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To members of European Parliament

As a president of NGO "Trkulja and associates", as an intellectual with proven academic and business acumen, as a former diplomat, and finally as a human being I am addressing this brief yet most urgent and most fundamentally important communiqué to Your kind attention. Do allow me at this juncture to state that Organization that I am heading is currently handling in excess of 60.000 refugee cases all of which are a direct consequence of utter disregard towards any and all issues related to very basic human rights by the Republic of Croatia. Indeed, having mentioned my former diplomatic career, I am addressing this to all principal figures of the European Union system, with but a simple question: *"Does European Union condone acts and actions described in a factual text that follows, acts that are being carried on even as I write these lines by the state that is pleading to full membership within European Union – the Republic of Croatia?"*

Key problem for any analyses of issues in relation to private property and acquired rights of refugees from the Republic of Croatia and provisions of Annex G of the Agreement on Succession Issues is the lack of practice in application of relevant provisions of the Agreement. In that sense, the problems of the lack of comprehensive and generally accepted official interpretations and efficient mechanisms for their implementation, which additionally affect creation of the environment of legal insecurity. Therefore, one should bear in mind that the Annex G of the Agreement on Succession Issues currently is not efficient mechanism for protection of the rights it regulates.

The most complex open question for righteous and permanent resolution of the problems facing refugees in the region refer to recognition and exercise of the rights of the former tenancy rights holders over socially owned apartments who fled from the Republic of Croatia under the most atrocious nationalistic pressures and intimidation witnessed on the Continent since the World War II. These problems are discussed within the process of implementation of Sarajevo Declaration on regional refugee return. Unlike in Bosnia and

Herzegovina, establishment of efficient mechanisms for protection and exercise of the rights of exiled tenancy rights holders in the Republic of Croatia was disregarded in an apparent drive towards a creation of ethnically desirable demographics within the country.

The issue of regulation of the right in relation to the occupancy/tenancy rights in accordance with the provisions of the Article 6 of the Annex G aroused great interest among refugees and displaced persons – CITIZENS OF THE REPUBLIC OF CROATIA, mostly ethnic Serbs, whose occupancy/tenancy rights over socially owned apartments were cancelled under most clear discriminatory circumstances.

Legal character of the occupancy / tenancy right institute

According to the constitutional provisions of the former SFRY, the stated right was a family and legal, social, and property and legal category. It could have been characterized as kind of proprietary right (*sui generis*). Constitutional provisions were the fundamental base for the tenancy rights holders to, under beneficial terms, participate in the process of privatization of socially owned apartments they possessed in sense of acquirement of occupancy / tenancy rights.

Issues in relation to occupancy / tenancy rights are covered under the Annex G of the Agreement on Succession Issues that regulates private property and acquired rights protection subjects. One may, **and indeed should**, conclude that according to the provisions of the Agreement on Succession Issues, the rights related to occupancy / tenancy rights are considered property and acquired rights. Such conclusion, however, is most vehemently opposed by the authorities of the Republic of Croatia who hold discriminatory stand that the stated rights cannot be considered as ownership rights.

It is our deepest belief that term “possessions” in case of occupancy / tenancy rights should be interpreted in the sense of provisions of the Article 1 of Protocol no. 1 of the European Convention on Human Rights and Fundamental Freedoms (ECHR):

“Every national or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”

The practice of the European Court for Human Rights points that the term “possessions” meaning “ownership” can be widely interpreted and that it includes wide spectrum of different (economic) rights and interests. The opinion of the Court is that the concept of “possessions” in the sense of the provisions of the Article 1 of Protocol no. 1 has an autonomous meaning which is not limited to “ownership” of physical goods but also includes certain other rights and interests that present the ownership and can also be regarded as property rights.

The Court further believes that pecuniary assets, such as debts, by virtue of which the applicant can claim to have at least a “legitimate expectation” of obtaining effective

enjoyment of a particular pecuniary asset, may also fall within the notion of “possessions” contained in Article 1 of Protocol no. 1.

Furthermore, European Court for Human Rights, in its verdict dated 30 June 2005, in case *Teteriny vs. Russia* found that legally acquired occupancy / tenancy rights over socially owned apartments fall under “possessions” in the sense of Article 1 of Protocol no. 1.

Legal foundation for acquiring the stated rights were decisions issued by apartments providers on allocation of apartments and contracts on the use of apartments concluded between a tenancy rights holder (occupant) and relevant public fund (landlord). Legal institute of occupancy / tenancy right in Croatia was cancelled completely in 1996 with the Law on Lease of Apartments becoming effective and domestic legislation is no longer recognizing this institute. It must be stated that demographic figures indicate that by that time 98.4% of occupants / tenants of Croatian ethnicity exercised the right of buying the apartments under the most beneficial terms, while at the same time figure related to the Serbian minority indicates that less than 2% of occupants / tenants was allowed to do likewise. Implications are inevitable.

Issues on relation to the loss of occupancy / tenancy rights in the Republic of Croatia are of outmost significance for viewing discrimination of refugees and displaced persons of, mostly, Serb ethnicity, and legitimacy of cancellation of those rights. Mentioned persons have lost their occupancy / tenancy rights through court proceedings, in most cases in absentia and without knowledge of the beneficiaries, or by the power of the law. Those issues were never examined in any shape and/or form by the very highest authorities of the Republic of Croatia. Example that clearly defines the stand of Croatian authorities comes from the Christmas speech by Croatian Prime Minister Mr. Vukobratović who upon being asked about the above mentioned rights that were taken away from Serbian minority responded “*For me this issue is closed forever.*”

Mr. Vukobratović's stand is indeed foregone conclusion. In almost absolute absence of international legal sources related to the issue of succession of states, which would determine obligatory rules and instruments for their implementation, and which would with clarity determine the scope and nature of the property rights, the states of the Former SFRJ have reached towards the definition and implementation of the agreement on succession. It is of most dire consequence that the Agreement on Succession Issues, due to the wars raging the entire area, has been signed a full decade following the succession and independence of the republics/states of the Former SFRJ. Within mentioned decade the stated states have absolutely autonomously regulated the scope of recognition of the property rights and the development of the instruments that would guarantee those rights. The nature of disintegration of the SFRJ, as well as the very nature of the conflicts in Croatia and in Bosnia and Herzegovina, has produced migrations of unprecedented proportions since the WWII. In such setting the states that witnessed ethnic refugee wave have sized the opportunity to further their economic and political goals. Apart from the issue of occupancy / tenancy rights Republic of Croatia has abused property rights legislation in two distinct directions: 1) Significant percentage

of housing fund has been transferred from social to state ownership, and 2) Establishment of desirable ethnic structure of the state.

With the introduction of the amended version of the Private property and other real rights Law, as well as with the actual practice as witnessed within the legal system of the Republic of Croatia the very basic human rights of, mostly, Serbian minority population have been eradicated. Such situation is in a direct collision with those international instruments dealing with the issues of human rights, instruments that are implicitly and explicitly required from every nation to not only follow, but to indeed insure the very protection of those rights. For example, United Nations has recognized the necessity of protection of private property as a means of prevention of forced migration, and in addition United Nations have demanded that nations do provide legal security to all who are faced with forced expulsion, and also to undertake all the necessary measures that would eliminate even the possibility of forced expulsions. Indeed, in that sense, although it has no binding power of an agreement, the Principles of Economic and Social Council of United Nations on housing and property restitution for Refugees and Displaced persons need to be viewed. This document is important since it reflects widely accepted principles of international human rights standards, refugee rights, humanitarian law and other similar standards. These Principles are created in a way to help all relevant subjects, national and international, in addressing legal and technical issues in relation to the housing, land and property restitution in situations in which displacement resulted in persons being arbitrarily and illegally deprived of their homes, land, property or the place of their usual residence. The Principles refer to all refugees and displaced persons regardless of formal and legal recognition of their status.

Within the Republic of Croatia the practice was in most direct collision with the above stated demands by the United Nations. Upon leaving their properties, under duress and in many cases under the explicit threat related to their physical safety, absolutely no protection was instituted in order to guarantee the property rights that refugee population has legally obtained and uninterruptedly enjoyed up until that point. Indeed, as stated before every effort was/is being made by the very top of Croatian Executive, Legislative and Legal branch of government with the single aim of making the return of refugees impossible. The very same situation is to be found in the areas covering the right to compensation for the destroyed property (by Croatian armed forces after the expulsion of the Serbian minority during the military operations in 1995), unpaid pensions, compensations for “stolen” property via APN (illegally formed by Croatian government, Agency for property trading), unpaid savings, and indeed in a very wide spectra of other legal issues.

NGO “Trkulja and associates” is currently a sole champion of the rights of refugees from Croatia, and this most unexpected position, in a light of declarative statements both from the representatives of EU and UN, is allowing us rather unique insight into the legal abyss that has taken shape in a very candidate state for a full membership to the European Union. Thus it is of most vital importance for the very human beings, our “clients” , as well as for all of the other non – EU countries to learn whether the Union has means and above all else the determination to at least look into the issues of human misery that we

are witnessing on a daily basis. As a former diplomat myself, I do stand firm on a position that there is a time that calls for disburdenment of political interests, lobbying, promises and lastly the very principle of soft diplomacy in a face of catastrophic events that are taking place within the sphere of European Union declarative stand on human rights within the candidate countries. Thus I plead for Your kind consideration of this material and am also taking the liberty of calling upon the moral and ethical paradigm that should bound us together in a face of the stated.

Do allow me to thank You in advance for Your most valuable time and effort on a behalf of thousands whose very human dignity and pride has been so ruthlessly taken away.

Sincerely, and in a hope of Your kind response,

Trkulja M. Djuro

President of the NGO “Trkulja and associates”