



European  
Social  
Charter

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**European Social Charter**

**Council of Europe**

**CONFERENCE  
ON ECONOMIC AND SOCIAL RIGHTS  
FOR FORCIBLY DISPLACED PERSONS  
DURING THE CONFLICTS  
IN FORMER YUGOSLAVIA**

**27 – 28 June 2017**

**Parliamentary Assembly of Bosnia and Herzegovina**

**Sarajevo**

**Conference Report**

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## Preface

The idea for the conference “Economic and social rights for the forcibly displaced persons during the conflicts in the former Yugoslavia” was born on the occasion of a visit of the United Nations’ Special rapporteur on the Human Rights of Internally Displaced Persons, Dr. Chaloka Beyani, to the Council of Europe in October 2016, during a joint meeting with the Social Charter Department and the UNHCR Representation in Strasbourg. In his work as Special rapporteur, Dr. Beyani has repeatedly stressed the importance of social and economic rights in the process of finding solutions to displacement.

The Council of Europe, UNHCR and the Organization for Security and Cooperation in Europe (OSCE) have been working together in the western Balkans since 2011 in the Regional Housing Programme in the context of the Sarajevo Process. The Sarajevo Process, which started in 2005 and was re-launched in 2011, brings together Bosnia and Herzegovina, Croatia, Montenegro and Serbia in a joint effort to solve remaining displacement issues. While the focus of the 2011 Belgrade Declaration, which re-launched the Sarajevo process, is on housing solutions for displaced persons, at the time it was already clear that also other socio-economic re-integration issues, such as access to education and employment and various forms of social assistance, including pensions, would need to be addressed by the partner countries in order to achieve truly durable solutions for the displaced. Against this background the Social Charter Department of the Council of Europe took the initiative to organize the conference, convinced that the Social Charter, as one of the core human rights treaties of the Council of Europe, could offer the authorities concerned ways and means to give an impetus to finding solutions to displacement.

The conference provided thus an opportunity to assess the progress made regarding the implementation of social and economic rights within the Sarajevo Process and examine ideas for further improvements of the living conditions of displaced persons from the region by relying on the rights contained in the European Social Charter.

As issues related to displacement in the Western Balkans are not limited to the four countries co-operating in the Sarajevo Process, “the former Yugoslav Republic of Macedonia” and Kosovo\*<sup>1</sup> were also invited, with a view to sharing experiences in the process of finding durable solutions to displacement by promoting social and economic rights.

The conference also aimed at promoting a greater use of the revised European Social Charter, which proclaims human rights for the daily life of people and provides tools empowering all stakeholders at regional and national level to realize these rights. It emphasized the usefulness of ratifying the revised treaty by all Council of Europe member States and the acceptance of the collective complaints procedure, as well as to underline the important role of non-governmental organisations in the country reporting procedure or through the collective complaints mechanism.

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<sup>1</sup> Throughout this text, all reference to Kosovo\*, whether the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244(1999) and without prejudice to the status of Kosovo\*.

The conference heard speakers from the United Nations (the former Special rapporteur on the Rights of Internally Displaced Persons), from among former and present members of the European Committee on Social Rights, from UNHCR offices in the region, and from staff of the Council of Europe's Social Charter Department. In addition, the conference benefitted from introductions from experts from other parts of Europe (Northern Ireland, Spain) who not only had experienced severe social situations but who had also worked in order to overcome the difficulties and conflicts and found solutions, and from insights into the challenges faced, and solutions found, from representatives of authorities from the region, and from a panel of ombudsmen and women from the region.

In the run-up to the conference, expressions of interest were received from two other Council of Europe member States experiencing displacement, namely Georgia and Ukraine, which sent high-level representatives to the conference.

It is hoped that this conference report may contribute to wider use of the European Social Charter to find solutions to displacement in Europe.

Strasbourg, 24 November 2017

Gert Westerveen

UNHCR Representative to the European Institutions in Strasbourg

Régis Brillat, Head of the European Social Charter Department/Executive Secretary of the European Committee of Social Rights, Council of Europe

## Programme

27 June 2017	
Addressing the challenges	
09:00 – 09:30	Registration and welcome coffee
09:00 – 09:30	Press briefing
09:30 – 09:50	<p><b>Opening Remarks</b></p> <ul style="list-style-type: none"> <li>– Predrag Jović, Deputy Minister, Ministry of Human Rights and Refugees of Bosnia and Herzegovina</li> <li>– Ambassador Drahoslav Štefánek, Head of the Council of Europe Office in Bosnia and Herzegovina</li> </ul>
09:50 – 10:00	<p><b>Observations by Special guest</b></p> <p>Anne-Christine Eriksson, UNHCR Regional Representative for South Eastern Europe</p>
10:00 – 11:15	<p><b>Session 1: Regional challenges in implementing economic and social rights agreed within the Sarajevo Declaration Process</b></p> <p><i>Moderator: Ms Dragana Bojović, Adviser to the Deputy Minister Predrag Jović, Ministry for human rights and refugees</i></p> <ul style="list-style-type: none"> <li>– Keynote Speaker: Chaloka Beyani, Associate Professor of International Law, London School of Economics (LSE)/ former UN Special Rapporteur on the Human Rights of Internally Displaced Persons</li> <li>– Marja Seppälä, Regional Housing Programme Coordinator and Head of RHP Secretariat, Council of Europe Development Bank</li> <li>– Dejan Kladarin, Senior Protection Officer, UNHCR Representation in Skopje</li> <li>– Danilo Ćurčić, Legal Advisor, Lawyers' Committee for Human Rights (YUCOM), Serbia</li> </ul>
11:15 – 11:30	Coffee Break

<p><b>11:30 – 13:00</b></p>	<p><b>Session 1: Regional challenges in implementing economic and social rights agreed within the Sarajevo Declaration Process (continuing)</b></p> <ul style="list-style-type: none"> <li>– Round table with scheduled observations by representatives of the authorities of Bosnia and Herzegovina, Croatia, Montenegro and “the former Yugoslav Republic of Macedonia”</li> <li>– Plenary discussion</li> </ul>
<p><b>13.00 – 14.30</b></p>	<p><b>Lunch (at the Parliament building)</b></p>
<p><b>14:30 – 15:45</b></p>	<p><b>Session 2: The European Social Charter as a tool for the protection of social and economic rights</b></p> <p><i>Moderator: Gert Westerveen, UNHCR Representative to the European Institutions in Strasbourg</i></p> <ul style="list-style-type: none"> <li>– <b>The European Social Charter, a tool for the protection and implementation of social rights</b></li> </ul> <p>Régis Brillat, Head of the European Social Charter Department/Executive Secretary of the European Committee of Social Rights, Council of Europe</p> <ul style="list-style-type: none"> <li>– <b>The Reporting procedure under the European Social Charter and key annual conclusions by the European Committee of Social Rights which are of interest to forcibly displaced persons</b></li> </ul> <p>Karin Lukas, Vice-President of the European Committee of Social Rights</p> <ul style="list-style-type: none"> <li>– <b>The Collective Complaints procedure as a tool in addressing violations of rights and the role of INGOs</b></li> </ul> <p>Jarna Petman, Former member of the European Committee of Social Rights</p> <ul style="list-style-type: none"> <li>– Plenary discussion</li> </ul>
<p><b>15:45 – 16:15</b></p>	<p><b>Coffee break</b></p>
<p><b>16:15 – 17:30</b></p>	<p><b>Round table of Ombudspersons or representatives of the Ombudspersons of the region: improvement of living conditions of displaced persons</b></p> <p><i>Moderator: Chaloka Beyani, Associate Professor of International Law, London School of Economics (LSE)/ former UN Special Rapporteur on the Human Rights of Internally Displaced Persons</i></p>
<p><b>19:30 – 21:30</b></p>	<p><b>Dinner at restaurant BOSS, Sarajevo</b></p>



28 June 2017

## Implementing solutions

<b>09:15 – 10:15</b>	<b>Session 1: How to implement economic and social rights in post-conflict situations? Regional Programmes and successful experiences</b> <i>Moderator: Karin Lukas, Vice-President of the European Committee of Social Rights</i> <ul style="list-style-type: none"><li>– <b>The role of social workers in post-conflict situations</b> John Richards, Services Development Manager, Isle of Man Government Daria Terrádez Salom, Director General of the Relations with the EU and with the State, Generalitat of Valencia, Spain</li><li>– Plenary discussion</li></ul>
<b>10:15 – 10:45</b>	<b>Coffee Break</b>
<b>10:45 – 12:15</b>	<b>Session 2: Bringing cases before national courts and lodging complaints before the European Committee of Social Rights and applications before the European Court of Human Rights</b> <i>Moderator: Emir Prcanović, Executive director of the Association “Vaša prava Bosnia and Herzegovina”</i> <ul style="list-style-type: none"><li>– <b>Key decisions and conclusions by the European Committee of Social Rights which are of interest to internally displaced persons</b> Jarna Petman, Former member of the European Committee of Social Rights</li><li>– <b>Selected case-law of the European Court of Human Rights which is of interest to internally displaced persons</b> Kresimir Kamber, Lawyer at the European Court of Human Rights</li><li>– Plenary discussion</li></ul>
<b>12:15 – 13:00</b>	<b>Conclusions and Wrap-Up</b> <ul style="list-style-type: none"><li>– Predrag Jović, Deputy Minister, Minister of Human Rights and Refugees of Bosnia and Herzegovina</li><li>– Gert Westerveen, UNHCR Representative to the European Institutions in Strasbourg</li><li>– Régis Brillat, Head of the European Social Charter Department/Executive Secretary of the European Committee of Social Rights, Council of Europe</li></ul>

## Presentation of Speakers

### **Predrag Jović**

**Deputy Minister, Ministry of Human Rights and Refugees of Bosnia and Herzegovina**



Predrag Jovic is currently holding the position of Deputy Minister in Ministry of Human Rights and Refugees of Bosnia and Herzegovina (2015 – and on).

Prior to current position, he was employed as a Head of the Department for economy and agriculture in the municipality of Bijeljina, he worked as a city official and as an agricultural inspector. He worked as a professor at the secondary school in Bijeljina (2004 – 2005).

He is currently a member of the Executive Committee of the SDS He is currently a member of the Executive Committee of the SDS (Serbian Democratic Party) Bijeljina and president of the Committee on Agriculture, Forestry and Water Management of the SDS of Republika Srpska. Also he was the president of the board of "Football Club Radnik" Bijeljina (2011 – 2015), and is currently performing the duties of the president of the assembly of the mentioned football club.

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### **Drahošlav ŠTEFÁNEK**

**Head of Office of the Council of Europe Office in Sarajevo, Bosnia and Herzegovina**



2017 - Head of the Office of the Council of Europe in Sarajevo

2012 – 2016 Ambassador Extraordinary and Plenipotentiary, Permanent Representative of the Slovak Republic to the Council of Europe

2013 - 2015 Chairman of the Group of Rapporteurs on Human Rights (GR-H), Council of Europe

2015 Co-President of the Council of Europe Exchange on the religious dimension of intercultural dialogue, Sarajevo, 2 – 3 November

2014 Co-President of the Council of Europe Exchange on the religious dimension of intercultural dialogue, Baku, 1 – 2 September

2013 - 2014 Vice-Chairman of the Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings

2012 Director General for International Organisations, Development Assistance and Humanitarian Aid, Ministry of Foreign Affairs of Slovakia

2011 - 2012 Director General for the EU and Global Issues, Ministry of Foreign Affairs of Slovakia

2011/08-09 Director General for the EU Affairs, Ministry of Foreign Affairs of Slovakia

2011/04-07 Director General for the UN, International Organizations and Human Rights, Ministry of Foreign Affairs of Slovakia

2009-2011	Chairman of an Open-ended Working Group of the Human Rights Council on an optional protocol to the Convention on the Rights of the Child
2009-2011	Director of the Department for General Affairs and relations with EU Institutions Ministry of Foreign Affairs of Slovakia
2004 - 2009	Deputy Permanent Representative, Permanent Mission of the Slovak Republic to the United Nations Office and other International Organizations in Geneva, Human Rights and Political Affairs
2003 -	Agent of Slovakia before the International Court of Justice in the Case concerning Gabčíkovo - Nagymaros Project
2005/09	Chargé d' Affaires a.i. of the Slovak Republic to the United Nations Office and 2006/06 other international Organizations in Geneva
2004	Chairman of the 2nd Regional Meeting of the National Committees on International Humanitarian Law in countries of Central and Eastern Europe, Bratislava
2001- 2004	Director of the International Law Department, Ministry of Foreign Affairs of Slovakia
2002- 2004	Chairman of the National Committee of Slovakia on the International Humanitarian Law
1997- 2001	Second Secretary and Legal Adviser of the Permanent Mission of Slovakia to the United Nations, New York
2000	Rapporteur of the Sixth (Legal) Committee of the 55th session of the United Nations General Assembly
1997	Legal Assistant and a Member of the Delegation representing Slovakia before the International Court of Justice at the Hague in the Case concerning Gabčíkovo - Nagymaros Project (Hungary/Slovakia)

## **Anne-Christine Eriksson**

### **Special Guest, Regional Representative, UNHCR Regional Representation for South East Europe**

Anne-Christine Eriksson is presently serving as Regional Representative for UNHCR's Regional Representation for South East Europe, after a brief stay at UNHCR HQ in Geneva as Director a.i. of the Ethics Office having spent more than five years in New York as Deputy Director for UNHCR's Liaison Office to the UN.

Anne-Christine Eriksson joined UNHCR for the first time in 1987 in India, and has since worked in Ankara, Turkey; in Skopje, "the former Yugoslav Republic of Macedonia"; at the UNHCR Headquarters in Geneva, Switzerland; in Zagreb and Split in Croatia; in the Regional Office for the Baltic States and Nordic countries in Stockholm, Sweden; as well as Deputy Regional Representative for Austria, Czech Republic and Germany, based in Berlin, Germany.

Anne-Christine has also undertaken emergency missions to Uganda and Tanzania in 1994, "the former Yugoslav Republic of Macedonia" in 1999 and to the Philippines in fall 2009.

In between UNHCR assignments, Anne-Christine has worked with OSCE in Croatia and been seconded to OCHA, New York. Before joining UNHCR, she worked for the Institute for Human Rights at Abo Akademi University in Finland. She has a Master degree in political science with international law as her main subject.

## **Chaloka Beyani**

**Keynote Speaker**

**Associate Professor of International Law, London School of Economics (LSE)**

**Former UN Special Rapporteur on the Human Rights of Internally Displaced Persons**



Zambian citizen. D.Phil (Oxford); LL.M and LLB (University of Zambia).

Dr. Beyani served as Special Rapporteur on the Human Rights of Internally Displaced Persons appointed by the Human Rights Council between November 2010 and October 2016.

Dr. Beyani has taught International Law and Human Rights at the Universities of Zambia (1984-1988), Oxford (1992-1995), and the London School of Economics (1996-2010), where he is currently a senior lecturer in International Law. He has worked and published extensively in the fields of, inter alia: human rights, international criminal law, international humanitarian law, humanitarian assistance, migration, refugees and displaced persons.

Dr. Beyani has acted as legal advisor, consultant and expert to a number of United Nations agencies, the European Union, the Commonwealth Secretariat and the African Union. In addition, Dr. Beyani has drafted and negotiated a number of important international instruments including the International Conference on the Great Lakes Region, and the African Union Convention on Internally Displaced Persons.

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## **Marja Seppälä**

**Regional Housing Programme Coordinator and Head of RHP Secretariat**

**Council of Europe Development Bank**



Marja Seppälä has had long-standing experience working at the Council of Europe Development Bank (CEB) in Paris, France. Ever since the Regional Housing Programme (RHP) was first launched in 2012, she has served as RHP Coordinator and Head of RHP Secretariat. The RHP Secretariat is in charge, among other, of activities related to the coordination and visibility of this multi-stakeholder and multi-donor international programme.

Prior to working for the RHP, Marja was a Senior Country Manager in the CEB's General Directorate for Loans and Social Development in charge of CEB's lending operations in several of its member countries, including the Nordic and Baltic States, Germany, Hungary, Malta and Serbia.

She holds a MSc degree in Economics from the Helsinki School of Economics and is fluent in English, French, Finnish, Swedish and Italian.

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## Dejan Kladarin

### Senior Protection Officer, UNHCR Representation in Skopje

January 2013 – November 2014	Liaison Officer (Sarajevo Process), UNHCR Representation in Sarajevo, Bosnia and Herzegovina
November 2014 – November 2015	Regional Liaison Officer, UNHCR Representation in Sarajevo, Bosnia and Herzegovina
June 2011 – December 2012	Special Assistant to the Personal Envoy of the High Commissioner, UNHCR
October 2010 – January 2013	Associate Protection Officer, UNHCR Representation in Sarajevo, Bosnia and Herzegovina
November 2004 – October 2010	Assistant Protection Officer, UNHCR Representation in Belgrade, Serbia
January 2003 – November 2004	Deputy Head, SDC NHLO Project, Belgrade, Serbia
June 1999 – January 2003	Legal Advisor, SDC NHLO Project, Belgrade, Serbia
April 1998 – November 2004	Attorney at Law, Pančevo, Serbia
February 1997 – April 2004	Regional Sales Manager, Hemofarm International, Vršac, Serbia
February 1996 – February 1997	Trainee Lawyer, Cvetković/Božović/Trajs Law Office, Belgrade, Serbia
October 1994 – February 1996	Trainee Lawyer, Municipal Court in Pančevo, Serbia

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## Danilo Ćurčić

### Legal Advisor, Lawyers' Committee for Human Rights (YUCOM), Serbia



Danilo Ćurčić (LLB International Law, University of Belgrade, LLM Economic, Social and Cultural Rights, University of Essex) works with different non-governmental and international organizations on issues related to access to personal documents for Roma, access to economic and social rights, the right to adequate housing and access to justice. In last couple of years, Danilo Ćurčić has worked on some of the most important Roma rights cases in Serbia – concerning forced evictions of IDP Roma communities in Serbia, segregation in housing, as well as the affordability of social housing for Roma, IDPs and refugees in Serbia. Furthermore, before Serbian Constitutional Court, Danilo worked on a number of cases related to austerity measures and their impact on human rights, such as the introduction of compulsory labour for beneficiaries of social assistance and the introduction of so-called poverty tax – taxation of social housing for internally displaced persons and refugees. Danilo currently works as legal advisor with the Lawyers' Committee for Human Rights - YUCOM.

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## Régis Brillat

**Head of the European Social Charter Department/Executive Secretary of the European Committee of Social Rights, Council of Europe**



Trained as a lawyer.

Studied law at Lyon III University and at Paris II University, as well as political science at the Institute of Political Studies of Paris.

Entered the Council of Europe in 1983 and worked in the following Departments: Lawyer at the Registry of the European Court of Human Rights (1983-1986), at the Department of the Legal Adviser (1986-1991), at the Secretariat of the European Commission for Democracy through Law ("Venice Commission") (1991-1993).

Since 1993, Head of the Department of the European Social Charter and Executive Secretary of the European Committee of Social Rights (examination of national reports and treatment of collective complaints, assistance to States for the ratification and the implementation of the Charter, representation of the Committee and the Department in international meetings).

He has participated in many human rights cooperation activities in Council of Europe member States. He has lectured in several European Universities and participated in many Academic Colloquies and published a series of Articles concerning mainly the European Social Charter.

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## Karin Lukas

**Vice-President of the European Committee of Social Rights**



Karin Lukas is a senior researcher and head of department at the Ludwig Boltzmann Institute of Human Rights in Vienna. In 2011, she joined the European Committee of Social Rights of the Council of Europe and is Vice-President of the Committee since early 2017. She has been a consultant for various national and international organisations, such as the UN Development Programme and the Austrian Ministry for Foreign Affairs. She has done research as well as project-related activities in the field of

human rights, in particular women's rights, development cooperation and business since 2001. Ms. Lukas holds an LL.M. in Gender and the Law (Washington College of Law), an E.M.A. in Human Rights and Democratisation (University of Padova) and a PhD in Law (University of Vienna). She currently works on the impact of EU human rights policies and implementation, non-judicial grievance mechanisms in the business context, and economic, social and cultural rights in Europe.

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## Jarna Petman

### Former member of the European Committee of Social Rights



Dr Jarna Petman (LL.D., Docent) is Vice Dean of the Faculty of Law (International Affairs & Community Relations), Senior Lecturer (att. to the duties of Professor) of International Law, and Deputy Director of the Erik Castrén Institute of International Law and Human Rights at the University of Helsinki, and Adjunct Professor of the American University Washington College of Law, D.C..

Recipient of a number of teaching awards, she has been teaching mainly within the different areas of public international law and legal theory in Finland and abroad, and has published primarily within the fields of human rights, the law governing the use of force and legal theory. She has served on various domestic and international boards of academic associations in international law, international studies and law & literature; a former member of the European Committee of Social Rights of the Council of Europe, she is currently serving as a Commissioner of the International Commission of Jurists.

Jarna Petman is the Editor-in-Chief of the *Finnish Yearbook of International Law*. For her previous research, please see the curriculum vitae and the list of publications.

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## John Richards

### Services Development Manager, Isle of Man Government



John Richards' experience is substantial:

- Director of Social Services (8 years)
- Director of Children's Services (3 years)
- Chief Executive of two third sector organisations (5 years)
- International and National consultancy (8 years)
- Interim assignments at tier 2 in two Local Authorities and Isle of Man (6 years).

John's ability to work with front line staff, service users and being able to understand and respond to their needs is coupled with the skills of working with top flight civil servants and politicians in Great Britain, Ireland, Europe, the Russian Federation and IoM. He is published in the UK, Europe and Asia.

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## **Daria Terrádez Salom**

**Director General of the Relations with the EU and with the State, Generalitat of Valencia, Spain**



Daríá Terrádez holds a PhD in constitutional law, European mention, and currently holds the position of Director General for relations with the European Union and the State in the Presidency of the Generalitat valenciana.

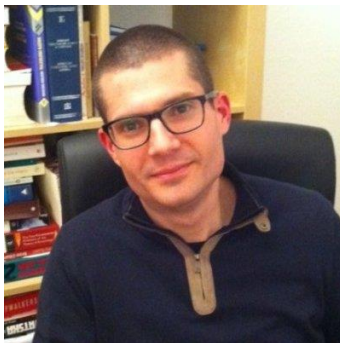
Her main scientific works concern the rights of foreigners, fundamental rights, and about the European Union. His doctoral thesis deals with the application of the European Social Charter in Spain, from a critical approach. She also has many publications that discuss topics as varied as the guarantee of social rights, freedom of expression and the rights of foreigners in an irregular situation.

From June 2015 until September 2016 she took charge of the Department of social rights in Bétera, where she could see first-hand the work carried out by social workers from the City Council in relation to the guarantee of social rights; from the same Department was drafted the first Bylaw regulating social aids and the guide on social rights, in collaboration with the Mayor of Bétera.

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## **Kresimir Kamber**

**Lawyer at the European Court of Human Rights, Strasbourg**



Krešimir Kamber obtained a Master of Laws diploma from the Rijeka University Faculty of Law (Croatia) where he also finished further studies in criminal justice sciences and criminal law. He obtained his PhD from the Ghent University Faculty of Law (Belgium).

He first worked in private practice and then continued his career as a legal officer at the Zagreb Municipal State Attorney's Office (Croatia). During his tenure he was seconded to the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia. He now works as a lawyer in a case-processing division and the Department of the

Jurisconsult of the European Court of Human Rights.

He has published several papers and co-authored several books and regularly lectures on various issues of human rights law.

He also participates in various initiatives of the Council of Europe, as well as those of the governmental and non-governmental sectors on the issues related to human rights. He is an associate member of the Inter-American Human Rights Network.

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## **Gert Westerveen**

### **UNHCR Representative to the European Institutions in Strasbourg**



Gert Westerveen has been working for UNHCR for twenty-eight years. During the conflict in the nineties in the countries of former Yugoslavia, he worked in Belgrade as assistant chief of mission (protection) and as senior protection officer as well as in Novi Sad as head of field office.

Prior to UNHCR, he also held positions with the Netherlands Institute of Human Rights in Utrecht and the Inter-Parliamentary Union in Geneva.

A Dutch national, Mr Westerveen holds a degree in public international law, as well as in Dutch constitutional and administrative law from the University of Amsterdam.

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## **Emir Prcanović**

### **Executive director of “Vaša prava Bosnia and Herzegovina”**



Emir Prcanović is currently holding the position of Executive director of the Association “Vasa prava BiH” (2008-and on) which is leading NGO Legal Aid provider in Bosnia and Herzegovina.

He is responsible for coordination of the antidiscrimination unit and asylum and immigration team work and cases in relation to strategic litigation within organization. Together with colleagues from antidiscrimination Unit of Association “Vasa prava BiH” he has successfully initiated first lawsuits under the Law on prohibition of discrimination in Bosnia and Herzegovina (2009). Among these, his focus is also on addressing the legal impediments related to access and effective exercise of the social and economic rights of the IDPs. He has gained substantial knowledge and experience through cases litigated in domestic courts and before the Constitutional court of Bosnia and Herzegovina, and before European Court of Human Rights and the UN Human Rights Committee related to antidiscrimination issues. This knowledge he has shared through lectures in many legal clinics, seminars, roundtables with topics related to antidiscrimination.

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**27 June 2017**

## **Addressing the challenges**

### **Opening Remarks**

**Predrag Jović**

**Deputy Minister, Ministry of Human Rights and Refugees, Bosnia and Herzegovina**

Your Excellences, Ladies and Gentlemen,

it is my honour and pleasure to address you on behalf of the Ministry of Human Rights and Refugees, and to wish you welcome to Sarajevo and Bosnia and Herzegovina. I also wish you fruitful work during the two-day conference "Social and Economic Rights of Forcibly Displaced Persons during the conflicts in the former Yugoslavia", which is jointly organized by the Council of Europe and our Ministry.

We are encouraged by the fact that the social and economic rights of displaced persons are being placed in the focus of interest. We believe that the economic and social security of returnees is a key condition for the success of the return process, which our country pledged to in Annex 7 of the Dayton peace agreement. You are familiar with the fact that Bosnia and Herzegovina, during the past war, was faced with the problem of forced displacement of the population, and that we still feel the consequences of this population exodus in terms of demographic, economic, social changes and migrations. This obliges us to do more to finally resolve the long-term displacement problem.

The conflict in the region has had enormous consequences on the demographic, housing and social picture of Bosnia and Herzegovina. This is evidenced by the fact that in the period 1992-1995, approximately 2.2 million people left their homes in Bosnia and Herzegovina, which was more than half of the pre-war population. Among them, 1.2 million people requested refugee status in more than 100 countries around the world, and nearly a million were internally displaced in Bosnia and Herzegovina. The number of refugees from Bosnia and Herzegovina who are still out of the country is 18,748, while 32,611 families still have the status of displaced, which is equivalent to 98,574 internally displaced persons.

All of the above indicates that the issue of return has not yet been completed and that today it primarily depends on social and economic rights. We are pleased to see that there is a growing understanding of the fact that for the success of return it is not enough to provide only a roof over the head, but that also the conditions for sustainability have to be met. This in particular means that much more should be invested in the sustainability of return through the rehabilitation of infrastructure, electrification and effecting rights in the areas of health care, social protection, employment and education of returnees and displaced persons. There is more to be done in order to build trust in government institutions from local to state level, and to ensure equal rights.

We need to keep in our minds that the returnees and the displaced persons are the most vulnerable category of the population in Bosnia and Herzegovina. The particular difficulty of returning is the inability to retain the rights acquired rights in places of displacement and which sometimes cannot be transferred

upon return. Also, a large number of displaced persons did not possess property before the war and so do not even have the opportunity to use some of the projects that would enable them and their families to find a lasting solution.



*Predrag Jović, Deputy Minister, Ministry of Human Rights and Refugees of Bosnia and Herzegovina*

These are just examples of the problems we face in implementing the revised strategy for the implementation of Annex 7. That is why we greatly appreciate the Council of Europe's readiness to jointly seek the best models and ways to offer an adequate response to the social and economic challenges which we are facing during the ending of the return process in our country and in the region. Expertise and financial support, not only to Bosnia and Herzegovina, but also to the countries of our region that are affected by forced relocation from the 1990s, is crucial for ending the return process, which is a key element for renewing mutual trust, building a safer and more stable future for all of us, not only in Bosnia and Herzegovina, but also in the whole region, the future of which is within the borders of the European Union. I wish you a successful work, good results and a pleasant stay in our country.

**Ambassador Drahoslav Štefánek**  
**Head of the Council of Europe Office in Bosnia and Herzegovina**

It is indeed a great honour for me to be with you here, at the opening of the conference “Economic and social rights for forcibly displaced persons during the conflicts in former Yugoslavia”. I would like to thank

the Department of the European Social Charter of the Council of Europe for organising this important event, and the UNHCR for active participation in also preparing the event and being here with us.

Exactly one week ago, on 20 June we all commemorated the World Refugee Day. World Refugee Day is a reminder of the harsh destinies of millions of refugees, a reminder of their rights, but also of their strength, courage and perseverance. At the height of the conflict in the former Yugoslavia, some 3.8 million persons were displaced, either internally on the territory of the former Yugoslavia or as refugees elsewhere in Europe.

In 2005, the Regional Ministerial Conference on Refugee Returns took place here in Sarajevo and adopted the Sarajevo Declaration which launched the Sarajevo Process. An integral part of the Sarajevo Process is the Regional Housing Programme initiated in 2012 jointly by four countries – Bosnia and Herzegovina, Croatia, Montenegro and Serbia. The Regional Housing Programme is administered by the Council of Europe Development Bank. The aim of this programme is to provide durable housing solutions to vulnerable persons who were displaced during the war in the former Yugoslavia and still live in dire conditions.

Today, after many years of action towards durable solutions, most forcibly displaced persons have returned home or integrated locally, but some 354,000 people still remain in some form of displacement without a durable solution. They include internally displaced persons (IDPs) as well as refugees and returnees.

Member States of the Council of Europe are committed to the respect of democracy, human rights and the rule of law, which are the basic pillars of the organisation. Two major treaties in this respect are the European Convention of Human Rights and the European Social Charter. The European Social Charter is a comprehensive human rights treaty in terms of substantive rights. At present, it is legally binding on 43 member States of the Council of Europe out of 47, and includes many social rights which are set out in the 1951 Convention relating to the status of refugees, such as social security and assistance, education and housing rights. The Social Charter rights apply equally to refugees and stateless persons as the European Committee of Social rights has frequently recalled.

Bosnia and Herzegovina ratified the revised European Social Charter on 7 October 2008, accepting 51 of its 91 paragraphs. In February 2017, Bosnia and Herzegovina submitted its 7th report under the Charter. I would like to also highlight that the Committee of Ministers of the Council of Europe adopted at its recent Ministerial meeting in Nicosia last May, the Council of Europe Action Plan for Child Refugees and Migrants.

Let me quote the Secretary General of the Council of Europe, Thorbjørn Jagland, in his fourth Report on democracy, human rights and the rule of law in Europe: “inclusive societies are those which guarantee equal rights and promote tolerance by reducing tension between communities. In Europe’s increasing diverse democracies it is important that newcomers and minorities are protected. The three pillars of the Action Plan aim to ensure children’s access to rights, to child friendly procedures, and to provide effective protection of children and freedom from discrimination. At the same time, vulnerable groups within the majority population must benefit from fair policies and have access to quality education, decent healthcare, adequate housing and employment opportunities, helping to defuse any sense of social injustice.” This statement is very relevant to the situation of IDPs.

The purpose of our Conference is to exchange views of how the implementation of the European Social Charter may result in the more effective implementation of human rights for IDPs, for instance through the acceptance of the Collective Complaints Procedures under the Social Charter.

We in the Council of Europe and in the Office of the Council of Europe in Sarajevo, are ready to work with all stakeholders and very grateful to all participants for the willingness to participate in this joint effort.



*From left to right: **Régis Brillat**, Head of the European Social Charter Department/ Executive Secretary of the European Committee of Social Rights, Council of Europe; **Drahošlav Štefánek**, Ambassador/ Head of the Council of Europe Office in Bosnia and Herzegovina; **Predrag Jović**, Deputy Minister, Ministry of Human Rights and Refugees of Bosnia and Herzegovina; **Željka Marković-Sekulić**, Assistant to the Minister, Ministry for Human Rights and Refugees, Bosnia and Herzegovina*

## **Observations by Special guest**

**Anne-Christine Eriksson**

**UNHCR Regional Representative for South Eastern Europe**

Distinguished Deputy Minister Jović, Ambassador Štefánek, representatives from the South Eastern Europe region and beyond, colleagues across organisations, partners and friends,

First of all, let me thank the Council of Europe for organising this event, raising not only crucial issues for sustainable solutions for those who still are forcibly displaced from the conflicts in former Yugoslavia,

but also providing tools and good practices how to overcome the obstacles for such sustainable solutions.

We just marked another World Refugee Day, and published our annual global trends - at the end of 2016, 65.6 million people were forcibly displaced worldwide, an all-time high, including 22.5 million refugees; 40.3 million internally displaced persons; and 2.8 million asylum-seekers awaiting a decision on their applications. According to the official statistics, there are still as many as 354,000 displaced persons seeking solutions in this region alone, as a result of the conflicts in the former Yugoslavia.

The situation of refugees, asylum-seekers and internally displaced persons is a pressing concern for Europe, and social rights are of utmost importance for these vulnerable groups. UNHCR is grateful to the Council of Europe, which has always shown a special interest in the situation of these groups. Over the years the Committee of Ministers has adopted a number of pan-European standards, including recommendations to Governments calling for the full implementation of the 1951 Refugee Convention. These recommendations draw explicitly or implicitly on the European Convention on Human Rights (ECHR) and on the European Social Charter (ESC), which with their universal and mutually complementary nature make up the backbone of the Council of Europe's action in the field of human rights.

Many social rights are enshrined in the 1951 Refugee Convention, such as the right to property, housing, education, social security, and these rights are reinforced by the ECHR and/or the ESC. The ESC expressly states that "Each Contracting Party will grant to refugees as defined by the 1951 Convention relating to the Status of Refugees, and lawfully staying in its territory, treatment as favourably as possible, and in any case not less favourable than under the obligations accepted by the Contracting Party under the said Convention and under any other existing international instruments applicable to those refugees". Hence UNHCR is looking forward to also strengthening further its legal cooperation with the monitoring body of the ESC, the European Committee of Social Rights (ECSR).

In this context, and back in 2009, UNHCR and the Council of Europe organised a first Round Table on "the Right to Housing and Property Restitution for Refugees and Displaced Persons", with particular emphasis on the displacement situation in former Yugoslavia. This was an important milestone in the process of implementation of the Sarajevo Declaration and Belgrade Declaration, respectively.

I am just coming back from yesterday's 10th Session of the Steering Committee of the Regional Housing Programme (RHP), aimed at providing long lasting solutions to the most vulnerable displaced in this region. So I would like to focus on the issue of housing. Together with our partners from the OSCE, we have established that the four Partner Countries, Bosnia and Herzegovina, Croatia, Montenegro and Serbia, are making continuous progress in selecting the RHP beneficiaries for all the approved sub-projects. This is primarily the result of well-established capacities at the regional and national levels, but also because the relevant support structures are fully operational. The beneficiary selection process has further been boosted with the newly submitted sub-project proposals within the framework of the RHP's second implementation phase. An increased delivery of housing solutions to the most vulnerable displaced is expected to materialise in the second half of 2017. This will provide additional assurances that the basic principles enshrined in the Sarajevo and Belgrade Declarations respectively, are materialising and that long-term solutions for the displaced in South Eastern Europe are becoming a reality. UNHCR and the OSCE have praised the efforts and dedication of the respective Partner Countries, which are displaying increased efficiency in implementing the RHP projects and clearly demonstrating

that the creation of conditions conducive to return and local integration of the most vulnerable displaced population is not merely a declaratory part of their joint strategies for durable solutions, but an obligation that is being progressively fulfilled and turned into reality.



*Anne-Christine Eriksson, UNHCR Regional Representative for South Eastern Europe*

UNHCR, together with the OSCE, is continuously drawing the attention of the Partner Countries to the RHP's overarching goal – the RHP is a comprehensive, needs-based durable solutions programme which goes beyond provisions of the housing solutions, and as such needs to be implemented in its entirety. Its impact needs to be measured against the set objectives. In this context, the Partner Countries' readiness to be proactively engaged in monitoring the process from the sustainability point of view was also broadly welcomed.

In addition to the issues directly related to the RHP, let me also note that UNHCR, together with relevant actors, such as the OSCE, are following closely the progress related to civil status legalisation (primarily for those refugees who wish to locally integrate in Montenegro) and on the long standing issue of access to outstanding pension payments for Croatian pensioners, many of whom are RHP beneficiaries.

UNHCR will continue to provide support in developing projects that address the unmet priority needs of the displaced from the former Yugoslavia and provide expertise and assistance to the authorities in their quest for finding sustainable solutions to displacement. We see this contribution as an important element within the wider EU accession process and in furthering regional co-operation and fostering reconciliation at all levels.

Thank you.



## Session 1: Regional challenges in implementing economic and social rights agreed within the Sarajevo Declaration Process

**Chaloka Beyani**

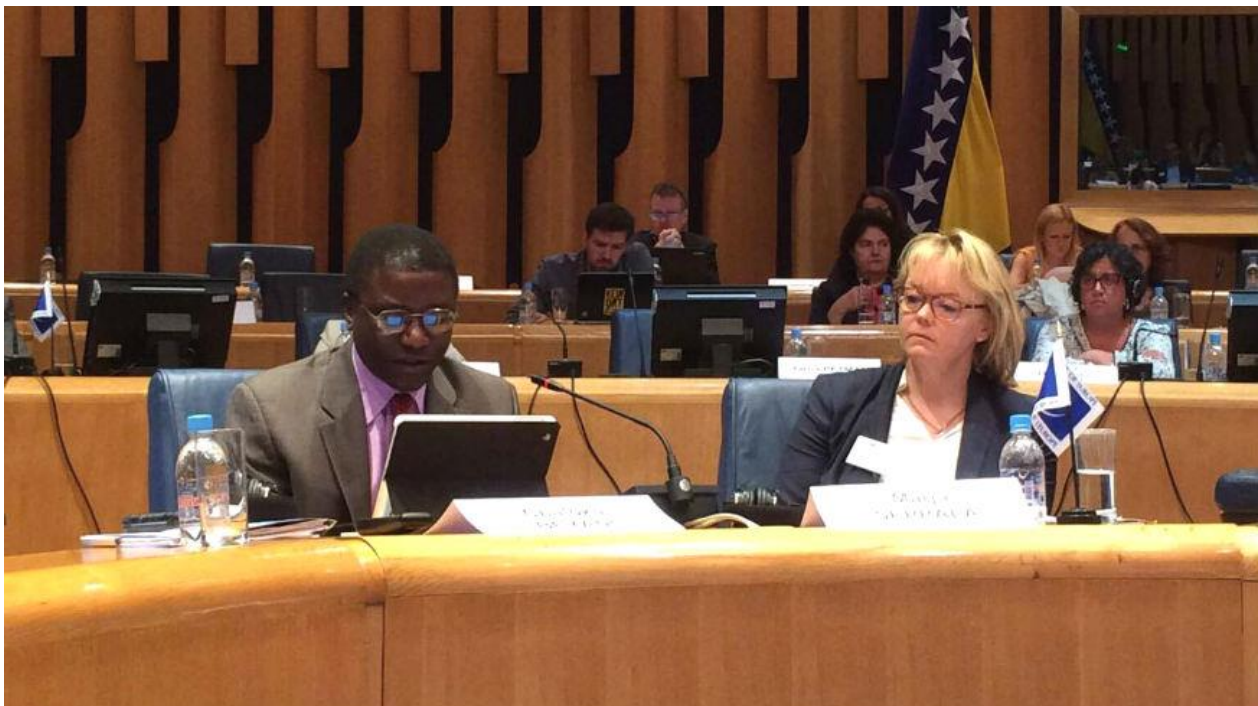
**Associate Professor of International Law, London School of Economics (LSE)/ former UN Special Rapporteur on the Human Rights of Internally Displaced Persons**

### ***Keynote Speech***

Professor Beyani thanked the organisers for having given him the opportunity to share with the conference some of his experiences of the past six years as UN Special Rapporteur on the Human Rights of Internally Displaced Persons.

He focussed his remarks on the question of whether, to what extent and how the Council of Europe and its human rights instruments and their implementation mechanisms could be of assistance in implementing durable solutions for displaced persons.

He said that while often States tended to treat social, economic and cultural rights not as binding obligations, it was clear that there were legally binding instruments containing such rights. Economic, social and cultural rights found a basis in Articles 55 and 56 of the UN Charter, which obliged the UN to take measures with regards to employment, housing, health and related aspects without discrimination.



*From left to right: **Chaloka Beyani**, Associate Professor of International Law, London School of Economics (LSE)/ former UN Special Rapporteur on the Human Rights of Internally Displaced Persons; **Marja Seppälä**, Regional Housing Programme Coordinator and Head of RHP Secretariat, Council of Europe Development Bank*

The Covenant on Economic, Social and Cultural Rights carried binding obligations on the basis of State responsibility. A similar approach, the primacy of State responsibility, was also to be found in the Guiding Principles on Internally Displaced Persons. Under the Covenant, rights were to be realised in a progressive manner; States had to take steps to fulfil the rights. But that also implied the principle of non-retrogression, namely once progress had been made, such progress could, or should, not be undone. Steps had to be taken with regard to the maximum available resources. The Committee on Economic, Social and Cultural Rights had made clear in its comments that this not only meant national resources, but also international resources. And here there was a connection with humanitarian assistance and technical assistance, such as in the Regional Housing Project.

Unlike the Covenant, the Council of Europe's Social Charter stipulated economic and social rights without reference to progressive realisation. The Inter-American Convention on Human Rights and the African Charter on Human and People's Rights took the same approach, with immediate obligations at national and regional levels.

Here Professor Beyani saw an opportunity for an expanded application of Social Charter rights. He thought that such rights could usefully be included in monitoring instruments, such as the "protection checklist", drawn up for the Ukraine situation by the UN and the OSCE. He also mentioned here that the 1951 refugee Convention also provided for certain social and economic rights to be granted to refugees on an equal footing with nationals. The UN Guiding Principles on Internally Displaced Persons had adopted some of these as well.

In the context of durable solutions for displaced persons, this meant that durable solutions were only obtained when there were no longer protection needs arising out of displacement. Such protection needs obviously included social and economic rights. Livelihoods for refugees and displaced persons was a crucial issue. This had also been recognised and reflected in the Sarajevo process and the Regional Housing Programme.

So how then to put social and economic rights into practice? A first key issue concerned the complex of registration and documentation, and recognition as a person before the law. A second key issue were segregated data based on needs assessments and surveys of intent. The results of such assessments and surveys would provide important indicators against which to measure progress.

In the region, housing had been identified as the key to durable solutions, and the Regional Housing Programme would appear to be the best way forward. Not only for refugees, but also for internally displaced persons.

Professor Beyani stated that during his visits to the Balkans and the Caucasus, he had become convinced that there was a need for transparency in programmes that meet the housing needs of displaced persons.

Another important element of durable solutions was that housing should not stand on its own, but should contribute to re-establishing livelihoods, so that displaced persons can become self-sustaining again. In this respect, it was important to leave the choice between return and installation elsewhere open for the persons concerned.

Professor Beyani then shared some concerns from his visits to the regions. First there was the issue of property restitution, which was a major problem in both the Caucasus and the Balkans. Here more

adequate solutions needed to be found. Second, the issue of minority groups and vulnerable persons. It happened too often that members of minority groups such as Roma, and persons with a particular vulnerability (single mothers, the elderly) were not involved in projects and programmes aimed at finding durable solutions through housing and livelihoods. Third, while return of displaced persons was most often the preferred solution of State actors, such might not be the case for the persons concerned, especially if displacement had been of a protracted nature. Lastly, there was the huge issue of pensions and social security, which were often tied to places of residence before displacement took place.

He closed his remarks by expressing the hope that the issues he had outlined would reflect the way in which the Council of Europe's Social Charter and its monitoring and complaints mechanisms could become more relevant to displaced persons and their Governments who are trying to address the issues.

### **Marja Seppälä**

#### **Regional Housing Programme Coordinator and Head of RHP Secretariat, Council of Europe Development Bank**

The Council of Europe Development Bank was set up in 1956 by eight member countries of the Council of Europe, on the basis of a partial agreement in order to bring solutions to the problems of refugees following the aftermath of World War II. Today, the Bank has 41 member states; the latest member to join was Kosovo\* which joined in 2013.

Although the Bank has its own legal personality there are very close institutional links with the Council of Europe. For instance, every project that is approved by our Administrative Council must receive an opinion from the Council of Europe regarding its admissibility and terms of compliance with the Council of Europe's political and social objectives. Last year, 2016, the Bank approved projects worth € 3.5 billion, and disbursed about € two billion in loans.

The Bank has three sectorial areas of action: 1. Sustainable and inclusive growth, 2. Integration of refugees, displaced persons and migrants and 3. Climate action through developing adaptation and mitigation measures. The main sectors of intervention which the Bank finances are social housing, public infrastructure, health, education, judicial infrastructure, and job creation in small and medium-sized enterprises. And, of course, the original core area, which is assistance to refugees and migrants.

Following recent refugee movements to Europe, the Bank's focus has really shifted back to refugees and migrants. A particular programme was established in 2015, the Migrant and Refugee Fund, which has now granted funds of € 24 million to finance close to 20 projects, mainly for increasing shelter capacity and improving reception conditions.

The origins of the Regional Housing Programme go back to the Sarajevo Declaration in 2005, when the Sarajevo Process started. It was further developed in the Belgrade Declaration of 2011. It is a joint initiative of the four partner countries who are implementing the Programme with a strong support coming from technical assistance, and which is financed by the European Commission. The original scope was, as described in the Sarajevo Declaration, to help 27,000 households or 74,000 persons. However, the Programme has so far not been able to collect the € 500 million which was set as a target at a Donor's Conference. As of today, € 271 million has been pledged to the Programme, which is already a remarkable amount. The Programme is multi donor funded, with the European Commission being the

biggest donor with € 232 million. Other donors include the United States of America, Germany, Norway, Italy and Switzerland.

The Council of Europe Development Bank is managing the technical side of the Regional Housing Programme and it also manages the RHP Secretariat. In doing so, it relies on UNHCR and the OSCE for the beneficiary selection process. The Bank is also in charge of the financial aspects of the Programme.

Where does the Regional Housing Programme stand today? The very recent Assembly of Donors which took place in Belgrade approved two new projects. That means that at present € 183 million worth of grants have been approved. The Programme is set to deliver close to 8,000 housing units, and well over 1,000 homes have been delivered so far.

The Bank is attempting to put more focus on sustainability, so that the Programme does not stop when a family receives a house, but that other livelihood aspects are taken into account as well, such as access to education, health, legal aid, and documentation.

The Regional Housing Programme is not without challenges. As the Programme is needs based, it really should target only those who are most vulnerable. This is a challenging task and needs the close cooperation of the countries concerned, and of UNHCR and the OSCE.

## **Dejan Kladarin**

### **Senior Protection Officer, UNHCR Representation in Skopje**

Let me try to offer you a perspective of UNHCR on the entire durable solutions process, the so called Sarajevo Process. The conference today gives us an opportunity to review the process of achieving the durable solutions for the remaining displaced population of the four countries participants to the Sarajevo process. More than two decades after the end of the conflicts in Bosnia and Herzegovina and Croatia, we may conclude that a lot has been achieved. More than a million people have returned to their pre-war homes, their property has been reconstructed and returned to them and they re-established their lives in their places of origin. Many remained in the places of their forced displacement and integrated in host societies. The Dayton Peace Agreement marked the end of the conflict in Bosnia and Herzegovina and through its Annex 7 paved the way for a return of internally displaced people and refugees to their homes. Bilateral agreements and national programmes and strategies have been designed in all countries in the region to outline the path to full re-integration and local integration of displaced populations. Yet, there is still considerable work to be done until this displacement chapter can be closed. The implementation of such agreements, laws, strategies and programmes remains challenging in many of their aspects, including insuring free and unhindered access to enjoyment of rights of displaced population.

Let me reflect on the historical background of the Sarajevo Process. This regional approach toward resolving the problem of persons forcibly displaced during the conflict in mid-1990's was initiated in the early 2000s, engaging the concerned national authorities of the partner countries with strong engagement of the UNHCR, the OSCE and the EU, who supported the process by providing good offices, technical and other expertise and significant resources within their respective mandates. The initiative was made into the Sarajevo process by the declaration signed there in 2005 as a result of extensive discussions among the partners. The Sarajevo Declaration is a landmark document which outlines the path for resolving the displacement chapter as a way of getting over the legacy of the war and full

normalisation of relations between the concerned countries. The governments of Bosnia and Herzegovina, Croatia, and the then Federal Republic of Yugoslavia expressed commitment to implement international standards of refugee protection, the 1995 Dayton General Framework Agreement for Peace in Bosnia and Herzegovina, in particularly its Annex 7, as well as existing bilateral agreements among them. At that time the partners have enthusiastically committed to solve remaining displacement by the end of 2006, in cooperation with the UNHCR, the EU and the OSCE, fully determined to undertake all the necessary actions to allow refugees and internally displaced persons to make an informed choice of their preferred durable solution and to ensure a just solution to refugee situations. The Sarajevo Process puts strong emphasis on the responsibilities of the countries in fulfilling their international and national obligations towards the displaced population, and on technical and other assistances by the key international partners involved, UNHCR, OSCE and EU, in developing the national road maps for the implementation of the commitments enshrined in the declaration. This approach yielded important yet limited results as a number of important issues remain unaddressed. Financial support to the process by the international community was significant but not sufficiently comprehensive, mainly bilateral and project-based which appears not to be enough to achieve the ambitious goal. Despite all the efforts, the Sarajevo Process came to a stalemate by 2007. The initiative of the then UN High Commissioner for Refugees António Guterres to reinvigorate attention for some of the world's longest lasting refugee situations launched in 2008 gave additional impetus to the Sarajevo Process by including the situation of Croatian refugees in Serbia as one of the five protracted refugee situations in the world. The High Commissioner visited the countries and revived the dialogue on outstanding regional issues stressing that status quo was not an acceptable option. Dialogue was guided by the conclusion of the Executive Committee of UNHCR appealing for all possible efforts to unlock and find comprehensive solutions to protracted refugee situations. It called on the States and other actors to commit themselves in a spirit of international solidarity and burden-sharing to collaborate in resolving these situations with full respect for the rights of affected persons. The High Commissioner appointed his personal envoy to facilitate the dialogue and garner donor support. As a result of the dialogue, facilitated by the High Commissioner's personal envoy, the Foreign Ministers of Bosnia and Herzegovina, Croatia, Montenegro and Serbia signed the joint declaration in May 2011 in Belgrade. The Belgrade Declaration represents an important milestone which reaffirms the principles of the Sarajevo Declaration, but went further in defining a way to closing the 1990's displacement chapter in the region. To achieve that goal, the four governments have agreed upon a joint regional programme to secure the reasonable solution for the most vulnerable refugees and internally displaced persons in the region. The four countries recommitted to cooperate in a spirit of a good faith, to protect and promote the rights of a refugees, returnees and internally displaced persons, including existing individual rights and to provide all necessary political, material, legal, social and other support required to end a displacement and enabled them to live as an equal citizens in their countries free from any form of the discrimination. This communiqué was the key for the donor support. The joint programme was presented to the Donor Conference in Sarajevo in April 2012, which yielded close to 300 million EUR support by the international community, like by the EU which alone pledged 230 million EUR support to the Regional Housing Programme, which initially aimed, as we heard at providing some 27,000 housing solutions to some 74,000 most vulnerable refugees and internally displaced persons in the region to be implemented by the four governments. There are several key elements that enabled this breakthrough and a landmark achievement such as the Regional Housing Programme: a stronger link with the EU integration process of the four partner countries, focusing on

the needs of the most vulnerable, and strong, comprehensive support from the international community, which had been missing in the first stage of the Sarajevo Process.

So, where are we heading to, what is the way forward? The measure of success of the Sarajevo Process and of the Regional Housing Programme as its most tangible offspring will be the sustainability of the solutions insured for the refugees and internally displaced persons, based on their free and informed choice to return or locally integrate. As the assistant High Commissioner for refugees, Volker Türk, said at the regional conference in Belgrade in March 2010, only when refugees and IDPs are able to be self-sufficient and to integrate in the communities in which they choose to live will make it possible to close the displacement chapter for this population and turn the page.



*From left to right: **Chaloka Beyani**, Associate Professor of International Law, London School of Economics (LSE)/ former UN Special Rapporteur on the Human Rights of Internally Displaced Persons; **Marja Seppälä**, Regional Housing Programme Coordinator and Head of RHP Secretariat, Council of Europe Development Bank; **Danilo Ćurčić**, Legal Advisor, Lawyers' Committee for Human Rights (YUCOM), Serbia; **Željka Marković-Sekulić**, Assistant to the Minister, Ministry for Human Rights and Refugees, Bosnia and Herzegovina; **Petar Ivezić**, Deputy of Protector, Ombudsman Office, Montenegro*

Both the reintegration of refugees and IDPs upon their voluntary return, as well as local integration are multi-faceted processes. They include legal, economic and social aspects. The legal dimension of the establishment of a framework in which refugees and internally displaced can fully re-acquire their rights in the places of origin upon their return, or in case of local integration gradually attain a wider range of rights in host communities. When it comes to refugees it can possibly lead to full citizenship and naturalisation in the host State. Secondly, economic processes will progressively reduce reliance on state

aid or humanitarian assistance, promote a growing degree of self-reliance, and establish sustainable livelihoods. Third, social and cultural processes will enable refugees and internally displaced persons to live fully integrated in pre-conflict or host communities, free of any form of discrimination, and where they can meaningfully contribute to the social life in a host community.

The Regional Housing Programme was the last collective effort by the international community to support dignified closure of the displacement Chapter of the refugees and displaced populations from 1991-1995 in the region of former Yugoslavia.

UNHCR and the OSCE remain engaged as monitors of the process and as advisors of the partner governments with the objective of ensuring that housing solutions are provided to the neediest and that the remaining displaced population can fully attain their economic and social rights, and live equally with the other citizens.

Five years after the donor's conference was held in this same building, we are in a good position to evaluate the progress one more time. Technical implementation of the unprecedented regional infrastructural endeavour is under way. After the difficult and prolonged inception stage, technical infrastructure is now in place and partner countries, supported by technical assistance provided through the Council of Europe Development Bank, have so far built over 1,000 housing units for some 3,000 most vulnerable refugees and internally displaced persons. Based on the subprojects approved to date, in total close to 8,000 refugees families, or over 20,000 persons are expected to achieve solutions by the end of 2018.

UNHCR is happy to know that the donors continue giving their support to the RHP's fund which is an indication that programme will be able to fulfil one of its key objectives and ensure that sustainable housing solutions are ensured throughout the region. Further, these figures are providing additional assurances that the basic principles enshrined in the Sarajevo and Belgrade Declarations are materialising and that long term solutions for displaced in the Western Balkan are on their way.

Special credit needs to be given to the partner countries, which are becoming increasingly efficient in implementing the RHP project in most of its segments, showing that conditions conducive to return and local integration of the most vulnerable displaced population are not just a declaratory part of their strategies for durable solutions, but in fact are gradually becoming the reality. UNHCR encourages the governments to speed up their efforts in that direction.

Challenges are still numerous on the way to ensuring an adequate level of protection of economic and social rights other than housing. People displaced during the conflicts in the former Yugoslavia shared the destiny of the entire population of their countries, including economic difficulties in the societies in transition. Such a landscape is not very conducive for achieving self-reliance for the most vulnerable refugees and IDPs. All the countries in the Western Balkans have developed respective national strategies and programmes, aimed at ensuring durable solutions for displaced populations and closing the refugee and internal displacement chapter. Yet, despite this significant result, this goal has not been fully accomplished. In a situation where social sectors are lacking sufficient resources, it is critical that the most vulnerable are prioritised for all available support, starting from but not ending with housing solutions. A needs-based approach is essential for reinvigoration of the Sarajevo process and it is critical that the countries maintain that course until its overall goal is achieved. Careful selection of the neediest beneficiaries for all available programmes and a sensitive balance between quality and speed of

implementation of housing and other projects should be priority. Comprehensive solutions for the remaining displaced must not rest only on the shoulders of the respective line Ministries and Agencies. Responsibility for access to economic and social right is often within the competence of the other national authorities and agencies at all levels, including local self-government. Sectors such as health, education and social security require strong inter-sectoral, horizontal and vertical coordination which is not possible without a strong political support from the highest instances in the governments.

Last but not least, civil society organisations are partners which bring added value by helping refugees and displaced societies to better articulate their needs, by being the strongest advocates for their rights as well as by designing and implementing the projects aimed at fostering self-sufficiency of refugees and IDPs. Civil society organisations are partners which can ensure the sustainability of monitoring how States are realising economic and social rights.

In conclusion, let me highlight that the achievement of durable solutions is a shared responsibility of all actors involved in the Sarajevo process. All partners including the refugees and internally displaced persons themselves, partner governments, civil society, donors and international organisations have invested a lot in that part. Gradually shifting its focus from operational engagement in durable solutions processes towards advocacy at policy level, UNHCR calls upon all partners to remain fully committed to the implementation of the commitments enshrined in the Sarajevo process. We cannot say that we have closed the Displacement chapter in a dignified manner until we are in the position to confirm that all refugees and internally displaced persons are able to live as equal citizens in the communities in which they choose to live, free from any form of discrimination.

### **Danilo Ćurčić**

#### **Legal Advisor, Lawyers' Committee for Human Rights (YUCOM), Serbia**

**Mr. Ćurčić** thanked the organisers for this opportunity to consider from the viewpoint of a civil society organisation the importance of social and economic rights in the search for durable solutions for refugees and displaced persons on the territory of former Yugoslavia.

He noticed a tendency among many people to consider social and economic rights more as programmatic policy objectives, than as real rights that belonged to all of us. That again brought a number of questions with it, such as, was the implementation of the Sarajevo Declaration with a view to finding durable solutions merely the implementation of a programme, or was it a real effort to implement social and economic rights? That in turn brought up the issue of financial resources. Could one really say that in times of austerity that a maximum of available resources was being made available for the implementation of social and economic rights?

These questions were also visible with regard to the justiciability of social and economic rights. The highest courts in the countries of the region did not often get cases dealing with social and economic rights, and when they did, they often did not have regard to international developments. The question was thus, how to link activities under the Sarajevo Declaration to human rights as contained in for instance the European Social Charter? In the region, only Croatia had ratified the optional protocol opening the way for collective complaints. This was a real difficulty for civil society organisations. One way out of this dilemma was to try to use another Council of Europe instrument, namely the European



Convention on Human Rights, which could also sometimes be used to promote social and economic rights.

A recent example could be found in Serbia, where the city authorities wanted to move a group of displaced Roma from Kosovo\* from an irregular settlement without offering them an alternative. This process was stopped through an interim measure from the European Court of Human Rights.

Ćurčić also posed the question how one could measure in a consistent manner progress in the implementation of social and economic rights and in the realisation of durable solutions for displaced persons? He considered that the governments in the region should set clear priorities in their policies, and ensure that proper coordination mechanisms are in place to ensure a uniform implementation process everywhere. The comments from supervisory bodies such as the European Committee for Social Rights, and the UN Committee of Social Economic and Cultural Rights should carry more weight with the governments concerned.

## **Round table with scheduled observations by representatives of the authorities of Bosnia and Herzegovina, Croatia, Montenegro and “the former Yugoslav Republic of Macedonia”**

**Željka Marković-Sekulić**

**Assistant to the Minister, Ministry for Human Rights and Refugees, Bosnia and Herzegovina**

**Mrs. Željka Marković-Sekulić** recalled that the countries in the region had, by adopting the Sarajevo Declaration in 2005, agreed to work together to solve issues relating to displacement following the conflicts in the period 1991-1995. Under the Declaration refugees and displaced persons can either opt to return to their place of origin, or for local integration in the place of displacement. The four partner countries have worked out a common regional multi-year plan with the aim to build housing for 27,000 displaced families, or 74,000 persons.

She then recalled that there were still 18,748 Bosnian refugees in other countries, and that at the moment there were 32,611 families, or 98,574 persons, with the status of displaced person. Also, so far, a total of 1,060,000 returns to Bosnia had been registered. But there were still many *de facto* displaced families who had not yet been able to return to their places of origin.

This was due to several impediments. For instance, there were still parts of the country where mines were present, and where infrastructure had not been repaired. But there were also legal and financial difficulties; it was difficult to transfer acquired rights between the two entities of Bosnia. A separate problem consisted of the disunity between entity laws on social security and old-age and invalidity insurance.

However, the government was in the process of identifying solutions to these problems, with the goal to come to country-wide uniform systems of social security and old-age and invalidity insurance. The same applied to the sector work and employment. A coordination group had been established last year with the task of following the implementation of Annex 7 to the Dayton agreement.

Since the government of Bosnia obtained competence over return issues, more than 1 billion convertible marks has been spent, with more than half of that sum spent on issues relating to housing.

Ms. Marković-Sekulić closed her remarks with mentioning a number of successful government projects in the social sector that had contributed to the finding of durable solutions for refugees and displaced persons.



*From left to right: **Željka Marković-Sekulić**, Assistant to the Minister, Ministry for Human Rights and Refugees, Bosnia and Herzegovina; **Zeljko Sofranac**, Director, Directorate for Refugees and Asylum seekers, Ministry of Labour and Social Welfare, Montenegro; **Ivančica Mamek Jagić**, Head of Sector for Contracting of Social services, Ministry for Demography, Family, Youth and Social Policy, Croatia*

### **Ivančica Mamek Jagić**

#### **Head of Sector for Contracting of Social services, Ministry for Demography, Family, Youth and Social Policy, Croatia**

**Ms. Mamek Jagić** explained in some detail the Croatian social security system, which, she said, was in accordance with the provisions of the European Social Charter. Access to social security and welfare was available to Croatian citizens domiciled in Croatia, but also to foreigners and stateless persons with a right of residence in Croatia. Similarly, persons with subsidiary protection, victims of trafficking and asylum-seekers and their family members had access to social security and welfare. Many former refugees had either obtained Croatian citizenship, or had regularised their stay as foreigners, and had thus access to social security and welfare.

Croatia had not yet ratified the revised Social Charter. A process was under way to identify legislative provisions that would need to be changed in order to be able to ratify the revised Social Charter. Indeed,

this process might be an opportunity to reconsider social policies in general, and to modernise the social security and welfare system.

### **Zeljko Sofranac**

#### **Director, Directorate for Refugees and Asylum seekers, Ministry of Labour and Social Welfare, Montenegro**

**Mr. Šofranac** recalled that he had participated in the drafting of the Sarajevo Declaration in 2005. He mentioned that Montenegro had experienced important refugee flows, first from Bosnia in the period 1992-1995, and later also from Kosovo\* in 1999. He believed that governments in the region had perhaps for too long taken a humanitarian assistance approach in dealing with these refugee populations, rather than a development approach, namely the securing of socio-economic rights.

At present there were still some 15,000 former refugees from Bosnia and Kosovo\* in Montenegro, who now had mostly the status of permanently residing foreigners. Several programmes were being carried out for them. An important part concerned the efforts to obtain civil documentation for approximately 3,000 undocumented Roma from Kosovo\*. As concerned the provision of housing, Montenegro was fully participating in the Regional Housing Programme. Earlier, in the period 1992-1999, some 1,200 housing units had been built throughout Montenegro, and at present the Konik camp in Podgorica resembled a large construction site. Other steps taken to give effect to socio-economic rights for former refugees included their inclusion in national education programmes, health insurance schemes, and the labour market.

### **Angel Stamenkovski**

#### **Consulting for integration issues, Ministry of Labour and Social Policy, “the former Yugoslav Republic of Macedonia”**

**Mr. Stamenkovski** stated that the involvement of the country started with the conflict in Kosovo\* in 1999, where some 360,000 persons requested protection within “the former Yugoslav Republic of Macedonia”. The majority of them returned to their homes, but there were still 381 persons from Kosovo\* residing in the country.

“The former Yugoslav Republic of Macedonia” had opted for local integration. Local integration had several aspects: legal, economic, social and cultural.

In 2008 the country adopted a strategy for integration of refugees and foreigners, and a national action plan. The strategy had created an obligation for the government towards the provision of social protection, housing and healthcare.

A Centre for integration of refugees and foreigners was created in 2009. This Centre guided the integration process through the creation of family integration plans. A family integration plan was implemented by the Centre for integration of refugees and foreigners. A family integration plan was created together with the family members and gave precise plan that covered all sectors of integration: employment, education, housing, healthcare, and social protection. We should say that this is basically one step, let say, a guidance towards meeting all of the goals necessary for achieving citizenship within the country.

He stated that “the former Yugoslav Republic of Macedonia” was currently in the process of developing a new strategy for the period from 2017 until 2028. This new strategy will include asylum seekers, recognised refugees and persons with subsidiary protection, as well as foreigners with a regulated stay in the country.



*From left to right: **Petar Ivezić**, Deputy of Protector, Ombudsman Office, Montenegro; **Ivančica Mamek Jagić**, Head of Sector for Contracting of Social services, Ministry for Demography, Family, Youth and Social Policy, Croatia; **Marija Penava Šimac**, Head of Department for Elderly, Asylum and Addict persons, Ministry for Demography, Family, Youth and Social Policy, Croatia; **Angel Stamenkovski**, Consulting for integration issues, Ministry of Labour and Social Policy, “the former Yugoslav Republic of Macedonia”*

Mr. Stamenkovski said that there were internally displaced persons within the “the former Yugoslav Republic of Macedonia” as a result of the conflict from 2001, during which some 74,000 persons were displaced. Currently, there were still 153 persons or 43 families that were internally displaced persons within the country. Of these, 19 persons or nine families were housed in collective centres and institutions, and 130 persons or 32 families were housed in private accommodation. For those that were housed in private accommodation, the Ministry continued to provide rent support and provide financial support to families that do not have income.

## **Session 2: The European Social Charter as a tool for the protection of social and economic rights**

### **The European Social Charter, a tool for the protection and implementation of social rights**

**Régis Brillat**

**Head of the Department of the European Social Charter / Executive Secretary of the European Committee of Social Rights, Council of Europe**

It is a pleasure and honour to be here with all of you today on this extremely important conference, which touches upon the rights of everyone, every day of their lives. I will make a brief presentation of the European Social Charter and I would like to start with reading out the text which appears in the city of Turin in the Palazzo Madama, where the European Social Charter was signed on 18th October 1961. The text is in Latin, but the English translation reads as follows: "Here, where the 16 States united within the Council of Europe signed the European Social Charter, through which the living conditions of all would be improved, the hope for a brighter future rises for workers of free Europe."

You perceive that this is a very ambitious programme. And indeed when the Council of Europe was founded after the Second World War, its first task was to adopt a Human Rights Treaty, which would embed in a binding document all the rights which appear in the Universal Declaration of Human Rights, which was adopted by the UN General Assembly in December of 1948. And very rapidly, the Council of Europe adopted the European Convention of Human Rights in 1950. It was the first success of the organisation. However, the main weakness was that the Convention did not embed all the rights of the Universal Declaration, but only a selection of them, and more precisely, the so-called civil and political rights.

Social and economic rights were left aside, and it was only 11 years later, in 1961 that the Social Charter was adopted. And for years the European Social Charter was considered as a rather weak instrument, and especially weaker than the European Convention of Human Rights. In the 1990s, the Council of Europe started to review the Social Charter in order to bring it as close as possible to the European Convention of Human Rights. This led to adoption of the revised European Social Charter in 1996, but also to the adoption of the Collective Complaints Procedure.

I would like to share with you two important facts about the European Social Charter. The first one is that the Charter is a human rights treaty, and the second one is that the Charter is the charter for the society. Indeed there is no doubt that the Charter contains the economic and social rights, it contains human rights. I think it is important to repeat that the European Social Charter finds its basis in the UN Universal Declaration. This was also reaffirmed by the UN member States in 1993, through the Vienna Declaration, according to which all human rights are of equal importance, seeking to end the qualitative division between civil and political rights on the one hand-side, and economic, social and cultural rights on the other. What is important in the Vienna Declaration is that the international community agreed to

treat human rights in its totality, in a fair and equal manner, on the same footing and with the same emphasis. And that is extremely important to understand the real nature of the European Social Charter.

Let me mention here the resolution adopted in October 2011 for the 50th anniversary of the Charter, in which the Committee of Ministers invited all member States to consider ratification of the revised Charter and acceptance of the Collective Complaints Protocol.

The rights included in the Charter concern the daily life of everyone. They concern the right to housing, health, education, employment, social protection, non-discrimination. All these issues are extremely important for each of us every day. These rights are interpreted by the European Committee of Social Rights in very ambitious manner, in a way that does not give any doubts on the real nature of the rights. The Committee insists that the rights have to be concrete and effective, that the obligations from the Charter are not only to provide for the legal framework, but also that practical measures including financial measures should be taken by states in order to carry out the policies aiming at respecting the Charter.

In other words, states have positive obligations, if you want to follow the terminology used by the Court of Human Rights. This means that it is not enough for States to refrain from interfering with the rights, but that they must give practical effect to the rights in the Charter. The persons governed by the Charter are firstly all nationals of the State concerned, but also all foreign residents who are legally residing or legally working in the country concerned. But the Charter also applies to refugees, to stateless persons, and of course it does apply to internally displaced persons. The Committee considers that several of the rights also apply to person present in an irregular manner when their human dignity is at stake.

Let me say a couple of words on a monitoring system under the Charter. There are two different types of monitoring. The first one is the obligatory reporting system which is applicable to the 43 State Parties to the Charter, out of the 47 member States of the Council of Europe. The second one is the Collective Complaints Procedure, which is an optional monitoring mechanism. Only those States which have formally accepted the Procedure are bound by it. 15 States, 15 out of 43 State Parties, have accepted this optional mechanism. The two monitoring mechanisms are organised in two different stages. The first one is to identify a shortcoming, whether there is non-compliance or a violation. During this phase not only governments participate in the provision of information, but also trade unions, Ombudspersons, and many actors can provide information. The second stage is after a shortcoming or violation is identified, and consists of bringing the situation into conformity with the Charter. This stage also requires the action of many stakeholders at national level: governments, parliaments if legislation is concerned, or judges who may take decision in order to remedy the violations. But let us not forget the role of local and regional authorities who are often in the front line in order to implement and respect the rights of the Charter.

The Charter as a human rights treaty is also the Charter for the society. What we perceive is that the real nature of social rights is not necessarily what we, at first glance, have in mind. The famous dichotomy between civil rights and social rights, according to which the civil rights would be more important or would precede the social rights, doesn't really correspond to the reality. And the Council of Europe is currently going through the so-called Turin Process, which is precisely meant to ensure that the Charter is perceived as it really is, and not as for years it has been considered to be.

The basic reasoning behind the Turin Process is that it is not conceivable to tackle the serious challenges that Europe is facing, without the full respect for social and economic rights as guaranteed by the European Social Charter in parallel to the civil and political rights guaranteed by the European Convention on human rights. In other words, the current situation of Europe not only highlights that all human rights should be treated equally, but it also requires that we manage to do so if we want to progress all together. And why Turin? Because, this is the city where the Charter was open to signature in 1961 and we considered that organising a conference in this city would be a clear sign that the Council of Europe is going back to the roots of the European Social Charter. The conference took place in 2014 and was the starting point of this process.

It is important to understand that there is a certain loss of trust in Europe from citizens of our continent, and that if we want to reinforce the link between Europe and its citizens, if we want to ensure participation in the democratic process, if we want to promote social inclusion and social cohesion, the rights approach is the correct approach. And what is extremely important is that the Charter is at the heart of the three main pillars of the Council of Europe. Human rights are the starting point; democracy gives many actors specific roles in the implementation of rights; and the rule of law because what is really important is that when the decisions are taken by the European Committee of Social Rights they are enforced at national level and the role of national judges is extremely important in this respect.

I would also like to highlight some reflections from Thorbjørn Jagland, the Secretary General of the Council of Europe, in his series of reports on the state of democracy, rule of law and human rights. The



*Régis Brillat, Head of the European Social Charter Department/ Executive Secretary of the European Committee of Social Rights, Council of Europe*

fourth report was published in spring this year, and the Secretary General insisted on the importance that social rights are extremely important to combat populism, fundamentalism, and that they are extremely important tools to bring European societies to the level where we would like them to be.

Let me mention also the issue of austerity measures, which were taken by several European States as a reaction to the economic crisis, and whereby social rights at first, but also civil rights, were affected. It is important that States take their international commitments seriously and that, according to the principle rule of law, they respect their commitments.

Ratifying the European Social Charter does not provide the solution to all social issues and problems of all countries. But it provides tools and a sort of compass in order to find the way and reach the solutions. There is absolutely no ambition within the Social Charter to define a model which would have to be followed by all countries. It's up to each individual country to find its own solutions, according to its tradition, according to its legal system, according to its possibilities, and for the rights which have to be implemented progressively States are under the obligation to use the maximum of their possibilities.

What is important for the European Social Charter to be respected is that human dignity should be respected in any circumstance.

Another important issue is the objective of the Turin Process and here I can be extremely concrete. What was agreed upon by the Conference in Turin in 2014, was that all the Council of Europe countries should ratify the revised European Social Charter. Currently there are nine countries which are still bound by the 1961 charter, and there are four countries which have not ratified either of the charters. So these 13 countries are invited to ratify the revised European Social Charter.

The Collective Complaints Procedure is seen as an important tool, not only to favour an increased participation of the civil society, of social partners, but also with a view to find practical solutions to human rights issues without necessarily implying individual obligations before the European Court of Human Rights.

Another important issue is the European Union and the current project of the social pillar within the European Union. The Secretary General of the Council of Europe has prepared an opinion on that pillar, very much in favour of this exercise, but under certain conditions in particular that the European Social Charter would be the heart of the EU social pillar, in order to ensure consistency of the two main legal orders in Europe.

To conclude my presentation I would like to go back to my first sentence and ask you two questions. If you read again this very ambitious text of Turin, my first question is "Have we achieved the objective?" Of course everyone is invited to give their personal opinion. But I would not be surprised if the majority of you would reply "No". So the second question is "Is it still our objective?" It is difficult to interpret silence, but I take it that we agree that it is still our objective. Let's work together to achieve this objective. Thank you very much.



## **The Reporting procedure under the European Social Charter and key annual conclusions by the European Committee of Social Rights which are of interest to forcibly displaced persons**

**Karin Lukas**

**Vice-President of the European Committee of Social Rights**

Good afternoon ladies and gentlemen.

I was asked to present the Reporting procedure under the European Social Charter and some of the key findings of the European Committee of Social Rights regarding the rights of forcibly displaced persons.

Under the State Reporting system, States have to present written reports to the Committee every year on a specific set of articles of the European Social Charter, on how they have implemented the Charter in law and in practice. The Committee reviews this progress and assesses the conformity or non-conformity of the State with the Charter. Each article is assessed every four years, with the notable exception of equal pay for women and men, which is examined every two years. Since 2014, there has been a reform in the State Reporting procedure for States that have accepted the Collective Complaints Procedure. There is a simplified reporting procedure for these States which only have to submit a simplified report every two years.

States communicate the reports not only to the Committee, but also to national trade unions and employers' organisations. These organisations have the possibility of submitting their comments on the State reports, and the government also takes into account such information of other sources that are relevant for the assessment of the situation, for the example international organisations or non-government organisations. The conclusions of the Committee are then made public and sent to the Governmental Committee of the Council of Europe, which then prepares the work for the Committee of Ministers, the highest decision making body in the Council of Europe. Where a State does not take the steps to remedy those situations that the Committee has found to be not in conformity with the Charter, the Committee of Ministers may decide to address a recommendation to a State, to change a law or practice as necessary.

A key complexity of the Charter, which influences both the Reporting procedure and the level of protection of the Charter, lies in the so called "a la carte ratification", which means that every State can choose which provisions of the Charter to accept, as long as it accepts a certain minimum number. Under the revised Charter, States must accept at least six out of so called nine "hard core" provisions, the most relevant provisions of the Charter. And in an addition, it must accept enough provisions so that it is bound by not less than 16 articles or 63 numbered paragraphs. Considering that there are 31 articles and 98 numbered paragraphs, that leaves quite some space for improvement also.

Countries have actually followed different strategies in order to address this "a la carte ratification". For example, France and Portugal have accepted the maximum, all the articles of the Charter. On the other end of the spectrum countries like Cyprus or Turkey have accepted only the minimum and are working towards accepting more provisions. There is actually a procedure that the Secretariat of the Charter supports, where the Committee and States meet in order to agree on further articles to be accepted.

Here in the region, it is somewhere in the middle, countries have accepted between 40 to 80 paragraphs of the Charter.

The scope of protection of the Charter is a very important topic today, because the Charter rights concern all people and the rights of their daily lives. They are relevant for migrants, refugees, stateless persons and internally displaced persons. The scope of the Charter is defined as limited to nationals of other States parties that are regularly working or lawfully residing in the State party concerned. Hence, there is a limitation to the protection in this regard. Migrants from one of the other State parties, if they are lawfully residing or regularly working, are enjoying the full protection of the rights of the Charter. However, third country nationals, whether regular or irregular in the territory, are excluded from the Charter's protection.

The Committee has, however, made efforts to interpret this limitation as restrictively as possible given that the Charter is a human rights treaty. It has for example extended the scope to cover migrants in an irregular situation when core rights are concerned, which are linked directly to life or health or the human dignity of the person concerned. Fortunately, the Charter has an express exception to this limitation regarding refugees and stateless persons. States must ensure treatment as favourable as possible, and in any way not less favourable than foreseen in the 1951 Convention for refugees and 1954 Convention for stateless persons.

Regarding stateless persons there is also another interesting document, a statement that the Committee has released in 2013, on the rights of stateless persons. It noted there that statelessness remains a very serious human rights problem. Stateless persons tend to be vulnerable to abuse, poverty and marginalisation. The Committee considered that equal treatment must be guaranteed to stateless persons, whether in law or in fact, in matters covered by the Charter.

With respect to refugees, the Committee has also adopted a statement, a bit later in 2015. Here it defined the rights which must be guaranteed to refugees under the Charter and emphasised that States must ensure the protection of refugees' fundamental rights, not only when they are formally recognised as refugees but already when they seek asylum. The statement also notes the benefits of effective implementation of social rights by facilitating a better integration of new arrivals.

Apart from these two statements, in response to the refugee crisis in Europe, there has been sporadic mention of refugees and stateless persons in the Committee's conclusions. But the Committee expects more conclusions and more information by the States on this topic because of the current situation in Council of Europe member States.

Finally, with respect to internally displaced persons, they are generally protected by the Charter so far as they remain within the territory of the State concerned and they are lawfully in that State. Thus far the Committee has had few occasions to deal with the situation of the IDPs. There are some collective complaints, but in the conclusions there are only a few mentions. Basically all the rights of the Charter are relevant for IDPs, but some are particularly important given their situation. This concerns non-discrimination in employment, vocational training, right to health, right to social security, right to social welfare services, right of the family to social, legal and economic protection, right of children to such protection, the equality of women and men in employment, the rights of elderly persons to social, economic and legal protection, the protection against poverty and social exclusion and the right to housing.

Regarding the principle of non-discrimination the Committee has given a wide interpretation of the grounds of discrimination, and internally displaced persons clearly fall under this category of other grounds of discrimination.

Now I will mention this handful of conclusions that the Committee has made over the 50 years of its operation and I will focus first on Article 16 which covers the rights of families to legal, economic and social protection. Two main aspects are important here: the first is family benefits and the second one is family housing. With regard to family benefits, State obligations include the implementation of means to ensure the economic protection of vulnerable families. The Committee recalls in various conclusions that States parties must ensure equal treatment of foreign nationals who are lawfully resident or regularly working, and stateless persons with respect to family benefits. For example, it asked the government of Serbia to indicate whether stateless persons and refugees were treated on an equal footing regarding family benefits.

Regarding the aspect of family housing, the Committee has held on a number of occasions that also here equal treatment must be assured with regard to different groups of vulnerable persons, particularly low-income persons, persons internally displaced due to wars, natural disasters and so on.

In Croatia, the Committee noted the adoption of the National Strategy for resolving the issues of refugees and internally displaced persons, from 2011-2014, which notably deals with housing issues. It also noted in this conclusion that the number of collective centres for accommodation of refugees and IDPs was reduced; and although numerous housing solutions provided, informal settlements are still present. It also took a note of the Regional Housing Programme and noted some figures as to solutions found for families in Croatia.

Under Article 31, the right to housing, the Committee's jurisprudence is that States parties shall guarantee to everyone a right to housing and shall promote access to adequate housing. However, in implementing these rights, States enjoy a margin of appreciation in the implementation. In particular with regard to a balance between general interest and the interest of specific groups, in terms of financial resources and other priorities. Here for example, the Committee put a question to Ukraine on the measures it had taken to ensure adequate housing for internally displaced persons.

Under Article 17, the right of children and persons to protection, it noted in the conclusions on Bosnia and Herzegovina the requirement to equal access to education for all children and that particular attention should be paid to vulnerable groups of children, such as children in asylum, refugee children and so on. It also, in the conclusions on Bosnia and Herzegovina, noted the uneven access of certain categories of women to the labour market, including refugee women and Roma women, as well as internally displaced women, and asked the Government for further information on this.

So far there is only one country where the Committee has found a situation of non-conformity, and that was in the case of Turkey, where in 2003 the Committee found that many internally displaced persons in Turkey who were either unable or unwilling to return, lived in conditions of poverty and social exclusion, and very often in sub-standard housing conditions. Therefore it found a breach of the Article 31 in this regard.

The Charter is a key instrument in the protection of social rights of vulnerable groups, rights that they need in their daily lives. And IDPs are clearly among this category of persons. Now when we look at the impact of the State reports on State legislation and practical implementation, we see numerous concrete

changes by States in order to implement the Charter that are relevant for vulnerable groups. A few examples: in Bulgaria a decree was passed that established the procedure for the reimbursement of expenses of hospital treatment for persons without resources. Denmark introduced a new public health programme which aimed to improve the quality of life and to reduce health inequalities. Also, in Denmark, the system of vocational training was reformed to take account of the needs of asylum-seekers, immigrants, refugees and unemployed persons. The French system provides for urgent medical care for foreigners, illegally resident in France, who do not benefit from State medical aid. And in Lithuania, amendments have been made in the law on equal treatment to include the duty to provide reasonable accommodation. All these improvements are potentially relevant for internally displaced persons and refugees. The Charter offers protection to specific groups that are exposed to poverty and social exclusion, and are in daily need of basic social rights.



*From left to right: **Karin Lukas**, Vice-President of the European Committee of Social Rights; **Jarna Petman**, Former member of the European Committee of Social Rights*

The Committee will, in view of the situation in Europe, pay higher attention to the situation of internally displaced persons, refugees and stateless persons. This Conference is an important event to underline and strengthen this attention and protection, both for the Committee and States Parties concerned.

## **The Collective Complaints procedure as a tool in addressing violations of rights and the role of INGOs**

**Jarna Petman**

**Former member of the European Committee of Social Rights**

The world in which we live is not perfect and we continue to disagree, we continue to face economic crises or other difficulties and we need to settle our differences. So in that sense, the answer to the first question posed by Mr. Brillat is no, we have not achieved everything that we've always wanted to achieve. But it is precisely because of that, that the answer to the second question is yes, a resounding, hearty yes. We need the Charter, it provides the legal venue for us to settle our differences and to approach the difficulties that we face in a cool, calm fashion. That is what law does.

I will outline in broad brushes the Collective Complaint mechanism. When adopted in 1961 the European Social Chapter was a ground-breaking document. It was in many ways the first attempt to give shape and meaningful legal content to social rights. It was however, from its inception completely overshadowed by its big sister, the European Convention on Human Rights, gradually turning into, what the more polite would call a sleeping beauty. It was not till early the 1990s that the general mood, which can only be described as disillusionment, changed as the process of the revitalisation of the Charter framework was launched by the Council of Europe. Also because of the fact that the European community was at that time starting to turn toward social rights. Among the various reforms that were made to revitalise the Charter in the 1990s, the most far reaching one and without doubt the most important one, was the adoption of the Collective Complaints Procedure, and it's entering into force in 1998.

The Procedure was deemed an essential means of strengthening the quality of supervision. Up until then, the sole means of supervision was that traditional system of national reporting. The Reporting procedure remains today a system within which most of the rights enshrined in the Charter are given more concrete meaning. It allows the Committees to identify European rights trends, in the right protections and it also enables the comparative analyses of States and their best practices. And yet, because of the share size and complexity of the exercise, the conclusions that the Committee adopts with a regard to State reports necessarily remain somewhat superficial.

The Collective Complaints Procedure that has since 1998 given the Committee the competence to examine complaints by social partner organisations and non-governmental organisations alike, has allowed the Committee to hear very detailed arguments from the applicants and the responding governments, and in turn has enabled the Committee to respond to these arguments with a detailed analysis of its own. In doing so, importantly, the Collective Complaints Procedure has strengthened the participation and role of non-governmental organisations by enabling them to directly apply to the Committee for rulings on possible non-implementation of the Charter. Unlike the Reporting system, which applies to all State parties to the Charter, acceptance to be bound by the Collective Complaints Procedure is optional. Today, 15 of the 43 parties to the Charter are bound by the Procedure. As the title of Procedure itself suggested, the Collective Complaints Procedure is one of collective and not individual complaints. Accordingly, complaints may only be made by a particular type of organisation, not by individual States or indeed individuals themselves.

There are four types of organisations that are eligible to make complaints under the system. The first comprises international organisations of employers and trade unions that are observers at the meetings of the Governmental Committee under the Reporting system. These three social partners, the European social partners, comprise now of the European Trade Union confederation for employees and the Business Europe and the International Organisation of Employers, for the employers side. The second type of organisation able to make a complaint are other international non-governmental organisations that have participatory status within the Council of Europe, and, importantly, have been placed on a list that is drawn up by the Governmental Committee for the specific purpose of making complaints. This list is valid for four years. To be put on this list, an international NGO must show that it has access to authoritative sources of information and that it is able to carry out the necessary verifications, and to obtain appropriate legal opinions. They must be able to draw up complaint files that meet the basic requirements of reliability. So it has to be a real actor of substance. Currently, there are 71 international non-governmental organisations on that list. The number is surprisingly small given that at the moment there are 320 international NGOs that hold participatory status within the Council of Europe. In any case international NGOs are only entitled to submit complaints in respect of those matters in which they have been recognised as having particular competence. In its decisions so far, the Committee has not been particularly restricted as to what may constitute such competence. For example, the Quaker Council of Europe was entitled to launch a complaint against Greece concerning the right to work. This had to do with military service in Greece.

The third type of organisation entitled to make complaints, comprises “representative national organisations of employers and trade unions within the jurisdiction of the Contracting state against which they have lodged a complaint”. It is up to the Committee when dealing with admissibility of a complaint, to determine whether a particular national employers’ or employees’ association is a representative one. The Committee has taken the view that the representativeness, in this instant, is an autonomous concept, beyond the ambit of national considerations as well as the domestic collective relations’ context. So it doesn’t matter whether within the domestic system a particular organisation is regarded as representative. In this respect again, the Committee has been fairly flexible and has accepted organisations to be representative, even when they have not deemed to be so within the domestic context. It would seem, however, that the main test whether particular organisation is or is not representative, will be its size in terms of the number of its members, relative to the sector or region in which it operates and the degree to which it has participated in collective bargaining in the sector concerned.

The final, fourth category of complainant organisations comprises other representative national non-governmental organisations with particular competence in the matters that are governed by the Charter. It will again be up to the Committee itself to decide and determine whether such an NGO is or is not representative for the purposes of the Charter and whether it has the particular competence referred to.

This is, as you can see, potentially a very wide right of complaint indeed, potentially referring to all domestic non-governmental organisations. It has a very important limitation that a national non-governmental organisation may only make complaints if the State in which it is located has made a special declaration in respect that it will accept complaints from such organisations. To date, only one State has made such wide declaration accepting complaints from any domestic non-governmental organisation, namely Finland. It is perhaps surprising that to date there have been only nine complaints

that have been launched by domestic NGOs in Finland. The Finns are quiet by nature, I guess that has to do with it.

It is worth noting that trade unions and employers' organisations are assumed to have competence in respect of all the Charter's provisions. They may therefore complain of any Charter related matter, including matters that are not directly affecting their members.

As for the Complaints Procedure itself, it begins by a qualified organisation making a complaint in writing to the Secretary of the Committee, alleging that a State party has not ensured the satisfactory application of one or more of the provisions of the Charter by which it is bound. In general, a complaint must be submitted in one of the official languages of the Council of Europe, French or English. However, the Committee accepts that national non-governmental organisations may use also a non-official language, thus bringing the threshold of complaints lower. It is also required that a complaint must be signed by a person that is competent to represent the organisation in question, and importantly stating the country against which the complaint is launched, the provisions of the Charter alleged to be violated and the precise nature of the violation. Here, it's worth emphasising that since individual situations may not be submitted, complaints must concern a general, legal or factual situation. As a consequence, complaints may be launched even if the domestic remedies have not been exhausted, even if a similar case is pending before national or international bodies and even if the claiming organisation has not been a particular victim itself of that relevant violation.

Similarly, the fact that a situation has been examined by the Committee within the reporting system does not prevent the Committee from taking a complaint on that exact same issue. Once the complaint has been declared admissible a procedure is set in motion. The procedure is adversarial by nature and thus any document that is supplied by one of the parties will be communicated to the other which then has an opportunity to respond. The information generated in this way allows the Committee to assess a situation in much more detail than is normally the case under the reporting procedure. The complaint procedure is also a very open one. Under the Committee's rules of procedure, all procedural documents are to be made public on registration with the Secretariat, unless the President of the Committee decides otherwise. The Committee may also decide to hold a public hearing and for that purpose the Committee may use the hearing rooms of the European Court of Human Rights.

After having examined the merits of the case, the Committee draws up a report that contains its decision, as to whether the State in question has or has not fulfilled its obligations under the Charter. The Committee looks not only at the law, but, as for the reporting Procedure, also at the actual practice. And the obligation is an obligation to take steps to the maximum of the State's available resources with a view to achieving the full realisation of the right. As is the case with social rights in general, constant progress must be demonstrated. From this it follows that there is a strong assumption that retrogressive measures breach a State's obligation. And yet, it needs to be said, restrictions or even limitations of rights in the area of social rights and social security are compatible with the Charter, insofar as they appear necessary to ensure the maintenance of a given system of social security, and as long as they do not prevent members of a society from continuing to enjoy effective protection against social and economic risks. To be more specific, especially during the current austerity crises, the Committee has again and again held that any restrictions on social rights for economic goals cannot push the income of, for example, the elderly, lower than the poverty threshold, defined as 50% of median income. Once the decision is made it is transmitted to the Committee of Ministers, as well as to the parties and States

bound by the protocol. But it is not made public until the Committee of Ministers has adopted a resolution or recommendation, recommending that the State concerned takes specific measures to bring the situation in line with the Charter. Should the Committee of Ministers for some reason decide to abstain from doing anything, and thus far it has only done that once, the decision will be published regardless no later than four months after the transmission of the report. While the formal enforcement of the Committee's decisions is left to the Committee of Ministers, the European Committee of Social Rights itself remains seized of the matter after it has delivered its decisions and continues to monitor each situation through the reporting procedure.

In the enforcement phase, the international NGOs continue to play an important role by revisiting the cases, if need be. Since the entry into force of the procedure in 1998, a total of 151 complaints have now been registered, and 109 have thus far been completed. When I was elected to the Committee in 2009, the Committee had, in the first decade of the Complaints Procedure, dealt with 54 complaints. It had been a very slow start, but now the number has almost tripled. This is due to the activity of international non-governmental organisations which have become more and more aware of the Committee and its growing jurisprudence. This has been even more so now that the European Court of Human Rights has been buried under a backlog of cases. The NGOs have also realised that the European Social Charter really is a sister treaty to European Convention on Human Rights.

The collective complaints procedure has fundamentally changed the way in which the supervision of the European Social Charter works. What in the past was limited to a rather technical examination of State reports taking place behind closed doors has now developed into a quasi-judicial procedure with applicants, defending governments, public hearings, decisions on admissibility, decisions on the merits and procedures for ensuring the execution of the decisions. This has produced a significant amount of a jurisprudence relating to different provision of the Charter, also to those that relate to forcibly displaced persons. Indeed, it would not be an exaggeration to say that the collective complaints procedure has already done more than the many years of reporting to convince the stakeholders that the European Social Charter gives rights to legal entitlements, that the rights contained in the Charter are really justiciable and not just vague policy principles. Importantly, over the years, international justiciability can be seen to have fostered justiciability at the domestic level too. As the Committee has been analysing the rights contained in the Charter it has been clarifying the content, and specifying and enforcing the obligations they give rise to. And in doing so it has contributed to the development and the consolidation of rights. And, at times, also to the widening of the scope of established rights. The existence of such a body of international case law based on the decisions in concrete cases, have made the Charter's standards more readily accessible, encouraging the various domestic stakeholders to take the Charter into account when they work on social rights before the national courts, holding States to their commitments.

Certainly, the full realisation of social rights will remain unattainable without the commitment of States, for States continue to remain the primary means of securing different forms of distributional decisions for the most vulnerable in society, but in a situation of economic troubles such political commitment easily erodes. Should this erosion combine, as it is so often does, with the emerging of competitors who have never recognised extensive economic and social rights nor now are ready to trade them off to attract investment, then efforts to solidify foundations of rights will be soon undercut. At times there may even be an outright outside demand that the State undermines social protection. Think for example



of the austerity measures and structural reforms imposed by European Union institutions and the International Monetary Fund in Greece, as the European Committee on Social Rights had to find out earlier in the decade.

Therefore, in addition to a commitment by States, also another type of commitment is needed for social rights to operate in an acceptable way, namely the political commitment of the civil society. Rights regimes and monitoring bodies need the various social partners and NGOs to use the procedural avenues available to claim rights. Why? Because our ability to address inequalities and wrongs through rights will not depend as much on a recognition of a particular right, as it will on the content and the interpretation of that right. What will ultimately be decisive of the success or the failure of social rights is whether they are taken up and used by States, but also importantly by civil society.



*Conference room, Parliament of Bosnia and Herzegovina, Sarajevo*

## Round table of Ombudspersons or representatives of the Ombudspersons of the region: improvement of living conditions of displaced persons

**Moderator:**

**Chaloka Beyani**, Associate Professor of International Law, London School of Economics (LSE)/ former UN Special Rapporteur on the Human Rights of Internally Displaced Persons

**Participants:**

- **Nives Jukić**, Ombudsperson of Bosnia and Herzegovina
- **Hilmi Jashari**, Ombudsperson of Kosovo\*
- **Dario Badovinac**, Advisor at the Ombudswoman's Office of Croatia
- **Snezhana Teodosievska Jordanoska**, Advisor to the Ombudsman of "the former Yugoslav Republic of Macedonia"
- **Petar Ivezić**, Deputy of Protector, Ombudsman's Office of Montenegro

Following introduction of the Ombudspersons, the moderator requested the Advisor to the Ombudsman from "the Former Yugoslav Republic of Macedonia", to explain the role of the ombudsman in relation to displaced persons and refugees.

Ms. **Teodosievska Jordanoska** explained that, similar to other Ombudspersons, the Macedonian one was competent to safeguard the rights of citizens and other persons present in the territory of the country, such as refugees, persons with subsidiary protection, or even irregularly present persons. With regards to refugees from the former Yugoslavia, the ombudsman was very much involved in finding durable solutions and access to rights. For instance, civil registration and access to social assistance were an important part of the activities of the ombudsman. It was envisaged to seek closer cooperation with the ombudsman from Kosovo\* in the search for durable solutions.

Mr. **Dario Badovinac**, Advisor at the Ombudswoman's office of Croatia, in reply to the same question said that in daily life he was exclusively involved in housing care in Croatia. Providing housing to returnees who had previously held housing rights which no longer existed was a huge problem. Especially the length of procedures was often excessive. Another problematic area was providing solutions to persons whose houses had been destroyed during the conflicts, or later, for instance during floods. In 2015 the office of the ombudswoman had proposed an all-encompassing legislative solution for such problems.

The **moderator** then asked Mr. Jukić if IDPs were visible in his country and whether his institution had taken any measures to actually make them visible so that the public were aware of the issue of the IDPs.

Mr. **Nives Jukić** explained that at one point of time, over 2 million persons had been displaced in his country, and therefore the public was well aware of what it meant to be displaced. Returnees had been the largest group of persons with which the ombudsman's office had had to deal. When the ombudsman started, in 1997, everyone was asking for return, as guaranteed in annex 7 of the Dayton agreement. Now, 21 years later, only a small number of IDPs remained who could not yet return. The issues these days had much more to do with access to other rights, such as work, and social assistance.



*From left to right: **Snezhana Teodosievska Jordanoska**, Advisor to the Ombudsman of “the former Yugoslav Republic of Macedonia”; **Dario Badovinac**, Advisor at the Ombudswoman’s Office of Croatia; **Hilmi Jashari**, Ombudsperson of Kosovo\*; **Nives Jukić**, Ombudsperson of Bosnia and Herzegovina*

Mr. **Hilmi Jashari**, said that he initially had raised his concerns with the Parliament of Kosovo\* through his annual report, which also recommended the actions that should be undertaken by the government. However, he was now having in plan to have a special report which would treat the situation of IDPs in Kosovo\*. On the other hand, he was also treating individual cases based on complaints. But his main concern was what would happen after he had issued recommendations to the government. He thought that a lot depended on the credibility of the institution itself; on the perception of the citizens as to the credibility of the institution; and on the political independence of the ombudsman institution. He said that Kosovo\* was in quite unique legal situation, because of the impossibility to use international mechanism such as the European Convention or European Court of Human Rights.

The **moderator** asked Mr. Petar Ivezic, Montenegro, for his views on this issue.

Mr. **Petar Ivezic** said that since its establishment, the ombudsman of Montenegro has been able to act in the defence of the rights of displaced persons from the 1990s, as well as asylum-seekers and refugees from third countries. He may address recommendations to government institutions, and has indeed done so. The ombudsman is also active in a variety of issues that affect displaced persons and refugees, such as civil registration, and access to health systems. The procedures before the ombudsman are free of charge, and open to citizens and foreigners alike. In the annual reports of the ombudsman, there is always a chapter devoted to displaced persons and refugees.

The **moderator** then asked the participants about their methods of work: had they initiated special investigations into IDP issues or were there processes by which IDPs could come and file their complaints.

Ms. **Teodosievska Jordanoska** said that the institution tried to be visible and open to all. Last year two leaflets had been prepared; one on the right to asylum, which had been distributed to all centres with asylum-seekers, and one for the local population on how to treat refugees and asylum-seekers appropriately. The annual reports of the ombudsman also address the issue of refugees and displaced persons; Complaints from refugees or displaced persons had been very few.

Mr. **Dario Batovinac** said that whereas there had been very few complaints from displaced persons, visibility of the institution was no longer an issue. It was more the returnee population who came with issues relating to access to running water and electricity. Through the annual reports, the ombudsman tried to tackle such issues.

Mr. **Hilmi Jashari** said that his institution had opened five sub-offices in the main regions in Kosovo\*. Sub-offices had also been opened in some minority areas, staffed by persons belonging to these minorities. There existed a very simplified procedure to bring the complaints, namely through emails and through a website. Also, he could open also an investigation based on free-of-charge telephone calls. Lastly, his office had developed a smartphone application known as “Know your Rights” in which citizens were informed about their rights and the obligations of the State.

Mr. **Nives Jukić** said that in Bosnia too the ombudsman had opened five sub-offices where complaints could be filed. The staff tried to go to the field regularly, in order to also reach other places. Unfortunately, the financial resources of the Bosnian ombudsman were limited. Internet and email use were not widespread in Bosnia, but it was possible to contact the ombudsman in that way. Whenever a complaint was received, the staff undertook investigations to gather as much information as possible.

Mr. **Dario Batovinac** added that in Croatia three additional offices had been opened, and that these offices could be contacted in person, by telephone, or by email or internet.

The **moderator** then asked whether national politics took into account the issues of IDPs. Were policies able to address IDP issues in an adequate manner?

Mr. **Petar Ivezic** said that the government of Montenegro had been quite active. Due to a change in the law, all previously displaced persons had become resident foreigners. Displaced persons from Kosovo\* without personal documentation had been assisted in obtaining such documentation, so that they could regulate their stay in Montenegro. Local authorities are also involved, especially in the area of housing.

Ms. **Teodosievska Jordanoska** said that governmental authorities, including her institution had done a lot in terms of accommodation and access to, for instance, education. However, a problem persisted for undocumented foreigners: they had no access to such services. As for IDPs in “the former Yugoslav Republic of Macedonia”, the government was taking active measures towards their return to their places of origin.

Mr. **Hilmi Jashari** said that in general in Kosovo\* there was a positive development with regard to politics and messages that different politicians were sending to the public with regard to treatment of IDPs. In some cases, even the President of the State was personally involved by visiting them and of course by helping them through the different donors. In Kosovo\* there were no legal instruments which clarify the

IDPs status as such. Additionally, there was no proper profiling of the IDPs in Kosovo\*. There were certain figures, mainly collected by the UNHCR and some other organisations, but in the meantime local authorities had different figures which were not compatible. He also thought that proper cooperation among the concerned States was needed, especially between Kosovo\* and Serbia.

Mr. **Nives Jukić** said that for a long time the priority in Bosnia and Herzegovina had been the implementation of Annex 7 of the Dayton agreement, which was to say, returns. And there were still a few people who had not yet been able to return. On the other hand, in the various subdivisions of Bosnia there were still serious problems with access to socio-economic rights. One aspect of these problems was the insufficient coordination between the various subdivisions.

The **moderator** opened the floor for questions.

Mr. **Bashkim Ibishi**, NGO Advancing together, remarked that Kosovo\* did not participate in the Sarajevo process, which posed some problems with regard to the return to Kosovo\* of displaced persons. His organisation was trying to help individuals to return to Kosovo\*, but he noted to some extent a lack of political and financial commitment of the national authorities. This was certainly the case as concerned Kosovo\* Roma, Ashkali and Egyptians. He said that his organisation would be very willing to work closer with the various Ombudspersons in the region in trying to assist especially Roma, Ashkali and Egyptians to return to Kosovo\* and obtain the necessary assistance from local authorities.

The **moderator** then posed some further questions:

Would increased attention to international standards and their implementation mechanisms be helpful in addressing the IDPs issues? How was the European Social Charter used at the moment? Would adhering to the collective complaints mechanisms bring improvements? Could the Ombudspersons share examples which clearly showed their action in favour of improving integration of IDPs in society in general?

Mr. **Nives Jukić** said that his institution had always taken a pro-active stance in ensuring that national legislation would be in accordance with international human rights standards. The problem was often in the practical implementation of such laws, with the result that cases ended up with the European Court of Human Rights in Strasbourg. Whether international standards such as the European Social Charter could be used in practice often depended on the circumstances of each case.

Mr. **Hilmi Jashari** remarked that Kosovo\* was in quite a unique situation, because of the political status of the country. It was not part of the UN mechanism, nor of regional instruments like the European Social Charter or the European Convention of Human Rights. However, eight international conventions were directly applicable in the legal system of Kosovo\* and had priority over local legal instruments.

Ms. **Teodosievska Jordanoska** said that as “the former Yugoslav Republic of Macedonia” only had very few IDPs, the attention had in recent years more gone to the issue of refugees from Arab countries, and to the return process of refugees from Kosovo\*.

Mr. **Petar Ivezić** remarked that the IDPs in Montenegro were actually citizens of another country, who had arrived in Montenegro, when Montenegro and Serbia were still together. His institution had been very much involved in status questions, for instance when these IDPs wished to become foreigners with permanent residence in Montenegro. There had been several thousand of such requests, and

procedures lasted long. His institution had also spoken out for better integration measures for these people, and worked together with local authorities towards that end.

Mr. **Dario Batovinac** wished to relate how his institution sought the active cooperation with non-governmental organisations throughout Croatia, when dealing with issues relating to displacement and return.

The **moderator** asked about the cooperation between the various Ombudspersons in the region, and whether they would make the European Social Charter a reference point in their work with the displaced and the returnees

Mr. **Nives Jukić** said that the Ombudspersons in the region met quite frequently, and cooperated in all aspects of their work.

Mr. **Hilmi Jashari** confirmed that cooperation was happening, and that there were a lot of meetings in the Balkan region, organised especially with the focus to the refugees and migration. He believed that what some speakers had said about human dignity was one of the quite important aspects not only for the IDPs and refugees, but in general to the concept of protection of human rights as such.

Mr. **Dario Batovinac** said that in his work, providing housing solutions, he could in general invoke the European Social Charter, but more often he had to rely on national legislation.

Ms. **Teodosievska Jordanoska** said that while in their daily work the Ombudspersons had to rely on national legislation, they could always invoke higher international norms, if necessary.

Mr. **Petar Ivezić** stressed the importance of human rights instruments in his institutions work, especially when there were cases of violations of rights to be noted and corrected, as international legal instruments had priority over national legislation.

The **moderator** in his closing remarks paid tribute to the work of the Ombudspersons. They were part of a national responsibility to protect the rights of the IDPs and refugees, but they also checked on how governments and local authorities actually discharged their responsibilities toward the IDP's and refugees. So they had a double edge sword which could cut on both sides. He thanked them for having shared their insights with the conference.

**28 June**

## **Implementing solutions**

### **Session 1: How to implement economic and social rights in post-conflict situations? Regional Programmes and successful experiences**

#### **The role of social workers in post-conflict situations**

**John Richards**

**Services Development Manager, Isle of Man Government**

I am proud to be a registered Social Worker in the UK, despite the way that social work is often portrayed in the media there quite negatively. There is a gulf between what we actually do day-in and day-out and the public perception of what we do. The media reaction when a social worker makes a mistake is disproportionate and can be hugely demoralising for the whole profession. I have been privileged with having worked in different jurisdictions in the UK and in Europe.

I feel very honoured that you have chosen me to address you today. Let's start off with a definition of social work. I have chosen the definition used by the International Federation of Social Work<sup>2</sup>.

#### **Definition of Social Work**

*The social work profession promotes social change, problem solving in human relationships and the empowerment and liberation of people to enhance well-being. Utilising theories of human behaviour and social systems, social work intervenes at the points where people interact with their environments. Principles of human rights and social justice are fundamental to social work.* I will touch on both of these principles in turn as they are critical in establishing the role of social work in post conflict situations.

#### **Principles of Social Work**

##### ***Human Rights and Dignity***

Social work is based on respect for the inherent worth and dignity of all people, and the rights that follow from this. Social workers should uphold and defend each person's physical, psychological, emotional and spiritual integrity and well-being. This means:

Respecting the right to self-determination; Social workers should respect and promote people's right to make their own choices and decisions.

Promoting the right to participation; Social workers should promote the full involvement and participation of people using their services in ways that enable them to be empowered in all aspects of decisions and actions affecting their lives.

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<sup>2</sup> International Federation of Social Work. Statement of Ethical Principles (2012)

Treating each person as a whole; Social workers should be concerned with the whole person, within the family, community, societal and natural environments, and should seek to recognise all aspects of a person's life.

Identifying and developing strengths; Social workers should focus on the strengths of all individuals, groups and communities and thus promote their empowerment.



*From left to right: Karin Lukas, Vice-President of the European Committee of Social Rights; John Richards, Services Development Manager, Isle of Man Government*

### **Promote Social Justice**

Social workers have a responsibility to promote social justice, in relation to society generally, and in relation to the people with whom they work:

Challenging discrimination: in whatever aspect of life that this is evident.

Recognising diversity; recognising and respecting the ethnic and cultural diversity of the societies in which they practice, taking account of individual, family, group and community differences.

Distributing resources equitably; fairly and according to need.

Challenging unjust policies and practices; bringing these to the attention of politicians, policy makers, employers and the general public

Working in solidarity; with an obligation to challenge social conditions that contribute to social exclusion, stigmatisation or subjugation, and work for an inclusive society.



## ***Social Work Practice***

Social work practice consists of the professional application of social work values, principles, and techniques to one or more of the following ends: helping people obtain tangible services; counselling and psychotherapy with individuals, families, and groups; helping communities or groups provide or improve social and health services; and participating in legislative processes. The practice of social work requires knowledge of human development and behaviour; of social, economic, and cultural institutions; and of the interaction between all these factors.

It can be seen, then, that the profession of social work has much to offer in post-conflict situations, by virtue of its definition, the principles that it holds dear and the practice that it offers. I shall demonstrate in this paper/presentation how these can be used to good effect. Let me first though; briefly touch on the impact of conflict.

### **Post Conflict Situations**

In 2009 Amnesty International<sup>3</sup> said: *The destructive forces of ethnic conflict, religious strife, civil war, genocide and political repression exact a massive toll on the social welfare of peoples everywhere.*

We know that the impact of violence extends beyond the tragic loss of life and includes economic losses, displaced peoples, the spread of disease and profound social and psychological disruptions.

In Northern Ireland, where I was a Director of Social Services before, during and after, the Belfast (Good Friday) Peace agreement in 1998; 3,637 people were killed during the conflict, 107,000 people suffered some type of physical injury and half a million people have been identified as victims. Given that the population of Northern Ireland is 1.8 million, it has been said that no family was left untouched by the civil conflict.

The impact of the civil conflict on the ordinary people of Northern Ireland included the stress resulting from bomb attacks, street disturbances, security checkpoints, and the constant military presence which had the strongest effect on children and young adults. There was also the fear that local paramilitaries instilled in their respective communities with the punishment beatings, abductions and other atrocities meted out to individuals for various purported misdemeanors.

In addition to the violence and intimidation, there was chronic unemployment, poverty and a severe housing shortage. Many people were rendered homeless as a result of intimidation or having their houses burnt and urban redevelopment played a role in the social upheaval.

Belfast families faced being transferred to new, alien estates when older districts in poor condition were being demolished. According to the social worker and author Sarah Nelson, this new social problem of homelessness and disorientation contributed to the breakdown of the normal fabric of society, allowing for paramilitaries to exert a strong influence in certain districts. Vandalism was also a major problem. In the 1970s there were 10,000 vandalised empty houses in Belfast alone. Most of the vandals were aged between eight and thirteen years of age.

I am sure that this brief description chimes with the experiences that many of you have had.

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<sup>3</sup> Amnesty International. Amnesty International Report (2009)

## **The tasks for rebuilding communities**

It seems to me that rebuilding communities post-conflict happen on a number of different levels:

- Maintaining security, law and order
- Creating political stability
- Providing humanitarian relief in terms of food, water, clothing and shelter for those most vulnerable
- The repatriation of those dispossessed
- Getting the infrastructure working again
- Getting the economy back on track
- Fighting/reducing poverty
- Re-energising teaching and learning
- Building on community strengths to create additional capacity in order to meet needs
- Seeking justice

This list is illustrative only and not intended to be definitive. Social workers have a part to play in a number of these tasks as I will now describe.

## **Different Roles for social workers**

Given what I have said about social work principles, values and ways of working; you could expect qualified social workers to play a variety of roles depending on their qualifications, skills, abilities, past experiences and expertise. I will now set out a number of different but complementary roles.

### ***Involvement in high-level processes***

Social workers are often seen as honest brokers; they work within and between communities promoting social justice and human rights. Thus when the Government in Northern Ireland wanted to create a safe place for dialogue between previously warring factions, they chose the Chief Social Workers in the 4 administrative areas of Northern Ireland to chair and manage these very tricky meetings. Hence, I would have found myself in a meeting with a senior police officer, local politicians, a known activist from one side of the conflict, a known murderer from the other side of the conflict, religious leaders from Catholic and Protestant traditions, community leaders, community workers, social workers, families who had suffered torture from one side and/or another, and families who had lost loved ones in the conflict. Some of those in the room were sworn enemies, who would never ever have thought of being in the same room with the others.

One of the purposes of this group was to begin to help this diverse group of people from different communities to share their stories of what had happened to them, expecting the others in the room to listen (and sometimes, but not always, to respond). Another purpose was to try to discover and agree what kind of leadership these roundtable discussions would have and what kinds of initiatives they might be responsible for. We knew that this kind of multi-sector leadership could be seen by the population as having the power to bring about change and if this was the case, then there was a higher probability that

the change that they all wanted to see would occur. I think that this was an important piece of learning not only for Northern Ireland but relevant for other post conflict situations as well.

Lisa Schirch<sup>4</sup> says: *In the chaos following disaster or war, local civil society organisations and leaders are often left out of humanitarian assistance efforts. International military forces, international government assistance, and international humanitarian NGOs descend on the disaster-affected region often without knowing much about what civil society resources exist locally. . . Often, humanitarian aid presumes a lack of local leadership or resilience. Existing capacity is overlooked or seen as “difficult” to engage with because local civil society may not be organised in a way that makes it easy for outsiders to engage.*

Chairing these roundtable forums as a social work manager was an absolute privilege. I will never forget the first faltering steps of the participants in reaching for a greater understanding of each other through storytelling. The thing that struck me most was that the stories were more or less a notion of testimony. This is something that can sometimes be missed at this level of a post-conflict response. This work can be replicated in other places.

### **Community level involvement**

David Kaufman<sup>5</sup> has commented that coping with disasters is inherently a social process: thus social cohesion and strong relationships are critical for a community’s ability to recover from a disaster or conflict. Relationship building is vital to understanding a community’s strengths. And key to relationship building is establishing trust and respect. First and foremost, one needs to recognise that communities have wisdom and should be treated with dignity and respect.

Social work, a profession with a historic mission to fight oppression, injustice and to meet the needs of human suffering, has an important role to play in the resolution of conflict and recovery from violence at a community level.

Social workers can help lead the community to have a new vision of society; a social transformation, recognising that in some post conflict scenarios there is no original state of cohesion to return to. In order to do help create this vision, social workers can seek to answer the following questions:

1. Community: Do individuals, social groups, and institutions *have a shared vision and sense of collective future and what does this consist of?*
2. Interdependence: Have individuals, social groups, and institutions *established mutual ties and obligations across lines of social demarcation; how robust are these?*
3. Social Justice: Do individuals, social groups, and institutions *accept and actively promote individual rights, rule of law, tolerance of social diversity, and equality of opportunity and what is the evidence that this is happening?*
4. Non-Violence: Have individuals, social groups, and institutions *adopted non-violent alternatives to conflict management and what do these consist of?*

Social workers can also play a part in helping communities to forgive, as part of the reconciliation process. In any discussion about forgiveness and reconciliation, it is important to make a distinction

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<sup>4</sup> Schirch, Lisa. *After the Disaster: Rebuilding Communities* (2011)

<sup>5</sup> Kaufman, David. *After the Disaster: Rebuilding Communities* (2011)

between the two. On the one hand, forgiveness does not necessarily mean reconciling with the wrongdoer. There may be good reasons why people do not wish to reconcile. Reconciliation is an additional choice. On the other hand, it is nearly impossible to reconcile with someone we have not gone some way to forgive.

Forgiveness may require relinquishing something that was important to us, such as giving up our moral indignation, our desire for retaliation, or our attachment to being right. Yet forgiveness is useful to community building, because people who forgive tend to be more flexible and less certain in their expectations, both in how life will be or how others will treat them. Those people who have chosen to forgive do not to perpetuate a historical grievance; they are somehow able to turn the page, loosen themselves from the grip of the past, and reframe their own story. The importance of forgiveness in community building is that: forgiveness can bring new insights; forgiveness can help transform attitudes; forgiveness can help repair broken relationships; forgiveness can help break the cycle of violence.

Reconciliation in the context of community building assumes a need, a will, or an actual effort made on the part of an individual or a group of people to live side-by-side in peace with a person or another group they had considered to be their adversaries in the past.

Many social workers are trained in restorative approaches which, I believe, can be applied in post-conflict situations. As the Working Party on Restorative Justice (2007)<sup>6</sup> sets out, there are 4 principles associated with restorative justice:

**Harm-focused:** Restorative justice is not limited to the question of whether laws were broken but goes beyond to examine the resulting harms and how those might be repaired.

**Relational:** Restorative justice is relational. It offers a vision of justice that is concerned primarily with addressing the harm that wrongdoing causes to relationships between and among individuals, groups and communities. Restorative justice invites one to see the world relationally. Reflecting for a moment on the number of intersecting relationships in which we live makes clear the ways in which harm to victims is felt by those connected with them. It also becomes clear that wrongdoing causes harm to those connections and relationships. This includes harm to the relationship between direct victims and offenders, between victims and their communities, between offenders and their communities, and often between groups within the wider community.

**Participatory:** Restorative justice is participatory. This is in marked contrast to courtrooms or tribunals where lawyers and judges and other professionals are the primary actors and in which victims, offenders and community members have very limited roles, if any at all.

**Democratic:** Restorative justice reflects the subsidiarity principle. According to the European Commission, the subsidiarity principle *is intended to ensure that decisions are taken as closely as possible to the citizen*. This can happen in post-conflict areas.

In summary; restorative justice offers a number of benefits in post-conflict societies. As the demands for justice are satisfied, people and relationships are restored and forgiveness becomes possible.

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<sup>6</sup> McCold, P. Llewellyn, J and Van Ness, DW. Working Party on Restorative Justice (2007)

Working at the community level is never easy. Social work does however, have the theoretical underpinning and training to help in this regard, but it requires a particular set of skills and sustained effort to make it happen. Fabien Nsengimana's seminar paper<sup>7</sup> illustrates this point perfectly:

*The decision to act may require a superhuman effort to shake hands with a former enemy and carry out a constructive dialogue with him based on the shared need to coexist. But such management of post-conflict situations also requires that those responsible have the capacity of clear-sightedness and love for their people who are often very far from the heart of the decision making spheres. Without that, it is virtually impossible for those responsible for the reconstruction of a country in all its dimensions, to be truly at the service of the people who need to be reconciled with themselves in order to be genuinely committed to the positive and sustainable evolution of their society. With daring, determination, and perseverance, the difficult walk toward the other; for a rapid moral rehabilitation of victims of conflict— becomes possible (2011)*

### **Family/Individual level**

Working with individuals and families is the level at which that most observers would see social work operating at its most potent and effective. In this regard there are a number of different types of input, which I will now explore further.

#### ***Needs assessment***

One of the key skills of social workers is needs assessment. For assessment to be effective it must be based on the analysis of the unique set of circumstances of the child/family. It involves the systematic and purposeful gathering of information but is more than simply a process of collecting information. The practitioner needs to know why they are seeking the information in the first place, and then to be able to process a mass of multi-faceted and sometimes contradictory material to come to a view about its meaning. Most assessments take account of health needs, educational needs (if the subject is a child), emotional/behavioural needs, social, self-care and resilience needs and include the dimensions of the individual, the family and the community.

#### ***Practical support***

There is much practical support that social workers can provide by working alongside other colleagues. These would generally fall in the four lower levels of Maslow's hierarchy of needs<sup>8</sup>: level 1 being physiological – food, water, clothing, shelter; level 2 being safety – security of the body, resources, the home, the family and health; level 3 being love/belonging – friendship, family, community and finally, level 4 being esteem – self-esteem, confidence, achievement, respect of others and respect by others.

#### ***Strengths based solution focussed approaches***

In social work practice, the strengths perspective has emerged as an alternative to the more common pathology-oriented approach to helping children, families, adults and older people. Instead of focusing on clients' problems and deficits, the strengths perspective centres on clients' abilities, talents, and

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<sup>7</sup> Nsengimana, Fabien. The Tough Road toward the Other (2011)

<sup>8</sup> Maslow, A. A theory of Human Motivation (1943)

resources. This seems to be the most relevant approach to support families and individuals who have been caught up in, and suffering from conflict.

### ***Family Group Conferences (FGCs)***

A Family Group Conference is usually held where there are concerns about children in the family but can also be used to think about the needs of adults and older people. The FGC focuses on people's strengths and capabilities instead of on their problems, it seeks to include their extended social network, and it is intended to have an empowering influence on people and on their social networks. An independent Co-ordinator (often a social worker) facilitates the involvement of the child, family network and professionals in the Family Group Conference process. The FGC is an intervention in which a plan is made; not by a professional, but by the person/family who needs help and support him/themselves, together with their social network. Typical of the FGC is that it is not just family-centred but family-driven or broader; social network-driven.

### ***Counselling/therapeutic interventions***

Given that conflict can bring huge trauma to individuals, families and communities, it would be expected that social workers and others would provide counselling and other therapeutic interventions. Many social workers have a range of therapies that they can draw upon in addition to their core skills, the most common being; cognitive behavioural therapy, person centred therapy, family therapy, mindfulness and systemic practice/therapy.

It needs to be clearly understood that in terms of all of the interventions addressed under the individual/family level of support, careful attention must be paid to the training, experience and qualifications held by social workers, so that there is a proper mix and match of skills to needs.

### ***Reflexive Supervision***

The importance of the giving and receiving of reflexive supervision cannot be understated especially in post-conflict situations. Maglajlic and Selimovic (2014)<sup>9</sup> have drawn attention to the stress that social workers have experienced in Bosnia and Herzegovina: *The workers noted that they feel they are stigmatised and marginalised, just like the people who use their services. They also stated that they don't have sufficient competencies, support and training for the complex and ever-increasing jobs they are asked to undertake.* It is imperative that circumstances like this are addressed as part of the care and support that we give to social workers and others working in post-conflict situations. Good quality supervision that is both reflexive and action centred can support social workers through these stressful episodes.

### **Some Concluding Remarks**

In conclusion then, I have demonstrated that social workers can potentially provide a wide range of responses in post-conflict situations, assisting at 3 different levels:

1. Policy
2. Community
3. Family/individual

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<sup>9</sup> Maglajlic, R.A. and Selimovic, J. Social Work in Bosnia and Herzegovina (2014)

At these levels, social work can promote social change, aid problem solving in human relationships and encourage the empowerment and liberation of people to enhance well-being.

Change in post-conflict areas takes time and each of the levels of intervention which I have discussed will have an associated timescale attached to it. In this regard, I believe that we should take heed of the words of Lisa Schirch<sup>10</sup>: *Those of us who see the chaos on the ground see the benefits of going slow to go fast. The fantasy of fast action, delays the process in the long term. You have to go slow to go fast. You have to include insiders with outsiders in the planning and response.*

By utilising theories of human behaviour and social systems, social work can intervene at the points where people interact with their environments. In respect to the theoretical approaches used by social workers my view accord with that of Bobby Moore<sup>11</sup> who says: *wear your theory lightly but do not go out without it.* This seems particularly critical in post-conflict areas where there is so much at stake.

It should be noted that not all social workers will be suited to this type of work and those that are, will have a preference as to the level at which they are best suited. This needs to be firmly established prior to engagement.

My view is that social workers at whatever level they are working, should ideally be operating within a multi-agency context offering their insights, knowledge and skills to that of other professionals, so that a truly holistic approach can be provided to individuals, families and the community. If this happens, social workers and others will be offering a cohesive and comprehensive response to people in pain.

## **Daria Terrádez Salom**

### **Director General, DG Relations with the EU and the State, Generalitat of Valencia, Spain**

In Spain<sup>12</sup> we are not exactly in a post-conflict situation, but the economic crisis has left behind a very serious situation of lack of social rights, poverty and social exclusion. We are facing a severe situation of inherited poverty that will surely affect future generations. As many social workers are saying, and also researchers, a child coming from a poor home will surely remain poor as he has no guarantees of equal opportunities to access, for instance, education.

#### **GENERAL SITUATION DURING THE CRISIS**

The economic crisis started, officially, in 2008, even if our politicians tried to avoid this term. For several years politicians never used the word “economic crisis”, but “deceleration” of the economy and many synonyms to try to hide the seriousness of the situation.

Spain, before the crisis, was under a “fictitious” state of prosperity. There was a strong building sector, and also the banking sector was strong. The government did not consider at all a future crisis. But economic indicators started warning about this situation, about the “real-state bubble” and the risks we

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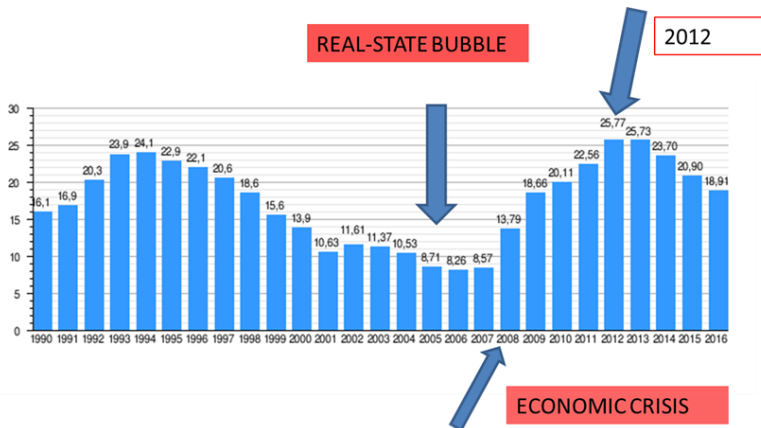
<sup>10</sup> Schirch, Lisa. After the Disaster: Rebuilding Communities (2011)

<sup>11</sup> Moore, Bobby. Reflexive Supervision: a Workbook for learning within and across professions (2016)

<sup>12</sup> Figures, data and charts of this presentation derive from the publication of the European Antipoverty network "[The state of poverty, 5th report](#)".

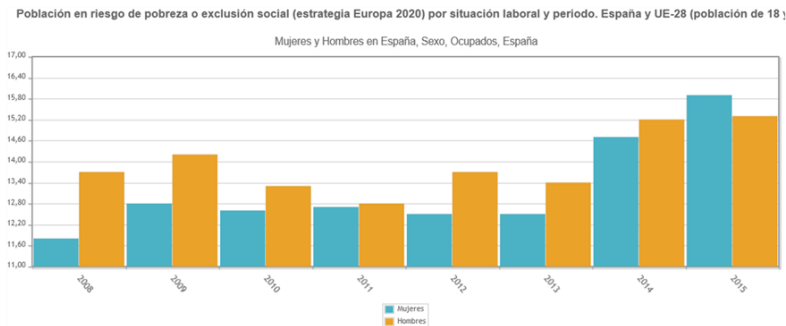
were facing, without any success. Moreover, some banks had been rescued with "public money" and we have recently learned that the State will not recover 60.000 million Euros of the provided bailout.

## UNEMPLOYMENT



During the first years of the 2000s, the building sector was one of the most preeminent sectors of the economy. Due to this there was a low rate of unemployment as it can be seen in the figure. But, on the other hand, there was a huge number of young people who abandoned their studies to work in this sector and right now have serious problems to get a job.

## POVERTY – SOCIAL EXCLUSION

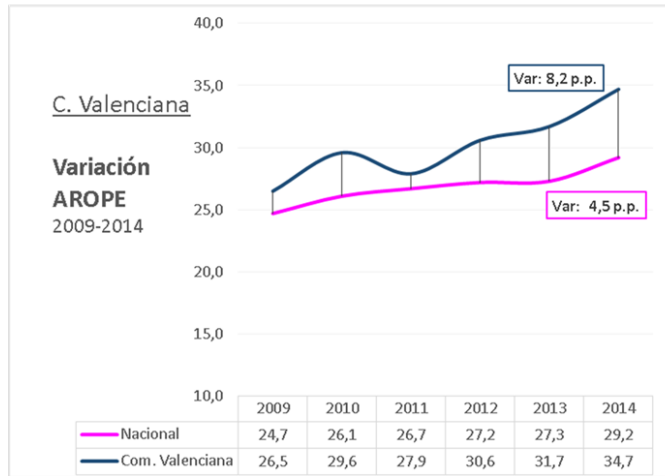


**The rise of the risk from suffering poverty and social exclusion is absolutely clear.**

Since the beginning of the economic crisis the risk of suffering poverty and social exclusion has risen, affecting especially women. We currently speak about the feminisation of poverty and, in my region, to remedy this situation, we are including a gender perspective in the social policies.

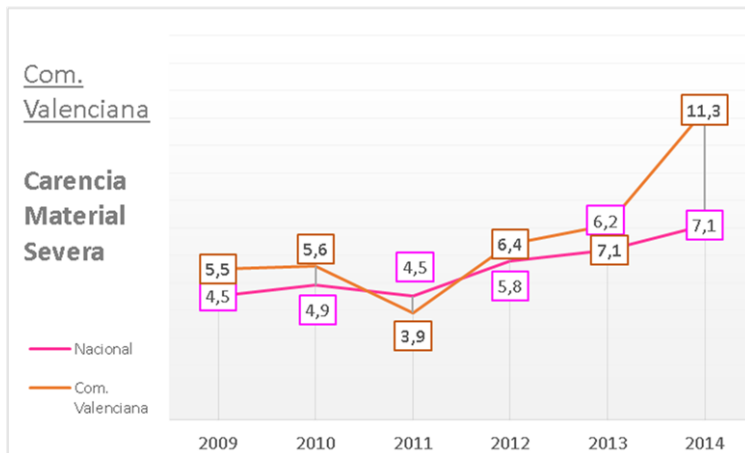


## REGION OF VALENCIA



34.7% of the population of the region of Valencia was at risk of poverty and social exclusion in 2014. That figure is 5.5 percentage points higher than the national one. In 2014 there were 1.736.000 people at risk of poverty or exclusion, 115,000 people more than in 2013. For 2016, data are better but we still are over the national rate: the region of Valencia had a poverty rate of 30.5% in 2016, while the average for Spain was 27.9%.

## REGION OF VALENCIA



In the year 2014, 11.3% of the population of the region of Valencia lived in a situation of severe material deprivation, i.e., it cannot reach at least four of nine concepts of basic consumption items defined at European level.

With respect to the items of consumption, it is easy to observe that 3.2% of the population can afford one meal with meat, chicken or fish every 2 days; 18,8% cannot keep the house heated in winter and 47.9% of the population has no capacity to deal with unexpected expenses. These data corresponds to 2014, but we still have families suffering from this situation. It is more visible in little towns; for this reason I think local social services are a basic tool to guarantee social rights and fight against poverty and social exclusion.

### **LEGAL INTERVENTIONS AND REFORMS PUT SOCIAL RIGHTS AT RISK**

Due the economic crisis, the Spanish government proceeded with many legal reforms that are, at present, affecting social rights.

A reform of the Spanish Constitution in 2011 introduced the obligation for the Government to maintain a stable budget, prohibiting budgetary deficits beyond a certain percentage, as defined by the European Union.

As a result, public expenditure is limited. Investments on education, health, social benefits, etc. are restricted.

### **SOME OTHER LEGAL REFORMS IN BRIEF**

Working conditions: in order to support entrepreneurs, employment contracts can have a period of probation of 1 year. The ECSR concluded that this kind of contract was not in accordance with the ESC.

Access to health care: third-country nationals without a stay or work permit have no access to the health system. This measure has been also criticised by the ECSR as it is not in accordance to the ESC mandate.

Local social services: Municipal social services cannot process social benefits, like payment of basic needs, food, water, electricity, rent, etc. Taking into account the serious economic situation of many people who cannot afford a standard level of living, it is impossible for them to obtain such benefits. The risk of social exclusion rises without any doubt.

Over 70,000 social workers are at risk of losing their jobs, and 2.6 million beneficiaries are deprived from social benefits.

The arguments for such reforms are always the same: these rights are expensive and should be "reduced" during an economic crisis. However, this is against the opinion of the European Committee of Social Rights. Fortunately the Spanish Constitutional Court decided to abolish some of the reforms, arguing that the reforms were contrary to municipal autonomy.

### **LEGAL REFORMS FROM THE REGION OF VALENCIA TO COUNTERACT THE CONSEQUENCES OF THE CRISIS SINCE 2015**

- **Basic / Minimum Income Law (Draft Law):**

The aim of this minimum income law is to turn it into an instrument that really allows people to "redo their project of life". It aims to achieve greater efficiency in the fight against poverty. With the elaboration of this law, the Regional government seeks to remedy income levels that do not guarantee the rights of many people.

Against the ancient model, the new law promotes an income that will reach more people, because of its flexible requirements of access. Only one year of registration of residency in a town, compared with the current 2 years, and lowering the age limit from 25 to 18.



*From left to right: **Daria Terrádez Salom**, Director General of the Relations with the EU and with the State, Generalitat of Valencia, Spain; **Karin Lukas**, Vice-President of the European Committee of Social Rights; **John Richards**, Services Development Manager, Isle of Man Government*

Despite of the aim of the new regional government to improve the social benefits and to guarantee the dignity of people, the State government is repeatedly trying to appeal every law or draft law before the Constitutional Court, sometimes with correct arguments, but sometimes with more politic than juridical arguments.

- **A new social model for the region**

This new legal project aims to create a real code of social rights. In the region of Valencia we have our own “Charter of Social Rights” but its effectiveness depends on budgetary provisions. The prior law, the Charter of Social Rights of the Region of Valencia, disposed in its Art. 51, that the budgets of the Generalitat, in the framework of annual availability, will contain sufficient resources for the effective implementation of the rights contained in this Charter. Due to this, the law has never entered into force in practice.

The budget assigned to social services, to the health care system, or for persons with functional disabilities could not ever have guaranteed the social rights contained in the Charter. Many people died

before receiving their benefits due to delays in processing those social benefits and also because the budgets, national and regional, could not afford to guarantee a fast and correct processing.

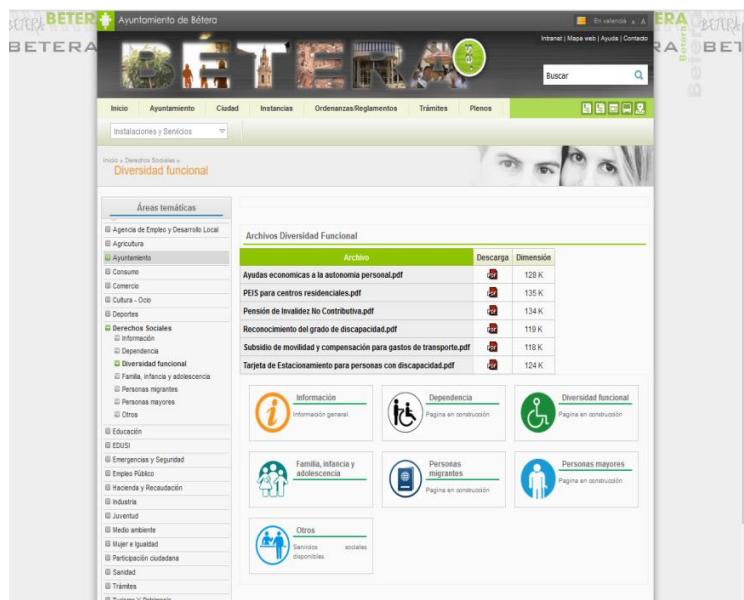
## SOCIAL SERVICES AT THE LOCAL LEVEL - THE CITY OF BÉTERA

The city of Bétera has a population of 22.696 persons. 1.411 persons are unemployed of which 58.19% are women and 6.24% are young people under 25.

- One of the first decisions was to change the name of the Councillorship of Social Rights, as we think that we are guaranteeing social rights and not any kind of privilege.
- The department has five social workers and one of them only deals with minors under risk of social exclusion.
- Their first objective is to detect situations of deprivation and proceed with the social grants guaranteed by a local regulation.
- Social benefits try to release from situations of exclusion: there are benefits to pay the rent, food or supplies like water or electricity.
- The problem we faced was the lack of information. The lack of information included not only the types of benefits available, but also the procedure to grant them. The social workers were continuously requested to explain the procedure, because people did not know nor which kind of aids were available, neither which procedure to follow.

## WHAT HAVE BEEN THE SOLUTIONS TO FACE THE LACK OF INFORMATION?

First of all, we created a regulation for granting social aids at local level. Before this regulation, the procedure was quite subjective and there was not sufficient information. For the first time a reference to the European Social Charter is made in the Preamble of the regulation. By doing this, we wanted to make a strong commitment to social rights and, also, to recognise the relevance of the treaty as being the unique social Constitution of Europe.



A web page which gives information about the procedure regarding social aids by the city council was developed. In order to accelerate the procedure, users can download the forms and the documents they need to present before the first interview with the social worker. For persons without access to computers there is a free internet access in the local library and also in the social services building. For persons with computer illiteracy, assistance is provided by trained personnel.

A guide of social rights has been prepared, on-line and in a paper edition, in order to inform everyone about the benefits available and the procedures for granting it. Having information about the rights we have, is crucial for a strong democracy.



#### The guide about social rights includes:

1. The types of benefits available.
2. The documents needed to be presented with the request form.
3. The procedure for granting the aids. This point is most important as people asking for this kind of grants often think that they will receive it immediately after the official application. The guide explains the procedure and convinces applicants that if it seems a little bit "bureaucratic", this guarantees objectivity.
4. The causes of rejection.
5. The obligations of the beneficiaries.

#### CONCLUSIONS

- People under risk of social exclusion or suffering from poverty need not just social aid, but attention from someone taking them into account.
- Social services at the local level are the very first place where people go to ask for help.
- Social workers not only grant social benefits, they also listen to people deprived of every basic need. The psychological part of their work is very important. It is very common to face situations of people feeling ashamed to contact social services; in Spain the crisis has hit a large number of people coming from the "middle class", people that have never come to this kind of department and or applied for social grants.
- The relationship between the social worker and the potential beneficiary is founded on mutual trust.
- It is crucial to guarantee not only the presence of social workers, but also to maintain the social services at a local level.
- The guarantee of social rights, their implementation cannot depend on budget and/or economic conditions. It is just a question of dignity.
- Social workers not only implement social rights, they guarantee dignity to people.

## **Session 2: Bringing cases before national courts and lodging complaints before the European Committee of Social Rights and applications before the European Court of Human Rights**

### **Key decisions and conclusions by the European Committee of Social Rights which are of interest to internally displaced persons**

**Jarna Petman**

**Former member of the European Committee of Social Rights**

The aim pursued with the introduction of the collective complaints procedure was to increase the effectiveness, rapidity and impact of the implementation of the European Social Charter.

The Collective Complaints procedure established under the Charter is a parallel protection system which complements the judicial protection provided under the European Convention on Human Rights. Unlike the situation with applications lodged before the European Court of Human Rights, the European Committee of Social Rights cannot consider individual applications. Only certain non-governmental organisations are entitled to lodge collective complaints concerning the Charter; individuals are not entitled to do so. In the light of this, complaints may be lodged **without domestic remedies having been exhausted and without the claimant organisation necessarily being a victim of the relevant violation.**

The collective complaints procedure 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. Nevertheless, there are sufficient examples of cases brought before the European Committee of Social Rights relating to Articles 16 and/or 31 of the 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-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 violated<sup>13</sup> in light of the non-discrimination clause of the Preamble on the ground of:

**Violation of Article 16 in the light of the non-discrimination clause of the Preamble**

*on the ground of a failure to implement the housing programme within a reasonable timeframe (unanimously)*

The Committee notes that the slow pace of the housing programme, and the lack of clarity as to when housing would be provided under it, would appear not to reflect the needs of displaced families who wish to return to Croatia. An extensive period of time has elapsed since the housing programme was launched in 2003. In addition, displaced families who expressed their wish to return and applied for housing programme have been obliged to remain without security of tenure for an unreasonably long period of time due to the slow processing of applications. These factors taken together have ensured that for many displaced families who wish to return to Croatia, the absence of effective and timely offer of housing has for a long period of time constituted a serious obstacle to return. As a consequence, the Committee considers that the housing programme has not been implemented within a reasonable timeframe.

*on the ground of a failure to take into account the heightened vulnerabilities of many displaced families, and of ethnic Serb families in particular (unanimously)*

The Committee considers that the delays and uncertainty associated with implementation of the housing programme since 2003 have failed to accommodate the heightened vulnerability of displaced families, who constitute a distinctive group who suffer particular disadvantage. This has also constituted a failure to accommodate the situation of ethnic Serb families in particular, who comprise the bulk of the families affected by non-satisfaction of their housing needs, and who constitute a particularly vulnerable group on account of their ethnicity.

As a consequence, the Committee holds that the failure to take into account the heightened vulnerabilities of many displaced families, and of ethnic Serb families in particular, constitutes a violation of Article 16 read in the light of the non-discrimination clause of the Preamble.

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. In addition, this Collective

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<sup>13</sup> 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.

Complaint was associated with an individual case lodged at the ECHR – [Berger-Krall and others v. Slovenia](#).

The European Committee of Social Rights concluded that the situation in Slovenia constituted a violation of Articles 31 and 16 in conjunction with Article E of the Revised Charter:

**(i) Violation of Article 31§1 of the Revised Charter (unanimously)**

The Committee has consistently held that the right to adequate housing means *inter alia* a right that is protected by law. It considers that the status conferred to tenants of non-profit flats in Slovenia prior to the 1991 Housing Act clearly fitted this definition. The rules introduced by the 1991 Act allowing former holders of the Housing Right – which the Act abolished - to purchase at an advantageous price the flats in respect of which they had previously held this right, also ensured sufficient legal security of tenure for the persons concerned.

The Committee considers, however, that as regards the situation of former holders of the Housing Right over flats which were restituted to their private owners, that the combination of insufficient measures for the access to or purchase of a substitute flat, the changes in the rules on tenancy and the increase in rents, are likely to place a significant number of households in a very precarious position and to prevent them from effectively exercising their right to housing, at the end of the Slovenian Government's reforms.

**(ii) Violation of Article 31§3 of the Revised Charter (unanimously)**

The Committee considers that, in order to establish that measures are being taken to make the price of housing accessible to those without adequate resources, States Parties to the Charter must show not the average affordability ratio required of all those applying for housing, but rather that the affordability ratio of the poorest applicants for housing is compatible with their level of income, something that is clearly not the case with former holders of the Housing Right, in particular elderly persons, who have been deprived not only of this right, but also of the opportunity to purchase the flat they live in, or another one, on advantageous terms, and of the opportunity to remain in the flat, or move to and occupy another flat, in return for a reasonable rent

**(iii) Violation of Article E of the Revised Charter in conjunction with Article 31§3 (9 votes to 5)**

The Committee considers that the treatment accorded to former holders of the Housing Right in respect of flats acquired by the state through nationalisation or expropriation, and restored to their owners, is manifestly discriminatory in relation to the treatment accorded to other tenants of flats that were transferred to public ownership by other means, there being no evidence of any difference in the situation of the two categories of tenants, and the original distinction between the forms of public ownership in question, of which, moreover, they were not necessarily aware, being in no way imputable to them, and having no bearing on the nature of their own relationship with the public owner or administrator.

**(iv) Violation of Article 16 of the Revised Charter (13 votes to 1)**

The Committee considers that in view of the scope it has constantly attributed to Article 16 as regards housing of the family, the findings of a violation of Article 31, taken alone or in conjunction with Article E, amount to a finding that there has also been a breach of Article 16.



**(v) Violation of Article E of the Revised Charter in conjunction with Article 16 (11 votes to 3)**

The Committee considers that in view of the scope it has constantly attributed to Article 16 as regards housing of the family, the findings of a violation of Article 31, taken alone or in conjunction with Article E, amount to a finding that there has also been a breach of Article 16, and of Article E in conjunction with Article 16.

Following the decision of the European Committee of Social rights, the Committee of Ministers of the Council of Europe 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.

Another example, which does not concern internally displaced persons, but which could be relevant for our discussion is [Complaint No. 100/2013 European Roma Rights Centre \(ERRC\) v. Ireland](#). The complaint concerns Article 16 (right of the family to social, legal and economic protection), Article 17 (right of children and young persons to social, legal and economic protection) and Article 30 (right to protection against poverty and social exclusion) of the Revised European Social Charter, read alone or in conjunction with the non-discrimination clause set forth in Article E. The complaint alleges that the Government of Ireland has not ensured the satisfactory application of the above-mentioned articles, particularly with respect to housing conditions and evictions of Travellers and, as regards child Travellers, also with respect to social, legal and economic protection.

The European Committee of Social Rights adopted its decision on the merits on 1 December 2015.

**In its decision on the merits, the Committee concluded:**

- unanimously that there is a violation of Article 16 of the Charter on the grounds of insufficient provision of accommodation for Travellers;
- by 6 votes to 5 that there is no violation of Article E in conjunction with Article 16 of the Charter regarding the insufficient provision of accommodation;
- unanimously that there is no violation of Article 16 of the Charter regarding the legislative framework on Traveller accommodation;
- unanimously that there is a violation of Article 16 of the Charter on the grounds many Traveller sites are in an inadequate condition;
- unanimously that there is a violation of Article 16 of the Charter on the grounds that the Criminal Justice (Public Order) Act 1994 (as amended) provides for inadequate safeguards for Travellers threatened with eviction;
- unanimously that there is no violation of Article E read in conjunction with Article 16 of the Charter regarding the Criminal Justice (Public Order) Act 1994 (as amended);
- unanimously that there is a violation of Article 16 of the Charter on the grounds that the Housing (Miscellaneous Provisions) Act 1992 (as amended) provides for inadequate safeguards for Travellers threatened with eviction;
- unanimously that there is no violation of Article 16 of the Charter or of Article E in conjunction with Article 16 regarding the Roads Act 1993;
- unanimously that there is no violation of Article 16 of the Charter or of Article E in conjunction with Article 16 regarding the Planning and Development Act 2000;

- unanimously that there is no violation of Article 16 of the Charter or of Article E in conjunction with Article 16 regarding the Local Government (Sanitary Services) Act 1948;
- unanimously that there is no violation of Article 16 of the Charter or of Article E in conjunction with Article 16 regarding the Public Health Act 1978 (as amended);
- unanimously that there is a violation of Article 16 of the Charter on the grounds that evictions are carried out in practice without the necessary safeguards;
- unanimously that there is no violation of Article 17 or of Article E in conjunction with Article 17 of the Charter;
- by 10 votes to 1 that there is no violation of Article 30 or of Article E in conjunction with Article 30 of the Charter.

In addition it invited the Committee of Ministers to recommend that Ireland pay the complainant organisation the sum of €2,000 as compensation for expenses incurred. The Committee of Ministers adopted Resolution CM/ResChS(2016)4 on 5 October 2016.

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).

## **Selected case-law of the European Court of Human Rights which is of interest to internally displaced persons**

### **Kresimir Kamber**

#### **Lawyer at the European Court of Human Rights, Strasbourg, France**

Mr. Kamber began his presentation by outlining the relationship between the Social Charter and the Convention on Human Rights.

He stressed that human rights treaties were not merely reciprocal engagements but rather a *sui generis* network of mutual undertakings of objective obligations. The Charter complemented the Convention as a treaty of civil and political rights. He said that human rights were indivisible, and that it was impossible to draw a clear line of distinction (e. g. right of association, respect for private and family life). He noted a few instances of cross-fertilisation between the two instruments (*Demir and Baykara v. Turkey* [GC]; *Bélané Nagy v. Hungary* [GC]; *Chiragov and Others v. Armenia* [GC]; *Sargsyan v. Azerbaijan* [GC]).

Mr. Kamber also mentioned the interaction with EU law, as the European Social Charter was mentioned in the preamble of the EU’s Charter of Fundamental Rights. Lastly, the Charter functioned as a complement to national constitutions and national legislation in the field of social rights.

The supervisory mechanisms of the two treaties, the Committee of Social Rights and the European Court of Human Rights, were the mechanisms of elucidation, safeguard and development of human rights. While the implementation of international human rights standards had to take place within the domestic legal order, the supervisory mechanisms provided interaction, interpretation, internalisation and obedience. This all contributed to respect for the rights of citizens in prosperous society governed by the rule of law, and for the legitimisation of government policies, acts and governing processes.



*From left to right: Jarna Petman, Former member of the European Committee of Social Rights; Kresimir Kamber, Lawyer at the European Court of Human Rights*

Mr. Kamber continued by describing the system of individual application before the European Court of Human Rights. He outlined how only victims –individuals, groups of persons, and legal entities- of human rights violation could complain, and described the admissibility criteria of the Convention.

He then went on to explore selected case-law of the ECHR on the social rights of IDPs. There had been several situations where conflicts had resulted in displacement, and where cases had been brought before the European Court of Human Rights.

#### **Case-law related to the Northern Cyprus (“TRNC”)**

The 1974 Turkish military intervention in the intercommunal conflict (Greek and Turkish Cypriots) in Cyprus and the establishment of the “Turkish Republic of Northern Cyprus” (“TRNC”) led to an unrecognised *de facto* regime. By the operation of the “TRNC” Constitution, the displaced Greek Cypriots lost their property titles and were not granted access to their properties.

In the judgment *Loizidou v. Turkey* [GC], the Court declared the purported deprivation of property title without any legal effect, and found a violation of the right to peaceful enjoyment of possessions (Article 1 of Protocol No. 1). In the case *Cyprus v. Turkey* [GC], the Court found a continuing violation of the right to respect for home (Article 8 of the Convention) of Greek Cypriots due to their impossibility to reoccupy the homes which they left behind and their physical impossibility to visit their homes, as well as a continuing violation of the right to peaceful enjoyment of possessions (Article 1 of Protocol No. 1).

#### **Case-law related to the Nagorno-Karabakh situation**

The disputed area between Azerbaijan and Armenia was mostly controlled by the “Nagorno-Karabakh Republic” (“NKR”), an unrecognised entity with military, political, financial and other support provided by Armenia

The case of *Chiragov and Others v. Armenia* [GC] was brought by displaced Azerbaijani nationals who could not obtain access to their property and homes. The Court held that there had been no valid expropriation, and that the applicants continue to be the legal owners of their homes. The Court found a breach of the right to peaceful enjoyment of possessions (Article 1 of Protocol No. 1) and the right to respect for their private and family life and their home (Article 8 of the Convention).

The case of *Sargsyan v. Azerbaijan* [GC] was brought by a displaced Armenian national who could not obtain access to his property and home in a disputed part of the Nagorno-Karabakh area under the control of Azerbaijan. Here too, the Court found a violation of Article 1 of Protocol No. 1 and of Article 8 of the Convention.

#### **Case-law related to the situation of refugees and IDPs in the former Yugoslavia**

In this situation there had been several different issues at stake, such as the enforcement of decisions granting pension rights to IDPs and discrimination in that respect (*Karanović v. Bosnia and Herzegovina*; *Šekerović and Pašalić v. Bosnia and Herzegovina*); the discontinuation of payment of pensions (*Grudić v. Serbia*; *Čekić and Others v. Croatia*); the termination of specially protected tenancies (*Blečić v. Croatia* [GC]); and tenancy rights extinguished by the operation of domestic law before the ratification of the Convention (*Gaćeša v. Croatia* (dec.); *Trifunović v. Croatia*), and access to court concerning a labour dispute (*Lončar v. Bosnia and Herzegovina*) and claim for damages against the State (*Novaković v. Croatia*; *Kutić v. Croatia*; *Milašinović v. Croatia*).

## **Conclusions and Wrap-Up**

**Predrag Jović**

**Deputy Minister, Minister of Human Rights and Refugees of Bosnia and Herzegovina**

Conclusion 1:

Bosnia and Herzegovina will continue to implement activities to ensure the lasting solutions for all refugees and displaced persons agreed under the Sarajevo Declaration.

Conclusion 2:

Bosnia and Herzegovina will provide refugees from Bosnia and Herzegovina, displaced persons in Bosnia and Herzegovina and returnees with housing and equal access to social and economic rights in Bosnia and Herzegovina.

Conclusion 3:

Bosnia and Herzegovina will ensure the social rights assumed (ratified) under the provisions of the Revised European Social Charter, including the rights of refugees, displaced persons and returnees, with the aim of improving living standards and social well-being while respecting and strengthening the principle of non-discrimination.

Conclusion 4:

Bosnia and Herzegovina will continue to ensure access to the rights to health care, social care, education and employment for all refugees in Bosnia and Herzegovina and foreign nationals under subsidiary protection in Bosnia and Herzegovina.

**Gert Westerveen**

**UNHCR Representative to the European Institutions in Strasbourg**

The conference was very rich in content.

After a thorough introduction by the former UN Special Rapporteur on the Human Rights of Internally Displaced Persons we heard from the authorities on the Sarajevo process and the progress made to finding solutions to displacement.

So far, with the help of the Council of Europe Development Bank (CEB), solutions to housing issues have been the focus of this process.

Several speakers mentioned that in addition to housing, livelihoods issues needed to be addressed as well.

Hence the European Social Charter also provides a useful framework for further action on livelihood issues.

I would like to note that in the Belgrade Declaration authorities have committed themselves to take all measures to end displacement and to enable everyone to live as equal citizens.

UNHCR in the region will continue to work with authorities in the context of the Sarajevo process and promote the rights of the European Social Charter.

We also heard from some authorities the programmes set up to enable local integration of refugees and displaced persons. It would seem to me that here the European Social Charter can provide useful goals and a framework for action.



*Gert Westerveen, UNHCR Representative to the European Institutions in Strasbourg*

The Ombudspersons are actors in securing rights/protection. We were happy to hear that the European Social Charter provides inspiration and aspiration for their work.

We also noted the interest of the civil society/ legal aid providers to make use of the European Social Charter, notably through the collective complaints mechanism or by providing “shadow reports”.

The European Social Charter is, of course, not limited to situations where solutions to displacement are implemented. It is in our view also relevant and useful where solutions are not yet in sight. As an example, I would like to mention an OSCE/UNHCR tool developed in the context of Ukraine. The “Protection Checklist” was developed as a practical guide for OSCE/UNHCR staff when confronted with displacement. The checklist often refers to the “rights of displaced persons”, without further specifying. It would perhaps be useful to review this checklist by specifying the rights referred to. Often these will be rights found in the European Social Charter.

Listening to this morning’s second session, some ideas came to mind for further action by my office, the UNHCR Representation to the European Institutions in Strasbourg. For years we have worked on the links between the European Convention on Human Rights and asylum. We developed a manual for

UNHCR protection officers, we conducted jointly with the Council of Europe training courses for judges and lawyers. With the Council of Europe's HELP programme we developed an online course comparing the ECtHR and the EU acquis in the field of asylum. We could seriously consider adopting similar approaches with regard to the European Social Charter and work jointly with the European Committee of Social Rights and the CoE's Department of the European Social Charter.

**Régis Brillat**

**Head of the Department of the European Social Charter / Executive Secretary of the European Committee of Social Rights, Council of Europe**

I would like to start by thanking all those who contributed to the organisation of such a rich Conference.

Firstly, my thanks go to the authorities of Bosnia-Herzegovina and, in particular, to you Vice-Minister, and to all your collaborators. We will remember your kind hospitality and the privilege you offered us to be in this very nice room.

I am also grateful to the UNHCR and to our special guest, Anne-Christine Eriksson, the Regional Representative for South Eastern Europe: Please extend our thanks to all your colleagues who participated in the Conference and who, on a daily basis, in each of their places of duty, take care of IDPS and of refugees, and manage, despite the difficulties, to reach concrete results.

Thank you also to the Council of Europe Office in Sarajevo for their strong and continuous support in the organisation.

The Conference was aimed at exchanging views on the situation of displaced persons, with a particular focus on the region, with a view to developing concrete measures, policies and strategies in order to improve their daily lives.

The Serbian Ministry of Foreign Affairs informed the Secretary General of the Council of Europe, in the course of yesterday, of their decision not to participate in the Conference.

During the Conference, we heard many positive developments from the countries of the Region, through the presentations from officials, as well as through the contribution of Ombudspersons whose task is instrumental in assisting persons in need, but also in reminding the authorities of their duties and of their commitments both under national legislation and under international law.

Council of Europe's member States undertook to respect democracy, rule of law and human rights. The two main human rights treaties, the European Convention on human rights and the European Social Charter, constitute a comprehensive set of rights which should be implemented in a concrete and effective manner.

I am grateful to all the participants who insisted on the importance of the Social Charter and of its relevance and its impact on the situation of our member States.

We listened carefully to the detailed explanations on the Charter, its monitoring mechanisms and the work of the European Committee of Social rights, but also to the potentialities of the Charter through the expected ratification of the revised version, and through the acceptance of the complaints procedure by all our member States. This procedure allows for an increased participation of social partners and

NGOs and identifies shortcomings in the implementation of the Charter with a view to allowing national actors to remedy these situations.

We were also provided with examples of the practical implementation of the Charter by regional and local authorities, of the important and essential task of social workers and of the positive results achieved. This should inspire us in our daily work.

The Charter provides for rights of individuals but not of isolated persons. These rights concern individuals as members of the community, of the society.

No one should be left aside. What is at stake in the support to IDPS and to refugees? The respect for the inherent dignity of all human beings, the free choice on their present and on their future, the participation of those concerned in decisions affecting their lives.

Let me repeat that the Council of Europe is willing to increase awareness of the European Social Charter and that we are available to work with all the stakeholders of the region in order to increase the know-how on the legal and practical implementation of this treaty. Do not hesitate to contact us in this respect and express your needs, wishes and projects.

The Conference is now brought to an end. But tomorrow each of us will resume his/her daily work, enriched by our discussion and exchange of information and of views. I wish you all strength in order to face the challenges ahead and wish that the Conference brought us to a common understanding on the strategies to be followed in order to overcome the difficulties streaming from the past, with a view to improving the daily life of everyone.

I thank the interpreters who helped us to understand each other during these two days.



*Conference room, Parliament of Bosnia and Herzegovina, Sarajevo*



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<sup>14</sup> All reference to Kosovo\*, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo\*.

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## Appendix 2: Concept Note of the Conference



23 June 2017

### Conference

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

27 – 28 June 2017

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\*.



## 1. Introduction

At the height of the conflict in the former Yugoslavia, some 3,8 million persons<sup>15</sup> 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)<sup>16</sup>, 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 Countries<sup>17</sup>.

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.

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<sup>15</sup> Including those that were displaced during and after the 1999 armed conflict in Kosovo\* (S/RES/1244(1999));

<sup>16</sup> Regional Ministerial Conference on Refugee Returns, Sarajevo, January 2005, see <http://www.refworld.org/docid/451a5acc4.html>.

<sup>17</sup> For more information on the role of the CEB see <http://www.coebank.org/en/project-financing/donors-and-fiduciary-accounts/regional-housing-programme/>.

## 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
<b>Bosnia and Herzegovina</b>	5,236	98,324	47,000 (minority returnees)
<b>Croatia</b>			10,000 (minority returnees in need of solutions)
<b>Montenegro</b>	947		1,530 (refugees in process of local integration)
<b>Serbia and Kosovo*</b>	29,427	219,697	
<b>“The former Yugoslav Republic of Macedonia”</b>	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 2011<sup>18</sup>. 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 Sarajevo<sup>19</sup>. 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

<sup>18</sup> 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>.

<sup>19</sup> 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/>.

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 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 Agency<sup>20</sup>. 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 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.”<sup>21</sup>

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

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<sup>20</sup> Memorandum following the Commissioner’s mission to Kosovo\* from 5 to 9 February 2017, para. 40.

<sup>21</sup><http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20514&LangID=E#sthash.A3gpYeSD.dpuf>

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.

#### **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 States<sup>22</sup> 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)<sup>23</sup>, and has been further interpreted by the Committee in its statements of interpretation on the rights of refugees and of stateless persons<sup>24</sup>.

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

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<sup>22</sup> 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>.

<sup>23</sup> Appendix to the revised European Social Charter, at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007cde4>.

<sup>24</sup> 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=0900001680489511>;

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=0900001680489115>, p 35- 36.

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
<b>Bosnia and Herzegovina</b>	x	X	x	x	x	x	x	–	–
<b>Croatia</b>	x	–	x	x	x	n/a	n/a	n/a	n/a
<b>Montenegro</b>	x	X	x	x	x	x	x	–	–
<b>Serbia</b>	x	X	x	x	x	x	x	x	–
<b>“The former Yugoslav Republic of Macedonia”</b>	x	X	X	–	x	x	–	–	–

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

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”<sup>25</sup>, the Committee “considers that certain social rights directly related to the right to life and human 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 Conclusions<sup>26</sup>.

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 Charter<sup>27</sup>.

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.

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<sup>25</sup> 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:

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

<sup>26</sup> See for e.g. European Committee of Social Rights, Activity Report 2015, at:

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

<sup>27</sup> 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>.



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-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 violated<sup>28</sup>. 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

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<sup>28</sup> 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.

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.

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 Procedure<sup>29</sup>. 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)<sup>30</sup>.

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<sup>29</sup> European Committee of Social Rights, Rules, 06 July 2016, at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069fae6>.

<sup>30</sup> 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>.