# Ombudsperson Decisions Status of compliance

# Ombudsperson Decisions Status of compliance

## September 1999

**Summary:**


- JNA apartments cases: The agreed legislative amendments have become law in the Federation. The Agent of the Federation will be following up on implementation.
- Length of proceedings (in property and non property cases): in cases Sabic, Eger and Spahic, R.I., v. RS the proceedings were not carried out. In case N.S. v. RS the First Instance Court in Banja Luka issued a decision on 20 April 1999 so that compliance was achieved. RS reinstated applicant S.A. into his apartment (on 18 March 1999). In the case Mijailovic v. Federation the proceedings were not finished and in the meantime the applicant was not provided with an alternative accommodation.
- Non execution of evictions (repossession of apartments): in case N.K. v. RS and Baric, B.T. and N.B. v. FBiH the evictions at issue were not carried and the applicants could not repossess their apartments. In the case Satric v. RS the applicant was reinstated into her apartment on 5 May 1999.
- Non enforcement of judicial decision: in the case B.D. v. FBiH the applicant has not been compensated for the damages caused by 2 mining companies on his land.
- Repossession of property: in the case Halebic v. RS an investigation has not been carried out with a view to disclosing the circumstances of taking away the applicant's property.
- Abandoned apartments: in the case Buntic and 19 others v. FBH the applicants did not receive the final decision upon their requests under the New Law nor repossessed their apartment (but in one case).
- Disappearance: RS has no information on Berbic,


# A. Federation of Bosnia and Herzegovina [and the State of Bosnia and Herzegovina]

1. **JNA Apartment cases**

   In late 1991 and early 1992, the Socialist Federal Republic of Yugoslavia began privatizing 'military' JNA apartments. Under the Law on Security Housing for the Yugoslav National Army[(1)], the holder of an occupancy right residing in an apartment of the JNA Housing Fund could purchase that apartment.

   On 15 February 1992, the Socialist Republic of Bosnia and Herzegovina issued a Decree imposing a one-year prohibition on the future sale of socially owned property, including JNA apartments[(2)]. On 15 June 1992, the Republic of Bosnia and Herzegovina transferred ownership of JNA resources, including JNA apartments, from the Federal Republic of Yugoslavia to the Republic of Bosnia and Herzegovina[(3)]. A Decree with force of law in 1994 required that contracts for the sale of socially-owned housing be verified by a competent court[(4)], and on 3 February 1995, a further decree required that courts and other state authorities adjourn proceedings relating to the purchase of JNA apartments.[(5)]

   After the entry into force of the Dayton Peace Agreement, the Presidency of the Republic of Bosnia and Herzegovina issued a Decree on 22 December 1995 which rendered invalid all previously formed contracts for the purchase of JNA apartments. This Decree became a law on 18 January 1996. [(6)]

Many of the persons who introduced applications to the Ombudsperson reside in the JNA apartment, but have not been able to register the purchase of the apartments with courts, as now required by law.

The OP, in all its decisions [(7)] on the matter held that the retroactive annulment of the purchase contracts was not proportional interference with the contractual "possession" right held by the applicants. It therefore found a violation of article 1 of the First Protocol to the European Convention on Human Rights, and found a violation of Article 6 of the Convention in that due to the compulsory court adjournment of all JNA contract cases, the applicants were not able to have their civil claims determined in a reasonable time. The OP, (following the HR Chamber case-law) therefore recommended the respondents (usually the Federation of Bosnia and Herzegovina and Bosnia and Herzegovina, although occasionally the Federation alone) to:

- take all necessary steps by way of legislative or administrative action to render ineffective the annulment of the applicants' contracts imposed by the Law on Supplement of the Law on the Transfer of the Resources of the SFRJ into the Property of the Republic (previously Decree with legal force of 22 December 1995) and
- lift the compulsory adjournment of the court proceedings instituted by the applicants and to take all necessary steps to secure the applicants' right of access to court.

In a minority of cases decided by the OP, the applicant was currently not resident in the JNA apartment, because the apartment was declared abandoned during the war, and because his or her occupancy right was canceled. In these cases, there was another individual or individuals currently residing in the apartment, so that the applicants sought not only recognition of ownership but also repossession of the apartment. In these cases[(8)], the OP also issued the following recommendations:

- within six weeks of receipt of this Report take all necessary steps by way of legislative or administrative action to render ineffective the annulment of the applicants' contracts imposed by the Decree of 22 December 1995 and the Law of 18 January1996;
- within six weeks of receipt of this Report lift the compulsory adjournment of the court proceedings instituted by the applicants and take all necessary steps to secure the applicants' right of access to court.
- within six weeks of receipt of this Report that the applicants be permitted to return in their pre-war apartments.

The Federation passed property legislation in late 1997[(9)] and early 1998[(10)] which permitted persons holding JNA purchase contracts over non-abandoned apartments to purchase and register their ownership of the apartment under a new scheme, which would take into account the amount paid in 1991 and 1992. However, the Human Rights Chamber rejected Federation arguments that the new scheme had cured the previously held violation. [(11)] The OP case-law instead was **partially different** as she agreed with the Agent's view (dated 30 November 1998) according to which the "housing legislation" adopted by the Federation (the Law on Purchase of Apartments; the Law on the Cessation of the Application of the Law on Abandoned Apartments; the Law on Taking over of the Law on Housing Affairs [3 April 1998]) would allow the adjourned proceedings to be resumed. In her opinion therefore there were no legal obstacles anymore for the courts to resume and carry out the relevant proceedings. So since the case Vukmirovic and others (final decision on 18 December 1998) the OP's conclusion was that there still had been violations of Article 1 of Protocol 1 to the ECHR on account of the retrospective annulment of the applicants' purchase contracts, but the matter had been solved as to the applicants' complaints under Article 6. Since then, therefore, the only remaining recommendation of the OP was to:

- take all necessary steps by way of legislative or administrative action to render ineffective the annulment of the applicants' contracts imposed by the Law on Supplement of the Law on the Transfer of the Resources of the SFRJ into the Property of the Republic (previously Decree with legal force of 22 December 1995) [(12)].

Up to date of writing, the Office of the OP had registered 1308 JNA cases. In July 1996 the OP referred the first group of decisions in JNA cases to the Human Rights Chamber, which found violations of the applicants' rights guaranteed by Article 6 ("right to a fair trial") and Article 1 of Protocol No. 1 ("protection of

property"). The OP adopted 395 final reports in the individual cases concerning the JNA cases finding violations of the human rights guaranteed by the Convention. However the Government of the Federation of Bosnia and Herzegovina did not comply with the Ombudperson's recommendations within envisaged time limit. Consequently the Ombudsperson referred the reports in 151 cases to the High Representative and forwarded them to the FBiH President for further action.

**Steps taken toward compliance:**

Legislative amendments implementing the orders of the Chamber and the OP have been agreed to by the Federation and the OHR. The High Representative has signed an order for publication of these changes in the Official Gazette, which they were (Official Gazette of the FBiH No. 27/99 of 5 July 1999).

While these amendments do not resolve all potential legal issues surrounding military apartments, it is hoped that most decided Chamber and OP cases will now be able to be resolved. OHR and the Federation Agent will continue to follow the application of the legislative amendments, and determine whether they are being applied in individual cases before the Chamber and the OP.

The legislative amendments allow those persons who had a legally binding purchase contract prior to 6 April 1992 (signed and dated) to register their ownership right in the property books. Those persons who had not paid the entire amount will be required to pay outstanding amounts prior to registration. A limited class of persons (essentially those who were in the service of JNA on 30 April 1991 or stayed in the service of a foreign army after the constitution of the armies of the Federation and the RS in 1996) will be excluded from the right to return to their apartments, and will instead be compensated for the amount already paid towards their apartment.

The Office of the Ombudsperson has decided for the moment not to continue with examination of the cases concerning the above mentioned annulments of the contracts and adjournments of the proceedings. However, the OP will continue to monitor the implementation of relevant provisions imposed by the High Representative Decisions to the already registered and possible new cases.

2. **Length of proceedings**
    a. **Mihajlovic v. FBH (18 January 1999, No. 1323/98)**

The applicant is the holder of the occupancy right over the apartment located in Grbavica. During the applicant's short absence in May 1996, Mr. R.B. illegally moved into the apartment. The applicant immediately started a procedure in order to evict the illegal user. The administrative proceedings began on 27 May 1996, when the applicant lodged a formal request for repossession of his apartment with the Municipality of Novo Sarajevo. The applicant received in the course of August 1997 a decision (dated 20 March 1997) issued by the Cantonal Ministry for Housing Affairs confirming her occupancy right. The decision was never enforced and the Canton Ministry for Urban Planning, Housing and Communal Affairs decided that the matter was within the competence of a court. The civil proceedings instituted by the applicant with a view to evicting the illegal user of the applicant's apartment began on 12 November 1997 and are still pending.

The Ombudsperson found that the overall length of the considered proceedings in this case had not been justified by the Government. She further found that the applicant could not be held responsible for any delay, that the case was not a complex one, and that the authorities were acting excessively slow in this case.

The Ombudsperson recommended to the respondent Party to carry out the proceedings at issue with no further unnecessary delays and to provide, within 2 weeks from receipt of the report, the applicant with an alternative accommodation until the final ending of his case.

**Steps taken toward compliance**

On 19 October 1998 the Sarajevo Court of First Instance II issued a decision by which the current occupant was ordered to vacate the apartment within 15 days. The current occupant lodged an appeal against the said decision. On 23 June 1999 the applicant received another decision in his favor which was again appealed by the defendant. The applicant in the meantime was **not** provided with

alternative accommodation as recommended by the Ombudperson.

**Other cases in which compliance has been achieved**

- The First Instance Court of Tuzla carried out the proceedings and on 18 Sept.1998 passed the judgment in the applicant case (Unger v. FBH, 27 April 1998, No. 601/98).

3. **Non enforcement of evictions (repossession of apartment)**
   a. **B.T. v. FBH (17 December 1997, No. 76/96)**

During the war in BiH the applicant left the apartment and resided in Germany and in FRY. On 12 November 1993 the apartment was allocated to another person for temporary use. The applicant returned to Sarajevo on 3 January 1996, and tried to move into her apartment but a temporarily user refused to allow the applicant to move in. The applicant submitted her request to repossess the apartment on 23 February 1996. On 30 July 1996, the Sarajevo City Secretariat issued a decision declaring the applicant's apartment as permanently abandoned. On 31 July 1996 the Secretariat rejected the applicant's request of 23 February 1996. On 9 August 1996 the applicant continued the proceedings against the aforesaid decisions before the Federal Ministry for Urban Planning and Environment ("the Ministry"). On 6 December 1996 the Ministry rejected the applicant's appeal against the decision of 31 July 1996 stating that the applicant had submitted a request for return to her apartment after the expiry of the time-limit provided by the Law. On 14 January 1997 the applicant started an administrative dispute against the said decision of the Ministry before the Supreme Court of the Federation of Bosnia and Herzegovina.

The Ombudsperson found a violation of Articles 8 of the Convention (right to respect for the home) and Article 1 of Protocol No. 1 of the Convention (right to the peaceful enjoyment of one's possessions) in that the fifteen-day time-limit provided for by Article 10 of the Law was "unjustifiably short", and in that the interference with both rights was unjustified.

The Ombudsperson recommended that Article 10 of the Law on Abandoned Apartments cease to be applied in its current form and that the applicant be granted a permanent occupancy right over the first apartment (over which she previously held an occupancy right). Or, subject to the applicant's approval, over another apartment of comparable quality in Sarajevo.

**Steps taken toward compliance**

The applicant obtained an administrative decision on 1 July 1998 issued in her favor in accordance with the new Law. However, she was not reinstated in the apartment yet, although she started a procedure with a view to have the decision enforced and the current occupant evicted.

   b. **Baric v. FBH (4 May 1999, No. 739/97)**

The case concerns the applicant inability to regain possession of his apartment. The applicant can rely on a decision in July 1998 issued by the Municipality of Travnik (Office for Housing Affairs) recognizing that the he was the holder of the occupancy right and that the current occupant used the apartment **without legal basis** (and so the competent authorities were obliged to provide him with alternative accommodation). The current occupant's eviction was not carried out.

The Ombudsperson found that the failure of the authorities to enforce the relevant decision obtained by the applicant in his favour constituted a violation of Article 6 para. 1 of the Convention, considering that such failure of the authorities rendered guarantees under Article 6 enjoyed by the applicant during the judicial phase of the proceedings devoid of purpose. Since the competent authorities did not take necessary action to protect the applicant against the unlawful interference by the individual squatting his apartment, the Ombudsperson considered that the respondent Party did not comply with the obligation to secure the effective respect for the applicant's home. She similarly concluded that inertia of the local authorities to enforce the administrative decision also constituted a failure by the respondent Party to secure his right to the peaceful enjoyment of his possession as guaranteed by Article 1 of Protocol No. 1 to the Convention.

The Ombudsperson recommended that the respondent Party ensure the reinstatement of the applicant into his apartment within 6 weeks of receipt of the Report. The current occupant was not evicted.

**Steps taken toward compliance**

On 23 August 1999 the case was referred from the Ombudperson to OHR for further action.

### c. N.B. v FBH (16 June 1999, No. 245/96)

The case concerns the applicant's inability to regain possession of his privately owned house . On 20 May 1998 the Municipality of Kresevo issued a decision under the law on Cessation of the Law on Abandoned Property allowing the applicant to repossess his house as of 20 August 1998. On 11 September 1998, the applicant submitted a request for the enforcement of this decision, i.e. for the eviction of the user of his house. In response to the applicant's request, dated 23 October 1998, the Municipality stated that it will not enforce the decision at issue until the user's house is reconstructed.

The OP considered that the failure of the authorities to enforce the binding decisions in the applicant's favor rendered his rights guaranteed by Article 6 devoid of purpose and created a situation incompatible with rule of law, and was a breach of the positive obligations under Article 8 and Article 1 to Protocol No. 1 of the Convention. The OP found no justification for such failure of the authorities to effectively secure the applicant's rights.

The OP recommended to the respondent party to enforce the decision of 20 May 1998 reinstating the applicant into his house within 6 weeks of receipt of the report.

**Steps taken towards compliance**

On 6 September 1999 the case was referred to OHR for further action as the applicant has not been reinstated in his house yet.

**Other cases in which compliance has been achieved**

- The law on abandoned apartment was amended on 3 April 1998 but the applicant was not still in a the legal position to be granted a permanent occupancy right over the apartment at issue since, (according to the Law on Housing Relations) he was not member of the household, and, in addition to this, he was the holder of an occupancy right over another apartment (case Bojanic v. FBH/BH, 14 October 1997, No. 99/96)

## 4. Right to life and ill-treatment

Special Report No. 348/97 issued on 10 April 1997

This report concerns the incident which occurred in Mostar on 10 February 1997 in which one Bosniak was killed and 19 were wounded when Bosnian Croat police opened fire on a group of Muslims going to visit the graves of their dead in west Mostar on the evening of Bajram. It also considers the subsequent investigation and trial that took place.

The Ombudsperson found that the failure to carry out a proper investigation into the shooting in Mostar and to conduct a proper trial subsequent to that investigation, the shooting into the procession and the beating of procession members by members of West Mostar police, were violations of Articles 2 and 3 of the ECHR.

The Ombudsperson recommended that an impartial rigorous criminal investigation be commenced by an independent investigation team monitored by the IPTF. Upon conclusion of the said investigation all those identified as involved in the incident should be charged and tried for offenses appropriate to the acts committed. The trial should provide the guarantees laid down in Article 6 of the European Convention on Human Rights.

**Steps taken toward compliance**

In April 1998, the Canton 7 Ministry of Interior began a re-investigation into the shooting incident. The original investigations by local law enforcement authorities and the ensuing prosecutions had been flawed and failed to yield convictions of the perpetrators. The re-investigation was monitored by UNMIBH Human Rights Office (linked with IPTF) at every stage of its planning and execution. The Ministry of Interior submitted its findings to the West Mostar Public Prosecutor on 23 June, following considerable disagreement between the Bosniac and Bosnian Croat members of the investigative team over the content of their report. Based on the results of the new investigation, the West Mostar Public Prosecutor has now requested a judicial investigation by the Cantonal Court on charges of endangering the safety of people and property. The criminal proceedings will continue to be closely examined by the competent Human Rights Offices.

5. **Right to the Enjoyment of Possessions and Discrimination**

Special Report No. 2859/99 issued on 26 May 1999

This Report addresses the issue of conformity of the 50% reduction payment reduction of the military pensions within Article 139 of the Federation Law on Pensions and Disability Insurance, with the ECHR and its Protocols.

The Ombudsperson found that the above mentioned reduction of the military pensions of the former members of JNA was in breach of their rights under Article 1 of Protocol No.1 to the Convention and constituted discriminatory treatment contrary to Article 14 of the Convention in conjunction with Article 1 of Protocol No.1 to the Convention.

The Ombudsperson recommended that the Government and the Parliament of the Federation, within two months of receipt of the Report, in accordance with their respective competencies take necessary steps to render ineffective the 50% payment reduction of the pensions of the former members of the JNA imposed by Article 139 of the FBiH Law on Pension and disability Insurance and provide just compensation for the period in which these pensioners, without compensation through certificates, were treated in a discriminatory fashion and in breach of their property rights.

**Steps taken toward compliance**

On 19 July 1999 the Prime Minister replied to the OP recommendations and it followed from his letter that the Government of the Federation would not comply with them until a final and binding decision is not issued by the HR Chamber. After a meeting with the Secretary of the Federal Ministry for Social Affairs and the Director of the Sarajevo Pension Fund on October 1999, OHR and the Federal Ministry are currently working to an amendment to the Article 139 of the Law at issue.

6. **Non enforcement of judicial decisions**
   a. **B.D. v FBH (24 March 1999, No. 746/97)**

The case concern the failure of two mining companies to comply with a judgment issued by the First Instance Court in Tuzla on 9 December 1996, and with an enforcement order issued by the same body no 25 February 1997 ordering them to compensate the applicant for damages caused on his land.

The OP found that the inertia of the competent authorities to enforce the court decision violated the applicant’s right to a court (depriving guarantees of Article 6 para.1 of all useful effect) and constituted a failure to secure the applicant’s right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention.

The OP recommended that the respondent Party ensure the enforcement of the judgment of 9 December 1996 in accordance with the relevant enforcement order, within 6 weeks from the date of receipt of this report.

**Steps taken toward compliance**

The case was referred to OHR for further action on 6 September 1999.

7. **Abandoned Apartments**
    a. **Buntic and others v. FBH No 47/96**

The case concerns the applicants' loss of their occupancy rights as a consequence of the application of Article 10 of the Law on Abandoned Apartments, the allocation of their apartments to a third person, the lodging of requests by the applicants for return into their apartments under the New Law and the lack of a decision in the applicants' case by the responsible administrative authorities.

The OP found a violation of Artcles 8 and 1 of Protocol 1 of the Convention

The OP recommended that the Respondent Party take all necessary steps to process the applicants' repossession claims in substance without further delay, with a view to them being granted and the decisions swiftly enforced.

**Actions taken**

The Final Report was forwarded on 11 October 1999 to OHR for further action.

**Final Reports Not Public in which Compliance has been achieved**

- In the case B.M. v. FBiH (report adopted on 9 February 1999) the applicant requested that the machinery seized by the Municipality of Lukavac in the period from October 1992 to July 1994 and then transferred to the "Airport Visoko", be handed back and that compensation for its use be paid. The Ombudsperson found a breach of the applicant's right under Article 6 para. 1 and recommended that the respondent Party ensure carrying out of the proceedings at issue with no further unnecessary delays. Promptly thereafter, the Cantonal Court of Sarajevo finished the proceedings at issue.
- In the case of J.D. v. FBH (report adopted on 4 May 1999), where the competent housing authorities failed to enforce a decision obtained in the applicant's favor and to restore the possession over the apartment to her, the Ombudperson found violations of Articles 6, 8 and Article 1 Protocol No.1 to the Convention and recommended that the FBiH Government ensure that the applicants be reinstated in her apartment. In the specified time limit, the applicant was reinstated into her apartment.

**Special Public Reports in which Compliance has been achieved**

- On 3 April 1998 the Federation Law on Purchase of the Apartments was amended in a way to exclude from its scope of application those apartments over which the relevant occupancy right had been considered as terminated in accordance with the Law on Abandoned Apartments, solely because their occupancy right holders left the apartments during the war in BiH (Special Report No. 980/97, 21 November 1997).

# B. Republika Srpska

1. **Length of proceedings (in property and non property cases)**
    a. **Sabic, Eger and Spahic v. RS (2 July 1998, 3 November 1998, 4 December 1998, Nos. 945/97, 320/97, 946/97)**

The applicants, together with other 4 people, were arrested on 4 September 1996. At the moment of applicants' arrest their mobile items were sequestrated. The applicants were convicted by the Court

of First Instance of Sokolac of theft of timber from the territory of the Republika Srpska and sentenced to one year's imprisonment by the judgment of 24 September 1996. By the same judgment it was also decided that the items which had been used for the theft (a truck, one hay-car, 2 horses and horse equipage) had to be seized as a security measure. On 19 December 1996 the applicants were released on bail according to a decision issued by the Court of Sokolac. No steps with a view to schedule the first re-hearing had been taken at all within a period of one year and eight months. The first retrial hearing that was scheduled for 24 June 1998 was not held because not all the charged persons came to the hearing. The measure of seizing the applicants' items remained in force. The Court postponed the hearings of 9 July 1998, 19 August 1998 and 16 October 1998 for the same reason as mentioned above.

The Ombudsperson found that the protracted period of inactivity of judicial authorities had not been convincingly justified by the Government and that, therefore, the criminal proceedings exceeded the requirement of "reasonable time" encompassed by Article 6 of the Convention. Furthermore the Ombudsperson found that the continued sequestration of the applicant's moveable items had to be considered as a violation of Article 1 of Protocol No. 1 to the Convention.

The Ombudsperson recommended that the respondent Party ensure that the authorities conduct the proceedings at issue without any unnecessary delays.

**Steps taken toward compliance**

There have been a few hearings scheduled but they were not held because the all accused persons were not duly summoned . According to the RS law on criminal procedure, it'is possible to postpone hearings if the codefendants (in this case the other 4 people concerned in the proceedings, besides the 3 applicants) are not all present at the trial. Apparently the codefendants are not interested in the proceedings. Furthermore all defendants reside in the Federation. On 28 September 1998 representatives of OHR and the OP office met in Sokolac with the public prosecutor and the judge in charge of the case and made the proposal to spilt the proceedings in other to speed up the finalization of the case at issue. No agreement was found in this respect but it was agreed that the President of the Court should be involved in the issue .On 14 October 1999 OHR sent a letter to the President of First Instance Court in Sokolac recommending him to sever the court proceedings in other to ensure those who have chosen to present themselves for trial receive a fair trial without further delay.

### b. R.I. v. RS (29 September 1998, No. (B)102/96)

The applicant is the holder of an occupancy right over an apartment in Banja Luka. On 19 September 1995 the applicant and his family were forcibly evicted from the apartment by an individual who thereafter occupied the apartment. On 8 March 1996 the applicant instituted civil proceedings before the Court of First Instance in Banja Luka requesting the Court to restore him the possession of the apartment. On 17 January 1997 the applicant urged the Court to hold a hearing in the case. The Court fixed a hearing for 30 June 1997, but the judge postponed it for an indefinite period of time. Thereafter the case was transferred to another judge who scheduled another hearing for 28 May 1998. Having heard the parties, the judge adjourned the hearing for indefinite period of time. No further hearings had been scheduled in the case to date of issuing of the Report.

The Ombudsperson considered that the competent authorities were responsible for the delay in the proceedings. The Ombudsperson, therefore, found that the proceedings at issue had exceeded the "reasonable time" requirement in Article 6 para. 1 of the Convention and that there had been a violation of the said provision.

The Ombudsperson recommended to the respondent Party, to forward, within one week of the date of receipt of the Report, a copy of the report to the Court of First Instance in Banja Luka with a view to ensuring that the hearing be scheduled and take place and, should further hearings or proceedings be necessary, they be carried out with no further unnecessary delays.

**Steps taken toward compliance**

On 17 August 1999 OHR sent a letter to the President of First Instance Court in Banja Luka to ensure that the hearings be scheduled and carried out. On 23 August the Municipal Court replied that hearings were scheduled on November 1998 and on March and April. These hearings were apparently postponed at the request of the plaintiff's lawyer (pending the outcome of another lawsuit within the applicant's case).

**Other individual cases in which compliance has been achieved**

- On 17 February 1998 the applicant's case was decided by the competent court (the decision of dismissal from work was revoked) (case Kelecevic v. RS, 20 June 1997, No. (B)30/96).
- On 21 Oct. 1998 the applicant was reinstated into the apartment at issue pursuant the OP's recommendation (case Juriskovic v. RS, 9 April 1998, No. (B)6/96).
- On 18 March 1999 the applicant was reinstated into his apartment thanks to the intervention of UNHCR (case S.A. v RS, 29 July 1998, No. (B)5/96).
- On 20 November 1998 the Supreme Court of RS decided the last applicant's complaint (case G.T. v. RS, 17 December 1998, No. (B)38/96).
- On 20 April 1999 the Court of First Instance issued a decision in the applicant's case (the applicant won the case). However, the defendant (her company) lodged an appeal before the District Court and the proceedings upon the appeal are pending. So it could be necessary to monitor the case even in the future. (case N.S. v. RS, 18 December 1998, No. (B)404/98).
- On 10 May 1999 the applicant personally appeared before the and withdrew the charges due to the fact that the defendant vacated the apartment and the he was reinstated together with his family (case M.R. v. RS, 3 December 1998, No. (B)25/96).

2. **Fair trial and Discrimination**

Special Report No. 2650/99, issued on 18 January 1999 (the Zvornik 3)

This special report addresses the issue of the fairness of the criminal proceedings against Nedzad Hasic, Ahmo Harbas and Behudin Husic (convicted of the murder of four Serbs by the Bijeljina District Court), of the independence and impartiality of the above mentioned Court and of the discriminatory proceedings and conviction of the 3 defendants at issue.

The Ombudsperson found that the criminal proceedings brought against the defendants and their conviction by the Bijeljina District Court were in breach of Artcle 14 in conjunction with Article 6 para. 1 of the ECHR.

The Ombudsperson recommended, inter alia , that the Supreme Court review the proceedings in the light of the Constitutions of Bosnia and Herzegovina and the Republika Srpska, of the European Convention of Human Rights and of all other applicable human rights instruments, and that should the case call for a retrial, the latter be conducted, pursuant to Article 373 para. 1 of the Law on Criminal Proceedings, by the Supreme Court itself, as this court offers more guarantees of independence and impartiality than the courts in Zvornik or Bijeljina.

She also recommended that in the further proceedings concerning the defendants Hasic, Harbas and Husic the Supreme Court should avail itself of the assistance of independent and impartial international experts on the European Convention for the Protection of Human Rights and Fundamental Freedoms. These experts should, in particular, have the authority to give advice on the respect of the Constitutions of Bosnia and Herzegovina and the Republika Srpska, of the European Convention and of all other applicable human rights instruments.

**Actions taken towards compliance**

On 26 Apr 1999 the Supreme Court of RS issued its decision in the case. On 27 May 1999, the OP referred her Report to OHR for specific action, as, according to the Ombusperson, the Supreme Court compliance with her recommendations was only partial (the judge Rosic abstained and the Supreme Court availed itself

of the assistance of the expert required) but its judgment in her opinion ignored them, even if the case was returned to the first instance court for retrial. A possibility exists that the 3 applicants be released according to the provisions within the RS Law on Pardon.

3. **Non execution of evictions (repossession of apartments)**

N.K. v. RS (2 December 1998, No. (B)88/96)

The applicant is a holder of an occupancy right over the apartment in which he and his family resided since 1985. The owner of the apartment is the factory "Cajavec" in Banja Luka. In 1992 the applicant concluded a contract for the exchange of real property. The Department for Property and Legal Affairs of the Banja Luka Municipality ("the Department"), to the owner's request, evicted the applicant and his spouse from the apartment in June 1994. Therefore, the applicant commenced administrative procedure in order to restore his occupancy right and possession over the apartment and on 26 May 1995 obtained a decision in his favor, which became final on 28 December 1995. Despite the applicant's requests, the Municipality hasnot yet enforced the said decision.

The Ombudsperson found that the failure of the authorities to enforce the relevant decision obtained by the applicant in his favor constituted a violation of Article 6 para. 1 of the Convention, considering that such failure of the authorities rendered guarantees under Article 6 enjoyed by the applicant during the judicial phase of the proceedings devoid of purpose. Since the competent authorities did not take the necessary action to protect the applicant against the unlawful interference by the individual squatting his apartment, the Ombudsperson considered that the respondent Party did not comply with the obligation to secure the effective respect for the applicant's home. She similarly concluded that inertia of the local authorities to enforce the administrative decision also constituted a failure by the respondent Party to secure his right to the peaceful enjoyment of his possession as guaranteed by Article 1 of Protocol No. 1 to the Convention.

The Ombudsperson recommended that the respondent Party ensure that the applicant be reinstated in his apartment, within four weeks after the receipt of the report.

**Steps taken toward compliance**

On 17 August 1999 OHR sent a letter to the Head of the Municipal Department of Housing and Legal Affairs and to the Head of Executive Boards in Banja Luka to ensure the enforcement of the administrative decision to reinstate the applicant into his apartment but no answer was obtained. To date there has been no reply.

**Other individual cases in which compliance has been achieved**

- On 5 May 1999 the applicant was reinstated into her apartment (case Satric v. RS, 22 January 1999, No. (B)7/96).

4. **Illegal evictions or threatened evictions**

Gajic, Dukic, Ukmar, Grozdanic, Tesanovic and others, Vidovic and others, Curlic v. RS (Nos. (B)124/96, (B)135/97, (B)146/97, (B)52/96, (B)57/96, (B)9/96, (B)78/96)

The applicants and their families had been living in the relevant houses on the ground of a contract for the use of privately owned houses or were authorized by the owners to live in their houses in the Republika Srpska after April 1992. Pursuant to Articles 49 and 53 of the Law, all relevant contracts and written authorizations were considered null and void. The applicants were therefore considered as illegally occupying the premises and, by application of Article 2 of the Law, the apartments or houses at issue were considered abandoned. Accordingly, pursuant to Article 10 of the Law, the Commission for the Resettlement of Refugees and the Administration of Abandoned Property ordered the applicants' evictions. In all those cases the Ombudsperson granted the applicants' requests for interim measures.

The Ombudsperson concluded, that applying of Articles 49 and 53 of the Law interfered with the applicants rights under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention and that such interference was not "necessary" and could not be considered as an interference which corresponded to a "pressing social need" nor it did show a fair balance between competing interests.

The Ombudsperson recommended to the Respondent Party that Articles 10, 49 and 53 of the Law cease to be applied in their current form and that appropriate steps be taken to repeal these Articles. Furthermore, she recommended that the applicants' rights to occupy the premises at issue on the basis on the relevant contracts/authorizations be recognized by the competent authorities.

**Steps taken toward compliance**

On 19 December 1998 the Law on Abandoned Property ceased to be applied, so that there was compliance with the general measure recommended by the OP. In any event, the Government did not issue an official order or instruction to explain the local Departments of the Ministry for Refugees in the RS that all proceedings started according to old Law on Abandoned Property should be adjourned and that the relevant contracts/authorizations of the applicants be recognized, in other to prevent future threats of eviction of the aforementioned applicants.

c) Lulic v. RS (4 September 1998, No. 1119/97)

The applicant entered into a temporary contract on use of the apartment located in Srbinje. On 4 December 1997 the Commission for the Resettlement of Refugees and the Administration of Abandoned Property ("the Commission") issued a decision by which the applicant was declared an illegal user and was ordered to vacate the apartment within three days. On 19 February 1998, the Ombudsperson decided, in accordance with Rule 16 of the Rules of Procedure, to request the respondent Government not to evict the applicant from the apartment at issue until she had had an opportunity to examine the application more thoroughly. The applicant has remained in the apartment.

The Ombudsperson considered that the applicant's threatened eviction from the apartment, since no legal basis for the decision on eviction had been identified, constituted an unjustified interference with his right to respect for his "home". As to Article 1 of Protocol No. 1 the Ombudsperson concluded that there was an interference with the applicant's right to the peaceful enjoyment of his possession and that this interference failed to strike a fair balance between the interest of the community and the applicant's interest.

The Ombudsperson recommended that the respondent Party ensure that the decision on eviction of 4 December 1997, by which the applicant was declared as an illegal user, not be enforced and that the applicant continue to use the apartment according to the contract on use that he had entered into with the owner of the apartment, until and unless the said contract was terminated pursuant to the applicable legal provisions.

**Steps taken toward compliance**

According to his lawyer the applicant is still in the apartment. The OP has never received any written assurance that the decision on eviction of 4 December 1997, by which the applicant was declared as an illegal user, would not be enforced and that the applicant would continue to use the apartment according to the contract on use that he had entered into with the owner of the apartment.

## 5. Disappearance Case

Berbic-Demirovic v. RS (30 September 1998, No. 7/96)

The first applicant is the mother of the second applicant (a daughter) and the third applicant is married to the second applicant. The first two applicants were last resident in Banja Luka. They are missing persons. The third applicant represented the first two applicants in the proceedings before the Ombudsperson and he was also considered by the Ombudsperson, acting ex officio, as an applicant in his own right. The case concerns the alleged abduction of the first two applicants in August 1995 and their detention by the Republika Srpska police officers.

The Ombudsperson noted that third applicant could not produce any concrete information or evidence (even circumstantial or presumptive) in support of his allegations that the first two applicants were detained after 14 December 1995, or at any time after their abduction. But the Ombudsperson also considered the lack of investigation into the first and second applicants' abduction in respect of the third applicant's rights under Article 3 of the Convention. The third applicant had been left in the most complete doubt and apprehension.

His anguish and distress were aggravated by the intimidation and harassment the applicant had been subjected to on account of his persistence in trying to find out his wife's and mother-in-law's whereabouts. The Ombudsperson could not find any acceptable justification for the complete inactivity of the authorities in respect of a complaint of such gravity and in the presence of so detailed allegations. Nor had the respondent Government submitted any argument to the contrary. Accordingly, the Ombudsperson considered that the third applicant was the victim of inhuman and degrading treatment.

The OP recommended that the respondent Party ensure that thorough investigations be commenced and carried out by the competent authorities into the disappearance of the third applicant's wife and mother-in-law on the basis of the detailed information submitted by the third applicant.

**Steps taken toward compliance**

RS has no information in this case.. An investigation carried out by RS local police and monitored by IPTF is likely to start soon after some steps taken in this respect by UNMIBH.

## 6. Repossession of Property

Halebic v. RS (27 May 1999, No. 23/96)

The case concerns taking of the applicant's industrial equipment from his carpentry workshop located in Ilidza, ordered by the Serb authorities in the period of reintegration of Ilidza into the Federation of Bosnia and Herzegovina. The applicant claims that he had unsuccessfully contacted several lawyers in the RS in order to take proceedings with a view to get his property back. He was told that it was not possible for him to start any judicial proceedings in the RS because he is not a citizen of this entity.

The OP found that the taking away of the property at issue, taken together with the failure of the authorities to subject this de facto confiscation to legal provisions, was in breach of the applicant's right under Article 1 of Protocol No. 1 to the Convention.

The OP recommended to the respondent Party to ensure that thorough investigation was carried out with a view to disclosing the circumstances of taking away the applicant's property, and the latter subsequent whereabouts; and, depending on the outcome of the investigation, to return the machinery at issue to the applicant or provide him with a just compensation therefor.

**Steps taken towards compliance**

The case was referred to OHR for further action on 7 September 1999.

## 7. Right to the Enjoyment of Possessions and Discrimination

Special Report No. (B) 655/98 issued on 27 May 1999

This Report addresses the compatibility of the practice of taking over the land previously used by minorities in the RS municipalities of Modica, Derventa and Novi Grad, occurred after the amendments to the local developments plans, with the ECHR and its Protocols.

The Ombudsperson found that the above mentioned practice was in violation with Article 1 of Protocol No.1 to the Convention and constituted discriminatory treatment contrary to Article 14 of the Convention in conjunction with Article 1 of Protocol No.1 to the Convention.

The Ombudsperson recommended to the Government of the RS and to the officials addressed in the report to secure that all changes in the development plans in the municipalities of Modrica, Derventa and Novi Grad be revoked as from the day of receipt of the report. Further, they should refrain from any activity in that respect in the future; to enable the previous users of the land at issue to have priority in allocation or any other disposal of the land mentioned in this Report; to inform the Ombudsperson about the measures taken in respect of the compliance with the recommendations set out above within 4 weeks from receipt of this Report. The Ombudsperson additionally recommended that the Government of RS suspend all activities on its territories concerning the taking over of the land previously used or owned by minorities in the RS until the final implementation of Annex 7 of the Dayton Peace Agreement.

**Steps taken toward compliance**

According to the Ombudsperson office in Banja Luka there are positive developments in this case which still requires monitoring. The Report was not forwarded to OHR for further action in order to obtain compliance.

**Other cases in which compliance has been achieved**

- On 24 October 1997 the applicant was released from prison (case Memovic v. RS, 20 October 1997, No. 431/97).
- On 15 May. 1998 the first re-hearing was scheduled in the case and the consequent decision on the applicant's continuing detention was passed (case Marjanovic v. RS, 9 April 1998, No. 310/97).

**Final Reports Not Public in which Compliance has been achieved**

- In the case V.B. v. RS (Report adopted on 31 August 1998) which concerned the length of civil proceedings commenced by the applicant against his dismissal from work, the Ombudsperson recommended that the first hearing be scheduled and the proceedings carried out with no further unnecessary delays. The hearings in the applicant's case have been held in September, November, and December 1998 and in February 1999. On 23 February 1999 the Court decided in the applicant's favor.
- In cases Mulabdic and Adzic v. RS (Reports adopted on 15 October 1998) which concerned the length of proceedings and the failure in the applicants' reistatement in thei apartments, the Ombudsperson recommended that the current occupants be evicted and the applicants be enabled to return to their properties In specified time limit the Government fully complied with the Ombudsperson recommendations.
- In the case A.B. v. RS (Report adopted on 4 March 1999) which concerned the failure of the Court of First Instance in Banja Luka to enforce the decision obtained in the applicant favor on 28 August 1997, the Ombudsperson recommended that the respondent Party ensured that the applicant be reinstated into his house in Banja Luka. The applicant was indeed reinstated on 14 May 1999.
- In the case D.J. v. RS (Report adopted on 12 April 1999), which concerned the length of civil proceedings before the Supreme Court of the RS regarding the applicant's appeal about his dismissal from work, the Ombudsperson recommended that the Respondent Party ensure that that Court decide upon the applicant's appeal with no further unnecessary delays. The applicant's case was decided by the Supreme Court of the RS in June 1999.
- In the case of D.Z. and 3 others v. RS (Report adopted on 3 May 1999), which concerned the applicants' unsuccessful efforts to commence criminal proceedings against eight local police officers who ill-treated and injured them during the interrogation in the local police station, the Ombudsperson recommended that within 4 weeks from the receipt of that Report, the competent Office of the Public Prosecutor take the necessary steps with the view of having the police officers concerned being investigated, on the basis of the criminal charges pressed by the applicants to the Office of the Public Prosecutor. In specified time limit, the Government fully complied with Ombudsperson's recommendations.
- In the case Z.S. v. RS (Report adopted on 13 July 1999) concerning the applicant's effort (submitting the appeal from the points of law on December 1996 before the Supreme Court of RS) to establish his property rights over the plot of land located in village Hrvacani near Prnijavor, respectively to fact that in 1946 the plot in question was nationalized, the Ombudsperson recommended that the respondent Party ensured that that Court examine the applicant's appeal without further delay. The applicant's case was decided by the Supreme Court in the specified time limit (on 2 August 1999).

**Special Reports in which compliance has been achieved**

- On 26 February 1998, the Constitutional Court of the RS declared unconstitutional Articles 4, 5, 11, and 13 of Law on Official Use of the Language and Alphabet of 8 July 1996 (No. 02-810/96) and they ceased to be applied as of the date when the Constitutional Court's Judgment was published, i. e. on 13 March 1998 (Special Report No. 345/97, 2 April 1997).
- After having met Mr. Pasic (director of the firm Kozaraprevoz in Novi Grad, RS) on October 1998 and after having examined his files the OP decided that there had been compliance with her recommendation (Special Report No.392/97, 6 May 1997)
- Even if not all the persons concerned were reinstated, none of the applicants, according to OP, is actually suffering from a lack of accommodation (Special Report No. 391/97, 12 May 1997).
- Within a week the applicants received copies of the judgments so that they could lodge an appeal against the decision of the First Instance Court in Zvornik issued on 24 April 1997 (Special Report No. 449/97, 3 June 1997).
- On January 1998 the District Court in Bijeljina accepted the appeal lodged by the 3 imprisoned applicants ruling that the verdict of the Municipal Court in Zvornik of 24 April 1997 would be abolished and the case returned to the first-instance court (District Court Bijelina) for retrial. The trial was rescheduled and postponed a couple of times and then resumed on 19 May 1998. (Special Report No.486/97, 19 June 1997).
- In its judgment of 10 November 1997 the Supreme Court of the RS (Kz-17/97) applied the ECHR directly and reverted the death penalty in this applicant's case to 20 years of imprisonment. The new drafted Criminal Code abolished the death penalty (Special Report No. 556/97, 18 July 1997).
- On 4 April 1998 the Law on Purchase of Apartments was amended to exclude from its scope of application the apartments over which the occupancy right had been considered as terminated (either pursuant to Article 10 of the Law on Abandoned Apartments or under Article 47 of the Law on Housing Affairs after 6 April 1992) solely because the relevant holders of the occupancy right abandoned their apartments due to the war in BiH (Special Report No. 980/97, 21 November 1997).

**Special Reports (Not Public) in which compliance has been achieved**

- Compliance was achieved in a case of protection of agricultural land against confiscation perpetrated with an intent of discrimination in a region of RS. The Ombudsperson recommended that the practice of arbitrary deprivation of land from private individuals in villages in the region cease as from the day of the receipt of this special Report and to refrain from this practice in the future. She recommended also to restore the possession of the deprived land to the legal owners in the region within 14 days by the day of the receipt of this Special Report. On 28 August 1998 the Ombudsperson received a letter from the addressees explaining the activities undertaken in other to remedy the situation observed in the Special Report. The Ombudsperson was satisfied with the reply of the competent authorities (Special Report adopted on 16 July 1998).

## C. the State of Bosnia and Herzegovina and Brcko

**Special Reports in which compliance has been achieved**

- The operative provisions of the Brcko Municipality decision (which temporarily suspended all contacts between representatives of Brcko General Hospital and members of IFOR or doctors from the Muslim-Croat Federation and which forbade all admissions and treatment of patients from the Muslim-Croat Federation) were nullified on 26 December 1996 (Special

Report concerning discrimination as to right to health and work, 12 December 1996).

- In the course of 1997 the postal and/or telecommunications services between FBiH and RS were established (Special Report No. 342/97, 28 February 1997).

**Notes:**

1. SL SFRJ, No. 84/90, entered into force into 6 January 1991.
2. SL SRBH, No. 4/92.
3. SL RBH No. 6/92, and see also SL RBH No. 6/93 and SL RBH No. 33/94.
4. SL RBH 18/94.
5. SL RBH 5/95.
6. SL RBH 50/95 and SL RBH 2/96.
7. M.P. v. FBH (24 March 1998), Levi and 56 others v. FBH/BH (19 May 1998), Petkovic and 28 others v. FBH/BH (16 July 1998), Birg v. FBH/BH (30 July 1998), Maric and 23 others v. FBH/BH (4 September 1998), Vukmirovic and 17 others v. FBH/BH (18 December 1998), M.M. and 18 others v. FBH/BH (18 December 1998), Stojakovic and 26 others (18 December 1998), Eror and 9 others (18 December 1998). Of these cases only M.P. , Birg, and Petkovic and 29 others involve regaining (or not being evicted) the purchased apartment. The remaining cases involve the registration of the purchase contract only, as the applicants reside in their apartment. Finally there is another set of JNA cases where a final decision was issued by the OP but which are still confidential.
8. 31 cases: 27 applicants are BiH citizens, 3 are FRY citizens and 1 is Macedonian. The applicants are: M.P., No. 84/96; Petkovic, No. 31/96 ; Zobenica, No. 39/96; V.V. No. 46/96; Terzic, No. 55/96; Kentara, No. 108/96; Sarenac, No. 138/96; Vujic, No. 141/96; Tvrtkovic, No. 153/96; Kovacevic, No. 155/96; Vujovic, No. 162/96; Budimir, No. 164/96; LJ.C., 165/96; Kasalica, No.187/96; Dakovic, No. 216/96; Drazetic, No. 223/96; Andelic, No. 236/96; Z.O., No. 248/97; J.R., No. 237/96; Juzbasic, No. 258/97; Opacic, No. 315/97; Lj.J. No. 339/97; A. and J. Vegar, No. 357/97; Kahvedzic, No. 371/97; S.N. and M.N. No. 396/97; D.K. No.400/97; Stankovic, No. 408/97; D.D. No. 418/97; Janis, No. 443/97; Pantelic, No. 459/97.
   According to our update information only one applicant Kahvedzic was reinstated (last year) into his apartment (the applicant is currently in America and he's currently leasing the apartment). As far as the others are concerned either was impossible to reach them or we know they submitted a request for reinstatement under the New Law but a decision in their cases was not issued yet.
9. The Law on the Sale of Apartments with an Occupancy Right (Official Gazette of the Federation, No. 27/97), in force on 6 December 1997.
10. The Law on the Cessation of the Application of the Law on Abandoned Apartments, 4 April 1998.
11. In Grbavac and 26 other JNA cases (15 January 1999 – 97/81 et al), the Chamber wrote that the 1998 legislation "cannot revalidate the applicant's original purchase contracts retroactively, that is to say with effect from the dates when those contracts were concluded. Accordingly, this legislation can have no bearing on the outcome of the present cases." In Maric et al v. BH & FBH (10 March 1999 – 98/126 et al), the Chamber held that "the new legislation issued after Medan and Others Š did not change the present applicants' situation. The same was true for Ostojic et al v. FBH & BH (15 January 1999 – 97/82 et al)."
12. See also final decisions in cases Stojakovic and others (Nos. 501/97), M.M. and others (Nos. 505/97), Eror and others (Nos. 521/97), all adopted on 18 December 1998. See furthermore the same conclusions in a number of more recent cases which are still non public, where OP did not even consider necessary to examine the applicants' complaints under Article 6 and 13 of the Convention.

## OHR Human Rights/Rule of Law Department