

# **Status of Implementation of the Reports and Decisions of Human Rights and Property Institutions Established under Annexes 6 and 7 of the Dayton Peace Accords**

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### **Update - 1 November 1999**

*This document is intended to give the reader a summary of the status of the implementation of the reports and decisions of the Ombudsperson of BiH, the Human Rights Chamber, and the Commission for Real Property Claims of Displaced Persons and Refugees. <sup>(1)</sup> Please see the associated documents for more detailed information.*

### **1. Introduction**

Annex 6 of the GFAP (Dayton Peace Accords) provided for two Institutions:

- The Human Rights Ombudsperson for Bosnia and Herzegovina and
- The Human Rights Chamber for Bosnia and Herzegovina

Both Institutions examine complaints of human rights violations committed by any or all of the three Parties to Annex 6: the State of Bosnia and Herzegovina (BiH), the Republika Srpska (RS), and the Federation of Bosnia and Herzegovina (Federation or FBiH). The European Convention on Human Rights (ECHR) is the primary instrument used for the determination of a violation, although 15 other international instruments may also be used. Applicants are required to have exhausted effective domestic remedies before coming to the Institutions. The Chamber is a judicial body, which uses as its model the European Court of Human Rights, and issues final and binding decisions. The Ombudsperson combines judicial determination of violations with mediation in order to solve cases brought by applicants, and issues recommendations when she finds violations. The Ombudsperson may also begin investigations of her own accord and issues Special Reports in such cases.

Annex 7 of Dayton established the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC). The CRPC is an independent international body with the authority to make final and binding legal decisions on claims for real property where the claimant cannot obtain possession of that property.

Compliance with the decisions and reports of the Institutions is an obligation of the Dayton Peace Accords<sup>(2)</sup>, the Madrid Declaration of the Peace Implementation Council<sup>(3)</sup>, and is a pre-condition for the accession of Bosnia and Herzegovina to the Council of Europe<sup>(4)</sup>.

### **2. Case file progress to date**

To the end of September 1999, the Institutions had registered and completed the following number of cases. Figures in brackets indicate increases over the past six months:

	Human Rights Chamber	Ombudsperson	CRPC
Cases registered	2795 (+907)	3454 (+551)	226,000 (approx. +46,000)
Cases completed	303 (+126)	1335 (+304)	59,000 (approx. +23,000)

\*CRPC cases registered and completed refer to properties over which an application was made. These figures are approximate.

### 3. Compliance and implementation of decisions and reports

#### a. Human Rights Chamber:

The **Federation of BiH** has made good progress in compliance. In all final decisions, there has been some progress. Complete compliance has been achieved in cases involving the following subject areas:

- Death penalty cases
- Arrest and detention cases

Substantial compliance has been achieved in cases involving the following subject areas:

- Employment discrimination case
- Military apartment cases
- Compensation awards

Civilian housing matters are and will likely continue to be an area in which compliance will remain difficult.

The Federation has had close to perfect compliance with provisional orders of the Chamber.

**Republika Srpska** has not made adequate progress in compliance with decisions of the Human Rights Chamber. There has not been compliance in the following areas:

- Compensation awards in housing matters
- Religious discrimination (Islamic Community)
- A disappearance case

There has been partial compliance in the following areas:

- Reinstatement in abandoned apartment cases (non-enforcement of judicial decisions)
- Removal of the threat of eviction in “tenancy” contract cases

There has been good compliance by the RS with the provisional orders of the Human Rights Chamber.

The **State of BiH** has not had any final cases in which action was required. It has complied with the provisional measure order in a case involving a requirement to improve refugee conditions.

#### b. Ombudsperson:

**Republika Srpska** has achieved compliance in cases in the following areas:

- Death penalty
- Arrest and Detention
- Employment case
- Freedom of expression
- Length of civil proceedings (non-property related)
- Execution of ordered eviction (repossession of apartments)

Republika Srpska has achieved partial compliance in cases in the following matters:

- Length of civil or administrative proceedings in property matters
- Fair hearing in a criminal case
- Development plans – property matters

**The Federation of BiH** has complied with reports of the Ombudsperson in the following subject areas:

- Length of civil proceedings in non-property matters

- Abandoned apartment cases (legislative reform required)

Cases in the following subject matters are in partial compliance, or steps have been taken or indicated:

- Right to life / ill-treatment
- Non-execution of evictions (repossession of houses and apartments)
- Length of civil proceedings in property matters
- Law on Pensions
- Military apartments

The **State of BiH** has complied with all decisions in which the Ombudsperson found a violation and requested the State to take action, in the following subject areas;

- Freedom of expression, privacy and right to court (to establish common postal services for all BiH, related to access to court)
- An abandoned apartment issue in which it was partially involved
- Brkco (not the State) also complied with a decision involving health issues

### c. **CRPC**

The Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) is empowered under Annex 7 of the Dayton Agreement to make final and binding decisions confirming the pre-war rights of dispossessed people. As of the end of September, CRPC had received a total number of 175,233 claims relating to 226,428 properties. By issuing final decisions on the legal entitlement to property (both private property and occupancy rights), the CRPC has provided the competent authorities responsible for implementing the Dayton Agreement with the means to meet their responsibilities. Thus far, 59,028 final and binding decisions have been issued by the CRPC. Responsibility for implementing CRPC decisions lies with the Entities under the specific terms of Annex 7, and with authorities under the Entities' direction at local level. <sup>(5)</sup>

While the status of the CRPC as the final decision-making body on property issues in BiH has been confirmed by domestic legislation passed in both Entities, <sup>(6)</sup> to date, the level of compliance with this obligation and specifically the enforcement of decisions has been manifestly inadequate. While a small proportion of those who receive final and binding decisions from CRPC do return into possession of their homes; many continue to meet obstacles and non-cooperation from the authorities in all areas where their properties lie.

The following are some of the main obstacles to enforcement:

- *In order to enable a property right holder to return to his/her pre-war residence, a current occupant must normally be evicted. Domestic law provides for specific deadlines for vacating property once a decision has been issued. In practice, few evictions have taken place, whether they relate to decisions issued by the CRPC or to decisions issued by domestic administrative organs themselves. The usual reason cited for the failure to issue an eviction order is the lack of alternative accommodation, though in practice, many of the occupants in question are not legally entitled to alternative accommodation.*
- *Some municipal officials have advised decision holders that there is no obligation on them to enforce CRPC decisions, in blatant disregard of the clear wording of Annex 7 and the final and binding nature of the certificates.*
- *The political will to enforce decisions of the CRPC and to return refugees and displaced persons to their homes is often lacking or insufficient. This has been of particular concern in cases where current occupants are public officials.*

Despite the continuing obstacles to enforcement of CRPC decisions, some progress has been made. Several

municipalities throughout BiH and the RS have begun to recognize the evidentiary value of CRPC decisions, though few have recognized their executive status. Over the past months, there have been fewer reported cases of officials refusing to accept CRPC decisions. Improving their capacity to proceed with their caseloads in a timely and efficient manner is critical. Further training on the role of housing offices in the implementation of Annex 7 is equally important.

CRPC continues to remind the competent administrative authorities of their obligations under Annex 7, and has assisted the Office of the High Representative in drafting a law which clarifies the responsibilities of administrative and court officials in regards to the enforcement of CRPC decisions. The draft laws are currently before the Entities, and indications of support have been received from both. The promulgation of enforcement legislation, a requirement set out in the Annex to the December 1998 Madrid Declaration of the Peace Implementation Council, is expected to improve the level of compliance with CRPC decisions.

1. This reporting is done by the Office of the High Representative pursuant to Annex 10, Article II(1), sub-paragraphs a) and f)
2. E.g. Annex 6, article 11(6), and Annex 7, article 8.
3. Annex, Section 2, paragraph 5.
4. Condition 3, elaborated in document AS/Pol (1999) 14 rev.
5. Article VIII of Annex 7 provides that "the Parties shall cooperate with the work of the Commission, and shall respect and implement its decisions expeditiously and in good faith, in cooperation with relevant international and nongovernmental organizations having responsibility for the return and reintegration of refugees and displaced persons."
6. Article 13 of the *RS Law on the Cessation of the Application of the Law on the Use of Abandoned Property*; and Article 14 of the *F BiH Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens* and *law on the Cessation of the Application of the Law on Abandoned Apartments* all recognize and affirm the final and binding nature of CRPC decisions.

## **OHR Human Rights/Rule of Law Department**