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Conference

Economic and social rights for forcibly displaced persons during the conflicts in former Yugoslavia

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Parliamentary Assembly of Bosnia and Herzegovina, Sarajevo

Concept Note

Organised by the Department of the European Social Charter of the Council of Europe (CoE) with a focus on Bosnia and Herzegovina, Croatia, Montenegro, Serbia, “the former Yugoslav Republic of Macedonia” and Kosovo*.

*All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation’s Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo.

1. Introduction

At the height of the conflict in the former Yugoslavia, some 3,8 million persons¹ were displaced, either internally on the territories of the former Yugoslavia, or as refugees elsewhere in Europe.

The conflict also entailed widespread destruction in many cities and villages in the region.

Today, after more than 20 years of action towards durable solutions, the majority of forcibly displaced persons have returned home or integrated locally but some 354,000 remain in some form of displacement, without a durable solution. They include internally displaced persons (IDPs), as well as refugees and returnees (persons who returned to their pre-war places of origin). The displacement was produced by three different conflicts; (i) persons displaced by the conflict in Croatia; (ii) persons displaced by the conflict in Bosnia and Herzegovina; and (iii) persons displaced by the conflict in Kosovo*. While most of the humanitarian agencies have drastically scaled down or ceased their activities, UNHCR is in the process of changing the nature of its operational engagement and is asking the respective governments and institutions to take the full ownership of the process of achieving durable solutions for the remaining population in need.

Bosnia-Herzegovina, Serbia, Montenegro and Croatia have been cooperating since 2005 to find sustainable solutions for those displaced by the 1991-1995 conflict in Yugoslavia within the framework of the Sarajevo Declaration (2005)², commonly known as the Sarajevo Process. Within this framework, as of 2012, the four countries have jointly initiated implementation of the Regional Housing Programme (RHP), which is supported, *inter alia*, by the OSCE, the European Commission, the US Government and UNHCR. The RHP Fund is managed by the Council of Europe Development Bank (CEB) which also provides assistance to the four Partner Countries in preparing and implementing their housing projects as well as monitoring the use of grants disbursed from RHP Fund resources to the Partner Countries³.

The question that the conference wants to address is whether, to what extent and how, the Council of Europe and its human rights instruments, in particular the (revised) European Social Charter and its implementation mechanisms, can be of assistance in devising and implementing such durable solutions.

2. Population(s) concerned

According to UNHCR data, as at December 2016 the following groups of persons in the Western Balkan region were still in need of a durable solution:

	Refugees	Internally displaced persons	Others of concern
Bosnia and Herzegovina	5,236	98,324	47,000 (minority returnees)

¹ Including those that were displaced during and after the 1999 armed conflict in Kosovo* (S/RES/1244(1999));

² Regional Ministerial Conference on Refugee Returns, Sarajevo, January 2005, see <http://www.refworld.org/docid/451a5acc4.html>.

³ For more information on the role of the CEB see <http://www.coebank.org/en/project-financing/donors-and-fiduciary-accounts/regional-housing-programme/>.

Croatia			10,000 (minority returnees in need of solutions)
Montenegro	947		1,530 (refugees in process of local integration)
Serbia and Kosovo*	29,427	219,697	
"The former Yugoslav Republic of Macedonia"	493 (18 recognized refugees; 475 granted subsidiary protection)		180 (former refugees in need of solutions)

3. Description of the current situation

As indicated above, the Regional Housing Programme (RHP) is seen as a major effort by international stakeholders to find solutions for the most vulnerable persons displaced between 1991 and 1995. Its key principles are set out in the Sarajevo Declaration and further developed in the Joint Ministerial Declaration (Belgrade Declaration) of 2011⁴. As of December 2016 a total of EUR 269 million were pledged in support of the RHP, including at a Donors Conference in April 2012 in Sarajevo⁵. The initial aim of the RHP was to find solutions for 74,000 persons. The implementation period was originally planned for five years (2013 –2017), but was extended further in December 2016. The role of UNHCR (in close partnership with OSCE missions where present) is to provide support to the four partner countries by monitoring and reporting on the progress of selecting beneficiaries for specific projects and in making policy-level suggestions to guide the implementation of the RHP. To this end, amongst others, mechanisms were established to ensure that beneficiaries of the RHP indeed meet general eligibility criteria, including in particular those related to vulnerability. Both organizations also support the RHP Secretariat of the CEB to ensure that the housing solutions selected address the specific needs of the beneficiaries, including the sustainability of solutions provided. Within this integrated approach in the RHP, addressing the issue of sustainability is seen by UNHCR as a challenge, as beneficiaries who obtain housing solutions may be unable to legalize their status, have unhindered access to their rights (including social welfare and acquired rights), afford rent or care and maintenance, and/or are unable to afford living in the location where the housing has been provided. At present, while complementary sustainability measures have been introduced in part, as an element of the project proposals, they are fragmented and have been provided in an incoherent manner. The aim of ensuring sustainability is enshrined in the Joint Declaration (Belgrade Declaration), whereby the four partner countries committed themselves to apply an integrated approach to ensure sustainable solutions for all RHP beneficiaries.

In 2016, UNHCR country offices in the region summarized the situation of the populations concerned as follows:

Refugees from Croatia: UNHCR estimates that some 250,000 persons left Croatia during and immediately after the 1991-1995 armed conflict. The vast majority of them belonged to the Serb national minority. The Croatian authorities have formally registered over 134,000 minority returns to

⁴ Joint Declaration on Ending Displacement and Ensuring Durable Solutions for Vulnerable Refugees and Internally Displaced Persons, Belgrade, November 2011, at: <http://www.unhcr.org/4ec22a979.pdf>.

⁵ Cf. CEB press release, 01 December 2016, at: <http://www.coebank.org/en/news-and-publications/news/regional-housing-programme-steering-committee-fund-assembly-donors-meet-paris/>.

and within Croatia. As of December 2016, some 25,543 refugees from Croatia remained registered in the region, of which 20,334 were in Serbia; 5,164 in Bosnia and Herzegovina; 33 in Montenegro; and 12 in Kosovo* (S/RES/1244 (1999)). In April 2014, UNHCR issued its Advisory on the Implementation of the Durable Solutions Process (Sarajevo Process) for refugees from Croatia displaced by the 91 – 95 conflict, including cessation of refugee status. The Advisory contained UNHCR’s recommendation for the cessation of refugee status pursuant to the “ceased circumstances” cessation clauses contained in the UNHCR Statute and Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees. UNHCR recommended that States ensure that all aspects of cessation be implemented in 2014, with cessation to take effect by the end of 2017 at the latest. In tandem, UNHCR provided a set of thematic recommendations on how to resolve remaining displacement challenges and further advance the Regional Durable Solutions Process. In Serbia, UNHCR handed over the voluntary repatriation programme to the Serbian and Croatian Governments in 2012, and has effectively disengaged operationally, implementing only limited community services and free legal aid activities, linked to the implementation of the Regional Housing Programme (RHP). The majority of the applicants are refugees from Croatia who wish to locally integrate in Serbia and may have acquired Serbian nationality. There remain outstanding issues of discrimination and effective access to rights and reintegration in Croatia (need for adequate housing, regularizing of stay for refugees without Croatian citizenship, employment, access to acquired pension rights, etc), which UNHCR hopes the EC (and other relevant actors) will keep a focus on, in order to resolve outstanding matters. UNHCR continues to stress the need to urgently resolve the longstanding issue of access to acquired pension rights, which hinders the enjoyment of acquired rights for a significant number of Croatian pensioners. UNHCR will continue to advocate for solutions with various stakeholders.

Refugees from Bosnia and Herzegovina: In Bosnia and Herzegovina, some 2.2 million persons left their homes, between 1992 and 1995, with 1.2 million persons seeking refuge in more than 100 countries around the world. Twenty years after the 1995 Dayton agreement, durable solutions have been found for many of these refugees from Bosnia and Herzegovina. According to the most recent official statistics approximately 452,000 persons have returned, and another 21,890 persons remain recorded as holding refugee status. UNHCR estimates that some 120,000 former refugees from Bosnia and Herzegovina have naturalized in neighbouring Croatia (primarily ethnic Croats). The country with the highest refugee population today is Serbia, with over 9,000 refugees, primarily ethnic Serbs. The political fragility in Bosnia and Herzegovina and the on-going implementation of the Dayton Peace Accords have meant that cessation of status for refugees from this conflict has not yet become feasible. The time is approaching when efforts to facilitate return and integration for those who chose it (including minority return) must be expected from and taken up by the entities’ Governments, with support from the EC and other stakeholders. Depending on this support, UNHCR hopes that cessation of refugee status for these refugees would become possible by the end of 2017, irrespective of their rights of return and to reclaim property or compensation. Refugees who do not want to return to their areas of previous residence due to fears arising from previous persecution would be able to claim the benefit of the exception provided for in article 1C(5) of the 1951 Convention relating to the Status of Refugees.

Internally Displaced Persons and Returnees in Bosnia and Herzegovina: At present, according to the State Ministry of Human Rights and Refugees (MHRR), there are 98,324 IDPs in Bosnia and Herzegovina. In addition, UNHCR estimates that there are 47,000 (mostly) vulnerable returnees who are a minority in their places of origin. Recently, renewed efforts were made to streamline and update existing data and re-assess the vulnerability levels of the remaining IDPs and returnees. Although the final results are not yet available, initial results tend to indicate that between 30 and 35% of the above two groups fall within the established vulnerability criteria, thus an approximate number of 50,000 persons still requiring sustained attention and targeted assistance. “The Revised Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Accords from 2010” (Revised Strategy), a national strategy, builds upon the first Annex VII Strategy from 2002

and identifies ten problem areas related to the implementation of Annex VII (housing, property repossession, access to electricity, infrastructure, health care, social protection assistance, education, employment, safety, compensation for damaged property). Projects implemented by MHRR, UNHCR and other actors, funded primarily by the international community, focus on addressing these problems (key projects include: EU-IPA, UNTFHS, CEB II and the RHP). Despite the many concurrent projects, the needs of most vulnerable IDPs and returnees exceed the resources available. At the same time, many problems faced by IDPs and returnees are similar to those faced by large parts of the entire population, irrespective of their status. UNHCR intends to phase out its operational involvement for this group by the end of 2017.

Persons displaced from Kosovo*: According to official Government data there are approximately 230,000 IDPs displaced from Kosovo today (203,006 registered IDPs in central Serbia and an estimate of around 17,000 internally displaced persons within Kosovo*). UNHCR estimates that amongst them there are nearly 91,000 persons still with displacement related special needs, namely 72,000 in Serbia, 16,717 in Kosovo*, 1,083 in Montenegro and 664 in “the former Yugoslav Republic of Macedonia”. Only 27,000 voluntary returns to and within Kosovo* have been recorded in the last 17 years, while many stakeholders assess that a significant number of minority ethnic communities returns were not sustainable, resulting in secondary displacement. Since 2011, the number of voluntary returnees to Kosovo* has been steadily decreasing, due to numerous obstacles to safe and sustainable return and reintegration. In 2016, in the period between January and August, only 219 persons have returned, the lowest number since the returns began in 2000. A decline in returns is expected to continue. Since November 2014, representatives of institutions from Pristina, Podgorica, Skopje and Belgrade committed their support to the regional co-operation aiming to tackle obstacles to the displacement from Kosovo*. This initiative, the so-called “Skopje process” is jointly facilitated and guided by UNHCR and OSCE offices in the region. In September 2015, the forum endorsed a joint document with 10 guiding principles of the process and operationalization of five thematic working groups with the largest number of remaining obstacles: (1) Property Rights; (2) Security, Dialogue and Reintegration; (3) Personal documentation; (4) Data Management and (5) Solution Planning.

In Kosovo*, there is still no specific legal, accountable and transparent voluntary return and reintegration framework established. Many IDPs continue having problems in accessing property in Kosovo and in the process of restitution/compensation of properties. Recently, the Council of Europe’s Commissioner for Human Rights noted with concern the lack of effective implementation of decisions of the Kosovo Housing Agency⁶. Security incidents affecting IDP and returnee population continue. During 2015, there were 92 recorded incidents in Kosovo*, of which 63 % affected returnees and 81.5 % of the victims were reported to be Kosovo Serbs. Another obstacle to the minority ethnic communities returns is the lack of sustainability. During the last 16 years, many return projects have been implemented. Yet these returns have not been sustainable due to *inter alia* security issues, problems in accessing rights and services and weak livelihood components. Due to persisting obstacles to safe and sustainable return and reintegration, according to informal assessments of housing projects conducted by UNHCR, many houses are abandoned, inhabited by third persons or inhabited only seasonally by the owners. The majority of reconstructed uninhabited houses belong to Serb community. In some regions the non-occupancy rate by the owners reaches 58%. Returnees belonging to the Roma, Ashkali and Egyptian communities find themselves in particularly vulnerable situations and have not so far enjoyed any affirmative measures recommended by the Strategy for the Integration of Roma, Ashkali and Egyptian Communities. Both municipal and central authorities often tend to de-prioritize Roma, Ashkali and Egyptian families displaced in Montenegro and “the former Yugoslav Republic of Macedonia” that lived in informal settlements before the conflict. As part of the Skopje Process UNHCR is investing efforts to set up an accountable, and functioning return and reintegration system (speeding up the adoption of the

⁶ Memorandum following the Commissioner’s mission to Kosovo from 5 to 9 February 2017, para. 40.

normative framework, functional data management system, and selection/prioritization of beneficiaries based on vulnerability criteria), to be steered by the Kosovo* authorities as part of its solutions strategy.

Returns from central Serbia to Kosovo* remain few. According to UNHCR, there have been 15.147 minority returns from Serbia to Kosovo* over the past eighteen years, although there are estimates that not more than 5.000 of the minority ethnic communities returns were actually sustainable. In 2015, the number of IDP returns from Serbia stood at 306 persons. Although many IDPs from Kosovo* have integrated in displacement, and while several thousand have returned to Kosovo* with others remaining interested to return, there are still an estimated 72,000 vulnerable IDPs with displacement related needs, in dire need of durable solutions. The position of Roma IDPs in particular is of grave concern. There are approximately 23,000 Roma IDPs registered in Serbia, of which 14,560 are in a situation of "urgent need". During his visit to Serbia and Kosovo* (S/RES/1244 (1999)) in September 2016, the UN Special Rapporteur on the human rights of internally displaced persons stated that "All durable solutions for IDPs should remain as options open to them, and must be delinked from political processes", noting that the emphasis has too often been put on return. "IDPs must be consulted on what is the best solution for them." In this context, he also called on the Government in Serbia and authorities in Kosovo, with the help of the international community, to carry out a survey of intent to identify IDPs' workable durable solutions option for them."⁷

Some 360,000 persons fled from Kosovo* to "the former Yugoslav Republic of Macedonia" in 1999. The vast majority have voluntarily returned in 1999, after the conflict ended. The first Law on Asylum and Temporary Protection was adopted in 2003. Some 2,600 persons unwilling or unable to return to Kosovo* applied individually for asylum in "the former Yugoslav Republic of Macedonia". Currently, there are 673 persons displaced from Kosovo*, all belonging to Roma, Ashkali and Egyptian minorities, remaining in the country. Durable solutions for this population include both voluntary return and local integration. In parallel to continuous voluntary repatriation efforts, the Government has developed a strategy for local integration in 2009.

In Montenegro, as of December 2016, there were 883 registered refugees originated from Kosovo*. Unlike in other countries in the region, refugees from Kosovo* in Montenegro are eligible to apply and subsequently receive housing assistance for the purposes of local integration under the RHP scheme. The Government agreed to extend its 2011-2015 Strategy for the displaced population until end-2017. The Strategy comprises access to legal status as a first chapter, together with chapters on access to social and economic rights, education, health, housing, and return, with particular attention to the largest Roma refugee settlement in the region – the Konik camps. Interest still persists for return to Kosovo*, and additional efforts could be made to help some 70 families still wishing to return to Kosovo*.

In Bosnia and Herzegovina, it is expected that all the current 72 recognized refugees from Kosovo* will apply for naturalization by the end of 2017. The key challenge of local integration for these refugees is that despite having lived for so many years in Bosnia and Herzegovina, most are not economically self-sufficient, and depend on assistance to survive. It is essential to ensure that these individuals and families are considered for available housing projects available to nationals, and, that they are in the meantime supported by appropriate institutions.

⁷<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20514&LangID=E#sthash.A3gpYeSD.dpuf>

4. Ratifications of the (revised) European Social Charter

The European Social Charter is a comprehensive human rights treaty in terms of substantive rights contained. At present it is legally binding on 43 Member States⁸ and includes many social rights which are set out in the 1951 Convention relating to the Status of Refugees, such as employment rights, social security and assistance, education and housing rights.

The applicability of the (revised) European Social Charter to refugees and stateless persons is defined in the Appendix (to the revised ESC)⁹, and has been further interpreted by the Committee in its statements of interpretation on the rights of refugees and of stateless persons¹⁰.

Croatia has ratified only the 1961 European Social Charter. Bosnia and Herzegovina, Montenegro, Serbia and “the former Yugoslav Republic of Macedonia” have ratified the revised European Social Charter. However, they have not accepted all of the provisions that would seem to be most relevant in the context of displaced persons, i.e. Arts. 11 (health), 12 (social security), 13 (social and medical assistance), 14 (social welfare systems), 16 (protection of the family), 17 (the right of children and young persons to social, legal and economic protection), 23 (elderly persons and social protection), 30 (poverty and social exclusion), and 31 (housing).

	11	12	13	14	16	17	23	30	31
Bosnia and Herzegovina	x	x	x	x	x	x	x	–	–
Croatia	x	–	x	x	x	n/a	n/a	n/a	n/a
Montenegro	x	x	x	x	x	x	x	–	–
Serbia	x	x	x	x	x	x	x	x	–
“The former Yugoslav Republic of Macedonia”	x	x	x	–	x	x	–	–	–

Of these five countries, only Croatia is a party to the 1995 collective complaints protocol.

⁸ As of 15 February 2017 thirty-four Council of Europe member states have ratified the 1996 revised European Social Charter and an additional nine Council of Europe member states have ratified only the 1961 European Social Charter; Overview of signatures and ratifications at: <http://www.coe.int/en/web/turin-european-social-charter/signatures-ratifications>.

⁹ Appendix to the revised European Social Charter, at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007cd e4>.

¹⁰ European Committee of Social Rights, Statement of interpretation on the rights of refugees under the European Social Charter, 5 October 2015, at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804895 11>; See also European Committee of Social Rights, Activity Report 2013, Statement on the Interpretation of Stateless Persons available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804891 15>, p 35- 36.

For complete information regarding the ratification of the European Social Charter, the acceptance of provisions and reporting, consult the country fact sheets on the European Social Charter website:

- [Bosnia and Herzegovina](#)
- [Croatia](#)
- [Montenegro](#)
- [Serbia](#)
- ["The former Yugoslav Republic of Macedonia"](#)

5. (Possible) Contribution of the Social Charter to problems of displaced persons

A) Reporting Procedure

The Council of Europe has always shown a special interest in the situation of vulnerable groups such as internally displaced persons, and over the years the Committee of Ministers has adopted a number of pan-European standards, including recommendations to governments which call for the full implementation of the 1951 Geneva Refugee Convention, the European Convention of Human Rights and the European Social Charter, which with their universal and mutually complementary nature represent the spine of the European human rights architecture.

The conformity of national law with the Charter is monitored by the European Committee of Social Rights, composed of 15 independent, impartial members who are elected by the Committee of Ministers of the Council of Europe for a six-year term, renewable once. The Committee adopts "conclusions" in respect of national reports submitted annually by the States Parties, and it adopts "decisions" in respect of collective complaints lodged by the social partners and other non-governmental organisations.

Insofar as they refer to binding legal provisions and are adopted by a monitoring body established by the Charter and the relevant protocols, *Decisions and Conclusions* of the European Committee of Social Rights must be respected by the States concerned; even if they are not directly enforceable in the domestic legal systems, they set out the law and can provide the basis for positive developments in social rights through legislation and case-law at national level.

Although the ECSR has not been closely monitoring the provision of social rights to internally displaced persons by the States Parties, IDPs are protected by the provisions of the Charter as far as they remain in the country bound by the Charter. It is therefore the responsibility of national authorities to ensure the full enjoyment of the rights guaranteed by the Charter.

In its "Statement of interpretation on the rights of refugees under the European Social Charter"¹¹, the Committee "*considers that certain social rights directly related to the right to life and human*

¹¹ European Committee of Social Rights, Statement of interpretation on the rights of refugees under the European Social Charter, 5 October 2015, at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048911>; See also European Committee of Social Rights, Activity Report 2013, Statement on the Interpretation of Stateless Persons at:

dignity are part of a “non-derogable core” of rights which protect the dignity of all people. Those rights therefore must be guaranteed to refugees, and should be assured for all displaced persons”.

The Committee therefore requests that *“all States Parties provide up-to-date and complete information relevant to the situation of refugees and displaced persons on their territory, in their reports concerning the rights identified in this Statement of Interpretation. Where specific measures apply to such persons these should be clearly described, and any difference of treatment in relation to the treatment of other persons subject to their jurisdiction should be justified with reference to the principles of Article 31 of the 1961 Charter and Article G of the Revised Charter”.*

NGOs, National Human Rights Institutions, International Organizations can also provide information/ “shadow reports” which are being published on the website of the Council of Europe’s Department of the European Social Charter. Reports by the latter have been acknowledged as an important source of information for the Committee’s Conclusions¹².

So far, in the country reports of the countries from the Western Balkans little mention has been made concerning the situation of refugees, internally displaced persons and stateless persons.

B) Collective complaints

Under a Protocol to the Social Charter a collective complaints procedure was introduced in 1998 for the purpose of improving the enforcement of the rights guaranteed by the Charter¹³.

It is, most likely, the collective complaints procedure that is the most effective way of implementing the rights of the ESC in a way that they will protect displaced persons, being they nationals or not of the States Parties.

Of the countries in the region, only Croatia is party to the collective complaints protocol. Under the Protocol, selected non-governmental organizations can bring complaints to the European Committee on Social Rights about non-observance of the provisions of the European Social Charter.

Over the years since the entry into force of the Protocol, some 33 complaints have been brought under Art. 16 and/or Art. 31 of the European Social Charter, alleging violations of the Charter in respect of certain population groups. As examples can be mentioned the complaints brought by the European Roma Rights Centre against Greece (No. 15/2003), Italy (No. 27/2004), Bulgaria (No. 31/2005), France (No. 51/2008), Portugal (No. 61/2010), and Ireland (No. 100/2013), or the complaints brought by the FEANSA (European Federation of National Organisations working with the Homeless) against the Netherlands (No. 86/2012), Slovenia (No. 53/2008) and France (No. 39/2006).

The Centre on Housing Rights and Evictions (COHRE) brought a collective complaint against Croatia (No. 52/2008). It invoked Croatia’s infringement of Art. 16 of the European Social Charter 1961 (the right of the family to social, legal and economic protection), read alone or in conjunction with a non-

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680489115>, pp. 35-36.

¹² See for e.g. European Committee of Social Rights, Activity Report 2015, at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805ab9c7>, p. 55.

¹³ Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, ETS No. 158, 09 November 1995, at: <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/158>.

discrimination article in the Preamble of the Charter. COHRE based its complaint on the grounds that the ethnic Serb population displaced during the war in Croatia was subjected to discriminatory treatment as families had not been allowed to reoccupy their former dwellings from prior to the conflict, nor had they been granted financial compensation for the loss of their homes. Although Croatia has objected that the complaint was inadmissible *ratione temporis* (i.e. the Additional Protocol only entered into force in Croatia on 1 April 2003) the Committee of Social Rights concluded that it was irrelevant to speculate on the date when the violation first occurred and the date of the entry into force of the Protocol, as at the heart of the complaint was an alleged violation which had continuing and persistent effects even at the time it was lodged. In 2010 the European Committee on Social Rights unanimously concluded that Art. 16 of the Social Charter had been violated¹⁴. It was violated in light of the non-discrimination clause of the Preamble on the ground of:

- a) a failure to implement the national housing (care) programme within a reasonable timeframe and
- b) a failure to take into account the heightened vulnerabilities of many displaced families, and of ethnic Serb families in particular.

The Committee also concluded that the following was outside the scope of the Article 16:

- a) persons who did not wish to return to Croatia (and could not benefit from the national housing programme) and
- b) the question of restitution of or compensation for the loss of dwellings or occupancy/tenancy rights.

In its complaint against Slovenia (No. 53/2008), the European Federation of National Organisations working with the Homeless (FEANTSA) pleaded a violation of Articles 31 (right to housing) and 16 (the right of the family to social, legal and economic protection), read alone or in conjunction with Article E (non-discrimination) of the Revised Charter. In support of its request, the complainant organisation alleged that a vulnerable group of persons occupying denationalised flats in the Republic of Slovenia have been deprived of their occupancy titles and subjected to eviction. As the persons concerned were denied access to alternative housing in the long term, they have become homeless. These measures have also resulted in housing problems for the families of the evicted persons.

Following the decision of the European Committee of Social Rights that the situation in Slovenia (Complaint 53/2008) constituted a violation of Articles 31 and 16 in conjunction with Article E of the Revised Charter, the Committee of Ministers adopted a Resolution (Resolution CM/ResChS(2011)7). As a result, the government of Slovenia adopted the National Housing Programme 2015-2025 (NHP) which focuses, in particular, on the young, elderly and vulnerable groups of the population. The NHP identifies long-term goals, which already have wide public support: a balanced offer of appropriate high-quality and functional apartments and easier access to them, and greater residential mobility.

¹⁴ In cases of violation of the Charter, the concerned State is asked to notify the Committee of Ministers of the Council of Europe of the measures taken or planned to bring the situation into conformity. The Committee of Ministers cannot reverse the legal assessment made by the Committee on Social Rights; it can, however, adopt a resolution or recommendations addressed to the State concerned. The concerned State must report on the measures taken to remedy the situation.

In cases of violation of the Charter, the concerned State is asked to notify the Committee of Ministers of the Council of Europe of the measures taken or planned to bring the situation into conformity. The Committee of Ministers cannot reverse the legal assessment made by the European Committee of Social Rights; it can, however, adopt a resolution or recommendations addressed to the State concerned. Also, in every subsequent report to the European Committee of Social Rights, the concerned State must report on the measures taken to remedy the situation.

It can clearly be emphasized that the collective complaints procedure has strengthened the role of the social partners and non-governmental organisations by enabling them to directly apply to the European Committee of Social Rights for rulings on possible non-implementation of the Charter in the countries concerned, namely those States which have accepted its provisions and the complaints procedure. This is why, it is crucial that, in times of greater social insecurity, States Parties recognise that “respect for social rights contributes to peaceful and stable societies. The effective enjoyment of social rights such as housing, education and health, non-discrimination, employment, decent working conditions and legal, social and economic protection provides the basis for respect for human dignity” (Council of Europe Secretary General’s 2016 Report on the State of Democracy, Human Rights and the Rule of Law).

Under Rule 32A of the Rules of the European Committee of Social Rights the President of the Committee may invite any organisation, institution or person to submit observations in the context of the Collective Complaints Procedure¹⁵. If the latter are interested they should approach the Department of the European Social Charter/Secretariat of the European Committee of Social Rights. UNHCR has provided observations to the Committee in the Complaint DCI v. Belgium (No. 69/2011) which pertained to reception conditions of children (including asylum-seeking)¹⁶.

¹⁵ European Committee of Social Rights, Rules, 06 July 2016, at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069fae6>.

¹⁶ UN High Commissioner for Refugees (UNHCR), *Submission by the Office of the United Nations High Commissioner for Refugees in the case of Defence for Children International (DCI) v. Belgium*, 13 July 2012, at: <http://www.refworld.org/docid/500419f32.html>; see also European Committee of Social Rights, *Defence for Children International (DCI) v. Belgium*, Complaint No. 69/2011, *Decision on the merits* of 23 October 2012, at: <http://hudoc.esc.coe.int/eng/?i=cc-69-2011-dmerits-en>.