

# 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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Schriftenreihe Gerechtigkeit und Frieden  
Published by the German Commission for Justice and Peace

Editor: Ulrich Pöner

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Schriftenreihe Gerechtigkeit und Frieden  
Dokumentation 45

ISBN 3-932535-45-6

Bonn, 2001

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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



## Proslov

Konflikt i ratovi u bivšoj Jugoslaviji su mirovne misli europskog društva stavili na tešku kušnju. Instrumenti za svladavanje konflikta, koji su poznati iz vremena sukoba istok-zapad, su se s obzirom na nove izazove pokazali kao nedovoljni i neprimjereni. Tako je katastrofa ratova u bivšoj Jugoslaviji i u posebnosti rat u Bosni i Hercegovini postao i neuspjeh europske politike.

U Bosni i Hercegovini su dramatične razmjericice nakon mukotrpnih napora u međuvremenu nestale. Dosljedno tome je situacija dalekosežno nestala iz vidokruga međunarodne medijske pozornosti; njihova pozornost je sada usmjerena Kosovu i odnedavno i Makedoniji. Obrati li se pažnja na to, koliko znači uspjeh mirovnog konsolidacijskog procesa u Bosni i Hercegovini za cijelu regiju i ako se promisli, da će se međunarodna zajednica najvjerojatnije još dugo godina angažirati na ovom području, onda postaje jasno, da je još uvijek potrebna velika pozornost i kritične debate.

Sa predloženom publikacijom bi se trebalo pridonijeti potrebnim razgovorima o sadašnjosti i budućnosti Bosne i Hercegovine. Radi se o jednom izvješću komisije *Justitia et Pax*, koja je imenovana od Katoličke biskupske konferencije u Bosni i Hercegovini, o stanju ljudskih prava u prošloj godini. Ovdje se javlja sam glas iz regije, koji se miješa u dijalog međunarodne zajednice (koja sa svoje strane ima puno glasova) i traži spoznanje konflikta. Odgovorni u europskim državama i akteri internacionalne građanske zajednice bez dvojbe dobro čine, kada takva reflektirana javljanja za riječ iz dotičnih regija zapažaju sa velikom pažnjom. Jer dugoročno, bez obzira na značenje međunarodnog angažmana, ne samo pučanstvo na licu mjesta već i politički odgovorni akteri mogu biti nosioci mira.

Predstojeći izvještaj Bosansko-Hercegovačke komisije *Justitia et Pax* je nastao u okviru jednog projekta europske konferencije *Justitia et Pax*. Ono će biti izdano od njemačke komisije *Justitia et Pax* po nalogu europske konferencije.

Biskup prof. dr. Reinhard Marx

Predsjedavajući njemačke komisije *Justitia et Pax*





**BISHOPS CONFERENCE OF BOSNIA AND HERZEGOVINA**

**COMMISSION “JUSTITIA ET PAX”**

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





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

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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/JSAP, 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 Balić, B&H, Mr. Mehmed Deković, B&H, Prof. Dr. Giovanni Grasso, Italy, Mr. Andrew Grotrian, Great Britain, Mr. Želimir Juka, B&H, Prof. Dr. Viktor Masenko-Mavi, Hungary, Mr. Jakob Moller, Island, Prof. Dr. Manfred Novak, Austria, Mr. Miodrag Pajić, B&H, Ms. Michele Picard, France, Prof. Dr. Vitomir Popović, B&H, Prof. Dr. Dietrich Rauschnig, Germany, Mr. Mato Tadić, B&H.



before the Chamber, "*Matanović vs. Republika Srpska*", regarding the disappearance of a Catholic priest in Republika Srpska, the government bodies were requested to establish the fate of Reverend Matanović, 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 Jovanović, and Esad Muhibić 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 Osmić, and Slavica Slavnić.

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, Brčko, Banja Luka, Tuzla and Bihać.

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, Čapljina 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 Brčko 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

demanded. 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>

<b>CATEGORIES</b>	<b>Fed.</b>	<b>RS</b>	<b>Total</b>
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, Kajmakčalanska 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 Doboј
- premises at 36, Omladinska St. in Banja Luka (crkvena kuća);
- premises in Presnače, near Banja Luka (dvije crkvene kuće);
- premises in Kozarska Dubica (župni pastoralni centar);
- premises in Stratinska (župni pastoralni centar) - municipality of Banja Luka;
- premises in Šimići (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 as 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.

## **7. Sources and References**

1. *Ministry for Human Rights and Refugees (Council of Ministers): State of Human Rights in Bosnia & Herzegovina with suggested measures, Sarajevo, October 2000.*
2. Dailies, weeklies, and periodical publications, various bulletins and publications of organizations and societies.
3. *Amnesty International: Reports.*
4. *Helsinki Federation for Human Rights: Reports.*
5. *Human Rights Watch World Reports: Reports.*
6. *UNHCR: Annual Reports of Human Rights' Infringements.*
7. *International Red Cross: Annual Reports of Human Rights' Infringements.*
8. *OHR: Quarterly Reports of the State of Human Rights.*
9. *Helsinki Committee for Human Rights in Bosnia & Herzegovina: Bulletin of the State of Human Rights.*



# **IZVJEŠĆE O STANJU LJUDSKIH PRAVA U BIH ZA 2000. GODINU**







# Izvešće o ljudskim pravima u BiH za 2000.

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## Proslov

*Promatrajući područje ljudskih prava u Bosni i Hercegovini moglo bi se reći, pomalo cinično, da je ovo područje raj za ljude koji se ozbiljno bave ovom problematikom. Pitanje zaštite ljudskih prava je, po mnogima, jedan od glavnih indikatora stanja društva u cjelini. Bosna i Hercegovina nije izuzetak, pa prema tome niti komisija «Justitia et Pax» Biskupske konferencije Bosne i Hercegovine, koja se bavi ovom problematikom, ne može ostati u tišini zbog potrebe unapređenja zaštite ljudskih prava svakog čovjeka.*

*U državi u kojoj glavnu riječ vode predstavnici i povjerenici međunarodne zajednice; u kojoj razni politički i drugi subjekti parazitiraju na grbači ispaćenog stanovništva, bez da im osiguraju minimalne preduvjete makar za poštenu i časnu egzistenciju; u kojoj nisu riješena pitanja međunacionalnih odnosa; u kojoj svi građani nisu jednaki u pravima i dužnostima pred zakonom; u kojoj nominalno postoje tri politički međusobno nesklone vojske, a zapravo stvarnu snagu ima jedino vojska međunarodne zajednice; u kojoj je nezaposlenost premašila i sam europski vrh, a gospodarska nerazvijenost prijeti da otme primat najnerazvijenijim zemljama trećeg svijeta; koju je nakon rata, uz oko milijun izbjeglica, u miru napustilo preko 100.000 ljudi; u kojoj službeni organi vlasti prikrivaju optužene za ratne zločine i u kojoj su korupcija i krijumčarenje među glavnim oblicima «poslovanja»; koja je trajno u latentnoj ustavnoj i političkoj krizi, s najneučinkovitijim državnim parlamentom u Europi; u takvoj državi, uz ove i mnoge druge nespomenute probleme, žive ljudi izašli iz ratnih strahota ili povratnici iz tuđine, od kojih brojni još nisu u prilici ostvariti svoje osnovno ljudsko pravo, pravo na vlastiti dom.*

*Hoteći sudjelovati u borbi svakoga čovjeka za ostvarivanjem svoga prava i postizanjem opće pravde i mira, što je cilj svakoga demokratskog društva, Katolička crkva, kako mjesna tako i opća, se na brojne načine i brojnim sredstvima napreže oko rezultata u osiguravanju puta ljudima do njihovih prava, uključivši tu zaštitu prava na povratak, prava na obrazovanje na materinskom jeziku, uspostavljanju dijaloga s drugima i uopće stvarajući ozračje tolerancije, u skladu s evanđeoskim porukama ljubavi i mira.*

*Komisija «Justitia et Pax» Biskupske konferencije Bosne i Hercegovine izravno djeluje u tom nastojanju Katoličke crkve time što želi sudjelovati u odgajanju svih građana za demokratsko i pravedno društvo, u kojemu će biti zaštićeni širi interesi zajednice, ali u kojoj niti jedan pojedinac neće biti ugrožen, niti uskraćen u ostvarivanju svojih prava. U tom smislu je naša komisija organizirala do sada niz studijskih dana i okruglih stolova, izdala nekoliko priopćenja, sudjelovala u publiciranju knjige, priprema i samostalno izdanje na ovu temu, te*

je otvorila besplatno pravno savjetovalište. I ovo izvješće o stanju ljudskih prava u BiH prilog je tomu.

*Prema mišljenju komisije «Justitia et Pax», prioritet u rješavanju slučajeva kojima su ugrožena ljudska prava, imaju oni problemi od kojih ovisi gola egzistencija građana u Bosni i Hercegovini. Svakako u tu grupu spadaju pored ovih temeljnih sa životom povezanih i problem slobodnog, održivog i neometanog povratka prognanih i raseljenih osoba, kao preduvjet stvaranja klime opće snošljivosti; problem nezaposlenosti koja je između 40 i 45% i općeg gospodarskog razvoja, čijim rješavanjem bi se postupno eliminirali crno tržište i korupcija; zatim, problem nacionalnog identiteta i međunacionalnih odnosa naroda koji žive u BiH, s obzirom da trenutno, neriješeno stanje trajno predstavlja mogući izvor sukoba (i to širih razmjera); uspostava i jačanje efikasnih sudsko-zaštitnih mehanizama i kontrola zaštite ljudskih prava i sloboda.*

*Podvlačeći crtu ispod pregleda općeg stanja ljudskih prava u BiH, može se steći dojam da ono nije ni blizu onoj točki kada bi se moglo reći da je zadovoljavajuće. Potrebno je uložiti mnogo napora i truda pa da se osjete plodovi zadovoljstva zbog uspostave pravednog i mirnog društva u kojemu će svakom pojedincu biti zagwarantirana sva opća proklamirana prava i slobode. Ovo izvješće treba poslužiti toj svrsi.*

## 1. BiH i ljudska prava - opći uvod i situacija

Na početku samog dokumenta evo nekoliko napomena na koje treba obratiti pozornost pri promatranju stanja ljudskih prava u BiH 2000. godine:

- 1.1. Prema *Povelji Ujedinjenih naroda* i *Općoj deklaraciji o ljudskim pravima*, pitanje zaštite ljudskih prava i temeljnih sloboda nikako se ne može tretirati kao unutarnje pitanje bilo koje države. Isto načelo proistječe iz međunarodnih konvencija nastalih pod zakonodavnim okriljem Parlamentarne skupštine Vijeća Europe, te dokumenata Organizacije (Konferencije) za Europsku Sigurnost i Suradnju (OESS). Međunarodne organizacije, nevladine organizacije, države, skupine ljudi, pojedinci, imaju legitimno i neotuđivo pravo ukazivati na svako kršenje ljudskih prava.
- 1.2. Budući da je Bosna i Hercegovina pravno i *de facto* specifično utemeljena država, zbog okolnosti strašnih ratnih sukoba čije posljedice osjećaju ne samo građani i institucije u BiH, nego i čitava međunarodna zajednica, potpisivanjem *Općeg okvirnog sporazuma za mir* 1995. u Daytonu, utemeljeni su novi institucionalni mehanizmi supervizije i zaštite ljudskih prava u BiH. Tu spadaju: Ured Ombudsmana, Dom za ljudska prava i Komisija za povrat imovine izbjeglih i raseljenih osoba (CRPC).
- 1.3. Glavne odrednice za ljudska prava u BiH, kao vid specifične regulative, nalaze se u zaključnim dokumentima konferencija za implementaciju mira u BiH održanih do sada u Luxemburgu, Bonnu, Sintri, Madridu i Bruxellesu, koji su obavezujući za sve institucije u BiH.
- 1.4. Bosna i Hercegovina je, pored SR Jugoslavije, jedina europska zemlja koja nije članica *Vijeća Europe*. Predstavnici te organizacije su u svibnju 1999. ustvrdili 13 (trinaest) uvjeta za prijem BiH u *Vijeće Europe*, od kojih je 7 (sedam) iz domena ljudskih prava (ukupno 40 zasebnih zadataka). Zadaci se odnose na domaće institucije za ljudska prava, jače angažiranje na stvaranju uvjeta za povratak, usvajanje i implementaciju imovinskih zakona, reformu sudstva, poštivanje *Europske konvencije o ljudskim pravima*, suradnju s *Međunarodnim tribunalom u Haagu*, uspostavu nediskriminirajućeg obrazovnog procesa. Bosna i Hercegovina je ispunila 12 (dvanaest) zadataka, od kojih je većina ispunjena nametanjem zakona od strane *Visokog predstavnika*, a *Vijeće Europe* pravi razliku između zakona donesenih od strane *Visokog predstavnika* i onih usvojenih na *Parlamentarnoj Skupštini BiH*.

- 1.5. Jedna od najvažnijih odluka donesenih u 2000. godini je ona Ustavnog suda BiH o konstitutivnosti sva tri naroda (Hrvata, Srba i Bošnjaka) na čitavom području države BiH. Time su proglašene neustavnima odredbe po kojima je Federacija BiH označena kao entitet Bošnjaka i Hrvata, a Republika Srpska kao entitet samo Srba. Ovaj važni korak omogućit će lakšu provedbu svih ostalih normi koje se tiču sva tri većinska i povijesno prisutna naroda u BiH, kao i drugih građana.

## **2. Prioritetni zadaci za 2000. u rješavanju problema ljudskih prava u BiH po mišljenju Međunarodne zajednice.**

*Predstavnici međunarodne zajednice, kao najodgovornije snage koja ima izravnu odgovornost i mehanizme za provođenje Općeg okvirnog sporazuma za mir u BiH, potpisanog 1995. u Daytonu, za 2000. godinu kao prioritete u rješavanju postavili su slijedeće probleme, koje usprkos preopširnosti navodimo u cijelosti:<sup>11</sup>*

- 2.1. Nastaviti sa naporima **da se osigura fizička i psihička sigurnost svih građana BiH**, putem kontinuiranog angažmana na obuci i integraciji policije, neovisnoj istrazi o slučajevima kršenja ljudskih prava od strane lokalne policije, pomno praćenje odabranih istraga koje provodi lokalna policija, te nastaviti sa pružanjem podrške ekshumacijama i suradnji s Tribunalom. (*UNMIBH, OHR, OHCHR*)
- 2.2. Ciljane političke intervencije kako bi se osiguralo **provođenje imovinskih zakona** u svrhu olakšavanja povratka raseljenih osoba. Kao dio ovoga, mora postojati mehanizam koji će davati preporuke za poduzimanje sankcija protiv službenika koji opstruiraju provođenje imovinskih zakona. (*OHR, OSCE, UNHCR, UNMIBH*)
- 2.3. **Otklanjanje administrativnih prepreka povratku**, putem: usvajanja i provođenja državnih i entitetskih zakona o osobnim kartama i prijavama boravka; političkih intervencija čiji je cilj omogućavanje jednakog pristupa javnim uslugama; te novi naponi da se omogući pristup i priznavanje javnih dokumenata. (*OHR, OSCE, UNHCR, UNMIBH, SFOR*)
- 2.4. **Otklanjanje pravnih prepreka povratku**, putem: amandmana na Zakon o javnom redu i miru; usvajanje i provođenje državnih i entitetskih zakona o izbjeglicama i raseljenim osobama; te provođenje zakona o državljanstvu u BiH i RS, te usvajanje i provođenje istih u Federaciji. (*OHR, OSCE, UNHCR, UNMIBH, CoE*)
- 2.5. Pokretanje i, ukoliko je neophodno, nametanje procesa koji će voditi ka provođenju zajedničkog **okvirnog nastavnog plana i programa** u cijeloj BiH, s ciljem uvođenja novog nastavnog plana i programa za školsku godinu 2000./2001. Nastavak revizije i korekcije udžbenika, u sprezi sa stalnim interveniranjem, kako bi se osigurala etnička

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<sup>11</sup> Vidi: «Prioriteti u oblasti ljudskih prava za 2000. godinu», Preporuke Upravnog odbora organizacija koje se bave pitanjima ljudskih prava Radnoj grupi za zaštitu ljudskih prava, (20. siječnja 2000. godine).

integracija učionica i pristup djece izbjeglica obrazovnim kapacitetima. <sup>2</sup> (OHR, OSCE, UNHCR, CoE)

- 2.6. Nastaviti sa naporima **na smanjenju diskriminacije po svakom osnovu do koje dolazi pri zapošljavanju**, i to putem promoviranja "Pravičnih principa zapošljavanja" i provođenja "Projekta uvjetovanog ulaganja". Revizija Zakona o radu RS je od suštinske važnosti, kao i praćenje slučajeva diskriminacije u okviru procesa privatizacije. Potrebno je pojačati napore na ponovnom zapošljavanju osoba koje su bile u radnom odnosu prije sukoba. (OSCE, OHCHR, CoE)
- 2.7. Nastaviti sa naporima da se **umirovljenicima osigura ostvarivanje prava na osnovu mirovinskog osiguranja**, putem napora da se ustanovi odgovarajući pravni okvir (usklađivanje entitetskih zakona, usvajanje novog zakona u RS u skladu sa Ustavom BiH i standardima ljudskih prava, te usvajanje zakona na državnom nivou kojima će se urediti osnovna mirovinska prava te suradnja između tri fonda), putem napora na ujedinjenju penzionih fondova, i putem promatranja sporazuma koji treba da se zaključi između tri fonda. (OHR, UNHCR, OSCE, OHCHR)
- 2.8. Političke intervencije **kako bi se svim građanima omogućilo korištenje električne energije, vode, plina i telefona**, bez diskriminacije. Provođenje odluke Visokog predstavnika od 30. srpnja u vezi s ponovnim priključenjem telefona. (OHR, OSCE, UNHCR)
- 2.9. Zakonska revizija i intervencije **kako bi se osigurala nediskriminacija u politici i praksi u vezi sa pružanjem zdravstvene zaštite**, u sprezi s međuentitetskom suradnjom u oblasti zdravstvene zaštite, te podrška stvaranju pristupačnog zdravstvenog osiguranja. Podrška lokalnim vlastima za izradu programa edukacije o HIV-u odnosno AIDS-u. (OHCHR, UNMIBH, CoE)
- 2.10. Ustanoviti mehanizam procjene uvjeta za povratak, kako bi se osigurao siguran i dostojanstven povratak raseljenih. (UNHCR)
- 2.11. Praćenje tretmana ugroženih grupa poput pripadnika manjinskih naroda i Roma, **kako bi se osiguralo da svi dijelovi društva mogu podjednako koristiti povoljnosti**. (OSCE, UNHCR, OHCHR)



- 2.12. Revizija zakona i praćenje provođenja zakona, poput entitetskih zakona o amnestiji, kako bi se osigurala nediskriminacija pred zakonom i u praksi. (OHR, UNHCR, OSCE, UNMIBH, OHCHR, CoE)
- 2.13. **Kontinuirana izgradnja temelja kojima se promovira vladavina zakona**, putem: osiguranja usvajanja i provedbe *Zakona o sudskoj i tužiteljskoj funkciji* u Federaciji i *Zakona o sudovima i sudskoj službi* u RS; promoviranja entitetskih zakona o obuci u sudstvu i pružanje pomoći u procesu uspostave Centara za obuku u sudstvu u Federaciji i u RS; pružanja pomoći i promoviranja amandmana na Krivični zakon i *Zakon o krivičnom postupku* u RS; i usvajanja *Zakona o zaštiti svjedoka/Zakona o zaštiti identiteta* u RS. (OHR, UNMIBH-JSAP, OSCE, Vijeće Europe).
- 2.14. **Kontinuirana izgradnja institucija koje će pomoći uspostavu vladavine zakona**, putem: provedbe izmijenjenog i dopunjenog *Zakona o Vrhovnom sudu i Zakona o tužiteljstvu u Federaciji*; pojačanje uloge tužitelja u istražnom postupku i suđenju, što važi za policiju i istražne suce uz pojačanje uloge branitelja u krivičnom postupku; daljnje revizije organizacije i rada prekršajnih sudova; provedbe *Zakona o sudskoj policiji* u Federaciji; usvajanja *Zakona o sudskoj policiji* u RS, kao i obuka u oba entiteta; nastavak napora u cilju oživljavanja i proširenja suspendirane Komisije o unapređenju međuentitetske pravne suradnje u pogledu mehanizama za provođenje presuda u građanskim parnicama. (HR, UNMIBH/JSAP, OSCE, Vijeće Europe).
- 2.15. **Kontinuirana podrška nastojanjima u pravcu izgradnje kapaciteta u oblasti vladavine zakona**, putem: pomaganja u stvaranju održivih domaćih struktura za pružanje pravnih savjeta kojima će pristup biti omogućen; jačanja postojećeg programa za pravnu pomoć (Komisija za pravnu pomoć-Benefits Commission) putem njene uspostave kao domaće pravne institucije, djelomično putem izrade zakona o pravnoj pomoći, a djelomično kroz osiguranje financiranja sve dok se ne preda Vladi; osiguranja dugoročnijeg održivog financiranja sektora pravne pomoći (pravni savjeti i pravna pomoć) u cjelini kroz uspostavu fonda za pravnu pomoć; povećana domaća i postojeća međunarodna pravna informiranost i materijal bi trebali biti dostupni sucima, pripravnicima i općoj javnosti; kontinuirani naponi u pogledu strategije vođenja parničnog postupka; i na kraju, javnost u odnosu na tekuće reforme i njihova prava prema zakonu. (UNHCR, Vijeće Europe, OHR, OHCHR).
- 2.16. **Kontinuirani naponi u cilju restrukturiranja policijskih snaga u oba entiteta**. Naponi će se nastaviti u pogledu restrukturiranja i reforme lokalne policije u skladu s demokratskim načelima policije i međunarodnim standardima ljudskih prava.

Konkretno, napori će se pojačati u pogledu registracije policije, upošljavanja pripadnika manjinskog stanovništva, objedinjenja paralelnih policijskih struktura i uspostave zajedničkih institucija, kao što je Državna granična služba. Registracija cjelokupnog policijskog osoblja od strane IPTF-a i ukidanje privremenih ovlaštenja za izvršenje policijskih ovlasti policajcima koji ne ispunjavaju ni minimalne standarde će se i dalje primjenjivati kao strategija. (*UNMIBH, OHR, Vijeće Europe*).

- 2.17. **Kontinuirano nadgledanje** odabranih slučajeva i općeg ponašanja lokalnih organa vlasti i lokalne policije, kako bi se procijenio uspjeh gore navedenih napora. Konkretno: nadgledanje sudskih i drugih organa koji ne izvršavaju svoje obaveze u cilju njihove moguće smjene ili krivičnog gonjenja; nastavak praćenja suđenja, uključujući i suđenja za ratne zločine pred domaćim sudovima, kako bi se osiguralo poštivanje međunarodnih standarda ljudskih prava; nastavak praćenja poštivanja Pravila puta. (*OHR, OSCE, UNHCR putem Centara za pravnu pomoć, UNMIBH*).
- 2.18. **Kontinuirano praćenje suđenja**, osobito onih međuetničkog karaktera i domaćeg suđenja za ratne zločine, kako bi se osiguralo poštivanje međunarodnih standarda i kako bi se pravda propisno provodila. (*OSCE, OHR*).
- 2.19. Kontinuirana **revizija zakona**, kako bi se osiguralo poštivanje *Europske konvencije o ljudskim pravima*.
- 2.20. Puna **provedba bh. Zakona o imigraciji i azilu**, osobito u pogledu: izrade podzakonskih akata i instrukcija na državnom i entitetskom nivou, gdje će se detaljno regulirati provedba Zakona; uspostava zakonom predviđenih organa; prijenos evidencije o odlukama nadležnih vladinih institucija u vezi s ulaskom, kretanjem i boravkom stranih državljana, kao i davanje azila, na *Ministarstvo civilnih poslova i komunikacija*; obuku državnih i entitetskih dužnosnika o međunarodnom pravu izbjeglica i azilu; prijevod i distribucija relevantnih dokumenata/priručnika/modula za obuku koji tretiraju izbjeglička pitanja. (*OHR, UNHCR, OHCHR, UNMIBH*).
- 2.21. Na osnovu koncepta lokalne odgovornosti za zaštitu ljudskih prava, međunarodna zajednica će raditi na višem nivou kako bi osigurala trenutnu i punu implementaciju odluka *Doma za ljudska prava*, izvještaja *Ombudsmana za BiH* kao i izvještaja federalnih *Ombudsmana* od strane odgovornih lokalnih vlasti. Jednako, međunarodna zajednica mora izvršiti politički pritisak neophodan da se osigura provođenje odluka CRPC-a. (*OHR, OSCE, UNMIBH, Vijeće Europe/ u daljem tekstu CoE*)

- 2.22. Osigurati jačanje institucija ljudskih prava, putem **ohrabriranja adekvatnog državnog financiranja institucija**, upotpunjenog međunarodnim financiranjem po potrebi. (*OHR, OSCE, UNHCR, CoE*)
- 2.23. **Reforma mehanizama za zaštitu ljudskih prava** na osnovu mišljenja *Venecijanske komisije* o budućnosti mehanizama ljudskih prava u BiH koja bi se trebala dovršiti prije isteka petogodišnjeg tranzicijskog razdoblja u Aneksu 6 *Daytonskog sporazuma*.
- 2.24. Promovirati suradnju između zastupnika i lokalnih vlasti i ohrabriti vlasti da osiguraju adekvatno financiranje, posebno prema RS zastupniku. Nadalje, međunarodna zajednica mora promovirati stalnu suradnju između zastupnika i institucija koje se bave ljudskim pravima, uključujući trenutni i puni odgovor od strane vlasti na svim razinama zbog informacija i dokumenata. (*OHR, OSCE, CoE*)
- 2.25. Promovirati usvajanje zakona na razini države, RS i Federacije koji se tiču odgovarajućih institucija Ombudsmana u prvoj polovini 2000 godine. (*OHR, OSCE, CoE*)
- 2.26. **Osigurati usvajanje Zakona o udruženjima i fondacijama** na državnoj i entitetskoj razini kako bi se osigurala mogućnost da postoji potrební pravni okvir za nevladine organizacije (NGO) širom zemlje. (*OSCE, OHR, OHCHR, UNHCR, CoE*)
- 2.27. **Promovirati suradnju između agencija koje rade na unapređivanju sposobnosti NGO-a** i ostalih pripadnika građanskog društva da budu aktivni na području ljudskih prava preko uspostavljanja Koordinacijske grupe Upravnog odbora organizacija koje se bave ljudskim pravima za NGO-e i građansko društvo. (*OSCE, OHR, OHCHR, UNHCR, CoE*)
- 2.28. **Povećati proizvodnju sredstava i materijala za zaštitu ljudskih prava i javnu informiranost**, poput prijevoda već postojećih publikacija ili novih publikacija napisanih za javnost u BiH. (*CoE, OHCHR, UNHCR, UNMIBH*)
- 2.29. **Nastaviti obuku o *Europskoj konvenciji o ljudskim pravima*** posebno za pravnike koji pružaju pravnu pomoć, kao i za druge u pravnoj zajednici. Takva obuka mora biti progresivno povezana s centrima za obuku sudstva. (*CoE, UNHCR, OHCHR*)

- 2.30. Izrada nacrtu, usvajanje i implementacija **Zakona o kleveti i slobodi informiranja**; upotpunjena razrađivanjem konkretnih prijedloga za zaštitu novinara (*OHR, OSCE, CoE*)
- 2.31. Koji od ovih zadataka jesu ispunjeni, a koji nisu, te koliko je koristi bilo od onih koji su ispunjeni formalno, djelomice će pokazati i ovo kratko izvješće o stanju ljudskih prava u BiH 2000.

### 3. Stanje ljudskih prava u BiH 2000. godine

#### 3.1. Europska konvencija.

Članak II. (2) Ustava Bosne i Hercegovine, glasi: "Prava i slobode predviđeni u Europskoj konvenciji za zaštitu ljudskih prava i osnovnih sloboda i u njenim protokolima se **direktno** primjenjuju u Bosni i Hercegovini. Ovi akti imaju prioritet nad svim ostalim zakonima." Sam ovaj članak Ustava BiH omogućava teoretsku podlogu za sigurnost provođenja međunarodnih standarda za zaštitu ljudskih prava. Zakonska osnova za sva ljudska prava je osigurana prihvaćanjem ove konvencije. No na žalost mnogo toga je ostalo samo mrtvo slovo na papiru. Ipak se mora priznati da se nešto i institucionalno ostvarilo, kako slijedi.

#### 3.2. Institucije ljudskih prava u BiH.

S obzirom da je ovo prvi izvještaj koji pripravlja *Komisija «Justitia et Pax» Biskupske konferencije BiH*, napominjemo da ćemo se kratko osvrnuti na državno, vladino tijelo za ljudska prava, to je *Ministarstvo za ljudska prava i izbjegle osobe pri Vijeću ministara BiH*, zatim tijela koja predviđa Ustav BiH i Opći okvirni sporazum za mir, to jest *Dom za ljudska prava, urede Ombudsmana i Komisiju za imovinska pitanja izbjeglica i raseljenih osoba*. Također ćemo se upoznati s nekim od nevladinih organizacija u BiH koji su uključeni u veliko polje rada oko ljudskih prava.

##### 3.2.2. Država Bosna i Hercegovina ima **Ministarstvo za ljudska prava i izbjegle osobe**.

Članak 39. *Zakona o Vijeću ministara BiH i ministarstvima BiH* kaže: «Ministarstvo za ljudska prava i izbjeglice poduzima radnje u ostvarivanju i zaštiti ljudskih prava i prava izbjeglica, emigracije, imigracije i azila, sukladno Ustavu Bosne i Hercegovine i Općem okvirnom sporazumu za mir u Bosni i Hercegovini, međunarodnim konvencijama i zakonima, i drugim aktima mjerodavnih institucija Bosne i Hercegovine, koordinira u poslovima prava izbjeglica i u tome ostvaruje suradnju s entitetima.» S obzirom da su ovlasti zajedničkih tijela (na razini BiH), pa tako i ovog ministarstva, uglavnom ograničenog karaktera zbog stvarne onemogućenosti koordinacije djelovanja i provođenja odluka na različitim političkim razinama, od kojih one niže entitetske u mnogim pitanjima imaju šire kompetencije (sudstvo, policija, vojska, obrazovanje, gospodarstvo i sl.) čini se da su opravdana predviđanja da ovo važno tijelo ima pred sobom teško breme složenih problema. Ipak, što više odmiče

proces izgradnje države Bosne i Hercegovine, s ovim tijelom treba ozbiljnije računati u poboljšanju stanja ljudskih prava.

3.2.2. **Dom za ljudska prava.** *Dom za ljudska prava BiH* je utemeljen po Aneksu 6, članak VII. *Daytonskog sporazuma* i sastoji se od 14<sup>12</sup> članova. Osam članova imenuje Ministarsko vijeće Vijeća Europe, četiri Federacija BiH i dva Republika Srpska. Dom je prvi put zasjedao 27-29. ožujka 1996. Sve odluke ovog Doma su obvezujuće. Odluke donesene ove godine odnose se na mirovinska prava, prava vezana za zapošljavanje, slobodu od proizvoljnog uhićivanja i pritvora, stanarska i imovinska prava, prava na pošteno suđenje i vjerska prava, odnosno diskriminaciju. U najvažnijem od ovih slučajeva, Dom je odlučio da odluka Federacije da za 50% smanji mirovine bivših pripadnika Jugoslavenske narodne armije (JNA) ne predstavlja kršenje Aneksa 6. Podnositelji zahtjeva nisu uplaćivali doprinose u mirovinski fond i stoga, po članku 1. Prvog protokola *Europske konvencije o ljudskim pravima*, nije bilo prava na posjedovanje. Općenito, implementacija odluka Doma se povećala sa 10%, koliko je iznosila početkom 1999. godine, do sadašnjih 60%, najvećim dijelom zahvaljujući implementaciji amandmana koji su doneseni u srpnju 1999. godine na regulativu u vezi sa stanovima JNA. Međutim, općenito je postignut napredak u Federaciji BiH jer su u izvještajnom periodu implementirane mnoge odluke koje se tiču stanarskog prava i nadoknade. Pored toga, Federacija trenutno isplaćuje nadoknade po donesenim odlukama. Republika Srpska (RS) je sporija u izvršavanju svojih obaveza koje proistječu iz odluka *Doma za ljudska prava*. Jedan od primjera takvog odugovlačenja je slučaj «*Islamske zajednice protiv RS*» (CH/96/29) iz lipnja 1999. godine; Dom za ljudska prava je naložio Vladi RS da osigura hitno izdavanje dozvola po zahtjevima, koje su podnositelji dostavili u ožujku 1997. godine za rekonstrukciju sedam džamija u Banjoj Luci. Međutim, prošla je godina dana a organi vlasti nisu proveli ovu odluku. Pored toga, u prvom slučaju pred Domom, «*Matanović protiv RS*», koji se odnosi na nestanak katoličkog svećenika u RS, od organa vlasti u RS se tražilo da utvrde sudbinu, odnosno gdje se nalazi vlč. Matanović. I ova odluka još uvijek nije provedena. Noviji slučajevi kod kojih nije došlo do provedbe obuhvaćaju još jedan slučaj «*Islamske zajednice protiv RS*» (CH/99/2177) koji obuhvaća zahtjev da se opozove općinska odluka kojom se zabranjuje ukop na gradskom muslimanskom groblju, kao i tri slučaja u Federaciji BiH u kojima se traži istraga nezakonitih uhićenja i pritvora. Jedna od važnih presuda Doma je i ona o

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<sup>12</sup> *Članovi su:* Prof. Dr. Rona Aybay, Turska, gosp. Hasan Balić, BiH, gosp. Mehmed Deković, BiH, Prof. Dr. Giovanni Grasso, Italija, gosp. Andrew Grotrian, V. Britanija, gosp. Želimir Juka, BiH, Prof. Dr. Viktor Masenko-Mavi, Mađarska, gosp. Jakob Moller, Island, Prof. Dr. Manfred Nowak, Austrija, gosp. Miodrag Pajić, BiH, gđa Michele Picard, Francuska, Prof. Dr. Vitomir Popovic, BiH, Prof. Dr. Dietrich Rauschnig, Njemačka, gosp. Mato Tadic, BiH.

«zamrznutim bankovnim računima» (tzv. stara štednja). Dom je odlučio da je Federacija BiH kršila Članak 1. Protokola 1. Europske konvencije o ljudskim pravima, jer je propustila uspostaviti pravednu ravnotežu između općeg interesa i zaštite imovinskih prava vlasnika deviznih računa sa starom štednjom.<sup>13</sup>

3.2.5. **Ured Ombudsmana za ljudska prava** je zapravo drugi dio *Komisije za ljudska prava BiH*, koju čini zajedno s *Domom za ljudska prava*. Ured Ombudsmana u svojoj nadležnosti ima razmatranje povreda ljudskih prava iz Europske konvencije o ljudskim pravima, te također i raznih diskriminacija pri uživanju ovih prava, prema mnogim međunarodnim dokumentima i standardima. Stalno vijeće OESS-a je 1. svibnja 2000. godine imenovalo novog Ombudsmana za BiH, gospodina Franka Ortona iz Švedske, koji je zamijenio gđu Gret Haller. Ona je obavljala dužnost Ombudsmana za BiH od osnivanja te institucije prema Aneksu 6 Daytonskog sporazuma. Branka Raguz, Vera Jovanović i Esad Muhibić su kao Ombudsmani Federacije BiH dali značajan doprinos osvjetljavanju mnogih slučajeva povrede ljudskih prava u proteklih nekoliko godina. Njihovi izvještaji su prisutni u javnosti kada se raspravlja o ljudskim pravima. Neposredno prije odlaska sa svoje dužnosti, gđa Gret Haller je 28. travnja imenovala prva tri Ombudsmana za Republiku Srpsku<sup>14</sup>, koji tek konstituiraju svoje urede u RS.

3.2.5. **Komisija za imovinske zahtjeve raseljenih osoba i izbjeglica (CRPC)** odgovorna je za potvrdu imovinskih prava raseljenih osoba i izbjeglica, kao jednog od gorućih problema. CRPC ima ovlasti da prima i odlučuje o imovinskim zahtjevima za nekretnine u Bosni i Hercegovini (BiH) u slučajevima kada podnositelj zahtjeva nije u posjedu te imovine i kada imovina nije dragovoljno prodana ili na neki drugi način prenesena od 01. travnja 1992. godine. CRPC, također, ima ovlasti donositi konačne i pravno obvezujuće odluke o imovinskim zahtjevima i stanarskim pravima koje moraju biti poštivane u oba bosanskohercegovačka entiteta. CRPC čine tri međunarodna i šest članova iz BiH. Tri međunarodna člana imenovao je predsjednik Europskog suda za ljudska prava. Od šest članova Komisije iz BiH četiri člana je imenovala Federacija Bosne i Hercegovine, a dva Republika Srpska. CRPC ima oko 360 zaposlenih u Izvršnom uredu u Sarajevu i mreži regionalnih ureda u BiH, uključujući Sarajevo, Mostar, Brčko, Banju Luku, Tuzlu, Bihać.

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<sup>13</sup> Godišnje izvješće Doma za ljudska prava za 1999. god. Sarajevo, veljača 2000.

<sup>14</sup> Tri Ombudsmana, koji su privremeno imenovani na razdoblje od dvanaest mjeseci u RS su Franjo Crnjac, Darko Osmić i Slavica Slavnić.

3.2.5. Ovdje ćemo ukratko prikazati broj zahtjeva («slučajeva») za rješenje kršenja ljudskih prava, koji su do danas podnijeti Domu za ljudska prava, Uredu Ombudsmana za ljudska prava i CRPC-u, kao i broj riješenih zahtjeva.

	<b>Dom za ljudska prava</b>	<b>Ured Ombudsmana</b>	<b>CRPC</b>
<b>Predati zahtjevi</b>	5463	4889	276.177
<i>Riješeni zahtjevi</i>	685 (12,52%)	1963 (40,15%)	110.640 (40,06%)

3.2.6. U BiH djeluju i brojne međunarodne i domaće nevladine organizacije koje se bave ljudskim pravima. Među značajnije svakako spadaju *Helsinški komitet za ljudska prava* (funkcionira na razini BiH i RS), i *Centar ljudskih prava* na Pravnom fakultetu u Sarajevu.

3.2.7. Naša Komisija održala je 03. prosinca 1998. okrugli stol na temu: Ljudska prava – sanje slabih ili obveza jakih? Među predavačima bila je i zastupnica u Europskom parlamentu gđa. Doris Pack. Naša Komisija je također bila suorganizator simpozija na temu: Ljudska prava i Katolička crkva, koji je održan 27. - 29. travnja 2000. Suizdavač smo knjige pod istim naslovom. Pogled na djelovanje Katoličke crkve za vrijeme rata Komisija je pokušala dati na okruglom stolu koji je održan 11. prosinca 1999. pod naslovom: Riječ i djelo Katoličke crkve u ratu u BiH. Pod naslovom: Katolička crkva u BiH prije, za vrijeme i poslije rata, Komisija je objavila dokument koji je predstavljen javnosti 10. prosinca 1999.

### **3.3. Povratak i imovinska prava.**

3.3.1. Povratak izbjeglih i raseljenih osoba je trenutno najvažniji problem u Bosni i Hercegovini. Oko dva milijuna ljudi bilo je u ratu i neposredno nakon rata nasilno protjerano ili humano preseljeno sa svojih ognjišta, a od tog broja relativno mali broj se vratio. Prema podacima *Ministarstva za ljudska prava i izbjeglice BiH*, koje pravno razlikuje izbjegle i raseljene osobe, u 40 zemalja svijeta boravi 625.850 izbjeglica iz BiH, a u BiH ima oko 857.000 interno raseljenih osoba. Od potpisivanja *Daytonskog okvirnog sporazuma* do 1. rujna 2000. godine u BiH je registriran povratak 682.478 izbjeglih i 321.730 raseljenih građana. Od ukupnog broja povratka 81,55% je ostvareno u Federaciji BiH, a svega 18,4 % u Republici Srpskoj. U Federaciji BiH od ukupnog broja prognanih i izbjeglih oko 18% došlo je do svoje imovine i ostvaren je



kakav-takav povratak, s tim da u ovom entitetu postoji veliki broj interno raseljenih osoba. U Republici Srpskoj taj broj se kreće oko 8%, dakle **92%** stanovništva s tog područja nije u mogućnosti ostvariti povratak! Prema podacima koje je službeno iznio vrh Katoličke crkve, od raseljenih oko 200.000 Hrvata s područja Republike Srpske, do danas postoje podaci o povratku oko 2.500 Hrvata – katolika u RS, ili 1,25%! Ipak, samo u prva tri mjeseca 2000. godine ukupno je registrirano 7.377 tzv. «manjinskih»<sup>15</sup> povrataka u cijeloj Bosni i Hercegovini. To predstavlja četverostruko povećanje u usporedbi s istim razdobljem prethodne godine kada je registrirano samo 1.700 «manjinskih» povrataka. Prepreka povratku, uz tvrdokornost vlasti onog područja gdje se ljudi žele vraćati je i politika «humanog raseljavanja», tj. namjenska naselja za raseljene osobe na području na kojem je većinski narod kojem pripadaju te raseljene osobe. Najviše ovakvih naselja ima u Hercegovini, u općinama Mostar Jug, Čapljina i Stolac, ali i drugdje. Problemi povratka su brojni, poput paljenja povratničkih kuća, zastrašivanja, uništavanja imovine, do ubijanja povratnika. Njima se bave mnogi odgovorni i sigurno je da će ovo pitanje, tretirano Annexom VII. *Daytonskog okvirnog sporazuma*, još dugo biti u žiži pozornosti onih koji odlučuju o sudbini građana i naroda BiH. Trenutno je situacija takva da je oko 100.000 građana napustilo BiH nakon rata (!) posredstvom *Međunarodne organizacije za migracije* (IOM), a prema anketi UN-ovog programa za mlade, oko 62% mladih ljudi želi napustiti BiH.

3.3.2. Problem imovinskih prava u BiH vezan je uz rezultate povratka. Konačna i pravosnažna rješenja i odluke na pripadanje imovine uglavnom izdaju institucije za zaštitu ljudskih prava ustanovljene *Daytonskim okvirnim sporazumom*, ali je njihovo provođenje relativno sporo. Imovinska prava zaniijekana su i onim vlasnicima kojima je imovina oduzeta nepravednim zakonima o nacionalizaciji, a koje je provela komunistička vlast nakon Drugog svjetskog rata<sup>16</sup>. Iako su vođeni neki pokušaji da se uspostavi zakonski okvir za povrat otuđene imovine izvornim vlasnicima, nažalost nije bilo nikakvih rezultata. Jedan od razloga za to je i odluka Visokog predstavnika Wolfganga Petritscha da poništi zakone koji su tretirali ovu problematiku u RS. Također, i u Federaciji BiH nacrt zakona o denacionalizaciji ušao je u proceduru ali se nakon prvog čitanja dalje ništa o njemu nije čulo. Svakako da je teško socijalno i gospodarsko stanje nužna motivacija svim fizičkim i pravnim osobama da preko svoje imovine pokušaju osigurati egzistenciju sebi i svojim najbližima.

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<sup>15</sup> Gdje je jedan narod u manjini na lokalnoj razini.

<sup>16</sup> Na tu temu je održan 09. prosinca 2000. okrugli stol pod naslovom: Privatno vlasništvo i restitucija. Restitucija će biti tema specijalnog izvješća za 2001. god.

### 3.3.3. Implementacija imovinskih zakona:

Broj	Federacija BiH	RS	BiH
<i>Imovinskih zahtjeva</i>	119,032	106,263	225,295
<i>Donesenih odluka</i>	54,570 (46%)	23,409 (22%)	77,979 (35%)
<i>Izvršenog povrata imovine</i>	21,868 (18%)	8,515 (8%)	30,383 (13%)

(Napomena: Statistički podaci su važeći za razdoblje do sredine 2000. godine. Ove brojke ne uključuju distrikt Brčko. Brojke su zasnovane na izvještajima koje su dostavile same općine i one samo daju opću naznaku trendova.)

### 3.4. **Sudski sustav i provođenje zakona.**

Sudski sustav u BiH je vrlo slab i neorganiziran. Nerijetko se nađu tragovi korupcije, protiv čega se kroz cijelu 2000. godinu borila združeno međunarodna zajednica, iako s polovičnim uspjehom. Nesposobnost sudova da sprovedu u djelo zakonske akte koji se izravno primjenjuju kao pozitivni zakoni, od kojih je samo najočitiji primjer *Europska konvencija o ljudskim pravima*, na koju se dosada još niti jedan sud nije pozvao u bilo kojem slučaju rješavanja ugroženosti ljudskih i drugih prava, govori o nužnoj reformi sudstva. Mnogi strani i domaći eksperti već dulje vrijeme pripremaju čitav niz mjera kojima bi se popravilo stanje u oblasti sudstva, ali zakonodavni organi presporo i rijetko donose zaključke koji bi mogli ubrzati ovaj proces. Po preporukama stručnjaka ključni problemi u uspostavi neovisnog i nepristranog pravosuđa su u formiranju Sudskih komisija/povjerenstava u Federaciji BiH i Viših sudskih i tužiteljskih vijeća u RS. Do značajnijeg pomaka u ovoj oblasti ove godine došlo je u Hercegovačko-neretvanskoj županiji, koja je s posebnim režimom (mješovita županija s Hrvatskom i Bošnjačkom većinom), a u kojoj su uspostavljena, nakon dugih opstrukcija, sva sudska i tužiteljska tijela, na općinskoj i županijskoj razini. Upravo pred Županijskim sudom u Mostaru započelo je prvo suđenje optuženima za ratne zločine koje se održava u BiH. U onim slučajevima kada bh. zakonodavni organi nisu bili u stanju izglasati zakone potrebne za normalno funkcioniranje državnih organa i uprave, zakone bi nametao Ured Visokog predstavnika. Uglavnom se to odnosilo na zakone na državnoj razini, kao što su oni o jedinstvenoj putnoj ispravi, set zakona o mirovinama i tako dalje. Provođenje zakona često je upitnog karaktera. Poglavitito se to odnosi na provođenje zakona kada je u pitanju služba policije. Postoje mnoge prijave, koje prati i misija UN-a u BiH, o zloupotrebi položaja i kriminalnom ponašanju

policije. Pripadnici policije, iako ih je danas mnogo više nego što ih je bilo na području BiH prije izbijanja ratnih sukoba, evidentno je da nisu u stanju efikasno zaštititi građane i imovinu, što je onda urodilo određenom dozom nepovjerenja građana i institucija prema policiji. Nakon objavljenih televizijskih snimaka u kojima se vidi kako se policija na području Tuzlanske županije (sjeveroistočni dio zemlje) palicama obračunava s raseljenim osobama koji su se okupili na protest zbog deložacije i žestoke reakcije javnosti, zatražena je smjena ministra policije Tuzlanske županije. Takvih primjera bilo je više na cijelom području BiH.

### **3.5. *ICTY – Međunarodni sud za ratne zločine počinjene na području bivše Jugoslavije.***

Ovu točku samo spominjemo ovdje zbog njezina značaja za društvo u BiH u cjelini. Međunarodni sud za ratne zločine u Haagu nije prihvaćen kod većine političkih čimbenika na prostorima BiH i šire, no odluke donesene u Haagu imaju velike posljedice na razvoj stanja u BiH. Presuda poput one Hrvatima iz BiH Tihomiru Blaškiću na 45 godina zatvora pobudila je snažne proteste i dovela do jakih demonstracija među Hrvatima u BiH. Mnogi vjeruju da je sud u Haagu samo produžena ruka međunarodnih moćnika koji žele ostvariti svoje ciljeve na Balkanu, ne dovodeći pred lice pravde stvarne kreatore i počinitelje najtežih ratnih zločina. Iako se ponekad na ratne zločine gleda i iz nacionalnog a ne samo iz objektivnog kuta, ne bi se smjela zanemariti činjenica, da građani pa i političari s pravom očekuju, da u privođenju svih ratnih zločinaca bude u svako vrijeme zastupljeno i načelo reciprociteta, jer ih je bilo na svim stranama. Uhapšenici kojima se sudi u Haagu su također nezadovoljni čekanjem na početak i trajanje samog suđenja. Carla del Ponte, glavna tužiteljica Haaškog tribunala, prilikom posjete BiH zatražila je formiranje specijalnih jedinica za uhićenje svih optuženih za ratne zločine. Glavni osumnjičeni, Srbi iz BiH, Radovan Karadžić i Ratko Mladić, iako je za njima raspisana međunarodna tjeralica i nagrada u iznosu od 5 milijuna US dolara još nisu privedeni u Haag.

### **3.6. *Nestali – ekshumacije.***

Problem osoba nestalih u ratu 1992-1995. je možda najteži i najdugotrajniji zadatak koji potresa društvo u BiH. Gotovo svakodnevno se otkrivaju pojedinačne i masovne grobnice, čija tijela se naknadno identificiraju, iako tisuće njih ostanu samo registarski brojevi pod kojim su zavedeni u knjigu pronađenih tijela. Najviše mjesta u kojima su dosada pronađena tijela i ostaci nalaze se u području Istočne Bosne (RS), područja uz rijeku Unu, te na području grada Sarajeva. Sudbine mnogih su još uvijek

nepoznate, a pretpostavlja se da mnogi vojni arhivi kriju tajne o tome gdje se nalaze ljudi nestali u ratu ili njihovi ostaci. Zbog takvog stanja, Dom za ljudska prava donio je nedavno presudu u kojoj je Vlada Republike Srpske dužna isplatiti određenu sumu novca gospođi čiji je suprug zarobljen tijekom ratnih pregovora. Presuda je donesena na temelju indicija o tome da su vlasti srpske vojske bile odgovorne za njegov nestanak. U dokumentima Međunarodne konferencije Crvenog križa nalazi se popis od još preko 20.000 nestalih osoba iz BiH

### **3.7. *Ekonomska i socijalna prava.***

Osigurati svakome pravo na zaposlenje, stabilnu mirovinu, socijalnu i zdravstvenu uslugu i ostale elemente socijalne i gospodarske zaštite, primarni su ciljevi bh. društva. Uz etiketu države s najvećom stopom nezaposlenosti u Europi (između 40-45%!) BiH je zemlja u kojoj je očigledno da ne postoje makroekonomski i makrosocijalni planovi za ozdravljenje društva. Radnicima koji su ostali bez posla prijeti novi val nezaposlenih zbog transformacije platnog prometa koji će ugušiti oko 11.000 (!) nelikvidnih poduzeća i time ostaviti bez posla još najmanje 100.000 radnika. Novi Zakon o radu proglašen još 1999. donio je neke promjene u ovom polju i zaštitio određene kategorije ugroženih radnika, posebno onih na čekanju. Njima je poslodavac dužan dati odgovarajuću otpremninu ili naći novo radno mjesto. Ulaganja u razvoj privrede su vrlo mala, jer inozemni potencijalni ulagači nisu zainteresirani za ulaganja u državu koja nema osnovne mehanizme zaštite njihovog kapitala. Što se tiče umirovljenika, oni su na rubu egzistencije. Njihovo stanje je pogoršano otkako je Visoki predstavnik u ljeto 2000. donio set zakona kojima se mirovine mogu isplaćivati samo iz akumuliranih sredstava u fondovima, što znači da ako država ne uspije prikupiti poreze, prireze i ostale dažbine, nema ni mirovine! Pokušaj da se stabilizira osnova za razvoj gospodarstva u BiH je bolan ali neophodan korak. Međutim, čini se da odgovorni za ovaj dio posla ne vode dovoljno računa o onima koji bi bili potencijalne žrtve njihovih ekonomskih pokusa. Izlišno je i spominjati da je kriminal u ovoj oblasti vrlo prisutan, često i onaj organizirani. Privatizacija, oko koje se digla velika prašina, još uvijek nije ni izbliza onoj točki kada bi se moglo reći da je izvršena na zadovoljstvo svih građana. Ne samo da je Visoki predstavnik smijenio neke lokalne čelnike procesa privatizacije, nego je i neriješeno pitanje restitucije ostalo «kost u grlu» mnogih koji žele sudjelovati u ovoj pretvorbi društva. Mnoga druga pitanja socijalne zaštite također ostaju neriješena, i o njima bi se dalo napraviti čitavo posebno izvješće o ljudskim pravima.

### **3.8. *Obrazovanje – kulturno pravo.***

Uza sve ostale specifičnosti, čini se da je problem obrazovanja i drugih kulturnih prava jedna od najspornijih tema oko koje koplja lome domaći i inozemni stručnjaci, politički predstavnici, te samo odgojno-obrazovni radnici, a ponajviše trpe učenici i studenti. Sustav obrazovanja koji bi pružio svima jednaku šansu i poštivao svačije pravo, koji bi promovirao toleranciju i pomirenje među ljudima cilj je kojemu se mora težiti ako se želi stabilna Bosna i Hercegovina. Nažalost, često niti škole, niti nastavnici, nastavni planovi i udžbenici, nisu napravljeni s najboljom voljom da se pomogne onima koji se žele reintegrirati u područje odakle su iz bilo kojeg razloga bili prisiljeni otići. Svijetli primjeri postoje, ali oni kao da samo potvrđuju pravilo da je škola mjesto na kojemu se vode borbe za političke poene i odgajaju generacije koje će nastavljati bespoštednu borbu među pojedincima i narodima. Jedan od primjera usmjerenosti ka dobrom putu je i ideja o uvođenju predmeta o ljudskim pravima i slobodama koje bi djeca izučavala u sklopu redovne nastave. Nažalost, ostaju mnoga neriješena pitanja, poput onih o grupi nacionalnih predmeta (materinski jezik, nacionalna kultura, povijest i sl.), kao i neriješeni status vjeronauka, odnosno predmeta Povijesti religija.

### **3.9. *Pravo na slobodu prakticiranja religije***

Crkve i vjerske zajednice sigurno nisu zadovoljne stanjem u kojem se nalaze.<sup>17</sup> Iako je nakon demokratskih procesa došlo do kvantitativnog «buđenja» vjernika, u smislu jače socijalizacije vjerskih manifestacija, strukture religijskih institucija su relativno slabe. Jedan od glavnih problema je njihova ekonomska ovisnost o pomoći izvana i iznutra. Način da se to popravi je restitucija nacionalizirane imovine koju su komunisti oduzeli nakon Drugog svjetskog rata. Vjerske slobode, to jest, pravo na slobodno ispovijedanje i prakticiranje vjere također je ugroženo. Ne samo zbog porušenih stotina vjerskih objekata nego i zbog politiziranja vjerskih osjećaja, kako od strane političkih čimbenika, također nerijetko i od pojedinih vjerskih službenika pa i poglavara. Ipak, ovo pitanje usko je vezano s pitanjem povratka izbjeglih i raseljenih osoba. Činjenica je, barem govore podaci iz Katoličke crkve, da je povratak jači tamo gdje postoji strukturirana župa i namješten svećenik.

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<sup>17</sup> Radi poboljšanja njihova stanja u društvu, te radi njihovog doprinosa društvenim temama i problemima u teškim poratnim prilikama formirano je Međureligijsko vijeće BiH koje je već polučilo određene rezultate.

### 3.10. Sloboda izražavanja i mediji.

3.10.1. Obzirom da je Bosna i Hercegovina **zemlja s vjerojatno najvećim brojem elektronskih medija po glavi stanovnika** (nešto manje od 300 televizijskih i radio kuća na manje od tri milijuna stanovnika!) u ovom dijelu svijeta, a među onim je zemljama, nažalost, u kojima je čitanost tiska na najnižem stupnju, može se kazati da je dominacija elektronskih medija više nego očita. Nažalost, zbog ratnih (ne)prilika većina tih medijskih kuća nema dovoljno kvalitetnog kadra da pokrije potrebe proizvodnje programa, a nerijetko su mediji predmetom političke svađe, kao što je to slučaj s Televizijom Federacije BiH, koja treba biti javna televizija svih stanovnika ovog političkog entiteta. Ona je u procesu nastajanja dulje od godinu dana, a do danas nije emitirana ni jedna sekunda njezina programa. U BiH postoji *Neovisno povjerenstvo za medije* (IMC), koje je isključivo nadležno za sve dozvole emitiranja i uspostavljanja elektronskih medija. Zbog toga se može reći da je stanje medija vrlo slabo, i da je potrebna hitna pomoć u uspostavljanju kvalitetnog kadra i opreme, te racionalizacija mnogih medijskih kuća koje su nastale kroz ratne i poratne donacije, a ne bi se mogle održati na komercijalnom tržištu.

3.10.2. **Free Media Help Line:** Tako je nazvana linija za pomoć novinarima. Odjel za medija OESS-a ustanovio je ovu službu koja prati dojave o ugrožavanju medijskih sloboda i pomaže ugroženim novinarima. U proteklih godinu dana stotinjak novinara je prijavilo incidente i napade ili se obratilo za pomoć zbog ugrožavanja.

3.10.3. Slijedeća tablica prikazuje vrste prijetnji i teren na kojemu se to događalo<sup>18</sup>:

<b><u>KATEGORIJE</u></b>	<b><u>Fed</u></b>	<b><u>RS</u></b>	<b><u>Ukupno</u></b>
KLEVETA	13	7	20
IZRAVNA PRIJETNJA	22	7	29
POSREDNA PRIJETNJA	4	1	5
ZASTRAŠIVANJE	3	2	5
UZNEMIRAVANJE	7	2	9
PRIGOVOR NA RAD	3	2	5

<sup>18</sup> Izvor: OHR-ov izvještaj o stanju ljudskih prava za 2000. godinu.

<i>PRITISAK PORESKIH SLUŽBI</i>	2	-	2
<i>FIZIČKI NAPAD</i>	6	7	13
<i>UPLITANJE</i>	6	2	8
<i>NE PRUŽANJE (PLAĆENIH) USLUGA</i>	1	3	4
<i>OSTALO</i>	3	1	4
<b><u>UKUPNO</u></b>	<b><u>70</u></b>	<b><u>34</u></b>	<b><u>104</u></b>

3.10.4. Od ukupno prijavljenih 104 slučaja, primijećeno je da su 95,2% slučajeva počinili prestupnici u slijedećih pet kategorija:

Vlada/Službenici političkih partija:	36 prijavljenih slučajeva (34.6%)
Anonimni:	22 prijavljenih slučajeva (21.2%)
Neovisni pojedinci:	19 prijavljenih slučajeva (18.3%)
Osoblje distribucije medija:	16 prijavljenih slučajeva (15.4%)
Policija:	7 prijavljenih slučajeva (6.7%)

3.10.5. Uopće, dojam je da mediji pomažu mnogim političkim, vjerskim i privrednim subjektima da ostanu prisutniji na javnoj sceni socio-političkog života u BiH, te tako više utječu na događaje i kreiranje javnog mnijenja o mnogim stvarima. Mediji su uglavnom, uz časne iznimke, više u službi promocije pojedinih ideja i političkih programa, negoli u službi informiranja javnosti i povezivanja sa svijetom.

## 4. Zaključak

Kada bi netko htio u Bosni i Hercegovini riješiti sva pitanja ljudskih prava to bi sigurno trajalo godinama, ako ne i desetljećima. Ipak, čini se da su nužni prvi preventivni koraci, tj. edukacija građana o njihovim pravima i slobodama, te poduka o tome kako će koristiti ona sredstva i mehanizme zaštite koji su im na raspolaganju. Nedovoljan broj stručnjaka i literature o tome sigurno nije od velike pomoći. Uvriježen je stav da bi i Katolička crkva trebala poduzeti djelatnije korake na ovom području,<sup>19</sup> iako se ne može zanemariti trud kojega iskazuju biskupi, svećenici i mnogi drugi djelatnici. Kao primjer akcije, nakon ugroženosti svojih prava, Banjalučka biskupija poduzela je korake da zaštiti svoju imovinu i ljude, a u tome joj je sigurno od velike pomoći i preporuka Ureda Ombudsmana za BiH, kojom se nalaže vlastima da postupe tako kako će interesi i prava Banjalučke biskupije biti zaštićeni. Rješenje ovog slučaja dostavljamo u prilogu, kao ilustraciju načina kako strukture vlasti zloupotrebljavaju položaj i krše osnovna prava (vidi prilog).

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<sup>19</sup> Usporedi dokument naše Komisije o stanju Katoličke crkve prije, za vrijeme i poslije rata u BiH, predstavljen 10. prosinca 1999.



## 5 . P r i l o g

### O povredi imovinskih prava Katoličke crkve i povredi slobode vjeroispovijesti katoličkih vjernika u Banjalučkoj biskupiji<sup>20</sup>

#### Primjenjivo domaće pravo

#### Ustav Republike Srpske

Članak 28. Ustava Republike Srpske, u relevantnom dijelu, glasi kako slijedi:

"Jamči se sloboda vjeroispovijesti. Vjerske zajednice su jednake pred zakonom, slobodne u vršenju vjerskih poslova i vjerskih obreda. . . "

Prema članu 12. Ustavnog zakona za provođenje Ustava Republike Srpske (Službeni glasnik RS, broj 21/92), do donošenja odgovarajućih zakona i drugih propisa Republike Srpske, primjenjivat će se zakoni i drugi propisi SFRJ i SR BiH, koji su u suglasnosti sa Ustavom Republike Srpske i koji nisu u suprotnosti sa zakonima i drugim propisima koje je donijela Skupština srpskog naroda u Bosni i Hercegovini, odnosno Narodna skupština.

Status vjerskih zajednica reguliran je Zakonom Socijalističke Republike Bosne i Hercegovine o pravnom položaju vjerskih zajednica (Službeni list SR BiH, broj 36/76), koji je preuzet kao zakon Republike Srpske.

Članak 27. tog Zakona propisuje da vjerske zajednice mogu, u skladu sa zakonom, posjedovati i stjecati zgrade i drugu imovinu koja služi potrebama vršenja vjerskih obreda i drugih vjerskih poslova, ili je potrebna za smještaj osoblja.

#### **Analiza**

##### **a) Imovinska prava**

Ombudsman na početku podsjeća da članak I. Aneksa 6. Daytonskog sporazuma zahtijeva od strana da osiguraju svim licima najviši nivo međunarodno priznatih ljudskih prava i osnovnih sloboda, uključujući prava i slobode predviđene Europskom konvencijom o zaštiti ljudskih prava i osnovnih sloboda ("Konvencija") i njenim protokolima.

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<sup>20</sup> Izvještaj je poslan gosp. Miloradu Dodiku, predsjedniku Vlade RS pod brojem (B) 842/00. Izvještaj je uputila 05. travnja 2000. gđa. dr. Gret Haler, Ombudsman za ljudska prava za BiH, u skladu sa stavom 6. člana V Aneksa 6. Općeg okvirnog sporazuma za mir u BiH.

Uz to, svako tumačenje garantiranih prava i sloboda treba da bude u skladu sa "općim duhom Konvencije, kao instrumenta sačinjenog da sačuva i promovira ideale i vrijednosti demokratskog društva" (vidi presudu Europskog suda za ljudska prava u predmetu Soering protiv Ujedinjenog Kraljevstva od 7. jula 1989., Serija A, br. 161, str. 34, stav 87., i dalji navodi).

Ovaj Specijalni izvještaj, na prvom mjestu, razmatra pitanje člana 1. Protokola br. 1 uz Konvenciju.

Članak 1. Protokola br. 1. uz Konvenciju glasi:

"Svako fizičko i pravno lice ima pravo na neometano uživanje posjeda. Nitko ne može biti lišen svoje imovine, osim u javnom interesu i pod uvjetima predviđenim zakonom i općim načelima međunarodnog prava. Prethodne odredbe, međutim, ni na koji način ne utječu na pravo države da primjenjuje zakone koje smatra potrebnim kako bi regulirala korištenje imovine u skladu s općim interesima ili da bi osigurala naplatu poreza ili drugih dažbina ili kazni."

Ombudsman podsjeća da član 1. Protokola broj 1. uz Konvenciju može također da nametne pozitivnu obavezu strani potpisnici Aneksa 6. da osigura efikasno ostvarivanje prava garantiranih Konvencijom, uključujući i pravo na mirno uživanje posjeda (vidi broj 20357/92, odluka 7.3.94. O.I. 76-A, str. 80).

Ombudsman primjećuje da je prije rata u Bosni i Hercegovini Katolička crkva posjedovala navedene objekte i koristila ih za smještaj svojih vjerskih službenika i/ili za vršenje vjerskih obreda (vidi gore "Predmet Specijalnog izvještaja"). Uslijed ratnih okolnosti, značajan broj vjerskih službenika je bio prisiljen da napusti crkvene prostorije u kojima su živjeli i obavljali vjerske obrede. Proizlazi da je, nakon toga, veliki broj objekata dodijeljen izbjeglicama i raseljenim licima od strane Komisije za smještaj izbjeglica i upravljanje napuštenom imovinom u Banjaluci i susjednim općinama, dok su neki od objekata zauzeti bez pravnog osnova.

Ombudsman dalje primjećuje da su unazad više od dvije godine nadležni organi Katoličke crkve u Banjalučkoj biskupiji formalno zahtijevali od nadležnih vlasti Republike Srpske i nadležnih organa općine Banjaluka da poduzmu neophodne mjere radi vraćanja njihove imovine u posjed. Proizlazi da relevantne vlasti do danas nisu poduzele nikakve korake po zahtjevima podnositelja žalbe u cilju vraćanja te imovine.

Ombudsman podsjeća da je Dom za ljudska prava, u predmetu *Islamska zajednica u Bosni i Hercegovini protiv RS*, smatrao da "podnosilac žalbe ima pravo-kao i svaka vjerska zajednica-da dobije, kao odgovor na svoje zahtjeve, obrazloženu odluku zasnovanu na poštovanju njihovih osnovnih prava" (vidi *mutatis mutandis*, odluka Doma za ljudska prava, broj CH/96/29, u gore navedenom predmetu, od 11. juna 1999. godine, strana 23, stav 165.).

Ombudsman je mišljenja da su nadležne vlasti Republike Srpske trebale da poduzmu sve neophodne mjere za vraćanje predmetnih objekata u posjed podnosiocu žalbe. Ona, prema tome, smatra da je takva neaktivnost nadležnih vlasti Republike Srpske spriječila katoličke vjerske službenike da se vrate u svoje predratne objekte u kojima su živjeli i vršili vjerske obrede, te tako spriječila i same katoličke vjernike da slobodno obavljaju svoje vjerske službe u tim objektima.

Prema tome, Ombudsman smatra da se propust nadležnih organa odgovorne strane da podnosiocu žalbe vrati u posjed gore navedene objekte, može smatrati njenim propustom da ispuni svoju pozitivnu obavezu prema podnosiocu žalbe, te, prema tome, zaključuje da je došlo do povrede člana 1. Protokola broj 1. uz Konvenciju.

#### **b) Sloboda vjeroispovijesti**

Ombudsman dalje smatra da se ovaj predmet može ispitati u kontekstu člana 9. Konvencije, koji garantira, *inter alia*, slobodu vjeroispovijesti.

Članak 9., u relevantnom dijelu, glasi kako slijedi:

"Svako ima pravo na slobodu misli, savjesti i vjeroispovijesti; ovo pravo uključuje slobodu promjene vjere ili uvjerenja i slobodu čovjeka da, bilo sam ili zajedno s drugima, javno ili privatno, ispoljava vjeru ili uvjerenje molitvom, propovijedi, običajima i obredom. . ."

Ombudsman podsjeća da je sloboda vjeroispovijesti zaštićena Ustavom Republike Srpske, koji predviđa da će vjerske zajednice biti jednake pred zakonom i slobodne u vršenju vjerskih obreda i službi.

Ombudsman dalje podsjeća da je pravo zaštićeno članom 9. jedno od osnova "demokratskog društva" u smislu Konvencije. Ono je, u svojoj vjerskoj dimenziji, jedan od najvitalnijih elemenata u stvaranju identiteta vjernika i njihovog koncepta života. Dok je sloboda vjeroispovijesti, s jedne strane, predmet svijesti pojedinca, ona također uključuje, s druge strane, slobodu "ispoljavanja" nečije vjeroispovijesti. Svjedočenje riječima i

djelima je nerazdvojivo povezano sa vjerskim uvjerenjima. (vidi Europski sud za ljudska prava, Kokkinakis protiv Grčke, presuda od 25. maja 1993. godine, Serija A, broj 260-A, strana 17. stav 31.).

Europski sud je također našao da je način protivljenja ili nepriznavanja vjerskih uvjerenja i doktrina, pitanje koje može uključiti odgovornost Države, tj. njenu odgovornost da osigura mirno uživanje prava koja su garantirana članom 9. pripadnicima tih uvjerenja i doktrina. (vidi Europski sud za ljudska prava, Otto Preminger-Institut protiv Austrije, presuda od 20. rujna 1994. godine, Serija A, broj 295-A, strana 18. stav 47.).

Evropski sud je naglasio da sloboda vjeroispovijesti, garantirana Konvencijom, isključuje svako diskrecijsko pravo Države da odlučuje da li su vjerska uvjerenja ili sredstva koja se koriste za izražavanje takvih uvjerenja, zakonita (vidi Europski sud za ljudska prava, Manoussakis protiv Grčke, presuda od 26. rujna 1996. godine, Izvještaji o presudama i odlukama 1996-IV, fasc. 17. stav 47.).

Ombudsman primjećuje da su tijela Katoličke crkve, njeni vjerski službenici i sami katolički vjernici, spriječeni da se vrate u crkvene objekte koje trenutno koriste treća lica, uslijed propusta nadležnih vlasti Republike Srpske da poduzmu efikasne i odgovarajuće mjere kako bi im vratili tu imovinu u posjed. Ona, zbog toga, smatra da su oni spriječeni u vršenju svojih vjerskih obreda i slobodnom ispoljavanju svojih vjerskih uvjerenja, korištenjem postojećih kapaciteta u potpunosti.

Ombudsman zaključuje da je, uslijed gore navedenog propusta vlasti Republike Srpske, došlo do povrede člana 9. Konvencije.

## **Zaključci**

Ombudsman zaključuje da je u ovom predmetu:

- došlo do povrede članka 1. Protokola br. 1. uz Konvenciju, i da je došlo do povrede članka 9. Konvencije.

U skladu s tim, Ombudsman nalazi da je odgovorna strana prekršila svoje obaveze iz člana 1. Aneksa 6. Općeg okvirnog sporazuma za mir u Bosni i Hercegovini.

### ***Preporuka Ombudsmana***

U skladu sa članom V. stav 4. Aneksa 6., Ombudsman preporučuje Vladi Republike Srpske da poduzme sve neophodne korake radi vraćanja u posjed gore navedenih crkvenih objekata Banjalučkoj biskupiji u roku od mjesec dana od dana prijema ovog Specijalnog izvještaja.

## 6. NAŠA OČEKIVANJA

Željeli bi smo vjerovati da Vam je ovo naše prvo izvješće ovakve vrste za 2000. godinu, usprkos svih manjkavosti, ipak omogućilo malo bolji uvid u stanje ljudskih prava u Bosni i Hercegovini. Ova komisija *Justitia et pax* BK BiH je svjesna svoje neznatne pozicije i skromnih mogućnosti, pa se s toga na kraju ovog izvješća ne usuđuje nešto glasno zahtijevati, nego s vjerom i nadom želi izraziti svoja promišljanja i skromne prijedloge u obliku naših želja i očekivanja, koja povezujemo u prvom redu sa svim međunarodnim, pa onda domaćim državno političkim, i vjerskim čimbenicima, kako bi se koordinirano ujedinile sve pozitivne snage u provođenju, očuvanju i zaštiti svih temeljnih ljudskih prava za svakog čovjeka i svaki narod u Bosni i Hercegovini.

Svaka pojedina osoba ove zemlje, svako njezino udruženje, sve njezine institucije i strukture, te cijelo društvo i sve vjerske zajednice morale bi se svjesno i aktivno uključiti u taj proces, a ne samo pasivno čekati da im to netko osigura. Da bi velika većina ljudi mogla prijeći iz pasivnog čekanja u aktivno djelovanje na ovom području neophodno je ljude educirati i poučiti, koja su to stvarna njihova temeljna prava i koji su to konkretni pravni mehanizmi ove zemlje u procesu njihova ostvarivanja. Na tom području očiti su pomaci, ali cilj još ni izdaleka nije ostvaren.

Naše želje i očekivanja uz izvješće za 2000. godinu fokusiramo na međunarodnu zajednicu i njezin doprinos stanju ljudskih prava u ovoj zemlji. Izvješće jasno pokazuje njezinu ponajvažniju ulogu u tom procesu. Svjesni smo ogromnog pozitivnog značenja međunarodne zajednice za mir i stabilnost na ovim područjima. Svjesni smo velikih žrtava, odricanja, materijalnih ulaganja, humanitarne pomoći, pa i nerijetko izraza ljubavi i simpatija prema ovoj zemlji. Svjesni smo da i međunarodna zajednica u ovoj zemlji nije svemoguća, te da je u dobroj mjeri naslonjena na konstruktivnost i dobronamjernost u suradnji domaćih državno političkih struktura. Zato s velikim poštovanjem i zahvalnošću, cijeneći sve dosad pozitivno učinjeno od strane međunarodne zajednice, njezine vojske i humanitarnih organizacija, usuđujemo se u dobroj namjeri dati na razmišljanje neke svoje poticaje, kako bi se postigao još veći učinak na dobrobit svih u ovoj zemlji.

Činjenica je, da međunarodna zajednica nije *de jure*, ali jest *de facto* preuzela protektorat u ovoj zemlji, pa je stoga pravni *fac totum* u donošenju zakona i važnih odluka u Bosni i Hercegovini. Parlament Bosne i Hercegovine zakone donosi ili uz njihovu suglasnost, ili međunarodna zajednica nameće neke zakone, nakon što se parlamentarci ove zemlje ne mogu usuglasiti, ili mijenja legalno izabrane zastupnike ili dužnosnike itd. Zato je

međunarodna zajednica, u de facto protektorskoj ulozi, najodgovornija i za konkretno provođenje zakonskih odredbi. U zapadnoj i srednjoj europskoj tradiciji razlikuju se dva načela u provođenju zakonodavne regulative. To je djelovanje u duhu i po slovu zakona. U tom smislu očekujemo, da međunarodna zajednica ne primjenjuje slovo zakona tamo gdje bi primjena njegova duha polučila veće učinke, ili obratno, da se primjenjuje slovo zakona tamo, gdje je neučinkovit i nemoćan njegov duh. Ne bi se smjelo dogoditi, da se prema nekima primjenjuje uvijek duh zakona a prema drugima uvijek slovo zakona. Mišljenja smo da je najgore, kada se ne primjenjuje prema svima isti zakon na isti način za ista djela.

Činjenica je, da BiH nije definirana daytonskim okvirnim mirovnim sporazumom kao jedna država s dva politička sustava. No u stvarnosti tako izgledaju dva Daytonom ozakonjena entiteta u BiH. To je na jednoj strani Federacija BiH, te Republika Srpska na drugoj strani, pravno tretirane skoro kao države u državi. Najviše nesuglasica proizilazi iz nejednakih pravnih sustava entiteta u odnosu na državu BiH, koja je daytonskim sporazumom više simbolična, nego li realna. Dok u Federaciji imamo decentralizirani sustav upravljanja s deset županija, dotle je u Republici Srpskoj centralizirani sustav bez kantona. Srpski entitet nema ni Doma naroda, čija je uloga balansirati vitalne interese konstitutivnih naroda u BiH. Vrhovni sud BiH je konstitutivnim narodima proglasio Bošnjake, Srbe i Hrvate na cijelom području BiH. Očekujemo od međunarodne zajednice, da u ovoj zamršenoj i vrlo osjetljivoj ustavnoj situaciji u BiH, konkretnije i djelotvornije pomogne njezinu usklađivanju, jer bez toga nema održivog povratka a bez povratka ni trajnog rješenja i mira na ovim prostorima.

Činjenica je, da mnogi članovi međunarodne zajednice u ovoj zemlji dobro žive i zarađuju. Mi želimo vjerovati, da oni nisu ovamo došli samo radi lakšeg života i dobre zarade, te da bi trebali sve dublje i nijansiranije upoznavati mentalitet, kulturu, jezik i povijest svih naroda u BiH. Oni bi morali znati istančano razlikovati težnje i želje od realno utemeljenih prava i dužnosti svakog naroda u BiH. Opasno je za predstavnike međunarodne zajednice zadovoljiti se s površnim upoznavanjem kompliciranih odnosa u BiH. Isto tako može biti jednostrano i pogibeljno temeljiti svoju spoznaju samo na političkim izvorima jedne stranke ili strane. Njihovo iskustvo rada u nekim drugim mirovnim operacijama može na ovim područjima biti neplodonosno, zbog specifičnih ovdašnjih okolnosti. Transplantacija rješenja nije uvijek garant uspjeha, jer svi problemi u BiH su najmanje tri puta kompliciraniji nego u drugim zemljama.

Činjenica je, da dobro radi onaj koji daleko vidi u budućnost. Očekujemo od najodgovornijih predstavnika međunarodne zajednice da budu sposobni gledati unaprijed na dobrobit svih naroda. Nije pravo rješenje u privremenom rješavanju problema. Još od komunističkog sustava zasićeni smo provizornim rješenjima. Dugotrajna rješenja su moguća samo onda

ako je utvrđena prava dijagnoza stanja i ako je zaista jasan cilj pred očima. Tek tako je moguće naći pravu terapiju, to jest pravi put do cilja. Za sve koji odbijaju na širokoj međunacionalnoj bazi opće prihvaćene demokratske norme i pravila ponašanja, te se destruktivno ponašaju na putu njihova ostvarivanja, očekujemo energičnije djelovanje međunarodne zajednice.

Činjenica je, da su i predstavnici međunarodne zajednice ljudi od krvi i mesa, sa svojim osjećajima i slabostima. Ipak oni ne bi smjeli u bitnome pravu podleći niti pritisku većine, jer su sva tri naroda u BiH konstitutivna, niti sažaljenju bjednijih i siromašnijih, nego se isključivo voditi ustavnim načelima pri donošenju i provođenju pravednih zakona utemeljenih na temeljnim ljudskim pravima.

*Činjenica je, da dobar primjer zlata vrijedi. Zato očekujemo od međunarodne zajednice, u čijem sklopu promatramo i trupe SFOR-a, da se i sami drže onoga što nas uče i nama nalažu. Ovdašnja nacionalna obilježja ne gledaju previše rado. Smatraju ih potencijalnim izvorom opasnosti i eskalacija. Zato bi bilo vjerodostojno i dosljedno kada ni oni ne bi isticali vlastita državna i nacionalna obilježja, koja se mogu uočljivo vidjeti na ramenu i kapi svakog vojaka, na karoseriji skoro svih vozila, počevši od putničkih pa do teretnih, kako humanitarnih tako i oružanih. Međunarodni predstavnici morali bi se posebno čuvati promicanja isključivo nacionalnih interesa svojih zemalja u Bosni i Hercegovini.*



## 7. Izvori i literatura:

- I. *Ministarstvo za ljudska prava i izbjegle osobe (Vijeće ministara): Stanje ljudskih prava u Bosni i Hercegovini sa prijedlogom mjera, Sarajevo, listopad 2000.*
- II. Dnevni, tjedni i periodični tisak, te razni bilteni i publikacije različitih organizacija i društava
- III. Amnesty International: *Izveštaji*
- IV. Helsinki Federation for Human Rights: *Izveštaji*
- V. *Human Rights Watch World Reports: Izveštaji*
- VI. *UNHCR: Godišnji izvještaji o kršenjima ljudskih prava*
- VII. *Međunarodni Crveni križ: Godišnji izvještaji o kršenjima ljudskih prava*
- VIII. *OHR: Kvartalna izvješća o stanju ljudskih prava u BiH*
- IX. *Helsinški komitet za ljudska prava u BiH: Bilten o stanju ljudskih prava*