

Human Rights Report November 1998

SUMMARY

- Continued incidents targeting Bosniak minority returns in Herzegovina-Neretva Canton; attacks targeting Bosniak minority returns in Teslic municipality
- Obstruction of Bosniak returns to Rastani
- UNMIBH Judicial System Assessment Programme established to monitor and assess BiH court system
- Implementation of property and housing laws in Federation continues to face obstacles
- New property law passed by RS National Assembly establishing claims process for repossession of property
- High Representative endorses Venice Commission's Opinion that Constitutional Court has no appellate jurisdiction in respect of decisions of the Human Rights Chamber

RETURN-RELATED INCIDENTS

[This section is primarily based on OSCE and UNMIBH reports]

Federation

Continued Return-Related Incidents in Herzegovina-Neretva Canton:

1. Violent incidents targeting Bosniak minority returns in Herzegovina-Neretva Canton continued during the month of November. IPTF reports a total of 132 return-related incidents since the beginning of the year, including explosions, arsons and stoning incidents, of which 70 occurred in **Stolac** municipality. The majority of incidents occurred at night, targeting uninhabited Bosniak-owned houses under reconstruction for return.
2. **Stolac municipality:** On 3 November, two Bosniak-owned houses were destroyed by explosions in **Rivine** and **Poprati**. Both explosions caused damage to neighbouring houses. On 5 November, a hand grenade was thrown at a Bosniak-owned car in **Aladinici**, causing minor damage to the vehicle. On 7 November, two hand grenades were thrown in front of a house belonging to a Bosniak returnee in **Donji Balavci**. Two male Bosniaks sustained minor leg injuries. On 11 November, two Bosniak-owned houses were blown up by explosives in **Borojevici**. One of the owners sustained minor injuries.
3. On 2 November, graves were desecrated at the Catholic cemetery in Kuti-Livac, **Mostar North** municipality. The incident was condemned by Mostar's Deputy Mayor Orucevic. On 19 November, an explosive device was detonated in front of a Bosnian Croat-owned shop in **West Mostar**.
4. In response to the high number of return-related incidents in **Stolac**, Capljina and Mostar, SFOR increased its presence in these return areas to prevent threats against the security of returnees. On 29 November, a Bosnian Croat male was detained for possession of illegal ammunition seized during a check-point search by SFOR. Attempts to search his house were blocked by a swiftly-mobilised crowd of around 200 people, and routes in and out of the area were also blocked by vehicles. Negotiations were eventually successful in dispersing the roadblocks.
5. Despite repeated interventions, IPTF reports that the response of local police and Municipal/Cantonal Authorities to returnee-related violence in Canton 7, in particular **Stolac** and

Capljina, has been wholly inadequate. [**Ed. Note:** In response, IPTF instituted a full Operational Performance Scrutiny of the **Stolac** Police Administration in early December. A 24-person investigation team was deployed to examine the performance of the **Stolac** police in preventing and responding to returnee-related violence. The team will inspect police premises and facilities in **Stolac**, interview local police officers and personnel and will monitor police officers in carrying out their duties.]

Republika Srpska

6. OSCE reports a number of **attacks targeting Bosniak returnees in Teslic** municipality during October and the first half of November, following the return of 71 Bosniak families during September and October. On 9 and 15 October grenades were thrown on three occasions at Bosniak-owned houses in **Teslic town, Gornji Teslic** and **Donji Ruzevic**. On 24 October, stones were thrown at a Bosniak-owned house in Teslic town. On 3 November, three hand grenades were thrown at two Bosniak-owned houses in the village of Gornji Teslic. A Bosniak female sustained leg injuries. The incident followed a previous incident on the same day involving the Head of the Municipal Office of Returns attempting to prevent a Bosniak woman from returning to her house in Gornji Teslic. On 6 November, a hand grenade was thrown at a Bosniak-owned house in **Pribinic Selo Marica, Teslic municipality**, causing material damage. On 4, 12 and 13 November, Bosniak-owned haystacks were set alight in **Gornji Teslic**. In response to these incidents, IPTF, SFOR and the local police increased patrols in these areas. A similar pattern of grenade and arson attacks against Bosniaks in Teslic was carried out in the summer of 1996 and in the spring of 1997, resulting in 1996 in the departure of some 100 Bosniak families to the Federation.
7. On 9 November, a Bosniak-owned house was destroyed by explosive devices in **Kozarac, Prijedor**. According to IPTF, approximately ten to 12 explosives were used. The house was in the process of being rebuilt by the Norwegian Refugee Council (NRC) with UNHCR funds. The house was part of a group of 53 houses being rebuilt by NRC in this area. The hand-over of keys to the owner, currently living in Sanski Most, was due to take place on 13 November. The incident was condemned by the Mayor of Prijedor and the Chief of Public Security Centre. The incident was initially linked to the destruction the previous day of a Bosnian Serb grave site located in Podvidaca, Sanski Most municipality. Local police subsequently indicated that the explosion was not linked to the desecration of the graveyard. Disciplinary measures were taken against Kozarac local police for not responding appropriately or in a timely fashion to the explosion. At the end of November, five Bosniak families had returned. Kozarac has been identified by the International Community as one of the most important return areas.
8. On 8 November, a hand grenade was thrown at a Bosniak-owned house in **Banja Luka**. On 17 November, a hand grenade was thrown at a house owned by Bosniak returnees in **Novo Selija, Banja Luka**, causing slight damage to the house. The owners were recent returnees from Germany. On 14 November, a group of 15 Bosnian Serb displaced persons blocked a road obstructing a bus carrying 51 Bosniaks, currently living in Slovenia, following a UNHCR-organised graveyard and assessment visit to **Kotorsko, Doboj**. The bus was stoned as it was leaving the scene, causing damage to windows. The local police reportedly failed to take any action. IPTF subsequently issued a non-compliance report to the Doboj Chief of Police for inadequate direction of the operation.

RIGHT TO RETURN/FREEDOM OF MOVEMENT

Assessment Visits and Returns

[This section is primarily based on UNHCR and RRTF reports and focuses on visits and returns which are particularly significant from a human rights perspective]

Visits/Returns to Federation:

9. On 7 November, approximately 50 Bosniak displaced persons returned to **Poprati, Stolac** municipality, including around 20 staying overnight. The return proceeded without incident, despite the destruction of a Bosniak-owned house in Poprati on 3 November (see above). On 24 November, 30 Bosnian Serb families returned to **Laksevina settlement, Mostar South** municipality. This marked the beginning of Bosnian Serb returns to the last settlement in Mostar South municipality.
10. **Returns to Polje and Rastani:** A hand-over ceremony of keys to houses in Polje was planned for 27 November, to be accompanied by Bosnian Croat returns. This announcement was followed by notification of Bosniak returns to Rastani on 28 November. On 26 November, the Mayor of Mostar postponed the hand-over ceremony due to 'bad weather conditions.' In addition, the Head of Municipality Mostar West announced that Bosniak returns to Rastani were not acceptable until 34 houses in Polje currently occupied by Bosniaks were vacated. [**Ed. Note:** On 11 December, approximately 80 Bosniak displaced persons returned to Rastani, including approximately 30 staying overnight. SFOR, UNHCR and OHR were present during the return. The Bosniak return followed the return visit the previous day of approximately 50 Bosnian Croats to Polje].
11. On 11 November, 27 Bosnian Serb displaced persons currently in Vlasenica, Zvornik and Bratunac visited **Olovo** municipality, reportedly the fifth assessment visit to the area. On 12 November, 22 Bosnian Serb displaced persons currently in Vlasenica visited the village of **Staric, Kladanj** municipality, where the majority were able to visit their houses. On the same day, a group of six Bosnian Serb displaced persons carried out assessment visits to **Lukavac** and **Tuzla** municipalities and 60 Bosnian Serb displaced persons currently living in Srebrenica and Bratunac visited **Donji Vakuf** without incident.

Visits/Returns to Republika Srpska:

12. On 7 November, 120 Bosniak displaced persons currently living in Teocak and Tuzla carried out assessment visits to the villages of **Janjari** and **Atmacici, Ugljevik** municipality. The majority were able to visit their homes and were welcomed by local Bosnian Serb displaced persons. On 14 November, around 90 Bosniak displaced persons carried out an assessment visit to **Hrusta, Nevesinje** municipality. On 17 and 18 November, 49 Bosniak displaced persons visited inhabited areas in **Bratunac**, the third and fourth visits to the area this year. On 29 November, approximately 105 Bosnian Croats currently living in Slavonski Brod visited the Catholic chapel and graveyard in **Plehan, Derventa** municipality, where they held a religious ceremony.

Other Visits/Returns:

13. The first organised repatriation of Croatian Serb refugees to Croatia took place on 10 November. Since the first movement, UNHCR has organised weekly 'convoys.' Most of the returnees are currently residing in Bosanski Novi, Bosanska Dubica and Bosanska Gradiska. At the end of November, 83 Croatian Serbs had returned to Croatia.

RULE OF LAW

14. **Besirevic Case:** Alija Besirevic, a supporter of Fikret Abdic and member of the Presidency of

the 'Autonomous Province of Western Bosnia' was arrested for alleged war crimes in 1996 in violation of the Rules of the Road. Only after additional evidence was submitted did the ICTY find there was sufficient evidence for his detention. On 31 October 1997 Besirevic was convicted by the **Bihac (Fed)** Cantonal Court to eight and a half years imprisonment for the illegal detention and mistreatment of civilians during the period of the Autonomy. In May 1998 the Supreme Court overturned the verdict and ordered a retrial. A decision was handed down in that trial in mid-November 1998; after 27 months in prison Besirevic was found not guilty of authorizing the detention and subsequent ill-treatment of civilians based on the same evidence admitted at the first trial and with the same judges. The OSCE commended this decision as "a demonstration of properly functioning judicial review" and as vindication that insufficient evidence was presented to warrant the earlier conviction.

15. **Subotic Update:** On 19 November, the Prosecutor filed an appeal against the sentence in the Zenica-Doboj Cantonal Court on five women and two men found guilty of the March 1997 beating death of Slavko Subotic. The appeal followed a press release issued on 17 November by OSCE, OHR and UNMIBH condemning the sentences handed down by Visoko Municipal Court (suspended sentences between nine and six months) as not reflecting the severity and brutality of the crime and calling on the prosecutor to consider an appeal of the final verdict. [see HRCC Monthly Report, October 1998, para. 15]
16. **Judicial System Assessment Programme:** UNMIBH established a Judicial System Assessment Programme (JSAP) to monitor and assess the court system as part of an overall programme of legal reform. The programme will consist both of general assessments of the organisation and functioning of the courts and case-oriented observations. The focus of the programme will be on three main aspects of the judicial system: **technical**, covering legislation and other legal norms and standards; **institutional**, concerning the capacity of the system in terms of physical resources and personnel; and **political**, relating to the political framework and factors determining the operation of the judicial system. The JSAP team consists of 26 lawyers, both internationals and nationals, who were deployed throughout BiH at the end of October.

PROPERTY RIGHTS AND PROPERTY LEGISLATION

Federation Property Legislation

18. OHR has forwarded to Prime Minister Bicakcic a list of outstanding problems with Federation legislation and administrative practices relating to property and housing, which should be resolved as a matter of priority. The issues include amendment of the Criteria under Article 3(7) of the *Law on Cessation of Application of the Law on Abandoned Apartments*; amendment of the laws to allow for administrative claims for repossession of illegally occupied property that was never formally declared abandoned; a strengthening and clarification of the role of the Commission for Real Property Claims of Displaced Persons (CRPC) in the claims process; and a range of other matters. OHR and other interested international organisations will undertake detailed negotiations on each of these matters in the coming weeks.
19. **Implementation of the property and housing laws in the Federation continues to face obstacles.** While the numbers of claims registered continues to improve in most parts of the Federation, the rate of decision-making and enforcement is still extremely low. The authorities in Zenica, and more lately in Tuzla, are applying Article 3(2) of the *Law on Cessation of the Application of the Law on Abandoned Apartments* to reject claims, on the basis that the departure of the original resident was unrelated to war activities. This amounts to a denial that the original residents of Zenica have the right to return under Annex 7 of the Dayton

Agreement. OHR has intervened with the Ministry for Urban Planning and Environment, and other international organisations are intervening with the relevant municipal authorities. There has also been a marked increase in reports of the military police carrying out summary evictions of civilians from military apartments in Sarajevo. The military police are competent only to enforce military regulations against military personnel, and their attendance at evictions has no basis in Federation law. The civilian police have sole responsibility for supporting the execution of evictions, which may only be carried out pursuant to a decision rendered by a competent body – either a court or the administrative authority competent for housing affairs. The High Representative sent a letter on 4 December to the Federation Ministry of Defence objecting to the involvement of military police in evictions.

Republika Srpska Property Legislation Update

20. On 2 December, the **Republika Srpska National Assembly adopted the *Law on Cessation of Application of the Law on Abandoned Property***. This Law finally rescinds the war-time legislation on abandoned property, which has been a major obstacle to return in Republika Srpska. Although a review of the final text is still underway, its adoption represents a very positive step forward. The Law establishes an administrative claims process for the repossession of property, similar to the two Federation property laws adopted in April 1998. The RS Law regulates both private property and socially owned apartments, and specifies the rights of temporary occupants to alternative accommodation. Under the Law, the Ministry for Refugees and Displaced Persons is responsible for implementing the law and deciding property claims. The Law also gives an important role to the CRPC. A draft *Law on Amendments to the Law on Housing Relations* is currently before the National Assembly

Evictions in Republika Srpska

21. On 9 December, the National Assembly adopted a Conclusion instructing the authorities not to carry out evictions of refugees, displaced persons, families of killed soldiers and war invalids from the period 15 December 1998 until 15 April 1999, except where alternative accommodation is available. Similar restrictions on evictions had already been adopted by the court authorities in Banja Luka. 'Winterisation rules' preventing evictions over the winter period were the usual practice before the war, although normally promulgated at municipal level. OHR will try to ensure that progress continues to be made on multiple occupancy and floater cases over this period.

INSTITUTIONAL AND POLICY DEVELOPMENTS

22. **Conference on Parent-Teacher Association Development:** An ethnically diverse group of more than 70 parents and teachers from throughout BiH met in Vogošća from 27 to 29 November to discuss how parents and teachers can organise themselves and take a more active role in the development of democratic and multi-ethnic educational institutions in BiH. The overall aim of the conference was to discuss the possibilities of establishing a BiH Parent-Teacher Association. This country-wide conference builds on a series of local and regional parent-teacher seminars held across BiH in 1997 and 1998, and is the last event in a Parent-Teacher Project jointly initiated by the OSCE and the Austrian Ministry of Education/KulturKontakt. Led by experts from educational institutions and organisations in Austria and Norway, the participants in the conference were encouraged to further examine the role of parents and teachers in schools with a focus on how they can structurally formalise co-operation, especially to shape educational policies.

23. **RS Prison Visit:** Two Council of Europe experts visited prisons in the Republika Srpska from 23 November to 4 December. The experts will make recommendations to the RS Ministry of Justice after their visit. A report on a Council of Europe prison assessment in the Federation was submitted to the Federation Ministry of Justice in August [see HRCC Monthly Report, August-September 1998].

HUMAN RIGHTS INSTITUTIONS

24. **Human Rights Chamber:** On 9 November, the Human Rights Chamber held a public hearing in Banja Luka in the case of **Islamic Community v. Republika Srpska**. The case relates to a number of mosques that were destroyed in Banja Luka and attempts by the Islamic Community to reconstruct the mosques. During the course of preparations for the public hearing the Chamber encountered numerous difficulties. The public hearing in the case was originally scheduled for 13 July. One week before the hearing, then Minister of Justice for the RS, Mr. Petko Cancar, informed the Chamber that the Agent for the Republika Srpska had resigned and requested the delay of the hearing until a new Agent was appointed. The new Agent was not appointed until over three months later. At that point, the Chamber had already rescheduled the public hearing for 9 November. In addition to this initial delay, the Chamber had difficulties in finding a location for the November hearing in Banja Luka. On two separate occasions, the venue for the hearing was canceled, including premises for which the Chamber had secured a written contract, which occurred two days before the hearing was scheduled to take place. In both instances, political pressure was cited as the reason for the cancellation. Further, when the hearing finally took place, the government of the Republika Srpska failed to send an Agent before the Chamber to represent the government. In addition, two witnesses summoned from the Banja Luka municipality failed to appear. The **Human Rights Steering Board** issued a public statement on 12 November strongly condemning any activities of authorities or individuals to obstruct the work of the Chamber. It also reminded the RS authorities of their obligations under Annex 6 of the Peace Agreement to cooperate fully with the Chamber.
25. In November, the High Representative endorsed the interpretation of the Council of Europe's Commission for Democracy through Law, the **Venice Commission**, that **"the Constitutional Court has no appellate jurisdiction in respect of decisions of the Human Rights Chamber."** The Venice Commission reached this conclusion, inter alia, for the following reason: *"[The] decisions of the Human Rights Chamber, as well as the decisions of the Constitutional Court, are 'final and binding' (see Article XI, para 3 of Annex 6 and Article VI, para 4 of the Constitution). This clearly shows that there should be no room for appeals from one body to the other and that there should be a distribution of the competencies among them, as long as they are both in operation in the field of human rights."* Therefore, the final decisions of the Human Rights Chamber must be fully complied with by all relevant authorities. The High Representative called for every effort to be made to ensure that all final decisions of the Human Rights Chamber which have been rendered so far, or will be rendered in the future, are implemented in full and without any further delay. [Chamber decisions and reports are available from the Secretariat or on the Internet at <http://www.gwdg.de/~ujvr/hrch.htm>].

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 Michelle Morris or by e-mail to michelle.morris@ohr.int.

Office of the High Representative