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Housing programs on the halfway between human rights and social rights

The right to housing as an integral part of basic human rights which are covered by the European Convention on Human Rights, could be referred as:

- the right to respect for private and family life and the home and
- the right to peaceful enjoyment of possessions

These rights must be particularly respected and protected.

Further, the significance of housing and the corresponding responsibilities of national governments have been recognised in a number of other international instruments. These include the Council of Europe's European Social Charter of 1961, its additional Protocol of 1988, and the Revised European Social Charter of 1996.

While these international sources of human rights are included in the very Constitution of Bosnia and Herzegovina, they have the legal power of constitutional provisions and should be directly implemented, i.e. they have supremacy over all other national laws.

In addition to the BiH Constitution, which is namely Annex IV to the General Framework Agreement for Peace in Bosnia and Herzegovina, in this context it is very important to mention it's Annex VII – Agreement on Refugees and Displaced Persons. Provisions of this document are consistently integrated in domestic legal framework ensuring refugees and DP's rights, as follows:

- freely to return to their homes of origin or to choose other place of residence;
- to have restored to them property of which they were deprived in the course of hostilities since 1991 and
- to be compensated for any property that cannot be restored to them.

Why is the reference to Annex VII housing related provisions so relevant in Bosnian context?

Although the housing issues that emerged after the transition in most of Central and Eastern European countries could be comparable to those present in BiH, the major dissimilarities, however, do exist, since in most of the countries of the region, there was a peaceful transformation as opposed to Bosnia and Herzegovina.

Tragic conflict in the region, as the BiH Constitution defined the war devastations from 1992 to 1995, had caused huge direct consequences to the demographic, as well as to the housing situation in BiH.

- Besides thousands of persons who had been killed and/or are still missing, 2,2 million people fled from their pre-war homes which makes more than a half of the domicile population before the war;
- Around 453.000 housing units or 42% of the pre-war housing stock suffered severe devastations. Out of this number, around 80% of housing units were either destroyed or heavily damaged;
- Following the legal model on disposal of the abandoned properties more than 200,000 units were subject to the changed occupation with almost equal ratio of social and private ones.

Current Situation

In the last twelve years since signing the Dayton Peace Agreement, more than a million returns have been recorded; almost all occupied property has been returned to its pre-war owners; thousands of houses have been reconstructed, etc.

However, despite substantial achievements in the implementation of Annex VII, there remains a significant number of displaced persons, refugees, other conflict-affected persons, as well as socially disadvantaged persons who are in need of durable solutions, with access to social housing as a basic precondition.

- Among them, there are 125,000 displaced persons. Many of these people are extremely vulnerable and traumatized, living in inhumane conditions in displacement.
- Unfortunately, around 2,700 families, altogether more than 7,000 persons continue to live in collective centres in BiH.
- Also, many persons are unable to return because their pre-war property is destroyed and is on the list including 45,000 housing units of returnees awaiting reconstruction.
- Many persons who never owned property before the war have not had the opportunity to benefit from any housing project to lead towards a durable solution for them.
- In addition, it is estimated that more than 7,000 families lost their former tenancy rights due to the preclusive deadline that had been set for submitting claims for the repossession of the former social ownership. Besides the fact that there is no common understanding whether tenancy rights equal property rights, undoubtedly, in cases of those who would opt to return, and who at the same time could be in a need of social housing – adequate measures would have to be taken.

Economic opportunities are scarce, often there is no infrastructure, including electricity, and their access to rights and services, such as health care, education, social protection and pensions, is limited.

Not rarely these limitations are rooted in discrimination, which is contrary to the principles set out in the BiH Constitution and international law. In other cases the primary obstacle to return is the changed social environment with many persons, particularly younger persons, seeking higher education and employment opportunities in larger towns instead of rural communities, which makes presence of housing shortage in various urban areas.

Consequences of Ranking Equal Rights: Some Rights became more "equal"

Housing support has served the primary objective to reverse the demographic impact of the war in accordance with the Dayton Peace Agreement Annex VII provisions. In housing terms, this has led to a focus on two major areas of operational activities: repossession and reconstruction. The third option guaranteed by the Annex VII, compensation, was left over and remained on the margins of the both international, and national concern.

At the same time, based on this guaranteed right, a large number of refugees and displaced persons, submitted claims for compensation to the Independent Commission for Displaced Persons and Refugees (Dayton Peace Agreement – Chapter II, Article VII), while others initiated lawsuits in courts for the same purpose.

On the other hand, provisions on compensations of Annex VII were not applied or their application was not ensured, and thus compensation has remained inaccessible in practice to this day.

Without compensation, as a practical possibility, the only choice for displaced persons and refugees is to apply for repossession and reconstruction of their homes from 1991. To this day, about 210,000 buildings, *de jure* and *de facto* were repossessed, and 320,000 housing units were reconstructed through budget resources, donations, and personal investments of returnees. However, a significant number of repossessed and reconstructed buildings were later sold by their owners. In this way, without a formal compensation mechanism, with free use of money gained through sale, many displaced persons and refugees found a way to achieve some form of compensation "instead of repossession", as it is prescribed in Annex VII.

From the human rights standpoint, state authorities and international community have responsibility to consider all options that support durable solutions for displaced persons and other populations in need of housing.

Major Challenges

The process of return of property to refugees and displaced persons was substantially completed in late 2006. While substantial completion means that all pre-war owners/users have repossessed their property/tenancy rights, in the remaining outstanding cases, due to disputable factual and legal status, administrative procedures, disputes or lawsuits are still ongoing before competent courts.

On one hand, the provision of repossession rights included forced evictions of those who „temporarily“ resided in abandoned houses/flats, on the other hand.

This mainly led to further displacement, with provision of alternative accommodation, including collective types of housing.

Apparently, with shortage of housing programs, the implementation of rights of those who were eligible to repossess, could result in violation of rights of those who lost, or are most likely to lose their (temporary) homes and who became in a need for housing. This particularly refers to the lack of access to social housing.