

# **REPORT ON THE STATE OF HUMAN RIGHTS IN BOSNIA & HERZEGOVINA IN THE YEAR 2000**

Presented by the Justice and Peace Commission of Bosnia-Herzegovina.  
Published by the German Commission for Justice and Peace on behalf of the  
European Conference of Justice and Peace Commissions.

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## **Preface**

The conflict and wars in former Yugoslavia have put the European societies' idea of peace to a severe test. The instruments of conflict resolution well-known from the times of East-West confrontation have proved to be insufficient and inadequate in view of the new challenges. The catastrophe of the wars in former Yugoslavia and especially the war in Bosnia-Herzegovina thus became a failure of European policy, too.

In Bosnia-Herzegovina the dramatic conflicts in the meantime have given way to a toilsome boring through thick walls. And as an almost logical consequence, the international media largely turned away from this conflict directing its attention now to Kosovo or, more recently, to Macedonia. However, considering the importance of a successful outcome of the peace consolidation process in Bosnia-Herzegovina for the whole region and bearing in mind that the international community will probably have to be committed here for many years, it is obvious that this situation still requires much attention and critical discussion.

The intention of this publication is to make a contribution to the necessary dialogue on the present situation and the future of Bosnia-Herzegovina. It is a report on the state of human rights in the past year of the Justice and Peace Commission established by the Catholic Bishops' Conference of Bosnia and Herzegovina. So we hear a voice from this region which joins in the dialogue of the (many-voiced) international community and challenges its perception of conflicts. Those responsible in the European countries and the actors in the international civil society undoubtedly will be well advised to take note of such reflective reports from the region concerned. Since, despite the importance of an international commitment, in the long run only the local population and the local responsible actors can guarantee peace.

The present report of the Justice and Peace Commission of Bosnia-Herzegovina was drawn up in the context of a project of the European Conference for Justice and Peace which entrusted the German Commission for Justice and Peace with the publication.

Auxiliary Bishop Prof. Dr. Reinhard Marx

President of the German Commission for Justice and Peace

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## Prologue

*One could say somewhat cynically that Bosnia & Herzegovina is a promised land for people who are concerned with human rights issues. The question of human rights is, according to a prevalent opinion, one of the main indicators of the societal state as a whole. Bosnia & Herzegovina is not an exception to this rule, and accordingly the "Justitia et Pax" commission of the Bishops' Conference of Bosnia & Herzegovina, which is concerned with these problems, cannot remain silent because there is a need of improving the protection of human rights of each individual.*

*Bosnia & Herzegovina is a state in which the representatives and commissioners of the international community call shots; in which variegated political and other subjects parasitize and live off the agonized population without securing for them even minimal preconditions for an honest and upright existence; where the question of relations between nations remains unsolved; in which not all citizens are equal in their rights and duties by law; where nominally there are three armies politically unfavorably disposed towards each other, but where only the army of the international community has the real power; where unemployment had risen to European peak level, and economic underdevelopment is dangerously close to the most undeveloped countries of the Third World; which was left after the war by 100,000 emigrants, on the top of a million refugees during the war; in which the official governmental bodies hide the accused for war crimes and in which corruption and contraband are the main forms of "business"; where there is a permanent latent constitutional and political crisis, with the least efficient state parliament in Europe. In this state, facing these and many other problems unmentioned here, live people emerging out of the horrors of war or returnees from abroad, among whom many are still unable to assert their basic human right, the right to their own home.*

*Wanting to assist each individual in the struggle of asserting his/her rights, and to achieve a general state of justice and peace, which is the aim of every democratic society, the Catholic Church has, at local level as well as in general, in many ways and by many means achieved results in securing a path to people's rights, including the protection of the right to return, the right to education in the mother-tongue, establishment of a dialogue with others, and generally creating an aura of tolerance, in harmony with the evangelical messages of love and peace.*

*"Justitia et Pax", the commission of the Bishops' Conference of Bosnia & Herzegovina, is working directly on behalf of this initiative of the Catholic Church trying to participate in the*

*education of all citizens for a democratic and just society, in which the general interest of the community would be protected, but in which not a single individual would be endangered, nor deprived of his/her rights. Therefore, our Commission organized a series of study days and round table discussions, published statements, co-organized a symposium on human rights, published a book on the subject and set up a legal advice center. This report on the situation of human rights in Bosnia & Herzegovina is another contribution towards this goal.*

*The "Justitia et Pax" commission thinks that priority in the solution process of endangered human rights should be given to those problems affecting the sheer existence of Bosnia & Herzegovina citizens. This obviously includes the problem of free, sustainable and unimpeded return of refugees and displaced persons as a precondition for creating a climate of general tolerance. Solving the issue of high unemployment (between 40 and 45%) and general economic development problems would gradually eliminate the black market and corruption. Further on, there is a problem of national identity and relations between nations living in Bosnia & Herzegovina, since its present unsettled state is a lasting possible conflict source (on a wider scale). As well there are problems of establishing and strengthening efficient judicial protective mechanisms and the control of human rights and freedoms protection.*

*Summarizing this survey of the general situation of human rights in Bosnia & Herzegovina, one gets the impression that it is not even close to the point we might call satisfactory. A lot of effort and hard work is needed to feel satisfaction of establishing a just and peaceful society, in which every individual will be assured of all generally accepted rights and freedoms. This should be the purpose of this report.*

# 1. Bosnia & Herzegovina and Human Rights

## General Introduction and Situation

At the very beginning of this document, we wish to present several issues which should be taken into account when discussing the human rights situation in Bosnia & Herzegovina in the year 2000:

- 1.1. According to the *U.N. Charter* and the *General Declaration of Human Rights*, the protection of human rights and basic freedoms can by no means be treated as an internal issue of whatever state. The same principle is reiterated in international conventions written under the legislative aegis of the Parliamentary Assembly of the Council of Europe, as well as in the documents of the Organization (Conference) for European Security and Cooperation (OSCE). International organizations, NGOs, states, groups of people as well as individuals have a legitimate and inalienable right to report any infringement of human rights.
- 1.2. Bosnia & Herzegovina is legally and *de facto* a specifically established state due to the circumstances and the terrible war conflict, the consequences of which are felt not just by the citizens and institutions of Bosnia & Herzegovina but also by the whole international community. New institutional mechanisms for the supervision and protection of human rights in Bosnia & Herzegovina have been founded by signing the *General Comprehensive Peace Agreement* in Dayton, Ohio, in 1995. They include the Ombudsperson's Office, the Human Rights Chamber, and the Commission for the Return of Property, of Refugees and Displaced Persons (CRPC).
- 1.3. The main points of human rights in Bosnia & Herzegovina, as an aspect of a specific set of regulatory rules, can be found in the concluding documents of conferences for the implementation of peace in Bosnia held in Luxembourg, Bonn, Sintra, Madrid and Brussels, which are binding for all Bosnian & Herzegovinian institutions.
- 1.4. Bosnia & Herzegovina is, except the Federal Republic of Yugoslavia, the only European country which is not a member of the *Council of Europe*. In May 1999, the representatives of this organization have established 13 (thirteen) conditions for the incorporation of Bosnia & Herzegovina into the *Council of Europe*, 7 (seven) of which have to do with human rights (altogether 40 separate tasks). The



tasks relate to internal institutions for human rights, stronger efforts in creating the conditions for return, the enactment and implementation of property laws, judiciary reform, compliance with the *European Convention of Human Rights*, cooperation with the *International Tribunal in the Hague*, as well as the establishment of a non-discriminatory educational process. Bosnia & Herzegovina has up to now fulfilled 12 (twelve) tasks, the majority of which through the imposition of laws by the *High Representative*, and the *Council of Europe* makes a difference between laws enacted by the *High Representative* and those enacted by the *Parliamentary Assembly of Bosnia & Herzegovina*.

- 1.5. One of the most important decisions reached in the year 2000 is the decision of the Constitutional Court of Bosnia & Herzegovina on the constitutional nature of all three nations (Croats, Serbs, and Bosniaks) in the entire territory of the state Bosnia & Herzegovina. By this decision, the provisions according to which the Federation of Bosnia & Herzegovina was designed as an entity of Bosniaks and Croats, whereas Republika Srpska was designed as an entity of Serbians, were proclaimed unconstitutional. This important step will facilitate the implementation of all other norms concerning all three major and historically present nations in Bosnia & Herzegovina, as well as other citizens.

## 2. Priority Tasks for the Year 2000 in Solving Human Rights Problems in Bosnia & Herzegovina According to the International Community

Representatives of the international community, as the only force which is directly responsible and which disposes of mechanisms for implementing the General Comprehensive Agreement for Peace in Bosnia & Herzegovina signed in 1995 in Dayton, Ohio, set the following problems as priority for the year 2000<sup>1</sup> (complete list):

- 2.1. Continuation of efforts **to secure the physical and psychological security of all citizens of Bosnia & Herzegovina**, through a continuous engagement in police training and integration, independent inquiry about cases of human rights infringement by the local police, close monitoring of selected inquiries conducted by the local police, as well as continuous support of exhumations and cooperation with the Tribunal. (UNMIBH, OHR, OHCHR)
- 2.2. Political interventions geared to secure the **implementation of property laws** to facilitate the return of displaced persons. As part of this, mechanisms should be implemented to produce recommendations for sanctions against officials obstructing the implementation of property laws. (OHR, OSCE, UNHCR, UNMIBH)
- 2.3. **Elimination of administrative obstacles to return**, through enacting and implementing state and entity laws about ID cards and registrations; political interventions to allow equal access to public services; new efforts to allow access to and acceptance of public documents. (OHR, OSCE, UNHCR, UNMIBH, SFOR)
- 2.4. **Elimination of legal obstacles to return** through amendments to the Law of Public Order; enactment and implementation of state and entity laws on refugees and displaced persons; implementation of the Law of Citizenship in Bosnia & Herzegovina and Republika Srpska, as well as enactment and implementation of these in the Federation. (OHR, OSCE, UNHCR, UNMIBH, CoE)
- 2.5. Initiation and, if necessary, imposition of a process leading to implementation of a common **comprehensive syllabus and curriculum** in the entire territory of Bosnia & Herzegovina, aiming at the introduction of a new syllabus and curriculum

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<sup>1</sup> See "Priorities in the Area of Human Rights for the year 2000", Recommendations of the Board of organizations dealing with human rights issues to the Working Group for the Protection of Human Rights (Jan. 20, 2000).

for the school year 2000/2001. Continuous revision and correction of textbooks in connection with continuous intervention to secure ethnic classroom integration and allow refugee children access to educational facilities. (OHR, OSCE, UNHCR, CoE)

- 2.6. Continuation of efforts **to lessen discrimination on any basis when seeking employment**, through promoting "Just Principles of Employment" and implementing the "Project of Conditional Investment". Revision of the Law of Labor in Republika Srpska is of essential importance, as well as monitoring discrimination cases within the privatization process. Efforts to re-employ persons who were employed before the conflict should be increased. (OSCE, OHCHR, CoE)
- 2.7. Continuation of efforts **to make it possible for the retired persons to assert their rights within the retirement insurance systems**, by establishing a corresponding legal framework (harmonization of entity laws, enactment of a new law in Republika Srpska in accordance with the Constitution of Bosnia & Herzegovina and standards of human rights, as well as enactment of a law at state level which would regulate basic retirement rights and the cooperation of the three funds), by uniting retirement funds and by monitoring the agreement which should be concluded among the three funds. (OHR, UNHCR, OSCE, OHCHR)
- 2.8. Political interventions **to enable all citizens to use electricity, water, gas and telephone**, without any discrimination. Implementation of the decision of the High Representative of July 30 on the re-connection of telephone lines. (OHR, OSCE, UNHCR)
- 2.9. Legal revision and interventions **to enable non-discrimination in medical care, in policy and practice**, connected to inter-entity cooperation in the area of health care and to support the creation of an affordable health insurance system. Support of the local government in setting up a program of HIV (AIDS) education. (OHCHR, UNMIBH, CoE)
- 2.10. Setting up a mechanism for the assessment of conditions for return to ensure safe and dignified return of the displaced persons. (UNHCR)

- 2.11. Monitoring the treatment of endangered groups (minorities and Romas) **to ensure that all parts of the society can equally use facilities.** (OSCE, UNHCR, OHCHR)
- 2.12. Revision of laws and monitoring law implementation, e.g. entity laws on amnesty, to ensure non-discrimination in policy and practice. (OHR, UNHCR, OSCE, UNMIBH, OHCHR, CoE)
- 2.13. **Continuously building up funds to promote the rule of law** through ensuring enactment and implementation of the *Law on the Functions of Court and Prosecutor* in the Federation, and the *Law on Courts and Court Services* in Republika Srpska; promotion of entity laws on judiciary training and help in the process of setting up Centers for Judiciary Training in the Federation as well as Republika Srpska; help and promotion of amendments to the *Criminal Law*, and the *Law of Criminal Procedure* in Republika Srpska; as well as enactment of the *Law of Witness Protection / Law of Identity Protection* in Republika Srpska. (OHR, UNMIBH-JSAP, OSCE, The Council of Europe)
- 2.14. **Continuously building up institutions which will help to establish the rule of law** by implementing the amended *Law of the Supreme Court* and *Law of Prosecution* in the Federation; the increasing role of the prosecutor in the inquiry and trial, concerning both the police and the investigating magistrate, with the increased role of defense council in criminal procedure; further organizational and operational revisions of magistrates' courts; implementation of the *Law of Judicial Police* (Bailiffs) in the Federation; enactment of the *Law of Judicial Police (Bailiffs)* in Republika Srpska, including training in both entities; continuation of efforts leading to revitalization and enlargement of the suspended Commission for the Advancement of Inter-Entity Legal Cooperation regarding mechanisms for verdict implementation in civil cases. (OHR, UNMIBH/J SAP, OSCE, The Council of Europe)
- 2.15. **Continuously supporting efforts in capacity building in the area of rule of the law**, by helping to create viable local structures to give accessible legal aid; strengthening existing programs for legal help (Commission for Legal Help – Benefits Commission) through its establishment as a local legal institution, partly by creating a law on legal help, and partly by securing financial support until it can be handed over to the Government; securing more long-range viable funding of the legal help sector (legal advice and legal help) in general, by establishing a fund

for legal help; increased local and existing international legal information and materials should be made available to judges, trainees and the general public; continuous efforts regarding the strategy of legal proceedings; and, finally transparency regarding ongoing reforms and citizens' rights in them according to the law. (UNHCR, The Council of Europe, OHR, OHCHR)

- 2.16. **Continuation of efforts to reconstruct police forces in both entities.** Efforts will continue to reconstruct and reform local police according to democratic police principles and international human rights standards. In practice, efforts will be increased regarding police registration, employment of members of minority groups, uniting parallel police structures and creating common institutions, as the State Border Service. The strategy of registering all members of the police force by IPTF and of temporary suspensions of policemen who do not correspond to even minimal standards from work will be continued. (UNMIBH, OHR, The Council of Europe)
- 2.17. **Continued monitoring** of selected cases and the general behavior of local authorities and local police to ensure success of the above efforts. In practice, monitoring courts and other agencies which do not fulfill their obligations, with the aim of possible dismissal and criminal prosecution, continued monitoring of trials, including trials for war crimes in local courts, to ensure adherence to international human rights standards, continued monitoring of adherence to Rules of the Road. (OHR, OSCE, UNHCR through legal advice centers, UNMIBH)
- 2.18. **Continued monitoring of trials**, especially those of inter-ethnic character and local trials of war crimes, to ensure adherence to international standards, and the statutory administration of justice. (OSCE, OHR)
- 2.19. **Continued law revision** to ensure adherence to the *European Convention of Human Rights*.
- 2.20. **Full implementation of the Bosnia & Herzegovinian Law of Immigration and Asylum**, especially regarding the production of sub-acts and instructions on local and entity levels, which would regulate in detail the application of the Law; establishing law-envisaged bodies; the evidence transmission about relevant government institutions' decisions regarding entering, movements, and sojourn of foreign citizens, as well as asylum granting, to *Ministry of Civic Affairs and Communications*; training of state and entity officials on international refugee rights

and asylum; translation and distribution of relevant documents/handbooks/modules for training regarding refugee issues. (OHR, UNHCR, OHCHR, UNMIBH)

- 2.21. Based on the concept of local responsibility for human rights protection, the international community will work at a higher level to ensure that decisions made by the *Human Rights' Chamber* as well as reports of Bosnian & Herzegovinian *Ombudsperson* and the *Federal Ombudspersons* are instantly and fully implemented by the responsible local authorities. By the same token, international community must exert political pressure essential for secure implementation of decisions made by CRPC. (OHR, OSCE, UNMIBH, The Council of Europe, CoE)
- 2.22. Strengthening of the human rights institutions by encouraging **adequate state funding of such institutions** complemented by international funding, if necessary. (OHR, OSCE, UNHCR CoE)
- 2.23. **Reform of human rights protection mechanisms**, based on the conclusions of the Venice Conference about the future of the human rights mechanisms in Bosnia & Herzegovina, which should be completed before the end of the five-year transition period from Annex 6 of the *Dayton Agreement*.
- 2.24. Promoting cooperation between representatives and local authorities and encourage authorities to ensure adequate funding, especially for the representative in Republika Srpska. Further on, the international community must promote a continuous cooperation between representatives and human rights institutions, including an instant and full response on the part of the authorities at all levels of information and documents. (OHR, OSCE, CoE)
- 2.25. Promoting the enactment of laws at the state and entity levels (Republika Srpska and the Federation) regarding corresponding institutions of the ombudsperson in the first half of the year 2000. (OHR, OSCE, CoE)
- 2.26. **Ensuring the enactment of the Law of Associations and Foundations** at the state and entity levels to establish a legal framework for non-governmental organizations (NGOs) throughout the country. (OSCE, OHR, OHCHR, UNHCR, CoE)
- 2.27. **Promoting cooperation between agencies working towards ability improvement of NGOs** and other members of the civic society who are engaged

in the area of human rights by establishing a Coordinating Group of Boards of organizations which are engaged in the field of human rights. (OSCE, OHR, OHCHR, UNHCR, CoE)

- 2.28. **Increasing the production of instruments and materials for human rights protection and information**, like translations of already existing publications, or new ones written especially for the Bosnian & Herzegovinian public. (CoE, OHCHR, UNHCR, UNMIBH)
- 2.29. **Continued training on the *European Convention of Human Rights***, especially for lawyers working as legal advisors, as well as for others in the legal community. Such training must be progressively connected to centers for judiciary training. (Co.E, UNHCR, OHCHR)
- 2.30. Production of a draft, enactment and implementation of a **Law of Libel and Freedom of Information**; to be complemented by elaborating concrete proposals for the protection of journalists. (OHR, OSCE, CoE)
- 2.31. The question, which of these tasks have been fulfilled and which have not, and what was the practical use of those formerly fulfilled, will at least partly be answered in this short report on the situation of human rights in Bosnia & Herzegovina in the year 2000.

### 3. The Situation of Human Rights in Bosnia & Herzegovina in the Year 2000

#### 3.1. *The European Convention*

Article II (2) of the Constitution of Bosnia & Herzegovina reads as follows: "*Rights and freedoms provided in the European Convention for the Protection of Human Rights and Basic Freedoms and its protocols are **directly** applied in Bosnia & Herzegovina. These acts have priority over all other laws*". This article of the Bosnia & Herzegovinian Constitution is supposed to provide the legal basis for the implementation of international standards for human rights protection. However, this is rather theory. Only some achievements have been made as far as institutions are concerned.

#### 3.2. *Human rights institutions in Bosnia & Herzegovina*

Since this is the first report prepared by the Commission "Justitia et Pax" of the Bishops' Conference of Bosnia & Herzegovina, we shall briefly introduce the state body for human rights, that is the *Ministry for Human Rights and Refugees*, a body of the *Council of Ministers of Bosnia & Herzegovina*, and other bodies envisioned by the Constitution of Bosnia & Herzegovina and the General Comprehensive Agreement for Peace, that is the *Human Rights' Chamber*, the *Offices of Ombudspersons* and the *Commission for Property Issues of Refugees and Displaced Persons*. We shall also look into some of the non-governmental organizations in Bosnia & Herzegovina involved in the great field of human rights.

- 3.2.1. The state of Bosnia & Herzegovina has a **Ministry of Human Rights and Refugees**. Article 39 of the *Law of Council of Ministers and Ministries in Bosnia & Herzegovina* says: "*The Ministry of Human Rights and Refugees takes actions in realization and protection of human rights and rights of the refugees, emigration, immigration and asylum, in accordance with the Constitution of Bosnia & Herzegovina and the General Comprehensive Agreement for Peace in Bosnia & Herzegovina, international conventions and regulations, and other acts of competent institutions of Bosnia & Herzegovina. It coordinates issues of refugee rights and in this cooperates with entities.*" Taking into account that the authorities of common bodies (at the level of Bosnia & Herzegovina) are generally limited due to the basic inability of coordination of actions and implementations on various



political levels, whereas those at lower levels (entity level) often have wider competencies (judiciary, police, army, education, economy, etc.), the predictions that this important body will have to face a heavy burden of complicated issues seem to be justified. Still, as the process of building up Bosnia & Herzegovina is going on, this body should be seriously reckoned with as far as the improvement of the situation of human rights is concerned.

**3.2.2. Human Rights Chamber.** *Human Rights Chamber* has been founded according to Annex 6, Article 7 of the *Dayton Agreement*, and it has 14 members<sup>2</sup>. Eight members are appointed by the Council of Ministers of the Council of Europe, four by the Federation of Bosnia & Herzegovina, and two by Republika Srpska. The Chamber had its first meeting on March 27-29 1996. All decisions made by this Chamber are binding. Decisions made in this year include retirement rights, employment rights, freedom from arbitrary arrest and detention, tenant and property rights, the right to a fair trial, and religious rights, that is discrimination. In the most important of these cases, the Chamber decided that the reduction of retirement pensions of former members of Yugoslav National Army (JNA) by 50% was not an infringement of Annex 6. The applicants were not paying contributions to the retirement fund and therefore, according to Article 1 of the First Protocol of the *European Convention for the Protection of Human Rights*, they have no right of ownership. Generally speaking the implementation of the Chamber's decision has improved from 10% at the beginning of 1999 to currently 60%, mostly because of the implementation of amendments brought in July 1999 to the regulations connected to JNA apartments. However, progress was generally made in the Federation, since many decisions concerning tenants' rights and compensation were implemented in the period covered by this report. Beside that, the Federation is at the moment paying compensations according to decisions made. Republika Srpska is slower in the fulfillment of its obligations originating from decisions made by the *Human Rights Chamber*. An example of such stalling is the case of *Islamic Community vs. Republika Srpska* (CH/96/29) of June 1999. The Human Rights Chamber requested the Government of Republika Srpska to ensure a speedy issuance of permits for applications submitted by applicants in March 1997 for the reconstruction of seven mosques in Banja Luka. However, a year passed and government bodies did not implement this decision. Beside that, in the first case

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<sup>2</sup>The members are: Prof. Dr. Rona Aybay, Turkey, Mr. Hasan Balic, B&H, Mr. Mehmed Dekovic, B&H, Prof. Dr. Giovanni Grasso, Italy, Mr. Andrew Grotian, Great Britain, Mr. Želimir Juka, B&H, Prof. Dr. Viktor Masenko-Mavi, Hungary, Mr. Jakob Moller, Island, Prof. Dr. Manfred Novak, Austria, Mr. Miodrag Pajic, B&H, Ms. Michele Picard, France, Prof. Dr. Vitomir Popovic, B&H, Prof. Dr. Dietrich Rauschnig, Germany, Mr. Mato Tadic, B&H.

before the Chamber, "*Matanovic vs. Republika Srpska*", regarding the disappearance of a Catholic priest in Republika Srpska, the government bodies were requested to establish the fate of Reverend Matanovic, i.e. his whereabouts. This decision has also not been implemented. More recent cases which have not seen implementation yet include another case of "*Islamic Community vs. Republika Srpska*" (CH/99/2177), dealing with a demand to revoke the municipality's decision to prohibit interment in the municipal Muslim cemetery, as well as three cases in the Federation demanding an investigation of illegal arrests and custody. Another important decision by the Chamber is the one about the "frozen bank-accounts" (the so-called "old savings"). The Chamber decided that the Federation of Bosnia & Herzegovina violated Article 1 of the Protocol 1 of the European Convention of Human Rights, since it failed to establish a just equilibrium between common interest and the protection of the property rights of the owners of foreign-currency bank accounts with old savings.<sup>3</sup>

3.2.3. **The Office of the ombudsperson for human rights** is actually the other part of the *Commission of Human Rights of Bosnia & Herzegovina*, together with the *Human Rights Chamber*. The competence of the ombudsperson's office includes deliberation on the infringement of human rights based on the European Convention of Human Rights, and other discrimination in the use of these rights, according to numerous international documents and standards. On May 1, 2000, the permanent council of OSCE appointed the new ombudsperson for Bosnia and Herzegovina, Mr. Frank Orton from Sweden, who replaced Ms. Gret Haller, who performed this duty since the foundation of this institution according to Annex 6 of the Dayton Agreement. Branka Raguz, Vera Jovanovic, and Esad Muhibic have, as ombudspersons of the Federation of Bosnia & Herzegovina made an important contribution to elucidate cases of human rights infringement in the past several years. Their reports are referred to whenever human rights are discussed in public. Just before she left, Ms. Gret Haller appointed the first three ombudspersons for Republika Srpska, on March 28, and they are still setting up their offices in Republika Srpska<sup>4</sup>.

3.2.4. **The Commission for Property Claims of Displaced Persons and Refugees** is responsible for the approval of property rights of displaced persons and refugees.

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<sup>3</sup> Cf. Annual Report 1999 by the Human Rights Chamber, Sarajevo, February 2000.

<sup>4</sup>The three ombudspersons who have been temporarily appointed for the period of twelve months in Republika Srpska are Franjo Crnac, Darko Osmic, and Slavica Slavnic.

CRPC has the authority to accept and make decisions about property claims for real estate in Bosnia & Herzegovina in cases in which the claimant is not in possession of this property, and when the property has not been sold or transferred in some other way from March 1, 1992. CRPC has also the authority to take final and legally binding decisions about property claims and tenants' rights which have to be respected in both entities. CRPC consists of three international members and six members from Bosnia & Herzegovina. The three international members have been appointed by the president of the European Court of Human Rights. Out of six members of the commission from Bosnia & Herzegovina, four have been appointed by the Federation, and two by Republika Srpska. CRPC has about 360 employees in the Executive Office in Sarajevo and in the network of regional offices throughout Bosnia & Herzegovina, including Sarajevo, Mostar, Brcko, Banja Luka, Tuzla and Bihac.

- 3.2.5. The following table briefly presents the number of claims ("cases") for solving human rights' infringements which have been presented to the Human Rights' Chamber, the Office of Ombudsperson for Human Rights, and the CPC until now, as well as the number of solved cases.

	<b>Human Rights' Chamber</b>	<b>Ombudsperson's Office</b>	<b>CRPC</b>
Claims filed	5463	4889	276,177
Claims solved	685 (12.52%)	1963 (40.15%)	110,640 (40.06%)

- 3.2.6. Many international and local NGOs involved in human rights are also active in Bosnia & Herzegovina. Among the more important are the *Helsinki Committee for Human Rights* (functioning at the level of Bosnia & Herzegovina and Republika Srpska), and the *Center for Human Rights* functioning at Law School in Sarajevo.
- 3.2.7. The Commission Justitia et Pax organized a round table discussion on the subject "Human Rights – the weak people's dream or the powerful people's obligation?" Among the speakers was Ms. Doris Pack, a member of the European Parliament. Also, our Commission was co-organizer of a symposium on the subject "Human Rights and the Catholic Church", which was held from April 27 to 29, 2000, and published a book under the same title. The Commission provided an insight into the work of the Catholic Church during the war in B&H by organizing a round table

discussion on December 11, 1999 on the following subject: "The Word and the Work of the Catholic Church during the War in B&H". Following this meeting, our Commission presented a document which is entitled: "The Catholic Church before, during and after the war" to the public which was published December 10, 1999.

### **3.3. *The Return and Property Rights***

3.3.1. The return of refugees and displaced persons is currently the most urgent problem in Bosnia & Herzegovina. Around two million people had been expelled or displaced from their abodes during the war and immediately after it, and out of this number only relatively few returned. According to data from the *Ministry for Human Rights and Refugees*, there are 625,850 refugees from Bosnia & Herzegovina in 40 countries all around the world, and in Bosnia & Herzegovina itself there are about 857,000 internally displaced persons. From the signing of the *Dayton Comprehensive Agreement* till Sept. 1, 2000 there were 682,478 registered returns of refugees and 321,730 registered returns of displaced persons. Out of the total number of returns 81.55% were reported for the Federation of Bosnia & Herzegovina, and only 18.4 for Republika Srpska. Out of the total number of refugees and displaced persons in the Federation, about 18% have come into possession of their property, and so some kind of return has been accomplished, but it should be taken into account that in this entity there is a large number of internally displaced persons. In Republika Srpska this number is around 8%, consequently **92 %** of the population in this area is not in the position to return! According to data published officially by the top echelons of the Catholic Church, out of displaced 200,000 Croats from Republika Srpska, there are data about the return of 2,500 Croats – Catholics to Republika Srpska, or 1.25%. Still, only in the first three months of the year 2000 there was registered a total of 7,377 so-called minority returns<sup>5</sup> in the whole of Bosnia & Herzegovina. This is a four-fold increase compared to the same period of last year when there were only 1,700 minority returns registered. An impediment to return, together with the obstinacy of authorities of the return target area, is also the policy of "humane resettlement", i.e. settlements targeted to displaced persons in the area where the majority population belongs to the same nation as the displaced persons. The greatest number of such settlements have been registered in the Herzegovina, in the municipalities of Mostar South, Capljina and Stolac, but also in other places. The problems of return are various, e.g. arson of the returnees' houses, intimidation, destruction of property, and even murder of the returnees, etc. Many responsible

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<sup>5</sup> where a nation lives as a minority group at the local level

people are engaged in solving them, and it is certain that this issue, treated in Annex VII of the *Dayton Comprehensive Peace Agreement*, will for a long time continue to be in the focus of those who decide on the fate of citizens and nations in Bosnia & Herzegovina. The situation at present is such that around 100,000 citizens left Bosnia & Herzegovina after the war (!) with the help of the *International Organization for Migration* (IOM), and according to a questionnaire of a UN program for the young, around 62% of young people want to leave Bosnia & Herzegovina.

3.3.2. The problem of property rights in Bosnia & Herzegovina is connected to the return issue. Final and legally valid decisions concerning property rights are mostly made by institutions for human rights protection established by the *Dayton Comprehensive Agreement*, but their implementation is relatively slow. Property rights are also refused to such owners whose property was seized through unjust laws of nationalization produced by the Communist government after World War II.<sup>6</sup> Although there were some attempts to create a legal frame for the return of stolen property to original owners, unfortunately there were no results. A reason for this is also the decision by the High Representative Wolfgang Petritsch to abolish laws that deal with these issues in Republika Srpska. In the Federation of Bosnia & Herzegovina as well, a de-nationalization bill entered the procedure, but after its first reading no one heard anything further about it. It goes without saying that the difficult social and economic situation necessarily motivates each natural and legal person to try through creating a living for themselves and their families with the help of their property.

3.3.3. Implementation of property laws:

Number	B&H Federation	Republika Srpska	B & H
Property claims	119,032	106,263	225,295
Decisions made	54,570 (46%)	23,409 (22%)	77,979 (35%)
Property returned	21,868 (18%)	8,515 (8%)	30,383 (13%)

*Note:* These statistical data are valid for the period till the middle of the year 2000. The figures do not include the Brcko district. The figures are based on reports filed by municipalities and only show general trends.

<sup>6</sup> A round table discussion was held on December 9, 2000 on the subject "Private Property and Restitution". Restitution will be a special subject next year.

### **3.4. Judicial System and Law Implementation**

The court system in Bosnia & Herzegovina is very weak and unorganized. Traces of corruption are not infrequent, and throughout the year 2000 the entire international community fought against it with a doubtful success. The inability of courts to implement legal acts which should be directly applied as definite laws, one of which – the glaring example – is the *European Convention of Human Rights*, never once invoked by any court in any case of infringement of human and other rights, indicates the need for a reform of the judiciary. For some time, many foreign and local experts have been preparing a number of measures which would improve the judiciary situation, but legislative bodies only rarely and too slowly pass acts which could speed up this process. According to expert recommendations, the key problems in the establishment of an independent and unbiased judiciary are related to the formation of Court Commissions in the Federation and Higher Court and Prosecution Councils in Republika Srpska. The only important breakthrough in this respect happened this year in the Herzegovina/Neretva Canton, which is the one with a special regimen (a mixed canton with Croatian and Bosnian majority), in which, after many obstructions, all Court and Prosecution bodies were established at the municipal as well as at the cantonal level. It was precisely before the Cantonal Court in Mostar that the first trial of the indicted for war crimes in Bosnia & Herzegovina started. In those cases in which the legislative bodies of Bosnia and Herzegovina were unable to pass laws necessary for the normal functioning of governmental bodies and administration, the laws are imposed by the Office of the High Representative. Generally speaking, this applies to laws at the state level, such as the laws concerning the single passport, the set of laws on retirement pensions, etc. The implementation of laws is very often questionable. This mainly applies to the police implementation. There are many reports, also monitored by the UN Mission in Bosnia & Herzegovina, on the abuse of authority and criminal behavior on the part of the police. In spite of the fact that their number is much higher than it used to be before the war in Bosnia & Herzegovina, it is evident that policemen cannot efficiently protect citizens and their property, which generates a certain suspicion and distrust on the part of citizens and institutions towards the police forces. After broadcasting the TV footage in which it could clearly be seen that the police of the Tuzla Canton (the north-western part of the country) were using nightsticks to handle displaced persons who were protesting against evictions, and the stormy public reaction, the dismissal of the police minister of the Tuzla Canton was

demanding. There were several such examples in the whole of Bosnia & Herzegovina.

### **3.5. *ICTY International Tribunal for War Crimes Committed in Former Yugoslavia***

This point is being mentioned here only because of its importance for the Bosnian & Herzegovinian society in general. The International Tribunal for war crimes has not been accepted by the majority of political subjects in Bosnia & Herzegovina and beyond, but decisions reached in the Hague have great consequences on the development of the situation in Bosnia & Herzegovina. Verdicts, such as the one which gave 45 years of imprisonment to the Bosnian Croat Tihomir Blaškić, roused forceful protests and produced powerful demonstrations among the Croats in Bosnia & Herzegovina. Many believe that the Hague Tribunal is only the long arm of international power brokers who want to realize their aims in the Balkans, without bringing before justice the real creators and perpetrators of the gravest war crimes. Although war criminals are sometimes regarded from the national rather than from an objective perspective, it is an obvious fact that citizens as well as politicians expect the relevant authorities to apply the principle of reciprocity as far as the imprisonment of war criminals is concerned, as war crimes were committed on all sides. The detainees who are being tried in the Hague are also dissatisfied with the long wait for the start and the long duration of the trial. During a visit to Bosnia & Herzegovina, Carla del Ponte, the chief prosecutor of the Hague tribunal, asked for the formation of special units to arrest all the indictees for war crimes. The main indictees, Bosnian & Herzegovinian Serbs Radovan Karadžić and Ratko Mladić, have not been arrested and brought to the Hague, in spite of an international warrant and bounty of 5 million US \$.

### **3.6. *The Disappeared – Exhumations***

The problem of persons missing since the 1992 – 1995 war is perhaps the most difficult and longest task burdening the Bosnian & Herzegovinian society. Almost every day single and mass graves are being discovered, and in spite of attempts to identify the corpses from them, thousands of them remain just registration numbers from the evidence book of discovered corpses. Most locations in which corpses and other remains have been discovered are located in the area of East Bosnia (Republika Srpska), areas bordering on the Una river, and the area of Sarajevo. The destinies of many are still unknown, and it is supposed that many military archives hide secrets of where these people who disappeared during the

war or their remains are. Due to this situation, the Chamber of Human Rights has recently ruled that the Government of Republika Srpska has to pay a certain amount to a lady whose husband was captured during war negotiations. This verdict is based on clues that Serbian military authorities are responsible for his disappearance. The documents of the International Conference of the Red Cross contain a list of over 20,000 missing persons in Bosnia & Herzegovina.

### **3.7. *Economic and Social Rights***

Primary aims of the Bosnian & Herzegovinian society are: to ensure to everybody the right to employment, stable retirement pensions, social and health services, and other elements of social and economic protection. Together with the label of the state with the highest unemployment rate in Europe (between 40 and 45%), Bosnia is also a country which obviously does not have macroeconomic and macrosocial plans for social recovery. The unemployed might soon be joined by a new wave of jobless, due to the transformation of the payment system which will suffocate about 11,000 (!) insolvent firms, rendering jobless a minimum of further 100,000 workers. The new Labor law inaugurated in 1999 brought some changes in this field and protected certain categories of endangered workers, especially those on the waiting list for jobs. The employer has to give appropriate severance pay to such, or find a new job for them. Investments in the economic development are very low because the potential foreign investors are not interested in investing into a state which does not have the basic mechanism for the protection of their capital. The retired, on the other hand, are on the brink of existence. Their position has aggravated since the High Representative in the summer of the year 2000 enacted a set of laws according to which retirement pensions can only be paid from moneys accumulated in funds, meaning that if the state does not succeed in accumulating taxes, surtaxes and other revenue, there are no pensions! The attempt to stabilize a basis for economic development in Bosnia & Herzegovina is a painful but necessary step. However, it seems that people responsible for this task do not quite take into account those who could become victims of their economic experiments. It is to no purpose mentioning that crime is exceedingly present in this area, sometimes even organized crime. Privatization, which raised a great outcry, is still very far from the point where one could say that it has been accomplished to the satisfaction of all citizens. Not only has the High Representative discharged some of the local privatization officials, but the issue of restitution still stands as a thorn in the side of many who want to participate in this



social transformation. Many other questions of social security remain unsolved, and one could write a complete report about human rights on them only.

### **3.8. *Education – a Cultural Right***

Together with all other specificities, it seems that the problem of education and other cultural rights is one of the most controversial issues about which battles are fought by local and international experts, political representatives, and educationalists themselves, and those mostly afflicted by it are the students. An educational system giving an equal chance to everyone and respecting everyone's right, promoting tolerance and reconciliation, is a goal to which we must aspire if we want a stable Bosnia & Herzegovina. Unfortunately, it is very often the case that neither schools, teachers, curricula nor textbooks have been made with the good will to help those who would like to re-integrate in the area they were forced to leave for whatever reason. There are some shining examples, but they seem only to reinforce the rule that the school is a place where battles are fought for political points, and generations are being educated which will continue the relentless battle of individuals and nations. One of the examples of good directional approach is the introduction of "human rights and freedoms" lessons which the students would study in regular classes. Unfortunately, many unsolved issues remain, like those of the group of national subjects (mother tongue, national culture, history, etc.), as well as the unsolved status of religious instruction, or the subject "History of Religions".

### **3.9. *The Right to Freely Practice Religion***

Churches and religious communities are certainly not satisfied with the state in which they presently are.<sup>7</sup> Although the democratic processes were followed by a quantitative "awakening" of worshipers, in the sense of a stronger socialization of religious manifestations, structures of religious institutions are relatively weak. One of the main problems is their economic dependence on internal and external help. A way to handle this is the restitution of nationalized property which the Communists seized after World War II. Religious freedoms, that is the right to freely practice religion has also been endangered, not only because of hundreds of destroyed religious objects, but also due to politicization of religious feelings, by political subjects, but also not infrequently by certain religious functionaries,

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<sup>7</sup>, The Interreligious Council of B&H was established in order to improve their standing in society and to contribute to societal issues in this difficult situation; it already achieved some positive results.

sometimes even the leading ones. Still, this question is tightly connected with the issue of the return of refugees and displaced persons. It is a fact, or at least these are the data of the Catholic Church, that return is more successful in places where there is a structured parish and a working priest.

### **3.10. Freedom of Expression and the Media**

3.10.1. Since Bosnia & Herzegovina is a **country with the highest number of electronic media per capita** (a little less than 300 TV and radio stations on a little less than three million inhabitants!) in this part of the world, and, on the other hand, is unfortunately among those countries in which the printed media are at the lowest level, one could say that the domination of electronic media is more than obvious. Unfortunately, due to war circumstances and troubles, most of these media houses do not have enough quality personnel to cover the needs of program production, and rather often media are a cause of political quarrels, like in the case of Television of the Bosnian & Herzegovinian Federation, which ought to become public television of all the inhabitants of this entity. It has been in the establishing process for more than a year and up to now not a second of its program has been on air. Bosnia & Herzegovina has an *Independent Media Commission* (IMC) which is exclusively in charge of all broadcasting permits and the establishment of electronic media. Due to all this one could say that the state of media is very weak, and that urgent help is needed to raise the quality of personnel and equipment, and many media houses which were born due to wartime and post-war donations, and could not survive in the commercial market, should become redundant.

3.10.2. **Free Media Help Line.** This is the name of a line to help journalists. Media Section of OSCE established this service which monitors reports about threats to media freedom and helps endangered journalists. During the past year about a hundred journalists reported incidents and attacks, or called for help due to being endangered.

3.10.3. The following table presents different kinds of threats and the area where they occurred<sup>8</sup>

CATEGORIES	Fed.	RS	Total
LIBEL	13	7	20
DIRECT THREAT	22	7	29
INDIRECT THREAT	4	1	5
INTIMIDATION	3	2	5
DISTURBANCE	7	2	9
WORK OBJECTION	3	2	5
TAX SERVICE PRESSURE	2	0	2
ASSAULT AND BATTERY	6	7	13
INTERFERENCE	6	2	8
REFUSAL OF (PAID) SERVICES	1	3	4
OTHER	3	1	4
<b>TOTAL</b>	<b>70</b>	<b>34</b>	<b>104</b>

3.10.4. Of the total 104 cases reported, it was noted that 95.2% of cases were committed by the following five categories of perpetrators:

<i>Government/Officials of political parties:</i>	<i>36 reported cases (34.6%)</i>
<i>Anonymous perpetrators:</i>	<i>22 reported cases (21.2%)</i>
<i>Independent individuals:</i>	<i>19 reported cases (18.3%)</i>
<i>Media distribution personnel:</i>	<i>16 reported cases (15.4%)</i>
<i>Police:</i>	<i>7 reported cases (6.7%)</i>

3.10.5. The general impression is that the media help various political, religious and economic subjects to keep their presence on the public scene of the socio-political life in Bosnia & Herzegovina, and thus exert influence on events and creation of public opinion about many things. With a few honorable exceptions, the media are generally more in the service of promoting single ideas and political programs than in the service of informing the public and creating links with the rest of the world.

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<sup>8</sup> Source: OHR's Report of the State of Human Rights for the Year 2000

## 4. Conclusion

It would certainly take years, if not decades, to solve all human rights' issues in Bosnia & Herzegovina. Still, it seems that first preventive steps are necessary, that is, citizens' education about their rights and freedoms, and instruction on how to use such means and mechanisms of protection that are available. The insufficient number of experts and literature dealing with the subject certainly does not help. It is an established view that the Catholic Church should also take more efficient steps in this respect<sup>9</sup>, although the efforts of bishops, the clergy and other activists should not be neglected. As an example of an action, after its rights have been endangered, the bishopric of Banja Luka took steps to protect its property and personnel, with the great help and advice of the Office of Ombudsperson for Bosnia & Herzegovina, which ordered the authorities to act in such a manner that the interests of Banja Luke bishopric should be protected. The decision of this case can be found in the appendix, as an illustration of the way the government structures abuse their position and infringe basic rights. (See Appendix)

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<sup>9</sup> Ref. our document on the situation of the Catholic Church before, during and after the war in B&H which was presented to the public on December 10, 1999.

## 5. Appendix

### **Violation of Property Rights of the Catholic Church and Violation of the Freedom of Religion of Catholic Believers in the Diocese of Banja Luka<sup>10</sup>**

This Special Report addresses the usurpation of a certain number of premises, located in the territory of the municipality of Banja Luka and the neighboring municipalities, owned by the Catholic Church.

This Report is based on information which was reported to the Office of the Ombudsperson by the Diocese of Banja Luka concerning the problem of illegal use of property owned by the Catholic Church, which had been occupied by individuals, mostly refugees and displaced persons, and the inactivity of the competent authorities of Republika Srpska to solve this problem, despite numerous requests thereof.

The competent bodies of the Diocese of Banja Luka have been addressing the authorities of Republika Srpska and representatives of local municipal authorities where the occupied church property is situated, for more than two years, requesting them to undertake necessary steps with a view to restoring their property. In particular, they addressed the President of the municipality of Banja Luka, the President of the Executive Board of the municipality of Banja Luka, the Minister of Religions in Republika Srpska Government and the Minister for Refugees and Displaced Persons in Republika Srpska Government. They also submitted a formal request for the repossession of the premises located at 22, Srpska St. in Banja Luka, to the Ministry for Refugees and Displaced Persons Department in Banja Luka, but they have not restored the possession thereof to date.

The following premises are occupied and the Church has no access thereto:

- premises at 22, Srpska St. in Banja Luka (župni pastoralni centar);
- premises at 124, Srpskih branilaca St. in Dervišima, Banja Luka (župni pastoralni centar);
- premises in Barlovci (župni stan);
- premises at 26, Srpska St. in Banja Luka (samostan redovnica);
- premises at 17, Kajmakalanska St. in Banja Luka (samostan redovnica);

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<sup>10</sup> This is the statement (B) 842/00 by Dr. Gret Haller, the Ombudsperson for Human Rights in B&H sent to Milorad Dodik, the President of Republika Srpska on April 5, 2000 according to Article 6 V, Annex no. 6.

- premises in Aleksandrovac (samostan redovnica) - municipality of Laktaši;
- premises in Nova Topola (samostan redovnica) - municipality of Gradiška
- premises in Vrbanjci (župni pastoralni centar i župna crkva) - municipality of Kotor Varoš
- premises in Dragalovci (župni pastoralni centar i župna crkva) - municipality of Doboj
- premises at 36, Omladinska St. in Banja Luka (crkvena kuca);
- premises in Presnace, near Banja Luka (dvije crkvene kuce);
- premises in Kozarska Dubica (župni pastoralni centar);
- premises in Stratinska (župni pastoralni centar) - municipality of Banja Luka;
- premises in Šimici (župni stan) - municipality of Banja Luka;

After she had decided to examine the present case, on November 3, 1999 the Ombudsperson addressed the letter to the Legal Representative of the Republika Srpska Government, indicating the above mentioned problem and invited the Government of Republika Srpska to undertake necessary steps in order to restore the possession over the subject premises to the Catholic Church, and to inform her of their position regarding a possible friendly settlement in the case.

The Government has not replied.

### **Applicable domestic law**

#### **Constitution of Republika Srpska**

Article 28 of the Constitution of Republika Srpska, in relevant part, reads as follows:

"Freedom of religion shall be guaranteed. Religious communities shall be equal before the law and shall be free to perform religious affairs and services..."

According to Article 12 of the Constitutional Act on the Implementation of the Constitution of Republika Srpska (Official Gazette of RS, No. 21/92), laws and other regulations of SFRY and SRBiH which are consistent with the Constitution of the RS and not inconsistent with laws and regulations enacted by the Assembly of the Serb People in Bosnia and Herzegovina, i.e. the People's Assembly, will be applied until the issuance of relevant laws and regulations of Republika Srpska.

The status of a religious community is regulated by the Law of the Socialist Republic of Bosnia and Herzegovina on the Legal Status of Religious Communities (Official Gazette of SRBiH, No. 36/76), taken over as the Law of Republika Srpska.

Article 27 of this Law provides that religious communities may, in accordance with the law, own and acquire buildings and other property which serve the needs of worship and other religious matters or are needed to accommodate staff.

## **Analysis**

### ***a) Property rights***

The Ombudsperson recalls at the outset that Article I of Annex 6 to the Dayton Agreement requires the Parties to secure to all persons the highest level of internationally recognized human rights and fundamental freedoms, including the rights and freedoms provided by the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and its Protocols.

In addition, any interpretation of the rights and freedoms guaranteed has to be consistent with the "general spirit of the Convention, an instrument designed to maintain and promote the ideas and value of a democratic society" (see the judgment of the Eur. Court HR in the case of *Soering v. United Kingdom* of 7 July 1989, Series A No. 161, p. 34, para. 87, with further references).

The present Special Report addresses in the first place the issue under Article 1 of Protocol No. 1 to the Convention.

Article 1 of Protocol No. 1 to the Convention provides as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Ombudsperson recalls that Article 1 of Protocol No. 1 to the Convention may also impose positive obligations on a party to Annex 6 to ensure effective exercise of the rights guaranteed by the Convention, including the right to the peaceful enjoyment of one's possessions (see No. 20357/92, Dec. 7.3.94. D.R. 76-A p. 80).

The Ombudsperson notes that, before the war in Bosnia and Herzegovina, the Catholic Church possessed the mentioned premises and used them to accommodate its clergy and/or to perform religious ceremonies (see above "subject matter of the Special Report"). Due to war-related reasons, a significant part of the clergy were forced to leave church premises where they had been living and practicing religious services. It appears that, thereafter, a lot of those premises were allocated to refugees and displaced persons by the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Banja Luka and neighboring municipalities, while some of the premises were occupied without any legal ground.

The Ombudsperson further notes that the competent bodies of the Catholic Church in the Diocese of Banja Luka, more than two years ago, formally requested the competent authorities of Republika Srpska and the competent bodies of the Municipality of Banja Luka to undertake necessary steps for the restoration of their property. It appears that the relevant authorities have taken no action upon the applicant's claims to date with a view to restoring the property.

The Ombudsperson recalls that the Human Rights Chamber in the case of the Islamic Community in Bosnia and Herzegovina against the RS, considered that "the applicant is entitled – as any religious community – to receive, in reply to its requests, reasoned decisions based on respect for its fundamental rights." (see *mutatis mutandis*, the decision of the Human Rights Chamber No. CH/96/29, in the above case, of 11 June 1999, p. 23, para. 165).

The Ombudsperson is of the opinion that the competent RS authorities should have taken all necessary measures to restore the subject premises to the applicant. She, therefore, considers that such inactivity of the competent authorities of Republika Srpska prevented the catholic clergy from returning into their pre-war premises where they had been living and practicing religious worship and, thus impeding the catholic believers to freely access the services in those premises.

Accordingly, the Ombudsperson considers that the failure of the competent bodies of the respondent Party to restore the possession over the aforementioned premises to the applicant can be considered as a failure to fulfil its positive obligation in respect of the



applicant, and, therefore, concludes that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

### ***b) Freedom of religion***

The Ombudsperson further considers that the present case can be examined in the context of Article 9 of the Convention, which guarantees, *inter alia*, the freedom of religion.

Article 9, insofar is relevant, reads as follows:

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance..."

The Ombudsperson recalls that the freedom of religion is protected by the Constitution of Republika Srpska, which provides that religious communities shall be equal before the law and shall be free to perform religious affairs and services.

The Ombudsperson further recalls that the right protected by Article 9 is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life. While religious freedom is, on the one hand, a matter of individual conscience, it also implies, on the other hand, freedom to "manifest" one's religion. Bearing witness in words and deeds is bound up with the existence of religious convictions (see Eur. Court HR, Kokkinakis v. Greece judgment of 25 May 1993, Series A, No. 260-A, p. 17, para. 31).

The European Court also found that the manner in which religious beliefs and doctrines are opposed or denied is a matter which may engage the responsibility of the State, notably its responsibility to ensure the peaceful enjoyment of the right guaranteed under Article 9 to the holders of those beliefs and doctrines. (see Eur. Court HR, Otto Preminger-Institut v. Austria, judgment of 20 September 1994, Series A, No. 295-A, p. 18, para. 47).

The European Court stressed that the freedom of religion, as guaranteed under the Convention, excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs, are legitimate (see Eur. Court HR, Manoussakis v. Greece judgment of 26 September 1996, Reports of Judgments and Decisions 1996-IV, fasc. 17, para. 47).

The Ombudsperson notes that the bodies of the Catholic Church, their clergy and the catholic believers themselves are prevented from returning to the church premises, which are currently occupied by third persons, due to the failure of the competent authorities of Republika Srpska to undertake effective and appropriate measures to restore the property to them. She, therefore, considers that they are prevented from practicing their religious ceremonies and freely manifesting their religious beliefs using their full existing capacities.

The Ombudsperson concludes that, due to the aforesaid failure of the Republika Srpska authorities, there has been a violation of Article 9 of the Convention.

### **Conclusions**

The Ombudsperson concludes that in the present case:

- there has been a violation of Article 1 of Protocol No. 1 to the Convention, and there has been a violation of Article 9 of the Convention.

Accordingly, the Ombudsperson finds that the respondent Party is in breach of their obligations under Article 1 of Annex 6 of the General Framework Agreement for Peace in Bosnia and Herzegovina.

### **Recommendation of the Ombudsperson**

In accordance with Article V para. 4 of Annex 6, the Ombudsperson recommends the Government of Republika Srpska to take all necessary steps in order to restore the possession over the above mentioned church premises to the Diocese of Banja Luka **within one month from the date of receipt of this Special Report.**

## 6. Our Expectations

We have every confidence that our 2000 report, the first report of this type, has provided – despite all deficiencies – a better insight into the human rights situation in Bosnia and Herzegovina (B&H). The Commission for Justice and Peace of the B&H bishops' conference is well aware of its weak position and its limited possibilities to act. Therefore, we are reluctant to conclude this report with exaggerated demands. We rather wish to communicate our ideas and humble suggestions in good faith and hope. They primarily refer to international, and further to local state-political and religious factors. It is our objective to unite all those who show good intention and who care about the defense and the protection of the human rights of everyone and every nation in B&H.

Each individual in this country, each association, all institutions and structures, the entire society and all religious communities must consciously and actively contribute to this process. We must not wait passively for someone else to solve our problems. In order to make a vast majority of people leave their passive state and get actively involved in this process, they must be informed about basic human rights and specific legal mechanisms in this country. Some progress has already been made in this respect, but there is still a long way to go.

We focus our wishes and expectations related to this 2000 report on the international community and its contribution to the human rights situation in this country. Our report discloses the international community's important role in this process. We know very well which enormous positive significance is attached to the international community with respect to peace and stability in this region. We are as well aware of the great personal sacrifices and renunciations, of the enormous material investments, the important humanitarian aid and the many testimonies of love and sympathy for the benefit of our country. We also recognize the fact that the international community is not all-powerful and that it relies on the benevolent cooperation and support of our national political structures. With good intention, with great respect and gratitude for the previous commitment on the part of the international community, SFOR and the humanitarian aid organizations, we allow ourselves to present some ideas for reflection which aim at further improving the situation of all people in this country.

The fact of the matter is that the international community has taken over a *de facto* (rather than a *de jure*) protectorate in this country. It is, in the true sense of the word, a *fac totum* in B&H as far as legislation and important decisions are concerned. In B&H, bills are

either passed in accordance with the international community or they are dictated by the international community when the members of our parliament fail to come to an agreement. The international community even has the capacity to replace the legally elected members of parliament and high-ranking officials. The international community is acting *de facto* as a protector. Thus it is the authority responsible for the concrete implementation of legal standards. The western and central European legal tradition distinguishes between two implementation principles for statutory regulations, the *spirit of the law* and the *letters of the law*.

We expect the international community not to stick to the letters of the law where interpreting it according to its spirit would be more effective. On the other hand we also expect a law to be applied literally when its interpretation according to its spirit fails or is ineffective. However, it is unacceptable that acts committed by the one side are always judged according to the spirit of the law while the other side's acts are always judged according to the letters of the law. In our opinion, there is nothing worse than judging by a double standard.

The fact of the matter is that the *General Comprehensive Peace Agreement* of Dayton does not define B&H as a state with two political systems. In fact, however, according to the Dayton agreement, there are two entities in B&H, the *B&H federation* and the *Republika Srpska*. In legal terms, these two entities are more or less states within the state. Most conflicts are caused by the fact that the legal systems of the two entities differ from the legal system of B&H, a state which is, as defined in the Dayton agreement, a symbolic rather than a real state. The B&H federation is a decentralized legal system comprising ten cantons, while the Republika Srpska is a centralized legal system without any canton. The Serb entity does not have any Chamber of the Nations which is supposed to balance out the most important interests of the constitutional nations in B&H. The constitutional court of B&H declared Bosniaks, Serbs and Croats constitutional nations in the entire territory of B&H. We expect the international community to work more explicitly and firmly for the harmonization of the legal systems in this confusing and extremely delicate legal situation in B&H. Otherwise there is no return on a long-term basis which means that neither a long-term solution nor peace can be established in these regions.

The fact of the matter is that many members of the international community lead a fine life and make good profit in B&H. We should like to believe that they have not come to B&H because of the fine life and the good profits. But they should acquire a closer and more differentiated understanding of the mentality, culture, language and history of all nations in

B&H in order to be able to work more efficiently. They should be able to differentiate between wishes and desires on the one hand and the truly justified rights and duties of every nation in B&H on the other hand. The representatives of the international community are undoubtedly running the risk of contenting themselves with superficial information on the complicated relationships in B&H. It also may be unfair or dangerous to use only political parties or only one side as sources of information. Their experience made with previous peace processes might remain fruitless as long as the specific local conditions are not clearly identified. Simply transplanting ready-made solutions is no guarantee for success, as most problems in B&H are much more complicated than in other countries.

The fact of the matter is that useful and efficient work presupposes the development of political perspectives. We expect the responsible representatives of the international community to develop these perspectives for the benefit of all nations. Short-term solutions are of no use. We have been living with innumerable provisional solutions since the period of the communist regime. Permanent solutions require correct analyses and clear perspectives. They are necessary to prescribe the appropriate "treatment" and to find the right way to the goal. We expect the international community to take vigorous action against everyone who refuses to apply the democratic standards and the code of conduct, which are generally approved by a broad international basis, to the nations in Bosnia and Herzegovina.

The fact of the matter is that every representative of the international community is just a human being of flesh and blood with feelings and weaknesses. Nonetheless they must not yield to the temptation to pervert law under the pressure of the majority or because they feel sympathy for the needy and the poor. Each of the three nations is a constitutional nation. Any action taken by the international community must be exclusively based on the constitutional principles with regard to legislation and implementation of fair laws which are based on the fundamental human rights.

The fact of the matter is that a good example is invaluable. Therefore, we expect the international community present in B&H, which also includes SFOR, to adhere to their own principles they teach us and impose on us. Let us give just one example: The international community does not approve of signs of national affiliation because they are considered to be a potential source of danger and escalation. For this reason, the international representatives would demonstrate their credibility and consistency if they themselves refrained from wearing their national emblems in B&H. Instead, they can be seen on every soldier's arm and cap as well as on military vehicles and on the vehicles of

aid organizations. Even these emblems give the impression that the representatives of the international community excessively proclaim the interests of their own national states here in B&H. They should beware of this.

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