

HRCC Human Rights Monthly Report January 1999

SUMMARY

- IPTF places Stolac police officers on 3 months probation
- RS police officers torture murder suspects
- 'Zvornik 3' exchanged for Bosnian Serb prisoners
- IPTF Monitors attacked in Foca following attempted SFOR detention of Bosnian Serb
- RS Instruction on Property Laws published

THE RIGHT TO RETURN

ASSESSMENT VISITS AND RETURNS

[This section focuses on visits and returns which are particularly significant from a human rights perspective]

1. Due to winter and bad weather conditions, it was a quiet month for actual returns. Preparations, however, for the return season in Spring are ongoing and include some assessment visits (see paras. 2-6 below). The main return related activities as reported by UNHCR and RRTF involved negotiations on political agreements to facilitate returns and reconstruction projects, many of which will enable minority returns to the eastern RS (which so far has seen only a low number of minority returns). Specifically, UNHCR reported that the Municipal Assembly of **Cajnice (RS)** has expressed its support for return projects, including minority returns, thereby becoming the first "southern" RS municipality to publicly support minority returns. Previously only municipalities in western RS had supported minority returns. Also many of the January assessment visits by prospective returnees were to the eastern RS indicating that return of minorities may be expected to Eastern RS municipalities in the coming spring. [**Ed. Note:** Due to improved freedom of movement in BiH in general, some returnees are able to visit their pre-war homes spontaneously (i.e. without organizational assistance from international organizations or NGOs). Therefore the reports on organized assessment visits and bus lines are not necessarily indicative of where returns are taking place and returns may be taking place following spontaneous, non-documented, assessment visits.]

Visits/Returns to Eastern RS

2. On 20 January, approximately 60 Bosniak displaced persons living in **Mostar (FBiH)** made an assessment visit to **Nevesinje** municipality (southern RS). This visit took place despite earlier protests by the Mayor of Nevesinje that he could not guarantee the security of the visitors as 20 January was an Orthodox religious holiday. The visit was carried out following pressure from the international community that the visit take place and was without incident.
3. The first visits of 56 Bosniak displaced persons to **Vlasenica** municipality took place on 18 and 26 January. The visits occurred against the backdrop of heightened tension following violent incidents against members of the international community after the December SFOR detention of Bosnian Serb General Krstic (see HRCC Monthly Report, December 1998, at para 3) and the January SFOR killing of Bosnian Serb Dragan Gagovic (see para 20 below). The visits took place without incident and in the presence of the local police.

4. On 21 January, UNHCR commenced bus routes from **Ilidza (FBiH)** to **Srebrenica** municipality. Bosniak displaced persons traveled from Ilidza to Srebrenica and were accompanied at all times by a heavy local police presence. Considerable interest has been shown in the route by Serb displaced persons from **Sarajevo (FBiH)** currently living in Srebrenica.
5. On 22 January, Bosniak displaced persons held a funeral service in **Zvornik** municipality with the assistance of the IPTF and local police. The funeral procession included one bus and approximately 20 vehicles.

Visits/Returns to Federation

6. Approximately 80 Serb displaced persons living in **Pelagicevo** and **Doboj** municipalities (**both RS**) made assessment visits to **Lukavac** municipality. Despite logistical problems, the visits proceeded without incident and 50 Serb families have expressed their wish to return.
7. On 19 January, for the first time since the war, Bajram was celebrated at a mosque in **Prozor-Rama** town. Approximately 200 Bosniak displaced persons no longer living in the town attended the service and local (Bosnian Croat) police provided security. There were no incidents. It was the first service organized at the mosque in Prozor-Rama town since the war (whose pre-war Bosniak population had almost entirely fled or been expelled).

RETURN-RELATED INCIDENTS

[This section focuses on a few of the most significant return-related incidents that were reported to and investigated by the international community.]

Federation

9. **Stolac Update:** On 28 January, the IPTF Commissioner, in consultation with the Special Representative of the Secretary-General, announced that each member of the Stolac Police Administration was to be placed on three-month probation, effective 3 February 1999. This decision follows an extensive review (known as the 'Operational Performance Scrutiny'), of the Stolac Police Administration. From 7-11 December, a special IPTF Inspection Team reviewed police performance in Stolac. The decision to carry out such a review arose from the wholly inadequate response of the Stolac police to the more than 70 incidents of returnee-related violence and intimidation in Stolac municipality from March to December last year.
10. Despite numerous efforts, UNMiBH's attempts to engage Stolac local police in meaningful crime prevention and detection have proved unsuccessful. These efforts included the 1998 publication of two reports which contained specific policing recommendations to improve the security situation: the dismissal of the chief of police; the establishment of a special investigation team to assist the local police with investigation into these incidents; review of local security plans; co-location of IPTF monitors in the Stolac police station; increased presence of IPTF in Stolac town; and repeated meetings with officials of the Cantonal Ministry and Stolac police station expressing concerns and requests.
11. During the December review the IPTF Inspection Team conducted 46 interviews with Stolac police officials; inspected all premises and facilities; examined investigation reports, official correspondence and administration files; and interviewed local officials and citizens on the performance of the police. IPTF found that the command structure of Stolac police is inadequate and subject to inappropriate external influences. In addition crime prevention and detection measures in the context of returnee-related violence fall significantly short of professional policing standards. As a result of these findings, the IPTF Commissioner placed the police

officers on probation. Under the terms of probation, police officers who fail to demonstrate a significant improvement in their adherence to specified minimum requirements of professional policing will not be re-certified at the end of the three-month probationary period by the IPTF. During probation, the performance and conduct of each police officer will be continually assessed. At the end of the three-month period, the performance of each police officer will be comprehensively evaluated.

12. During the early hours of 7 January, unknown individuals fired automatic weapons at the house of a Bosnian Serb returnee family in **Zeljusa**, returnee area in **Mostar West municipality**, causing external damage to the building. Approximately 40 bullets were found near the house. The local police are investigating and have stepped up patrols in the area.

Republika Srpska

13. On 1 January, a house, used as a youth center, was partially destroyed by an explosion in **Kozarac, Prijedor municipality**. The building was part of a German-government funded project (Technisches Hilfswerk (THW)) to house a local clinic. Following the incident local police have initiated twice nightly foot patrols of the area whilst four SFOR patrols currently monitor the area nightly. IPTF is monitoring the investigation conducted by Prijedor Public Security Centre (PSC) Crime Department. This is the second serious explosion in the area in two months. On 9 November, an explosion blew up an almost completely reconstructed house for a Bosniak returnee in Kozarac (see HRCC Monthly Report, November 1998, at para 7). The town is a high profile return area, given its significance and its history, and the international community hopes it will open up other areas for return.

RIGHT TO PHYSICAL INTEGRITY

14. **Interrogation Techniques by RS Law Enforcement Officials:** On 21 January, UNMiBH issued a report on its findings in respect of interrogation techniques used by RS law enforcement officials during their investigation into the August 1998 murder of **Srdan Knezevic**, Deputy Chief of the Srpsko Sarajevo Public Security Center in Pale (Pale PSC). The IPTF investigation revealed that RS police officers had held 14 suspects and witnesses in illegal detention and subjected them to torture and ill-treatment for periods of up to ten days. The torture techniques included using a high-voltage “stun gun” on the tongue and other parts of the body; loosening teeth with a pair of pliers; pulling hair from the chest and other beatings and kickings. A number of the detained men had been questioned and tortured by **Ljubisa Savic**, Chief of the RS Uniformed Police, who was as a result disqualified in September 1998 by the IPTF as a police officer and barred from any future law enforcement position in BiH (see HRCC Monthly Report, August-September 1998, at paras. 18-20).
15. Under such physical and psychological abuse, several of the suspects were coerced into making confessions and incriminating statements. Under both national and international law, statements made as a result of torture cannot be used in any criminal proceedings. RS law enforcement officials however proceeded to use such statements as evidence against the suspects and in the course of his investigations, the Investigating Judge failed to exclude the incriminating statements from the record. On 11 December, the Srpsko Sarajevo District Prosecutor issued indictments against six of the suspects which were based nearly exclusively on the statements made under duress.
16. On the basis of the facts discovered during its recent investigation, UNMiBH has called upon RS authorities to take the following actions without delay: to remove **Momir Vukovic**, Chief of Staff of the Pale PSC, and **Spasoje Camur**, Head of the Pale PSC Crime Police, who were disqualified by IPTF in December (see HRCC Monthly Report, December 1998, at paras. 8-9); to

ensure that all persons disqualified as a result of their misconduct in the murder investigation are prevented from participating in any aspect of police work in the future anywhere in BiH; to proceed with disciplinary and criminal proceedings against law enforcement officials involved in any misconduct; and to exclude any evidence obtained under duress from suspects and witnesses from use in criminal proceedings, in accordance with national and international law. IPTF will continue to investigate the case and to actively monitor related developments to ensure that RS law enforcement officials who act in violation of democratic policing principles and international human rights standards are appropriately and effectively sanctioned.

(Interrogation Techniques Employed by Republika Srpska Law Enforcement Officials in the Srdan Knezevic Murder Investigation) is available from UNMiBH's Human Rights Office in Sarajevo.) The trial of the suspects is ongoing and international organizations are monitoring the trial.

RULE OF LAW

17. **Zvornik 7 Update:** Confirming long-standing speculation that such discussions were underway, on 20 January the three imprisoned Bosniaks from the 'Zvornik 7' case were transferred to a Federation prison from the RS in exchange for the transfer of three Bosnian Serbs imprisoned in the Federation on war crimes charges to an RS prison. The transfers were made on the basis of a protocol signed the previous day by the RS Minister of Justice and an assistant to the Federation Minister of Justice. The protocol obliges the parties to act according to the verdicts of the courts in the cases, implying release only as may be ordered in accordance with law. The High Representative wrote to the parties, concerned that the transfer of any prisoner should be decided on the merits of any individual case, and not on the basis of exchange arrangements which may be influenced by political considerations resulting in disregard for the due process of law.
18. The 'Zvornik 3' had been found guilty in December 1998 in a retrial before the **Bijeljina District Court (RS)** after a previous conviction had been quashed. They were sentenced to terms of imprisonment of up to 20 years for the 1996 murder of four Serb woodcutters and the separate murder of one of their Bosniak companions. The men's lawyers have appealed the decision with assistance from the International Human Rights Law Group in preparing supplements to their appeals highlighting violations of the European Convention on Human Rights.
19. On 18 January, the Human Rights Ombudsperson for BiH issued a special report on violations of the European Convention on Human Rights in the re-trial. The Ombudsperson concluded that misgivings that the Bijeljina court did not constitute an independent and impartial tribunal are legitimate, that the material evidence presented by the prosecution was insufficient to establish responsibility of the defendants for the acts, and that the conviction was based on confessions and statements which were the plausible result of ill-treatment. The Ombudsperson also criticized the failure to provide effective representation to the defendants, noted that their ability to conduct a defense was impaired by the fact that one of the defendants was tried in absentia and thus unable to be cross-examined, and concluded that the defendants had not been presumed innocent. The Ombudsperson also found that the open speculation and suggestion that the prisoners may be exchanged had constituted a violation of their right to be free from discrimination and thus their right to be treated equally before the law, as the inherent value of a prisoner for exchange would be based on the court reaching a guilty verdict. The Ombudsperson recommended that the Supreme Court panel which will consider the appeal be constituted to ensure the appearance of impartiality, that it review the proceedings in light of the European Convention on Human Rights and other applicable human rights instruments, and to do so that it avail itself of the assistance of independent and impartial international experts who can advise the court on the human rights standards applicable to the case.

International organizations continue to follow the case closely.

WAR CRIMES

20. **BiH requests arrest of Fikret Abdic:** On 4 January, the Office of Member of the BiH Presidency Alija Izetbegovic made public the results of a review by the International Criminal Tribunal for the Former Yugoslavia (ICTY) Office of the Prosecutor regarding the file of Fikret Abdic, leader of the DNZ who declared the Autonomous Province of Western Bosnia (**FBiH**) during the war. Under the Rules of the Road, the ICTY Prosecutor had reviewed Mr. Abdic's file and deemed evidence sufficient by international standards for Abdic's detention on war crimes charges. On 10 January, a letter was sent from the Ministry of Interior of the FBiH to the Ministry of Internal Affairs in the Republic of Croatia requesting that the Croatian authorities arrest Fikret Abdic in Croatia where he is currently residing.
21. **IPTF Monitors attacked:** The death of Dragon Gagovic during the attempted SFOR operation to detain him on 9 January near **Foca (RS)** was followed by attacks against the international community. Gagovic, a Bosnian Serb, had been publicly indicted by the ICTY in June 1995 for crimes against humanity and for grave breaches of the laws or customs of war. During the SFOR operation to detain Gagovic, Gagovic drove his car directly at SFOR soldiers. In self-defense, the SFOR soldiers opened fire and shot Gagovic. Following the incident Gagovic was taken to a medical facility and pronounced dead on arrival. Later the same day a crowd of approximately 100 local residents demonstrated outside the IPTF station in Foca. The crowd became angry and members later assaulted IPTF monitors in the station, injuring five monitors, two of them seriously. The IPTF station was badly damaged and UN equipment, including two vehicles, destroyed. The RS Minister of Interior has established an investigation team led by the Foca Chief of Police to fully examine the circumstances of the attacks and IPTF has set up an investigation to monitor RS investigations into these incidents. Since the attack, international organizations have suspended their activities in the area, with only a limited IPTF presence returning to Foca.
22. On 25 January, Milomir Tepes was convicted and sentenced to 13 years imprisonment by the **Sarajevo Cantonal Court** for war crimes against the civilian population. Tepes was arrested in March 1998 by Sarajevo police on the outskirts of Sarajevo. Tepes' file had been sent to the ICTY in accordance with the Rules of the Road agreement and ICTY had found there was sufficient evidence for his detention. The investigative phase commenced on 23 March 1998 and an indictment was brought against Tepes in August last year. The trial commenced in mid September 1998 and no major procedural violations were noted by trial monitors. Tepes has suffered from mental health problems and was examined on several occasions during the period in which the investigation and trial took place by medical professionals, who assessed Tepes to have competency in following proceedings.

PROPERTY LEGISLATION

Federation Property Legislation Update

23. The review of the Federation laws on property and housing initiated by the High Representative in November 1998 (see HRCC Monthly Report, November, at para 17, and December, at para 15), has produced agreement between OHR and the Federation Ministry for Urban Planning and the Environment on urgent amendments to the property laws. The agreed amendments will:
 - strengthen the provisions regarding the implementation of decisions of the Commission for Real Property Claims under the Law on Cessation of Application of the Law on

Abandoned Apartments and Law on Real Property;

- strengthen the presumption of refugee/displaced persons status and therefore increase the numbers of those eligible to claim;
- amend the Law on Housing Relations to terminate all court proceedings currently underway and cancel all court decisions based on provisions of this Law rendered since 30 April 1991 and which terminated contracts on use of apartments. It will also render all proceedings for those whose contracts were cancelled in this way, subject to the administrative procedure under the Law on Cessation. This amendment is currently being considered for adoption by the Federation Parliament;
- amend the Law on Sale of Apartments so that persons who lost possession of their apartments, either pursuant to a decision on abandonment or a cancellation of their contract on use under the Law on Housing Relations since 30 April 1991, will acquire the right to purchase the apartment after 5 years. Those who acquired a permanent occupancy right to an apartment which was the subject of a decision on abandonment or cancellation of the contract on use, will acquire the right to purchase on whichever is the later of 4 April 2000 or the date at which proceedings brought by the pre-war occupancy right holder have been concluded.

24. OHR has held two working sessions with lawyers from the Federation Ministry of Defence (FMoD) to address the failure of the military authorities to relinquish control of the military housing stock, which has blocked returns to these apartments. The FMoD have presented a proposed amendment to the Law on Cessation of the Law on Abandoned Apartments, which is currently under the consideration of OHR and other international organisations. The proposal includes a provision to transfer the administration of the claims process to the competent civilian authorities.
25. On 15 December, the **Sarajevo Cantonal Assembly** adopted legislation which resulted in the abolition of the Sarajevo Cantonal Housing Department, the cantonal body responsible for processing claims for socially owned housing and for issuing eviction notices. Since then, although officials continue to process claims for the return of socially owned housing, there have been no decisions or documents issued by the Department.
26. Persistent obstacles to the processing of property claims in **Central Bosnia Canton** have led to calls by the international community for the police in **Jajce** and **Bugojno** municipalities to initiate proceedings against the municipalities' Housing Commission for failure to respond to applications for the return of property. [**Ed. Note:** The police in Bugojno have refused to press charges against the Housing Commission while the Jajce police have agreed to do so.]
27. The results of the inter-agency **review of implementation** of the Federation property and housing laws have been received, and are now being compiled. The information has been gathered on a municipal basis. Once analysed, the results will identify the main political and administrative obstacles to implementation of the laws, and will form the basis of a BiH-wide inter-agency intervention strategy, which will involve the RRTF.

Republika Srpska Property Legislation Update

28. OHR has held discussions with the RS Government authorities on the initiatives they should undertake to ensure the effective implementation of the Law on Cessation of Application of the Law on Abandoned Property, which entered into force on 19 December 1998 (see HRCC Monthly Report, December 1998, at para 18). The RS Ministry for Refugees and Displaced Persons is currently holding a series of training sessions throughout the RS for municipal officials responsible for the claims process. The Ministry is also preparing a list of responsible officials and addresses of municipal departments which will receive claims under the Law. In addition, OHR has asked the RS Government to present an amendment to the *Law on Housing Relations*

to the National Assembly, equivalent to that which is currently being considered for adoption by the Federation Parliament (see para 22 above). [**Ed. Note:** On 10 February 1999, the Instruction on the claims process for both private property and socially-owned apartments, was published in the RS Official Gazette. This Instruction contains a number of important procedural safeguards, and an integral part of the Instruction are two standard claim forms, one for socially-owned property and the other private property and will be used by municipal officials to process property claims.]

Evictions in Republika Srpska

29. There were no minority reinstatements in January and all evictions for minority reinstatements in Republika Srpska remain suspended except where alternative accommodation is available, pursuant to the Conclusion adopted by the RS National Assembly on 9 December, (see HRCC Monthly Report, December 1998, at para 19). OHR has raised the obstruction to the reinstatement of these cases with the RS Minister of Justice.

INSTITUTION AND POLICY DEVELOPMENTS

30. **Curricular reform:** UNESCO has engaged three international experts from the University of Heidelberg to study the current curricula in use in primary and secondary schools in BiH. The approach is to examine curricula issues and needs in order to draw up a curricula development program in cooperation with other international organizations. The project includes both an analysis of curricula quality, and of the socializing intentions of curricula. The aim of the program is to both address the issue of accommodating diversity within the education system and to promote tolerance and stability. This work will form the basis of proposals for curricular reform in BiH as part of an International Curriculum Conference to be organized by UNESCO. In the meantime, the World Bank, in conjunction with the Council of Europe, has commenced an extensive project to promote the process of reform of governance and financing structures in primary, secondary and higher education systems throughout the country.
31. The Office of the High Commissioner for Human Rights (OHCHR) in BiH has recently been tasked to focus on the following areas: gender discrimination, the protection of minorities, social and economic rights and the rule of law. A number of new programs and activities have been developed, in co-operation with other inter-governmental and NGOs, aimed at inter alia, promoting gender equality and women's human rights by formulating responses to domestic violence and the trafficking of women and improving access to primary health care.
32. **IMC launches 24 hour Helpline:** The Independent Media Commission (IMC) launched a 24 hour 'Helpline' in Sarajevo to allow journalists throughout BiH to report incidents affecting their professional rights and privileges. Based on the information given by the journalists, the IMC will prepare case reports for further action. The Helpline is part of IMC's developing strategy to protect the rights and privileges of all journalists. Other initiatives in this area include providing legal advice to journalists, and investigating and disseminating information on cases.

HUMAN RIGHTS INSTITUTIONS

33. **Progress of Human Rights Institutions:** At the end of January 1999, the **Human Rights Chamber** had registered 1586 cases and had issued final and binding decisions with respect to 98 cases, and had granted orders for provisional measures in 78 cases, following 15 public hearings. In addition, 44 cases did not meet the procedural requirements necessary for admissibility, and were therefore terminated. To the end of last year, the Commission on Real Property Claims for Displaced Persons and Refugees (CRPC) had received claims concerning

148,167 properties, and had made decisions with respect to 25,421 properties. At the end of January, 1999, the Office of the Ombudsperson had registered 2731 cases and had issued final reports with respect to 295, while it had transferred 111 cases to the Human Rights Chamber and issued 14 *ex-officio* "Special Reports".

34. **Human Rights Chamber:** During its January session, the Human Rights Chamber publicly delivered three decisions on the merits of 60 cases. The Chamber delivered its decisions in the cases of Dusan Erakovic v. Federation of BiH, Miro Grbavac and 26 Other JNA Cases v. BiH and the Federation of BiH, and Velimir Ostojic and 31 Other JNA Cases v. BiH and the Federation of BiH. In the **Erakovic case**, the applicant held an occupancy right over an apartment in Sarajevo. In March 1995, the applicant left the city allegedly for medical treatment. Shortly thereafter, his apartment was declared abandoned under the 1994 Law on Abandoned Apartments; in November 1996 the apartment was declared permanently abandoned and permanently allocated to the temporary occupant. In July 1998, the applicant received a decision under the 1998 Law on the Cessation of the Application of the Law on Abandoned Apartments, confirming his occupancy right and entitling him to reclaim the apartment. The decision also established that the temporary occupant had obtained a new occupancy right based on a contract signed on 7 January 1998 and had moved into the apartment before 7 February 1998. The allocation right holder was therefore ordered to refer the case to the competent cantonal authority within 30 days for a further decision by which either the current occupant or the applicant was to be allocated another apartment. No such decision has yet been made. The Chamber ordered the Federation to take all necessary steps to process the applicant's repossession claim without further delay, with a view to its being granted and the decision swiftly enforced. The Federation was further ordered to report to the Chamber on the steps taken by it to comply with the order. The applicant's claim for compensation was rejected.
35. The Chamber released 59 decisions relating to **JNA apartments**. In these cases the applicants contracted in 1991 and 1992 to buy apartments from the JNA. In 1995 the Republika BiH enacted legislation that retroactively annulled these contracts of purchase and compulsory adjourned the court proceedings necessary to register the applicants as owners of these apartments. The Chamber found that the applicants' right to a fair hearing, Article 6 of the ECHR, and the right to property, Article 1 of Protocol No. 1 to the ECHR, had been violated by application of the 1995 and 1996 legislation. The Chamber ordered the Federation to take all necessary steps to render ineffective the annulment of the applicants' contracts; lift the compulsory adjournment of court proceedings affecting the applicants' property right; and secure their right of access to court and to a hearing within a reasonable time. The Chamber awarded compensation to some of the applicants. *[Chamber decisions and reports are available from the Secretariat or on the Internet at <http://www.gwdg.de/~ujvr/hrch.htm>].*
36. **Implementation:** Compliance with one Federation case involving payment of a damage award (Damjanovic v. FBH) was reported but not confirmed.
37. The **Constitutional Court** held a hearing in the case of **BiH v. FBiH and RS**. At issue is whether or not the entity Constitutions should be harmonized with the BiH Constitution which, in its preamble, states that "Bosniaks, Croats and Serbs are constituent peoples and citizens of Bosnia and Herzegovina". The Federation Constitution refers only to Bosniaks and Croats as Constituent Peoples while the RS Constitution refers only to Serbs.

NOTE: The HRCC Human Rights Monthly Report is based on the regular and special reporting of inter-governmental and non-governmental organisations. The aim of the Report is to provide a concise overview of human rights issues, cases and trends affecting the overall human rights situation in Bosnia and Herzegovina during the reporting period. Questions on specific items should be directed to the reporting organisation or to the HRCC. Please send information for inclusion in the report to 387-71-447-420 to the attention of Bela Kapur or Sirpa Rautio or by e-mail to bela.kapur@ohr.int or sirpa.rautio@ohr.int.

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