

Accession of Bosnia and Herzegovina to the Council of Europe: Progress Review # 10, June 22, 2000

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The Human Rights Coordination Centre was tasked by the Human Rights Steering Board to draft an assessment on the progress to date of Bosnia and Herzegovina towards meeting the accession requirements identified by the Council of Europe in May 1999. In this report the HRCC tracks progress on those requirements pertaining to Human Rights. The report is intended to provide factual updates but does not intend to provide an opinion on whether or when BiH should accede to the CoE.

It is important to note the following. The accession requirements often stipulate the passage of particular legislation. The Council of Europe does not differentiate between whether legislation is imposed or adopted; therefore, some requirements are marked as "satisfied" although the law may have been imposed by the High Representative. Also, many of the requirements only refer to adoption, but not to implementation.

Please contact HRCC if you would like copies of past reports. Please send information/comments to fax number: 387-71-447-420 to the attention of Lene Madsen, Sirpa Rautio, or Eric Frejabe, or by e-mail to lene.madsen@ohr.int, sirpa.rautio@ohr.int, or eric.frejabue@ohr.int.

UNHCR has contributed to, reviewed, and approved sections directly relevant to its mandate. The sections are noted by an asterisk () in the text. The "®" symbol in the text indicates issues where changes have taken place since the last progress review.*

Highlights

- No change in assessment this month
- Higher Education Coordination Board is formally established, after some initial delays, page 13.
- RS Housing Authorities allocate additional resources to the implementation of the property legislation. This is however done under strong pressure of the IC, page 10.
- Pursuant to the newly passed Law on Judicial and Prosecutorial Service, the Federation Commission has held its inaugural session and appointed its president, page, page 6.
- The RS National Assembly passes Proposed RS Criminal Code, Page 9.

3. Human Rights Institutions

BiH

- ***Commitment to adequate Funding of the Human Rights Chamber, Ombudsperson and Commission for Displaced Persons and Refugees***

Not Satisfied. The Council of Ministers of BiH proposed in October 1999 (for the first time) that the funding levels for the Institutions in Annex 6 and 7 be raised from the current KM 200,000 to the level of KM 600,000. The year 2000 budget provides for KM 400,000 per institution, which remains below KM 600,000, deemed to be "adequate funding". Note that the latter sum is less than each Institution pays for local salaries at BiH salary levels.

By 3 March, the State government completed outstanding payments towards the total funding committed for 1999 to the Human Rights Chamber, the CRPC, and the Ombudsperson. The total amounts are still below KM 600,000 per institution, but do at least fulfill the amount of KM 200,000 per institution, which the state itself budgeted for

1999. As of 26 May, the institutions did not receive any payment for 2000, yet. ® Disbursements for the year 2000 have not been paid, due in part to a failure on the part of the Entities to pay their contributions.

BiH, FBiH and RS

• Full compliance with decisions of the Human Rights Chamber and recommendations of the Ombudsperson

In recent months, there has been a trend towards implementation of the decisions of the Chamber and the Ombudsperson. This has led, for example, to a current implementation rate of 60% of the 207 decisions of the Human Rights Chamber in which an order to a government was given. The implementation rate for cases of the Ombudsperson in which a public recommendation was given is approximately 45% of 600. One reason for the discrepancy is that the Ombudsperson seeks and achieves implementation in many cases which are not made public and not included in these statistics.

However, the Entities have not demonstrated an ability to provide any assurance that the many thousands of remaining property repossession cases (see graph above) can be resolved within a reasonable time, and certainly not within the time limits established by law. BiH is therefore not currently in a position to be able to prevent future violations of the Convention, which is fundamental to the European Court of Human Rights system. Regarding this criteria, cases involving “possessions” (including property matters) comprising of over 70% of the claims brought to the Ombudsperson and the Chamber, BiH would be unable to satisfy this particular compliance requirement used by the Committee of Ministers, as many thousands of similar cases are not complied with. Less than fifteen percent of applicants to domestic housing bodies have been able to repossess their house or apartment. Until this percentage increases significantly, under Human Rights Chamber / Strasbourg jurisprudence, large numbers (tens to hundreds of thousands) of admissible applications could reach the European Court of Human Rights upon BiH accession under the “continuing violation” principle.

BiH

Satisfied. The State (as opposed to the entities) has been found to be in violation of the European Convention on Human Rights and other international conventions in very few instances, due to its limited competencies under the Constitution of BiH. The State has implemented all orders and recommendations of the Chamber and the Ombudsperson.

FBiH and RS

Despite ongoing non-implementation with respect to the *Human Rights Chamber's* decisions, some progress has been noted. The Agents, who are undertaking much of the work, were appointed in early 1999. It may thus take up to the fall of 2000 to be able to assess whether the governments are respecting the decisions of the Chamber following the introduction of the agents' offices. It is evident however that the level of co-operation between the Agents and the Institutions is increasing. As a result, most cases appearing before the Chamber and Ombudsperson at least have received legal argumentation by the respondent governments. There has been a high degree of success regarding interim measures issued by the *Chamber* and the *Ombudsperson*, and an increasing number of amicable solutions found, especially in Ombudsperson cases.

RS

Partially Satisfied. The RS is not meeting all obligations with regards to compliance with *Chamber* decisions. The RS has not implemented orders issued by the Chamber in the June 11, 1999 Decision of *Islamic Community in BiH v. RS*, nor has it implemented the Chamber's orders in the case of *Matanovic v. RS*, which has been outstanding since 1997. Broadly speaking, implementation has been achieved in most non-property Ombudsperson cases, but only in a minority of cases involving property repossession. In addition there has been non-compliance in a case of two disappearances, less than full compliance in cases of illegally threatened evictions, and non-compliance with regard to *Zvornik 3* recommendations.

FBiH

Partially Satisfied. The Federation is moving towards compliance with decisions of the Human Rights Chamber, although often with the assistance/involvement of OHR, the OSCE and other international organisations. As a result

of OHR involvement in legislative amendments, the Federation has complied with requirements in several death penalty cases. There are only a few cases of non-compliance with decisions of the Ombudsperson, including, length of administrative proceedings, failure to deal with the "Liska Street Incident" which took place in 1997, ordered retrials, ill-treatment by law enforcement officials. The issues of individual property and changes to JNA property legislation would not have progressed without OHR involvement. All five previously-reported promised repossessions have now taken place. The Federation now has a limited number of Human Rights Chamber decisions to implement, but there remain many repossession cases filed with the Ombudsperson of BiH in which there has not been implementation.

FBiH and RS

- ***Establishment of a working group with OHR and Council of Europe for restructuring human rights protection mechanisms in accordance with recommendations of the Venice Commission***

Partially Satisfied. Restructuring of the human rights mechanisms is currently under discussion with the Venice Commission, the OHR, the OSCE, the relevant institutions, and State bodies. On 1 April 2000, the Venice Commission adopted a plenary opinion on the future restructuring of the human rights institutions, although a public version is not yet ready. The report has not yet been made public.

FBiH

- ***Passage of legislation on the Ombudsmen recommended by the Venice Commission and guaranteeing their continuing independence***

Partially Satisfied. On 28 July 1999, OHR, OSCE, and the Council of Europe proposed a draft to the Federation Minister of Justice. The draft law was on the agenda of the 9th Session of the House of Representatives of the Federation of BiH, which began on 5 October. The draft law has passed the first reading (of two) in the House of Representatives, w