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INSTITUTION OF THE OMBUDSMAN OF THE
FEDERATION OF BOSNIA AND HERZEGOWINA

**SEMIANNUAL REPORT ON THE
STATE OF HUMAN RIGHTS
(1-6/1996)**

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SARAJEVO, JULY 1996

**REPORT ON THE WORK OF THE OFFICE
OF THE FEDERATION OMBUDSMEN
JANUARY 1--JUNE 30, 1996**

The 1995 annual Report of the Office of the Federation Ombudsmen provided a comprehensive review of the structure of human rights violations in the Federation of Bosnia-Herzegovina. In it, we reported by separate categories the types of human rights violations for which over 5,700 citizens requested our assistance that year. This number reflects the citizens' growing trust in our institution, but it also served to confirm our suspicions that human rights violations in the Federation are on the increase. We concluded that the Federation Constitution is not being implemented by the authorities--a situation in which politics still dominates over the rule of law.

The six-month period after the signing of the Dayton Peace Accords (DPA) did not mark an improvement in its civilian implementation, while the human rights situation worsened. The Federation authorities are obliged by Article 2 of the Constitution to guarantee the highest level of human rights and fundamental freedoms, just as we are entrusted by the Constitution to monitor human rights abuses. Nevertheless, the authorities actively resisted our efforts to monitor human rights compliance, despite repeated assurances to the contrary. For instance, they refused to accept our suggestions, to answer our queries and/or proposals, and even avoided talking to us or to our associates. We were generally obstructed at both municipal and cantonal levels, this creating a false impression that the local power lords were the obstacles. Through our work, however, we have come to believe that local power lords are not exclusively responsible for the worsening human rights situation--they are under direct influence from the decision-makers in the highest levels of government.

In addition to our monitoring role, our Office is entrusted with eliminating, where appropriate, the causes of human rights violations. In those cases where our analysis determined that particular legislation is a source for violations, we demanded that the authorities adjust such laws to the Constitution and to the DPA norms. In the cases which affected the rights of individual citizens, we demanded co-operation from the authorities and acceptance of our recommendations. As means of pressure in both cases, we utilized the publishing of our findings and recommendations in the media, as well as by providing timely reports of human rights abuses to the OSCE. Unfortunately, the authorities most often did not accept our initiatives.

Although the Federation's legal system functions only nominally and in part, we continue to urge the Federation's political leaderships (both in the territories under control of the Bosnian Army as well as under the Croat Defence Council--HVO) to fulfil their constitutional obligation and request the municipal and cantonal authorities to co-operate with our Office. Such co-operation is important to ensure the success of the forthcoming elections, in which the Ombudsmen's Office has an important monitoring role. For instance, it will make more effective our monitoring of the right to freedom of movement--the implementation of which is essential to the validity and success of the elections, as well as to annul the results of ethnic cleansing.

Indeed, in the past 6 months, we concentrated our work on eliminating obstacles to the right of free movement. We identified those government organs which consistently violate it, and through our casework addressed the issue of the return of refugees, their restitution, and/or restoring the right to their property. Our findings show that the worsening situation regarding freedom of movement makes it necessary for a more active involvement by IFOR, as well as for more direct pressure on the Federation authorities by the High Representative. We strongly believe that the time has come for a resolute stand on the part of the international community to ensure freedom of movement.

Many citizens have conveyed to us a tangible fear and an uncertainty regarding the authorities' misapplication of the Amnesty Law. The government continues to arrest citizens and charges them for war (and other) crimes from which they must be excluded under the Amnesty Law. Such practice points to the validity of our conclusion expressed earlier at meetings within the OSCE, the Office of the High Representative, and elsewhere, of the necessity to create a neutral body that will monitor implementation of the amnesty provisions of the DPA and the Rome Agreement. In the meantime, the police and local courts continue to arrest and bring law suits against citizens, despite the fact that the Hague Tribunal has not been informed of them, or that it had found no grounds for their arrest. The fear and uncertainty directly affects freedom of movement not solely for men of military age, but for their families as well--a large number of citizens. The recent arrests of citizens in Sarajevo, Mostar, Kiseljak, Zenica, Tomislavgrad, Bihac, and other places, in great part block free movement because the arrested serve as examples for others not to realize this guaranteed right. The existence of unpublished "wanted" lists for individuals that the authorities have marked in Republika Srpska and in the Federation, create a chaotic situation that most directly impedes freedom of movement.

Freedom of movement is further impeded by the work of local and military police, which at times act in tandem. Namely, after IFOR eliminated earlier check

points from the major Federation roads, the local police greatly concentrated units within short distances, and continued the practice of checking people and goods under the excuse they check the technical conditions of vehicles). Our field officers have reported their suspicion that such road controls are not performed according to the rules set out by, nor are properly if at all reported to, IFOR. We have found little evidence that IFOR controls such check points. So focused is the police to checking vehicles at city entrances or in the cities themselves, that often it claims it has not enough policemen to intervene when public order is disturbed. Such excuses the police used when citizens from the Sarajevo suburbs complained they were harassed.

Throughout the Federation territory, the problem of the police's refusal to cooperate with our Office was very pronounced. Based on the information gathered from case work in all of our field offices, we have determined that the police is the greatest violator of human rights. The police not only does not protect the citizens' physical well being and property, but it actively participates in criminal activities.

There are many reasons for such police behaviour. The primary is that the police forces are composed of members of one ethnic group in different territories controlled by the major nationalist parties. A joint Federal police force has still not being constituted that will allow the Minister of the Interior and his deputy-- both are of different nationality--to give it orders on equal footing. The separate police force of "Herceg Bosna" consists solely of Croats, and the police in the territories under control of the BiH Army almost exclusively of Muslims. As a consequence of such composition, territories where Croats and Muslims are in the minority respectively, can not count on the police to protect neither their most basic human rights such as the right to remain in their places of residence. We found this problem to be particularly pronounced in West Mostar, Capljina, Bihac, Zenica, Bugojno, and especially in the re-integrated suburbs of Sarajevo (Ilidza, Ilijas, Vogosca, Grbavica).

For it was exactly at the re-integrated Sarajevo suburbs that the efforts to establish a joint Federal police force failed. At the time of the re-integration last March, the police in Ilijas for instance was composed of 50 Bosniaks, 33 Serbs, and 7 Croats employed as full time policemen. Now, under orders of the Interior Ministry which in turn is under direct control of the ruling political party SDA, there are 117 Bosniaks and 7 Croats. As a consequence of this policy and the police's refusals to protect them, those Serbs that remained in the re-integrated areas now solely trust the IPTF. The Serbs continually undergo attacks and acts of theft and vandalism during the official curfew, and threats that they will be arrested for war crimes. Unidentified persons forcefully enter their apartments

saying they are policemen, conduct searches, interrogations, and physically mistreat the inhabitants, often cut off the telephone lines, and the like. Attacks on sacred buildings and objects have increased as well: the churches in Ilijas and Reljevo had been set on fire, while many graves had been desecrated or destroyed since the re-integration. Consequently, 30 families have left from Vogosca, 25 from Ilidza, and Over 100 persons from Ilijas.

We have also gathered information of the police's failure to protect Croats from similar attacks, the most drastic example being in the town of Bugojno. Even though the concentration of police forces increased during the religious holiday (*Manifestacija Ajvatovica*)*, two houses owned by Croats were stoned. Later on, explosive devices were thrown at several houses in the suburb of Lug that were rebuilt by the Swedish Caritas, as well as on a business owned by a Croat. A Catholic church in the nearby village of Humac was burned down. Such police passivity we discovered in rural areas as well, such as in the village of Ozmice (Zepce municipality under control of the HVO) and in Podbriježje (Busovaca area under control of the BiH Army), where theft and destruction of property against minority populations is rampant. Only in Ozmice 56 houses have been destroyed while the police did not investigate or acted preventively in neither of those cases. Similarly, we received many complains against refugees and displaced persons now returning to areas formerly within the Republika Srpska such as Vitez, Jajce, Travnik, Vares, Bugojno, Busovaca, and others, for stealing the entire house property and personal belongings in their temporary places of residence.

Through our case work, we discovered that the military police does not provide protection to citizens when their rights are violated by soldiers of the BiH Army or the HVO. For instance, the military police in Kakanj had refused to arrest and interrogate a member of the special forces of the BiH Army who on April 5 shot at a group of children age 14-17 for no apparent reason, heavily wounding one. Assisted by his friends after the shooting, the soldier had brutally beat the children, throwing the wounded one in the sewer mistaking him for dead. In Podbriješce, a village with mostly Croat population, 50 members of the BiH Army unit "El Mujahadeen" composed of soldiers from Libya, Sudan, Iran, and other counties, in addition to harassing the local Croats, forcefully occupied houses there and placed in their families. Soldiers of this unit had previously forcefully occupied houses of Serbs near Zavidovici. Similarly, in West Mostar, we had gathered further evidence that the HVO military police forcefully enters apartments, harasses, and evicts former members of the JNA and their families.

Human rights violations also occur due to the authorities' illegal non-recognition of identification documents. The Federation authorities are obliged by numerous agreements (and by the conclusions reached at the Joint Civilian

* Islamic shrine

Commission at the High Representative's Office) to respect all IDs until an agreement for their standardization is signed. Yet, even though the agreement reached between the parties on June 13, 1996, specifies no ID can be taken away from any citizen, the police practices exactly the opposite. In one case for instance, the Federation police took the car plates from a citizen living in Republika Srpska on a visit to the Sarajevo suburb of Vogosca. The police in "Herceg Bosna" continually inhibits freedom of movement by stopping cars with "R[epublika] BiH" plates, and this practice is the same throughout the Federation. Now there are no police stations (*policiski punkтови*)*, but patrols continually stop and check vehicles that have plates from the "other side." We have been particularly concerned at the total discrimination against Bosniak Muslims regarding freedom of movement in Pözor, Stolac, Capljina, and Neum municipalities.

An increasing number of citizens complained they are called in by the police for "informational discussions" without even being told the content of the conversation. During these discussions, the police keeps the citizens in the stations for many hours. We have found that such practice is widespread in Sarajevo, where the police often calls in refugees which are visiting their families, or want to get information in order to return to their former places of residence. These "discussions" add to the climate of fear and uncertainty, and negatively impacts those minorities and/or refugees that want to exercise their right to return.

In a large number of cases we worked on in Tuzla, Sarajevo, and Mostar, we found out that the police (civilian as well as military) refuses to carry out the so-called "executive procedure" to evict people which have illegally occupied apartments or businesses. The police enters an argument whether its assistance is called for or not, most often refusing to intervene, while disregarding the fact that the law prohibits it to make such judgements. We would like to illustrate this practice with a case of an illegally occupied business in Tuzla. Despite the formal decision of the local authorities and our numerous interventions since April 1995, the police refuses to evict an illegal occupant of a private property because the owner belongs to the "Union of Veterans." When the illegal occupants are members of the police, the Ministry of Interior even protects the their unlawful deeds instead of treating them as criminal acts.

In certain areas (Sarajevo, Mostar), much of our work concerned dealing with cases regarding problems of obtaining personal IDs by minorities. They are forced to wait several months, and in certain cases in Sarajevo, their right to obtain them was put under question. An increasing number of people that had supported autonomy for Bosanska Krajina under Fikret Abdic faces this problem. The police treats such people as terrorists even though they have not taken part in any terrorist

* police check-points

or similar activities, and refuses to issue them passports. In addition, it confiscates the passports from those individuals that had already obtained them.

The Constitutional role of our Office to protect human rights and fundamental freedoms is particularly pronounced in cases where we worked to annul the results of ethnic cleansing. Through our case work, we practically and continually worked on affirming the right of refugees and displaced persons to return. The DPA, the Washington agreement, the Federation Constitution, and many other agreements guarantee their right to freely return without any preconditions. Unfortunately, the number of refugees and displaced persons that had realized the refugees' right to return in the Federation relative to their total number is negligible. All attempts to ensure return, including initiating pilot programs and signing additional agreements, remain without tangible results due to government obstruction (save for the pilot program in Travnik and the return to the Kuplensko camp).

In fulfilling our aforementioned role to protect the right to return, our job was twofold:

(1) to work on individual cases where this right was directly violated;
 (2) to intervene with the Federation authorities to cease all activities to cease the activities that violate free and safe return. Our interventions begun as early as January at all relevant Federation agencies, as well as with international bodies involved in the DPA's civilian implementation. We requested that the authorities either repeal or adjust certain laws such as the discriminatory Law on Abandoned Apartments, which are an obstacle to the right to return, or whose application becomes a source of violation to this right. Based on our case work, we determined the main causes in impeding the right to return to be as follows:

- 1). Lack of political will on the part of the Federation authorities;
- 2). Severe violations of the right to, and protection of, property;
- 3). Violations to the freedom of movement;
- 4). Malapplying or ignoring the Amnesty Law.

For each category we provide brief explanation by subheading.

1). Lack of political will on the part of the Federation authorities.

It appears that many activities by the authorities in the field are undertaken exactly in order to prevent the refugees' return. The following points to such a conclusion:

(a) the authorities do not want minority refugees and displaced persons to return to the territory they control, conditioning it with the return of members of

their nation to the "other" side. Thus, the Croat authorities emphasize in the media the return of Croats to Vares and Bugojno; the Bosniak authorities emphasize the return of Bosniak Muslims to Stolac and East Bosnia; the Serbs authorities the return of Serbs to Drvar;

(b) the authorities apply the principle of "negative reciprocity." In practice that means that they do not allow the return even of those individuals that have where to return to (for instance have houses they own readily available) and do not "threaten" the status or well being of third persons with their return. In our work we gathered evidence of the authorities misuse of returnee lists for the pilot programs. In Bugojno for instance, the names of dead people were included in the lists;

(c) the authorities close their eyes to the forceful and illegal entry by refugees from other parts of Bosnia-Herzegovina in apartments in their current place of residence such as in the re-integrated Sarajevo suburbs. The government has officially distanced itself from these activities. But from our discussions with people in various collective centers, we found out that the authorities have advised them to "solve your housing problems yourselves." In practice that has meant the refugees can break into others' apartments while the authorities later provide them with documents to show the occupants reside there legally.

Such practice further complicates the already difficult question of the refugee return. Pressure has mounted to close the collective centers, but the authorities have not satisfied minimum conditions for the people that are to leave the centers, and subsequently are forced to break into others' apartments. Illustrative of this situation are the cases of the "Vrbanjusa" and "Bosna" collective centers in Sarajevo;

(d) unwillingness of the authorities to bring the existing Law on Abandoned Apartments into compliance with the DPA, as well as to respect the human rights provisions of the European Convention for Human Rights;

(e) excessive bureaucratic demands on the refugees. The administrative practice requires of the refugees which want to return an increasing number of documents they can hardly, or sometimes can not at all, obtain. The latest cases in Sarajevo show that a refugee or a displaced person can not even get humanitarian assistance without a document from the owner of the apartment in which the refugee is temporarily occupying. If a refugee does not have all the "necessary" papers, the housing authorities refuse to accept the request for return which is in contradiction with the Law of Executive Procedures. Namely, the housing authorities are not allowed to refuse to accept an application; they can request additional information, reject an application allowing the applicant to use a complaint procedure, etc.

2). Severe violations of the right to property

The greatest number of citizens' complaints concern two categories of cases involving:

- (a) violations of the right to an apartment (occupancy right);
- (b) violations of the right to personal belongings, and real estate.

In addition to the existing discriminatory laws such as the Law on Abandoned Apartments, our case work allowed us to determine patterns of violent behaviour including:

-- devastation, looting, and burning of property after the return of some refugees to their places of residence. The violators steal all or close to all of the belongings from the refugee's house or apartment, here including parts of the house (roof tiles, doors, windows, etc.) so as to prevent the holder of occupancy right or the owner of the house to return. The passive stance of the police while these activities take place is highly symptomatic of the authorities' attitude toward this problem.

-- threats, violence, and forced entry into apartments by "out of control groups," which are, according to the findings from our casework, very much under control of the authorities. Civil and military police or employees or "paramilitaries" take active part in such criminal activities. The government is silent regarding this problem, and does not try to find out the perpetrators, does not initiate criminal charges or disciplinary measures against them. This practice is particularly visible in the re-integrated Sarajevo suburbs, but is present throughout the Federation.

-- arbitrary treatment of deadlines set out by the Law of Abandoned Apartments and the Law of Abandoned Property. The authorities rigorously respect the deadlines set out by Article 10 of the Law on Abandoned Apartments, without checking relevant facts. By being so rigorous, the authorities were able to declare at least 6,000 apartments as being "abandoned" during the first 6 months of this year. However, the municipal authorities do not respect the deadlines of 3 and 8 days set out by Article 26 of the Law on Abandoned Property. They are particularly inert in the smaller towns where there is the greatest number people privately own their houses. The very fact that the discriminatory Law on Abandoned Apartments is applied today has resulted in an ever increasing number of apartments determined to be "permanently abandoned."

-- disregard for the existing discriminatory laws regarding property. The authorities misuse the criteria for which an apartment may be proclaimed "abandoned" so that government employees exchange their apartments for better and bigger ones (they are not refugees or displaced persons). Others which have valid reasons to leave the country (e.g. for medical treatment) have their apartments proclaimed abandoned. The employees of the Sarajevo City Secretariat (now cantonal) dealing with housing issues for instance are involved in such misdeeds.

3). Freedom of movement:

We already discussed aspects of the violations to the right to freedom of movement earlier in this report. Our contention remains that violations to this right are the major obstacle to the return of refugees and displaced persons.

4). Malapplying or ignoring the Amnesty Law

The authorities do not comply with Article 6, Annex VII of the DPA, and with the provisions of the Rome agreement. The recent illegal arrests of individuals in Zenica, Tomislavgrad, Kiseljak, Sarajevo, and Bihac, in contradiction to the international instruments, speak for themselves how the Amnesty Law is applied in practice. According to the explanations by courts in the opened cases, investigations are conducted for hundreds of people suspected of war crimes while the factual description is the same for all of them.

In addition to the major aforementioned categories of human rights violations, in the past 6 months we also dealt with abuses of the following rights:

- 1). The right to work. In the Federation, the government has not annulled the condition "immediate war danger." This condition still in force, the Law of Working Relations has provided for increasing powers of the directors of enterprises. Since it is known that the transition of ownership of the state-owned enterprises to privately-owned has not taken place, the war added to the catastrophic conditions for those workers that want to regain employment. An increasing number of employees that complain of the great power of directors, of being illegally fired, of discrimination based on national status or origin. Minorities and/or refugees can hardly, or not at all, realize their right to work. we want to emphasize that the right to work is *sui generis*, similarly as is the occupancy right, regardless of the fact that state/social ownership is the primary mode of ownership in the Federation.
- 2). The right to a fair trial
- 3). The right to equality before the law
- 4). The right to social and health care
- 5). The right to free thought
- 6). The right to life

Vera Jovanovic
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STATISTICS FOR 1996
January - June 1996

Office in Sarajevo

Contacts with 1 380 clients

(through direct meeting, by correspondence or telephone)

OPEN 252 cases for investigation
Violations: 65% occupancy right and right to property
20% right to life and freedom of movement
10% equality before the law (at present, especially right
to work, acknowledgment of documents of the other
Entity, etc.)
5% others

note: We did not open as separate case clients-refugees who submitted requests to return to their homes, but as legal advice

Office in Zenica

Contact with 1 367 clients

(through direct meeting, by correspondence or telephone)

OPEN 521 cases
Violations: 65,11% occupancy right and right to property
14,06% right to equality before the law
7,20% right to social security

Office in Mostar

Contact with 1 935 clients

OPEN 815 cases
Violations: 55% right to work
25,2% occupancy right and right to property
7% right to work

Office in Tuzla

Contacts with 1 000 clients

OPEN 298 cases
Violations: 80% occupancy right and right to property
10% right to work

Office in Bihać

started to work on 27 May 1996

OPEN

Violations:

41 cases

85% occupancy right and right to property
others: right to equality, freedom of movement,
protection against illegal arrest, etc.

Note: in all offices contacts were realized with 5 723 clients

1 927 cases are open

410 cases are closed