

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 ABOUT THE STATE OF HUMAN RIGHTS IN BOSNIA & HERZEGOVINA FOR THE YEAR 2000

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Prologue

Regarding the area of human rights in Bosnia & Herzegovina, one could say, somewhat cynically, that it is a promised land for people involved in such problem area. 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 commission "Justitia et Pax" of the Bishops' Conference of Bosnia & Herzegovina involved in such problems cannot remain silent because of the need of improving the protection of human rights of each individual.

In 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 exist three armies politically unfavorably disposed towards each other, but the real strength has only the army of the international community; where unemployment had risen to the European peak, 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 such a 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 realize their basic human right, the right to their own home.

Wanting to assist in the struggle of each person to realize his/her rights, and in the general achievement of justice and peace, which is the aim of every democratic society, the Catholic Church, at local level as well as in general, has in many ways and by many means achieved results in securing for people a path to their rights, including the protection of the right to return, the right to an 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.

*The commission of the Bishops' Conference of Bosnia & Herzegovina "Justitia et Pax" is working directly within this Catholic Church's effort, 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 in the realization of his/her rights. **In diesem Sinn organisierte unsere Kommission eine Reihe der Studientage und Runden Tische, gab heraus einige Stellungnahmen, mitorganisierte ein Symposium ueber die Menschenrechte, publizierte das Buch und organisierte eine Rechtsberatung.** This report about the state of human rights in Bosnia & Herzegovina is another contribution towards this goal.*

*The commission "Justitia et Pax" 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 group obviously includes the problem of free, sustainable and unimpeded return of refugees and displaced persons, as a precondition of creating a climate of general tolerance; the unemployment and general economic development problem **zwischen 40 und 45%**, whose solution would gradually eliminate the black market and corruption; further on, the 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 as the problem of establishing and strengthening of efficient judicial protective mechanisms, and the control of human rights and freedoms protection.

Summarizing this survey of the general state 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 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 there are several **Bemerkungen** issues that should be taken into account when considering human rights in Bosnia & Herzegovina in the year 2000:

- 1.1. According to *U.N. Charter* and *General Declaration of Human Rights* the issue of human rights and basic freedoms' protection 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 the documents of 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 point out any infringement of human rights.
- 1.2. Since Bosnia & Herzegovina is legally and *de facto* a specifically established state, due to circumstances and the terrible war conflict the consequences of which are felt not just by the citizens and institution of Bosnia & Herzegovina, but by the whole international community, by the signing of *General Comprehensive Peace Agreement* in Dayton, Ohio, in 1995 new institutional mechanisms for supervision and protection of human rights in Bosnia & Herzegovina have been founded. They include the Ombudsman'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 up to now in Luxembourg, Bonn, Sintra, Madrid and Brussels, which are binding for all Bosnian & Herzegovinian institutions.
- 1.4. Bosnia & Herzegovina is, except 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 about the constitutional nature of all three nations (Croats, Serbs, and Bosniaks) on the whole territory of the state Bosnia & Herzegovina. By this the provisions according to which the Federation of Bosnia & Herzegovina was designed as an entity of Bosniacs and Croats, whereas the Republic Serbian was designed as an entity of Serbians only were proclaimed unconstitutional. This important step will make possible an easier 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 has a direct responsibility as well as mechanisms for the implementation the General Comprehensive Agreement for Peace in Bosnia & Herzegovina signed in 1995 in Dayton, Ohio, set the following problems as priority for the year 2000¹ **die wir in Gaenze bringen:**

- 2.1. Continue the 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 continue with support to exhumations and cooperation with the Tribunal. (UNMIBH, OHR, OHCHR).
- 2.2. Political interventions geared to secure **implementation of property laws** to facilitate the return of displaced persons. There should exist a mechanism, as a part of this, producing 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 aimed at enabling the same access to public services; as well as new efforts to enable access 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 Republic Serbian, 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 whole of Bosnia & Herzegovina, aiming at introduction of a new syllabus and curriculum for the school-year 2000/2001. The continuation of the revision and corrections of text-books, connected to continuous intervention to secure ethnic classroom integration and access to refugee children to educational facilities. (OHR, OSCE, UNHCR, CoE).
- 2.6. Continuation of efforts **to lessen discrimination on any basis happening when seeking employment**, through promoting "Just Principles of Employment" and implementation of "Project of Conditional Investment". Revision of the Law of Labor in Republic Serbian 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. Continue with efforts **to make it possible for the retired persons to realize their rights within the retirement insurance**, through efforts to establish a corresponding

¹ 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 Protection of Human Rights (Jan. 20, 200).

- legal framework (harmonization of entity laws, enactment of a new law in Republic Serbian in accordance with the Constitution of Bosnia & Herzegovina and standards of human rights, as well as enactment of a law on the state level which would regulate basic retirement rights and the cooperation of the three funds), through efforts to unite retirement funds, as well as through monitoring the agreement which should be concluded among the three funds. (OHR, UNHCR, OSCE, OHCHR).
- 2.8. Political interventions **to enable all citizens the use of electricity, water, gas and telephone**, without any discrimination. Implementation of the decision of High Representative of July 30 about re-connection of telephone lines. (OHR, OSCE, UNHCR).
 - 2.9. Legal revision and interventions **to enable non-discrimination in medical protection, in policy and practice**, connected to inter-entity cooperation in the area of health protection, and support to creation of an affordable medical insurance. Support to local government in setting up a program of HIV (AIDS) education. (OHCHR, UNMIBH, CoE).
 - 2.10. Set up a mechanism for assessment of conditions for return, to ensure safe and dignified return of the displaced. (UNHCR).
 - 2.11. Monitoring of 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 of laws' implementation, like entity laws on amnesty, to ensure non-discrimination in policy and practice. (OHR, UNHCR, OSCE, UNMIBH, OHCHR, CoE).
 - 2.13. **Continuous build-up of 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 Republic Serbian; 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 the Republic Serbian; help and promotion of amendments to the *Criminal Law*, and *Law of Criminal Procedure* in Republic Serbian; as well as enactment of the *Law of Witness Protection / Law of Identity Protection* in Republic Serbian. (OHR, UNMIBH-JSAP, OSCE, The Council of Europe).
 - 2.14. **Continuous build-up of institutions which will help in establishment of rule of law**, through implementation of 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 Republic Serbian, including training in both entities; continuation of efforts leading to revitalization and enlargement of the suspended Commission for Advancement of Inter-Entity Legal Cooperation regarding mechanisms for verdict implementation in civil cases (OHR, UNMIBH-JSAP, OSCE, The Council of Europe).
 - 2.15. **Continuous support to efforts in capacity building in the area of rule of the law**, through help in creating viable local structures to give accessible legal aid; strengthening

of existing programs for legal help (Commission for Legal Help - Benefits Commission) through its establishment as a local legal institution, partly through creating a law on legal help, and partly through securing financial support until it could be handed over to the Government; securing more long-range viable funding of legal help sector (legal advice and legal help) in general, through establishment of a fund for legal help; increased local and existing international legal information and materials should be made available to judges, trainees and 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. **Continuous 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 minority population members, uniting parallel police structures and creating common institutions, as the State Border Service. The strategy of registering total police personnel by IPTF and abolishing temporary authorizations for police work in cases of policemen who do not correspond to even minimal standards will be continued. (UNMIBH, OHR, The Council of Europe).
- 2.17. **Continuous monitoring** of selected cases and the general behavior of local authorities and local police, to assess success of the above efforts. In practice, monitoring court and other agencies which do not fulfill their obligations, with the aim of possible dismissal and criminal prosecution, continuation of monitoring 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 centers for legal help, UNMIBH).
- 2.18. **Continuous 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. **Continuous law revision**, to ensure adherence to *European Convention of Human Rights*.
- 2.20. Full **implementation of Bosnia & Herzegovinian Law of Immigration and Asylum** especially regarding production of sub-acts and instructions on local and entity levels, which would regulate in detail the application of the Law; establishing of 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 on a higher level to ensure instant and full implementation by responsible local authorities of decisions made by the *Human Rights' Chamber*, reports of *Bosnian & Herzegovinian Ombudsman* and *Federal Ombudsmen*. 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 /in further texts CoE/).

- 2.22. Secure strengthening of human rights' institutions, through 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 opinions of Venice Conference about the future of human rights' mechanism 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. Promote cooperation between representatives and local authorities, and encourage authorities to ensure adequate funding, especially for the representative in Republic Serbian. 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 on all levels to information and documents. (OHR, OSCE, CoE).
- 2.25. Promote enactment of laws on the state and entity levels (Republic Serbian and the Federation) regarding corresponding institutions of ombudsman in the first part of the year 2000. (OHR, OSCE, CoE).
- 2.26. **Ensure the enactment of the Law of Associations and Foundations** on the state and entity levels to make a legal framework possible for non-governmental organizations (NGOs) throughout the country. (OSCE, OHR, OHCHR, UNHCR, CoE).
- 2.27. **Promote cooperation between agencies working at ability improvement of NGOs** and other civic society members to be active in the area of human rights by establishing a Coordinating Group of Boards of organizations involved in human rights for NGOs and the civic society. (OSCE, OHR, OHCHR, UNHCR, CoE).
- 2.28. **Increase 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. **Continue training about the *European Convention of Human Rights***, especially for lawyers involved in legal help, 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 elaboration of concrete proposals for the protection of journalists. (OHR, OSCE, CoE).
- 2.31. Which of these tasks were performed and which were not, and what was the practical use of those formally performed, will at least partly be demonstrated in this short report about the state of human rights in Bosnia & Herzegovina in the year 2000.

3. The State of Human Rights in Bosnia & Herzegovina in the year 2000.

3.1. The European Convention.

Article II (2) of the Constitution of Bosnia & Herzegovina runs 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 Bosnia & Herzegovinian Constitution in itself makes possible a foundation for **theoretische** ensuring implementation of international standards for human rights' protection. **Damit ist die gesetzliche Grundlage fuer die Menschenrechte gesichert. Leider vieles ist ein toter Buchstabe am Papier geblieben. Einiges im institutionellen Sinn ist doch gelungen, wie folgt.**

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 review 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 *Human Rights' Chamber*, *Offices of Ombudsmen* and *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 **Ministry of Human Rights and Refugees**. Article 39 of the *Law of Council of Ministers and Ministries in Bosnia & Herzegovina* runs: "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 coordinates issues of refugee rights and in this cooperates with entities.". Taking into account that the authorities of common bodies (on 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 on lower levels **Entitaetsebene** 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 build-up of Bosnia & Herzegovina goes further, this body should be seriously reckoned with in the improvements of the state of human rights.

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 members². Eight members are appointed by the Council of Ministers of the Council of Europe, four by the Federation of Bosnia & Herzegovina, and two by Republic Serbian. The Chamber had its first meeting on March 27-29 1996. All the decisions of this Chamber are binding. Decisions made in this year include retirement rights,

²The members are: Prof. dr. Rona Aybay, Turkey, Mr. Hasan Bali}, B&H, Mr. Mehmed Dekovi}, B&H, Prof. dr. Giovanni Grasso, Italy, Mr. Andrew Grotrian, Great Britain, Mr. @elimir Juka, B&H, Prof. dr. Viktor Masenko-Mavi, Hungary, Mr. Jakob Moller, Island, Prof. dr. Manfred Novak, Austria, Mr. Miodrag Paji}, B&H, Ms. Michele Picard, France, Prof. dr. Vitomir Popovi}, B&H, Prof. dr. Dietrich Rauschning, Germany, Mr. Mato Tadi}, B&H.

employment rights, freedom from arbitrary arrest and detention, tenant and property rights, 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 50% for retirement pensions of former members of Yugoslav National Army (JNA) 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 *European Convention for the Protection of Human Rights*, there was no right of ownership. Generally speaking the implementation of the Chamber's decision has improved from 10% where it stood at the beginning of 1999 to present 60%, mostly because of the implementation of amendments brought in July 1999 to the regulations connected to JNA apartments. However, the progress was general in the Federation, since in the period covered by this report many decisions have been implemented concerning tenants' rights and compensation. Beside that, the Federation is at the moment paying compensations according to decisions made. Republic Serbian is slower in the fulfillment of its obligations originating from decisions made by *Human Rights' Chamber*. An example of such stalling is the case of *Islamic Community vs. Republic Serbian* (CH/96/29) from June 1999. Human Rights' Chamber has ordered the Government of Republic Serbian 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. Besides that, in the first case before the Chamber, "*Matanovi} vs. Republic Serbian*", regarding the disappearance of a Catholic priest in Republic Serbian, the government bodies should have established his fate, that is where Reverend Matanovi} was. This decision has also not been implemented. More recent cases which have not seen implementation yet include another case of "*Islamic Community vs. Republic Serbian*" (CH/99/2177), containing 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 inquiry into 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 property rights of the owners of foreign-currency bank accounts with old savings.³

3.2.3. **The Office of ombudsman for human rights** is actually the other part of *Commission of Human Rights of Bosnia & Herzegovina*, together with the *Human Rights' Chamber*. The Ombudsman's office has in its competence deliberation on infringement of human rights from the European Convention of Human Rights, and other discrimination in the use of these rights, according to numerous international documents and standards. The permanent council of OSCE appointed on May 1 2000 the new ombudsman 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 Ragu`, Vera Jovanovi}, and Esad Muhibi} have, as ombudsmen of the Federation of Bosnia & Herzegovina given an important contribution to elucidate many cases of human rights' infringement in the past several years. Their reports are publicly present whenever human rights are discussed. Just before she left, Ms.

³ Vgl. Jahresbericht 1999 des Hauses fuer die Menschenrechte, Sarajewo Februar 2.000.

Gret Haller appointed the first three ombudsmen for Republic Serbian, on March 28, and they are still setting up their offices in Republic Serbian⁴.

3.2.4. **Commission for Property Claims of Displaced Persons and Refugees** is responsible for approval of property rights of displaced persons and refugees. 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 reach 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 Republic Serbian. 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. Here we shall briefly present the number of claims ("cases") to solve human rights' infringements which have been till now presented to the Human Rights' Chamber, Office of Ombudsman for Human Rights, and the CPC, as well as the number of solved cases.

	Human Rights' Chamber	Ombudsman's Office	CRPC
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 on the level of Bosnia & Herzegovina and Republic Serbian), and the *Center for Human Rights* functioning at Law School in Sarajevo.

3.2.7. *Unsere Kommission hielt den Runden Tisch auf das Thema: Menschenrechte – ein Traum der Schwachen oder eine Verpflichtung der Starken? Unter den Vortragenden war auch die Abgeordnete im Europaparlament Frau Doris Pack. Unsere Kommission war Mitorganisator eines Symposiums auf das Thema: Menschenrechte und die Katholische Kirche, das von 27- bis 29. April 2000 abgehalten wurde. Unter dem gleichen Titel gab sie ein Buch mit heraus. Einen Hinblick auf das Wirken der Katholischen Kirche waerend des Krieges in BiH bot die Kommission bei einem Runden Tisch am 11. Dezember 1999 unter den Thema: Das Wort und Werk der Katholischen Kirche im Krieg in BiH. Daraus entstand ein dokument unserer Kommission unter dem Titel: Katholische Kirche vor, waerend*

⁴The three ombudsmen who have been temporarily appointed for the period of twelve months in Republic Serbian are Franjo Crnac, Darko Osmić, and Slavica Slavnić.

und nach dem Krieg, das am 10. Dezember 1999 der Öffentlichkeit vorgestellt wurde.

3.3. The Return and Property Rights

3.3.1. The return of refugees and displaced persons is momentan the most important problem in Bosnia & Herzegovina. Around two million people had been moved gewaltig vertrieben oder human uebersiedelt 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% have been realized in the Federation of Bosnia & Herzegovina, and only 18.4 in Republic Serbian. 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 Republic Serbian this number is around 8%, consequently 92 % of the population in this area is not in position to return! According to data published officially by the top echelons of the Catholic Church, out of displaced 200,000 Croats from Republic Serbian, there are data about the return of 2,500 Croats - Catholics to Republic Serbian, or 1.25%. Still, in only first three months of the year 2000 there was registered a total of 7,377 so-called minority returns⁵ 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 for displaced persons in the area where the majority population belongs to the same nation as displaced persons. The greatest number of such settlements are in the Herzegovina, in municipalities Mostar South, Čapljina and Stolac, although they exist in other places as well. The problems of return are various, like arson of returnees' houses, intimidation, destruction of property, bis zur Ermordung der Rueckkehrer etc. Many responsible 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 make decisions of the fate of citizens and nations of Bosnia & Herzegovina. The situation at present is such that around 100,000 citizens left Bosnia & Herzegovina after the war (!) through *International Organization for Migration* (IOM), and according to a questionnaire of a UN program for the young, around 62% of young people wants to leave Bosnia & Herzegovina.

3.3.2. The problem of property rights in Bosnia & Herzegovina is connected to return results. Final and legally valid decisions about property are mostly issued 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

⁵ wo ein Volk als eine Minderheit auf der lokalen Ebene lebt

nationalization produced by the Communist government after World War II.⁶ 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 it is also the decision of the High Representative Wolfgang Petritsch to abolish laws that dealt with these issues in Republic Serbian. In the Federation of Bosnia & Herzegovina as well, a draft of a de-nationalization law 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 all physical and legal persons 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	Republic Serbian	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 year 2000. The numbers do not include Brčko District. The numbers are based on reports filed by municipalities and only show general trends.

3.4. Court system and law implementation

Court system in Bosnia & Herzegovina is very weak and unorganized. Traces of corruption are not infrequent, and throughout the year 2000 the whole 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 of a reform of the judiciary. Many foreign and local experts are for some time preparing a number of measures which would improve the judiciary situation, but legislative bodies only rarely and too slowly issue acts which could speed up this process. According to expert recommendations, the key problems in the establishment of an independent and unbiased judiciary are in the formation of Court Commissions in the Federation and Higher Court and Prosecution Councils in Republic Serbian. The only important breakthrough in this area in this year happened in the Herzegovina/Neretva Canton, which is the one with a special regimen (a mixed canton with Croatian and Bosniac majority), in which, after many obstructions, all Court and Prosecution bodies were established, on the municipal as well as on 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 would be imposed by the Office of the High Representative. Generally speaking, this applied to laws on the state level, such as the laws about a 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, monitored by the UN Mission in Bosnia & Herzegovina as well, about abuse of authority and criminal behavior on the part of the police. In spite of the fact that their

⁶ Auf dieses Thema wurde ein Runden Tisch am 9. Dezember 2.000 abgehalten unter dem Titel: Privateigentum und Restitution. Das Thema der Restitution wird im speziellen Beitrag fuer das kommende Jahr sein.

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 then generated 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 the Area of Former Yugoslavia.

This point is being mentioned here only because of its importance for the Bosnian & Herzegovinian society generally. 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 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. **Obwohl auf die Kriegsverbrecher manchmal auch von einer nationalen und nicht allein von einer objektiven Ecke gesehen wird, es duerfte die Tatsache nicht uebersehen werden, dass die Buerger und Politiker erwarten, beim Fangen aller Kriegsverbrecher auf die Reziprotitaetsprinzip zu achetn, weil es sie auf allen Seiten gab.** 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. Carla del Ponte, the chief prosecutor of the Hague tribunal during a visit to Bosnia & Herzegovina asked for the formation of special units to arrest all the indicted for war crimes. The main indicted, 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 from 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 (Republic Serbian), areas bordering with 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 wherethese people missing in the war, or their remains are . Due to such a situation, the Chamber of Human Rights has recently ruled that the Government of Republic Serbian 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 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 small because the potential foreign investors are not interested to invest 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 is 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 the organized one. 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 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 themes 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 a subject about human rights and freedoms 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.⁷ Although after democratic processes came 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, 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 of three million inhabitants!) in this part of the world, and, on the other hand, is unfortunately among those countries in which reading of the press is on 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 of 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 had been on the air. Bosnia & Herzegovina has an *Independent Media Commission* (IMC) which is exclusively in charge of all broadcasting permits and 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.

⁷ Wegen der Verbesserung ihres Ansehens in der Gesellschaft und wegen ihres Beitrages den gesellschaftlichen Themen und Problemen in der schweren Situation wurde Interreligiöse Rat von BiH formiert, der gewiss einige positive Resultate bisher erzielen konnte.

3.10.3. The following table presents kinds of threats and the area where they occurred⁸

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

3.10.4. Of the total 104 cases reported, it was noted that 95.2% of cases were done 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 promotion of single ideas and political programs than in the service of informing the public and creating links with the rest of the world.

⁸ Source: OHR's Report of the State of Human Rights for the Year 2000

4. Conclusion.

It would certainly take years if not decades, if someone wanted 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 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 area⁹, 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 a great help and advice by the Office of Ombudsman for Bosnia & Herzegovina, which ordered the authorities to act in such a manner that the interests of Banja Luka 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).

⁹ Vgl. unser Dokument ueber die Lage der Katholischen Kirche vor, waehrend und nach dem Krieg in BiH, das der Oeffentlichkeit am 10. Dezember 1999 vorgestellt wurde.

5. Appendix

Violation of Property Rights of the Catholic Church and Violation of the Freedom of Religion of Catholic Believers in Diocese of Banja Luka¹⁰

This Special report addresses the usurpation of certain number of premises, located on the territory of the municipality of Banja Luka and the neighbouring municipalities, owned by the Catholic Church.

The basis for this Report is information that was referred 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 inactivity of the competent authorities of the 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 the 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 the Republika Srpska Government and the Minister for Refugees and Displaced Persons in the 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 (´upni pastoralni centar);
- premises at 124, Srpskih branilaca St. in Dervici, Banja Luka (´upni pastoralni centar);
- premises in Barlovci (´upni stan);
- premises at 26, Srpska St. in Banja Luka (samostan redovnica);
- premises at 17, Kajmakalanska St. in Banja Luka (samostan redovnica);
- premises in Aleksandrovac (samostan redovnica) - municipality of Laktaši;
- premises in Nova Topola (samostan redovnica) - municipality of Gradiška;
- premises in Vrbanjci (´upni pastoralni centar i ´upna crkva) - municipality of Kotor Varo;
- premises in Dragalovci (´upni pastoralni centar i ´upna crkva) - municipality of Dobojo;
- premises at 36, Omladinska St. in Banja Luka (crkvena kuća);
- premises in Presnahe, near Banja Luka (dvije crkvene kuće);
- premises in Kozarska Dubica (´upni pastoralni centar);
- premises in Stratinska (´upni pastoralni centar) - municipality of Banja Luka;
- premises in [imi]i (´upni stan) - municipality of Banja Luka;

After she had decided to examine the present case, on 3 November 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 the Republika Srpska to undertake

¹⁰ Das ist eine Stellungnahme (B) 842/00 des Ombudsmanns fuer die Menschenrechte fuer BiH Frau Dr. Gret Haller, die sie am 5. April 2.000 an den President der Republika srpska Milorad Dodik geschickt hat, im Einklang mit 6.Artikel V Annex Nr.6.

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 the Republika Srpska

Article 28 of the Constitution of the 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 the 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 the 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 the 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 recognised human rights and fundamental freedoms, including the rights and freedoms provided in 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 "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 the war-related reasons, significant part of clergy were forced to leave church premises where they had been living and practising 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 neighbouring 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 Diocese of Banja Luka, more than two years ago, have been formally requesting the competent authorities of the 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 took 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 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 the Republika Srpska prevented the catholic clergy from returning into their pre-war premises where they had been living and practising religious worship and, thus impeding the catholic believers to freely utilise their services in those premises.

Accordingly, the Ombudsperson considers that the failure of the competent organs 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 the 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 has 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 the Republika Srpska to undertake effective and appropriate measures to restore the property to them. She, therefore, considers that they are prevented from practising 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 the 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. Unsere erwartungen

Wir sind fest davon überzeugt, dass Ihnen unser erster Bericht dieser Art für das Jahr 2.000, trotz aller Mängel, ein wenig besseren Einblick in die Lage der Menschenrechte in Bosnien und Herzegowina (BiH) ermöglichte. Unserer Kommission *Justitia et pax* der Bischofskonferenz von BiH sind wohl bewusst unsere geringe Position und bescheidene Möglichkeiten. Deswegen trauen wir uns gar nicht am Ende dieses Berichtes irgendwas laut zu fordern, sondern wir möchten im guten Glauben und wohlwollender Hoffnung unsere Anregungen und bescheidene Vorschläge zum Ausdruck bringen. Diese verbinden wir dies Mal n erster Linie mit den internationalen, danach mit den heimischen staatspolitischen und religiösen Faktoren, um auf diese Weise alle positiven Kräfte koordiniert im Durchführen, Verteidigen und Schützen aller Grundmensenrechte für jeden Menschen und jedes Volk in BiH zu vereinigen.

Jede einzelne Person in diesem Land, jeder sein Verein, alle seine Institutionen und Strukturen, die ganze Gesellschaft und alle Religionsgemeinschaften hätten sich bewusst und aktiv in diesen Prozess einbinden lassen müssen und nicht allein passiv zu warten, dass ihnen jemand anderer dies ermöglicht und sichert. Um zu ermöglichen, dass eine große Mehrheit der Menschen aus einem passiven Zustand ins aktive Mitarbeiten in diesem Prozess übergehen können, ist absolut zuerst notwendig die Menschen zu erziehen und zu belehren, welche sind ihre Grundmensenrechte und welche sind die konkreten Rechtsmechanismen in diesem Land im Prozess ihrer Verwirklichung. In diesem Gebiet sind offensichtlich einige Fortschritte zu unterstreichen, aber das Ziel ist noch immer weit weg entfernt.

Unsere Wünsche und Erwartungen verbunden mit dem Bericht für das Jahr 2.000 fokussieren wir dies Mal auf die internationale Gemeinschaft und ihr Beitrag der Lage der Menschenrechte in diesem Land. Unser Bericht zeigt klar ihre wichtigste Rolle in diesem Prozess. Es ist uns wohl bewusst, die enorm große positive Bedeutung der internationalen Gemeinschaft für den Frieden und die Stabilität in diesem Gebiet. Es ist uns sowohl bewusst, die großen persönlichen Opferbereitschaft und Entsagung, die enormen materiellen Investitionen, die wichtige humanitäre Hilfe, als auch nicht selten Zeugnisse der Liebe und Sympathie gegenüber diesem Land. Es ist uns weiter bewusst, dass die internationale Gemeinschaft nicht eine allmächtige sei, und dass sie im wesentlichen abhängig von der Zusammenarbeit und dem Wohlwollen der heimischen staatspolitischen Strukturen ist. Um noch größeren Erfolg zum Wohl aller in diesem Land zu erzielen, wagen wir uns mit guten Absichten und großer Achtung und Dankbarkeit für alles bisher Gemachtes von der Seite der ganzen internationalen Gemeinschaft, von SFOR Truppen und humanitären Organisationen, einige Anregungen zum Nachdenken anbieten.

Es ist eine Tatsache, dass die internationale Gemeinschaft kein Protektorat *de jure* aber *de facto* in diesem Land übernommen hat. Sie ist im wahren Sinne des Wortes ein *fac totum* in der Verabschiedung der Gesetze oder wichtigen Entscheidungen in BiH. Das Parlament von BiH verabschiedet die Gesetze entweder im Einklang mit der internationalen Gemeinschaft, entweder sie erlegt die Gesetze auf, nachdem sich die Parlamentaria dieses Landes nicht einigen können, oder sie wechselt die legal gewählten Abgeordneten und hochrangigen Funktionäre usw. Deswegen ist die internationale Gemeinschaft *de facto* in einer Protektorrolle und als solche die verantwortlichste Instanz für das konkrete Durchführen der gesetzlichen Normen. In der west und mittel europäischen Rechtstradition unterscheidet man zwei Durchführungsprinzipien der gesetzlichen Regulative. Das ist einerseits die Wirkung im Sinne des Geistes und andererseits des Buchstaben des Gesetzes. In diesem Sinn erwarten wir, dass die internationale Gemeinschaft die Gesetze nach ihrem Buchstaben nicht dort anwendet, wo die Anwendung nach ihrem Geist größere Leistung gebracht hätte und umgekehrt, dass sie die Gesetze nach ihrem Buchstabe dort anwendet, wo die Anwendung nach

ihrem Geist erfolglos und uneffektiv bleibt. Es dürfte nicht passieren, dass gegenüber den einen immer nach dem Geist und gegenüber den anderen immer nach dem Buchstabe die Gesetze angewendet werden. Das Schlimmste, unserer Meinung nach, ist, wenn die gleichen Gesetze in der gleichen Anwendungsart, für die gleichen Taten, nicht immer gleich angewendet werden.

Es ist eine Tatsache, dass BiH mit dem Rahmen Friedensvertrag von Dayton nicht als ein Staat mit zwei politischen Systemen definiert wurde. In der Wirklichkeit aber erscheinen so mit dem Vertrag von Dayton anerkannte zwei Entitäten in BiH. Das ist auf der einen Seite die Föderation BiH und auf der anderen Seite Republika srpska. Rechtlich gesehen sind diese zwei Entitäten fast wie Staaten im Staat rangiert. Die meisten Konfrontationen kommen aus den nicht identischen Rechtssystemen der Entitäten gegenüber dem Staat BiH heraus, der durch den Vertrag von Dayton mehr symbolisch als real haltbar definiert wurde. Während wir in der Föderation BiH ein dezentralisiertes Rechtssystem mit zehn Kantonen haben, haben wir zur gleichen Zeit in Republika srpska ein zentralisiertes Rechtssystem ohne Kantone. Das serbische Entität hat auch kein Haus der Völker, dessen Rolle darin besteht, die wichtigsten Interessen der konstitutiven Völker in BiH zu balancieren. Der oberste Gerichtshof von BiH anerkannte die Bosnjaken, Serben und Kroaten für die konstitutiven Völker auf dem ganzen Gebiet von BiH. Von der internationalen Gemeinschaft erwarten wir, dass sie in dieser konfuse und sehr sensible Rechtsituation in BiH noch konkreter und entscheidender die Annäherung der Rechtssysteme beiträgt, da es ohne dies keine haltbare Rückkehr und ohne solche Rückkehr keine dauerhafte Lösung und kein Frieden in diesen Gebieten geben kann.

Es ist Tatsache, dass viele Mitglieder der internationalen Gemeinschaft hier gut leben und gut verdienen. Wir möchten glauben, dass sie nicht allein wegen des guten Lebens und guten Verdienens nach BiH gekommen sind. Sie müssten immer tiefer und nuancierter die Mentalität, Kultur, Sprache und Geschichte aller Völker in BiH kennen lernen. Sie müssten dezidiert die Wünsche und Begehren von den real begründeten Rechten und Pflichten eines jeden Volkes in BiH unterscheiden können. Es ist zweifellos gefährlich für die Vertreter der internationalen Gemeinschaft sich mit einem oberflächlichen Wissen über die komplizierten Beziehungen in BiH leicht zufrieden zu geben. Ebenso kann es einseitig und gefährlich sein, ihr Wissen allein aus den politischen Quellen einer Partei und einer Seite zu schöpfen. Ihre Erfahrungen aus anderer Friedenssituationen könnten unter Umständen unfruchtbar bleiben, wenn die spezifischen hiesigen Gegebenheiten unerkannt bleiben. Die Lösungstransplantation müsste nicht immer ein Garant für den Erfolg sein, weil alle Probleme in BiH mindestens dreifach komplizierter sind, als in anderen Ländern.

Es ist ein Tatsache, dass gut arbeitet derjenige, der weit in die Zukunft sehen kann. Wir erwarten von den wichtigsten Verantwortlichen der internationalen Gemeinschaft, dass sie fähig sind weit im Voraus für das Wohl aller Völker sehen zu können. Es ist keine echte Lösung in den befristeten Lösungen. Seit dem kommunistischen Regime sind wir voll von den provisorischen Lösungen. Aber die dauerhaften Lösungen sind nur dann möglich, wenn die richtige Diagnose festgestellt wird und wenn das wahre Ziel klar vor den Augen steht. Erst dann ist es überhaupt möglich die richtige Therapie vorzuschreiben und so den richtigen Weg bis zum Ziel zu finden. Für all diejenigen, die auf einer breiten internationalen Basis hiesigen Völker allgemein akzeptierten demokratischen Normen und Verhaltensregel ablehnen, und sich so destruktiv auf dem Weg ihrer Verwirklichung benehmen, erwarten wir von der internationalen Gemeinschaft energischeres Eingreifen.

Es ist eine Tatsache, dass die Vertreter der internationalen Gemeinschaft Menschen auch aus Blut und Fleisch sind, die ihre Emotionen und Schwächen haben. Trotz dem, hätten sie nicht im Rechtswesen weder einem Druck der Mehrheit, noch einem Mitleid für die Notleidenden und Armen unterlegen dürfen., weil alle drei Völker konstitutiv sind. Sie müssten sich ausschließlich

durch die Verfassungsprinzipien bei der Verabschiedung und Durchführung der gerechten Gesetze, die auf den Grundmensenrechten beruhen, führen lassen.

Es ist eine Tatsache, dass ein gutes Beispiel Gold wert ist. Deswegen erwarten wir von der internationalen Gemeinschaft in BiH, unter der wir auch SFOR- Truppen betrachten, dass sie selbst das halten, was sie uns belehren und uns auferlegen. Die Nationalzeichen hiesiger Völker sehen sie nicht besonders gerne, weil sie diese für eine Quelle der potentiellen Gefahr und Eskalation betrachten. Deswegen wäre es glaubwürdig und konsequent, wenn sie selbst ihre eigene nationalen und staatlichen Zeichen nicht in BiH getragen hätten, die man sonst auf jedem Arm und Kappe der Soldaten, auf der Karosserie jedes Fahrzeuges, sowohl der PKW als auch der LKW, wie humanitären, so auch der militärischen, sichtlich sehen kann. Dadurch geht der Eindruck hervor, dass die Vertreter der internationalen Gemeinschaft zu stark Interesse ihrer eigenen Nationalstaaten hier in BiH proklamieren. Davor müssten sie sich besonders hüten.

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