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ANNUAL REPORT ON THE STATE OF HUMAN RIGHTS

INSTITUTION OF THE OMBUDSMAN OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

SARAJEVO, FEBRUARY 1996

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In accordance with obligations from the Article II. B. 3. 8. (1) of the Constitution of the Federation of Bosnia and Herzegovina, we are submitting the annual

ANNUAL REPORT
ON
THE STATE OF HUMAN RIGHTS IN THE TERRITORY
OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

The first Ombudsmen of the Federation of Bosnia and Herzegovina were appointed by the OSCE at the end of the 1994, in accordance with the Article IX. 9. e) of the Constitution of the Federation of BH. Officially they started working on January 20, 1995 after having taken a formal oath.

Having analyzed the work of the Ombudsmen over the period of one year, as well as the situation of basic human rights and freedoms, some general conclusions and evaluations can be made.

The Ombudsmen have been working over the last year under extremely difficult conditions, such as communication blockade of Sarajevo (where Ombudsmen's main office is based), shelling and sniping.

Activities on organizational-legal issues took first few months; Passing of Regulations on the work of Ombudsmen and preparations for the establishment of the office in Sarajevo.

Later on, under financial (logistics) and political support of the OSCE Mission to Bosnia-Herzegovina, in May 1995 our offices were opened in Zenica, for the area of Central Bosnia , and in Mostar, for the area of Herzegovina. At the end of October the Office in Tuzla was opened. And the Provisional Suboffice in Velika Kladuša was opened mid of August the same year, based on the Agreement from August 8, 1995, concluded between the Republic of Bosnia and Herzegovina and the Republic of Croatia, because of the big number of people who had fled from the area of Velika Kladuša, Cazin etc. in the Una-Sana Canton, to the Camp of Kuplensko (Republic of Croatia).

By the establishment of such a net of offices (encompassing nearly a half of the Federation territory), a big number of citizens have been given the possibility to approach us asking for help in the protection of their human and civil rights. On the other hand, we have been enabled to monitor the state of human rights and fundamental freedoms more directly, in the areas which our offices cover.

Apart from direct contacts, we have held a large number of meetings with representatives of municipal authorities (We have visited around 80% of municipalities in the area of the Federation). We have not only got the picture of the state of human rights through discussions with them, but we appreciated their readiness for cooperation, which emerges from the Article VI. 6. c) of the Constitution of the Federation. That way we were educating the representatives of the authorities what human rights were, what their obligations were, in terms of the protection of those rights (right to life, right to freedom, right to fair criminal charges and proceedings, right to property, etc.), then the constitutional positions and authority of Ombudsmen, etc.

It has to be stressed that neither the Constitution of the Federation has been implemented so far, nor the federal authorities established, primarily thanks to ruling political parties, i.e., SDA (Muslim) and HDZ (Croat). One of very rear federal institutions, which over the last year was functioning, was exactly the institution of ombudsmen. The failure to implement the Constitution of the Federation continues to be a big brake in our work, but also a source for many violations of basic human rights and freedoms, as is return of refugees and displaced persons to their homes, in the first place. The Federation should finally assume the full responsibility in applying the highest standards of internationally recognized rights and freedoms, i.e., responsibility for the protection of human rights and principles of nondiscrimination, which are envisaged in the Constitution of the Federation. The Institution of Ombudsmen cannot be successful in restoring violated human rights, particularly in annulment of results of ethnic cleansing, if it is facing problems of nonfunctioning of federal authorities, their indifference and acting on their own, what is the consequence of operation of two legal systems (those of the Republic of Bosnia-Herzegovina and so-called Herceg-Bosna), in the territory of the Federation, which are incompatible. To illustrate non-functioning and non-implementing of the Federation, it is enough to say that there is still no the Human Rights Court, nor the Judical Police, as well as the proper federal acts, and without it the system of the protection of human rights cannot be complete.

The consequence of Bosniac-Croat conflict is a large number of expelled Croats and Bosniacs, what resulted in almost ethnically clean areas in the Federation territory. Especially this fact has caused the situation of emphasized discrimination of minorities , almost in all spheres of basic human rights and freedoms. A large number of people who have approached the offices, their petitions and results of checking and investigations lead to a conclusion that minorities (including the mixed marriages), hardly have been exercising rights to their personal safety, protection of their property, freedom of movement, right to work, equality before the law (when getting necessary approvals, passports etc.), or have had difficulties in exercising those rights; during the conflict people who belonged to a minority were digging trenches at the first front line, or they were doing the most difficult physical work in working units.

The return of refugees and expelled people has not started yet. Apart from the return from the Camp of Kuplensko to Velika Kladuša, Cazin and other places in the Una-Sana Canton, a small number of expelled and displaced persons has returned (Travnik about 70, and Jajce only 30), to other areas in the Federation. The most courageous ones, who have returned on their own (like in the area of Vareš), have been treated as second class citizens, and have not succeeded to exercise even the elementary rights to the humanitarian aid, freedom of movement etc.

The agreement on starting the return of expelled people to Jajce, Bugojno, Stolac and Travnik, as it was agreed in Dayton on November 2, 1995, has not been implemented. Although the deadline for the return of 200 people from one side, and 100 from another, according to the agreement signed by the highest authorities of the Republic of BiH and the Federation , and the Republic of Croatia, was November 12, 1995, an insignificant number of families has returned just to Travnik.

This Agreement was meant to be a stimulus for the return of all other displaced persons to their homes, but now it is obvious that it was just a political act.

The principle of reciprocity on a restricted return (so-called pilot projects, i.e., in Bugojno 200 persons, but only in case the same number of persons can be settled in Stolac), is in our opinion unacceptable and contrary to the constitutional principle of **free** return of people to their homes, and in practice it enabled abuses and manipulations (the names of those who had died were on the lists for return, and of those who had returned before; It cannot be decided which criteria have to be met for the return, or who is responsible for permissions, approvals etc., for the return of people to their homes).

A further brake in our work is the stressed domination of politics over law. What was the characteristics of the former regime, that in practice it was political state instead of the one based on law, is nowadays even more obvious! Only the interest of own people is nowadays being articulated into the highest political interest. The state based on law was pushed out. Therefore our results have not been always corresponding to our efforts. In this context problems of the independent judiciary should be stressed. Namely, the number of complaints of citizens about the work of courts is getting bigger and bigger, particularly with respect of fair trial and there is less an less trust in courts, because in practice those are courts, or to be precise court council, which consist exclusively of judges from one nation, representing an absolute majority in certain territory. Mistrust is also due to fact that judges are at the same time the members of the ruling parties leadership. Also Mr. Mazowietzcky pointed out this problem to us, when we met him in May last year.

We initiated a discussion (Round Table) with ABA CELLI on this subject, in order to actualize and stress all the gravity of this problem.

Although the obligation of all state organs and institutions at the federal level is to exercise and respect rights and freedoms, guaranteed by the Constitution, by instruments mentioned in its Annex, and to cooperate with us, we cannot say that state organs have shown
readiness for that cooperation. It was basically a declarative one, and with some exceptions (Ministry of Justice, The Republic Administrative Inspection, Ministry of Urbanism and Protection of Environment), we can conclude that it has failed completely. Extremely non-cooperative are Ministry of Interior, City Secretariat of Housing Sarajevo, and all organs dealing with housing matters in the area of the Federation, some of the military authorities, (particularly the First and Second Corps of BH Army), municipal authorities in Vareš, Čapljina, Bugojno, Stolac, Mostar, Livno, Jablanica...

Their non-cooperativeness was ranging from their unwillingness to accept our suggestions and mediation in the protection of some of violated rights, unwillingness to accept our comments on the fact that some of laws have not been brought into accordance with the Constitution and international convention related to the protection of human rights and fundamental freedoms to the ignoring attitude - the response by the Second Corps of BH Army from Tuzla was:" BH Army is an institution which already has been established, where the issues of accommodation of its personnel are being dealt with in accordance with positive law. Interference of any organ into this system means a disturbance of the system of leading and commanding over the Army, what we, as an institution cannot allow anyone outside the system of Army, even not the Ombudsmen."

The municipality of Vareš did not respond to any of our requests regarding getting the information on citizens' complaints. The Police of Western Mostar also refuses cooperation, as well as their Office for Housing and Utilities, which do not respond to our requests, aiming to checking whether it is the question of denial or violation of rights, people are pointing out. In addition to the protection of rights and freedoms, as well as apart from taking measures for the prevention of such violations, where we were exercising also pressure of the publicity through media, we have found out that in certain cases certain **law** is for a big number of persons source for the violation of human rights, because it has not been brought into accordance with international conventions and the Constitution. In such cases we made certain initiatives for the change of disputable provisions of law, or asked for their adaptation.

For example, we requested the Parliament of the Republic of Bosnia and Herzegovina to reestablish the court control of administrative acts (administrative disputes), that had been suspended during the war by the BH Presidency, which was acting as the BH Parliament substitute . This initiative has been accepted.

However, there has neither been any response to the suggestion to the change of the Law on Citizenship, nor the suggestion to change the Law on taking over of property from former SFRJ by the Republic of Bosnia and Herzegovina has been accepted. Namely, the Parliament of Bosnia and Herzegovina has confirmed the Decree with Legal Power of the Presidency of Bosnia and Herzegovina, and contracts on the buying up of military apartments, which were made before February 18, 1992, declared **invalid** retroactively, what is in contrast with the Constitution of the Republic, and with the Constitution of the Federation of Bosnia and Herzegovina. The initiative on the necessity and urgency to bring into accordance the internal laws with the Annex 7 of the Dayton Agreement was submitted to the Constituent Parliament, in order to enable the return of refugees and displaced persons to their homes. Namely, according to our assessment the

Article 10 of the Law on Abandoned Apartments is in contrast to the provisions of the Agreement, related to measures and way of return of all displaced persons.

Although we have not been taking accurate records on discussions with citizens since the beginning of our work (for good reasons), according to our estimate there have been approximately 10,000 of them. Of course, not all those discussions and complaints by citizens were indicating violation of human rights and freedoms, and that is why we advised the citizens to approach courts or authorities, to start a regular procedure. Over the last year there were 1,680 cases of possible violation of basic human rights and freedoms.

We were enjoying big support by the OSCE Mission in Sarajevo in our work, especially during the first half of last year. That support was of logistical, organizational and political nature, enabling us an independent operation.However, we have to say, with regret, that support became significantly weaker, in particular at the end of year, despite of assurance given by the highest ranking OSCE officials during our official visit the Vienna OSCE Headquarters in August 1995, that the support would be bigger, aiming to the material and organizational strengthening and preparation of the Institution of the Ombudsmen of the Federation of BiH, as well as with respect to the number of personnel, and preparation for future work of Ombudsmen without being supported by OSCE Mission.

Over the last period a significant cooperation with non-governmental organizations in Bosnia and Herzegovina has been achieved, and with international organizations and institutions dealing with protection of human rights and freedoms, especially with different OSCE sections, particularly with ODHIR, in whose arrangement two seminars in Warsaw on the protection of human rights were held, then with Helsinki Committee for Human Rights in BiH, SOROS Foundation - Open Society BiH, International Center for Peace in Sarajevo, UN Center for Human Rights, Special Reporter on Human Rights of UN Secretary-General Mr. Mazowietcky and Ms. Elisabeth Ren, American Bar Association, Central and East-European Legal Initiative (ABA, CEELI), EU Monitors (ECMM), Office of High Representative, International Committee of Red Cross etc.

Recently the cooperation with UNHCR has been intensified (organization of joint specialized seminars on the return of refugees and displaced persons, protection of property etc.).

Since Ombudsmen, all over the world do not have means of force, their strongpoint in their work is the strength of mass media, aiming to gain public opinion for their work and engagement. So the federal Ombudsmen showed a significant cooperation with local media, especially with daily papers "Oslobođenje", "Večernje novine" and "Hrvatska riječ", which almost regularly report the activities of Ombudsmen. Also international journalists and reporters showed a significant interest, such as from Switzerland, Germany, Denmark, and even Japan.

The Structure of the Violation of Human Rights in the Territory of the Federation

According to the subjects dealt with by our offices throughout the Federation, the majority of registered cases of violation of human rights refers to following violations:

Right to the apartment - Most of cases have been opened on the territory of the Federation of Bosnia and Herzegovina on these issues, i. e. this kind of violation of rights.

This Law at the time of its issuance was a successful attempt to stamp out existing lawlessness, or at least to have it under control. In that sense this Law had a positive role in the first year of its implementation (from April 1992 till April 1993), and was a kind of an obstacle to the usurpation of apartments by individuals or groups, or by refugees and expelled persons. Sympathizing with the state organs because of difficulties in performing their duties, which partly were caused by the war, and then the fact that they were neither well qualified nor well equipped, we have to say that those organs had never been in control, nor acting according to the Law on Abandoned Apartments. This resulted inevitably in the violation of human rights, particularly in terms of (in)equality of citizens before the law, and in the failure to provide an appropriate protection of property and rights to property.

The most frequent negative manifestation of such occurrence is declaring the apartments ***abandoned*** by a local administrative organ responsible for housing issues, but without any previous legal or administrative proceedings. Decisions on declaring apartments abandoned were being taken irrespective of reasons why they had been abandoned. So, we have examples that apartments were being declared abandoned even in cases of the death of holders of occupancy right, of imprisonment, of medical treatment elsewhere, etc. There are neither proofs of validity of decisons on declaring the apartments abandoned, nor proofs that those papers have been submitted to persons concerned. The Offices in Zenica and Sarajevo have had cases where the state organ neither got into an investigation on the validity of complaints by members of a household and on their established rights, nor included persons into the procedure who had a legal interest to be parties in the procedure of declaring the apartment abandoned. Their interventions were entirely ignored. So, for example, the complaints and objections submitted by those persons were neither considered nor passed to the organ of second instance. The obligation to make a precise list of items and to store them somewhere, immediately after the apartment has been declared abandoned, in order to preserve them, was mostly not complied with. In case of compliance with that obligation in principle, then there were many failures and formalism. For example, there was not a single case of storing the movables in a separate room. On the contrary, the opposite was being done, i. e. new temporary tenants were using personal property of the holder of occupancy right,

and it is available to them. The movables from the apartments, although a private property, were being taken by temporary tenants, without any attempt by the administrative organ to prevent it. What is the worst, there was an intention to legalize such behaviors. Such occurrences were registered most frequently in Sarajevo.

Besides, it happened often that the competent administrative body allocated an apartment to a person, as to a temporary tenant, although some other person was living in the same apartment, which was occupied by force without any permission. Neither in these cases the competent administrative body showed any serious intention to ensure that the proper paper on the allocation of the apartment be implemented, and illegal tenant evicted. Such behavior resulted in the situation where a big number of persons have formal letters of intent on temporary occupancy of apartments, which, however, could not be realized for two and more years. On the other hand, there is a big number of persons, who illegally and unauthorized occupied apartments and houses (mostly - by force), and it is impossible to evict them, since they are either policemen or soldiers, or their closest relatives are in the army, police or political officials.

In the second instance procedure, apart from not being prompt in actions from time to time, a high degree of objectivity and lawfulness in performing tasks has to be recognized, what resulted in revoking of a big number of proper papers of the first instance. Unfortunately, the organs of the first instance, despite clear, unambiguous and binding instructions by the higher administrative body, did not follow the given instructions in a repeated process, showing the self-will of individuals among the authorities, and at the same time it proves the non-existence of a state based on rule of law. Particularly this is the characteristics of Sarajevo.

The issue of returning the apartment to the holder of occupancy right upon his arrival to the place of residency, was being dealt with in an illegal way. Repealing of Articles 16, 17 and 18 of the Criteria on the Allocation of Abandoned Apartments by the Constitutional Court of BiH, due to Governmental judicial incompetence, resulted in the refusal even to take the requests for the return of apartments into consideration, and that was justified by so-called legal gap, i. e. lack of legal act. When the second instance organ declared such behavior illegal in its instructions, they started issuing documents which exclusively were not in the interest of holders of occupancy right. The legislator, although he had made changes in the Law on Abandoned Apartments, was consciously avoiding to follow the instructions of the Constitutional Court of the Republic of Bosnia and Herzegovina, which had fixed the timeframe for legislation. Those instructions have not been followed so far.
Ordinary courts have recently registered a significant number of charges brought by governmental bodies as the apartments owners, against the holders of occupancy right, who have been out of the apartment for longer than six months, what is in accordance with the Article 47 of the Law on Housing, in order to confirm cessation of occupancy right permanently. In our judgement, the legislator failed to change the Law on Housing, by not taking into consideration war situation as an objective obstacle to use the apartment, when he/she was considering justified reasons for absence and not using the apartment. After the Presidency of the Republic of Bosnia and Herzegovina had declared the end of the war (on 22 December 1995), the timeframes from the Article 3 started to run, in connection with the Article 10 of the Law on Abandoned Apartments. The circumstance, that the holder of occupancy right is requested to return to the place of residence within seven days, or fifteen (in case he/she is out of BiH), upon the cessation of war, and even " to start using the apartment", regardless of the fact

that a temporary tenant lives in their apartment, indicates the conclusion that given deadlines make return of people to their homes practically impossible. Namely, persons who do not return within the given timeframe, will loose the occupancy right, as well as persons the mentioned charges refer to (who are longer than six months ot of their apartments), without being aware of it.

The Ombudsmen have also submitted their initiative to the Constituent Parliament of the Federation of Bosnia and Herzegovina with respect to these problems, which we have attached to this Report.

Regarding the area of Mostar, this issue became very actual after the break out of the conflict between Bosniacs and Croats (on May 9, 1993).

The situation in Mostar is specific, having in mind that the post of EU Administrator has been introduced. The fact is that almost every second citizen of Mostar does not live in his apartment he was using before the war. Despite the Legal Act on occupancy rights, passed by EU Administrator (on November 1, 1995), results regarding the return of people to their homes, from which they had been either evicted by force or they fled, or were expelled from the town, are almost symbolic. Even after the Dayton Peace Agreement, there are cases in Mostar, that people are being evicted from their apartments, mostly only because they belong to some other nation.

The occupancy right was being violated by a double allocation of abandoned apartments, or by the allocation of one part of the apartment, while the other part was occupied either by members of the household of the holder of occupancy right or by himself. There is a drastic example of Bosniac families, expelled from the villages of Sovići, Doljani and Slatina (the municipality of Jablanica), as well as from the municipality of Prozor, which have been accommodated, according to the approval by authorities from the municipality of Jablanica, in the apartments, in which people from minority groups live, mostly Croats. To live together in those apartments is unbearable, because the holders of occupancy right are being forced to leave the apartments by being maltreated and insulted everyday day. Such an allocation of apartments is not based on the Law on Housing.

Right to property - A big number of citizens is approaching all offices of Ombudsmen, especially in Tuzla, asking for protection of their real estate and their movables.. During the war there were migrations of people, what caused loss and illegal usurpation of property. Ordinary courts are primary in charge of protection of property and right to property, but according to regulations passed during the war, the competent adiministrative bodies also had right to allocate abandoned property temporarily to certain categories of citizens. At the same time, they were obliged to list movables and protect it . However, due to the difficulties in functioning of those administrative bodies during the war, there were numerous cases of self-will and illegal usurpation of somebody else's property. The most frequent cases of addressing the Ombudsmen by citizens are with respect to the exchange of occupancy right between the citizens of

different nationality, who became minority in their places of residence. These contracts have been made in a legal fashion, and often notarized by authorities on the territoriy where the real estate is.

But, it is difficult to implement such contracts on the ground, since the exchanged real estate is owned by a third person - mostly refugees. Besides, also state organs refuse to follow those contracts, either for the reason that they deny legality of the notarization of the signature by the other party during the war, or because they think that such contracts support ethnic cleansing. Besides, such contracts were being made mostly under pressure. For example, at the very beginning of the war, Bosniac families from Bijeljina, Janja and Zvornik exchanged their real estates (houses, land, etc.) with citizens of Serb nationality from the area of Tuzla and the contracts were verified mainly at the court in Bijeljina. In an attempt to exercise their right to property according to the mentioned contracts, Bosniac families could not move into houses which were subjects to those contracts in the area of Tuzla, since they were already occupied by refugees. We have similar situation in the cases in the Zenica office, and in other areas as well. Competent authorities of the state of Bosnia and Herzegovina refused to legalize above mentioned contracts (exceptions are courts in the area of Zenica). Ombudsmen agree that legalization of these contracts in fact represents ethnic cleansing, but, on the other hand, the interest of the individual and his right to property, as a basic human right, were violated since by such procedure one of contracting parties loses its property, so we think that ordinary courts and other authorities are obliged to provide such parties with protection based on law. The second group of cases dealing with protection of right to property covers requests by refugees and displaced persons, who upon their return to their homes practically do not have access to their property, as it has been occupied by other refugees, i.e. temporary occupants. According to the existing legislation the responsible municipal authority is obliged to enable the owner to reoccupy his property within three days upon his return, and to return his movables and real estate from temporary occupants. We are talking about houses where even several families have been accommodated. In these cases ombudsmen are exercising pressure on local authorities to comply with law, related to the protection of private property as well as with the Constitution of the Federation and the Dayton Peace Agreement.

Throughout the Federation we have the situation that civil and military authorities themselves are illegally evicting citizens from their homes without any previous legal and administrative procedure. Such cases occur in the areas controlled by HVO, i.e., in Herzeg-Bosnia, as well as in the areas of Tuzla, Živinice and Srebrenik. For example, according to the Office in Mostar, cases of eviction of citizens belonging to minority groups in Western Mostar (Bosniacs/Muslims and Serbs), have been registered, and at the same time, persons belonging to majority (Croats), mostly engaged in military and police structures, moved in. Legal occupants and owners have to leave with their friends and neighbors, or to leave Mostar. In above mentioned areas of northern Bosnia legal authorities deprived them of houses by force and evicted 57 families of Serb nationality, mainly old and sick people. Around 30 of them approached Ombudsmen for protection and providing return of property. In the area of the Municipality of Livno there are cases where citizens are restricted in using their private property, so that Bosniacs, as minority, have to give their premises to persons belonging to Croat majority; we have the same situation in Bugojno, with Muslims as majority.

According to the report submitted by the Office in Zenica, the village of Podbriješće is mostly populated by Croats. In the premises of the "Vatrostalna" Zenica company quite big group of mercenaries from special units of BH Army has been accommodated. It almost is a regular occurrence that they harass Croat population in different ways, by exerting pressure, threatening and even by maltreating them physically, in order to force

them to leave their homes. Later they move in their apartments after they get married to a person of Bosniac-Muslim nationality.

At the end, citizens approach ombudsmen because of impossibility to avail themselves of money (local and foreign currency) from their bank accounts, so-called old foreign currency savings, then the citizens who were not receiving their pension from abroad due to illegal act by responsible banks in the area of the Federation, as well as the citizens whose movables and real estates have been ilegally mobilized. Of course, the major violation of right to property has been caused by new Act which has annulled all sales contracts retroactively, and according to which the apartments belonging to JNA (armed forces of former Yugoslavia) Apartment Fund, were bought up and thus became their property. The Ombudsmen tried to prevent passing of such Act since it directly denies the right to property which previously was established, and they keep exerting further pressure, by available instruments to revoke such legal act and in their opinion the Constitutional Court should take decision on legality of such Act.

Freedom of movement. This problem is the characteristics of the whole Federation of Bosnia and Herzegovina but it was evident in the first ten months of the period of reporting in Sarajevo, Mostar and Tuzla.

It is understandable that due to the war and the need to defend the country freedom of movement was restricted to the persons of military age. However, a series of administrative proceedings of some authorities (Ministry of Interior, Ministry of Defense, etc.) and preconditioning of this right by providing a big number of papers, questioned freedom of movement for persons which are not military conscripts (mothers of children up to 10 years, persons above 60 and 65). Namely, it is impossible to find out what those numerous papers are for or should be for, which because of bureaucratic approach and self-will of administration make any communication more difficult or impossible, and provoke justified discontent among citizens. In dealing with requests and issuing approvals self-will was observed, ranging from ordinary officials to high ranking ones so that it is not possible define the way of operating of some organs, but to say that it depended exclusively on discretionary power and mostly on the nationality, and were mainly based on internal instructions, the publicity was not familiar with, so that, by doing so, many irregularities and illegalities were being hidden and justified.

For example, for the issuance of the passport the consent of the employer was required, despite the fact that passport is only a proof of the citizenship and nothing else. During some periods of time, some administrative bodies, e.g. - municipal secretariats in Sarajevo, were refusing to accept requests for leaving the town, despite the fact that bus-lines with Croatia have been established.

This information shows inequality of citizens before authorities.

Freedom of movement and the possibility of having contacts with family members across the bridge of "Brotherhood and Unity" and through Grbavica was being suspended for months. There were complains by citizens about the work of Ministry of Interior even before, ranging from the fact that they had to pay 30 DM in advance (many of them even three times), no matter if their name will be on the list for crossing, to lack of any explanation by the authorities why an approval cannot be issued, except the explanation that the name of the person has been registered in Police Record of the City Police Department.

For the area of Mostar the restriction that 250 persons can go from one to the other part of Mostar, is still in force. Otherwise, there were also difficulties in the movement within the Federation in general, due to big number of check-points.

The problem of issuing passports is directly linked to the freedom of movement. But the bunch of papers is also required (issued by military authorities, civil defense, employer, etc.), as well as the document showing that criminal charges have not been brought against certain person.

However, in spite of that, requests of citizens for the issuance of passports were being almost regularly rejected, referring to the famous Article 33, Clause 2, Item 2 of the Law on Passports of the Republic of BiH. Namely, this legal act states that issuance of passports will be denied "if it is necessary for the prevention of terrorist and some other actions aiming to a forced change of a state and social system of the Republic, defined by the Constitution". The reaction of the citizens whose requests were rejected according to this regulation was justified, so they asked for an explanation which was not provided, although that is the obligation of the authorities according the law. In accordance with internal regulations of the Ministry of Interior, the ban on the issuance of passports was placed for one year.

According to the number of registered cases citizens whose requests for passports were rejected on this ground, are of Croat and Serb nationality, and only one of them was Bosniac, which indicates that nationality is one, if not the only reason for denial of passport issuance.

Leaving the town for medical treatment was also restricted.

In addition to what has been said, it should be stressed that same principles were not applied throughout the Federation. For example, women, mothers and elders (over 60) in Jablanica, Zenica and Konjic could travel only with identity card, whereas in Sarajevo and Tuzla it is not possible in spite of the same regulations.

After the Dayton Peace Agreement had been signed, the compliance with this regulation was improved. Many communications, even the one over "Brotherhood and Unity" bridge have been opened. Now one needs only identity card or passport for traveling, and number of check-points has been significantly reduced.

However, the situation in Mostar has not changed yet.

Citizenship. Since the very beginning of the existence and work of the institution of ombudsmen, we faced with the citizenship problem. Law on federal citizenship has not been passed. It should be stressed that according to the Constitution of the Federation terms for obtaining and termination of the citizenship state that no one can deny the citizenship to anyone
on his own or in the fashion by which a person would be left without citizenship, and that all citizens have right to retain the citizenship of other country, what is in accordance with the Universal Declaration of Human Rights from 1948, which is constituent part of the Constitution.

However, the authorities of the Republic have agreed on the formula of automatism which does not exist in the international theory and practice. There is Clause in the Law on Citizenship of the Republic of Bosnia and Herzegovina according to which the citizens of former SFRJ who were on the territory of Bosnia and Herzegovina on April 6, 1992, where they had permanent residence, are considered to be the citizens of the Republic of Bosnia and Herzegovina, and regulations referring to military obligation and service in BiH Army are applied to them.

This problem neglects the fact that institution of citizenship is a double act, i.e. synthesis of **receiving** and also **acceptance**, meaning freedom of will of an individual to accept also the citizenship of another country. In fact, citizens have right to refuse it especially if they do not consider themselves citizens of that country.

A big number of citizens of states which became independent (Slovenia, Croatia, Macedonia, Serbia, Montenegro) asked for our help and mediation in protection of their rights because of depriving them of obtaining the citizenship by place of birth - *jus soli.*

Consequently, we initiated in the Assembly of the Republic of Bosnia and Herzegovina canceling of disputable provisions and their change. Although the initiative was submitted in April 1995, the proposer of the disputable Law - the Ministry of Interior has still not taken position on the initiative, what has stopped the whole procedure.

Concerning the violation of this right in the total number of cases, 4,95% are problems of citizenship.

Right to work - The right to work during the war was restricted by introducing the category of work obligation which in fact represents the deployment of the employees, based on needs for the mobilization. Accordingly, neither there is nor there was a classical employment relations with elements of freely expressed will of employees, and of employers as well. There has been introduced a special category of employees on stand-by, with the obligation to come periodically for registration, without any work effect. Non-compliance with defined regulations was considered to be a reason to dismiss someone from a job, irrespective of justified reasons. A significant number of cases of misuse of such job termination has been registered. Some companies in Sarajevo and Tuzla (especially in health centers, some commune assemblies and faculties, schools and related institutions), were submitting letters of job termination mostly to persons belonging to minorities, thus creating one-national composition of companies. Efforts to thwart this practice were not efficient having in mind prerogatives of directors in taking decisions. E.g., The Main Clinic in Sarajevo, Health Center Sarajevo, Municipal of

Sarajevo Stari Grad, etc. Ombudsmen's efforts to protect this right in legal proceedings have not been as efficient as expected. At some places in the Federation people belonging to minorities, especially after the conflict between BH Army and HVO, were being denied right to work (Mostar, Livno, Bugojno etc. - Ministry of the Interior, Post-Office Company, etc.).

Fair criminal charges and proceedings - Work of the judiciary, especially in the field of criminal law, is subject to the independent treatment by the administration of justice in the constellation of the division of power and their control. Data from registered cases in Zenica, Tuzla and Sarajevo as well, point out that conditions for entirely independent administration of justice have not been created and in broader sense judiciary (prosecutor's offices) as well. The judiciary has been made dependent on political parties which are on power in terms of material resources and personnel. The result of that was that the citizens especially in Zenica, Tuzla and later also in Mostar did not have trust for the work of courts and that some Ministries were preventing the implementation of decisions made by court by issuing written orders.

The ombudsmen initiated over the last year a number of expertise on this issue aiming to the importance of these problems.

The activity of military courts, the responsibility of which was changing during the war in terms of their affiliation (e.g., at the beginning of the war they were attached to the Ministry of Defense, and later to the Ministry of Justice) is subject to serious criticism. The work of these courts was not accessible to the control by the public opinion to the extent to which it was necessary. A greater number of decisions made by these courts regardless of the fact that the second-instance proceedings took place at the ordinary court, indicates that they are dependent and influenced by daily political assessments, especially in cases of legal judgment on criminal acts committed by persons belonging to the majority. That brought about inequality before the law i. e. the discrimination based on nationality. This has been unfortunately the case in the work of ordinary courts (Zenica, Konjic, etc.).

The state organs themselves repudiated the court procedure by their conduct by exchanging captives without previous court consent and by amnestying individuals from the group of persons against which a legal proceedings had been taken. Also there is drastic case of persons who have been detained for several years in prisons without taking legal proceedings against them. The example of such a case was the case of 153 persons who were detained in the facilities of SILOS (grain elevator) near Tarčin. These persons were detained in facilities which were not real prisons and were not under control of Ministry of Justice. Those persons are exclusively of Serb nationality. The process was finished by the exchange of prisoners, who were not allowed to have contact to attorneys during the entire period of their detention.

Right to life and health care - Cases of illegal detention of citizens and even killing them, were registered, i.e., reported by citizens to the Institution of the Ombudsmen in Sarajevo, Zenica and Mostar. Compared with the number of cases of such violations at the beginning of the war, the number has decreased, but has not been eliminated. The possibility of tracking persons which we do not have access to, or they are assumed to be missing, is relatively small. Authorities neither show any interest, nor do intend to make bigger efforts in resolving these questions. Extremely serious case was registered in Hrasnica, residential region of the suburb of Sarajevo. Namely, so-called work units were formed, consisting exclusively of persons of Serb nationality. Those citizens were brought to the first front line under extraordinary circumstances for work, which caused big number of casualties. Apart from the fact that they were extremely humiliated, exposed to the discrimination, without any protection, their status was not defined at all. It is still unclear who formed those work units - military or police authorities, or civil defense, or local community? Whenever Ombudsmen tried to find out the legal status of these persons, responsibility was shifted from one of mentioned institutions to another. In this case the intervention by Ombudsmen did not have results as desired, although they were asking for help of international organizations in several cases (ICRC. etc.).

The right to health care is linked to this problem. A significant number of citizens, especially military conscripts were approaching the Institution of ombudsmen because of the opinion of military medical commissions on their fitness for military service. One can say that criteria for the assessment of fitness, i.e. health condition of citizens mainly were incomprehensible, and it happened quite often that in spite of the health condition which got worse, fitness of conscripts who had previously been considered unfit was assessed as limited. So, for example, a person who was considered mentally ill before the war and therefore unfit for military service, is now considered partly fit and has been sent into combat units!? This way not only that the personal security of soldier was jeopardized but the security of people around him. The efforts of ombudsmen to question seriously such attitude were without any results. This practice has been stopped upon decision on demobilization and upon signing the Dayton Peace Agreement.

Missing persons

According to the Constitution of the Federation the problem of persons who were found missing in the war is not the responsibility of Ombudsmen, but this problem is considered the basic human right - right to life.

Since the beginning of our work we have got information on missing persons or groups exclusively from the members of their families. Based on available information and discussions with family members of missing persons, we have established two categories:

* missing persons on the territory of the Serb Entity

* missing persons on the territory of the Federation.

The offices of Ombudsmen opened 14 cases last year, two of which are related to the missing groups, in west Mostar 13 persons of Bosniac nationality (taken away from the "Vranica" building) and 26 persons of Croat nationality from Bugojno, taken away from the stadium in Bugojno, who were found missing during the conflict between BiH Army and HVO.

We informed the international organizations on these cases, first of all, the International

Committee of Red Cross and the authorities of the R BiH and "Herceg-Bosna". Unfortunately, authorities do not show any interest to resolve the fate of missing persons. This conclusion is based on fact that in their opinion it was not worthwhile to respond to our interventions from more than 6 months ago.

In the case where it is claimed and substantiated by evidences that persons were detained and killed from 1992 to 20 January 1995 (when our office started working), in the first line organs of law and order, prosecutor's offices and courts, as well as the Tribunal in the Hague are in charge. State authorities of the Federation have not considered the problem of missing persons so far.

Report on the work of Provisional Office in Velika Kladuša

Provisional Office of Ombudsmen in Velika Kladuša started working on August 13, 1995 in accordance with the Agreement between the Republic of Croatia and the Republic of Bosnia and Herzegovina from August 8, 1995, which provides establishment of the joint Office of the countries signatories to the Agreement. The task of the Office of Ombudsmen is to watch the work of state authorities on the implementation of the Constitution of the Federation of Bosnia and Herzegovina, aiming to the protection of human rights of refugees - returnees from the Camp of Kuplensko (in the Republic of Croatia), and the supervision of personal security and security of property which is being guaranteed by the Agreement between the countries.

The Office was established thanks to the logistical and political support by the OSCE Mission to Sarajevo, and the Ombudsmen were regularly performing their duties in the area of Velika Kladuša, Cazin and Bihać.

A permanent representative of the Ombudsmen has been appointed who is monitoring and supervising the return of refugees. The activities of the Office cover reception of the returnees, supervision of their security on the ground, by visiting their homes and by holding regular weekly meetings with representatives of international organizations in the Office of Ombudsmen in Velika Kladuša.

Out of roughly 20, 000 refugees the return of 12, 890 has been registered till the end of period of reporting (from August 29,1995 to January 22, 1996). All returnees are Bosniacks/Muslims.

In the Office there have been 1,200 discussions with returnees for the purpose of providing information related to the right of refugees after their return. In the course of the work of the Office 56 cases have been opened, indicating violation of human rights by state authorities on the ground. Most of the cases dealt with the violation of personal security, i.e. taking of citizens to the police for questioning where they were being kept unusually long time, then with attacks by neighbors what was considered to be violation of basic right to life...

There have been cases of violation of right to property especially occupancy right, since refugees from other areas already have been accommodated in some of the houses belonging to returnees; then cases of asking for help concerning health care, freedom of movement and denial of issuing the passports, and illegal detention.

Out of 56 cases 47 have been successfully resolved upon the intervention by Ombudsmen. In 9 cases the procedure is under way.

Around 5 000 returnees have approached the Office asking for medical help, to which the organization MSF and other international organizations have committed themselves.

In connection to the exercise of right to health care 1,300 files have been opened for returnees who have approached the Office, although that was obligation of other offices. Strong further presence of Ombudsmen in the area of this Canton is necessary, especially in the process of the return of refugees from Kuplensko, since the Office of the Federation of Bosnia and Herzegovina has not been represented in the joint office for two months as their representatives left in November 1995.

In January 1996, mass visits to the Camp of Kuplensko were arranged, aiming to the acceleration of the return of the rest of refugees.

Statistics of opened cases in offices respectively

Office in Sarajevo

Establishment of the Office in Sarajevo followed the employment of two personal secretary-assistants to Ombudsmen, two joint Ombudsmen's representatives, one of which was appointed at the end of April 1995, and another in November same year.

The Office does not have a secretary, so that the existing personnel is dealing with all administrative issues, and with all other issues related to activities envisaged in the plan. Premises are adequate to current realistic requirements, although they objectively are insufficient for any extension of activities and further employment of personnel (of deputy Ombudsmen and possibly information and PR advisor). The equipment, especially compared with the modern one, is inadequate. The Institution is using the equipment, together with the OSCE Mission to Bosnia-Herzegovina whose operation is priority, what significantly limits and slows down the work of the Institution. The problem of inadequate rendering services (providing transport for Ombudsmen) is actual. Accordingly, the communication between Ombudsmen and other offices has been made more difficult as well as dynamics of performing assigned tasks. The work of the Office was financed exclusively by the OSCE Mission. Over the period of one year of activities, the Office of Ombudsmen in Sarajevo made contact with around 4,000 citizens, directly or by phones. Because of large scale of activities the daily registration of contacts has not been made. Regardless of the previous statements the estimation on the number of contacts is realistic having in mind that over the working hours approximately 20-25 clients were being received on daily basis. They all had possibility of having personal contact in order to enable them to present their problems in details which was recorded. The number of citizens who phoned the Office was large especially during the shelling due to insecurity for coming in person. There have been 686 cases of the investigation in accordance with Rules on operations. In all cases which were opened and registered in that way a written information was submitted to the party which, according to the

statement made by the client and to the assessment by Ombudsmen, can be considered to be possible violator of human rights.

First Corps of BH Army has been the most frequently "the opposite party" - 13,99%, City Department for Housing 12,83%, Ministry of Interior, CSB (the Citiy Police Department) 11,37%, companies 7,00%.

The most frequent violation is the one of occupancy right - 20,26%, then right to freedom of movement 19,97%, right to private property 16,33%, right to health care 12,97%...

Statistics on nationality - Bosniacs 34,84%, Serbs 20,85%, Croats 17,64%, and those who refuse to claim their national origin (abstention) 12,97%, so-called "others" 7.43% and Bosnians 6,28%.

Over the period from November 20, 1995 to January 28, 1996, 294 cases or 42,42% were resolved.

In 41,50% of cases requests submitted by the clients were met by the intervention of Ombudsmen, in 25,85% of cases some other solution was applied, in 23,13% it was concluded that the requests were not justified, and in 9,52% the results of the procedure for the change of law, initiated by Ombudsmen, are being awaited.

The number of resolved cases based on the national structure:

Bosniacs	(B)	89	or	30,27%
Serbs	(S)	58	or	19,73%
Croats	(H)	57	or	19,39%
abstention	(X)	42	or	14,29%
others	(O)	26	or	8,84%
Bosnians	(A)	22	or	7,48%

Office in Zenica

The Office of Ombudsmen of the Federation of Bosnia and Herzegovina to the Zenica-Doboj Canton, located in Zenica, started working on May 8, 1995. Only the deputy who belongs to the Croat minority was working till October 24, 1995, and two employees as secretaries. Afterwards, assistant to Ombudsmen was appointed from Bosniacs whereas an assistant of other nationality has not been appointed so far. The Office in Zenica has been logistically supported by the OSCE like the Office in Sarajevo, however, there is still need for some equipment, like, for example, a standard PC, etc.

In the reported period 539 cases were opened, encompassing 626 opposing parties. The decision on opening cases was being taken upon a direct contact with clients.

The national structure of clients who asked for protection:

Bosniacs	(B)	49,9%

Croats	(H)	36,0%
Serbs	(S)	11,4%
Bosnians	(A)	1,5%
others	(O)	1,3%

The number of resolved cases is 369. Out of that number 200 cases or 66% were solved successfully. There was no bases for procedure in around 100 cases or 30%, whereas in 4% of cases the solution depends on the fate of the initiative submitted to the authorities by the Ombudsmen (the change of related law, etc.).

The number of resolved cases based on national structure:

Bosniacs	(B)	197	or	48,88%
Croats	(H)	146	or	36,23%
Serbs	(S)	47	or	11,66%

Office in Mostar

The Office of Ombudsmen of the Federation of Bosnia and Herzegovina to the area of Herzegovina, based in Mostar, started working in May 1995. Since, due to well-known tragic events in Herzegovina, especially in Mostar, the town has been divided into eastern (controlled by BiH Army) and western (controlled by HVO), and citizens are restricted the freedom of movement from one to another part of the town, the Office of Ombudsmen is located in both parts of the town (with the central Office in the EU Administration), in order that all citizens be provided with timely and efficient protection of their violated and denied human and civil rights. However, due to the current restriction of movement and overall non-satisfactory status of minorities in Herceg-Bosna, citizens from some places (Čapljina, Livno, etc.) are not able to come to our offices and ask for help. There is a Deputy Ombudsman in the Office which is from the Bosniac minority, together with two assistants of Croat and other nationalities.

Namely, major problems in the operation of this Office are the result of the size of the area covered by it, as well as of their different locations. Only the central Office located in the Headquarters of EU Mostar is well-equipped, whereas the two others even do not have necessary furniture.

This Office was approached by around 3, 000 clients over the period of reporting, but only 340 cases were opened. The worst situation is in the area of violation of occupancy right - 182 cases or 53,5% were opened, then of right to private property - 63 cases or 18%, violation of right to life - 26 cases or 8%, of right to work 25 cases or 7,3%.

During the above mentioned period, apart from regular assignments, citizens were being advised on legal matters from different fields. Thus, they were 1866 cases of providing legal advice. For the purpose of providing the most efficient protection of violated rights of citizens days for the Office work in Jablanica on the regular basis were fixed.

Out of total number of opened cases, this Office has completed only 10 or 2,9%. This information illustrates enough the gravity and complexity of the situation, not only in the area of human rights but also of overall political situation and relations in Mostar.

Office in Tuzla

In this Office which recently has been established for the area of the Tuzla-Podrinje Canton only one Deputy Ombudsman from Bosniac majority has been employed.

During the period of two months of work (the Office started working on October 24, 1995), 182 cases were opened. Most of the cases (137 or 75,2%) are dealing with violation of right to property. However, the number of persons involved is much bigger. For example, only one case of violation refers to 100 persons and another one to 147. It is illustrative that in the violation of this right only 21 cases refers to the occupancy right and other 116 to the violation of right to property. This proportion is reverse in other offices.

The characteristics of the area covered by the Office in Tuzla is mistrust of citizens in courts which point out that courts do not work in accordance with law and with the principle of justice and equality before the law. This problem is being dealt with by 14 opened cases.

The right to work (13 cases) has an important place in the structure of jeopardized and violated rights. In this case, like in the case referring to right to property, national discrimination is evident. Namely, out of 40 Serbs who approached us 30 did it because of violation of right to property, and the rest because they were fired for their nationality. For the time being only the case of one Croat has pointed out the violation based on the national discrimination, who was denied return to his apartment although all legal and other conditions for that have been met.

Therefore, out of the total number of opened cases in Tuzla 20% are referring to the national discrimination.

National structure of clients:

Bosniacs	(B)	123	or	67%
Serbs	(S)	40	or	22%
Croats	(H)	17	or	9%

During the same period altogether 34 cases were completed, 12 or 35% of which successfully, i.e. in favor of the request of clients. In 20 cases or 58 % there was no justification for a procedure, since after first checking it was found out that there was no violation or denial of human rights. According to the national structure, the resolution of cases was successful as regards 22 by Bosniacs, 13 by Serbs and 6 by Croats.

NEXT TASKS

One of the top priority tasks in the future work is active involvement in the implementation of the Dayton Peace Agreement in the view of the part relating to the Agreement on human rights - Annex 6.

In that way the return of the refugees and displaced persons to their homes as well as elimination of the consequences of ethnic cleansing will be a focal point in the work of the Institution of the Ombudsmen. Protection of human rights and freedoms will be permanently supervised together with the state authorities and organizations dealing with protection of human rights and freedoms, and appropriate measures will be taken in order that the present tendencies of creating ethnically cleansed areas are stopped.

It will be insisted on the fact that the state authorities should exclusively apply in their work proceedings based on law, and provisions of the European Convention on Human Rights as well, if material provisions of the law are in the opposition to it. First and foremost, the Federal Parliament should make the internal legislation brought into accord with this and other international conventions and instruments.

Bearing in mind the forthcoming elections, special attention will be paid to affirmation of political rights, including the right to freedom of speech.

However, we have to point out that the existing net of our offices with their equipment and personnel is inadequate, even for performing our original assignments, i.e. supervision of the basic human rights and freedoms. Namely, by the Constitution of the Federation (Article B.1.1 (2) the Ombudsmen are obliged to appoint their deputies in the municipalities in which national structure of the population does not reflect national structure of a canton as a whole.

Regarding our judgment that the minorities on the whole territory of the Federation are less protected, i.e. unequal, we deem it necessary to increase the number of our deputies and assistants, as well as advisors for particular fields of law, and for information and public relations. It goes without saying that all above mentioned requires an extra funding by the OSCE whereby the work of the Institution of Ombudsmen, as the Constitutional institution, would improve in quality. At the same time, preconditions would be created for further promotion of human rights, freedoms and dignity of a man, in other words, preconditions would be created for true functioning of the state based on rule of law and for the functioning of the civil society.

Ombudsmen of the Federation
of Bosnia and Herzegovina

Vera Jovanović
Esad Muhibić
Branka Raguz

OFFICE OF THE OMBUDSMEN OF THE
FEDERATION OF BOSNIA AND HERZEGOVINA
Number: 3/95
Date: 20 March 1995.

TO: ASSEMBLY OF THE REPUBLIC OF BOSNIA AND HERZEGOVINA

SARAJEVO

Attn: President of the Assembly Mr. Miro Lazović

According to the provisions of the Article 133 of the Constitution of the Republic of Bosnia and Herzegovina, the legality of the final acts by which state authorities, organizations and communities, in performing their public duties decide upon rights and obligations of citizens is determined by Court trough administrative dispute. Juridical control of the administrative acts, mentioned above, was conducted by the Supreme Court of Bosnia and Herzegovina and High Courts of the Republic.

Legal act on non enforcement of Law on administrative disputes during the immediate war danger and during the state of war (Official Gazette R BiH 6/92 from 2 June 1992), in the beginning of the aggression on the Republic Bosnia and Herzegovina it was decided that Law on Administrative disputes except for the provisions which refer to the administrative affairs with out right to appeal or where responsible authorities did not pass legal act upon request or appeal. Absence of Juridical control of the administrative documents in last three years, brought about that administrative authority was deprived of outside control what resulted with intensify discontent of the citizens specially in the field of solving housing issues, premises, tax police and etc. Appeals of citizens for the protection of the violation of human rights sent to the Institution of the Ombudsmen in last two months show that discontent of citizens is most frequent in that part of housing where in the two party procedures municipality and it's authorities appeared as the opposite party to the citizen, and which at the same time are the party concerned in the procedure, and as administrative body which decides on administrative procedure. These are cases where the municipality is the owner of the apartment, i.e. holder of occupancy right, and on the opposite side is the citizen in the capacity of tenant. The situation is the same when the military apartment fund as a party and the holder of occupancy right, trough it's administrative body decides on the fate of the tenant in that apartment, on the validity of the contract on buying up the apartment etc. Evictions in these procedures with out participation the person concerned in the administrative procedure cause extreme discontent of citizens, and in same cases are considered to be violation of human rights.

Therefore it appeared that in such field of law the legal control, specially by Court, has big importance. Especially each democratic society is interested in it's efficiency. Court control is *conditio sine qua non* in achieving compliance with Constitution and lawfulness in one country. In exercising administrative governing and making decisions from the position of the authorities on the right and obligation of a person one has to stick to the principle of legality. Accordingly over though last period, since the Law on administrative disputes have not been implemented, the administrative bodies have been maintain only so-called internal control within hierarchic sectorial power, what is neither sufficient for protection of rights of parties nor of democratic principles nor of human rights. For above mentioned reasons we think that has come when the control of administrative acts from

quoted provisions of the Article 133 of the Constitution of the Bosnia and Herzegovina, envisaged in the Constitution, can be implemented even nowadays.

Therefore we are suggesting the initiative that Law be passed, by which the legal act will be revoked, i.e. now Law on non- enforcement of the Law on administrative disputes during the immediate war danger and during the state of war (Official Gazette RBiH 6/92).

OMBUDSMEN

Vera Jovanović
Esad Muhibić
Branka Raguz

THE OFFICE OF THE OMBUDSMEN
OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

No: 4/95
Date: 20 March 1995

To: THE PARLIAMENT OF THE REPUBLIC
OF BOSNIA AND HERZEGOVINA

S A R A J E V O

Attention: Mr. Miro Lazović

Performing our duties as ombudsmen we have been dealing with a big number of requests by citizens, asking for protection of rights, and after the investigation of facts we realized that human rights are being restricted and denied by Provisions of the Law on Citizenship of the Republic of Bosnia and Herzegovina (Gazette of the R BiH 18/92 from 7 October 1992) and of the Law on Changes and Amendments to the Law on Citizenship (Gazette of the R BiH 11/93 from 10 May 1993).

Namely, citizens who were born on the territory of other republics of former Yugoslavia (Croatia, Macedonia, Serbia and Montenegro), and who happened to be on the territory of the Republic of Bosnia and Herzegovina on 6 April 1996, are being denied right to citizenship, which they have acquired on the fundamental basis (by their birth, by birth of one or both parents), the citizenship of the Republic of Bosnia and Herzegovina which has been established in the way which the legal theory does not know, but is in direct contrast to the instruments which are protecting human rights. so, for example, according to the international private law citizenship can be acquired beside in the basic also in additional way, as follows: <u>through naturalization</u> and on the basis of <u>the international contract.</u> For both ways of obtaining the citizenship, in addition to other conditions, it is required that such persons express <u>their wish to obtain such kind of citizenship.</u> Such right to freedom of expression of choice of citizenship is proclaimed in the Article 15, Clause 1 of the General Declaration on human Rights (adopted in the Assembly of United Nations on 10 December 1948), according to which " no one must deny anyone his citizenship on his own, or deny his right to change his citizenship".

However, according to the provisions of the Article 29 of the Law on Citizenship of the Republic of Bosnia and Herzegovina, this right is limited by having determined specific conditions, whereas the Law on Changes and Amendments to the Law on Citizenship contains the principle, which is completely contrary to any good will. According to this last law the

citizenship of the Republic of Bosnia and Herzegovina is being acquired exclusively by automatism, and nobody has right to ask for its termination or renunciation. It also has not been solved in a reliable fashion which persons had the citizenship of former Yugoslavia on 6 April 1992, since most of republics of that former state, if not all of them, declared independence by that day and issued their own legislation.

Therefore we think that the Assembly of the Republic of Bosnia and Herzegovina, the regulations of which we are talking about, should undertake measures for the adoption of such law on citizenship, in accordance with its constitutional system and international obligations, the law which would provide necessity of free will in choosing citizenship. Having in mind that the General Declaration on Human Rights, which exclusively is proclaiming that it be included in the Constitution of the Federation, has become a legal instrument, whereas its citizens are citizens of the Republic of Bosnia and Herzegovina.

WE ARE SUGGESTING

1. Revocation of the Law on Changes and Amendments to the Law on citizenship

2. Review and change of specific provisions of the Law on citizenship of the Republic of Bosnia and Herzegovina, in accordance with all above mentioned.

OMBUDSMEN

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No: SU 11/95
Date: 08.05.1995

HQ OF THE ARMY
OF BOSNIA AND HERZEGOVINA

- Administration for Personnel and legal affairs -
To be delivered to Maj. Hodžić Rasim

SARAJEVO

A great number of citizens has addressed the Ombudsmen of the Federation of Bosnia and Herzegovina for protection and realization of occupancy rights related to the apartments now under the authority and at the disposal to the Army of the Republic of Bosnia and Herzegovina.

It is about the apartments bought up by the permanent holders of occupancy right before the war from the ex- Federal Army of Yugoslavia (JNA).

Having analyzed all the submitted applications, and on the grounds of the provisions of the Constitution of the Federation of Bosnia and Herzegovina, Article 6, Paragraph 1, Chapter II - b, we point out some legal and other problems the citizens are facing in the procedures before your bodies, as well as before regular courts, and procedures of which could result in the violation of basic human rights and freedoms.

Namely, the Republic of Bosnia and Herzegovina by transferring sovereignty of former SFRJ on the territory of the Republic of Bosnia and Herzegovina, which had been used by the ex-JNA and ex-federal bodies and organizations, on the basis of the Law on transfer of the sovereignty from the former SFRJ to the RBiH ("Gazette of the RBiH", No 6/92 and 13/94), has taken over the obligations which are , being related to those resources, legally, until the moment of coming into force of the of the mentioned Law.

Such obligations are also the ones, which emerged from valid contracts on the sale of apartments, according to the provisions of the Law on Housing issues in the JNA ("Gazette of SFRJ" No 84/90), until 18 February 1992, when the Decree on the temporary suspension of the sale of state owned apartments ("Gazette of the SRBiH" No 4/92), since this Decree passed by the Government could not be implemented retroactively (Article 221 of the Constitution of the RBiH).

In accordance with the Article 9, paragraph 1. of the Law on the transfer of real estate ("Gazette of the SRBiH" No 38/78, with changes and amendments), which was effective during 1990 and 1991 till 23 November 1992, contracts on the transfer of state owned real estate was considered valid, if it was made in written form, whereas in accordance with the Article 9, paragraph 2 of the same Law, the notarization of the signature of contracting parties at the competent court is required for the validity of the contract on the transfer of the right to the real estate (i. e. of the contract which is being made by natural persons and citizens - legal persons).

Accordingly, contracts on the sale of apartments to the holders of occupancy right in accordance with provisions of the Law on housing issues in the JNA, have to be regarded as legal, if they were made in written form before 18 February 1992, even if the signatures of contracting parties were not notarized at the court.

This legal position is based on the Law on Changes and Amendments to the Law on transfer of real estate ("Gazette of the RBiH" No 18/94 and 33/94), which went into effect on 15 July 1994, since according to the changed provision of the Article 46, paragraph 1. of the Law on transfer of real estate, all contracts on transfer of real estate are valid, if they were made before the mentioned date in writing, and if contracting parties observed obligations emerging from the contract, entirely or in the biggest part. The obligations, in a concrete case payment and handing over of the apartment, were met through a short procedure - traditio brevi manu - by failing to pay the rent and continuing to use the bought apartment as owners, and not as holders of occupancy right.

Thus, the authorities of the Republic of Bosnia and Herzegovina are obliged to treat the person who has bought the apartment from the apartment fund of the Army of the Republic of Bosnia and Herzegovina, in the procedure of declaring these apartments abandoned and of allocating these apartments for temporary use, and in all other procedures dealing with these apartments, as the owner of the apartment, i. e. person with a good legal basis for obtaining the right to ownership over the bought apartment, if the contract on sale was made in written form before 18 February 1992, and the agreed price paid before 15 July 1994. That means that provisions of the Law on abandoned apartments are not being applied ("Gazette of the RBiH" No 6/92 and 13/94), with changes and amendments, but provisions of the Law on real estate owned by the citizens, temporarily abandoned during the war or in case of immediate war threat ("Gazette of the RBiH" No 11/93 and 13/94), so that such apartments cannot be considered abandoned even if they are being used by third persons in accordance with the valid contract, made with the person who has bought the apartment, the former holder of occupancy right (Article 5. Paragraph 2. of the mentioned Law).

The right to ownership over real estate is being obtained in a derivative way (on the basis of legal matters) by the registration in cadastre books, according to the provisions of the Article 33 of the Law on fundamental ownership issues, accepted as the Law of the Republic of Bosnia and Herzegovina, but the Organs of the Republic of Bosnia and Herzegovina, which took over the obligations from valid contracts on the sale of apartments from the military apartments fund, cannot refer to the provisions of this Article, since the buyers have obtained the right to property and to avail themselves of the bought apartments even before their registration., having in mind that the Republic of Bosnia and Herzegovina has taken over the obligations of the seller. Namely, it is about rights, which emerge for the contracting party directly from valid obliging contract.

The elaborated position is even not being influenced by the Article 1. of the Law on the Amendments to the Law on budgets for financing the Army of the Republic of Bosnia and Herzegovina ("Gazette of the RBiH" No 5/95 and 9/95), ordering suspension of the procedure before the court or other competent state organs, if it is related to the contracts on sale of apartments, which, besides, was made on the grounds of provisions of the Law on housing issues in the JNA, since the validity of these contracts is not being called into question by that provision.

In case of different interpretation of quoted legal regulations, citizens - owners of bought apartments would be brought into an unequal position with other citizens of the Republic of Bosnia and Herzegovina, since they are denied the exercising basic rights through court proceedings. This is especially because the provisions of the Decree on the suspension of the sale of state owned apartments are linking exercising of this right to the issuance of regulations for an unlimited period of time.

By above mentioned reasons we are pointing out the need that all administrative procedures concerning the implementation of the Law on abandoned apartments, should be

carried out in the fashion of court proceedings, and that, in any case, validity of contracts on the sale of apartments is to be judged upon in them, like the previous question, by the administrative organ, i. e. that these apartments should be treated in that procedure as abandoned real estate, owned by the citizen.

OMBUDSMEN:

Vera Jovanović
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Number: IO 17/95
Date: 20 July, 1995

Independent court authority

Independent court authority as legacy of all democratic systems based on law, is the only one that can ensure equality of all people before the law being one of the basic human rights. In the Republic/Federation of Bosnia and Herzegovina the court authority first appeared in the Constitution of the Federation and is being realized exclusively in carrying out functions of the court. According to tradition on these areas, it is almost incomprehensible that court authority is independent, so it is justifiable to ask the question of whether court authority, according to the present state of legislature, has the chance to be independent, especially if one keeps in mind that it is at its inception, and that we do not have any tradition on these areas.

That is certainly a handicap, but that can also be an advantage, since we are at the stage when perceived inconsistencies can be corrected, which will, after all, depend on a method in which a legislator creates the court authority, i.e. in which the state based on law and rule of law will be created.

Since the attitude of a legislator represents in fact the will of the ruling political parties, principle of independent judiciary is seriously questioned. Namely, practice exercised by now intends to retain unity of authority, particularly by full influence on selection of personnel in these bodies, and by preventing to appoint to these posts those who are not members of the ruling parties. In that way, execution of the policies of the parties in major segments of the court authority is secured:

- prosecution (influence on making decision on whether someone will be prosecuted or not for criminal acts of major gravity, influence on predeternination of the final result of a court trial, or influence on qualifying the gravest criminal acts according to mild regulations, or influence on absence of complying with procedures in criminal charges in general)

- influence in sphere of penal policy of courts, by means of which members of parties or their supporters are provided with pronouncement of a penal which the others cannot "count on"

- retaining and failure in solving cases or rejecting to conduct some procedures which are not in the interest of a party, etc.

All these brought about discontent of a great number of people and distrust in bodies of the court of law (Tuzla, Konjic, Zenica, Mostar, Sarajevo, etc.).

In order that these circumstances would be overcome and realistic conditions for independent and court authority would be created, we find it necessary the following:

1. To act educationally on political power

2. To build up complete legislative as soon as possible, especially in connection to cantonal and municipal courts thereby setting relations between the court and the legislator uniformly on proper foundations on the whole territory of the Federation. In that way, they will be counterparts in relation to one another, but not that the court authority depends on legislative.

3. To give correct answer to the question whether justices with regard to the extent of authorization granted by law should be members of political parties at all (of those on power as well as of those in the opposition).

The two solutions are possible:
a) justices' complete absence of involvement in politics
b) partial absence of involvement in politics, making it possible to become members of the parties with prohibition to be elected to the leading and other posts in the party and prohibition to appear in the public in capacity of the party representative.

It is true that political determination of each citizen represents his democratic legacy which cannot be confined even to the citizen who works as a justice. However, we esteem that justices' complete absence of involvement in politics in the forthcoming period would be of great importance for restoring confidence in the court authority which has been shaken.

Namely, political determination and membership of a justice in a political party cause suspicion in objective proceedings and dependence on party discipline, which is incompatible with this function, especially taking into consideration the war time and responsibilities before these bodies. Numerous complaints of the citizens sent to the Office of the Ombudsmen indicates to that.

4. One of the important preconditions for the independence of the court is a method of arranging procedures for election and relieve of duty of the justices.

The Constitution of the Federation has regulated that the justices should be lawyers having high qualities as regards morality and professionalism. In that, personnel that are not closely connected with judiciary (economy, administration, private and other activities) should not be excluded from this field of operation, because not only the basis of the elections would be made more narrow, but this function would remain inaccessible to all the citizens who meet other conditions designed by the Law, and thereby, Constitutional principle according to which all the posts in the Federation are accessible to all citizens under equal conditions would be breached.

Furthermore, conditions must be created for one body out of Parliament which consists of representatives of the court of last resort, of university professors of law and of other institutions dealing with the same field of activities, to propose appointments on positions.

Members of this body would be proposed by institutions from which they are elected.

On the ground of announced open competition, this body would perform, on the basis of formerly defined rules, selection of candidates, and after that, the proposal with explanation would be sent to the President of the Federation, or Constituent Assembly.

Similar procedure should be applied in election of cantonal and municipal justices. In this,the principle of equal representation of the number of justices from Bosniac and Croat nationality and appropriate representation of the others should be observed always and on every occasion.

5. Funding of courts, and especially of personnel, should be solved uniformly and on federal basis if possible in order that influence of the local authorities would be avoided as well as determination of the court by means of funding.

6. Along with establishing all federal courts, it would be necessary to establish court police on the basis of all constitutional authorizations, and put it in its real place. In that way, preconditions would be created for the court authority to be separated from the court executive authority.

We are fully aware that the mentioned problems will not be solved only by these proposals. This problem should be dealt with by the structure of citizens most interested in the issue professionally, that is, justices, whose voice has not been heard to date at all.
In our opinion, the reason for this is their conviction that they will retain their present positions by "calm and zealous" conduct. During the war personnel were elected for court positions in a way which is incompatible with procedure and criteria defined by law, which, in turn, do not reflect national structure of the population in the Federation of Bosnia and Herzegovina.

Ombudsmen of the Federation

Vera Jovanović

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No. 1/96

Parliament of the RBiH
attn. Mr. Miro Lazović, President

SARAJEVO

Having acted according to the entitlements from Article 5 B/2 of the Constitution of the Federation, we have investigated the Legal Act on supplements to the Law on transfer of sovereignty from the former SFRY to the RBiH, on the 22. 12. 1995. We have estimated that its appliance could put at stake some of the internationally recognized fundamental human rights and freedoms, which we are obliged to protect.

Therefore we address with the request that at the meeting of the Parliament, where the mentioned Act has to be certified, you inform the deputies on the following:

1. According to the provisions of the Amendment LI, Item 5, Para. 3, to the Constitution of the RBiH, the Presidency can according to its own initiative pass Legal Acts on issues which are within the competence of the Parliament of BiH "if there is no possibility of convening the entitled councils." Since however, this Act was passed between two Parliament meetings, we estimate that there was no reason for its passing by the Presidency of the RBiH.

2. Not raising the question of legal validity of this Act, which has amended the Law on transfer of sovereignty from the former SFRY to the RBiH, and **retroactively**, and according to which all the lease and sales contracts between the former JNA and citizens on apartments, premises, garages have been proclaimed to be **invalid**, we wish to indicate that because of the delicacy and complexity of this matter, the act of its certification itself by the Parliament of the RBiH, and without a previous complete discussion, would have enormously damaging consequences, especially for the legal (in)security of citizens.

Taking into account all the mentioned facts we propose that the deputies at the meeting of the Parliament should first and foremost consider and estimate whether it is the interest of the RBiH to certify the Legal Act on amending the Law on transfer of the sovereignty from the former SFRY to the RBiH, or to pass it in the regular procedure after having conducted a complete discussion?

Sarajevo, 05. 01. 1996

Ombudsmen of the Federation

Vera Jovanović
Esad Muhibić
Branka Raguz

TO THE CONSTITUENT ASSEMBLY OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

SARAJEVO

attn. Mr. Mariofil Ljubić, Chairman of the Assembly,

The General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter Agreement), Annex 7 has established the fact that all the refugees and displaced persons, no matter the reasons of becoming displaced persons and refugees, have the right to free return to their homes of origin.

In accordance to that right, all the signing parties are obliged to undertake the necessary steps for preventing the activities within their territories, which would disturb or prevent safe and voluntary return.
Geneva Conventions prescribe the obligation of the states to dislocate the civilians from the zone of direct war activities if possible.

The Constitution of the Federation of Bosnia and Herzegovina guarantees to all refugees and displaced persons the right of free return to the homes of their origin /Article II. A. 3. of the Constitution/. The right to return freely to the homes of origin is one of the fundamental human rights and freedoms which is closely related to the right on property and the protection of property, including the apartment occupancy right.

There is a large number of displaced persons as holders of the occupancy right or who are owners of private family houses. There is also a large number of apartments and private houses occupied by other displaced and non-displaced persons.
Therefore it is obvious that this is going to be one of the most complex rights the government is liable to fulfill.
It is no wonder that recently we have had a large number of citizens addressing to us for protection of that right.
Housing issue is an area in which human rights and constitutional principles of equal treatment before the law are violated mostly today.

To remind:

The Law On Housing Relations is in force, and to fully understand these violations it is necessary to clarify the term "the apartment occupancy right".

The apartment occupancy right is a legal entitlement/authorization given to the holder to use permanently and undisturbed an apartment and to participate in administrating the matters of the special social importance in the housing area, as well as to participate in the authorities/bodies of direct management of the building in social /now state/ ownership/property.

The permanent use of the apartment means that the holder of the occupancy right has authorization/right to use the apartment without any time limitations, and to lose that right under terms and in the way regulated by the Law on Housing Relations /Official Gazette SR BiH 14/.

The continuity of the occupancy right is also guaranteed by the right on succeeding that right by the members of the family even after the death of the holder of the tenant right /Art. 20 and 21 of the Law/.
The occupancy right can be exercised only for one apartment /Art. 12. para. 1. of the Law/.

The holder of the occupancy right is always the subject to the occupancy right, and the his/her spouse enjoys the status of a co-holder of the occupancy right, while the other members of the family household have the status of "occupants of the apartment" /Art. 6. of the quoted Law/.

A "Social Legal Person"/ who has built or purchased residency building/ has the status of a "person authorized by the Law to give the apartment to be occupied"./Art. 5. of the Law/

The citizen acquires the occupancy right by the day of commencing the use of the particular apartment.

Out of these quoted Law regulations it is obvious that the occupancy right is not a classical renting relation, and as such represents a legal institute *sui generis*, unknown outside the boundaries of these territories.
The occupancy right is a particular property right which contains the elements of a real estate property and obligatory right. Intention to exercise the ownership right for the apartment for which the occupancy right has been obtained is particularly significant.
Namely, it is a rule that the apartments for which the occupancy right has been acquired, were mainly built from the Housing Contribution Funds of all the employees in BaH.
The obligatory contribution was rather high (up to 10% of the total brutto income of the employees). For instance, a couple could have bought an apartment at the market price before the war for the money contributed, because their taxes/obligatory contribution as for the period of 25 years had been 70.000 to 75.000 DEM.
Therefore, a logical conclusion appears to be that the holders of the occupancy right have aspiration to the ownership on the apartments they occupy and they expect to fulfill/realize that right under favorable terms in the ownership transformation procedure. Firstly, by the Decree With Legal Power of a Law on Deserted Apartments, which later became a "law" /Official Gazette R BiH 8/92, 16/92 and 13/94/, the legal preconditions which violate the acquired rights of the holder of the occupancy right were created.
Above all, apartments were claimed to be deserted neglecting the reasons of the holder of the occupancy right for leaving after 30 April 1992, which created possibilities of abuse in applying this Law. The deserted apartments were given to the others together with the removables and personal belongings of the holder of the occupancy right and usually without respecting the lawful procedure of registering the property and its sealing.

The apartments were given for temporary use, emphasizing that **"temporary use of the apartment can last one year at most from the day of the cessation of direct war danger."**

Later, the Decree with Legal Power of a Law changed Article 10 proclaiming: "Once the Cessation of the State of War is announced, the holder of the occupancy right who is not in the apartment and who is in the country, but who does not start to use them apartment within 7 days, and if the holder lives abroad and does not start to use the apartment within 15 days, is considered to have deserted the apartment permanently." It means that he/she loses his/her apartment!

The Presidency of Bosnia and Herzegovina made the Decision on Cessation of State of War on 22 December 1995, so the 7 days deadline for the holders of the occupancy right residing within the territory of Bosnia and Herzegovina expired on 29 December 1995, and for those residing abroad it expired on 6 January 1996.

It is well known that the holders of the occupancy right could not return within these deadlines and enter their apartments /occupied by the others/ in order to start using them, and many holders were not informed of these regulations and deadlines, bearing in mind the information and other blockade.

Since the provisions of Articles 16 and 18 of Criteria for granting temporary use of Deserted Apartments /on the ground of which the holder of the occupancy right, after return might demand giving back the temporary deserted apartment/, have been annulled, the right of temporary use of the apartment is extended to one year after the cessation of the direct war danger (which has not been annulled yet), thus the deadlines for annulling the temporary use of apartments are not yet in force.
In that way the annulling of validity of the occupancy right is related to the cessation of state of war and is conditioned by very short deadlines for return of the holders of the occupancy right, as well as by *de facto* use of the apartment. It is known that these two conditions can not be accomplished.

On the other hand, temporary users stay in the apartment for one year after the cessation of direct war danger, which still exists.
Annulling of the occupancy right validity in this way has been planned and targeted to the civilians who left their cities and now do not have legal grounds for moving into their apartments, and thus neither basis nor possibility for return.

Law on Housing Relations has determined very clearly under which terms the occupancy right can expire. Article 47 states that it is possible "when the holder and the members of his/her housing, who lived in the apartment, are not using the apartment longer than six months."

According to our information, there is a huge number of complaints for canceling apartment occupant contracts, on the grounds of the quoted provision, neglecting completely at the same time the fact that there is a cruel war in BaH, and that the 6 months deadline is related to peace and normal living conditions. As these law suits/civil proceedings occur in absence of holders of the occupancy right, it is sure that their interests and rights will not be represented at all, or very poorly by temporary proxies/imposed by the court - as provided by the Law on Civil Proceedings.
The problem is especially emphasized in towns, because the majority of apartments there is in the state property/ownership, and particularly in Sarajevo.
Besides, the housing authorities are setting new conditions for return with no legal grounds, as can be concluded from the application form enclosed. For instance, the housing authorities request from the holders of occupancy right who fled, to enclose, beside the official request for giving back the apartment, the approval/accord from the owner of that particular apartment, which has never been requested by the Law on Housing Relations.
Not to mention robberies of personal belongings/removables, because the housing authorities claim it as a voluntarily deserted property and anybody who wants can do whatever he/she wants with it!

The Law on Deserted Real Estate Property is also not obeyed, because the deadlines for taking over and for the disposal of property are inappropriately short.

By taking over the former SFRY "social" assets located on the territory of R BaH and previously used by the former JNA and federal authorities, and on the grounds of the Law on Taking Over the Assets of the former SFRY in the Republic BaH Ownership (Official Gazette of R BiH 6/92 and 13/94), the Republic of BaH has taken over, at the same time, the obligations that have been legally established on the bases of those assets until the day the above mentioned law entered into force.

Such obligations are as well as those that came out as result of valid contracts on selling apartments in accordance to the provisions of the Law on Housing in JNA (Official Gazette SFRY 84/90) that have been concluded until 18 February1992, when the Decree on Temporary Prohibition to Sell Apartments in Social/State/ Property entered into force, because this Governmental Decree could not applied retroactively (Art. 221. of the Const. of R BiH).

All those contracts were signed in the prescribed form and the most of them had been verified by the competent courts of Bosnia and Herzegovina, but they had not been registered in land registers/cadastres.

The military apartments had been treated as real estate in private property, until 2 March 1995, when the Presidency of the Republic of Bosnia and Herzegovina passed the Decree With Legal Power of a Law on Amendment of the Law on Financial Resources and Funding of the BaH Army.

This Decree terminated all the court and administrative proceedings dealing with rights and obligations from a such kind of contracts.
From then, these apartments have been treated subject to the Law on Deserted Apartments, and there was no possibility of protecting these citizens.
Our intervention and warning to the competent authorities that they had severely violated the right of citizens to be equal before the law was in vain. The Constitutional Court has not pass the decision until today on the Bar's Assessment regarding the accordance of this Decree to the Constitution.

Finally, on 12 December 1995 The Presidency of the Republic of Bosnia and Herzegovina passed the Decree With Legal Power of a Law on Amendment of the Law on Taking Over the Assets of the Former SFRY in the Republic of Bosnia and Herzegovina Ownership, and in that way retroactively annulled, against the provisions of the Constitution, these contracts on buying and selling "military"apartments.
Our intervention to The Assembly/Parliament of BiH to suspend this Decree, has not been accepted. Thus the Decree became the Law.

We estimate that it would be useful to inform you also, on the following: a large number of citizens from the territory of BaH signed contracts on real estate exchanges. Most of these contracts were signed by Bosniacs and Serbs from Bijeljina, Zvornik, Banja Luka and some other places.
The contracts were mainly verified by the courts from the Serb Entity, although there is a number of cases them being verified by the courts from the Federation of BaH. The contract obligations and handing over the real estate were realized within the Serb Entity, and the registration in the land register was carried out as well.

However, the Bosniacs can not exercise this right from a such an contracts for two reasons:

1. the authorities in charge refuse to legalize these contracts, because in that way they would legalize the consequence of the ethnic cleansing;
2. Real Estate subject to the exchange within the Federation of BaH were proclaimed as deserted and were given to the displaced, and exiled persons /third persons/.

We also do agree that accepting the validity of these contracts could represent legalizing the consequence of the ethnic cleansing.
However, taking into considerations the interests of individuals - the citizens who have applied to us (a single claim from Tuzla has a 100 individual signatures) - and their highly expressed wishes to remain within the territory of the Federation (more precisely in the area of the Tuzla canton), we do consider that the competent courts should accept and conduct a certain proceedings with respective verdicts/decisions to be reached/made, in order to determine their standings.

In accordance to the competencies from Articles B.1.2. and B.1.4 of the Constitution of the Federation, we would like to remind you on your obligation from Annex 7 - of Agreement on Refugees and Displaced Persons, WITH NO DELAY - IMMEDIATELY after signing the Agreement to:

terminate the internal legislation and administrative praxis with a discrimination purpose or effect.

It is our view that the cited Law on Deserted Apartments and Law on Taking Over the Assets in the Property of the Republic of Bosnia and Herzegovina as well as the administrative praxis of the housing authorities are directly opposing the Agreement and the Constitution of the Federation.
The terms from the valid laws/in force, related to the cease of the apartment occupancy right have to be in accordance to the conditions and the program of return of the refugees and displaced persons, as stated in Para. I Item 1-5 Annex 7 of the Agreement.
It is obvious that at the present stage, there are numerous objective obstacles in implementing Annex 7 of Agreement now.

We remind of only a few among them:

- The program of returning refugees and displaced persons under UNHCR is a long term process and it is envisaged in three phases;
- problems with visas of third countries;
- impossibility of quick releasing of apartments inhabited by refugees and displaced persons from the territory of BaH;
- repair of destroyed and ruined facilities;
- providing the basic conditions for living, etc.

Therefore it is necessary to pass new regulations or bring the existing in conformity with the Agreement and the Constitution of the Federation, which has undertaken the commitment of ensuring the exercise of the internationally recognized rights and freedoms of the highest scale.
It is necessary to emphasize that Annex 4, Article II of the Agreement scheduled the direct implementation in Bosnia and Herzegovina of the European Convention on Protection of Human Rights and Basic Freedoms in its protocols. It will be priority over any other legislation.

As the basic task of Ombudsmen is to protect human dignity, rights and freedoms guaranteed by the Constitution and instruments cited in the Annex of the Constitution of the Federation, this intervention is targeted to the protection of these rights - equality of citizens before the law, protection of acquired property and property rights, and return of displaced persons and refugees.

Any delay in passing the regulations or updating them and bringing them in conformity with the Agreement, will make more complex an already existing complex issue of return of displaced persons.

To deliver to:

Mr. Miro Lazović, President of the BiH Parliament
Mr. Krešimir Zubak, President of the Federation of BiH
Mr. Ejup Ganić, Vice-President of the Federation of BiH
Government of the Federation of BiH
Government of the Republic of BiH
OSCE Mission Sarajevo
Office of the High Representative, Sarajevo
UNHCR, Sarajevo
Media

Ombudsmen of the Federation of Bosnia and Herzegovina

Vera Jovanović
Esad Muhibić
Branka Raguz

The Republic of Bosnia and Herzegovina
The City of Sarajevo
The City Secretariat for Housing Policy
Section Novi Grad

Number:
Sarajevo,

REQUEST
/for giving back in property of the holder of t
the occupancy right, or a member of the family housing/

I. DATA ON THE PERSON WHO REQUESTS
Last Name/Name of one parent/and First Name_____
THE ADDRESS WHERE THE HOLDER OF OCCUPANCY RESIDED
Street_____number_____floor_____number of apartment_____
Municipality_____number of contract on using apartment_____
_____owner of apartment_____
code of apartment_____ID number_____
individual birth register number_____
... (very pale copy of this request makes translating of the whole request impossible)

WITH THIS REQUEST I ENCLOSE THE FOLLOWING

1. Occupancy/Lease contract, number_____
2. Housing list verified by the municipal authorities
3. Identity card, passport, certificate of birth
4. Certificate of residency /application/ when he and his/her family return in apartment
5. Certificate of Municipal Assembly Department for National Defense that applicant is registered to that Department.
6. Approval of the owner of the apartment

SARAJEVO_____ 1996.

APPLICANT_____