

# **MARRI PROJECT**

**MIGRATION, ASYLUM, REFUGEES REGIONAL INITIATIVE**

**ACCESS TO THE RIGHTS PROJECT**

**CIVIL SOCIETY WORKING GROUP FOR BOSNIA AND HERZEGOVINA  
(CSWG B&H)\***

## **LEGAL AND ACTUAL STATUS OF REFUGEES, DISPLACED PERSONS AND RETURNEES TO BOSNIA AND HERZEGOVINA**

**TO ACCESS THEIR BASIC RIGHTS**

**(BOSNIA AND HERZEGOVINA INVENTORY<sup>1</sup>)**

**July 2005**

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\*Koordinator CSWG B&H is Lex International Banja Luka.

<sup>1</sup> This Inventory ... has been drawn up as a relatively independent document. In order to have a better overview, reference to certain issues from the document under the title "OVERVIEW OF ACCESS TO RIGHTS", MARRI – Stability Pact for South Eastern Europe (document for BiH, author Mr. Jens Schwalb) will be given in special notes (footnotes). The aforementioned document will hereinafter be referred to as: Overview...

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## SUMMARY

This document, under the title Legal and Actual Status of Refugees, Displaced Persons and Returnees to BiH, resulted from the activities of the Civil Society Working Group of BiH (CSWG BiH) within MARRI Program – Access to Rights (AtR). This working group consists of the following non-governmental organizations in Bosnia and Herzegovina: International Lex Banja Luka, Zena BiH Mostar, JOB 22 Sarajevo, BOSPO Tuzla, DISS Sarajevo, Vidra Banja Luka and Association of Employees and Disabled Workers Returnees from Croatia.

The aforementioned material, along with the Plan Base and Activity Plan, represents the basis for the work and activities that will be undertaken by CSWG BiH in the forthcoming period, and it primarily contains the legal reference to the status of refugees, displaced persons and returnees to BiH in terms of consuming most of the rights.

The issues worked on were grouped according to their main fields. They refer to the legal framework regulating the issue of the status of refugees, displaced persons and returnees, as well as the issue of setting criteria for the determination of beneficiaries of projects relating to the returnee and property reconstruction. Since the issue of status has been regulated on two legislative levels (state and entity), a difference can be noticed in the status of certain rights of those persons, while the procedure for electing the beneficiary of the return and property reconstruction projects has been bureaucratized and it is very possible that the information on tenders is not equally accessible to all the interested parties.

Furthermore, according to the document, the process of repossession of private property and apartments in BiH has generally been finalized, except of the so-called military apartments (mainly in the Federation of BiH) and houses and apartments that were subjects to the sales or exchange agreements. It seems possible that the legal practice concerning the destiny of these agreements have not been adjusted, which puts the citizens in an unequal position (especially in RS), and that the Commission on the level of BiH, successor of the former CRPC, did not succeed in keeping the dignity, i.e. independent position in relation to the previous body. Such a conclusion can be drawn if we analyze more carefully the decisions of this body referring to the so-called reexamination of the previously rendered decisions (certificates).

The issue of privatization of state-(socially-) owned apartments has been summarily worked on in this material. The issue of discount when repurchasing (buying off) apartments for refugees and displaced persons has not been equally resolved and regulated in the entity laws. Moreover, attention was brought in the document to the new entity laws on construction land that envisaged the audit (abolition) of some rights that the refugees and displaced person had according to previous regulations (communal facilities, compensation for land settlement, etc.). Generally speaking, the mere purpose of the existence of those laws seem questionable since they only complicate the legal-property relations in city settlements and give space for manipulation by the bureaucracy.

BiH inventors briefly worked out the issue that regulates the labour law, as well as the laws on enterprises and laws on manual trade (shops). Labour laws did not have a significant impact on the compensation to citizens who had lost their jobs during the hostilities. Even though the labour laws regulate the compensation issue differently in the entities, i.e. the length of service, it seems that the situation concerning the implementation of the same is unfavourable both in the RS and the Federation of BiH. These laws are still mainly only words on paper concerning the aforementioned issue. The laws on enterprises, as well as on entrepreneurship, request a lot from the returnees in cases when they decide to secure their economic survival by starting their own private businesses. This does not refer to the relatively high equities and duties only, but also unreasonable administrative requirements and slowness of court and managerial administration when deciding about the registration of a company or shop.

The issue of health care, social protection and pensions was also worked on. Formally speaking, the target group has access to health protection, but it does not resolve the problem because of the difficult situation in which the health care is on all levels. The private health sector is mainly inaccessible to this category of beneficiaries. Due to the poverty of the state and budget of the lower levels of authority, including local communities, the social protection is on a very low level. The issue of pensions has not been resolved in the relations between the entity pension funds in BiH, nor has it been resolved between the former republics of SFRY, at least not completely (even though the inter-entity agreements between BiH and Croatia and Serbia and Montenegro have been entered). The payment of earlier (outstanding) pensions presents a special problem.

This document also involves the issue of tariff concessions, validity of public documents acquired in the former common country (SFRY). It has been noticed that the liberalization of regulations concerning the proving of the acquired educational qualifications, especially in the war and post-war period, had led to numerous misuses, resulting in an increased number of criminal offences due to document forging, etc.

A more specific activity of CSWG BiH, as well as the activity of the same bodies in the neighbouring countries, will in the forthcoming period mainly depend on the activities of the state component in the MARRI Program – Access to Rights.

## **1. LEGAL STATUS OF REFUGEES FROM BIH ACCORDING TO THE STATE LAW**

A special Law on Refugees from BiH and Displaced Persons in BiH was passed on the level of BiH and adopted on 3 December 1999 ("BiH Official Gazette" No. 23/1999). This law also regulates the legal status of refugees from BiH, residing abroad. According to the Amendments to this Law of 18 July 2003 ("BiH Official Gazette" No. 21/2003), the status of refugees or displaced persons and acquisition of the same refers to the period after 30 April 1991, instead of 30 April 2002, as was the case up to then. Besides, by these amendments the competency was determined/given to the Ministry for Human Rights and Refugees of BiH that is in charge of the solving of status and other issues of refugees and displaced persons, instead of the Ministry of Civil Affairs and Communicaitons. Other amendments to the Law are more comprehensive, and they were published in the "BiH Official Gazette" No. 33/2003, with the application of the same starting from 13 November 2003. The competency of the Ministry for Human Rights and Refugees of BiH is precisely regulated by the above-mentioned amendments, and a special Commission for Refugees and Displaced Persons of BiH is established (apart from the local representatives, comprised of representatives of UNHCR, OSCE and OHR). The Law anticipates the establishment of regional centers of the Ministries in Sarajevo, Banja Luka, Tuzla and Mostar<sup>2</sup> in order to have higher efficiency of the aforementioned ministries.

### **1.1. Acquisition of the status of refugee from BiH**

The refugee from BiH is a citizen of BiH who is residing outside BiH, and who was due to the hostilities expelled from his or her address or left his or her address in BiH and took refuge in another country after 30 April 1991, having had justified fear of being harassed because of race, religion, nationality, affiliation to a certain social group, or political orientation. An additional condition is that he or she cannot return in safety and dignity to their pre-war home nor has he or she voluntarily decided to permanently live outside BiH<sup>3</sup>.

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<sup>2</sup>Even though these regional centres of the state Ministry... were supposed to have been established two years ago, up to date they have not been established. There is no need to further explain how this circumstance reflects directly and negatively on the refugees', displaced persons' and returnees' consuming of their rights, when they are in the competency of the state Ministry. It also makes the sharing of information on the respective right more difficult.

## **1.2. Cessation/expiration of the status of refugee from BiH**

A refugee from BiH loses this status in the following cases:

- if he or she returns to his or her pre-war home in BiH in safety and dignity;
- if, upon all and objective information relevant to the choice of place of residence, he or she voluntarily decided to permanently move to another place of residence in BiH<sup>4</sup>; or
- if he or she permanently takes up residence outside BiH.

## **1.3. Status of displaced persons and its expiration**

Pursuant to the local legislation (see Art. 4 of the state Law ...), displaced person<sup>5</sup> is a citizen of BiH residing in BiH but who, due to the hostilities, was expelled from his or her place of residence or who left his or her place of residence after 30 April 1991 in justified fear of being expelled because of race, religion, nationality, affiliation to a certain social group or his or her political orientation, and are not in the possibility to return safely and with dignity to their pre-war places of residence nor has he or she decided to permanently take up residence on another address.

A displaced person ceases to be the same in the following cases: when he or she returns to the pre-war place by his or her own will, by refusing to return if it is possible to return safely and with dignity, and when permanently taking up residence in another place in BiH, chosen by his own will (Art. 7 of the Law).

## **1.4. Who is a returnee and how to decide about this status and cessation/expiration of the status?**

Returnee is a refugee from BiH who has expressed his or her wish to the competent body in BiH to return to his or her pre-war residence and who is in the process of that return, as well as a refugee from BiH who has returned to his or her pre-war home.

Status and cessation/expiration of the returnee status are being acquired upon the aforementioned state Law, i.e. upon the procedure stipulated by the laws of Entities. Entity laws include the Law on Displaced Persons – displaced persons and refugees – returnees to the Federation of BiH ("FBiH Official Gazette" No. 19/2000, 56/2001 and 27/2002) and Law on Displaced Persons, Refugees and Returnees to RS ("RS Official Gazette" No. 33/1999, 65/2001 and 13/2002).

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<sup>3</sup>Basically, the domestic legislation paraphrases the Art. 1 A (2) of the Convention on Refugee Status (from 1951 and Art. 1 of the Protocol from 1967) quoting: "For the purpose of the convention, the term "refugee" shall be applied on every person: "... who, as a result of the events arisen before 1 January 1951, in justified fear of being expelled because of race, religion, nationality, affiliation to a certain social group or his or her political orientation, finds him or herself outside the borders of the country of which he or she is the citizen and who cannot or, being in fear of the same, does not want to seek for the protection of that country; or who, if he or she does not have citizenship and finds him or herself outside the borders of the country in which he or she had their permanent place of residence, as a result of such events, cannot or, being in fear of the same, does not want to return to it. "

### **1.5. When does the returnee lose that status?**

The status of returnee (and refugee, alike) ceases to be the same at the expiration of six months starting from the day when that person took up the pre-war residence or another place of residence in BiH.

### **1.6. Types of rights of the refugees from BiH**

The rights of refugees from BiH are as follows:

- Right to return to the pre-war place of residence;
- Right to choose another place of residence;
- Right to repossess his or her property;
- Right to repossess his or her tenancy rights.

A refugee from BiH, after having been issued the decision on return to BiH, has the right to use the special benefits in personal transportation and the transportation of belongings from another country to the transit centers in BiH or pre-war places of residence. The refugees also have some additional rights that are being constituted and realized upon the entity, cantonal and municipal regulations, especially referring to the economic, social, and health protection (care) and freedom of religious expressing and political activities.

### **1.7. Special rights of returnees**

During the returnee status, these persons have the right to:

- Receive aid in an urgent reconstruction of their houses and apartments;
- Be granted loans for the starting of business to have income for him/herself and his or her family;
- Adequate financial support;
- Necessary meals (nutrition);
- Necessary clothing;
- Basic health care (protection);
- Primary education, and
- Social aid, provided that they are unemployed.

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<sup>4</sup> In case that a refugee returns to BiH, but that he or she fails to choose another place of residence or does not return to the previous place of residence in BiH, he or she can, under certain circumstances, acquire the status of displaced person in BiH.

<sup>5</sup> Bosnia and Herzegovina has 3,842.527 citizens (Statement of Nora Selimovic from BiH Statistics Agency, "Nezavisne novine", 17 July 2005). The official census in BiH was taken in 1991. According to the data of the state Ministry of Human Rights and Refugees, based on the latest census, approximately 186.451 displaced persons and 59.825 families were registered in BiH (Statement of the minister Mirsad Keba, "Nezavisne novine", 16 April 2005).



It should be stressed that these rights, which have been specified in the aforementioned state law, are not being equally realized on the whole territory of BiH, but that their realization depends on the activities of entities, cantons and municipalities.

## **2. CRITERIA FOR THE DETERMINING OF PROPERTY RECONSTRUCTION AND RETURN PROJECT BENEFICIARIES**

The general criteria for the determining of potential property reconstruction and return project beneficiaries are regulated by the Law (New Art. 22), and those are the following:

1. that the refugee is from BiH, displaced person from BiH, or a returnee<sup>6</sup>;
2. that he or she expressed the wish to return;
3. that the ownership status or tenancy right has been determined over the housing unit that is subject to the reconstruction;
4. that on 30 April 1991 he or she had the address at the housing unit that is subject to the reconstruction;
5. that the housing unit is not considered to have good conditions for living in accordance with the standards for minimum housing conditions;
6. that he/she or a member of his or her household in 1991 do not have another adequate housing unit on the territory of BiH, and
7. that he or she did not get sufficient financial aid in the reconstruction to satisfy the adequate standards for minimum housing conditions.

The amended Law anticipates the establishment of the Return Fund, as a special administrative organization, with the main goal to offer support to return and reintegration of refugees from BiH and displaced persons in BiH. According to the Law, the mode of securing money for the Fund is regulated, as well as the role of the mentioned Commission for Refugees and Displaced Persons of BiH, in relation to the activities of the Fund.

### **2.1. Instructions for the selection of beneficiaries for the program of aid in the reconstruction of housing units for the purpose of return**

The Ministry for Human Rights and Refugees of BiH has, in coordination with the state Commission for Refugees and Displaced Persons, issued the Instruction for the implementation of the procedure for the selection of beneficiaries for the aid program of housing reconstruction for the purpose of return (hereinafter: Instruction<sup>7</sup>). This document entered officially into force on 9 June 2004. By this Instruction guidelines are given to the competent municipal bodies and other representatives of the local

community towards their partners in the implementation of the process of selecting priority beneficiaries for the aid in reconstruction.

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### **2.1.1. Criteria for the selection of beneficiaries**

There are general and special criteria for the allocation of aid, of which the general ones are eliminatory. General criteria for the determining of potential beneficiaries are the following:

- Aid beneficiary is a refugee from BiH, displaced person in BiH or returnee;
- Aid beneficiary expressed the wish to return;
- Ownership status or tenancy right has been regulated over the housing unit that is subject to the reconstruction;
- Aid beneficiary's place of residence on 30 April 2001 was the housing unit that is subject to the reconstruction;
- The housing unit is not considered to have good conditions for living in accordance with the determined standards for minimum housing conditions;
- Aid beneficiary and members of his or her household from 1991 do not have another housing unit fit for living (the so-called, IMG standard) on the territory of BiH;
- Aid beneficiary did not get sufficient financial aid in the reconstruction to meet the adequate standards for minimum housing conditions.

Local commissions use the prescribed special criteria as a basis for the selection of priority beneficiaries, respecting the principle of equal right to the access to reconstruction aid. These special criteria are the following:

- The beneficiary returned to his or her pre-war place of residence and now lives in conditions that are below the housing minimum (including the beneficiaries that temporarily live in a tent settlement, camp, containers, etc);
- Aid beneficiary belongs to a certain group such as social categories, ill or disabled persons, unemployed, staff having jobs in short supply, self-supporting parents, (under-aged) minors without parents, families of fallen soldiers, families of disappeared persons, former camp inmates;
- Beneficiaries are in different forms of collective accommodations (transit and collective centres, alternative accommodation or is entitled to alternative accommodation);
- The age of beneficiaries and number of household members.

The mode of proving certain special criteria has been prescribed. The beneficiaries who have returned to their pre-war place of residence prove this circumstance with the

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<sup>6</sup> Body of rights discussed in this material equally refers to all categories (refugees, displaced persons and returnees), of course when the nature of law anticipates the same and when it is applicable *ratione material*.

<sup>7</sup> This Instruction was published in the "Official Gazette of BiH" No. 25-2004

already mentioned certificate on movement, i.e. that he or she has registered the place of residence on the address of the object for which reconstruction is being asked. The local community issues the certificate according to which the returnee-beneficiary can get the aid. Affiliation to a certain group is being proved by the adequate original certificate. Welfare Center in the municipality issues the certificate on parents' or minors' self-support, i.e. to person using social aid. Chronic (lingering) disease is being proved with the certificate issued by a health institution. Jobs in short supplies are being proved by the certificate on employment in the place of return, certificate on employment or certificate on employer's intention to employ the person, etc. Certificates on different forms of collective accommodation are being issued by those centers or institutes, and the certificate on alternative accommodation is being issued by the body in charge of the housing issues of the municipality of temporary residence. The house list not older than six months is used to prove the number of household members, and the under-aged status by an excerpt from the book of births, etc.

### **2.1.2. Procedures for the selection of beneficiaries**

The instruction anticipates, at least formally, a transparent procedure for the selection of beneficiaries and allocation of aid. The public invitation is to be published on the notice board of the municipality, and at least in one daily newspaper of each entity; however, the Ministry for Human Rights and Refugees can, whenever necessary, organize special informative campaigns. The public invitation has to last (remain published) at least 39 days starting from the day of publishing the same in the daily newspapers. The content of the public invitation is regulated by the instructions, of which the most important ones are general and special conditions, as already mentioned, and the total value of the project and approximate number of housing units for reconstruction.

A special Commission for the selection of aid beneficiaries implements the procedure for the allocation of aid, and is being established by the municipal council (assembly), from the representatives of the municipality, civil society (including associations of returnees or refugees, if organized) and donors. The mode of work of the Commission is regulated in details by the instruction, as well as the delivery, opening and registration of the potential beneficiaries' applications, checking of data, cooperation with the relevant bodies, including the Ministry for Human Rights and Refugees, UNHCR, OHR, returnee associations, etc. An interview has been foreseen with the potential aid beneficiary, as well as a visit to the housing unit with the evaluation of the level of damage and reconstruction costs.

Assistance can be given to individual beneficiaries in form of the so-called self-help in construction-installation material, upon the "turn-the-key" system or in another way.

After having done the checking, interviews and other activities that were undertaken, the Commission makes the final list of selected beneficiaries and publishes the results

by putting the same on the municipal notice board. There is a possibility that someone files an objection within the 15-day-term, whereupon contracts are concluded with the beneficiaries.

The application of the Law on Freedom of Access to Information in Bosnia and Herzegovina, which the Instruction directly quotes, guarantees the correct selection. It means that someone who is interested could require (file a request) to have an insight into the list of aid beneficiaries, i.e. concluded contracts, etc. and check the correctness of the selection of beneficiaries<sup>8</sup>. At the same time, the acting bodies are obliged to protect the beneficiaries from any possible data misuse, in accordance with the application of the BiH Law on Protection of Personal Data.

## **2.2. Local bodies are responsible for the return**

The Memorandum on Understanding was signed in the course of October 2003 between the Ministry of Refugees and Displaced Persons of BiH, Ministry of Refugees and Displaced Persons of the Federation of BiH, and Ministry of Refugees and Displaced Persons of RS and the United Nations Development Program (UNDP) relating to the program "Permanent transfer of responsibility for the return to the competent institutions".

## **3. REPOSSESSION OF PRIVATE PROPERTY AND APARTMENTS IN BOSNIA AND HERZEGOVINA**

The entity laws on cessation of the application of the law on use of abandoned property are in force in Bosnia and Herzegovina, and they present the legal basis for property repossession in BiH to the pre-war rightful owners, occupants or tenancy right holders.

Provisions of this law refer to real estate, including business premises in private possession (ownership), houses in private ownership and apartments in private ownership, as well as apartments where there is a tenancy right over them ("apartments"), which were abandoned in the period after 30 April 1991, regardless whether the real estate or apartment was declared abandoned.

<sup>8</sup> The right, i.e. access to the aid on housing reconstruction is, as a rule, not disputable in terms of the prescribed criteria and procedures. However, it does open a crucial question as to whether the potential beneficiaries are being informed about this type of assistance in due time. Procedures for the selection of beneficiaries are being carried out in cooperation of the state Ministry of Human Rights and Refugees and local authorities (municipality). As for the potential beneficiaries of this type of aid, if they are refugees, they reside outside BiH, and if they are displaced persons, they are again outside the territory they want to return to, i.e. the damaged property is located at the territory of pre-war place of residence. It would probably be useful to notify (publish) the access to aid for the reconstruction of a certain number of housing units on a certain territory in an already well-known mode and well-known press so that the potential beneficiaries can follow the same. Furthermore, it would be useful to know in advance the time limits of publishing (e.g. every two months), have a list of territories that can be considered, etc. With regard to the aforementioned, an issue closely linked to this is the non-existence of branches of the above-mentioned Ministry outside Sarajevo.

The only condition is that the rightful owner or occupant of the real estate has lost the possession of real estate or the occupancy right holder has lost the possession of apartment.<sup>9</sup>

### **3.1. REPOSSESSION OF PRIVATE REAL ESTATE**

The rightful owner or occupant (user) of the real estate who has abandoned the real estate is entitled to repossess that real estate along with all the rights he or she had until 30 April 1991, i.e. until the moment of abandoning the real estate.<sup>10</sup>

The claim for repossession of property in the Republika Srpska is filed with the department of Ministry of Refugees and Displaced Persons of Republika Srpska in the municipality in which the property is located (the so-called OMI)<sup>11</sup>.

The claim for repossession of property in the Federation of BiH is filed with the administrative body in charge of property-legal affairs in the municipality in which the property is located.

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<sup>9</sup> The agreement of OSCE Missions is mentioned in the Overview... (I Property, I.1.1. Legal Framework) as to how the regional cooperation regarding the return, property and vested rights, apart from the right to property repossession, will also involve... "right to adequate compensation". Concerning BiH, such a standpoint is directly supported by the Dayton Peace Agreement (Annex VII, Agreement on Refugees and Displaced Persons), clearly stipulating that "...claims can refer to the repossession of property or fair compensation instead of repossession." (art. XI), and that the Property Fund will be established for the refugees and displaced persons within the Central Bank of BiH (art. XIV). The aforementioned legislation has not been realized in reality due to the fact that the possibility of having "adequate compensation" for the property damaged in the war has still not been realized in practice. The reason for it is probably the lack in financial means (this has been correctly concluded in the clause 16 of the Overview...). It has to be mentioned that a number of refugee and DP associations has again actualized this issue at the beginning of 2005, thus a number of their members have initiated lawsuits before regular courts to get compensation. There is no accurate statistics, but according to some estimation, up to date more than 5000 people in BiH have started these lawsuits.

<sup>10</sup> The legal possibility of prosecuting the occupants of the property if they do not vacate the same by their own will within 15 days is mentioned in the same Overview... (see the previous footnote), as well as the possibility of reporting and prosecuting the multiple occupants. It seems that these mechanisms have not been used in practice nor has any other way been used to make the evictions less time-consuming or provide means for the same. Furthermore, the possibility of prosecuting pursuant to the Art. 146 of BiH Criminal Code, which entered into force on 1 March 2003 (criminal act upon preventing refugees from returning or using their property), has not been effectively applied yet. This is being mentioned so as to point out that even though the original plan was to finalize the property repossession process by the end of 2003, the return process has still not been finalized.

The pre-war owner or occupant of the property has the right to at any time file a claim for the repossession of his or her property. The claim of the rightful owner for the repossession of real estate cannot be time-barred.<sup>12</sup>

### **3.2. REPOSSESSION OF PRIVATE MOVABLES**

Regarding the repossession of movables, no special regulations were passed. That means that repossession of this type of property is possible upon the regular provisions from the period of peace.

Repossession of movables (furniture, equipment, vehicles, machines, etc) is possible via the regular legal proceedings by lodging a complaint with the court. Hence, it is necessary to identify things and persons who are keeping them in their possession before lodging a complaint. The problems one can face could be the relatively short time-barred terms. As opposed to the real estate where the deadlines are open, this issue remained open concerning the movables.

It is possible to check the movables that are subjects to the registration (automobiles, trucks, tractor, etc) with the competent body of interior affairs.<sup>13</sup>

### **3.3. RETURNING APARTMENTS TO THE OCCUPANCY RIGHT HOLDERS IN BOSNIA AND HERZEGOVINA**

The existing legislation confirms the right of the occupancy right holder over an apartment that the contested apartment is to be returned in line with the Annex VII of the General Framework Agreement for Peace in BiH, if the apartment were abandoned after 30 April 1991.<sup>14</sup>

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<sup>11</sup> About the possibilities of having one's property repossessed before the court, and not only by administrative procedures based on special property laws, see the Decision on acceptance and merit in the case under the file No. CH-98-659 of the Human Rights Chamber of BiH (20 linked complaints altogether) dating from 10 September 1999; also, the Decision on merit in the case No. CH-98-697 of BiH Human Rights Chamber dating from 11 February 2000. In the aforementioned decisions the Chamber was directly quoting the European Convention on the Protection of Human Rights and Fundamental Freedoms (art. 1 of the Protocol I; art. 8). The European Convention... is an integral part of the domestic legal system of BiH, and according to the BiH Constitution, it has a stronger legal power than any other domestic law.

<sup>12</sup> In the Overview... the issue of responsibility for the return of property is imprecisely linked to the competencies of the municipalities instead of the adequate entity ministries as was precisely stipulated by the entity property laws, including the interventions of the OHR in the same (see e.g. the clauses 12, 20, 30, and 32). The only truth is that the municipal bodies in charge of housing issues are competent for the return of apartments in the Federation of BiH.

<sup>13</sup> Nevertheless, many proceedings have been initiated before the regular courts for the repossession of movables or compensation of the same (see the Art. 154 of the Law on Obligatory Relations, for the claim, and Art. 376 and 377 of the Law on Obligatory Relations, for time barring).

Even though the deadlines for claiming the repossession of apartments have expired in BiH, there are still some claims pending. There are many municipalities where all the claims have been resolved. According to estimations, less than 1% of all filed claims have been left unresolved. The pending cases mainly refer to the apartments that were subjects to the exchange or the so-called military apartments in the Federation of BiH.

In the Federation of BiH the claim for repossession of apartment was being filed with the municipal body in charge of housing issues (municipal housing body), in the municipality in which the apartment was located. Sarajevo Canton is an exception, where the cantonal body for housing issues is in charge of the aforementioned claims (which is located in municipal premises in the municipality in which the apartment is located). The deadline for filing the claims for the repossession of apartments in the Federation of BiH was until 4 October 1999 at the latest.

The claims for the repossession of apartments in the RS were being filed with the department of the Ministry of Refugees and Displaced Persons of Republika Srpska (OMI) in the municipality in which the apartment was located. The deadline for filing the claims for the repossession of apartments in the Republika Srpska was until 19 April 2000 at the latest (under certain conditions even until 19 June 2000, but only with the Commission for Real Property Claims).

It is a well-known fact that in certain cases in both entities people have not filed claims for the repossession of their tenancy rights within the above-mentioned deadlines. The data are not equal upon the municipalities in BiH. We are talking about approximately 3% of pre-war occupancy right holders. If the occupancy right holder has not filed a claim for the repossession of his or her apartment in the aforementioned deadlines, he or she has no longer the occupancy right, and has legally lost the apartment.<sup>15</sup> In such a case the apartment could be used as alternative accommodation<sup>16</sup> in the period of transition, and later returned to the legal entity, i.e. allocation right holder.

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<sup>14</sup> The ratification of the Agreement on Succession of former SFRY by the Republic of Croatia (the last ratification) that entered into force on 3 June 2004, threw a new light on the repossession of apartments. This Agreement... especially guarantees the enjoyment of citizens' occupancy rights. The countries successors of former SFRY committed themselves to equally apply their domestic legislation relating to occupancy rights on persons who used to be citizens of former SFRY and who used to have this right without discriminating against someone regardless of his or her sex, race, language, religion, political or other orientation, national or social origin, affiliation to national minorities, property, birth or any other status. It can be noticed that this provision is not really clear and unambiguous as the one of private property. Namely, with regard to private property, the law explicitly guarantees "...recognition, protection and return...", whereas, regarding the occupancy right, the law generally talks about persons who "...used to have such right..." in the context of non-discriminatory application of internal laws of each country successor in terms of the right to use the apartment.

<sup>15</sup> It has been concluded in the Overview... (clause 12), among other things, that according to the New Strategy Direction of OSCE there is a requirement to determine "...legal procedures that refer to persons who have not filed a claim for the repossession of their apartments within the deadline prescribed by the property laws...". Up to date, this has not happened in BiH. Individual attempts to repossess their apartments in legal proceedings, before the court of BiH, gave no results, because the courts referred to the fact that the complaints failed to be lodged in due time, i.e. within the deadlines stipulated by the property laws as *lex specialis*. In the same place in the Overview.. issues are mentioned, though not very clearly, relating to the "...migration from BiH to Croatia..." and "...efforts put to provide the pre-war population of BiH, who wish to return to BiH, with adequate accommodation...". If these conclusions have any relation to the occupancy

In July 2003 in the Federation of BiH, and in November in 2003 in the RS, changes were passed of the Law on Cessation of the Application of the Law on Abandoned Apartments (FBiH), i.e. the Law on Cessation of the Application of the Law on Repossession of Abandoned Property (RS), referring to the repossession of military apartments. According to these changes, the holder of occupancy right over an apartment owned by the RS Ministry of Defence, who after 14 December 1995 stayed to professionally serve in any of the armed forces out of Bosnia and Herzegovina, is not entitled to repossess the apartment and is not considered to be a refugee. Moreover, the occupancy right holder with the described status who was allocated a new occupancy right or a right corresponding to the mentioned right from the same housing fund of former YNA or the established funds of armed forces of countries established on the territory of former SFRY is not considered a refugee and is not entitled to repossess the apartment in the RS.<sup>17</sup>

### **3.4. ENFORCEMENT OF DECISIONS ISSUED BY THE COMMISSION FOR REAL ESTATE CLAIMS OF REFUGEES AND DISPLACED PERSONS**

The Commission for Real Estate Claims of Refugees and Displaced Persons (hereinafter: Commission, and more known as CRPC upon the English abbreviation), established upon the Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina, had the authority to make special decisions and the execution of the same secure the repossession of property (houses and apartments) in BiH. These decisions were often called certificates.

This Commission stopped with its work in 2003, however there are still pending/non-executed decisions of the Commission in BiH. The entity bodies took over the pending cases from CRPC upon some special laws.

#### **3.4.1. Which body in the Federation of BiH is in charge of resolving the pending claims filed with CRPC, which has closed down?**

After the CRPC stopped working, the Parliament of the Federation of BiH resolved the issue of competency for the acting upon the previously filed claims with CRPC

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rights in the Republic of Croatia that, according to the existing legal framework in the Republic of Croatia, the pre-war occupants cannot repossess, then it is a real and open issue even today. As for this population, some issues related to the nationality status are also open in BiH (see the Overview... clause 48, 49, 51..). Up to date, this problem has not been resolved. There is a remark that by recognizing the BiH citizenship upon the application of the former BiH Law on Nationality the ethnic structure in BiH would change by 2-3% in favour of Serbs. Constitutionality of the disputable RS Law on Nationality was disputed and the case is pending before the council for protection of the vital national interest of RS Constitutional Court. Due to the fact that many other rights depend on the issue of nationality, this problem is crucial for this relatively numerous population.

<sup>16</sup>There were no cases in which apartments located in one municipality were used as alternative accommodation for occupants from another municipality (see the clause 33 of the Overview...)



requiring the same to issue a decision (certificate) by a special Law. This refers to claims filed with CRPC for which the same never issued a first-instance decision.

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The new Law entered into force on 7 February 2004, and the municipal, i.e. city administrative department in charge of housing issues, i.e. housing-legal affairs is now competent to act upon the pending claims filed with CRPC. These bodies are competent to act upon claims for the repossession of private property (filed upon the Law on Temporarily Abandoned Property in Possession of Citizens), and claims for the repossession of tenancy rights (filed upon the Law on Cessation of the Application of the Law on Abandoned Apartments). Anyway, the aforementioned law allows for the possibility to have this issue settled in another way by the cantonal law (competent body for the resolving of applications filed with CRPC).

The final deadline within which these claims are to be resolved is 31 December 2004, and they are being resolved in a chronological order as received by CRPC. It seems that these deadlines have not been met. According to the Law, the procedures for property repossession upon the pending claims filed with CRPC are to be merged with the procedures for the repossession of private property and apartments directly filed with local administrative bodies.

### **3.4.2. Which body in the RS is in charge of resolving the pending claims filed with CRPC, which has stopped working?**

In the Republika Srpska, after the CRPC stopped working, the National Assembly of Republika Srpska has by a special Law on Transfer and Resolving of Pending Claims for the Repossession... solved the issue of competency, i.e. determined a competent body to be in charge of acting upon previously filed claims with the CRPC requiring to be issued a decision (certificate). This refers to claims filed with CRPC for which the same never issued a first-instance decision.

The new Law entered into force on 20 January 2004, and the department of the Ministry of Refugees and Displaced Persons is now competent to act upon the pending claims filed with CRPC, in the municipality in which the contested property or apartment is located (OMI). These bodies are competent to act upon claims for the repossession of private property and claims for the repossession of tenancy rights, alike. These two types of claims for the repossession have been filed with the CRPC upon the Law on Use of Abandoned Property.

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<sup>17</sup> The repossession of the so-called military apartments in BiH (especially in the Federation of BiH) is today probably the most important property issue that has not been completely solved yet, because it refers to a relatively bigger number of people. With regard to this issue see the Decision on acceptance and merit in the case No. CH-97-110 of BiH Human Rights Chamber dated 11 February 2000; Decision on acceptance in the case No. CH-96-3 of BiH Human Rights Chamber. Compare the Decision of the Municipal Court of Bihac in the case No. P-842-99 dated 18 October 2000, upon the complaint of Dj.A. versus the Federation of BiH.

The final deadline within which these claims are to be resolved has not been regulated yet, and, according to the Law, they are to be resolved in a chronological order as received by CRPC. According to the Law, claims for property repossession upon the pending claims filed with CRPC are to be resolved simultaneously with the procedure for the repossession of private property and apartments directly filed with the OMI.

### **3.4.3. Reexamination of previously made decisions by CRPC**

Regarding the reexamination of the already made decisions by CRPC, a special Commission for the second-instance resolving has been established within the Ministry of Refugees and Displaced Persons. An Agreement has been formally concluded between Bosnia and Herzegovina, the Federation of BiH and RS on transfer of competencies and continuance of financing the work of the Commission for Real Estate Claims, in accordance with the Art. XVI of the Annex VII of the Dayton Agreement.

Decisions of the Commission have become final on the day of their issuance. The rights to real estate (property) are being confirmed by the Decisions of the Commission to the benefit of persons mentioned in the decision and the same require from the competent executive bodies to take necessary measures that would enable owners to finally repossess their property (be reinstated). The Decisions of the Commission also present legally valid evidence that can be used in administrative, court and other legal proceedings.

The Decisions of the Commission are being executed upon the entity laws passed by the High Representative for BiH. The laws entered into force on 28 October 1999 and they were later amended at several occasions. The laws have nearly the same wording, except of the part referring to the entity bodies in charge of the execution of the Commission's decisions.

### **3.4.4. Initiating proceedings and competency**

Decisions of the Commission are implemented administratively upon the request of the interested party (claimant of execution). In the Republika Srpska, the department of the Ministry of Refugees and Displaced Persons (OMI) of the municipality in which the property is located, is the one executing the decisions of the Commission that refer to the property of citizens upon the written request of the interested party. The same body (OMI) executes the decisions of the Commission referring to apartments over which there is a tenancy right, also upon the request of the persons claiming (asking for) the execution.

In the Federation of BiH the administrative body for property-legal issues is in charge of executing the decisions of the Commission referring to private property in the municipality in which the contested property is located. Regarding the decisions of the Commission by which the tenancy rights are confirmed in the Federation of BiH, the competency is given to the administrative body for housing issues of the municipality in which the apartment is located. The decisions of the Commission referring to private property or apartments over which there is a tenancy right are being executed only upon the request of the interested party.

The right to file a claim for the execution of the Commission's decision by which the right to private property is confirmed cannot be time-barred.

The request for the execution of the Commission's decision by which the tenancy right is confirmed has to be filed within a year from the day when the Commission issued the decision, i.e. for decisions that were made before the Law on Execution of CRPC Decisions had entered into force within 18 months starting from the day when the same became effective. The Law on entered into force on 28 October 1999.

#### **4. VALIDITY OF THE AGREEMENT ON EXCHANGE OF PRIVATE PROPERTY AND SOCIALLY OWNED APARTMENTS**

A number of citizens of BiH have, during the war period when leaving their pre-war homes due to various motives and reasons, very often because they had to, concluded agreements on exchange of their private property. With regard to the agreements on exchange of private property concluded after 30.04.1991, there is no precise legal rule but instead the practice of the competent bodies, which can evaluate the validity of these agreements, has been clarified. The following conclusions relating to agreements on exchange of private property basically also apply to the agreements on sale of property (sale contracts).

It is not disputable that the contracts on property sale, which the contracting parties respect and do not dispute, are legally valid. In the case of private property, it means that there is a written contract containing the signatures of the contracting parties (or their proxies) verified/certified at the court, and that the contract has been entered in the land-registry books and fully executed.

If it is about a contract on exchange of apartments, there should be a contract on exchange in writing signed by the contracting parties for which the allocation right holder gave its written consent and which the contracting parties took over.

If the contracting parties do not dispute such a legal matter, it is basically not necessary to undertake any additional legal actions to have them valid in future.

The status of the agreements on exchange of private property becomes disputable if/when one contracting party is disputing the same by filing a claim for the repossession of property that he or she formally exchanged by a valid agreement on exchange of property. Pursuant to the existing regulations (Art. 25 of the Law on Cessation of the Application of the Law on Use of Abandoned Property, etc), in case of a dispute relating to the legal transfer of property rights, the administrative body refers the clients to resolve the validity of the contract in a regular civil lawsuit. According to this regulation, it is not possible to return the property to the pre-war owner without the consent of the other contracting party. Up to date, the competent body was acting without any principle because it used to address the clients to the court, and sometimes it would return the property to the previous owner as if there was no contract at all. In certain cases this "administration would rather keep silent". BiH Constitutional Court resolved some dilemmas concerning this issue by its decision No. U-15/99 of 15 December 1999. When interpreting these decisions it can be concluded that all the formally valid contracts on exchange of property (written contracts with certified signatures of contracting parties before the court) are to be recognized until differently proved before the court, and that the contracts are not annulled upon the law itself, which results in the fact that the administrative bodies are not authorized to return the apartments to the pre-war owners nor by themselves determine the legal validity of these contracts. Furthermore, it means that the existing status is being respected for the clients who comply with the contract. However, if the contract is disputed, the possibility of keeping the same in force is questionable from the aspect of respecting the fundamental human rights. Namely, when one of the contracting parties leaves the place of residence due to hostilities, i.e. if in war circumstances his or her life and property are in danger, the issue of correctness of property exchange is put into question. A freely expressed wish is the condition for regarding a contract valid, and the Constitutional Court is of the opinion that it is endangered by the vulnerable position of members of the ethnic minority who had entered the agreement (contract) during the hostilities and left his or her place of residence. Therefore, it is not likely that court can keep the contracts on exchange of property concluded under such conditions in force. Moreover, the legal proceedings cannot be avoided, which would mean that the repossession of property is not possible in the administrative proceedings by the ministry of refugees and displaced persons before the court dispute has been finalized.<sup>18</sup>

#### **4.1. Discontinuing administrative proceedings for property repossession**

The legal view of the obligatory halt in the administrative proceedings in terms of returning the property (private property and apartments) for which there was a transfer of rights and the need to advise the clients to start legal proceedings before the competent court, in order to determine the validity of such legal transactions, has been emphasized in the mandatory instruction issued by the RS Ministry of Refugees and Displaced Persons No. 01-107/03 of 14 March 2003.

However, in the course of 2003 such a legal view got a legislative confirmation through the changes in the property laws of both entities of BiH. Changes were done in the Law on Cessation of the Application of the Law on Abandoned Apartments, Law on Cessation of the Application of the Law on Temporarily Abandoned Property owned by citizens, and the Law on Execution of Decisions of the Commission for Real Estate Claims of Refugees and Displaced Persons (in the Federation of BiH) and the Law on Cessation of the Application of the Law on Use of Abandoned Property and Law on Execution of Decisions of the Commission for Real Estate Claims of Refugees and Displaced Persons (in the RS). The essential scope of all the changed laws is the changed mode of the competent bodies' acting when returning the property in case a contract on exchange of property exists (apartment or private property) to which the contested property that is now being claimed was the subject. In all such cases, the laws foresee a discontinuing of administrative proceedings for the repossession of property and clients are to be advised to resolve the destiny of the concluded contracts on exchange via the court. It is important to emphasize that the administrative proceedings are being discontinued also in cases where there is a decision of the Commission for Real Estate Claim of Refugees and Displaced Persons (CRPC) by which the claimant's right to repossess the contested property is being confirmed. If both properties that are subjects to the exchange are located in BiH, the burden of submitting evidence in the lawsuit is on the party claiming that the contract is valid. When the property, which is subject to the contract on exchange, is located outside BiH, the burden of submitting evidence is on the party who is asking for the annulment of the contract.

#### **4.2. Disputing the agreements on exchange of apartments**

By the end of 2001 all agreements on exchange of socially owned apartments became null and void upon the law. On 29. 12. 2001. and in terms of exchange of socially owned apartments, the changes of property laws entered into force, according to which the High Representative for BiH regulated the issue of apartments exchanged in the period between 30.04.1991. and 18.12.1998. in a completely new and different way. If there is a formally valid agreement on exchange of apartments (concluded in writing and supported by the consents of the allocation right holders, the will of contracting parties is respected and the agreement is considered valid if both parties

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<sup>18</sup> Up to 2003 there were cases in which property was repossessed while agreements on exchange, i.e. purchase and sale of property still existed. The property repossession was being resolved in administrative proceedings as if no agreements/contracts existed. After the aforementioned period, the practice was changed due to the fact that administrative bodies in charge of the repossession process changed the policy and started to stop all such procedures and advice the clients to address the court. Today a repossession is not possible until the court renders a decision on validity of the agreement (Compare e.g. the case of private property exchange under the file No. P-439-02 before the Municipal Court of Banja Luka in which A.C. and S.C. lodged a complaint against D.O. and S.O.; i.e. the case of exchange of apartments under the file No. P-946-04, before the Municipal Court of Banja Luka, in which N.L. lodged a complaint against S.T. and N.Z.).

have not filed claims for repossession of their pre-war apartments. The agreement is considered valid also in case both contracting parties declare that they comply with the exchange of apartments (even if they have formally filed claims for repossession of their pre-war apartments, for the sake of caution).

If, in case there is an agreement on exchange of apartments, only one contracting party filed a claim for repossession of the apartment, and the other one did not, the case will be treated as if the other contracting party filed in due time a claim for repossession of his or her apartment.

Finally, if the contracting parties dispute the validity of the agreement on exchange of apartments (one party complies with the agreement on exchange and the other one disputes the same), the body in charge of making decisions upon the claims filed for the repossession of apartments stops with the procedure and directs the clients to the court where they are to initiate proceedings and prove, as the so-called pre-judicial (previous) issue, the validity of the agreement on exchange of apartments. If the exchanged apartments are located in BiH, the party who claims that the agreement is valid is being sent to the court, and if one of the parties is out of BiH, then the party who claims that the exchange of apartments was done in a legally unaccepted way is to be sent to the court. The aforementioned regulations practically make it impossible to depose the apartment of the occupancy right holder who had realized that right during the war upon the agreement on exchange of apartments, until the court renders a final decision. These regulations have been additionally confirmed through the legal changes in 2003, as explained hereunder.

## **5. THE BUY-OFF OF APARTMENTS IN BOSNIA AND HERZEGOVINA**

The following comments take into account all the existing legal solutions relating to the buy-off of apartments, including the decisions of the High Representative for BiH.

All occupancy right holders have, as a rule, the right to buy off socially owned apartments. Spouses are regarded as equal occupancy right holders regardless of who had formally signed the agreement on exchange of apartments. Members of the occupancy right holder's household can also buy off the apartment.

Occupancy right holders who have abandoned their apartments in the period between 30 April 1991 and 19 December 1998, and who have not reposessed their apartments yet (have not been reinstated), but have started either an administrative or legal procedure for the repossession of their apartments, can file the request to buy off the apartment within a year starting from the day when they were reinstated. The date of reinstatement is considered to be the date when the minutes were taken by the authorized body at the moment of reinstatement, which were signed by the occupancy right holder or his or her proxy.

With regard to the apartments over which the tenancy right is disputable, the request to buy off the apartment can be filed only after the dispute has been finalized. In these cases it is mainly about that were during the war subjects to the exchange upon written agreements on exchange for which the allocation right holders gave their written consents. It is worth noting that a dispute referring to the reimbursement due to investments in the apartment cannot make the contested apartment disputable, in terms of the buy-off. According to the rule, reimbursement due to investments done in the contested apartment can be requested only after the apartment has been returned to the pre-war occupancy right holder.

As for the military apartments that were bought off earlier, one does not need to buy the same off again.<sup>19</sup>

The request to buy off the apartment is to be filed in a written form in three copies with the legal entity that, as the investor, has built the apartments or acquired the same upon another basis. It is about the co-called allocation right holder whose name has been mentioned in the preamble of the pre-war contract on use of the apartment. If, at the moment of filing the request, such a legal entity no longer exists, the request is to be submitted to its successor.

It is obligatory to submit the minutes along with the request to buy off the apartment, which serves as evidence of the occupancy right holder (and members of his or her household) that they left the accommodation which they had temporarily occupied or that they are not obliged to leave the current accommodation. This evidence refers only to people who are in Bosnia and Herzegovina. Concerning the people out of BiH, this can be seen from any of the documents that have the address of the current residence.

The occupancy right holder is to enter a written agreement on the buy-off of apartment with the owner of the apartment (allocation right holder).<sup>20</sup> The signatures of the contracting parties are to be verified at the court in the place where the apartment is located. If one of the spouses is buying off the apartment, a written consent of the other spouse is necessary. The tax on real estate turnover is not being paid upon the buy-off of apartments.

If during a period of one year starting from the day of reinstatement the contract on the buy-off of the apartment is not concluded, the apartment is to be rented until further notice. The rental price is from 1,5% to 2,5% per year of use when compared to the value of the apartment stipulated by the Law on Privatization of Apartments. The rental price is determined by the competent municipal body in the place in which the apartment is located, within the limits of the prescribed percentages.

All persons who abandoned their apartments in the period between 30.04.1991. and 19.12.1998. (refugees and displaced persons) are entitled to a maximum discount to the amount of 75% regardless of the value of the apartment, location of the apartment, age of building in which the apartment is located, discount being recognized to the buyer and mode in which the purchase price is paid. Anyway, the sum of these discounts that are being recognized to the buyer cannot be higher than 75% of the repurchase value of apartment.

## 6. NEW LAWS ON CONSTRUCTION LAND

The new laws on construction land have been passed in both entities of BiH. They have been published in the "Official Newspapers of FBiH" No. 25/2003 and "Official Gazette of RS" No. 86/2003. These are laws that regulate certain property-legal relations referring to the so-called construction land. Conditions, way of acquiring the right to land in cities and settlements of city character, mode of use, fees for the use of construction land and other issues are regulated by these laws. The laws also cover the field of the rights of refugees and displaced persons, particularly of those who have decided to permanently stay in their places of residence, because they do not have any favourable solutions for this population. In essence, the existence of such a legislation that regulates a quasi-property category such as the construction land is completely disputable. It seems that these laws present a good basis for making the property relations between physical and legal persons more complicated, creating more local bureaucracy in the cities, and not making the life easier to the citizens.<sup>21</sup>

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<sup>19</sup> Naturally, if the laws are being properly applied. However, it was already pointed out that there is obstruction in the repossession of military apartments, even when referring to the apartments bought out earlier.

<sup>20</sup> At this moment, the legal nature of the right to buy off an apartment is disputable in BiH (whether it is a property right suitable for inheritance). Namely, in some cases where the occupancy right holder had passed away after the Law on Privatization of Apartments was put into force but before having bought off the apartment, the question arose as to whether the inheritors had the right to buy off the aforementioned apartment instead of the rightful occupancy right holder. This refers to inheritors who were not members of the deceased occupancy right holder's household. There is still no final legal standpoint on this issue.

<sup>21</sup> Optimism is expressed in the Overview (see the clause 9, 10) in terms of the laws on construction land imposed by the OHR (these laws were in the meantime adopted by the entity parliaments). The Law on Cessation of the Validity of the Law on Construction Land was submitted to the legislative body in BiH back in 1991 but was, unfortunately, not adopted due to some latter events. The opportunity to abandon the 50-



## 7. APPLICATION OF THE LABOUR LAW

The existing Labour Law, which entered into force on 16 November 2000 enables the employees that were left without work during the war realize their right to compensation (severance pay)<sup>22</sup>. Conditions for the realizing of the right to severance are the following:

- That the employee was employed on 31.12.1991;
- That the seat of his employer is located on the territory of Republika Srpska;
- That his or her employment was illegally terminated in the period between 31.12.1991. and 16.11.2000.;
- That he or she filed in due time a request for the severance pay within 3 months starting from the day when the Law had become effective, i.e. until 16 February 2001.

The employees whose legal disputes were finalized and the employees who have realized their right to compensation based on the lay-off or termination of employment contract upon previous regulations do not have any right to severance pay.

The severance amount depends on the length of service and amounts to:

- for the length of service up to 5 years to the amount of 1,33 average salaries in the RS in the last three months in which the employee's right to severance pay is recognized;
- for the length of service from 5 to 10 years to the amount of 2,00 average salaries;
- for the length of service from 10 to 20 years to the amount of 2,66 average salaries;
- for the length of service over 20 years to the amount of 3,00 average salaries.

Funds for the severance payment are being paid to the burden of the fund that is to be established for this purpose out of the funds that are to be provided from the sale of state capital and other sources (in the privatization process). Up to date, the fund has not been established.

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year-long Communism experiment and ownership and that even the construction land is in someone's ownership has been missed, and other issues that do not refer to the ownership are stipulated by the administrative law, as used to be the case (the construction land was nationalized on the territory of former Yugoslavia by a special Law on Nationalization of Construction Land and Buildings For Rent dating from 1958). It is now even more probable that the agony in terms of property-legal relations relating to the construction land in BiH will last in future, and not be resolved by the imposed law. Evidence for that are also the last two years starting from the adoption of "new" laws in which nothing happened concerning the solving of ownership issues. In any case, there is still a need to see what will happen with the implementation of current laws on construction land.

The Commission, which consists of 4 members and a chairman, established by the relevant minister decides upon the request for severance pay upon the Labour Law. However, so far the commission has processed approximately 900 requests of which only one third was positively resolved.

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According to some unofficial information, more than 60.000 requests for the severance pay have been filed within the legal deadline, but not all of them have been officially registered yet, thus the exact number is not known.

## **8. EMPLOYMENT OF RETURNEES BY STARTING ONES OWN BUSINESS<sup>23</sup> AND IN OTHER SECTORS**

Generally, it could be concluded that private business in BiH can be started in two basic ways. One way is to establish ones own company (business enterprise), and the other one is to open a shop (manual trade). The domestic legislation basically supports the existing regular legal forms of enterprises all over the world.

### **8.1. Foundation and registration of a business enterprise**

The mother law pursuant to which a company is founded is the Law on Enterprises ("Official Newspapers of the Federation of BiH" No. 23/99, 45/00, 02/02 and 06/02). According to the Law on Enterprises, there are four basic forms of enterprises:

- company with unlimited joint and several liability;
- limited partnership;
- joint-stock company, and
- limited liability company.

Business operations can be done only within the business registered/entered in the court registry.

The core capital of a stock company amounts to at least 50.000 KM. Nominal value of shares cannot be less than 10 KM, which practically means that a stock company with the minimum equity cannot have more than 5000 shares. These are high amounts and are not available for most of the refugees and displaced persons.

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<sup>22</sup> It is about employment contracts that were terminated in a discriminatory way during the war due to ethnic affiliation to another group of population. In most cases these persons were not in the possibility to in due time ask for legal protection of their rights, because of having been expelled after the termination of their employment contract from their pre-war homes. The new entity legislation on labour was supposed to at least secure the length of service to these people, as well as compensation in form of satisfaction, (and not full compensation). It seems that after five years since the new labour legislation has entered into force, both have been missing. The reason is also the obstruction that has traditionally been justified with the lack in financial means.

<sup>23</sup> Today it is clear to everyone that the privatization (transition) in BiH (especially on the territory of RS) has resulted in a high rate of unemployment (over 40%). There is almost no successful legal successor of the previous socially-owned (state) company existing, thus the employment (of not only refugees, displaced persons, i.e. returnees) by the same is hardly probable. Therefore, this material covers more the issue of legal access to or possibility to start a private business than the possibility of employing someone in mostly non-existing pre-war companies. However, it does not imply that the issue of educating new employers and the public in the practices of fair employment is not present in BiH. On the contrary, it is more than necessary, as has been correctly concluded in the Overview... (clause 12). Nevertheless, it seems that the conclusion that "... discrimination is the main obstacle to the economic development" (the Overview... clause 65) has been exaggerating. It is obvious that the problem of economic development could be more easily resolved if it was reduced to this problem as the main one.

Taking into account the number of persons establishing Ltds in the Federation of BiH, an adequate core capital is required. The capital of Ltd with more than one founder amounts to at least 10.000 KM; however, the individual equity cannot be less than 2.000 KM. The capital of company established by one person amounts to at least 2.000 KM. Holdings can involve things, rights or cash, and if they involve cash, they cannot amount to less than the mentioned amounts. Holdings are transferable by written contract, and suitable for being inherited.

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Companies in the Republika Srpska are founded and registered by the application of the provisions of the Law on Enterprises ("RS Official Gazette" No. 24/98 and 62/02, 38/03).

A stock company in the RS can be founded by simultaneous foundation, whereas the core capital cannot be less than 10.000 KM. In case of a successive establishment of stock company, the core capital cannot be less than 20.000 KM.

It is necessary that the core capital amounts to at least 2.000 KM to establish a limited liability company; however, the equity of each member cannot be less than 100 KM. Anyway, when founding a company it is allowed to register 50 % of the mentioned amount (hence, at least 2.500 KM), and the remaining amount should be registered within two years at the latest starting from the date when the company was registered.

## **8.2. Foundation of manual trades (entrepreneurship)**

There is a special Law on Manual Trades in the Federation of BiH. It should be emphasized that cantons (districts) also have their own laws on manual trades.

With regard to the activities themselves, the Law on Manual Trade contains a very liberal provision according to which every business or other activity, which has not been explicitly banned by law, is allowed.

Manual trade is an independent and permanent performance of the allowed and registered businesses and other activities by the tradesman for the purpose of making profit. The profit can be made by production, turnover or by rendering services at the market. Cottage industry is also regarded as manual trade. A tradesman is a physical person who undertakes activities for his or her sake and account. The tradesman is held accountable for the liabilities arising from the manual trade activities with all his or her property. There are three types of manual trades: free, related and special.

Free manual trade can be done without any particular qualifications, skills or qualifying exam. Related manual trade requires higher qualifications, skills or qualifying exam. Special manual trades are those which the tradesman can do only if he or she fulfills the conditions required for the related trades and has the necessary consent of the competent body for the performing of a special manual trade. The Government of the Federation of BiH makes a list (inventory) of special manual trades upon types, conditions and modes of giving consents for the special manual trades.

There is also a legal possibility of performing a manual trade as additional profession. A physical person can perform a manual trade as additional profession in situations when he or she already has an established working relation upon any basis. It is natural that even this person has to fulfill some general and special conditions, depending on the type of manual trade as additional profession.

Apart from the issue of legal subjectivity, the main difference between a manual trade and business enterprise are the conditions for registration and competency of different registering bodies contained in the explicit provision of the Law on Manual Trade of the Federation of BiH, according to which the total annual income of the manual trade is limited. Namely, when the tradesman (independent entrepreneur) achieves the total income higher than 1,000.000 KM in the previous year, he or she is obliged to ask that the manual trade is deleted from the court registry and if he or she wished to continue with the business operations, a business enterprise should be established in line with the possibilities given by the Law on Manual Trade.

Pursuant to the Law on Manual Trade – Entrepreneurship ("RS Official Gazette" No. 16/02 and 39/03), entrepreneur is a physical person who undertakes activities for his or her sake and account. A shop has to be registered to perform entrepreneurial activities. The shop presents a form of business operations such as: workshop, office,

bureau, agency, studio, board and logging, pharmacy, doctor's office, atelier, laboratory, etc).

### **8.3. Starting of a previously registered company or shop**

There is a possibility to have a previously registered company continue with its business operations. The main prerequisite is that the company has not formally stopped existing, and that means that the bankruptcy procedure or liquidation was not processed. This circumstance can be easily checked by having an insight into the court registry kept by cantonal courts (Federation of BiH) or municipal courts in the headquarters of district courts (RS). The registries are public documents and this data can be checked by anyone, and not only by the owner (founder) or director of the company.

It is necessary to re-register a previously registered company so as to have it continue with its business operations, and the goal of the re-registration is to adjust documents and by-laws of the company to the existing laws. In this particular case it is necessary to respect the existing legal conditions in terms of minimal equity, which was described in the previous text herewith. Court fees are in this case lower than when founding and registering a completely new company (business enterprise), but their total amount depends on the number of changes. E.g. sometimes only the change of the equity amount will be necessary, and sometimes only the business activity, or the seat of the company, or persons authorized to represent, etc. It is also possible to re-register the previously the so-called private companies into a new status form stipulated by the existing legislation.

It is not possible to again activate the business operations of the previous shop, which stopped with the business during the war. It is necessary to register the foundation of a new shop, but one can name the shop as before.

### **8.4. Employment in other sectors**

As already mentioned, due to the bad economic situation, any possibility for new employment in other sectors is rather strained. Furthermore, employers avoid having their employees registered with the funds in order to avoid paying the tax and contribution, which additionally impoverishes the country (black market, see the Overview ... clause 66). Serious measures have recently been taken to prevent from the black market labour and tax evasions in general.

A non-discriminatory employment process is of particular importance in governmental bodies, public institutions, public companies, police and judicial bodies. Awareness of the improvement in the fair employment procedures in these bodies and institutions can significantly improve the whole process of refugees' and displaced persons' return. It seems likely that the access to work of ethnic communities throughout BiH has a noticeable positive trend. This is especially the case when getting employed

with courts and prosecutor offices.<sup>24</sup> There are also positive changes in the employment process with administrative bodies<sup>25</sup> and public enterprises.<sup>26</sup> Efforts are being put in the same direction to have a proportional participation of local communities in the governmental bodies; however, the results have not been equalized on all territories.<sup>14</sup>

Nevertheless, the above-mentioned is far from the desired standards, thus this field will still have to be monitored more cautiously.

## **8.5. Legal protection in the employment process**

The labour legislation enables legal protection of candidates applying for job. There may be some remarks and objections within the legal entity, whereon those people address the courts. The labour inspector can intervene with provisional measurements so as to protect the rights of employees, as well as ombudsmen operating on different levels of the territorial organization.

The access to the employees' rights is rather limited by the inaccessibility to professional legal aid because of the poverty, i.e. of not being able to pay for the rendered services. There is not system of free legal aid<sup>27</sup>, formal or real one, except of a number of NGOs who operate from project to project. This type of aid is very rare within the unions.

The main problem remains the fact that the discrimination in the employment process is more covered up than visible.

## **9. HEALTH CARE IN BOSNIA AND HERZEGOVINA**

A person who has returned from abroad has the right to basic health care provided that he or she has registered with the employment bureau within 30 days upon return from abroad and that he or she had had health insurance in BiH before having left to another country.

The mandatory health care applies to children up to the age of 15. It also applies to children at the age of 15 who have not completed their primary education or have not

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<sup>24</sup> These changes result from the fact that the selection of judges and prosecutors has been exempted from the competency of legislative bodies that were recruiting staff upon the will of the ruling parties (in favour of the predominance of ethnic communities that they represent). By the new legislation the selection of judiciary function holders was put in the competency of the High Judicial and Prosecutor Council of BiH. See the Law on High Judicial and Prosecutor Council of BiH, laws on courts and laws on prosecutor offices (state, entity and Brcko District).

<sup>25</sup> Agencies for state service (state, entity, cantonal and Brcko District) were established by special laws and they are responsible for the process of appointing state officials on different levels.

<sup>26</sup> There is a tendency to make the selection of employees in public enterprises and other institutions transparent. However, the situation is far from being satisfactory because there are vacancy notices but there is no guarantee that the most qualified candidates will be selected. Moreover, the access to work of all ethnic communities is more formally than really equal.

got employed after finishing the primary school, if they had registered with the employment bureau within 30 days after turning 15 or after the ending of school year.

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The mandatory health care provides the following:

- health care;
- reimbursement in case of temporary absence from work (for the employees), and
- travel costs reimbursement relating to the use of health care.

In the Federation of BiH, the cantonal insurance institutes determine the trait of an insured person, and in the RS those are the organizational units of the Health Protection Fund. The trait of an insured person is being proved by a special certificate (the so-called health identity).

The RS Law on Health Insurance (Art. 12) has been supplemented by the fact that, apart from refugees and displaced persons, returnees are considered to be persons covered by the mandatory health care. This entered into force on 9 July 2003. However, if the refugees, displaced persons or returnees are covered by the health insurance upon another basis, the mandatory health insurance will not be applied on them.

#### 9.1. REALIZATION OF RIGHTS UPON THE AGREEMENT ON MODE AND PROCEDURE OF THE USE OF HEALTH CARE CONCLUDED BETWEEN THE ENTITY FUNDS AND BRCKO DISTRICT

The signatories of this agreement are the RS Health Insurance Fund, Institute for health insurance and re-insurance of the Federation of BiH and the Government of Brcko District – Department of Health Care, Public Security and Other Services to Citizens (herinafter: signatories of the Agreement). The agreement was signed in December 2001 and was to be applied ever since.

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<sup>27</sup> The issue of free legal aid to the category of poor people (the so-called right of the poor) has not been regulated in BiH even on the legislative level. The pre-war legal aid system in municipalities rarely functions anywhere. The Commission for Legal Aid in BiH (which operated between 1998 and 2000 within the program of OSCE, and thereafter within BiH Council of Ministers; whereon it completely stopped with its work in 2002) once offered a draft of the Law on Legal Aid in BiH, but other than that nothing has been done up to date. The previous Law on Legal Aid (2002) used to be one of the priorities of the OHR, but it does no longer seem to be that case.

The Agreement regulates cases in which an insured person from the territory of one of the signatories of the Agreement needs to use the health care (protection) on the territory of another signatory of the Agreement.

An insured who changes the place of residence outside the territory of one of the signatories of the Agreement is entitled to health protection (care), provided that the contribution payer pays the contribution for that person in the mode and in line with the law on health insurance of the signatories of the Agreement on whose territory he or she is. This rule does not apply to pensioners who, in case of changing the place of residence, are entitled to health protection even though no contribution was paid in.

The insured have the right to health protection (care) just as any other insured person on the territory at which he or she is<sup>28</sup>. There is a possibility of sending the person on medical treatment to the territory of another entity. In case the insured has to participate in the payments of costs for medical services, according to the by-law of the institute giving the medical treatment, the insured will have to pay directly that participation. In this case he or she will not be entitled to reimbursement regardless of the by-laws of his or her mother insurance.

## 9.2. MEDICAL TREATMENT ABROAD

There is a possibility to have the medical treatment of BH citizens abroad. There are special rulebooks on the aforementioned of the health funds. The procedure for sending a person on medical treatment abroad is to be initiated upon the proposal of a health institute at which the insured is being treated. There are special commissions that direct/send the insured person on medical treatment, as well as special provisions for the realization of health protection during their stay abroad.

It is important to know that the insured person can check with his or her mother health fund with which countries a multilateral or bilateral agreement has been concluded on free medical treatment based on reciprocity.

## 10. SOCIAL PROTECTION

Socially handicapped persons, among whom there are returnees, are entitled to financial aid if they are not capable to work and do not have their own income, and no relatives who are obliged to support them, in line with the provisions of the Law on Family Relations.



The amount of financial aid is almost symbolic and according to the most recent changes of the Law on Social Protection in RS dating from December 2003 is per month:

- for one person 41 KM;
- for a two-member family 49 KM;
- for a three-member family 57 KM;
- for a four-member family 65 KM;
- for a five-member family 82 KM;

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The aforementioned amounts are being adjusted once a year to the costs of living for the previous year. Regardless the adjustments, the amounts speak for themselves and they are obviously more than symbolic.

## **11. RETIREMENT-DISABILITY INSURANCE**

The basic rights from the retirement-disability insurance are the following:

- old-age pension;
- disablement pension, and
- widow's pension.

### **11.1. THE MAIN RIGHTS**

#### **11.1.1. Conditions for acquiring the old-age pension and the retirement-benefit base and amount**

When the insured becomes 65 years old and reaches at least 20 years of service for insurance he or she acquires the right to the old-age pension. The insured who reaches 40 years of service for insurance acquires the right to old-age pension no matter of his or her age.

The retirement-benefit base for determining of the old-age pension is the average amount of the insured's net salary (net average yearly earning of the insurance) starting from 1 January 1970 (however, in the RS one does not take into account the wages nor the average yearly earning of the insurance for 1992 and 1993).

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<sup>28</sup> One of the general problems in the access to health protection, which has a particularly negative reflection on refugees and displaced persons, is the confusion between the private and state (public) health sector. A number of doctors work at the same time in public and private sector, whereas the public sector is used to attract clients to the private sector. Both the legislator and different health chambers are inert to resolve this problem by laws and codes. Therefore, the health protection offered by the public institutions is inadequate and the refugees cannot afford themselves to pay for the services from the private health sector due to their poverty.

There is a privilege for female insurants (but not obligation) that they may request their retirement even when 60 years old and with at least 20 years of service or when they reach 35 years of service for the insurance regardless of their age.

The old-age pension for 20 retirement years of service goes to the insurant to the amount of 45% of the retirement-benefit base and it is being increased by a certain percentage for each following full year of the retirement years of service, depending in which year the person gets retired (as a rule the percentage is less if the retirement happens later, because it amounts to 1,70% for retirement in 2002, in 2003 it amounts to 1,60% and in 2004 and the following years it amounts to 1,50%).

### **11.1.2. Conditions for acquiring the disablement pension and the retirement-benefit base and amount**

The following insurant is entitled to the disablement pension:

- 1) when there is a loss of physical performance;
- 2) when a person has more capacity for work but is not being provided with additional training regarding the qualification or retraining due to the fact that he/she is more than 55 years old as of the date when the disablement occurred.

The disablement pension for the retirement years of service up to 20 years goes to the insurant to the amount of 50% of the retirement-benefit base and is being increased by a certain percentage for each following full year of the retirement years of service, depending in which year the person gets retired.

Retirement-benefit base for the determining of the disablement pension is the same as in the determining of the old-age pension.

### **11.1.3. Conditions for acquiring the widow's pension and the retirement-benefit base and amount**

There are certain persons who realize the widow's pension in cases of death of the insurant or the beneficiary of old-age or widow's pension. Those are the following persons:

- 1) widower or widow;
- 2) a divorced spouse, if determined by the decision of the court that he/she has right to support;
- 3) a child (marital, extramarital, adopted, step-child);
- 4) a father, mother, step-father, step-mother, adoptive parent.

A deceased person includes also a missing person who was proclaimed deceased in the legally defined procedure.

The widow's pension is being determined in the following cases:

- after the death of the insurant - in the percentage of the disablement pension that would belong to the insurant in case he/she lost the capacity for work;
- after the death of the insurant of personal pension - in the percentage of the pension that belonged to the deceased on the day of death.

Depending on the number of household members who are entitled to widow's pension, it can amount from 70% to 100% of the retirement-benefit base as explained in the previous paragraph.

#### **11.1.4. Voluntarily paying the retirement insurance**

There is a legal possibility to voluntarily pay the insurance. However, it is not possible to retroactively pay in the contribution for a certain period in the past, but only upon filing the request for acceptance in the insurance.

#### **11.1.5. Buying the years of service**

Insurants who fulfill the age criteria for the old-age pension, but do not have enough years of service, can gather some more. One can buy as many years of service as is missing to meet the legal conditions (hence, until the settlement of 20 years of service), but not more than 3 years. The contribution has to be paid in to the full amount for the period that is being additionally gathered.

### **11.2. REALIZATION OF THE RIGHT TO PENSIONS UPON THE AGREEMENT BETWEEN BIH PENSION FUNDS**

There are three funds of the retirement-disability insurances in BiH: Social Fund for retirement-disability insurance BiH Sarajevo, RS Public Fund for retirement-disability insurance in Banja Luka and the Institute for retirement and disability insurance in Mostar (hereinafter: the funds). These funds concluded the Agreement on mutual rights and obligations in the implementation of the retirement and disability insurance in BiH (hereinafter: the Agreement), which entered into force on 25 May 2000.<sup>29</sup>

The main rule is that the fund which was paying out pensions upon the entry into force of the Agreement (25 May 2000) continues to pay out pensions regardless of the insurant's permanent residence or habitation. If the pension was being paid out to the beneficiary from April 1992, but was stopped before the Agreement entered into force, the fund that was the latest one to pay out the pension will continue with the procedure.<sup>30</sup>

### **11.2.1. Persons who did not receive any pension after March 1992**

If the Social Fund for PIO BiH was paying out the pension as of March 1992, and the payment of the pension for the period from April 1992 until the Agreement entered into force was not done by any fund, the payment of the pension will be carried out by the fund on which territory the pay-out address of the beneficiary was located for March 1992 in BiH, regardless of the current residence or habitation of the beneficiary. If the pay-out address of the beneficiary in these cases was located outside BiH, but on the territory of former SFRY, the payment of the pension will be carried out by the fund on which territory the pension beneficiary, before realizing the right to pension, was the last time insured in BiH, regardless of the current residence or habitation of the pension beneficiary.

### **11.2.2. Persons that were receiving their pensions from a fund outside former SFRY**

If the payment of the pension as of March 1992 was carried out by the fund outside former SFRY, and thereafter no other fund in BiH took over the obligation to pay out the pension, the Social Fund PIO BiH will continue to pay out the pension to those beneficiaries (whereupon the remaining two funds have the obligation to compensate one third of the gross pension and payment fees each).

### **11.2.3. Persons whose rights to pension were acknowledged after 1 April 1992 but no payment upon the same was done**

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<sup>29</sup> It seems that the main criteria for the access to the rights of insured persons is not the previously acquired length of service (the past years of work) but the need to embed in concrete the ethnic arrangement of the population inflicted upon the war. Which other reason can justify the running away from criteria to realize the pension at the place where the same was earned?

<sup>30</sup> The worst thing is that the Agreement.. between the BiH pension funds is not even being realized the way it is now, thus the pensioners are getting their previous pensions (see the Overview... clause 97). Even though the BiH Human Rights Chamber has confirmed the standpoint of the European Court for Human Rights, according to which the issue of pension has been equalized with the issue of property, offering legal protection upon the Art. 1 of the Protocol I of the European Convention..., no special change was made in the standpoints of BiH funds. It is absurd that agreements on social insurance function with other countries (e.g. Germany, Austria...) but that it is impossible to apply the agreement of BiH funds. Therefore, it seems that a radical reform is necessary (organizational and material) of the retirement-disability insurance in BiH in order to enable the pensioners to have access to this fundamental right. Naturally, one must not forget that money is a big problem, because the pension funds in BiH have been completely emptied. The payment of pensions is late because they are waiting for a current contribution inflow to the budget of funds to be able to pay out the current pensioners. As for a number of population, especially the refugees, a special problem are the contributions for pension that a number of employers never paid in (mainly the almost bankrupt state companies).

If the right to pension was recognized by one of the three funds in BiH after 1 April 1992, but the payment was not carried out until the Agreement entered into force, the payment of the pension will be carried out by the fund with which the beneficiary was the last time insured. With regard to this, the Public Fund PIO RS committed itself to recognize the right to pension according to the regulations that it applies.

#### **11.2.4. Taking into account the retirement years of service**

All the retirement years of service reached in the republics of former SFRY, including the former Institute for retirement-disability insurance of military insurants Belgrade will be taken into account by the funds in BiH for the fulfillment of conditions for recognizing of rights, as well as for the determining of the pension amount, in line with the regulations that are being applied. If a fund in BiH recognized some special years of service that will also be taken into account.

The retirement years of service reached until 30 April 1992 with the former Fund, as well as the insurance years of service reached after 30 April 1992 with one of the funds in BiH will be taken into account by that fund for the determining of conditions for the recognizing of rights and pension amount.

#### **11.2.5. Determination of the proportional pension**

The Agreement regulates situations in which the retirement years of service were realized with more than one fund in BiH after 30 April 1992, when a proportional pension is determined. In this case the seniority up to 15 days does not count, and the one including more than 15 days is being counted as one month.

If the claimant who is requesting to realize his or her right to pension has not reached the retirement years of service in BiH, but does have the retirement years of service in the former republics of SFRY, the pension falls on the burden of the fund on which territory the claimant has his or her residence, and if the claimant is a displaced person - on which territory the claimant has his or her residence as of the date when he or she fulfilled the conditions for the old-age or widow's pension, i.e. upon the request for disablement pension.<sup>31</sup>

## **12. TAX RELIEFS FOR REFUGEES**

In some cases the refugees are facing difficulties when entering the country with their belongings that they have acquired during their stay abroad. According to the Law on Tax Policies of Bosnia and Herzegovina, they are due to some special circumstances

exempted from paying taxes for certain types of goods that they are taking into a customs territory in BiH.

Custom free merchandise:

1. Personal luggage including non commercial merchandise, which value does not go over 200 KM, such as tobacco, (200 cigarettes or 100 cigarillos, or 250 grams of tobacco), alcohol (2 liters of wine, one liter of brandy over 22% vol, or two liters of stronger wine, etc. perfumes, toilette water (60cc/ml perfume and 250 cc/ml toilette water).
2. Personal belongings of persons who are to change their place of residence from a foreign country to BiH. Those persons will be free of custom's charge concerning their private belongings including bicycles, private cars and side cars, camp cottage, excursion boats, and private airplanes, if the person had already used them in the previous place of residence at least six months before changing the permanent address from the specific country and moving to BiH, where these goods would be used in an adequate way. These benefits can be used only by persons whose place of residence was permanently at least 12 months outside of BiH, specifically at least 12 months within the period of four years. Custom service requires documents proving the person's time spent in a foreign country. It is forbidden to have the goods that have been exempted from custom's fee at ones disposal within a period of twelve months starting from the day of receiving the report on putting the goods in free trade.
3. Personal property inherited abroad by BiH citizens and foreign citizens living in BiH.

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Apart from the above-mentioned custom's benefits, there are other benefits that are of less importance for refugees. Since January 01, 2004, a new BiH custom fee has been introduced, which is an integral part of the BiH Law on Custom Fees, adopted by the Council of Ministers on November 24, 2003.

The new custom fee has been sorted in 97 chapters, according to the types of goods, and it represents a very large document. Before returning, it is recommendable to check the custom status of the good, which might be imported to BiH, and all of the procedures relating to the same.

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<sup>31</sup> An issue that remains open is the effectiveness of the Agreement on Succession of former SFRY regarding the pension (Annex E). The Agreement anticipates in details the liabilities of pension payment for different situations. The possibility of entering bilateral agreements (Art. 3 of the Annex E) is anticipated in terms of the same. That is how a bilateral Agreement on Social Insurance was concluded between BiH and Republic of Croatia. The agreement stipulates in details the issue of realizing the right to pension of the citizen of one country who is employed or is employed in another country successor. There are relevant provisions for old-age pension, widow's pension and retirement-disability insurance, as well as more detailed provisions of procedures and competent bodies. Nevertheless, in practice, the beneficiaries are not informed enough about the possibilities of this Agreement, and there are serious indicators in a number of administrative cases relating to the pension that discrimination is present partially due to ethnic prejudices, and partially due to the keeping of their own funds.

### **13. THE RIGHT TO THE PREVIOUSLY OWNED TELEPHONE LINE AFTER RETURNING TO BIH**

If the refugee is returning to his or her previous home in accordance with Annex 7 of the General Framework Agreement for Peace in BiH, and he or she was connected to the telephone network before the conflict, and if his or her telephone connection was cut off or the telephone number was given to other persons, he or she has the right to a telephone line reconnection, taking into consideration that administrative tax is not to be more than 50 KM.

The pre-war subscribers should submit a request for reconnection within three months after having repossessed their previous home. Those who fail to use this opportunity could in future be treated like new subscribers.

The pre-war subscribers are not responsible for any unsettled debts, which were accumulated in the period when someone else was living in their home. Also, they are not obliged to pay any debts that they had made before the war, because those debts are no longer in force according to the law.

Non-payment of these debts will have no affect on the right of the returnee to have his or her reconnection prioritized.

These rules, imposed by the High Representative, relating to the reconnection of telephone lines, are the same for the entire BiH.<sup>32</sup>

### **14. ACKNOWLEDGMENT OF THE VALIDITY OF DIPLOMAS RECEIVED ABROAD-VALIDATION**

There is a possibility that certain persons, especially refugees who had spent some time outside BiH, would be interested in the acknowledgment of their diplomas obtained abroad by BiH authorities. The newly gained education can sometimes be a condition for employment or for some other type of engagement.

There is a special procedure for acknowledging the validity of a specific diploma gained outside BiH. This procedure is practiced at the relevant educational institutions (secondary school, colleges, etc). More information can be obtained directly contacting relevant educational institutions, depending on the profile of the gained education.

It is good to know that BiH acknowledges the validity of diploma gained in some of the republics of former Yugoslavia (until 1992), without a need to carry out a special procedure for acknowledgment of its validity.<sup>33</sup>

## 15. INSTITUTIONAL LEGAL PROTECTION

Refugees, displaced persons and returnees can achieve the protection of their rights before administrative and judicial bodies. Administrative bodies that deal with individual rights at the state, entity and cantonal levels. There are administrative bodies at the level of local communities (municipalities and cities).

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There is legal protection at the level of the first-instance courts (county courts in RS, and municipal ones in Federation BiH), second-instance courts (district courts in RS, and cantonal courts in Federation BiH), entity supreme courts, BiH Court, and BiH Constitutional Court. There are entity and state ombudsmen.

BiH Human Rights Chamber concluded its work as an independent judicial body on 31 December 2003. The Human Rights Chamber ended its work derived from the Agreement reached between BiH Council of Ministers and entities' governments, in accordance with the Annex VI of Dayton PA (art. XIV Annex VI). This agreement came into force on 25 December 2003.

A lot of BiH citizens, mostly refugees and displaced persons, addressed the BiH Human Rights Chamber, concerning the protection of different types of violated rights, but after HRC concluded its work a question arose: how to solve a couple of thousand of cases?

Bosnia and Herzegovina, the Republika Srpska and Federation of BiH signed the Agreement on Human Rights (Annex VI of Dayton PA), which was a legal ground to constitute BiH Human Rights Chamber, and enable the same to start with its work. The above-mentioned parties concluded the Agreement on 22 and 25 September 2003, making the decision to establish the Commission for Human Rights at the Constitutional Court of BiH (hereinafter: Commission), with its

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<sup>32</sup> Generally speaking, the relation of the municipal services towards returnees was in an earlier period more discriminatory than it is today. Today it is more a consequence of a monopolistic position of these services that they very often manifest towards domiciles alike, and not only towards refugees, displaced persons, i.e. returnees. It is the same case when changing the electric switch/clock, the clock measuring the water spent by a household, price of the accounted utility services, and when applying double tariffs for tradesmen and physical persons. If the pre-war owner of property by any chance fails to enter in the minutes taken at the handover of property data on the status of the power and water spent or any other service rendered, he or she can be certain that the communal services will try to collect at least a part of the previous debt from him or her.

<sup>33</sup> Bigger problems of different nature are related to the education. It is about the lack in the strengthening of confidence due to the present homogenization of the teaching staff according to the ethnic criteria and still inadequate curriculum of certain subjects (there are versions of "their" history, lack of uniformity in language subjects...).



mandate to solve the cases earlier launched before the released BiH Human Rights Chamber.

The Commission is a judicial body at the BiH Constitutional Court, and it operates totally independently and impartially. On 13 January 2004, the Commission brought its own Rules of Procedure, which presents the basic document that the Commission is using when solving cases and making decisions. These Rules of Procedure mostly support solutions from the earlier Rules of Procedure of former HRC.

BiH ratified two protocols of the European Convention regarding the human rights protection and fundamental freedoms, which is according to BiH Constitution an integral part of the BiH legal system. It refers to protocols 12 and 13.

The Protocol 12 regulates the full ban on discrimination. Thus, the exercise of all rights, defined by law, ensures without discrimination with regard to sex, race, color of the skin, language, religion, political or other orientation, national or social origin, ties with some national minorities, social status, etc. State bodies are responsible for the aforementioned because no state body should discriminate anyone upon any of the above-mentioned reasons.

There is no need to explain how significant the ratification of this protocol is. In BiH there are still many types of discrimination that are hidden in different ways.

By the Protocol 13 of the European Convention, referring to the human rights protection and fundamental freedoms, the death penalty was abolished. This protocol of the European Convention regulates that no one will be sentenced upon the aforementioned nor executed. It should be mentioned that BiH Criminal Code, at the level of state and entities, has already been harmonized with this protocol.

The practical meaning of these protocols is that discriminated persons under any of the above-mentioned basis can seek for protection before the European Court for Human Rights in Strasbourg. Any possible death penalty introduction within the penalty system of BiH is excluded. The Protocol 13 is a legal obstacle for extradition of any person to a third country in which legal system supporting the death penalty is still in force.

## **16. ACKNOWLEDGMENTS OF THE VALIDITY OF PUBLIC DOCUMENTS**

It is a well-known fact that refugees and displaced persons, i.e. returnees face difficulties when proving the validity of different public documents necessary for the realization of their rights. It is about different public documents issued by state bodies of BiH, entities, cantonal and local authorities, Brcko District, judicial bodies

of different instances, and other institutions, organizations or legal entities authorized to do the above-mentioned.

This problem was solved when the Law on Validity of Public Documents in BiH (hereinafter: the Law) was passed and entered into force on 3 June 2004. This law regulates the validity of all public documents for the entire territory of BiH, which were issued in the period between 6 April 1992 and the date when the law became effective, by the competent bodies, institutions, organizations, or authorized legal entities upon the existing regulations at the time (in the prescribed form).

In case that these documents have no title "Bosnia and Hercegovina", it could be added subsequently by the issuer and such a document would be adequate for the verification or revalidation by the competent body.

Moreover, the law regulates the validity of all public documents for the entire territory of BiH, without being additionally checked, which were issued until 6 April 1992, by the competent bodies of former SFRY, or its former republics or provinces.

## **17. RIGHTS OF THE MINORITIES**

A special Law on Protection of Rights of Minorities<sup>34</sup> has been passed in BiH. This Law refers directly to the rights guaranteed to the minorities by the Framework Convention on the Protection of the Rights of Minorities of the Council of Europe, with direct application of the Convention in BiH (Art. 2 of the Law). Pursuant to one of the provisions of the Law (Art. 3 clause 1), the method of negative definition stipulates that only the citizens of BiH that do not belong to either of the three constituent people in BiH<sup>35</sup>, but share the same or similar ethnic origin, tradition, habits, beliefs, language, culture and spirit, or close or related history and other features, shall be regarded as national minorities. The Law *exempli causa* outlines the members of national minorities in BiH.<sup>36</sup>

The Law thereby offers a wide range of rights to the members of national minorities, such as the use of their language, religion, marks and symbols, education, sharing of information, culture, economic and social rights, and participation in governmental bodies<sup>37</sup>.

A significant provision is being pointed out according to which BiH, entities, cantons, cities and municipalities are obliged to ensure financial means in their budgets so as to realize the rights belonging to the national minorities (Art. 8). This provision has been extended by the additional obligation to ensure education on the language of minorities in places where the minorities make the absolute or relative majority of the population (Art. 14)<sup>38</sup>. As for the places in which the minorities really are minorities of the population, which is mostly the case, the education on the language of minorities falls to the burden of the minorities.

Likewise, as a rule, the classes in religious instruction in schools is not mandatory. However, this is not enough due to the fact that there is often no real tolerance in either their homes or schools. Hence, the child will have the right not to attend the classes in religious instruction but will provoke distrustfulness among other pupils, thus the freedom of choice regarding this issue is still disputable.

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The provision according to which minorities have the right to participate in governmental bodies on the local level is rarely being effectively applied anywhere. Likewise, the BiH Council of Minorities, even though it exists formally, it does not operate in public.

It has not been noticed that, after having passed the aforementioned Law, the position of minorities has changed/improved<sup>39</sup> whatsoever in reality, except of the cases of selection of certain judiciary function holders (judges and prosecutors), and earlier the employment of police officers.

In Banja Luka, July 2005

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<sup>34</sup> Published in the "BiH Official Gazette", No. 12-2003, entered into force on 14 May 2003, when the same started to be applied.

<sup>35</sup> According to a special decision of BiH Constitutional Court (2000), Bosniaks, Serbs and Croats are considered to be constituent people throughout BiH.

<sup>36</sup> Those are Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Romanies, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks, Ukrainians, and others. The minorities have been listed in the law in an alphabetic order.

<sup>37</sup> The protection of national minorities has further been protected by a special norm of the BiH Criminal Code, which started to be applied on 1 March 2003 (Art. 145 of BiH Criminal Code, Violation of Equality of Men and Citizens).

<sup>38</sup> There is no case known in BiH where this provision has been effectively applied.

<sup>39</sup> For example, the position of Romanies is probably even more unfavourable than illustrated in the Overview... (see the clauses 155, 156, 161, 162, and 163).

