

# **Accession of Bosnia and Herzegovina to the Council of Europe: Progress Review # 8, April 19, 2000**

## **Accession of Bosnia and Herzegovina to the Council of Europe: Progress Review # 8**

*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](mailto:lene.madsen@ohr.int), [sirpa.rautio@ohr.int](mailto:sirpa.rautio@ohr.int), or [eric.frejabue@ohr.int](mailto: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 status of assessment requirements in April.** The last change occurred in January when the assessment of the commitment to adequate funding of the Human Rights Chamber, Ombudsperson and Commission for Displaced Persons and Refugees (#3) moved from 'partially satisfied' to 'unsatisfied' and the revised law on citizenship (#6) was downgraded from 'satisfied' to 'partially satisfied.'
- The adoption of the *Law on the Ombudsman of the Republika Srpska* in February (#3), although deemed a positive move from the RS authorities, still does not fulfill the criteria which requires that the Office is made operational. Applicants for the position are in the process of being interviewed.
- The level of co-operation between the Agents and the Institutions is increasing (#3). Respondent governments are providing legal arguments regarding cases brought before the Human Rights Chamber and the Ombudsperson.
- The draft *Law on Judicial and Prosecutorial Service* (#4) presented an important opportunity to fulfill an essential accession requirement. The draft law has been on the agenda of the House of Peoples for 3 months. The House of Peoples had an opportunity to pass the law on April 13, but failed to consider the legislation.

## **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. This proposal, now ratified by the Presidency, must be voted upon by Parliament, and paid by the State, following the collection of contributions from the Entities. The current budget provides for 400.000 DM per institution, which remains below 600,000 KM, deemed to be the adequate funding. Note that the latter sum is less than each Institution pays for local salaries at BiH salary levels.

It is worth noting that on 21 January, 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 the 600,000 per institution, but do at least fulfil the amount of KM 200,000 per institution, which the state itself budgeted for 1999.

### ***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 compliance with decisions of the Chamber and the Ombudsperson.

However, the entities have not demonstrated an ability to provide any assurance that tens of thousands of property cases (perhaps as many as 100,000) can be resolved within a reasonable time, and certainly not within the time limits established by law. BiH is therefore not in a position to “prevent future violations”, which is fundamental to the European Court of Human Rights system and prerequisite to the Council of Europe’s Committee of Ministers determination of compliance in any particular case. In essence, the Committee of Ministers decides that there has been compliance when it is satisfied that the likelihood of a repetition of the occurrence of the violation is low. On this test, in cases involving “possessions” (including property matters), which consist of over 70% of the claims brought to the Ombudsperson and the Chamber, BiH would not be able to satisfy the compliance requirement used by the Committee of Ministers, as many thousands of similar cases are not complied with.

This inability to solve the property question also raises doubts about the capacity of the European Court of Human Rights to absorb cases emanating from BiH, in areas including property rights, pensions, employment and education matters. The Strasbourg Court, which has only dealt with some 1200 cases since its inception (although many thousands of others were dealt with by the former Commission), would likely receive thousands of cases from BiH. Due to the lack of political will to allow return in many municipalities in BiH, these cases would be admissible and, in all likelihood, successful, and therefore, under the current rules of the European Court of Human Rights, could not be refused prior to a decision on the merits by the Court. Those deciding upon the application of BiH to the Council of Europe should consider the consequences of many thousands of such cases on the workload of the Court.

### ***BiH***

Satisfied. The State (as opposed to the entities) has been found to have violated 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 complied with all orders and recommendations of the Chamber and the Ombudsperson.

### ***FBiH and RS***

Despite ongoing non-compliance 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 mid-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**

### **Partia**

lly Satisfied. The RS is not meeting all obligations with regards to compliance with *Chamber* decisions. The RS has not complied with the orders issued by the Chamber in the June 11, 1999 Decision of *Islamic Community in BiH v. RS*, nor has it complied with the Chamber's orders in the case of *Matanovic v. RS*, which has been outstanding since 1997. In January and February, the RS has taken steps to comply with decisions involving the length of criminal proceedings and in matters involving ill-treatment by police. Broadly speaking, compliance has been achieved in most Ombudsperson cases, but not in many cases involving property repossession. In addition there has been non-compliance in a case of disappearances, less than full compliance in a few 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 non-enforcement of administrative decisions related to property and length of administrative proceedings, failure to deal with the "Liska Street Incident" which took place in 1997. The issues of individual property and changes to JNA property legislation would not have progressed without OHR involvement. Despite a promise by the Sarajevo Minister responsible for housing matters to reinstate five applicants who had received Human Rights Chamber decisions, only three of the five have been reinstated.

## **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.

## **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, with only minor changes. There have been delays, however, in advancement through the House of Peoples, passage by which is required for adoption of the legislation. ® On 21 March, the House of Peoples adopted the required legislation at first reading. The government must now review the comments of the two bodies and prepare the legislation for "proposal", the second and final reading. The government of the Federation of BiH should have the proposed legislation by the end of April 2000, but the backlog of legislation pending before the Federation Parliament could delay the adoption process.

## **RS**

- ***Establishment of the Ombudsmen as a multi-ethnic institution***

Partially Satisfied. The draft *Law on the Ombudsman of the Republika Srpska* prepared by the Venice Commission

and other organisations, which includes the establishment of the Ombudsmen as a multi-ethnic institution, was adopted on February 8, 2000 and came into force on 17 February 2000. The Law conforms to European standards and is in accordance with the Venice Commission Draft Law. It is important to note that this law remains to be implemented. Implementation will require action on the part of the RS authorities and will be closely monitored by OHR and OSCE. In March, the BiH Ombudsperson, who is to appoint the first three Ombudsmen, published a vacancy notice in newspapers in BiH and abroad with a view to appoint office holders, after consultations as provided for by the Law. ® The BiH Ombudsperson is now in the process of interviewing the applicants.

## 4. Judicial System

### *Adoption of legislation to achieve professional and independent prosecutorial and judicial system*

The goal of creating an independent and impartial judiciary in BiH will be promoted considerably by the impending adoption of judicial service laws in both entities that provide a merit-based, non-political structure for the appointment and dismissal of judges and prosecutors. However, laws and regulations providing for a new budgetary and administrative mechanism for courts and prosecution offices must also be promoted in order to prevent the executive from unduly influencing judicial decision making through courts and prosecution office budgets.

Better means for Federation and RS courts and prosecution agencies to prosecute inter-entity and inter-ethnic crime must be created. Existing co-operative structures, including the 1998 *Memorandum on Inter-Entity Legal Co-operation and the Commission on Inter-Entity Legal Co-operation*, must be revitalized. In the Federation, a structure for prosecution and punishment of specific classes of "Federal" and inter-cantonal crimes has already been established pursuant to imposed amendments to the Federation Law on the Supreme Court and the *Law on the Federation Prosecutor's Office*. Its proper implementation requires further structural and institutional reforms.

Laws providing for Legal Training Centers which should take the lead in streamlining and consolidating training standards for judges and prosecutors throughout Bosnia and Herzegovina must be promoted in both entities. To integrate these centers further, e.g. in terms of administration, curricula and training methods, co-operative agreements need to be negotiated between the parties/entities.

Efforts must continue at revising the existing Criminal Codes and Criminal Procedure Codes in both entities. These revisions will include changes affecting the structural relationships between courts, prosecutors and police, leading to a clarification of their roles and greater independence for judges and prosecutors. Working groups composed of domestic and international community participants are involved in the process and the input of Council of Europe experts has been sought.

### **FBiH and RS**

- ***Adoption of the laws to establish independent selection procedures for judges and prosecutors and priority to adequate judicial salaries<sup>1</sup>***

These laws establish special judicial commissions/councils responsible for the appointment, discipline and dismissal of judges and prosecutors. There will be councils on both entity and cantonal level. OHR, in coordination with the international community, is currently monitoring the legislative process and parliamentary debate in order to see whether any last minute attempts are made to amend the draft laws in a manner that thwarts their original intent. Once the legislation has been passed/imposed, the authorities must take on the responsibility of full implementation.

### **FBiH**

Partially Satisfied.® The draft Law on *Judicial and Prosecutorial Service* was passed in February by the House of Representatives, but it has not been considered by the House of Peoples, although it has been on its agenda since February. The House of Peoples had the opportunity to consider the law at its session on April 13, but failed to do so. The draft law in its current form contains some last minute amendments regarding the relationship between the Federation commission and the cantonal commissions which are of concern since they limit the oversight of the Federation commission over the cantonal commissions. These amendments are currently being assessed by the IC.

## **RS**

Partially Satisfied. A draft *law of the Law on Courts and Court Service* was passed as a draft in February by the RSNA and requires a second reading before that body. The draft law contains some elements of concern, i.e. provision providing for military courts. The draft is on the agenda of the RSNA, scheduled for April 24/25. Efforts to draft comparable legislation regarding prosecutors are ongoing.

## **5. Constitutional Court**

### **BiH**

- ***Commitment to adequate funding of the Constitutional Court in a manner which sustains its independence and implementation of its decisions***

Unsatisfied. The state has offered 50,000 KM towards the funding of the constitutional court. This is inadequate to ensure independence and implementation of decisions.

## **6. Compliance with the European Convention on Human Rights**

*Continued revision of legislation to ensure compliance with the ECHR:*

### **BiH**

- ***Adoption of Immigration and Asylum Law***

Satisfied. The House of Peoples, the second Chamber of the BiH Parliamentary Assembly, adopted the *Law on Immigration and Asylum* on December 3, 1999. The law was published in the BiH Official Gazette on 23 December 1999 and entered into force on December 31. The Law establishes the legal framework for the admission and stay of aliens, as well as the criteria and procedure for determining refugee status and granting asylum in BiH.

Outstanding issue: All necessary by-laws need to be adopted to ensure the implementation of the law. In particular, the following steps must be taken to achieve the full implementation of the law: issuance of comprehensive instructions at the State and Entity level; establishment of, and appointment of staff for the bodies foreseen in the law, i.e. an Appeals Panel under the Council of Ministers, and a unit fully qualified in refugee law within the Ministry of Civil Affairs and Communication; transfer of Entity-held records regarding decisions on entry and stay of aliens made prior to the entry into force of the law to the Ministry of Civil Affairs and Communications.® UNHCR, OHR, EU Phare and the Ministry for Civil Affairs and Communication have established a joint working group to address the drafting of the by-laws. This process is currently on-going.

### **BiH, FBiH, and RS**

- ***Adoption of Law on Associations and Foundations respecting independence of Non-Governmental Organisations***

Partially Satisfied. Two draft laws (entities/state) on association and foundations which are based on the LEA (Legislation Education Advocacy) draft have been finalized. The Council of Europe and the International Centre for Not-for-Profit Law have reviewed the draft laws and provided comments, which have been incorporated by the OHR. At the same time a working group in the RS has sent its draft to the OHR. The RS draft has been reviewed by the OHR and will be submitted to the RS parliament. Concerning the Federation and BiH, OHR will submit the drafts to the relevant bodies which will present the drafts to their respective parliaments for review.

### **RS and FBiH**

- ***Establishment of groups to examine compatibility of legislation with ECHR, and regular consultation with OHR and CoE on legislative initiatives***

Partially Satisfied. The Ministry of Justice of the Federation and the Ministry of Justice of Republika Srpska established ECHR compatibility groups of five members each in 1998 (FBiH) and 1999 (RS) respectively. There is a coordinator in the Ministry of Foreign Affairs. However, while some members of the groups have taken part in a study visit to Hungary to discuss the compatibility procedure, the groups have not met officially or started their work of drafting reports assessing the compatibility of domestic legislation with the ECHR. The Council of Europe has therefore recently decided to change the composition of the groups. There is consultation with OHR and CoE on legislative initiatives, but this is predominantly initiated by the international organisations rather than by government ministries.

## **RS and FBiH**

### **• *Legislation on Conscientious Objection and Alternative Service***

Unsatisfied. Legislation in both Entities falls short of ensuring the right to conscientious objection and alternative service to military service, both regarded as essential components of the right to freedom of thought, conscience and religion (article 9, ECHR and Recommendation No. R (87) 8, issued by the Council or Ministers of the Council or Europe in 1987).

## **RS**

### **• *Revised Law on Internal Affairs***

Unsatisfied. The RS National Assembly passed amendments to the *Law on Internal Affairs* in its session on 14 and 15 July. UNMIBH completed a preliminary review of the latest version of the Law and found serious inconsistencies with the Dayton Agreement, the European Convention on Human Rights, the Framework Agreement on RS Police Restructuring, Reform, and Democratization, as well as established policies which guide implementation of the police reform. Additionally, the Law was found to lack specificity in many areas.

UNMIBH proposed a full review of the law and requested the expertise of the CoE in its redraft. CoE Experts, OHR, and UNMIBH representatives met in Banja Luka on 18 November 1999 to discuss this issue, and agreed to proceed with redrafting the law. This redraft is to be led by OHR, in line with comments from the CoE and input from UNMIBH. The latter input consolidates the CoE comments with necessary changes to assure consistency with the *Framework Agreement on RS Police Restructuring, Reform, and Democratisation*.

## **BiH, FBiH, RS**

### **• *Law on Citizenship\****

## **BiH**

Satisfied. The *BiH Law on Citizenship* was imposed by the High Representative and entered into force on the 1st of January 1998 on an interim basis, pending adoption by the BiH Parliamentary Assembly, without amendments and conditions. On the 27th of July 1999, the Law was adopted by both Chambers of the BiH Parliamentary Assembly and was published in the Official Gazette on 26 August, 1999 (13/99).

Outstanding: The law still requires the adoption of implementing instructions, notably concerning registration of those who acquired citizenship *ex lege* on the basis of RBiH citizenship legislation. Also, the Madrid PIC urges the relevant BiH governmental authorities to conclude bilateral agreements with respect to citizenship, with neighboring countries, with the assistance of the High Representative, as soon as possible, but no later than June 30, 1999.

## **RS**

Partially satisfied. The *RS Citizenship Law* was passed at the RSNA in December 1999, published in the Official Gazette on 6 December 1999, and entered into force on 14 December 1999. However, during the RS National Assembly, some last-minute amendments were adopted which are not fully in line with the State Citizenship Law. Amendments to the Law, which will ensure the full compliance of the *Republika Srpska Citizenship Law* with the BiH Law are currently pending before the Republika Srpska National Assembly. The Republika Srpska government has also promised to pass necessary regulations for the implementation of the Law. In particular such regulations

will enable those former SFRY citizens, who under the Law are entitled to BiH citizenship, to apply for citizenship.

### **FBiH**

Not satisfied. The adoption of the *Federation Law on Citizenship* has been problematic. The draft law was discussed and prepared by the working group comprising of OHR, UNHCR, representatives of the Federation Government and the Council of Europe in April 1998. All provisions of the law were agreed upon and were in compliance with the State law. However, Federation partners subsequently, unilaterally, and without the knowledge of OHR changed the draft delegating the decision-making competencies from the Federation to the Cantonal level. After OHR intervention the Ministry of Interior reverted to the previous draft in compliance with the State law and submitted the draft to the government for further procedure. The draft *Federation Law on Citizenship* was approved by the Federation Government November 10, and is scheduled for adoption in both Houses of the Federation Parliament. The draft Law needs urgent adoption, since former SFRY citizens who took up permanent residence in BiH before 1998 were eligible for BiH citizenship as of 1 January 2000.

### **RS**

#### **• Adoption of the Criminal Code and Code of Criminal Procedure**

Partially satisfied. Efforts to revise the *Criminal Code* and *Criminal Procedure Code* are ongoing. The passage of the *Criminal Code* is pending, having received an initial vote.® The Criminal Code is undergoing review by Council of Europe experts and other members of the international community. It is expected that this will be placed before Parliament in the near future for final passage. The drafting of the *Criminal Procedure Code* is also nearing completion and will soon be sent to the international community for comment. Thereafter it will be presented to the Entity Working Group for discussion and then submitted to the National Assembly for adoption.

## **7. ICTY**

#### **• Full co-operation with the ICTY**

Unsatisfied. SFOR detained 1 PIFWIC, Momcilo Krajisnik on April 3, 2000, an ally of the former Bosnian Serb leader Radovan Karadzic. This is the 6th arrest by SFOR within the past 6 months. In total, SFOR has now detained nineteen alleged war criminals in BiH, which is to be added to the 18 who surrendered or have been apprehended in third countries. More than half of the 29 public indictees who remain at large originate from BiH.

## **9. Property Laws (Return of Refugees and Displaced Persons)\***

#### **• Full co-operation and compliance with Annex 7 on Refugees and Displaced Persons of the Dayton Peace Agreement in the Implementation of the property laws**

Unsatisfied. The legal framework for return of refugees and displaced persons, including the implementation of decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), is now in place in both Entities, but has been achieved only by repeated use of the High Representative's powers. Implementation of the laws remains the exception, rather than the rule.

The registration of claims is largely complete in the Federation, and is now progressing in Republika Srpska. Approximately 190,000 claims for houses and apartments have been registered in the two Entities. However, a combination of open political obstruction, lack of political support, and insufficient allocation of resources has meant that processing of the claims is very limited. The decisions of November 29, 1999 by the High Representative to remove housing officials who were obstructing the process is still hoped to have a mid-term positive impact on the implementation of the property legislation.

Most claimants have not received decisions confirming their property rights. Only slightly more than 5% of the claims have led to repossession of property, and most of those have resulted from the current occupant voluntarily vacating the property. Evictions of illegal and temporary users of property are rare, outside Sarajevo Canton. However, the lack of will on the part of housing authorities to tackle multiple occupancy and other forms of

misallocation of housing stocks remains strong. While shortage of accommodation remains a major practical problem in many places, there is little sign that the responsible authorities are making efforts to maximise their use of housing stocks, and/or create the necessary alternative accommodation to facilitate implementation of the housing law.

The responsible authorities in both Entities have not provided the personnel and material resources which the task of resolving property claims would require. This problem is particularly acute in Republika Srpska, where the lack of attention to building effective municipal operations of the Ministry of Displaced Persons and Refugees amounts to a form of political obstruction. Commitments have been made by the Republika Srpska Government to improve budgetary allotments to the MRDP, but this has not yet translated into improved implementation.

Overt political obstruction to property law implementation is still a severe problem in certain areas, especially Croat-controlled areas in Cantons 7, 8 and 10, and parts of Republika Srpska, and constituted one of the reasons for the High Representative's decision to remove a number of municipal officials from their posts on 30 November. In other areas, there are cautious signs that the political atmosphere surrounding the implementation of the property laws is beginning to improve. Sustained international attention on this issue has begun to make both local officials and the general public aware of the importance of restoring the rule of law in housing, irrespective of the ethnic dimension. However, this is yet to translate into a self-sustaining return process.

Outstanding. With standardised legislation in both Entities, and improved public tolerance for return in most parts of the country, there is a prospect of initiating a self-sustaining return process in the coming year. International efforts will need to focus on institution-building, increasing the capacity and professionalism of housing administrations, and to limit political interference. Close attention will be given to budgetary processes, staffing decisions and training. Efforts will be made to build formal channels of communication between different municipalities and across the Inter-Entity Boundary Line, to enable co-ordinated implementation.

#### **FBiH and RS**

- ***Revised laws to guarantee the right to return of individuals whose apartments have been permanently reallocated to another person***

Satisfied. The High Representative issued a Decision on 13 April 1999, by which new permanent occupancy rights were 're-converted' to temporary occupancy rights, to be resolved through the administrative claims process. This Decision has been accepted by both Entities and published in the respective Official Gazettes. Implementation has begun slowly. However, as the category of new permanent occupancy right holders includes many well-connected people, there is strong resistance to evictions, and strong international pressure is required to achieve any progress.

#### **FBiH and RS**

- ***Revised Law on Housing Relations***

Satisfied. Amendments to the problematic provisions were adopted by the Federation Parliament in January 1999, and imposed in Republika Srpska by a Decision of the High Representative on 13 April 1999. Following these amendments, it is no longer possible to cancel the occupancy rights of individuals owing to their displacement as refugees or displaced persons. Prior court decisions canceling occupancy rights on this basis have been annulled. The RS draft Law on the *Privatisation of Socially-Owned Apartments*, however, provides for the repeal of the *Law on Housing Relations*. This is clearly unacceptable as this law is the framework of the property legislation. The move is being opposed by the international community.

#### **FBiH and RS**

- ***Establishment of a mechanism to ensure access to and recognition of personal documents***

Unsatisfied. An advisory committee is preparing draft legislation regarding access to public administrative documents. Efforts by the competent authorities with regards to recognition of documents are at an early stage, and will require further concerted input on their part in the future.



In relation to documentary evidence for the property claims process, access to documents remains problematic in many parts of the country. Claims without supporting documentation are wrongfully refused at the filing stage, whilst copies of documentation remain extremely difficult or expensive to obtain from cadastral administrations and property book services. A number of municipal housing authorities have no access to the cadastre or housing records, either because they have been destroyed or because they are held elsewhere (usually across the IEHL). In the case of Drvar, as with some other municipalities, agreement on copying these records has proved difficult to reach.

#### **FBiH**

- ***Full implementation of the Decisions of the Human Rights Chamber concerning former Yugoslav National Army (JNA) apartments***

Partially Satisfied. A Decision of the High Representative on 1 July 1999, agreed in advance with the Federation Government, establishes criteria for determining which former occupants of JNA apartments should be considered refugees with the right to return. For those granted the right to return, procedures have been established for recognizing their pre-war contracts on sale. For those not permitted to return, they will be reimbursed for any money paid towards purchase of the apartment. Where the individual is unable to reach an agreement with the Ministry of Defense, the responsible court will have full jurisdiction to adjudicate.

The recognition of contracts of sale of those who remained in possession of their apartment is proceeding satisfactorily. Repossession of JNA apartments, however, has made little progress due to insufficient administrative capacity in the Sarajevo Cantonal Housing Department.

#### **RS**

- ***Establishment of an effective property claims process***

Partially satisfied. This accession requirement refers explicitly to the establishment of offices to receive claims, including staffing, funding, and other resources. The issue of implementation is discussed above and is not part of this specific requirement.

The Republika Srpska Ministry of Displaced Persons and Refugees has now established a network of municipal offices, which are operational, although with insufficient capacity for the task. While there have been few reported incidents of individuals being completely prevented from making their claim in Republika Srpska in the past months, there continue to be reports of obstacles throughout the filing process. The Republika Srpska Government has agreed with the international community on budgetary and other measures to strengthen the administrative claims process in the coming months. However, this has yet to be achieved and there are indications from the field that the funding remains inadequate in many parts of the RS.

## **11. Education**

Overall progress in the current education system in BiH remains unsatisfactory for a number of reasons, including lack of material resources, lack of access or facilities for disabled children and the gender imbalance that exists in relation to male-dominated directorial positions in schools. However, the major problem lies in the effective division of the education system along ethnic lines, which acts to inhibit sustainable minority return and ethnic re-integration; further, it encourages future destabilisation through radicalising, and thus polarising, another generation of citizens. To address this issue the international community focuses on excising offensive materials from text-books and on promoting multi-ethnicity and tolerance in the classroom.

- ***Substantial progress in the amendment of textbooks, including withdrawal of all offensive materials by beginning of 1999/2000 school year***

Partially satisfied. Some progress has been made towards removal of offensive materials from all textbooks. This ongoing exercise, involving extensive negotiations with local education authorities, is an interim step, to be followed by substantial further improvement of textbooks, to ensure that they eventually meet European standards. Continuous pressure from the international community remains necessary. Extensive spot checks

carried out in schools throughout the country between late October and late December (whereby approximately 10% of all the schools were actually visited) revealed that the level of compliance is generally acceptable. However, compliance is better in the Federation than the RS, and higher in primary than secondary schools. Schools following the Bosniak curriculum have the highest compliance level, followed closely (except in some problematic mixed areas of the Herzegovina Neretva and Central Bosnia Cantons) by schools with the Croat curriculum. Schools following the Serb curriculum have the lowest compliance levels, in part because the Ministry issued a different instruction than that issued by OHR, and a new set of textbooks was surreptitiously introduced in the Republika Srpska in September 1999, which were not reviewed by the expert teams of the other constituent peoples of BiH.

- ***Review of the education system in order to eradicate all aspects of ethnic segregation***

Unsatisfied. In most cases the education system in BiH is effectively entrenched along ethnic lines. Eradication of all aspects of ethnic segregation can only be achieved over the long term through continuous pressure from the international community and growing involvement of the civil society in the education system and provided the political will exists on the part of the national and local authorities. Under the Federation constitution, education is a cantonal competence, except where the municipality has a different majority ethnic population from the canton as a whole, where it is a municipal competence; in the Republika Srpska however, education is an Entity responsibility. In the Federation, the Deputy Minister continues to see ethnic segregation as necessary to protecting the rights of the Croat constituent people whose numbers were reduced from 750.000 before the war to about 400.000 now. In this respect several cases of physical segregation have been reported by the OSCE and the report of the International Human Rights Law Group.

A symposium on the curricula of the “national” subjects was held in Sarajevo on February 7 and 8 in which the participants agreed to adopt the Swiss model, which, while it allows a great degree of autonomy for each canton, also requires a sophisticated level of co-ordination and exchange between the cantonal systems. The symposium was designed to pave the way towards a sustainable education system. No joint curriculum can be envisaged in the short term but a process will now be initiated which will produce gradual change which should eventually lead to a more integrated education system in BiH on the basis of accepted European standards and norms.

- Accession of Bosnia and Herzegovina to the Council of Europe: Progress Review # 8 ([Chart](#))

## **HRCC<sup>2</sup> Member Organizations**

**OHR:** Under the Annex 10 of Dayton Agreement, the Office of the High Representative is tasked with co-ordination of civilian aspects of peace implementation in Bosnia. OHR maintains a regional human rights presence, and works closely with other agencies who monitor the human rights situation, to develop strategies and co-ordinate interventions. For more information about the OHR generally or about human rights specifically, please contact:

Office of the High Representative	tel: 387-71-447-275
Emerika Bluma 1	fax: 387-71-447-420
Sarajevo, Bosnia	web: <a href="http://www.ohr.int">www.ohr.int</a>

**OSCE:** Human Rights Department (HRD) The OSCE mandate derives from Article XIII of Annex 6 of the Dayton Agreement. HRD has staff in OSCE's 27 Field Offices and 4 Regional Centers, which allow the OSCE to ensure full coverage of the territory of BiH and makes the organisation a direct actor in addressing human rights issues. The HRD focuses on property and other return related issues; education; employment and; rule of law. The Human Rights Department interprets its mandate to include inter alia: monitoring, investigating and intervening on allegations of human rights abuses.

OSCE Human Rights Department	tel: 387-71-444-444
Dzenetica Cikma 2/4	fax: 387-665-236
Sarajevo, Bosnia	web: <a href="http://www.oscebih.org">www.oscebih.org</a>

**UNHCR:** The United Nations High Commissioner for Refugees is the lead organisation for the implementation of

Annex 7 of the Dayton Agreement, which guarantees the right of displaced persons and refugees to return to their homes of origin. Protection Unit: UNHCR Protection Unit provides international protection and assistance to refugees abroad, displaced persons, as well as other persons of concern through its offices throughout Bosnia and Herzegovina and the network of Legal Aid/Information Centres. To create a framework conducive to safe and dignified return and to promote return opportunities, UNHCR has been involved in various human rights areas: return, property, citizenship, customs, travel documents, amnesty, pensions, gender. Tools of involvement range from assisting in the creation of an appropriate legal framework, monitoring the situation on the ground, interventions, producing reports and issuing position papers in relation to persons still in need of international protection. For more information about UNHCR in Bosnia, please contact:

UNHCR	tel: 387-71-666-160
Unis Building Tower A	fax: 387-71-470-171
Fra Andela Zvizdovica 1	web: <a href="http://www.unhcr.ch">www.unhcr.ch</a>
Sarajevo, Bosnia	

**UNMIBH/IPTF Human Rights Office:** The existence of International Police Task Force is mandated by Annex 11 of the Dayton Agreement. Under Security Resolution 1088, the IPTF's work includes "investigating or assisting with investigations into human rights abuses by law enforcement personnel." The main objectives of the Human Rights Office are to: investigate human rights violations by law enforcement agents; design remedial measures to correct such violations; and to monitor and ensure the implementation of corrective measures. To implement these objectives, the Human Rights Office carries out investigations into serious incidents of police misconduct and conducts comprehensive inspections of law enforcement agencies to address persistent endemic institutional deficiencies. The Human Rights Office is comprised of 145 International police and 17 international civilian staff, deployed throughout the country.

UNMIBH	tel: 387-71-496-265
Mese Selimovica 69	fax: 387-71-496-539
Sarajevo, Bosnia	

**OHCHR:** As of December 1998, the OHCHR in Bosnia and Herzegovina is part of the Office of the Special Representative of the Secretary General (SRSG, in charge of the UNMIBH). It focuses its activities on human rights training and on issues of gender and discrimination, with particular emphasis on social and economic rights. It continues to support the mandate of the Special Rapporteur of the Commission on Human Rights and participates in the work of the Human Rights Co-ordination Centre (HRCC) of the OHR. The legal authority for its presence is based on annual resolutions of the Commission on Human Rights as well as Article XIII of Annex 6 of the Dayton Agreement.

Office of the High Commissioner for Human Rights	tel: 387 71 49 6402, 6403
PTT building, Mese Selimovica 18, Sarajevo, Bosnia	fax: 387 71 49 6438

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1 According to JSAP's findings, the independent control of finances for the judicial system is absolutely essential to ensure genuine independence of decision-making. At this point, efforts to secure independent financing for the judicial system have moved forward in Sarajevo, where the courts will no longer be dependent on the Ministry of Justice, but will instead be financed through the Cantonal Court.

2 The HRCC is an interagency body staffed by representatives of the OHR, OSCE and OHCHR. It produces quarterly and ad hoc reports on the human rights situation in Bosnia, supports the work of the Human Rights Steering Board and links with the Local and Regional Human Rights Working Groups throughout the country.

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