

November 2014

PROGRESS REPORT

Implementation of the Durable Solutions Process (Sarajevo Process) for refugees from Croatia displaced by the 91 – 95 conflict, including cessation of refugee status

A) Introduction

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*.¹

The advisory contained UNHCR's recommendation for the cessation of refugee status of refugees from Croatia displaced by the 1991 – 1995 conflict pursuant to the "ceased circumstances" cessation clauses contained in paragraph 6(A)(e) and (f) of the UNHCR Statute and Article 1C(5) and (6) of the 1951 Convention. States were recommended to ensure that all aspects of cessation are implemented in 2014, with cessation to take effect by the end of 2017 at the latest. In tandem, UNHCR provided recommendations on how to resolve remaining displacement challenges and further advance the Regional Durable Solutions Process.

This report is the first progress report² issued in line with UNHCR's commitment to monitor its cessation recommendation and States' commitments under the Regional Durable Solutions process, and should be read together with the initial advisory.

B) Overview of the refugee situation (update)³

At the time of issuing its advisory, there were 49,055 refugees from Croatia registered in the region, in Serbia (41,724), Bosnia and Herzegovina (BiH) (6,726), Montenegro (567) and Kosovo (S/RES/1244 (1999)) (38⁴). Much smaller numbers (around 800 individuals) are registered as still being hosted in other countries from which the majority of (former) refugees from Croatia have either returned to their country of origin or acquired the nationality of their country of asylum.

Since the issuance of UNHCR's advisory, the number of registered refugees from Croatia in the region have decreased: to 32,264 in Serbia, 6,706⁵ in BiH, 251 in Montenegro and 37 in Kosovo (S/RES/1244 (1999)).⁶ As such, there are now approximately 39,258 refugees from Croatia registered in the region.

¹ Available at: <http://www.refworld.org/docid/533d813f4.html>

² This report was due to be published by the end of October 2014 but has been delayed due to the time it took to receive feedback from all relevant States consulted.

³ This summary provides an update on the overview contained in UNHCR's advisory and is not comprehensive.

⁴ This is a correction of the figure of 39 contained in the advisory.

⁵ Estimate.

⁶ Figures for Serbia, BiH and Kosovo (S/RES/1244 (1999)) represent data as at 30 September 2014. The figure for Montenegro represents data as at 31 October 2014.

The decreases in Serbia,⁷ BiH and Montenegro are primarily a consequence of processes linked to the ongoing local integration of refugees from Croatia in their host countries (see below under section (C) for a more detailed explanation).

The information available to UNHCR indicates that refugee returns to Croatia have remained marginal. Between 1 January 2014 and 30 October 2014 UNHCR in Croatia registered 139 minority returnees. This figure includes 32 refugees from Croatia assisted with voluntary repatriation from BiH, and 16 refugee households from Serbia returning through the Government-sponsored returns programme.

Based on the information available to UNHCR there has been no significant change in the number of registered refugees from Croatia outside the region since the issuance of its advisory in April.

C) Comment on progress on UNHCR's recommendation regarding application of the "Ceased Circumstances" cessation clauses to Refugees from Croatia

UNHCR recognizes that some countries have ceased the refugee status of refugees from Croatia on an individual basis through, for example, the acquisition of a new nationality. However, at the time of writing this report, the principal host States of Serbia, BiH and Montenegro have not implemented nor informed UNHCR of their intention to implement the cessation of refugee status for refugees from Croatia pursuant to paragraph 6(A)(e) and (f) of the UNHCR Statute and Article 1C(5) and (6) of the 1951 Convention, in line with the recommendation contained in UNHCR's advisory.

It is important to note that in each of these host States – and in particular in Serbia and Montenegro – cessation has been applied on an individual basis since before UNHCR issued its advisory in April. This process, undertaken in line with relevant local legislation and generally pursuant to Article 1C(1) or (3) of the 1951 Convention, continues today. According to Article 1C(1) a person's refugee status may cease if s/he has re-availed himself / herself of the protection of his / her country of nationality, while according to Article 1C(3) a person's refugee status may cease if s/he has acquired a new nationality and enjoys the protection of the country of his / her new nationality.

In Serbia, the cessation of refugee status of refugees who have acquired Serbian nationality, in line with Article 1C(3), is an ongoing process involving the 'de-registration' of refugees once he or she has acquired Serbian nationality, including an identity (ID) card. This process accounts for the significant decrease in numbers of registered refugees from Croatia noted above. However it remains a well-known fact that many persons who have acquired a Serbian citizenship certificate, but have yet to acquire a Serbian citizen's Identity Card, continue to hold a refugee Identity Card at the same time. The refugee ID card is only withdrawn, and consequently de-registration as a refugee effected, once the individual concerned acquires or seeks to acquire a Serbian citizen's ID card. While this phenomenon also exists in BiH, there is a need to ensure these persons are included in the cessation process.

In Montenegro, a small number of refugees⁸ from Croatia have acquired Montenegrin nationality, primarily through marriage, and consequently their status as refugees is ceased pursuant to Article

⁷ In Kosovo (S/RES/1244 (1999)) one refugee from Croatia passed away during the reporting period bringing the total down to 37.

1C(3). There are also those who, in order to be able to apply for the status of foreigner with temporary or permanent residence in Montenegro (as an obligatory part of the process of their local integration including eventual acquisition of Montenegrin nationality), have re-availed themselves of the protection of the country of their nationality through acquiring Croatian nationality documentation, including passports. According to national legislation, such individuals' status as refugees⁹ is ceased once s/he has acquired the status of foreigner with temporary or permanent residence in line with relevant local legislation and generally pursuant to Article 1C(1).

For the host States outside of the region from which feedback was obtained¹⁰ none indicated an intention to implement cessation pursuant to Article 1C(5) and (6) for refugees from Croatia.¹¹ It remains UNHCR's position that long-staying recognized refugees from Croatia and/or those on a pathway to citizenship retain their refugee status pending their transition to a permanent residency status or citizenship.

D) Recommendations relating to the implementation of the Regional Durable Solutions Process

1. Overview of status of the Regional Durable Solutions Process (update)¹²

In its advisory, UNHCR outlined the status of each of the main components of the Regional Durable Solutions Process as it pertains to refugees from Croatia. In UNHCR's view, there has been limited tangible progress under the Regional Durable Solutions Process since it issued its advisory, with the exception of the recent positive developments under the Regional Housing Process (RHP), with the approval and start of implementation of an initial group of sub-projects.

While UNHCR welcomes the commitment and the efforts that the governments in the region are investing in setting up the necessary structures for the efficient implementation of the RHP, the process has taken considerably longer than expected to get underway¹³, with only a small number of sub-projects so far offering tangible solutions for refugees from Croatia.

Similarly, while UNHCR acknowledges specific efforts as outlined below, impediments to voluntary repatriation and sustainable reintegration, particularly for returnees from minority groups, remain (see s2 below). In this regard, the ongoing backlog in implementation of Croatia's Housing Care Programme (HCP) remains of particular concern. For those opting to stay in their country of asylum,

⁸ Under applicable local legislation refugees from Croatia hold the legal status of 'displaced person' in Montenegro.

⁹ *Ibid.*

¹⁰ UNHCR obtained feedback in time for the publication of this report from the following host States outside of the region: Austria, Belgium, Canada, Czech Republic, France, Germany, Hungary, Ireland, Italy, the Netherlands, Switzerland and the United Kingdom.

¹¹ The exception is Switzerland where cessation for refugees from Croatia pursuant to Article 1C(5) and (6) was implemented prior to the issuance of UNHCR's advisory and between the period of June 2010 and August 2013. The remaining 25 registered refugees from Croatia were found to have compelling reasons arising out of previous persecution for their status as refugees not to be ceased.

¹² This summary provides an update on the overview contained in UNHCR's advisory and is not comprehensive.

¹³ For an analysis of progress and associated constraints related to the RHP, see pp31-32 of the *RHP Fund Annual Report 2013*, available at

http://www.regionalhousingprogramme.org/uploads/news/FINAL_RHP_Fund_2013_reprot_lowres_1396259535.pdf

pursuing opportunities for local integration or alternative legal status in countries of asylum also remains a challenge (see s3 below).

UNHCR recognizes that this is an ongoing process. It is UNHCR's considered view that at this time our description of the status of each of the main components of the Regional Durable Solutions Process and associated recommendations – as contained in its April advisory – remain relevant. We thus only provide some general observations below which should be read in conjunction with Annex I of the advisory.

2. Comment on progress on recommendations related to removing barriers to voluntary repatriation and sustainable reintegration in the country of origin

- Difficulties to regularize stay for refugees from Croatia without Croatian citizenship

UNHCR notes that no changes occurred with respect to the challenges faced by refugees from Croatia who were former habitual residents of Croatia with regard to the regularization of their stay in Croatia upon return.

- Need for adequate housing

In the context of the Regional Durable Solutions Process, housing has been identified as the most urgent need. UNHCR notes that there has been limited progress with respect to meeting the need for adequate housing for (potential) returnees, and remains concerned about the large number of refugees from Croatia still pending housing assistance through State-run programmes including reconstruction.

UNHCR estimates, for example, that there remain some 10,000 (potential) returnees awaiting housing assistance. The number of cases assisted through the HCP in 2014 currently stands at 129 (this includes those cases from the Croatian Danube Region and Vukovar where a special HCP regime is in place). Although not unique to Croatia, progress under the RHP has remained slow.¹⁴ While 5 sub-projects for Croatia have so far been approved under the RHP, and despite progress in beneficiary selection, only the first sub-project (construction of an apartment building in Korenica for 29 families due for completion in 2015) is currently in its implementation (i.e. construction) phase. Some 9 families selected to benefit from the purchase of apartments under the fourth sub-project are however expected to be the first Croatian RHP beneficiaries, and probably before the end of 2014.

UNHCR further understands that the budget of the State Office for Reconstruction and Housing Care has not been increased; according to the information available to UNHCR, donor support continues to be the primary source of funding to meet the need for adequate housing. UNHCR also notes the continuing challenges faced by potential beneficiaries of the HCP with respect to the application and selection process under the legal framework currently in place.

Certain developments, such as the establishment of the Joint Working Group to provide recommendations on the process of selection of RHP beneficiaries, and steps to amend the Law on

¹⁴ *Ibid.*

Areas of Special State Concern are welcomed. However, the results in regard to smoother and more effective implementation of both the RHP and HCP are yet to be seen.

- Access to basic public infrastructure

UNHCR notes that many minority returnee communities continue to lack access to certain forms of basic infrastructure, including power supply, and that there has been no significant change in this regard since the issuance of its advisory.

- Employment and basic means of subsistence

Whilst acknowledging the general economic situation affecting employment across the country, as well as the small increase in the share of national minorities in public service (between 2012 and 2013), this remains an area of concern. UNHCR is also not aware of specific measures undertaken to advance the employment of national minorities this year nor has UNHCR received reports of the implementation – in 2014 – of measures set out in the Action Plan for the Implementation of the Constitutional Law on the Rights of National Minorities.

- Difficulties related to private property repossession

UNHCR acknowledges the amendments made to the Law on Areas of Special State Concern, adopted in May 2014, which promote a settlement of the unauthorized investment cases, and welcomes the out-of-court settlements that have been reached in 2 of the most pressing cases, currently pending clearance by the Attorney-General. However UNHCR notes with concern that in practice there have been no further final resolutions of such cases between the issuance of its advisory and the writing of this report.

- Access to legal aid

UNHCR welcomes improvements to the legal aid regime made in 2014 through the entry into force of the Act on Free Legal Aid, providing for *inter alia* revised criteria for access to legal aid and a simplified application procedure. However allocated resources remain insufficient to meet the current needs and not all vulnerable returning refugees enjoy access to free legal aid.

- Representation of minorities

UNHCR welcomes the publication of the 2013 progress report on the Action Plan for Implementation of the Constitutional Act on the Rights of National Minorities, and such developments as the support being provided to national minority councils and improvements to the elementary education of national minorities. UNHCR remains of the view however that mechanisms for ensuring the full implementation of the Constitutional Law can be further strengthened, and notes that it has yet to receive updates on further implementation of the Action Plan in 2014.

- Remaining security issues

UNHCR acknowledges efforts to combat hate crimes, such as trainings for police officers, public prosecutors, judges, and civil society representatives, the adoption of the National Programme for the Promotion of Human Rights 2013 – 2016, and the Protocol for Dealing with Cases of Hate Crime. In addition, UNHCR is not aware of any major security incidents having taken place between the

issuance of its advisory and this report, although isolated expressions of intolerance and sporadic incidents towards minority returnees do occur. UNHCR also acknowledges ongoing de-mining efforts, including plans in place to continue with such efforts in 2015. UNHCR notes with concern however that there has been no significant change with respect to the critical area of the prosecution of war crimes or witness protection since its advisory was issued.

- Discrimination of Roma returnees

UNHCR acknowledges the ongoing implementation of – and funding allocation for – the Action Plan for the Implementation of the National Strategy for Roma Inclusion, as well as the increasing number of Roma Integration Strategies adopted at local levels. Discrimination against Roma, including returnees, however remains a concern that requires ongoing attention.

3. Comment on progress on recommendations related to pursuing opportunities for local integration or alternative legal status in countries of asylum

Host countries in the region

- Regularize stay

While the legal status of refugees from Croatia in BiH, as refugees, has never been clear, UNHCR estimates that some 95% of refugees from Croatia in BiH have acquired BiH citizenship. Those individuals who have acquired a new nationality and enjoy the protection of the country of their new nationality should no longer be recorded as refugees, and should be required to return their refugee documentation. No progress has yet been reported in this regard. UNHCR welcomes the new BiH Citizenship Law, which it hopes will assist others among the remaining refugees from Croatia to acquire BiH citizenship. UNHCR continues, however, to advocate for the waiver or reduction of administrative fees for needy applicants, and calls for the swift adoption of implementing legislation in all constituent entities of BiH, without which no application for citizenship or naturalization can yet be processed.

UNHCR acknowledges ongoing efforts in Serbia to de-register as refugees those individuals who have acquired a new nationality (see above). Nevertheless, UNHCR monitoring suggests that further efforts are required in this regard.

In Kosovo (S/RES/1244 (1999)) UNHCR has come across individuals in Leposaviq/c municipality holding both Serbian and Croatia nationality documentation, while at the same time remaining in possession of Serbian refugee ID cards identifying them as refugees from Croatia. While these individuals may still be in need of a durable housing solution they should no longer be regarded as refugees.

In Montenegro, the process of the regularization of stay of ex-Yugoslav refugees – including those from Croatia – through the acquisition of status of foreigner with temporary or permanent residence is ongoing. UNHCR welcomes the extension of consular assistance by Croatia to refugees from Croatia residing there, and the waiver of fees for certain services for a number of refugees from Croatia in Montenegro, on a case-by-case basis. UNHCR notes however that the dissemination of relevant information to interested persons by Croatian diplomatic and consular missions in Montenegro (and elsewhere) can be improved. Although not a recent development, UNHCR

acknowledges the reduction in fees by Montenegro for the different stages of the process for applying for permanent residence for foreigners. These developments have assisted some to file applications for alternative legal status. UNHCR does remain concerned however about those vulnerable refugees who may still be in need of assistance to file an application before the end of 2014.¹⁵

- Adequate housing

As outlined in s1, there remains a need to expedite the implementation of the RHP, applying at the same time all necessary safeguards for the selection of the most vulnerable beneficiaries and ensuring that the housing solutions offered suit their choice of durable solution.

Since the issuance of UNHCR's advisory, 20 families of refugees from Croatia have been selected as beneficiaries under the RHP in BiH, providing support for their local integration, while an additional 130 housing solutions are planned for families of refugees from Croatia within the context of the other RHP projects in BiH approved thus far. An estimated 6,700 refugees from Croatia remain in BiH awaiting assistance with respect to a durable solution.

UNHCR welcomes donors' commitment to fully maintain their funding pledges for the RHP, as presented at the Donor Conference in Sarajevo in April 2012, and is pleased to note that the funding committed so far enables the financing of an important number of durable housing solutions. UNHCR wishes to encourage donors to continue lending their support, until the RHP fully meets its declared objectives.

- Employment

UNHCR notes ongoing challenges with respect to access to employment for refugees from Croatia in host countries in the region, whether due to existing restrictions based on law, or a lack of implementation of more favourable provisions where these exist, and continues to advocate for increased employment opportunities including through income generation programmes within the context of projects undertaken to support the Regional Durable Solutions Process.

- Access to acquired pension rights

UNHCR remains concerned about the lack of progress with respect to the dialogue between Croatia and Serbia to resolve the pension issue; intensified efforts to resolve this long-standing issue are still required.

- Social assistance and health care

Whilst acknowledging the existing provisions, UNHCR notes that no tangible changes occurred since its advisory was issued with respect to access to social assistance and healthcare for (former) refugees from Croatia in Montenegro.

¹⁵ Under the new draft *Law on Foreigners*, due for implementation as of 1 January 2015, the current status of refugees from Croatia will cease to exist. Only those who applied for permanent or temporary residence by 31 December 2014 will be able to continue residing legally in Montenegro and gradually acquire access to full local integration.

Host countries outside the region

Of those host States outside of the region from which feedback was obtained, no specific reports of progress with respect to the local integration of refugees from Croatia, through the acquisition of citizenship or permanent residence, were received. However, the majority of these States indicated to have legislation in place enabling the transition from refugee status to more permanent legal status alternatives, including naturalization.

UNHCR welcomes in particular the work of the 'Legal Status Working Group' established within the National Strategy for Roma Inclusion in Italy, and its development of legislative and administrative proposals aimed at resolving the situation of undocumented Roma. UNHCR looks forward to the resumption of its work and to a positive outcome on the issue of the legal status of Roma originating from Croatia in Italy, which UNHCR hopes will facilitate their eventual local integration.

E) Conclusion

Whilst there has been limited implementation of UNHCR's recommendation to declare the cessation of refugee status for refugees from Croatia displaced by the 1991 – 1995 conflict, pursuant to the "ceased circumstances" cessation clauses contained in paragraph 6(A)(e) and (f) of the UNHCR Statute and Article 1C(5) and (6) of the 1951 Convention by the principal host States, UNHCR welcomes the reduction in the numbers of registered refugees from Croatia since the issuance of its advisory through the application of relevant local legislation, and pursuant to Article 1C(1) or (3) of the 1951 Convention. UNHCR continues to urge host States to ensure all aspects of cessation are implemented by the end of 2017.

UNHCR acknowledges the ongoing efforts being made by both the country of origin and host States to ensure access to durable solutions for refugees from Croatia. However, the information available to UNHCR at the time of writing this report and the lack of any significant tangible progress suggests that further efforts are required to ensure the continuing development and effective implementation at all levels (national, municipal) of laws, policies and programmes aimed at remedying the effects of displacement, reducing discrimination, and the removal of unnecessary administrative hurdles that affect refugees and returnees differently from the general population, for example in obtaining nationality and regulating civil status, and accessing rights, including housing, acquired pension entitlements and rights, and basic services (water, electricity, healthcare etc.).

In light of the above, UNHCR is of the view that the recommendations contained in its April advisory remain relevant and need to be the subject of more active planning and dialogue by the concerned States in the context of the letter and the spirit of the Joint Declaration on Ending Displacement and Ensuring Durable Solutions for Vulnerable Refugees and Internally Displaced Persons of 7 November 2011. UNHCR wishes to invite partner countries to lend all necessary political, material, legal, social and other support to refugees from Croatia, to end their displacement and enable them to live as equal citizens, without any form of discrimination.

UNHCR
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