USURPATION OF SERBIAN PROPERTY IN THE REPUBLIC OF CROATIA 1991-2011 AND CROATIAN JUDUCIARY IN THE FUNCTION OF PREVENTING SUSTAINABLE RETURN OF REFUGED AND EXPELLED SERBS

- ANALYSIS OF THE 12 REQUESTS CONTAINED IN THE PETITION OF REFUGED AND EXPELLED SERBS FROM THE REPUBLIC OF CROATIA-

Introduction

According to a 1991 population census, the Republic of Croatia had 4,784,265 citizens, of which 581,663 declared as Serbs (12,2 %). Based on the population census of 31 March 2001, in Croatia lived 4,437,460 people. Out of that number, Serbs composed for 201,631 or 4,54%. By comparing the data from the two censi, the number of Serbs who have lived in the Republic of Croatia decreased by 380,000 or almost two thirds.

According to a 1991 census in the Republic of Croatia there was 286,000 citizens who did not declare their nationality (Yugoslavs, no nationality declared, regional orientation, unknown). According to a 1991 census, a total of 116,000 citizens did not declare their nationality (no nationality declared, regional orientation, unknown), or 170,000 less than in 1991. It is estimated that out of those 170,000 who did not declare their nationality at least 120,000 is of Serbian origin. That is to say that in the Republic of Croatia there was about 700,000 Serbs in 1991. It should be noted that a 1991 census was conducted in the atmosphere of nationalist hysteria and hate speech. Due to that reason a part of the citizens thought it was better not to declare as a Serb in order not to get in the way of the problems in their local communities. Unfortunately, this was not helpful to many of them.

Thus, apart from the aforementioned 380,000, another 120,000 Serbs have been expelled – which totals 500,000 refuged and expelled Serbs or about 150,000 families. Of the total number of expelled Serbs, 250,000 of them were expelled from the area under the protection of the United Nations, and the remaining 250,000 from the areas that were under Croatian control and which saw no war action.

On the territory that was under Croatian control, more than 30,000 apartments under tenancy right were taken over illegally in judicial processes, 10,000 houses were destroyed in terrorist actions and about 10,000 house and apartment owners have made contracts on exchanging their property, usually to their own disadvantage because they were forced to do that under pressure and threats. On the territory under the protection of the United Nations (Krajina) about 30,000 houses and 15,000 economic facilities were destroyed or damaged after the operation Storm; about 20,000 houses and 10,000 apartments under tenancy right were taken away based on the Law on temporary taking over and administration of specified property. Looting, burning and mining of Serbian property was in the function of forced expelling of Serbs and preventing their return to Croatia.
The aforementioned data confirm the verdict of the International Criminal Tribunal for the Former Yugoslavia of 15 April 2011, in which, *inter alia*, it is stated that the Croatian operation Storm was a *joint criminal enterprise* with a goal of forced and permanent expelling of Serbian population from Croatia. One can conclude that in the Republic of Croatia, over the course of many years there has been a systemic destruction, taking away and illegal usurpation of Serbian property (houses, apartments, business objects, other facilities, agricultural land and forestry land,

etc). The Republic of Croatia has systematically been violating one of the fundamental human rights – the right to enjoying private property.

Basis for solving the issue of the usurped private property and acquired rights is the *Annex G of the Vienna Agreement of Succession*, which clearly states that the right to movable and fixed property to which the citizens of the former SFRY claimed right on the day of 31 December 1990 would be recognised, protected and returned in accordance with established standards and norm of the international law without prejudice on nationality, citizenship, place of stay or place of residence of such those persons. Those persons who cannot take these rights have the right to movable and fixed property in accordance with the norms of civil and international law. Also, every transfer of rights to movable or fixed property that has been done after 31 December 1990 and concluded under pressure or contrary to the standards and norm of international law will be null and void.

We appeal on the European Union not to close the Chapter 23 "Judiciary and Fundamental Rights", until the Republic of Croatia truly becomes the state where rule of law is dully practiced and where the respect for human rights of all its citizens in accordance with the principles of non-discrimination and equality are in place. The Chapter 23 is the most important one when it comes to a comprehensive and fair solution for many problems of 500,000 refuged and expelled Serbs from the Republic of Croatia and over 100,000 other citizens of Serbia who have been damaged in their property and other rights.

We appeal on the European Union to support our request to the Croatian Parliament to adopt *the Declaration on Respecting the Human Rights of Refuged and Expelled Serbs from the Republic of Croatia and other Citizens who Were Damaged in Their Property and Other Rights in the Republic of Croatia* (see attachment). By adopting the Declaration, the Republic of Croatia would take responsibility for the losses, or the great damage that was done to its citizens of Serbian nationality and that is estimated to about 30 billion EUR.

We appeal to the European Union to support our demand that the Republic of Croatia creates a mechanism through which it would be decided upon every individual or family request regarding the restitution of private property and acquired rights or fair money compensation.

Later in this paper, we are going to specifically explain each of the 12 requests encompassed in the Petition of Refuged and Expelled Serbs from the Republic of Croatia which from 15 December 2010 until 30 April 2011. was signed by 70,000 refuged and expelled Serbs and a number of citizens of Serbia whose human rights were violated in the Republic of Croatia.

1. Restitution of occupied movable and fixed property

In the Republic of Croatia, a massive and illegal usurpation or usage of agricultural land, housing and economic objects of the returnees of Serbian nationality as well as refuged and expelled Serbs has been taking place since 1991. On that way the results of ethnic cleansing have been legalized in practice. In many instances, Serbs were prevented from entering their houses, economic facilities or agricultural land. According to the property inventory of the refuged and expelled Serbs from 1996, they possesed 18 millions square meters of buildings, of which 14 million square meters of apartment and 4 million square meters of business space. Among the unfinished investments, a total worth 800 million DEM was declared. Refuged and expelled Serbs used to have in their ownership about 500,000 ha of agricultural land (plowed fields,

gardens, orchards, wineyards and pasture land), and about 100,000 ha of forestry land. Here are not included the data concerning the citizens of Serbia (25,000) who had their private houses, weekend cottages, as well as other property.
Following are the ways of taking away or illegal usurpation of Serbian property in the Republic of Croatia by the state or local strongmen who enjoyed tacit consent by the state.

a) **Around 1,000 property owners of Serbian nationality cannot freely handle their houses that were during or after the war illegally taken away from them and given to other persons to use, so called temporary users**

Courts of law do not allow the owners to possess their property until the temporary users of Croatian nationality are not compensated for the means they have invested (Miladinovic, Kunic cases). The Government of the Republic of Croatia has made a decision in 2006 by which it would take the claims of temporary users on itself. Unfortunately, the courts of law have not respected the aforementioned decision by the Government.

Request: To enable the owners of Serbian nationality to freely have their houses that were during or after the war illegally taken away and given other persons, that is, temporary users to use according with the Decision of the Government of Croatia of 2006.

b) **The majority of 10,000 Serbian houses were sold illegally (falsified authorizations, double contracts) via the Croatian Real Estate Agency (APN) that was established by the Government of the Republic of Croatia in April 1997.**

Various intermediary agencies were, in cooperation with APN, via falsified authorizations selling the majority of the houses of refuged Serbs without their knowledge or authorization. The authorizations were verified with false stamps and falsified signatures of house owners. Those cheated people did not give their authorization for their houses to be sold, neither were they informed on the selling nor were they given any money.
Second way of cheating was the so-called mechanism of double contracts, which was used for buying and selling of the property of the Serbs from Croatia (i.e. the house owner was given a contract at 33,000 EUR and the second copy of the contract is stored at APN valued at 48,000 EUR, so the owner is damaged for 15,000 EUR. On top of that, the owner paid a commission of 3 % on the contract worth 33,000 EUR).

Request: Declare null and void all the contracts that have been made by using false authorizations or by using the mechanism of double contracts. Until this affair has been cleared up, the work of APN should be suspended.

c) **About 10,000 Serbian families who lived in major Croatian cities until the war, were forced to, due to pressure and threats, conclude the contracts on exchange of their houses and apartments.**

In those cities that were controlled by Croatia on 1991 and 1992, Serbs were under pressure and threats of their houses would be mined or that they would be killed if did not move out of Croatia. For that reason, a part of Serbs was forced to conclude a contract that provided for the exchange of houses on the territory under UN protection or in Serbia. In a great deal of these cases the value of their houses was manifoldly higher than the value of the houses they eventually moved in after the exchange. Those citizens thought the exchange was a temporary solution that would last until the war is over. However, the Croatian courts were confirming those contracts

even though they were not made by free will, which is clearly in breach of the law, and also contrary to the Annex G of the Succession agreements which states that each and every transfer of right to movable and fixed property that was done after 31 December 1990 and concluded under pressure or contrary to the standards and norms of the international law – will be considered null and void.
Specifically, the objects of forced exchange of property, or by buying and selling at extremely low prices, have been given a judicial treatment that is completely opposite to what is envisaged in the provisions of the Normalization Agreement and the Succession Agreement. The exchange of property between the owners in Croatia and owners in Serbia has often been done "unseen", which led to a great disproportion in the value of the properties that were subject to exchange.

Request: To suggest to the Croatian Parliament to adopt the adequate legislation by which the State Attorney's Office will be authorized that, by applying the Annex G of the Succession Agreement, annul the Contracts on Exchange of property, whose owners used to live in major Croatian cities, and who were forced to conclude those contracts under pressure and threats against their free will and against international standards.

d) **The Republic of Croatia after the adoption of the Law on Property of 1997, has registered itself as the owner of over 800,000 cadastre units whose cadastre owners until 1995 were Serbs, and intends to register itself as the owner of the remaining 700,000 cadastre units that were owned by Serbs, by the year of 2015.**

In the Republic of Croatia there is about 14,500,000 cadastre units. Of that number, 1,500,000 is considered as social property (house cooperatives or land communities that existed before the Second World War) or the property of social companies. After the *Law on Ownership* (1997) was adopted, the Republic of Croatia was registered as owner of the aforementioned cadastre units. On the basis of court decisions, the state is registered as the owner in land books, and Serbs were deleted from the cadastre as land owners. Despite the provision that everyone should be given a certificate of being deleted from the cadastre, that was not done. Given the facts, Serbs were under the *Law on Property* taken away their land under the phrase "maintenance of land books". The information were distributed on the notice boards of the Croatian municipalities and cities, of which most of the refuged Serbs have not been aware of. On the other hand, Croatia was supposed to, as its obligation, help the expelled Serbs to sign in the land books as owners of the land – which it did not do.
It can be often heard how Serbs are guilty for their current position because they did not sort our their ownership documents. However, not even in Zagreb was there a procedure of signing in land books in the past 30 years. There are many cases where natural persons bought off apartments in Zagreb but they possess only buying and selling contracts because in land books a particular location of the building is marked as a meadow. Imagine, what the reaction would be if those apartments were registered as the state property? There is no doubt, a public scandal would take place.

Request: To suggest to the Croatian Parliament to adopt adequate legislation by which it enables the return of the land property to its real owners, and to the Republic of Croatia has been registered in land books as the owner of 800,000 cadastre units whose owners are Serbs and to stop making new court decisions by which the state would become owner of the remaining 700,000 cadastre units owned by Serbs. Adopt adequate legislation or find a legislative solution by which refuged and expelled Serbs, with the support from the state, will be able to get registered as owners in land books by 2015 as the last year for the interim period.

e) **Municipalities and cities gave under lease more than 10,000 ha of the agricultural land which is owned by Serbs and without their consent**

The City of Benkovac in 2010, by means of public tender gave under lease 210 ha of land that is mostly owned by Serbs. Giving agricultural land under lease at 20 years is a usurpation and a clear message to refuged Serbs that they are not welcome back. This action is not only unfair, but also illegal. However, the decision of the Constitutional Court from March 2011 can be seen as positive. The Constitutional Court has revoked the articles from the *Law on Agricultural Land* which provides that uncultivated land could be taken away from its owners and be leased out without their prior knowledge. After those provisions had been revoked, the uncultivated land was supposed to be on the disposal of the Agency for Agricultural Land. The Republic of Croatia conducted unlawful actions, because the ownership was not sorted out in the terms of land books-cadastre. The deadline for settling of land books and cadastre is 2015, and up until then an interim period is in place.

Request: To stop the procedure of granting in accordance with the open competitions published by municipalities and cities, by which the land owned by Serbs is being given under lease to other persons without the prior consent of the owners. To suggest to the Government of the Republic of Croatia that by making relevant by-laws enables the implementation of a Constitutional Court decision on prohibition of giving the land under lease without prior consent of the owner.

f) **Law on Agricultural Land prescribes high money penalties for not cultivating agricultural land in accordance with agrotechnical standards, which particularly harms refuged and expelled Serbs who will be left without land (they have no money to pay the fines and the conditions for a sustainable return are not met)**

Law on Agricultural Land provides that those who would not cultivate their land that is intended for agricultural production, in accordance with agrotechnical measures must pay high money penalties ranging from 500 to 15,000 Kuna (70-2,000 EUR). If the agricultural land is located in the construction area or in the area that is under urbanist plan intended as a construction land, and which is not maintained to be able for agricultural production, a natural person will be fined 2,000 – 30,000 Kuna (300 – 4,000 EUR). Should they not pay the fine, their land will be taken away. Refuged Serbs are the ones most greatly affected by this decision, because they cannot (are not in a position) cultivate the land that leads to its taking away by the state. By this decision, the results of ethnic cleansing are being legalized and the right to private property is violated for the majority of Croatia's citizens of Serbian nationality.

Request: Until 2015 stop the application of high money penalties for non-cultivation of the land for refuged and expelled Serbs because they are not in the position to cultivate their land, nor are they able to pay fines.

g) **In some 5,000 cases, Serbs returnees and refuged Serbs were unlawfully usurped, based upon falsified contract, their agricultural land, houses, apartments and economic facilities by local strongmen and tacit consent of the executive and Croatian judiciary.**

Municipal courts in their decisions have declared the owners missing, dead or nonexistent (Municipal court in Zadar – Ciric case) and they legalize the usurpation done by influential individuals.

Request: To suggest to the Croatian Parliament to adopt commensurate legal solution which would enable (as it was done in the case of privatization) the return of the unlawfully taken-away agricultural and forestry land, houses, apartments and economic buildings to refuged and expelled Serbs.

h) **In 5,000 cases Serbs returnees, refuged Serbs and Serbian Orthodox Church were unlawfully usurpated agricultural land, houses, apartments and economic facilities**

Local strongmen for which there is no law they obey, with tacit blessing from the state, have been unlawfully using church land and the land of Serbian returnees and refuged Serbs (seeding crops, giving water to their herds, chopping wood, building facilities), their houses, apartments and economic facilities.

Request: To suggest to the Croatian Parliament and the Government of the Republic of Croatia to adopt appropriate measures which will bring about returning of the unlawfully usurpated property of the Serbs and to realize it in a short period of time.

2. **<u>Reconstruction of the property destroyed in war and terrorist actions to original condition or a fair compensation for destroyed, damaged or vanished movable and fixed property</u>**

a) **7,000 appeals regarding the reconstruction of damaged or destroyed houses of refuged and expelled Serbs still remains unsolved**

Request: Within the period of three months, the complaints regarding property reconstruction that have not been solved since 2005.

b) **Within the Law on Reconstruction are not encompassed the damaged or destroyed economic and auxiliary facilities (stables, etc), which are necessary for achieving a sustainable return of refuged and expelled Serbs.**

Request: Within the *Law on Reconstruction* there should be enabled the reconstruction of destroyed and damaged economic and auxiliary facilities with a goal of creating conditions for a sustainable return, or to provide the compensation for suffered damage.

c) **About 3,000 refuged and expelled Serbs, owners of destroyed and damaged houses, have not filed requests for reconstruction on time by 2004, from fear for their own safety due to ethnically motivated trials.**

Request: To open a new deadline for reconstruction of the damaged and destroyed houses.

d) **In the contract on reconstruction, concluded between the state and owners of the houses, inter alia, is stated that the owner of the house must return back to Croatia within a year from the date of issuance of the exploitation permit, even though the conditions for sustainable return have not been created.**

If the owner does not move into the house in due course, the State Attorney's Office will send the owner a request for a peaceful dispute settlement and will request from the owner to repay the invested means for the reconstruction of the house within three months (usually 20,000 – 40,000 EUR), although the state did not secure the conditions for sustainable return. In the case the homeowner is unable to repay, the state will file a lawsuit and sell the house.

Request: To suggest to the Parliament of Croatia to adopt adequate legal solution by which it will be possible to make a review of the Contract on Reconstruction of Destroyed Houses, between the state and the owners, regarding the repayment of the invested financial means if a refuged or expelled person is not permanently staying at a reconstructed house. We think that the current provision from the Contract violates the right to free movement of the users of the reconstruction funds, which is at the same time the violation of the right to property guaranteed by the European Convention on the Protection of Human Rights.

3. Fair compensation for destroyed, damaged and vanished movable and fixed property

The Croatian Parliament in 1996 abolished the Article 180 of the Law on Obligatory (mandatory) Relations and thus prevented more than 10,000 citizens of Serbian nationality to seek compensation for houses, commercial buildings, auxiliary buildings and vehicles in that were destroyed in terrorist actions outside the zone of armed conflicts.

Outside the zone of war activity, over 10,000 houses and commercial properties owned by Serbs were destroyed in terrorist actions. The claim that this was an act of organized state terror is confirmed by the fact that Croatian police did not arrest anyone, as there also was no investigation and police interviews. For example, in the wider area of the city of Bjelovar, more than 800 homes and commercial properties owned by Serbs were mined. The house of a Croat Ivan Srnec was also mined, because in the capacity of a deputy-head of the Bjelovar police department he was trying in 1992 to look for those responsible for the explosions. Those Serbs who have suffered a damage in those cases have no right to compensation, but only the right to reconstruction – even though it is the case of terrorist acts and not of war damage. For the destroyed weekend cottages, economic buildings, auxiliary buildings and cars, they cannot get any compensation.

The right to reconstruction of destroyed or damaged houses and weekend cottages could not achieve some 25,000 citizens of Serbia because they had no permanent residence declared in 1991. Also, the right to reconstruction could not achieve the former tenancy rights holders who have been expelled from Croatian cities in 1991 and 1992, and who fled to the Krajina region, to Serbia or in a third country because they had no permanent residence declared in 1991, and whose apartments were taken away in an illegal court proceedings because they supposedly did not stay for 90 days in the apartment. The key issue is that all citizens of Serbian nationality should be enabled the reconstruction of houses, economic and auxiliary facilities in their original form, or that they receive compensation for destroyed or stolen property.

The legal framework in Croatia, which regulates the issues related to compensation for burned or mined property is discriminatory, namely, it prevents damage compensation. The Croatian Parliament in 1996 abolished the Article 180 of the *Law on Obligatory (mandatory) Relations* based on which citizens could have sought damages compensation resulting from acts of violence

and terror, which included compensation for the intentional destruction of property by members of the Croatian army or police. Three years later, the Croatian Parliament passed amendments to the Law on Obligatory (mandatory) Relations, by which were suspended all judicial proceedings in compensation for damages committed by the Croatian army or police. Representative of the OSCE Mission in Zagreb criticized the procedures of Croatia for it is agianst international standards that a court decision on compensation for destroyed property and pendin lawsuits are retroactively canceled. Persons who filed a claim for compensation before January 1996 are treated as if they applied for a reconstruction. However, by the Law on Reconstruction it was planned neither for reconstruction of destroyed agricultural and ancillary buildings nor reconstruction of houses in their original form, but based on the principle "35 m2 per owner and 10 m2 per household".

Croatia has under pressure from the international community passed three laws that came into force on 1 August 2003 and that were supposed to regulate the issue of damage compensation. According to these regulations, persons who have not lodged a claim for damages caused by terrorist acts (if the damage occurred before January 1996.) or damage suffered by the forces of the army or police (if the damage occurred before November 1999), cannot do it any more because the lawsuit is already outdated. According to the Law on Obligatory (mandatory) Relations, a person has the right to file a lawsuit within five years of adverse events. Because the laws were adopted in 2003, it appears obvious that the owners of destroyed buildings did not have the legal ability to claim a lawsuit for damage compensation. Because of the provisions in the Law on Obligatory (mandatory) Relations (Article 230 which regulates the period of limitation), the time limitation of the proceeding, it was impossible to exercise the right to compensation for destroyed property and for physical body injuries (for those who did not initiate criminal proceedings).

Requests:

- To repeal three laws from 2003 that are discriminatory towards refugees and expelled Serbs;

- In the Law on Obligatory (mandatory) Relations, should be reinstated the provision of the state's obligation to compensate those whose property was destroyed by terrorist acts (the provision on compensation for property destroyed in the terrorist acts was repealed in 1996 so that the Serbs would not be compensated for damages to their destroyed movable and fixed property);

- To suggest to the Croatian Parliament to adopt adequate legislation which would enable the owners of the destroyed property to access the court for their protection (in a great deal of cases it is the Serbs whose property has been destroyed in terrorist actions and who out of fear have not filed lawsuits for damages compensation by which five years later they lost the right to file a lawsuit);

- To facilitate the reconstruction or fair compensation for movable and fixed property of Serbs, which was destroyed in the war or terrorist acts before or during armed conflict.

4. Return of the usurped tenancy right or a fair money compensation with no conditionality or limitation

In the area outside the military action (major Croatian cities), citizens of Serbian nationality were taken away illegally around 30,000 apartments on which the tenancy right had applied. In the area of special state concern (the area affected by the war) 10,000 apartments with the tenancy right were taken away from their owners. Croatian courts have referred to the *Law on Housing* adopted in the former Yugoslavia, which reads that the apartment will be taken away if the owner is out of the apartment for more than 90 days. It did not take into account the fact that the Serbs were forcibly expelled, and that there was no possibility to return within the prescribed time. These apartments were later, on the basis of the *Law on the Purchase of Apartments*, bought out by the new tenancy right holders. Thus, the occupants of the apartments have been given an advantage over the owners.
Instead of returning the usurped tenancy rights based on the model that has been applied in Bosnia and Herzegovina, Croatia in 2003 passed the Social Housing Programme which discriminate against tenancy right holders. UN Human Rights Council in the *Vojnovic vs Croatia* case considers that the abolition of tenancy rights under the Croatian law is an arbitrary interference with the right to a home, contrary to *the International Covenant on Civil and Political Rights.*

The tenancy right was the same for all apartments and tenancy right holders in the former Yugoslavia had the same rights and obligations. One of these rights was the law of succession. This means that a tenancy right holder had the right to the apartment as long as he is alive or there are his descendants.

The tenancy right was considered both the ownership and the property. This is proved by the purchase of all of those apartments under tenancy rights for 10 % of their market value. If the tenancy right had not been both ownership and property, then those apartments would have been purchased at market prices rather than just 10% of market value. Thus, the tenancy right had the characteristics of 90% ownership (only, the tenancy right holder was not allowed to sell the apartment, but he had the same rights as a landlord), the state decided to allow the tenancy right holders to buy out the apartments for 10% of market value so the tenancy right holders can acquire 100 % ownership of the apartments.

Prof. Ivan Padjen of the Faculty of Political Sciences in Zagreb said in September 2005 for “Feral Tribune” that"... the tenancy right is, of course, the right of ownership, and therefore enjoys protection as a human right under the Constitution and the Convention, so its protection should be guaranteed by the Croatian courts and the European Court of Human Rights. Accordingly, the Republic of Croatia should make possible to all former tenancy right holders, including those who have lost that right due to war circumstances and those who had that right in their privately owned apartments, to purchase the right to own their apartments under the terms of the Law on Purchase of Apartments which are under the tenancy right”.

Croatia, being a successor of Yugoslavia (which is written in the Constitution of Croatia) assumed all responsibilities taken by SFR Yugoslavia. Also, all acquired rights in the former Yugoslavia were transferred to Croatia, and one of those rights is the tenancy right. Croatia in 1996 abolished the tenancy right, but that does not mean that it no longer exists. Acquired rights cannot be terminated and that is dully confirmed by the Annex G of the Vienna Agreement on

Succession – that all acquired rights earned during the existence of SFR Yugoslavia, and after its dissolution, must be respected. Acquired rights cannot be abolished by a law.

Request: To suggest to the Croatian Parliament to adopt adequate legislation by which it will the apartment owners will be enabled to have their apartments back, in accordance with their acquired rights. We request that 40,000 citizens are enabled to by out their apartments at the prices paid by former tenancy right holders according to a constitutional principle of equality of citizens (price of 50-100 EUR per square meter) If the return of the same apartments is not possible, then the new apartments should be in the same distance range and floor area as the original apartments, and to allow the same terms and conditions of purchase or fair money compensation.

5. Grant the same conditions of purchase for persons that were given the apartments within the Housing Care Programme

As a replacement for the tenancy rights, in 2003 Croatia adopted the so-called Housing Care Programme as a sort of social and humanitarian program that is discriminatory against the former tenancy right holders of Serbian nationality as they may not have anywhere in the world any other property, and the purchase price is 50% higher than the market price. The principle of equality of citizens before the law requires that the legal relations for those persons who are in the same or a similar legal situation must be governed by the law equally to all.

In the area outside the military action (Croatian cities) were seized about 30,000 apartments of the expelled Serbs. Until March 2011, there were submitted 4,598 applications (about one-sixth). 3434 request for housing care have been solved, of which 1575 positive and 1859 negative and 1164 request was not resolved because they were not completed with all necessary documentation.

The Republic of Croatia did not arrange the purchase (privatization) of the apartments in a unique way, but it used the rules of different legal force to prescribe the unequal conditions for privatization of apartments and consequently put its citizens in an unequal position.

For example:

- *Law on Sale of Apartments with Tenancy Rights* allowed the majority of citizens in the period 1991- 1997 to purchase the apartments at a price of about 10% of their market value;

- *Regulation on Conditions for the Purchase of a Family House or an Apartment Owned by the State in Areas of Special State Concern*, it has been made possible to buy the apartments at a cost of about 30% of their market value (for example, in Vukovar the price is 175 euros per square meter for a cash payment, and twice as much for payments in installments). Recommended price is almost three times the price that would have been valid if the law that governed the privatization of apartments in Croatia had been applied;

- *The decision on the sale of apartments owned by the Republic of Croatia*, established an average apartment purchase price that is in average 5 times or more higher than that at which the majority apartments were privatized in Croatia by 1997 (average of 50% or more of the apartment market value);

- *Law on Areas of Special State Concern* provided, however, to one part of Croatian citizens, mostly refugees from BiH, to privatize free of charge an apartment owned by the state that was given to them on lease – that is, they were given the possibility to exercise the right to housing care by being presented with a state-owned apartment.

By various regulations were established unequal conditions for the privatization of apartments, for one number of citizens was enabled to privatize apartments at a cost of about 10 % of their market value (in the period 1991-1997), while in some other cases the price was set at about 30% of their market value (Eastern Slavonia, Baranja and Western Srem), to about 50% or more of their market value (refuged and expelled Serbs), and the fourth category was given the apartments for free (refuged Croats from Bosnia and Herzegovina).

Examples:
- Croatian citizens - former refugees from Bosnia and Herzegovina of Croatian nationality **have been returned** not only not only their apartments and houses in Bosnia, but they have been on top of that, presented the apartments of the Croatian citizens of Serbian nationality formerly possessed on tenancy rights,
- refuged and expelled Serbs, not only were they **seized** their apartments where they had lived before the war, but they are not entitled to a donation of an apartment owned by the state, as is the case with former refugees of Croatian nationality from Bosnia.
- To Croatian citizens - former refugees from Bosnia and Herzegovina of Croatian nationality - the new Law on Areas of Special State Concern makes easier the conditions that are necessary in order to have a house or apartment donated by the state, so they can keep the reconstructed homes in Bosnia and, in addition, get an apartment or house in Croatia; for a condition for exercising the right to housing care by being donated a house or apartment is that one does not own other residential property on the territory of the Republic of Croatia;
- refugees and displaced Serbs have not been made the situation easier by the new law, because it does not alleviate the conditions for exercising the right to housing care. To the contrary, the new law rather **makes it more difficult**, because the requirement is not any more that they must not own or co-own another livable family house or an apartment on the territory of the states-successors to the former Yugoslavia. The rule now reads that they must have no property in any other country in the world where they live, or that they have not sold, donated or in any other manner alienated the latter after 8 October 1991, that is, they have not gained a legal status of protected tenant.

Request:

It is necessary to improve the current model of housing care in a way to introduce the legal regime for users of the housing care in the entire territory of the Republic of Croatia, which has been applied to the former tenancy right holders. This means to enable the right to purchase of the apartment under the same conditions (10% of the market value of the apartments), abolish the requirement demanding that a person must own no other residential property, and to obtain alternative housing in the city where the former tenancy right holder used to enjoy his right.

6. Payout of due but unpaid pensions

It is well known that, since October 1991, about 50,000 Serbs-users of Croatian pensions, who continued to live in the territories outside the control of the Croatian authorities or have fled to Serbia and Montenegro or elsewhere, have lost their pensions, or whose payment thereof has been suspended by a unilateral act of the Croatian pension fund.

Croatian Pension Insurance Fund still refuses to pay the due but unpaid pensions to these persons, referring to the interruption in money transfers, war circumstances and the like. This procedure of the Croatian authorities is in direct contradiction with *the Convention no. 48 of the International Labour Organization*, to which the Republic of Croatia committed itself. However, the International Labour Organisation at its 19th session of in 1935 adopted Maintenance of Migrant's Pension Rights Convention.

Article 19 of the Convention leaves the possibility for States to conclude bilateral agreements, but also to regulate the way of acquiring and maintaining the acquired rights "at least as much favourable as it is governed by this Convention"

Agreement between the Federal Republic Yugoslavia and Croatia on social insurance, which entered into force on 1 May 2003 does not regulate any right to benefits before it enters into force.

Article 5 of the *Law on Pension and Social Insurance* of the Republic of Croatia, which entered into force on 1 January 1999 has a built-in provision on the statute of time limitations of due but unpaid pensions within 3 years (which is calculated from the due date), which indicates that in this case the legal obstacle prevented users from getting the right to receive payments from the Pension Fund in which they were paying contributions during the their working life. To this goal, it would be necessary to make changes in the legislation that regulates this issue.

Croatia is still persistently refuses to fulfill this obligation to its citizens, and mainly those of Serbian nationality who have resided in the questionable period in Serbia and for many years have been deprived of their acquired pension rights, which directly violates the commitments to membership in the International Labor Organization.

Request: To suggest to the Croatian Parliament to amend the Law on Pension Insurance which would provide for the payment of all due but unpaid pensions to refuged and expelled Serbs. On average, 81 pensions are owned per pensioner.

7. Recognition of complete years of service at work until 1991 and convalidation of the years of service with recognized contributions for the period 1991-1995

Part of refuged and expelled Serbs were not recognized part of their years of service acquired until 1991 on the grounds that they did not pay contributions. At the same time, the citizens of Croatian nationality had no such problem.

Refugees and displaced persons who have obtained the conditions for a proportional share of the

Croatian pension, in accordance with the Agreement on Social Security, concluded between the Republic of Croatia and Yugoslavia, of which the Republic of Serbia is a legal successor, cannot exercise full seniority pensions. Due to non-compliance of regulations governing the age required for eligibility for a pension, the Croatian Pension Fund does not want to acknowledge the years of service they gained working in the Republic of Croatia.

For many refugees and displaced persons, convalidation of the insured years of service obtained in the areas of Croatia that were under protection of the United Nations in the period 1991 – 1995 is a real problem. Regardless of a new deadline for validation of service that has been opened later on, work books, school mark books, health insurance cards are not recognized as relevant evidence. Although in the very Regulation on implementation of the *Law on Convalidation* for the administrative area of work, employment, pension and disability insurance, child allowances, social welfare and protection of military and civilian war invalids – it has been prescribed that the rights established by this Regulation will be determined on the basis of facts established by, inter alia, written evidence (Article 8);

Requests:
- recognize complete years of service to the citizens of Serbian nationality, acquired until 1991;
- To suggest to the Croatian Parliament to amend the Law on Convalidation which would provide for a simpler convalidation procedure of the years of service for the period 1991-1995, and in the case written evidence that were destroyed during the war are required for the proceedings before a regular court by which it would be determined the years of service in the aforesaid period. Once the years of service have been established as a fact, they would be registered in the work certificate.

8. Payout of foreign currency and domestic savings

During the recording of the property of refuged and expelled Serbs made in 1996, there was reported 180 million DEM and then - 3.5 billion Dinars in Croatian commercial banks as well as 600 million Dinars in the securities.

Refugees and expelled Serbs from Croatia were mostly foreign currency depositors at "Jugobanka", or another bank from other areas, and those banks in extraordinary circumstances, ceased to operate. Most of these savers-people, after so many years, are trying to get any information regarding the collection of their old foreign currency savings. As to "Jugobanka", they spoke to various institutions in Croatia and Serbia, but with no result. Many of them have become social help users despite the fact they have substantial foreign currency savings that are not accessible.

Request: To suggest to the Croatian Parliament to adopt adequate legislation by which it would be provided for the payment of the old domestic and foreign currency savings to the refuged and expelled Serbs, in a way that has been applied to all citizens of the Republic of Croatia with their place of residence being in Croatia, and whose savings have been converted into public debts and consequently paid in installments.

9. Compensation for not participating in the process of privatization

Privatization of state owned enterprises in Croatia without the active participation of returnees/refugees has a serious effect on the process of refugee return. It is not only the city but also in rural areas, because a large number of residents in rural areas made a living working in local enterprises, while the agriculture often represented a secondary source of income.

There are insurmountable obstacles to full participation of refugees and returnees in that part of economic life in areas of return. These problems can be identified by analyzing the actual situation of refugees and returnees who from the very beginning did not have access to information regarding the privatization process. A significant number of refugees from Croatia settled in Serbia and they were not given the opportunity to participate in the privatization process. Therefore, the longstanding absence of refugees from the previous place of residence was a real barrier to their participation in the privatization process in a way that would enable them to achieve one part of their economic rights.

Since the transformation of social ownership has been largely completed (in accordance with the Law on Conversion), it would be necessary to legally regulate the procedures for privatization of the funds transferred to the Croatian Privatization Fund during the process of transformation of social ownership, ie. those funds which, in accordance with special regulations and in a legally valid manner, have become the property of the state, counties, cities and municipalities.

Request: To suggest to the Croatian Parliament to adopt adequate legislation by which it will be enabled ex-post facto participation in the privatization to the refuged and expelled Serbs, in the way that was applied to all other citizens of Croatia with their residence being in Croatia. If that is not possible, than we suggest that a law or a by-law is adopted, by which it will be enabled for a money compensation form the funds of the Croatian Privatization Fund on the basis of non-participation in the process of privatization due to the occurence of an armed conflict.

10. Review of the verdicts for war crimes, made in absentia of the defendants

11. Fair and balanced processing of the war crimes and termination of ethnically motivated trials

In Croatia, in effect there have been double standards in war crimes trials – which were heavy against Serbs and far more lenient towards the Croats and members of their own armed forces. All relevant international organizations and institutions have for years, critically treated the "ethnic colored trials for war crimes" before Croatian courts. Because of criminal proceedings against the Serbs for committing war crimes and the armed rebellion in the period 1991-2011, despite the crime of armed rebellion has been under the amnesty - about 100,000 Serbs (mostly from the category of work and a fertile age), have not been able to return or travel freely in the Republic of Croatia because they expected to be prosecuted for war crimes. Namely, for war crimes and armed rebellion Croatian judicial authorities have processed about 25,000 Serbs, which, if multiplied by four, as the average household membership (if the head of family did not return, neither would any members of his immediate family), makes for the aforementioned figure.

That thesis is confirmed by the following fact. By participating in the International Conference on Heritage of the Hague Tribunal, held in The Hague 24-25 February 2010, the president of the

Supreme Court of Croatia Mr Branko Hrvatin and the State Attorney (prosecutor) Mr Mladen Bajic, in the presence of the then Minister of Justice Ms Ivana Simonovic, before an audience of about four hundred people, among whom were the victims' families, said that Croatia somehow went too wide in the charging of people who are now in Serbia, mostly Croatian citizens of Serbian nationality who are charged with war crimes. Prosecutor Bajic said during the discussion that the Prosecutor's Office is correcting the indictments and that the number of prosecuted will be lowered.

State Attorney's Office of the Republic of Croatia (hereinafter: DORH) published in November 2004 the list of suspects, accused and convicted persons for wae crimes before Croatian courts as of 1 September 2004. It was the first integrated list of persons prosecuted in the Republic of Croatia for war crimes. On the list, on the day of 1 September 2004 there are names of 1,993 persons. Among them, in an active status for war crimes before Croatian courts there was only 21 member of Croatian Armed Forces (one percent of the total processed number). On this list are not contained the names of those persons against whom the proceedings were suspended, and those who are acquitted or the charges against them dismissed (hereinafter referred to as "processed in a passive status").
At the meeting of the Ministers of Justice of Croatia and Serbia, held in Belgrade on 29 June 2010, was established the Joint Commission "with a mission to take over the roster of suspects, accused and convicted of war crimes offences." Already at the first meeting of this Commission, held on 13 July 2010, the contracting parties have exchanged lists of those prosecuted for war crimes before the judicial authorities of both countries and agreed on the criteria and methods of work, so that all interested citizens will be able in the Ministry of Justice of Serbia and Croatia to determine whether they are on these lists. The list of the processed that was handed by the Croatian side, titled "Those against whom the investigation is carried out, accused without investigation and convicted of war crimes in Croatia as of 31.03.2010", contains a total of 1534 names. Among the 1,534 processed in an active status for war crimes before Croatian courts, there are 83 members of the Armed Forces of the Republic of Croatia (five percent of the total processed persons), which is an improvement compared to this list compiled by the State Attorney's Office in 2004. year. The progress made, however, has been insufficient in the context of a consistent respect for the rule of law.

At the end of 2010, DORH submitted to the Ministry of Justice of the Republic of Serbia the latest list of suspects, accused and convicted persons for the offences of war crimes before Croatian courts, as of 30th September 2010. On this list there is a total of 1549 persons. The analysis shows that on this most recent list, compared to the previous one of 31 March 2010, there are 15 more persons. By analyzing the list on the name by name basis compared to the previous one, we found that 65 names were removed from the previous list, and the latest one was added 80 new names, which gives a figure of 145 different names in the interrelationship between these two lists.

Judging from the practice in the work of the Croatian judicial authorities so far when it comes to prosecution of Serbs for war crimes, it can be concluded that the judicial processes, in addition to a good reason that all perpetrators of war crimes should be brought to justice, also have another goal - deterring refugees, mainly Serbs, from returning to their homeland. However, comparing the published lists of those prosecuted for war crimes, it can be concluded that the lists are quite unsorted out, that some persons have been omitted from one list with no apparent reason, and they appeared on the other list. This causes fear and worries among the refugees, for whom these

lists are of concern, and they are afraid of the secret lists which turns them away in great numbers from the return to Croatia.

The Croatian judiciary is using the principle of "still valid" in prosecution for war crimes and is re-opening investigations against persons (mostly Serbs), who were not on the previous lists. Among the 105 Serbs from Croatia arrested so far based on the warrants issued in Zagreb, there was made 13 errors in terms of the identity of those arrested. Among refugees and displaced Serbs an impression is created that these errors are part of a prearranged plan of the Croatian leadership to hold all Serbs from Croatia under tension, that each of them can be found, regardless of whether one is or is not guilty, under charges for war crimes – which is in the same time read as a message to them not to return or travel to Croatia.

Also, the Croatian judiciary has from the very beginning of the conflict, which means the 17 August 1990, began to process the Serbs for the crime of armed rebellion. According to the official data of the Ministry of Justice, as of 25 February 2002 - from the date of entry into force of the General Amnesty Law, that is from 10/05/1996 until the end of 2001, a total of 21,255 persons were pardoned for the crime of armed rebellion. That figure is now much higher because the competent public prosecutor's offices in Croatia. reclassified the offense of war crimes to armed rebellion after 2001, so the General Amnesty Law applies to this category of persons. Potential returnees are afraid of the possibility, which was outlined in by DORH, (possibly due to some political reasons) there could come about reactivation of the suspended criminal proceedings that were reclassified from war crimes to armed rebellion. Neither the final list of those processed, nor the list of amnestied for armed rebellion was ever released in its entirety, which causes fear that they are still on a "secret list" and would be arrested if they returned to their homeland.

From 15 July 2010, the information on the possible conduct of criminal proceedings before the judicial authorities of the Republic of Croatia can be obtained from the Serbian Ministry of Justice. According to the instructions published on the website of the Ministry (www.mpravde.gov.rs), it is necessary to fill put the form which can be downloaded from the website and together with an ID number submitted at the administrative office of the Ministry of Justice, after which the applicant will receive a reply 15 days later. What does the certificate issued by the Ministry of Justice mean? At the written request of the applicant, the Ministry of Justice sends out generic responses in two variants. Firstly, that the applicant is not on the list of those processed, and if so, at what stage one's trial is. Secondly, those whose response states they have not been processed, must be sure to ask if they are guaranteed that this response enables them to travel freely to and from Croatia. The information on the status before the Croatian courts relates to the period by a certain day, in this case until 30 September 2011, but not after that date. It is known that war crimes do not expire and that it is possible to prosecute a person for war crimes at any time. Previous experience has taught us that it is enough that a Croat neighbour submits a report to the police that a Serb "has done something to a Croat" and that constitutes a ground for getting into custody, which is followed by arrest and filing a report to the investigating judge. The importance of those documents is questionable because of unsettled lists/ records on those processed. One thing is certain, and that is if someone is prosecuted and received confirmation of not being on the list of the processed persons, that certificate will not save him from possible arrest or trial.

The Law on Criminal Procedure entered into force in Croatia in early 2009, which as one of the novelties introduced a provision on the renewal of a criminal proceeding without presence of 435

Serbs who have been convicted in absentia for war crimes. Therefore, this provision provides a legal basis to all those who were sentenced in absentia if they are able to obtain new facts and evidence in favor of their innocence, directly or through their lawyers, or the competent prosecutor's office, without their presence meaning, voluntary or extraditionary leaving to Croatian prisons, to apply for a retrial and possibly succeed in their case. Unfortunately, many convicted persons do not have enough money to hire a lawyer.

Justice ministers of Croatia and Serbia, at a meeting in Zagreb 27 September 2006, agreed on to expand cooperation in processing war crimes cases. Based on the agreement of the Ministers, the Prosecutor's offices of the two countries signed *the Agreement on cooperation in prosecuting perpetrators of war crimes, crimes against humanity and genocide,* which shortly after signing was put into practice. According to this Agreement, the cases are not transferred as required under *the European Convention on Transfer of Proceedings in Criminal Matters*, which provides that criminal proceedings in the stages of investigation and prosecution are to be left to the state where the defendant resides and in which his citizenship protects him from extradition to a country in which he has been processed. Under this Agreement the evidence should be made available for transfer, which allows the signatories to hold open the cases for which the evidence was transferred to the other party to the Agreement, until the other party notices them of the final outcome of the proceedings before its court, and it can only then decide whether to close or continue with the proceedings.

According to the data from the Serbian War Crimes Prosecutor's office, the Croatian Prosecutor's Office has given way to 20 cases in which a few dozens of people have been prosecuted. After receiving evidence, the War Crimes Prosecutor, no matter at what stage the proceedings be, returns it to the investigation stage, without looking at the final verdict of the Croatian courts. That is the reason why it happened that the same person is convicted of the same act before the courts in both states. In some cases, people have been accused in one state, and acquitted in the other for the same offense. And those who were acquitted in a Serbian court, and who are on DORH's processed persons list or who are listed on Interpol's warrant list, are to be arrested as soon as they leave Serbian territory.

Requests:

- To prosecute perpetrators of war crimes (members of the Croatian Army and the police) against the Serbs in accordance with international legal standards (crimes that were committed against Serbs during and after operations "Bljesak" and "Oluja", Miljevački Plato, Pakrac Field, Sisak, Karlovac, Osijek, Zagreb and many other places in Croatia)

- To make a thorough review of previous proceedings conducted against Serbs, and which were often conducted without presenting the valid evidence and contrary to international standards;

- The Republic of Croatia to publish the names of all persons prosecuted, those prosecuted and than amnestied for armed rebellion (21,255 persons); those against whom the investigation has been suspended or against whom proceedings were suspended after the indictment, or the charges were dismissed or who were acquitted (over 2,200 persons), as well as those lawfully convicted for whom the State Attorney's office requested a retrial, and against whom, after allowing the retrial, without their knowledge and participation in the

proceedings, came about the rejection of charges or the suspension of proceedings - (for now, at least 52 persons);

- To harmonize *the Agreement on cooperation in prosecuting perpetrators of war crimes, crimes against humanity and genocide between Serbia and Croatia* with the *European Convention on Transfer of Proceedings in Criminal Matters*, which provides for criminal proceedings in the stages of investigation and prosecution to be taken care of by the state in which a defendant resides and in which his citizenship protects him from extradition to a country which had him processed;

- To enable re-opening of the criminal proceedings for all refugees and displaced persons convicted in absentia, either in Croatia or in Serbia. The competent authorities of both countries should provide each other with case documents including verdict and the evidence, and to follow the reopening of the proceedings in criminal matters.

12. <u>Ending of the process of exshumation and identification of the missing persons</u>

In the Republic of Croatia there has been identified over 600 burial sites in which lay the remains of the Serbs.

Request: The competent authorities of the Republic of Croatia to exhume and identify the remains of Serbs and hand them over to their families as soon as possible.

President of the Coalition of Refugee Associations
Miodrag Linta