

Support for Human Rights Institutions

The Office of the High Representative seeks greater respect for human rights in BiH through support given to the Annex 6 and Annex 7 Institutions (as well as other human rights institutions) principally in three areas:

1. Assistance in seeking implementation of decisions and recommendations;
2. Work with the institutions in restructuring following the five year transitional period in Annex 6 and Annex 7;
3. Assistance in the co-ordination of the Institutions' funding requests and BiH budgetary commitments.

The following is a brief description of each of the human rights institutions with which OHR works:

The Office of the Human Rights Ombudsman of Bosnia and Herzegovina: receives complaints based upon an alleged violations of the *European Convention on Human Rights*, or discrimination coupled with any of the 14 Annexed agreements to Annex 6 of the GFAP. The Ombudsman, Mr. Frank Orton, a Swedish national, issues recommendations to authorities following a determination of a violation of any of the above. The Ombudsman normally requires that the applicants seek initially to resolve their complaints through state and entity authorities. More details are provided at their website:<http://www.ohro.ba/> On 3 January 2001, the BiH Law on the Human Rights Ombudsman entered into force.

The Human Rights Chamber for Bosnia and Herzegovina is a judicial body composed of 14 members, 8 international and 6 national. The Chamber hears applications based on the same grounds as the BiH Ombudsman, but issues final and binding decisions. Further information about the Human Rights Chamber may be found at their temporary website, which should be transferred into a permanent website:<http://www.gwdg.de/~ujvr/hrch/hrch.htm>

The Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), composed of three international and six national members, is responsible for confirming real property rights for displaced persons and refugees. The CRPC is authorized to receive and decide claims for real property in Bosnia and Herzegovina (BiH) where the property has not been voluntarily sold or otherwise transferred since April 1, 1992, in cases where the claimant does not now have possession of the property. The CRPC has the authority to make final and legally binding decisions on claims for real property and for occupancy rights, which must be respected in both entities of BiH. More information is available at: www.crpc.org.ba/

The Ombudsmen of the Federation of BiH, established under the Federation Constitution of 1994, are entrusted with the defense of human rights and freedoms within the Federation. They work, more specifically, for the removal of the effects of violations of these rights and freedoms, and particularly to remove the effects of ethnic cleansing. They are required to report regularly on the status of their efforts. These reports represent the most detailed picture available of human rights problems and progress within the Federation. More information may be found at: www.bihfedomb.org/

The Ombudsmen of Republika Srpska were established through legislation of the National Assembly of the Republika Srpska, adopted in February 2000. Their task is to receive claims regarding maladministration and violations of human rights. The Ombudsmen were appointed in late April 2000, and began receiving claimants in the autumn of 2000. On 30 November 2000, the RS Ombudsmen officially opened their headquarters in Banja Luka, and four field offices in the municipalities of Prijedor, Doboj, Bijeljina, and Foca / Srbinje. In the period from November 2000 when they initially started to receive individual cases to 28 February 2001, the RS Ombudsmen received 973 cases, of which 134 have been completed and 839 are in process.

During the initial period, the RS Ombudsmen have sought media coverage of the Office and information to the public regarding the scope of the work of the institution and its competence, including the locations of their offices. The Ombudsmen also expressed a wish to have regular contacts with the media regarding the activities of the Institution.

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

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. ⁽¹⁾ Please see the associated documents for more detailed information.

1. Introduction

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

1. The Human Rights Ombudsman for Bosnia and Herzegovina and
2. 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 in conjunction with allegations of discrimination. 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 Human Rights Ombudsman combines judicial determination of violations with mediation in order to solve cases brought by applicants, and issue recommendations when he finds violations. The Ombudsman may also begin investigations of his own accord and issues Special Reports in such cases.

On 3 January 2001, the Law on the Human Rights Ombudsman of Bosnia and Herzegovina entered into force following the ordering of the publication of the Law by the High Representative on 11 December 2000 (Official Gazette of BaH, No. 32/00). The Law regulates the activities of the Institution, including the relationship between the BiH Ombudsman and the Entity Ombudsman Institutions. All three Ombudsman Institutions are now governed by legislation drafted with the assistance of the Venice Commission, the European Commission for Democracy through Law.

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⁽²⁾, the Madrid Declaration of the Peace Implementation Council⁽³⁾, and is a pre-condition for the accession of Bosnia and Herzegovina to the Council of Europe⁽⁴⁾.

On 27 October 1999 the High Representative issued Decisions imposing the *Law on the Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC)* both in the Federation and Republika Srpska. (27 October 1999 Decision on the Recognition and Implementation of CRPC Decisions in the Federation. These laws regulate the administrative and court procedures for the recognition and implementation of CRPC decisions.

The High Representative has issued the Decisions with the full support of the Steering Board and other international organizations operating in Bosnia and Herzegovina, such as the OSCE, UNMIBH, the European Commission, UNHCR and CRPC. The International Community considers the High Representative's Decisions essential to safeguard the rights of refugees and displaced persons in Bosnia and Herzegovina, speed up the execution of the property and housing laws and allow for the full implementation of Annex 7 of the Dayton Peace Agreement.

2. Case file progress to date

To the end of April 2001, 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	7037	6338	292,293
Cases completed	910	2824	152,157

*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

Implementation of Chamber decisions increased from 10% in early 1999 to the current 73%, in large part due to almost completed implementation of the JNA apartment decisions. However, progress in general was seen in the Federation, as many occupancy right cases and compensation awards were implemented in the reporting period. Republika Srpska also showed progress in regard to the payment of monetary compensation in 37 cases, although in all these cases the sums paid did not include interest charges as required by the Chamber. While the increase in implementation rates denote progress, there remain over 200,000 property repossession cases in BiH, all of which, under the Human Rights Chamber's jurisprudence, would be violations of the European Convention on Human Rights. Continuing progress in property implementation must be seen in order to decrease the caseload of the Human Rights Chamber.

a. Human Rights Chamber:

The **Federation of BiH** has made good progress in compliance. In all final decisions, there has been 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
- Property matters

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

The Federation has had close to perfect compliance with provisional orders of the Chamber and monetary compensations awarded by the Chamber (91% of compensation orders have been paid).

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 (Mosques in Banja Luka, Bijeljina and Zvornik)
- A disappearance case

There has been partial compliance in the following areas:

- Reinstatement in abandoned apartment cases (non-enforcement of judicial decisions)

There has been compliance in the cases of removal of the threat of eviction in “tenancy” contract cases due to changes in property legislation.

There has been good compliance by the RS with the provisional orders of the Human Rights Chamber. The compliance was achieved also in two cases of religious discrimination, Mahmutovic v. RS and Islamic Community v. RS regarding Bosniak part of cemetery in Prnjavor.

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. BiH Human Rights Ombudsman Cases:

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 Ombudsman 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 Ombudsman 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 April, CRPC had received a total number of 292,293 claims related to 294,238 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, 152,157 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. (5) While the status of the CRPC as the final decision-making body on property issues in BiH has been confirmed by legislation imposed by the High Representative in both Entities, to date, the level of compliance with this obligation and specifically the enforcement of decisions has been manifestly inadequate. CRPC decision-holders are increasingly complaining to the CRPC that they are unable to enforce their CRPC decisions, which clearly confirm their right to the property that they are trying to repossess. The CRPC has received over 6250 complaints regarding non-implementation of CRPC decisions, with the greatest numbers relating to properties in Banja Luka, Brcko, Doboj, Mostar, Sarajevo, Pale, Tuzla, Zenica and Zvornik. In order to assist CRPC decision-holders, the CRPC has increased its focus on monitoring and implementation of CRPC decisions. In recent months the Human Rights Chamber issued several decisions ruling that non-enforcement of CRPC decisions constitute violation of the ECHR.

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.”

Future of the Institutions

On 10 November 2000, agreements were signed which clarify the legal situation of the Annex 6 and Annex 7 Institutions (BiH Human Rights Ombudsman, the Human Rights Chamber and the CRPC). Under these agreements, the Human Rights Chamber and the CRPC are to operate until 31 December 2003 in the same manner as they have been operating between 1995 and 14 December 2000.

The BiH Human Rights Ombudsman is to be regulated in accordance with the Law on the BiH Ombudsman, which was imposed by the High Representative on 14 December 2000 by the Decision Imposing the Law on the Human Rights Ombudsman of Bosnia and Herzegovina. The Law entered into force on 3 January 2001. These agreements, negotiated by the OHR between the governments and the institutions, provide greater certainty for the institutions to carry out their efforts.

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