

Human Rights Report June 1999

SUMMARY

- Local authorities threaten to expel returnees from Drvar
- High Representative issues comprehensive package of property-related decisions
- Human Rights Chamber finds RS discriminated on basis of religion by preventing rebuilding of mosques in Banja Luka
- Judges and Prosecutors sign identical Codes of Ethics in RS and Federation

REFUGEES, DISPLACED PERSONS, and the RIGHT TO RETURN

[This section focuses on return-related information which is significant from a human rights perspective]

General Overview on Visits>Returns

1. Minority *returns* are continuing in both the Federation and the RS. In the Federation, Bosniaks and Serbs continue to return to Croat administered **Stolac**; returns are on-going to **Prozor Rama** (also Croat administered); and families continue to return to and from **Central Bosnia Canton**, including returns from **Zenica** and **Kakanj** to **Donje Kula**, **Buselji**, and **Busovaca** (following an agreement between the two "Open Cities", **Zenica** and **Busovaca**). Approximately one hundred Serbs returned predominantly from FRY to the **Martin Brod** area (Bihac Municipality) in May and June, bringing the total number to about 350. In the RS, returns and visits continue, and there are indications that returns will take place soon to **Han Pjesak**, **Sokolac**, and **Pale** municipalities.

2. The process for organizing *visits* of displaced persons and

refugees to their former homes appears to be increasingly lead by the refugees/DP's themselves, rather than organized through the international community, indicating increased freedom of movement, and greater confidence in their security. DP associations in many parts of the country are arranging details directly with local police/authorities, merely notifying UNHCR of details, and UNHCR then sharing the information with other IO's for monitoring purposes. This appears to be the case both in parts of the RS (such as **Sokolac** and **Han Pijesak, Rogatica**) as well as in some parts of the Federation, such as **Una Sana Canton**. This seems to indicate a greater sense of security and freedom of movement. Still, visits to some parts of the country, including **Foca/Srbinje**, remain difficult, and UNHCR thus remains directly involved.

Special Report

3. UNHCR issued a report in February 1999 entitled "***Returnee Assessment Study in Velika Kladusa, Una Sana Canton***", which documents the present conditions of life of a sample of the approximately 20,000 returnees who returned to the area since 1995. These returnees were almost exclusively either supporters of the DNZ political party, or presumed to be, based on having fled the region. The report found: a high level of employment discrimination against returnees, particularly in the fields of teaching, municipal administration, and police work; a low level of trust in the local police, who in general represent the majority political party in the area (the SDA), and a low level of trust in the court system, which is also dominated by the SDA. The report indicated a high level of exodus from the area as returnees face difficulties in restarting their lives. The study was based on 102 interviews. Findings of this study with respect to employment discrimination against minorities are echoed in the OSCE Employment Discrimination study discussed in paragraph 31 of this report. (A summary of the report, made

available in July 1999, is available from UNHCR Protection Branch, Sarajevo: tel: 387-71-666-160, e-mail: ALFARO@unhcr.ch).

Visits>Returns to Republika Srpska

4. Serious incidents took place in the village of **Tarevci (Modrica** municipality, RS), where previously peaceful house cleaning visits were targeted by violent protests in late June. These incidents come at a time when the return process in **Modrica** had been going slowly but steadily, and approximately 20 Bosniak and Croat families had to date returned to the village. The incidents included rock-throwing and the throwing of a hand-grenade. Eight people were injured in the incidents.

5. In a ground-breaking return, approximately 60 Bosniaks returned to **Berkovici (RS)** on June 18. Despite a last minute letter from the Berkovici Mayor stating that the return was "illegal", the movement took place without incident. Another group of Bosniaks returned to **Nevesinje** on 30 June, the first return of Bosniaks to this municipality.

6. Large numbers DP's are returning to areas such as **Kotor Varos, Prijedor** and **Dubica** in convoys. These returns are ostensibly "spontaneous" (self-organized), but there are indications that they may in fact be organized through DP associations. These return movements have resulted in violent reactions by the receiving Serb communities, for example in areas such as **Vecici** (Kotor Varos) and **Dubica**. This illustrates a growing trend towards organised and often politicised return movements lead by Bosniak DP leaders. The concern is that these returns may be based on mis-information from DP leaders to their community, resulting in serious violence in some cases. UNHCR is pressing the RS local and Entity governments to ensure security of returnees, but also advising the potential returnees and DP leaders to adopt a low-key, de-politicised approach in order to minimise

incidents.

7. Minority (Bosniak) return projects in the Eastern RS municipalities of **Sokolac** and **Pale** progressed well in June, with authorities showing good cooperation. It is expected that by the end of the summer some 90 families will return. In the meantime assessment visits are ongoing every week-end, without incident.

Visits>Returns to Federation

8. Serb and Bosniak return movements to **Stolac** municipality continued through the month of June without incident. By mid-July, it is expected that Serbs will have returned to all primary settlements in Stolac which had a pre-war Serb population, including to private houses in the town itself. While in 1998 the initial Bosniak returns to Stolac occurred amid numerous violent incidents against Bosniak properties, presently Serb returns take place smoothly.

9. Return continues to be problematic in the municipality of **Drvar**. On July 3, the **Canton 10** Minister of Interior issued an instruction to all police stations, informing them to expel all returnees (overwhelmingly of Serb nationality) who fail to de-register from their place of displacement, register with the local authorities, and obtain their identification cards within 10 days. This is clearly illegal as the maximum penalty for failing to acquire an ID card is a fine, and in any case, it is the authorities themselves who have obstructed the ability of the returnees to comply with the ID card requirement. At present there are approximately 4000 returnees in Drvar. The situation has been quite tense since this event, leading OHR to recommend that Serb returns to the area be slowed on a temporary basis.

10. **Prozor Rama (Fed)** witnessed the first organized Croat assessment visits to areas in the municipality formerly controlled by the BiH Army. Two of three villages are heavily

damaged, while the 3rd is in good condition and ready for the first phase of return. After realizing that the surrounding villages are 100% Bosniak, none of the Croats interviewed indicated a strong desire to return. Interest to return to Prozor Rama is significant as it is here in 1992 that the war broke out between the Croat (HVO) and Bosniak (Army BiH).

11. The municipality of **Zvornik (RS)** opened for further return after long, and to begin with, unsuccessful negotiations. Spontaneous housecleaning took place without incident, before the international community and the Zvornik authorities reached an agreement on return. Negotiations between authorities and DP's have progressed and the parties agreed to phased and organised return of approximately 740 families. Return to Zvornik is significant due to the widespread ethnic cleansing, undertaken by the JNA and Serb para-military forces, which began in 1992. Before the war the population was approximately 60% Bosniak; at present, the population is overwhelmingly Serb.

Returns to the Federal Republic of Yugoslavia

12. Since the FRY General Assembly accepted the Peace Agreement on Kosovo on June 3, commercial bus lines have been established, notably between Sarajevo and Sandjak, and some refugees Kosovars, Serbs, Sandzakis, and others – are making their way home. The trend appears to be spontaneous returns, or approaching UNHCR for assistance with bus tickets.

PROPERTY

13. On 2 July, the High Representative issued Decisions making a series of amendments to Federation laws concerning property rights. The amendments form part of a package of reforms agreed with the responsible Federation Ministries after extensive negotiations. The amendments are intended to address the two major remaining problems: the persistence of multiple occupancy; and criteria for granting alternative

accommodation. Although all the reforms had been agreed to by the Federation Government, they were imposed by the High Representative in order to be in place before the expiry of the 4 July deadline for claiming socially owned apartments in the Federation. The amendments address the following principal issues:

14. *Definition of refugees and displaced persons.* The provision in the *Law on Cessation of Application of the Law on Abandoned Apartments* which defined refugee and displaced person status by reference to the subjective reasons why people abandoned their apartments has been replaced by a new provision stating that **all** people who left their apartments between 30 April 1991 and 4 April 1998 (the date when the former Law on Abandoned Apartments was repealed) are presumed to be refugees or displaced persons for the purposes of Annex 7 of the Dayton Agreement, regardless of their reasons for leaving.

15. *The right to claim property which was never formally declared abandoned.* Municipal administrative authorities have now been given the additional competence to deal with claims for repossession of apartments and private houses which were never formally declared abandoned, but are now occupied by another person. Until now, municipal authorities have only received claims for property legally “declared abandoned” included in the abandoned property legal regime, while other repossession cases were obliged to pursue their claims through the lengthier process of the local courts. People in this category are given until 4 October 1999 to present their claim.

16. *Unclaimed apartments reserved for temporary accommodation.* Abandoned apartments which are not claimed by the pre war owners by the expiry of the appropriate deadline will be kept under municipal administration for 2 years. The municipality must use them for temporary accommodation for individuals who are occupying houses or apartments which they must vacate

because the original inhabitant has successfully claimed and is returning.

17. *Rights to alternative accommodation are clarified.*

Entitlements to alternative accommodation have been restricted, so that any person with a real possibility to return to his or her former home, or who has voluntarily disposed it, cannot qualify for alternative accommodation. Individuals occupying property under temporary permits will be regularly assessed to determine whether they continue to meet the requirements for temporary accommodation. Individuals who do not qualify are obliged to leave the property they currently inhabit within 15 days. These new rules will help to eliminate multiple occupancy.

18. *Returnees must wait for 2 years before purchasing their apartment.*

Those who return to abandoned apartments are required to occupy the apartment for 2 years, before they can participate in the privatisation scheme. This provision was requested by the Federation Government, to reduce the incidence of refugees and displaced persons claiming and then disposing of their apartments, without ever returning to live in their home of origin. This will support the minority return process, while reducing the risk of return-related multiple occupancy. Arrangements will be made so that individuals who wish to purchase their apartments with citizens claims vouchers, which are valid for only 2 years, will be able to do so by notifying the Privatisation Agency of their intention.

19. *Right to return to military apartments.*

The amendment includes the agreement between OHR and the Federation Government concerning the right to return to apartments owned by the former JNA. A test is introduced to establish whether a former occupant of the apartment is considered genuinely to be a refugee for the purposes of Annex 7 of the Dayton Agreement. Those who were in active service of the JNA in 1991 and were not citizens of the former Republic of Bosnia and Herzegovina are not given the right to return, unless they obtained

protection as a refugee outside of the former Yugoslavia. In addition, citizens of Bosnia and Herzegovina who continued in the service of a foreign army after the Dayton Agreement are not considered refugees. This agreement will open the way for return of genuine refugees to military apartments, in particular pensioners who form the greater part of the caseload. This amendment effectively operates as an exception to the Decision outlined in paragraph 14 of this report, for those individuals who were holders of occupancy rights for military apartments.

20. *Pre-war contracts on sale of military apartments are recognised.* The *Law on Sale of Apartments with Occupancy Right* is amended to give recognition to contracts on the sale of military apartments concluded with the JNA in 1991/2. This amendment allows for the implementation of more than 100 decisions of the Human Rights Chamber. Valid contracts, whether or not the signatures were verified in the court, will be implemented by the Federation Ministry of Defence at the original price. However, where the individual is not considered to be refugee or displaced person with a right to return, then he or she will not be able to implement the contract, but will receive compensation of the amount paid towards the purchase price. Where the purchaser and the Ministry of Defence are not able to agree on implementation of the contract, the local courts will have jurisdiction.

21. *Decision clarifying the competence of the Housing Officials in Republika Srpska:* On 21 June, the Republika Srpska Minister for Refugees and Displaced Persons issued a further Instruction on the implementation of the *Law on the Cessation of Application of the Law on the Use of Abandoned Property*, taking into account the changes made by the High Representative Decision on permanent occupancy rights. The Instruction obliges municipal offices to receive claims for apartments that are not declared abandoned, but also states that the municipal office is not competent to receive claims

for business premises.

22. *Deadline for claiming apartments suspended in Drvar municipality:* On 30 June, the High Representative adopted a Decision suspending the application of Article 5 of the Federation *Law on Cessation of Application of the Law on Abandoned Apartments* in the Municipality of **Drvar (Fed)**. This section of the law provides that refugees and displaced persons will lose their occupancy rights if they do not claim their apartments within the deadline of 4 July. The Decision was necessary due to the continuing poor functioning of the municipal housing office. Many individuals had either been denied the opportunity to submit their claims, or else had not been given a receipt for their claims, making them vulnerable to loss of their rights at the expiry of the deadline. The suspension will remain in place until the High Representative's Special Envoy for Drvar certifies that the housing office is functioning properly.

Implementation of Property Laws in the RS:

23. The implementation of property laws in the RS continues to move very slowly, due to a combination of factors including a lack of resources, lack of trained personnel, as well as a demonstrated lack of political will. The decision-making rate is very low in most RS municipalities (a maximum of 10-15% of cases submitted, in the "best" municipalities), and the authorities remain reticent to tackle the issue of double and multiple occupancy.

24. In **Trebinje (RS)**, the Director of the largest company in the area has issued to Serbs new permanent occupancy rights to 31 apartments occupied by Bosniaks and Croats before the war. The issuance of these individual decisions directly violates the new property legislation which already prohibited the issuance of new permanent occupancy rights after 7 February 1998. This action is in direct defiance of the spirit of the Decision of the High Representative dated 14 April 1999

whereby he cancelled all permanent and new occupancy rights issued between 30 April 1992 and 7 February 1998.

Implementation of Property Laws in the Federation

25. In the Federation, the non-execution of eviction orders, coupled with the lack of action on double and multiple occupancy cases continues to plague the property law implementation process in most municipalities. However, there are interesting developments in Sarajevo and West Mostar:

26. The Sarajevo Cantonal Government announced a change of direction in the housing policy, introducing measures to facilitate the return of pre-conflict residents of **Sarajevo**. Welcoming initiatives of the international community with respect to the return of Bosniac DPs to eastern RS, the Cantonal Government urged identification and resolution of all cases of multiple occupancy. The government committed itself to creating alternative accommodation for those who are to be evicted but still have no access to their pre-conflict homes, in part by utilising existing Transit Centres (Stup and Srednje) for emergency accommodation. In addition, funds raised through the process of privatisation of socially-owned apartments will be used to construct 150 new apartments to accommodate vulnerable families (war widows, war invalids and DPs) who have to leave their temporary accommodations. Completion of works on new apartments is expected in October/November 1999.

27. In **West Mostar (Fed)**, a 'hotline' for the reporting of double occupancy cases became operational. The purpose of the hotline is to collect from the general public claims and allegations regarding cases of double occupancy. The information will then be presented to the municipal housing departments for investigation. A public information campaign accompanied the launch of the hotline. In the first few days several hundreds calls were received by OHR South which operates the hot line.

POLICING

28. Canton 10: With the signing of the Minority Police recruitment plan in **Livno (Fed)** on 25 June, UNMIBH opened a new chapter with respect to police restructuring in Canton 10. Minority policing is considered essential in order to ensure the security of returning minority populations, as well as their confidence in the local police. This is particularly important in Canton 10, where the majority of the population is presently Croat, while the returnees are predominantly Serb. Presently most of the police officers are Croat.

RULE OF LAW

29. Legislation regarding the *Judicial Selection Commission* progressed and a version has been finalized by the Federation working group. It has been reviewed by the Council of Europe experts and will be submitted once internal review has been completed. A similar effort is underway in the RS. A final working group version has been submitted to OHR for review. Draft laws concerning expansion of Federation Supreme Court jurisdiction for certain classes of crime has been submitted as has a complimentary draft law to strengthen the Federation Prosecutor's Office.

RIGHT TO A FAIR TRIAL

30. Djedovic: Following the appeal hearing in the case on 13 May 1999, the Federation Supreme Court returned its decision on appeal in the case of Ibrahim Djedovic, annulling the first instance verdict and sending the case back to the Sarajevo Cantonal Court for retrial. Mr. Djedovic, a Bosniak and a prominent leader of the DNZ, on trial for war crimes allegedly committed in Northwest Bosnia in 1994 and 1995, was convicted of war crimes against the civilian population and sentenced to 10 years imprisonment at first instance. The trial was riddled with both procedural irregularities and serious human rights

violations. The substance of the Federation Supreme Court's decision reveals the lack of evidence presented at trial, irregularities in hearing witnesses (a number of defence witnesses were not given permission to testify), and documented violations of domestic and international standards.

ECONOMIC AND SOCIAL RIGHTS

31. Study of Employment Discrimination: On 24 June the OSCE released a report entitled, ***"Employment Discrimination in Bosnia and Hercegovina."*** The report documents the widespread firing of persecuted ethnic and political groups during the war and the subsequent failure to rehire them, the preferential hiring of members of the majority ethnic group, the exclusion of women in favour of de-mobilized soldiers, and extensive discrimination against teachers from minority groups. The report's recommendations focus on the need for a state-wide labour law prohibiting employment discrimination on any grounds, and the need for state-wide education about employment discrimination. The report also encourages the conditioning of investment in BiH companies on fair hiring practices. (A [summary](#) of the report is appended to this Monthly Report, and a full report is available from the OSCE in Sarajevo: tel: 387-77-444-444, or andrewm@oscebih.org.)

32. Disability Issues: Local and international agencies working on the rights of disabled persons have expressed concerns over several aspects of rights of disabled persons in BiH. Some of the concerns, such as lack of access to educational facilities, relate to all disabled persons. An important issue is the differential treatment of war-disabled and non-war disabled persons, foreseen in the new draft law on *Law on Basic Protection of Civilian Victims of War and their Families and the Protection of Children*, which has already been passed by the House of Representatives, although it has yet to be passed by the House of Peoples. Efforts are presently underway to establish a coalition of associations to

efficiently promote equal rights for the disabled.

WOMEN'S RIGHTS

33. The Office of the High Commissioner for Human Rights, together with The Council of Europe and Centre for Legal Aid – Zenica organised a two day conference on ***“Trafficking and Slavery: Implementation of a Human Rights-Based Approach,”*** held on 24 – 25 June in Neum, drawing participants both from the local and international community, including authorities from both Entities. The conference was held in recognition of the need to concretely address problem of trafficking of persons in BiH. The first part of the conference, which aimed at providing legal training for local non- governmental organisations on trafficking, had been organised by the International Human Rights Law Group on 11-12 June in Tuzla. The conference, which developed concrete conclusions and recommendations, was divided into two workshops, one for legal professionals and one for non- governmental organisations dealing with protection of victims and prevention.

34. The conference highlighted that at present, trafficking takes place predominantly cross-entity and in areas near the IEBL, as well as in all larger BiH cities. It is also common near SFOR bases and other military compounds, along heavily travelled highways, and in some guest-houses. Trafficking is facilitated by poor post-war economic conditions, the lack of adequate border controls, and a lack of local police recognition of and response to the issue. This is accentuated by the general insensitivity by police to issues involving violence against women.

35. *Recommendations* by the legal professionals included: to improve police and judicial response by improving education, co-operation with other agencies, internal mechanisms, and legal regulations; to improve treatment of victims by offering them witness protection, and by treating them as victims rather than as perpetrators; and, to improve co-operation with

the non-governmental sector in order to better provide victims with services. Recommendations from the non-governmental sector included: to engage with the international network of NGO's active on this issue; to ensure that professionals working with trafficking victims are specialists; to develop a co-ordinated awareness campaign against trafficking, for the general public, for victims, and for potential victims; to demand a safe haven for victims; to adapt existing telephone hotlines for use by trafficking victims; and to demand that governmental bodies consult with the NGO sector on this issue.

36. During the reporting period the number of trafficked persons approaching the agencies dealing with the issue has continued to increase. As of April 1999, when the OHCHR, UNMIBH/HRO and IOM began collaboration on providing protection and assistance to women trafficked into forced prostitution, some 25 women (and one man) have been assisted to return safely to their home countries. In more than 20 cases, however, the information was received too late and the women had already been fined and deported either from the canton or from the country. One of the obstacles in providing protection and assistance remains lack of funding to provide shelter, food and costs of repatriation.

HUMAN RIGHTS INSTITUTIONS

37. Case File Progress: To the end of June, 1999, the Institutions had registered the following number of cases. Figures in brackets indicate increases over the past month:

	Ombudsperson	Human Rights Chamber	CRPC
Cases registered	3087 (+88)	2398 (+222)	200,000 (+10,000)*
Cases completed	1200 (+216)	247 (+53)	48,000 (+12,000)*

* CRPC cases registered and completed refer to properties over

which an application was made. These figures are approximate.

Human Rights Chamber:

38. On 11 June, the Human Rights Chamber delivered its decision in the case of the ***Islamic Community in BiH v. Republika Srpska***. At the heart of the case was the destruction of 15 mosques by the Banja Luka authorities in 1993 and the applicant's several requests to rebuild seven of those mosques. To date, those requests have either been ignored or denied by the authorities. In addition, the RS authorities had removed all trace of the applicant's property on the relevant sites and in some cases paved or established parking lots on the sites. While the Chamber decided it had no jurisdiction to hear the claim relating to the destruction of the mosques as it is only competent to hear incidents which occurred after December 14, 1995, it did find a violation of the ECHR on the other facts. Specifically, the Chamber established that the RS authorities had either actively engaged in or passively tolerated discrimination in the exercise of freedom of religion in the RS against Muslims. The Chamber also found the refusal to allow reconstruction of the mosques to be a violation of the right to property. The Chamber ordered the RS to, among other things: allow the applicant to erect enclosures around the sites of the 15 destroyed mosques; refrain from the construction of buildings or objects on the sites of the 15 destroyed mosques; and grant the applicant the necessary permits for reconstruction of seven of the 15 destroyed mosques. The RS is to report to the Chamber on the steps taken to comply with these orders.

39. The HR Chamber issued a decision with respect to the right to a hearing within a reasonable time. In the ***Stanivuk*** case, the applicant, of Serb descent, ran a barber shop in Sarajevo, but lived in Grbavica. During the war she was unable to reach her shop. After the war she was prevented from re-entering her shop by a Bosniak who was then, and still is, running a barber shop at that location. The applicant initiated court

proceedings to be reinstated into her shop. These proceedings have been pending since 1996 and have been repeatedly adjourned. The Chamber found violations of the applicant's rights to a fair hearing within a reasonable time and to peaceful enjoyment of her possessions; the Chamber found no evidence of discrimination as alleged by the applicant. In four eviction-related cases versus the RS, the Chamber found violations of the applicants' right to home (Article 8 of the ECHR), peaceful enjoyment of possessions (Article 1 Protocol 1 of the ECHR), and effective remedy under domestic law (Art. 13 of the ECHR). (*Chamber decisions and reports are available from the Secretariat or on the Internet at <http://www.gwdg.de/~ujvr/hrch/hrch.htm>.*)

BiH Ombudsperson:

40. In June, the Ombudsperson achieved amicable solutions with the applicable respondent in three cases. In addition, she made public four reports concerning the Federation and the State, adopted on December 18, 1998. In these cases, which concerned adjournment of proceedings and retroactive annulment of purchasing contracts with respect to JNA apartments, the respondents had failed to comply with her recommendations (reports are not generally made public where an amicable settlement has been achieved or where her recommendations are complied with). Additional information regarding legislative changes in the law relating to military apartments may be found in paragraphs 19 and 20 of this report. The Ombudsperson also made public one report, adopted on February 10, 1999, where the RS had failed to comply with her recommendations. The Ombudsperson referred this case, **Brkic v. the RS**, to the Human Rights Chamber. (*More information about the work of the Ombudsperson is available at <http://www.ohro.ba/index.htm>.*)

Commission for Real Property Claims (CRPC)

41. In June, the CRPC adopted just over 12,000 decisions on claims for private property and apartments, bringing the total

to approximately 48,000 decisions rendered to date. Implementation of these decisions has been the key stumbling block with respect to CRPC decisions. Precise numbers of implemented decisions are difficult to gather, as many successful claimants do not report their case outcomes. It is apparent that a significant proportion of claimants meet resistance from the local authorities who refuse to recognize their pre-war occupancy and ownership rights. In June however, a number of claimants reportedly returned to their private property in **Pale (RS)** on the basis of CRPC decisions. In addition, courts in Mostar and Tuzla have addressed this issue, confirming the binding nature of the CRPC decisions, under Annex 7 of the GFAP. However, these courts have indicated that further legislative direction is required. *(More information about the work of the CRPC is available at <http://www.crpc.org.ba>.)*

INSTITUTIONS AND POLICY DEVELOPMENTS

42. The Presidents of the Associations of Judges and Prosecutors in the Federation and in the RS adopted identical *Codes of Ethics* on June 30. The international community began investigating this topic a year ago. At present, the codes apply to members of the associations of judges and prosecutors, of which there are three: the Association of Judges of the Federation; the Association of Prosecutors of the Federation; and the Association of Judges and Prosecutors of Republika Srpska. It is anticipated that the Codes will be referenced in the judicial selection laws of both entities, which are currently in draft form, so that they will apply to all judges and prosecutors in BiH. This is significant as it will provide a common framework for conduct for the judiciary and prosecutors, and will help to ensure that those who engage with the judicial system are afforded similar standards of treatment.

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Employment Discrimination in Bosnia and Herzegovina

Summary of an OSCE report by the same title, published by the OSCE on June 24, 1999

(This summary is intended to provide an overview of the key issues raised in the report. For a copy of the report itself, please contact the OSCE Senior Legal Advisor for Social and Economic Rights, at 387-71-444-444 /e-mail: andrewm@oscebih.org, or the HRCC at 387-71-447-275, ext 881/569/848.)

Access to employment is clearly a crucial factor in the decision of refugees and displaced persons to return to their pre-war homes. This report stresses that discrimination in employment works against the re-establishment of multi-ethnic society in Bosnia and Herzegovina and mitigates against return. The report documents the issue of employment discrimination in a systematic manner and reveals:

- Widespread firing of persecuted ethnic groups and political opposition members during and immediately following the war;
- Recruitment of workers from the majority ethnic group while minority employees who have been laid off remain

- on the “waiting list” for employment;
- Dismissals of opposition party members from key positions after elections;
- Exclusion of women from new vacancies through a system giving priority to ex-soldiers; and
- Extensive discrimination against teachers from minority groups, both ethnic and political.

Methodology:

The introduction is dedicated to the methodology used in the report. It is stressed that most of the information received is unverified and alleged, and that variations in access to information across the country affect the incidence of discrimination recorded. For this reason, no attempt has been made to carry out a quantitative analysis of the information received.

Legal Framework:

The report stresses that the legal framework is complicated and non-conducive to the elimination of employment discrimination. At the State level, there is no labour law; in the Federation, a draft labour law has been passed by the House of Representatives but has yet to be adopted by the House of Peoples; and in Republika Srpska, a new law has been in place since 1993, which has been amended four times. Unfortunately, employment discrimination is not addressed directly in any of the governing labour laws, so cases must be argued on the basis of the European Convention on Human Rights which enumerates the right to non-discrimination, and the Constitution of Bosnia which lists governing treaties, which in turn enumerate the right to work.

Types of Employment Discrimination:

The report outlines two main types of employment discrimination: cases of discrimination arising during and immediately after the war; and, those arising since. With

respect to the first category, which constitutes the overwhelming majority of cases, the following sub-types were identified: cases related to the war such as dismissal of workers “on the other side”, workers put on “waiting lists”, unlawful reasons or no reason given for dismissal, and dismissal for absence related to the war. The second category of cases encompasses the cases related to ethnicity, political affiliation, gender and trade union or labour rights activity.

Overview of Discrimination by Region:

A substantial part of the report is dedicated to a regional overview of discrimination reported, in an attempt to illustrate the geographical spread of the different issues, and to indicate areas which may need priority attention. It is important to recall the methodological concerns raised.

Canton 1	Almost all reports received from Canton 1 concerned discrimination on <i>political</i> grounds, both against returnees, and against those who stayed during the war. <i>Ethnic discrimination</i> was also reported.
Canton 2	No information was available for Canton 2.
Canton 3	Current discrimination in employment appears to be predominantly against those who fled, regardless of ethnicity, although this primarily impacts Serbs. There is also discrimination against those involved in trade union activity.
Canton 4	There was very little employment discrimination reported from Canton 4, although that reported appears to involve both political affiliation and ethnicity.
Canton 5	No cases of employment discrimination were reported from Gorazde.

Canton 6	All cases reported from Canton 6 arose during the war. They were based on ethnicity, and “being on the other side.”
Canton 7	Other allegations of ethnic discrimination in the choice of employees put on the waiting list with the post-war decrease in production were received from both West and East Mostar. One of the few complaints of <i>gender</i> discrimination was received from Mostar. In the post-war era, two complaints of failure to employ on grounds of <i>ethnicity</i> were received from Bosniaks in West Mostar.
Canton 8	Information from Canton 8 was only available from one source, and concerned <i>ethnic</i> discrimination during the war in the Ljubu_ki municipality.
Canton 9	Very little information was available from the Sarajevo area. Several cases have been due to “absence during the war”, and there have been a few complaints of ethnic discrimination.
Canton 10	In Livno and Tomislavgrad, practically every non-Croat in the area was laid off or dismissed between July and October 1993 on the assumption of having “participated in the rebellion.” Waiting lists are a serious issue in this area. The prominent case against the <i>Livno Bus Company</i> is before the Human Rights Chamber.

Western Republika Srpska	<p>The most egregious incidence of discriminatory dismissals during the war, were reported in the Prijedor area in 1992-93, where almost all Bosniaks and Croats were arbitrarily dismissed or put on waiting lists.</p> <p>In the post-war era, there were several reports of Bosniaks being dismissed from their posts in Banja Luka on the grounds that there was no longer work for them.</p> <p>In more recent years, reports of employment discrimination tend to allege <i>political</i> motives. In Banja Luka, repeated purges of different party members from leadership positions in State-owned enterprises, schools, hospitals and police stations have been noted following transfers of power in elections.</p>
Eastern Republika Srpska	<p>Little information on employment discrimination was available for Eastern Republika Srpska. This was partly due to lack of access on the part of OSCE members in the earlier months of this year.</p> <p>This also reflects the low level of minority return to many of these areas.</p> <p>Reports of <i>ethnic</i> discrimination were received from Bijeljina.</p> <p>There were many allegations of <i>political</i> discrimination against the director of the Boxit company in Milici, near Zvornik.</p> <p>An interesting case of <i>gender</i> discrimination was reported from Visegrad, in which a teacher was involuntarily “retired” at the age of 55 (although the retirement age for men is 60). The Municipal Court of Visegrad found this to be discriminatory.</p>
Brcko	<p>Cases of <i>ethnicity</i> and <i>gender discrimination</i> were reported.</p>

Observations and Recommendations for Action:

Recommendation 1 OHR must introduce a State-level framework labour law prohibiting discrimination in employment on any grounds.

Recommendation 2 The international community should organize targeted, in-depth training for litigators and judges on non-discrimination in international law. OSCE Human Rights Officers are well-placed to identify legal professionals who would benefit from such training, due to their monitoring of discrimination cases across the country.

Recommendation 3 A public information campaign should be organised to spread awareness of the key legal issues relating to dismissal that this report shows affect a large proportion of the population.

Recommendation 4 Employers should be trained in the implementation of a Non-Discrimination Employment Code for BiH.

Recommendation 5 A public information campaign should be developed around the Non-Discrimination Employment Code for BiH.

Recommendation 6 Donors and investors should encourage adoption and implementation of the Code before allocating funds to businesses in BiH.

Recommendation 7 Dialogue should begin with the relevant ministries, the BiH Ombudsperson and the Federation Ombudsmen with a view to developing domestic capacity to monitor compliance.

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Falling Through the Cracks: The Bosnian Pension System and its Current Problems

Summary of an OSCE Report by the Same Title, published by the OSCE in June 1999

(This summary is intended to provide an overview of the key issues raised in the report. For a copy of the report itself, please contact the OSCE Senior Legal Advisor for Social and Economic Rights, at 387-71-444-444/ andrewm@oscebih.org, or the HRCC at 387-71-447-275, ext. 881/569/848).

Pensioners throughout Bosnia and Hercegovina experience difficulties receiving and surviving on their pensions. There is no single aspect of the present system free of problems: from the level of discriminatory treatment of minorities in branch offices, to the inadequate legislation governing the system's development, the Bosnian pension system has fallen victim to both political manipulation and administrative neglect. Presently, there is no comprehensive effort being made within the Bosnian pension system to address these problems. Most critically, there is also no plan to address these issues in a manner that takes into account the responsibilities assumed under the pre-war SFRY pension system.

In pre-war Yugoslavia, basic rights to social security were set forth in Article 281 of the 1974 Constitution. Based on that provision, the SFRY enacted a law determining a basic set of pension rights enjoyed by all citizens of the country. Outside of this law, republics developed their own individualized systems and laws. Independent pension funds

thus existed in each of the republics of the SFRY, but these worked together closely.

During the war, the *Pension and Invalid Insurance Fund of the Republic of Bosnia and Hercegovina* split into three separate funds, head-quartered in Sarajevo, Mostar, and Pale. Each fund gained exclusive responsibility for the pensioners living within its ethnically-determined region. Despite numerous international requests for the development of working relationships, the Bosnian funds have had relatively little productive contact with each other. Further, the Bosnian funds have each developed different relationships with the states of the former SFRY, in the absence of formalized pension relationships and as a result of post-war ethno-political patronage. Further complicating matters, none of the pension funds has sufficient resources for the payment of satisfactory pensions, as the resources of the SFRY Bosnian pension fund "disappeared" during the war, and current employment-generated contributions are inadequate to cover obligations to pensioners.

The existence of two separate pension funds on the territory of the Federation of BiH is an example of parallel institutions, and demonstrates the political separation between the Bosniaks and BiH Croats. The fact that the Mostar fund covers pensioners in non-contiguous cantons emphasizes the ethnic, rather than administrative, nature of the funds' separation. A Federation Agency was established for the resolution of this issue but does not appear to be working effectively. Other issues facing Federation pensioners include delinquency in pension payments, contested legislation reducing the level of JNA pensions, the non-accumulation of pension arrears under the new pension law, and a recent decision to reject the pension applications of some returnees from the RS and Mostar areas.

In the absence of access to documents kept in Sarajevo, the RS fund adopted a set of criteria for the determination of

pension levels based on level of education. This criteria is being applied in a system with extremely limited resources, on a broad scale, resulting in a hypothetical criteria seriously affecting the fates of many RS pensioners. The rate at which doctors of science are compensated is more than eight times the lowest pension; the lowest pension, meanwhile, is 20 DM per month and no additional services are offered to pensioners to ensure survival (such as municipal subsidies for electric or medical bills). Other issues affecting RS pensioners include: the fund's failure to determine pension arrears for underpaid pensions; delinquency in payments; and a structure which directly indebts pensioners to the political system.

Lack of access to, and excessive fees for documents remain problematic issues, particularly across entity lines. Poor relations amongst the Federation and RS funds have resulted in decisions negatively affecting returnees, as the funds fear that individuals will take advantage of these poor relationships to illegally register for two pensions.

The Bosnian pension funds do not currently pay pensions to individuals living outside of Bosnia and Hercegovina who have not determined that they will permanently stay out of the country. As the republics of the former SFRY have not all established formal post-war relationships with each other, pension problems stemming from the absence of established relations are frequently evident. Groups of people affected have included Croatian Serbs now living in the RS, Bosnian Croats living in Croatia, and a number of individuals who contributed during their working lives to the fund of one republic and then retired or moved to another republic within the last ten years. Steps must be taken immediately to formalize these relationships.

The process of privatization also raises a number of issues for pensioners, particularly as the Federation has elected to "pay off" accumulated pension arrears through the distribution of extra privatization vouchers. Vouchers obtained on these

grounds will not be distributed internationally; further, the RS will probably not institute a similar policy with regard to its own pensioners.

The above represents only some of the issues surrounding access to pensions. A comprehensive study with practical recommendations is required to ensure a uniform approach is taken to pensions.

Long-term Recommendations:

It is critical, that in attempting to resolve these problems, the international community undertakes reform in a thorough, systematic manner that recognises the connections between each of the individual problems outlined above. To this point, the guarantee of pension rights has largely been attempted on a case-by-case basis: looking into problems one individual faces with regard to obtaining his pension, for example, or looking only at problems in receiving pensions from one fund or country.

For this reason, the real goals of pension system reform should consist of the following:

1. Instead of the case-by-case method, the system should be subject to a holistic review.
2. Following the recommendations developed through this review, formal relationships must be created between the funds of Bosnia and Hercegovina.
3. Once the work of establishing who is owed what has been accomplished, it will be the task of the Bosnian pension system to review its future structure, recognising that it will not be possible to reconstruct the system as it existed before the war.
4. It will be necessary to change the entire perspective on the Bosnian pension system from the current view which currently dictates differential entitlements based on previous occupation.

Short-term Measures:

In the short-term, there are some measures which can be implemented to improve individuals' access to their pensions. These measures include:

1. The Federation should continue to cover all Bosnian pensioners who now have registered residences on Federation territory, regardless of the territory upon which they acquired the right to a pension and regardless of the territory from which they have recently returned.
2. The Federation should reduce or eliminate fees for obtaining pension-related documents, particularly workbooks and evidence of previous pension levels.
3. The Federation Pension Agency should draw up legislation to create a single pension fund on the territory of the Federation.
4. The RS fund should immediately release the contents of its database to the Federation funds. Its consistent refusal to do so has enabled the illegal practice of "double-dipping," has contributed to bad relationships between the Bosnian pension funds, and has provided a convenient excuse for discrimination against those pensioners returning from the RS who wish to register with a Federation fund.
5. The RS National Assembly should pass legislation which makes automatic the monthly donation of funds sufficient to allow for the distribution of pensions, allowing for exceptions to this only in the case of true economic crisis.
6. All funds should eliminate fees for the use of databases containing information on those insured. This information should be freely exchanged for the benefit of pensioners in all funds.
7. All funds should make the question of their responsibility for foreign pension recipients an urgent

priority and meet regularly to resolve this issue.

8. Both the Federation and the RS should strongly consider creating pensioner subsidies for public utilities. The Federation in particular should make it possible for pensioners to use their privatization vouchers for the payment of communal services, as per the proposal of pensioners' associations.

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 Lene Madsen, Sirpa Rautio or Eric Frejabue or by e-mail to lene.madsen@ohr.int or sirpa.rautio@ohr.int or eric.frejabue@ohr.int.*

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