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Tackling human rights abuses in Bosnia and Herzegovina: the Convention is up to it, are its institutions?

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***E.H.R.L.R. 644** In this article, the author aims to show that certain changes in the operation of the Commission of Human Rights (set up by the Dayton agreement to implement the ECHR) would improve its ability to deal with the immediate problems facing individuals in Bosnia as well as, in the long term, fit into a coherent legal system. She considers the potential role of the Ombudsperson and analyses certain human rights issues (including the right to property, non-discrimination in the context of employment, human rights abuses by police officers and the right to a fair trial) in the light of the legal, political and practical problems that face human rights institutions in Bosnia. She concludes that the Convention is sufficient to address the main human rights issues that arise in Bosnia, although the procedures must be adapted to the particular context and some development of the case law is required.*

A national culture that explicitly draws its myths from folklore, as Serbia's has always done, grants priestly status to its intellectuals; for it trusts them to safeguard the sacred heritage in perpetuity. At the same time, by banishing absolute values in the name of national values, such a culture gives itself no protection from intellectuals who abuse this trust. For there is no court of appeal beyond the nation, and these self-same intellectuals are the nation's appointed judge and jury.

--Mark Thompson, *A Paper House: The Ending of Yugoslavia*

Three years after the signing of the Washington Agreements[1] that set up a fragile Federation between the Croats and the Bosniaks (Muslims) and eighteen months after the signing of the Dayton Agreement[2] that ended the war between the Serbs and the ***E.H.R.L.R. 645** Bosniaks, continuing violations of human rights in Bosnia and Herzegovina are a primary indicator that peace and reconciliation are yet to be achieved. While both agreements set up sophisticated human rights mechanisms and imported into domestic law numerous international instruments,[3] including the European Convention on Human Rights ("the Convention"), which should provide an extraordinarily high degree of legal protection, the sad reality is that neither the political nor legal framework necessary for such protection is yet in place. Speaking in Washington on May 2, 1997, the then High Representative, Mr Carl Bildt, stated that the leaders of Bosnia's three communities--Serbs, Croats and Bosniaks--still see "peace as a continuation of war by other means". That continuation of "war" in peace time, and most particularly, continued policies of "ethnic cleansing", is most starkly illustrated by the current pattern of human rights abuses. In such circumstances it is perhaps unsurprising that the law is largely ineffective in the protection of human rights. But the legal obligations do at least provide expectations and constitute a basis for the demands of individuals that their rights be respected. In that sense, the legal incorporation of fundamental principles of human rights is an essential starting block for peace and democracy.

***E.H.R.L.R. 646** But is it reasonable to expect the Convention to work in a post-war and post-communist country constructed on the basis of two international agreements: Washington and Dayton? In order to answer this question it is necessary to consider the context in which the Convention is being applied and the institution set up by Dayton to implement the Convention, namely the Commission of Human Rights. This article seeks to do that and to cast a critical eye on the institution, in an attempt to show that certain changes in its operation would improve its ability to deal with the immediate problems facing individuals in Bosnia as well as, in the long term, fit into a coherent legal system, where the judicial organs would have the primary role in the protection of human rights as part of the law in general, rather than as a discrete category of legal protection. However, it is important in any such critical analysis to recognise the extent and complexity of the human rights issues with which the institution has to grapple. Accordingly, I have attempted to explain and analyse certain of these issues below.

The Constitutional and Legal Framework [4]

The Peace recast the Republic of Bosnia and Herzegovina into the State of Bosnia and Herzegovina ("Bosnia") comprising two entities: the Bosniak-Croat Federation ("the Federation") (in practice divided into two *de facto* entities due to the continued existence of the "Croat Republic of Herceg-Bosna"[5]) and the Republika Srpska ("RS"). Citizenship was to be accorded to individuals both at a State and Entity level. Thus, it sanctioned two ethnic statelets (the Entities), and accorded political power within the institutions of the State according to the statelet's ethnic majority status, a status attained by the policy of "ethnic cleansing". Of the three common (State) institutions[6] : the Parliamentary Assembly (comprising the House of Representatives and the House of Peoples), the Presidency and the Constitutional Court, it is only to the House of Representatives that an individual belonging to a minority in an Entity could be elected. It is not therefore possible, for example, for a Bosniak or Croat in the territory of the RS or for a Serb in the Federation to be elected President of the State. The present arrangement therefore accepts a fundamentally non-democratic construct: that minorities do not have the same democratic rights as the majority. Furthermore, it provides ***E.H.R.L.R. 647*** a disincentive for the return of refugees, and constitutes an obstacle to the re-creation of a multi-ethnic State, the essential basis for peace.

The common institutions incorporate both direct election by the people and delegation by the common institutions of each Entity, so creating a federal structure. Each Entity was given far-ranging autonomy, including the possibility of entering into special parallel relationships with neighbouring States.[7] In this respect it opened the door to agreements between the RS and Serbia, and the "Croat Republic of Herceg-Bosna" and Croatia. The recent economic agreement between the RS and Serbia was met with dismay and anger by the international Community, even though it was premised on apparently democratic principles. In a worst case scenario this is an invitation for a further attempt to divide Bosnia, a fulfilment of the original war aims of Milosevic and Tudjman. All functions not expressly consigned to the institutions of the State[8] were assigned to the Entities,[9] while the State Presidency was given a residuary power to facilitate inter-Entity co-ordination in matters over which it does not have responsibility, where neither Entity objects.[10] Further, the State was to assume responsibility for other matters agreed by the Entities, provided in Annexes 5 to 8 of Dayton[11] or necessary to preserve the sovereignty, territorial integrity, political independence and international personality of Bosnia.

In reality, the State has very little responsibility and it is the Entities that exercise almost all governmental functions. Furthermore, the State is unwilling to accept responsibility for human rights abuses that it considers were committed at the Entity ***E.H.R.L.R. 648*** level, despite the fact that the Constitution so specifies. Thus, the State has refused to answer requests for observations in cases addressed to it by the Ombudsperson and has returned complete files and letters, stating that the State has no responsibility. The *de facto* division of the State into two statelets also means that two systems must be watched over, each with their own institutions and laws, and each tending to stipulate co-operation on specific conduct of the other Entity.

In addition to the State Constitution, Bosnia has 10 Cantonal Constitutions and two Entity Constitutions. While all levels are expressly "responsible" for the protection of human rights, legal "competence" to deal with specific human rights abuses is commonly denied at all levels. The overlapping powers and responsibilities of the authorities allows circles to be run around those trying to remedy human rights abuses and the international community in general. Furthermore, legal solutions to such problems are themselves difficult to reach: in many areas laws are yet to be adopted or published[12] and the illegal Croat Republic Herceg-Bosna continues to operate its own legal system, giving rise to the conundrum of whether a State Human Rights Institution, such as that of the Ombudsperson, should have regard to its laws or the judgments of its Courts, when considering allegations of human rights violations.

Apart from the normal courts in the State and Entities, there are ten different organs expressly charged in the Constitutions of Bosnia, RS and the Federation, with dealing with human rights abuses.[13] Already problems of concurrent jurisdiction have arisen between the Ombudsperson of Bosnia and the Federation Ombudsmen and it is inevitable that as these institutions start to function those problems will escalate. Furthermore, such diversity of choice creates difficulties for applicants who are often confused as to which route to pursue and are not helped by international staff, who are equally at a loss to advise them.

The Rights

The Constitution of Bosnia guarantees and entrenches[14] the highest level of internationally recognised human rights and fundamental freedoms. In particular, despite not being a member of the Council of Europe, the European Convention on Human Rights and its Protocols apply directly in Bosnia and are expressly given priority over all law.[15] The Constitution further obliges the State to secure to individuals the right not to be discriminated against in relation to any of the rights provided in the international instruments listed in its Appendix.[16] Further, the Constitution provides that "Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to rights protected by the ***E.H.R.L.R. 649*** Convention".[17] This suggests that the Convention and its Protocols can be invoked before all courts and, further, that the courts would be obliged to dissapply conflicting legislation. There being no such provisions in relation to rights protected by the international instruments, it appears unlikely that the same could be said of those rights. The Constitutional Court, when it starts to operate, will itself have to determine which rights can be invoked at what level and at what level laws can be dissapplied or annulled.

Annex 6 to Dayton (Human Rights) is an international obligation on the Parties to secure certain rights and could therefore be seen to bind the parties only in international law. In practice the obligations are partly incorporated into domestic law both in terms of the rights provided by the Constitution referred to above, and by the fact that the Constitution actually provides for the existence of the Human Rights Commission set out in Annex 6.[18] The international obligation is, however, wider than the domestic. In particular, the domestic obligation, mirrored by the jurisdiction of the Annex 6 Commission of Human Rights, only allows individuals to rely on the rights set out in the international instruments if they can establish discrimination, while the international obligation contains no such requirement; the State is obliged to secure all the rights in the international instruments listed.[19] In view of the width of the social, economic and cultural rights provided by those instruments, it makes sense that the obligation in relation to them should be confined solely to an international undertaking to work to achieve a goal. However, in a country that went to war on fundamentally discriminatory bases, and where rights are systematically violated for discriminatory reasons, it is essential to ensure that insofar as those rights are provided they are provided without discrimination, which the discrimination provision should do.

Finally, the Constitution recognises the rights of all refugees and displaced persons to return freely to their homes in accordance with Annex 7[20] to Dayton, and to have restored to them the property of which they were deprived since 1991 or compensation in lieu. It further nullifies all commitments or statements relating to such property that were made under duress.

The Institution of the Commission of Human Rights

The Commission of Human Rights consists of an Ombudsman[21] and a Chamber of Human Rights.[22] Both have jurisdiction to investigate alleged violations by Bosnia or ***E.H.R.L.R. 650*** either of the Entities or authorities thereof,[23] of rights provided in the European Convention and its Protocols and alleged or apparent discrimination as regards the enjoyment of any of the rights provided in the international agreements listed in the Appendix to Annex 6.[24] They must both endeavour to give particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination.[25]

Unfortunately, it is still too early to comment in detail on the role and functioning of the Chamber of Human Rights. To date the Chamber has heard six cases and made eight admissibility decisions but has issued no judgments on the merits. Accordingly, I have concentrated on the work of the Ombudsperson.

In my view, which I will develop in greater detail below, Dayton intended the Ombudsman to take an active investigatory and representational role in order to assist individuals in their actions against the State or Entity authorities; the traditional role of an Ombudsman. However, she adopted the Strasbourg structure and thus her rules of procedure incorporated the admissibility requirements laid down in Articles 26 and 27 of the Convention. She did leave herself the discretion to waive the requirement that the respondent Party be either of the Entity(ies), State or official thereof,[26] the six month time limit and the requirement of exhaustion,[27] but decided not to accept to investigate a matter if it was already being investigated by the Federation Ombudsmen or by a procedure of international investigation or settlement or if the act complained of took place prior to December 15, 1995.[28] The system of investigation adopted also mirrors the one used by the Commission of Human Rights in Strasbourg: an applicant must fill in a Strasbourg-like application form; a written decision will then be made as to whether to "open" or "not to open" an investigation. Pursuant to the former, the respondent Party (State or Entities) will be asked to submit observations on the admissibility and

merits of the complaints (although these are rarely received), following which either a decision to "close" the investigation will be made or a Final Report issued on the merits. Prior to April 1997, the Ombudsperson also issued admissibility decisions which were communicated to the respondent Party for further observations prior to the final report on the merits. This process is necessarily slow and it normally takes about a year to get to Final Report stage, which can hardly be ***E.H.R.L.R. 651*** described as "prompt" as required by Dayton.[29] A Final Report includes recommendations to the respondent Party. These include damages payments or a practical recommendation to remedy the situation. As yet no recommendations have been complied with on any of the six reports issued.

The Potential Role of the Ombudsperson

One cannot underestimate the enormous difficulties of achieving anything in Bosnia. However, the potential role of the Ombudsperson in addressing both the immediate needs of a post-war, post-communist State and the long term requirement of creating a coherent legal system, is in my view significant. I set out below what I think Dayton intended and why I think it could work. These views are, of course, expressed with the advantage of hindsight.

First, the division of the Commission into two parts, each with different powers and jurisdictional requirements (the Ombudsperson has enormous investigatory powers and relatively unlimited jurisdiction, while the Chamber has limited investigatory powers and expressly restricted jurisdiction), implies that their roles should be different. In this respect the fact that Dayton actually provides that allegations should generally be directed to the Ombudsperson unless the applicant specifies the Chamber, while giving her the power to refer at any stage an allegation within the jurisdiction of the Chamber to the Chamber,[30] indicates that the Ombudsperson should take action on cases that would not be within the jurisdiction of the Chamber, for example when domestic remedies have not been exhausted. The present system, where the Ombudsperson and the Chamber apply exactly the same admissibility requirements, means that an applicant gains nothing by applying first to the Ombudsperson rather than going directly to the Chamber, where a final and binding decision is given rather than a mere recommendation.

Secondly, the obligation that the Ombudsperson determine which allegations warrant investigation and in what priority[31] does not in my view require her to issue a full decision "not to open and investigation" (equivalent to an "inadmissibility decision" in the European Commission) for publication. She could simply reply to the applicant by letter, explaining why she does not intend to investigate the complaint. This would allow much more time to be devoted to serious allegations. Similarly, instead of issuing full decisions "to open an investigation" (equivalent to "admissibility decisions" in the European Commission), she could decide whether the complaint warranted investigation and if so, investigate the allegation prior to making any written conclusion. Not only would this save time, it would also mean that in cases where there is insufficient information in the present system to "open an investigation", for example in cases where the applicant cannot get information such as in missing persons cases, but there is a significant suspicion that there is something behind the allegation, the Ombudsperson could investigate prior to deciding whether the case in fact disclosed a violation. At the moment, for an investigation to be opened, the applicant has to have shown that the case is admissible and must have substantiated his/her complaints.

E.H.R.L.R. 652 Thirdly, this would accord with the wide investigatory powers given to the Ombudsperson, including access to all official documents, full inspection powers and the possibility of attending all administrative hearings and meetings,[32] indicative of the fact that she was intended to investigate, rather than merely communicate with the Government(s). Indeed, in view of the scant responses that are received from the Government(s), this would be extremely useful. While the government authorities are either unwilling or unable to answer requests for information, authorities at lower levels such as Municipalities, police, etc., actually have the information there and, on the rare occasions that they have been asked for it, generally co-operate.

Fourthly, having investigated a case, the Ombudsperson would be in a better position to know how to approach the issue. In cases where the violation is at a legislative level, it would be appropriate to address the Government Party under Annex 6, Article V, para. 4, advising it that the legislation is not in compliance with the Convention and recommending a change. In a case where the violation is as a result of an act or practice by a Government organ or official a special report could be addressed under Annex 6, Article V, para. 6 to that organ or official, recommending that the situation be remedied. In both cases reports could be used generally to address major issues and specifically by individuals before the courts, to alert the judges to the Convention issues arising in the case.

Fifthly, in so doing the Ombudsperson would be able to deal with cases prior to the exhaustion of remedies and actually assist individuals in a practical way within the judicial system. In cases where there is no success, applicants would then, having exhausted remedies, be able to go to Chamber for a binding judgment, where they could be represented by the Ombudsperson.[33]

Finally, such an approach not only accords with Dayton but would in my view work in practical terms. Not only would the whole procedure be faster, allowing the Ombudsperson to respond quickly to urgent cases, but the individual would be provided with institutional support. Such support would be invaluable in the presentday environment where fear prevails and individuals are frequently subjected to arbitrary and discriminatory treatment, where the judicial system does not function effectively and where legal representation is difficult to get, particularly across the inter-Entity boundary line ["IEBL"], either in order to pursue a case in the other Entity or for self-defence. By providing such support the Ombudsperson would build the confidence of individuals, without giving false hopes, and push the judicial system to work.

Human Rights Issues

A comprehensive analysis of the "human rights issues" in Bosnia is outside the scope of this article, if indeed possible. However, the following are examples of some of the most prevalent problems in Bosnia today. They demonstrate not only how difficult dealing with the issues can be, but how the Convention can be applied and the possible approaches that could be adopted.

*E.H.R.L.R. 653 Property

Property matters are foremost in the minds of refugees, displaced persons and other citizens of Bosnia and constitute the vast majority of applications to the Ombudsperson. I have therefore taken this issue first and dealt with it in greater detail.

The right to return

Getting people home is one of the main priorities of the international community. At the beginning of 1996 there were about 1.2 million refugees and 750,000 displaced persons within Bosnia. By May 1997, 400,000 refugees had found solutions in their host country, leaving 815,000 (315,000 in Germany, 253,000 in the Federal Republic of Yugoslavia, 160,000 in Croatia). Between December 1996 and May 1997, only about 250,000 refugees and internally displaced persons returned home, almost exclusively to areas where they form the majority group. However, in the same period a further 80,000 people were displaced, largely due to the transfer of territory between the Entities that took place in March 1996.[34]

At a humanitarian level, the desire of individuals to go home cannot be ignored; at an international political level it is seen as necessary for a sustainable peace and in order to relieve refugee problems in host countries. However, return is blocked at all levels and, as Carl Bildt remarked, "any attempt at major minority return is meeting fierce resistance ranging from the violent to the bureaucratic".[35] Apart from massive housing shortages[36] examples of the practical micro-level barriers to return include the refusal of police to enforce court eviction orders in favour of minority members, the burning of houses, often new, intended for minorities returning, direct, often organised, violence against returnees, employment discrimination and the lack of jobs, barriers to freedom of movement and lack of inter-Entity post and telephone communications. At a Constitutional level, the limited democratic rights of minorities, referred to above, acts as a further disincentive. At a domestic political level there appears to be little will for implementing a return policy, and legislation that actively prevents it is still being applied; this will be considered in more detail below.

The legal situation

There were three forms of property in the former Yugoslavia: private, state and social. "Socially owned property" was a unique concept, intended to provide an alternative to the Soviet-style state-owned property, and described by Kardelj as "simultaneously the collective, class property of all workers and a form of individual ownership by *E.H.R.L.R. 654 everyone who works".[37] Everyone who worked, in principle, had a right to an "occupancy right" in socially owned property, which was financed largely by taxes and social security contributions. The holders of social property were State

organs or legal persons, who had the authority to allocate the property according to criteria fixed by law. Most often companies were holders and allocated occupancy rights to their employees. Occupancy rights were also given over state property.[38] Article 164 of the 1974 Constitution of Yugoslavia provided that an occupancy right was one of the basic rights and entailed, *inter alia,* the right to use an apartment undisturbed and permanently.[39] On November 25, 1994, the Assembly of the Republic of Bosnia and Herzegovina ("RBiH") adopted a law transforming all socially owned property into state-owned property.[40] A law to the same effect was passed in the RS in 1993, before its legal existence was recognised in any form.[41]

Not only has there never been an express transfer of assets from the State to the Entities, but furthermore, by a Decree with Legal Force of June 15, 1992, the Presidency of the RBiH declared all movable and immovable state property of the former Socialist Federal Republic of Yugoslavia ("SFRY") on the territory of RBiH to be considered as state property.[42] Despite this, it has been assumed that the RS is entitled to apply legislation, some of which was adopted prior even to its recognition, to state property on its territory, while in the Federation, the RBiH legislation is applied. In this respect too, therefore, the Entities have taken on quasi-state roles. Entity control over state property can arguably be justified on the basis of Article III(3)(a) of Dayton, which provides that "All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities." However, one could equally argue that *inter alia* it is a necessary implicit Constitutional power of central government that it has authority to hold title to territorial assets and that to accept the opposite conclusion--that is, that a failure to expressly provide for the ownership of territorial assets by central Government means that only the Entities may own public assets--would lead to absurd results.[43] Whatever the answer, in dealing with applications relating to property, the Ombudsperson has had to accept the *de facto* situation, and has considered RS law to be applicable to state property in the RS and RBiH law to property in the Federation.

E.H.R.L.R. 655 During the war the RBiH and the RS (not then recognised) adopted legislation to deal with abandoned property. In practice that legislation preserves the post-war status quo, prevents effective return and allows for continued discrimination in the allocation of property rights.

The most stark example is the Law on Abandoned Apartments,[44] applied in the Federation. Article 1 provides that an occupancy right shall be temporarily suspended where the holder and the members of his or her household abandoned the apartment after April 30, 1991. Article 10 provides that if the holder of the occupancy right did not start to use the apartment within seven days after the cessation of war or within 15 days of the cessation of war if the holder of the right is outside the territory of RBiH, he or she shall be considered to have abandoned the apartment permanently. This was irrespective of whether the apartment was in fact occupied. The cessation of war was pronounced by being posted on a bulletin board in Sarajevo on December 22, 1995,[45] publication being in the official gazette that was distributed on January 5, 1996. Consequently, any occupancy right holder who did not return before December 30, 1995, if in the country, or January 7, if abroad, *ipso jure,* irrevocably lost their occupancy right.

In many cases apartments have been declared permanently abandoned even when the occupancy right holder had never left the apartment but had failed to "reclaim" it. The legislation was unclear in that respect, making reference not to the need to "reclaim" but to the requirement that the individual start to use it. In practice, a requirement that the occupancy right holder make an official request to "reclaim" the property has been implied, since almost all properties where no such request was made were declared as abandoned. In the case of *Kevesevic v. Federation,* where the apartment was declared as permanently abandoned whilst the applicant was in occupation, and the applicant was consequently evicted as an illegal user, the Ombudsperson found the eviction constituted a violation of Article 8 of the Convention, the legislation being arbitrary and non-foreseeable.

In the RS the Law on the Use of Abandoned Property (in effect from February 27, 1996[46]) "abandoned property"; the law merely provides that abandoned property, within the spirit of the law, is to be considered as real and movable property abandoned by the holder of the occupancy right which is recorded in an inventory when the property is registered as abandoned. This provision could be interpreted by reference to the Law on Housing Relations that existed in the SFRY and was adopted by the RS before its recognition[47] (in effect on October 10, 1993). Under this provision an occupancy right could be annulled if the holder ceased to use the apartment for more than six months, except when the absence was due to specific reasons, such as in order to serve in the Yugoslav National Army ("JNA"), or receive medical treatment, or to work abroad with permission from the competent organ of the State.[48] However, in ***E.H.R.L.R. 656*** practice, there have been cases of property being declared abandoned while the occupant or owner was out of the property very briefly. Under Article 3

that property is temporarily transferred to the RS for protection and administration to be implemented through the Ministry of Refugees and Displaced Persons and the Municipal Commission for the Resettlement of Refugees and the Administration of Abandoned Property, as well as other republic and municipal bodies. Furthermore, all lease contracts for the use and protection of abandoned apartments and other property concluded between owners who left the territory of the RS and third persons after April 6, 1992 are retrospectively annulled by Article 49 of that law.

As regards private property that has been declared abandoned in the RS, the Ombudsperson has found not only that Article 2 is too vague but that the law is not in fact concerned with the question of whether the property has genuinely been abandoned but rather allows for the complete and arbitrary forfeiture of private property by the public authorities in the absence of any substantive procedural regulation of the genuineness of the abandonment, so violating Article 1 of Protocol No. 1[49] to the Convention.

In many cases refugees left their property in the care of others under a contract of use. Those occupants are liable to be evicted, the property being declared abandoned under Article 2 and the contract being annulled under Article 49. Under Article 10 of the same law eviction takes place without any notice being given to the occupant. The Ombudsperson has found that this violates not only the substantive parts of Article 1 of Protocol No. 1 and Article 8, in that the property right is removed in an unforeseeable and arbitrary way and is thus unlawful under the latter[50] and does not strike a fair balance under the former,[51] but that it also violates the procedural requirements of Article 8. Thus, it was decided that before any eviction is carried out, the occupant must be given the chance to participate in fair proceedings that are determinative of his right to occupy the property. Naturally, the present system facilitates discriminatory evictions and continued policies of ethnic cleansing.

For over a year, the international community has fought to have this legislation repealed, without success. In August 1996 the High Representative, the final authority regarding the Interpretation of the Peace Agreement, concluded that this legislation was in violation of the Peace Agreement, in particular Article 3(a) of the Annex 7 and of the Convention of Human Rights (Annex II of the Constitution, Annex 4 of the Peace Agreement) and ordered that its enforcement be suspended immediately and that amending legislation be adopted.[52] The legislation is still relied upon. Recently, the High Representative used his last card and cancelled the donor conference, one of the conditions for its restatement being that draft legislation on social property drawn up by his Office be adopted.

The proposed new legislation is radical and few expect it ever to be adopted. It would annul all property rights gained on the basis of the Abandoned Property Laws ***E.H.R.L.R. 657*** since 1992 and re-start the process of property distribution giving priority to those reclaiming pre-war rights. Indeed, if it is adopted the Office of the Ombudsperson envisages claims relating to such annulments. An annulment of a right that was obtained prior to December 14, 1995 (the beginning of the Ombudsperson's temporal mandate) without compensation would be likely to constitute a violation of Article 1 of Protocol No. 1 to the Convention.[53]

On March 19, 1996, 45 days after the transfer of authority from UNPROFOR[54] to IFOR,[55] the two entities were to have established legal authority over the territory designated to them in Annex 1A to Dayton. The transitional period allowed for the withdrawal of forces across the IEBL and led to the stripping of flats and factories by the army and people leaving. At least 80,000 people were displaced during this period. Some had already moved during the war, others were moving for the first time. Many of those who had moved and attained rights in occupied areas during the war, remained, hoping to retain those rights, or having nowhere else to go. A large number are now being evicted, either in order that the original occupancy right holder be allowed to return or so as to house homeless refugees or displaced persons or so as to grant the right to a member of the majority.

The Ombudsperson's office has received several hundred applications regarding such evictions, but finding a solution is fraught with legal and moral problems. For example, in the area of Grbavica, a suburb of Sarajevo controlled by the Serbs from 1992 until the transfer of authority, individuals, in most cases Serbs who had left other areas of Bosnia or whose flats in Sarajevo had been destroyed, were granted temporary occupancy rights by the Serb authorities. The Federation, which now has authority over Grbavica, does not recognise any of the rights conferred by the Serbs, claiming that the RS had no legal existence prior to Dayton, and no legal authority to confer rights over any property.[56] Consequently, anyone who attained such a right is considered an illegal occupant and can be evicted with three days' notice.

From the perspective of individual rights, the fact that the individuals in areas where there was a

transfer of authority, such as Grbavica, had no choice but to address the authorities in control cannot be ignored: in Grbavica they could have attained permission from no legitimate body.[57] While therefore applying the Strasbourg organs' ***E.H.R.L.R. 658*** case law it would be possible to dismiss many such complaints on the basis that the property did not constitute the applicant's "home" under Article 8,[58] since it was occupied illegally, to do so would be to ignore the reality of the situation on the ground and furthermore, in practical terms it would be to accept a continued policy of ethnic cleansing: the replacing of the minority with the majority.

However, the moral solutions are themselves enormously difficult. Should those who moved into state property during the war be allowed to keep that property if the pre-war holder does not return? Should a refugee returning from abroad, sometimes with money, a car and a new foreign university degree be able to displace someone who has lived in a property for four years, albeit illegally? Should a homeless family of a dead soldier be left homeless while someone who took property during the war be allowed to stay? What about those whose property was destroyed during the war--should they have a priority right?

With massive housing shortages, there is no satisfactory solution. But it is only by accepting that duration of occupation and the emotional attachment of an individual to a property can be enough to establish a "home" within the scope of Article 8 of the Convention[59] that any check can be placed on the actions of the authorities. The way to exercise this check is itself difficult.

In the Federation, property rights are theoretically allocated for temporary use according to criteria that prioritise *inter alia* members of the families of active RBiH combatants and injured RBiH soldiers. Permanent rights are allocated according to criteria decided by the authority with the power to allocate, *i.e.* the municipalities or the companies that held the property as socially owned property prior to the war. The best solution to the issue would be for the Ombudsperson to determine whether the priorities and rules applied in each case were transparent, non-arbitrary and reasonable applying Constitutional principles of interpretation, and if so, whether they had in fact been applied in the case at issue. Such a solution would avoid the Ombudsperson herself having to balance the rights of two individuals to a property, something that should be for the elected authorities to do. The political problem is that essential need for return requires that those who lost their occupancy rights be allowed to reclaim them and consequently that occupancy right holders be given the first priority. By adopting such a line the Ombudsperson would, however, be equating occupancy rights with private property rights and saying that no state property should be permanently re-allocated until the authorities had ensured that the previous occupancy right holder was not alive or made no claim over the property. It is a difficult argument to make under the Convention and would most easily be dealt with by the Property Commission applying the "right to return" as enshrined in Annex 7 of Dayton and the Constitution. Furthermore, it is a line that is contested by many who say that occupancy rights cannot be left open forever, particularly when housing shortages are so acute and when those returning are often in a better financial situation than those who stayed.

E.H.R.L.R. 659 An alternative is to ignore the criteria applied and consider each eviction separately, balancing the interests of the applicant being evicted against those of the newcomer. In cases where the old occupancy right holder is returning, the balance would be tipped considerably in his or her favour, in view of the "right to return". In cases where a new holder, with no previous connection with the property is being given a right, providing the old occupant with alternative accommodation could be enough to establish that the eviction was proportionate to the legitimate aim of "the regulation of housing stock" (itself a speculation). Such an approach is unsatisfactory since there is no right to shelter under the Convention and, insofar as that right does exist in Bosnia, it is for the authorities to decide, in a non-discriminatory way, how to accord it.

The non-enforcement of judgments

Another obstacle to return is the failure of the relevant authorities to enforce judgments ordering the eviction of occupants in favour of private property owners or pre-war occupancy right holders. In the RS, there is no deadline for the reclamation of occupancy rights, and individuals have therefore been able, in certain cases, to attain a judgment in their favour. However, in practice the police will not evict a Serb in favour of a Bosniak or a Croat. Despite finding that the failure to carry out the court judgment is a violation of Article 6[60] and of the positive obligations under Article 8 and Article 1 of Protocol No. 1 to the Convention[61] and despite having been present at scheduled evictions with local police and the International Police Task Force ("IPTF"), the Ombudsperson has never managed to get an eviction carried out.

Employment

Discrimination

Both the appointment and dismissal of employees continue to demonstrate discriminatory treatment and, in a country where unemployment runs at 66 per cent, constitute a significant barrier to return. In most cases it is extremely difficult to prove, although the wide powers of investigation given to the Ombudsperson, including her power to attend administrative hearings and meetings, could help. However, in one instance, a teacher who had worked for 20 years was expressly dismissed for not being Croat and therefore not able to teach “Croat culture”. It was important that that complaint was examined under the Convention, rather than solely under the Covenant on Economic, Social and Cultural Rights, since, in the event that it is considered that the only rights that can be directly invoked before the courts are Convention rights (see the analysis of “the rights”, above), it is important to ensure that a discrimination at work case is found to fall within the rights guaranteed by the Convention. Consequently, that ***E.H.R.L.R. 660*** complaint is *inter alia* being examined under Articles 8, 9, 10 and 14 of the Convention.

Police Failures, Abuse and Killings

Serious human rights abuses continue to be committed by police officers. These include not only failures to carry out proper investigations into crimes, including murders, against minority members, but harassment and organised violence against minority members. The most startling example of this was the recent shooting by Bosnian Croat Police officers into the backs of a retreating crowd of Moslems who had crossed from east (Moslem) to west (Croat) Mostar to visit the graves of their dead on the eve of Bajram. One Bosniak was killed and over 20 were seriously wounded. Despite the fact that the incident was recorded on video and photographed, and despite a detailed investigation by the IPTF that identified the plain-clothes police officers who attacked and shot at the crowd, only four officers were charged and that was with abuse on police duty, for which they received suspended sentences. West Mostar police failed to carry out any crime scene investigation and the prosecution and trial were themselves risible. The prosecution offered no evidence against the police officers, the IPTF report was not mentioned, the photographs and video were not shown and the trial lasted 3 hours 45 minutes. The judge himself used biased language, referring to the accused as having acted in defence of their country.

Despite the scale of outrage in the international community and the consequent UN Security Council demands for a proper trial of the officers identified in the IPTF report,[62] those officers are now walking the streets of west Mostar. Mass evictions on both sides followed that incident but the situation seems now to be relatively stable. Unfortunately, fearing any disturbance of that apparent calm, the international community appears to have conveniently forgotten the incident, allowing murderers to police the streets. Just as the arrest of war criminals has been left, so have these individuals. And just as without the arrest of war criminals there can be no reconciliation based on justice, neither will Mostar be re-integrated until those officers are properly charged and tried.

On April 10, 1997 the Ombudsperson adopted a report finding a violation of Articles 1, 2 and 3 of the Convention. She recommended to the Federal Ministers of Justice and Interior that a proper investigation and trial be carried out. The response received from the Bosnian Croat Minister of Justice was that he was not competent to comply with the recommendations, while the Minister of Interior, a Bosniak, fully supported the Report and agreed to do whatever he was “obliged by law” to do. Despite the “responsibility” of the Federal authorities for human rights abuses, it is probably correct that the legal competence to carry out a proper investigation and trial lies at a Cantonal level. The Ombudsperson has therefore re-addressed her report to the Chief of West Mostar Police, the Public Prosecutor, the Cantonal Minister of Interior and the Cantonal Minister of Justice. This does to some extent avoid the problem of finding the Federation as a whole responsible for something that happened in the illegal Croat Republic of Herceg Bosna--a problem that is being faced in trying to implement ***E.H.R.L.R. 661*** mother report addressed to the Federation but relating to illegal detention by Croat Republic defence forces (HVO).

In that case, three individuals were detained for over six months. After four months they were brought before a court on charges of war crimes but were eventually exchanged in a prisoner exchange two months later. The Ombudsperson found a violation of Articles 3, 4, 5, 14 and 13 and recommended a monetary payment of 10,000DM. The predictable response is that the Federation cannot be held

responsible for something that happened in the “Croat Republic of Herceg-Bosna”--an illegal sub-Entity within the Federation that the Ombudsperson cannot address as a respondent Party.

Fair Trial

A biased and politicised judiciary, particularly in the RS, has led to some startling human rights violations. One example is the case of the Zvornik seven. These seven men escaped from Srebrenica and lived in the woods for over a year. They approached SFOR and, heavily armed, were handed over to the Serb authorities, who then charged them with murder and illegal possession of weapons. After almost a year in detention, they were tried but the court refused to allow them to be represented by their lawyers from the Federation. Despite the presence of trial monitors and the intervention of the then deputy High Representative Mr Michael Steiner, the RS continued to insist that only RS court appointed lawyers could represent them. The trial was swift, the evidence risible and the appointed defence counsel in no sense effective. Three were convicted of murder and sentenced to 20 years' imprisonment. The other four were released having already served their sentence for weapons possession.

The Ombudsperson took the view that the fairness of the proceedings could only be considered after the trial was over and after remedies had been exhausted, such that no intervention could take place prior to the end of the trial and possibly even after the appeal.[63] However, if the system suggested above was in place, she could have actively intervened in the case, by preparing a report that could also have been used by the accused in their own defence. The flexibility of the Convention and the particular political circumstances would have allowed her to say that the RS must recognise Federation lawyers, or at the very least, that the counsel appointed were not capable of effectively defending the accused.[64] In this way the Ombudsperson could have acted speedily in an attempt to regulate the proceedings and assist the accused.

Conclusions

I have outlined some of the changes that I consider need to be made to how the institution of the Ombudsperson operates. As can be seen from the analysis of certain “human rights issues” above, I do not underestimate the legal, political and practical problems, not least the continued polarised mentality of the respective authorities, that face human rights institutions in Bosnia. However, the context must be accepted and adapted to. The changes I suggest take into account the context and, if successful, could ***E.H.R.L.R. 662*** in the long term have some influence in changing it. The list of rights protected by the Convention is, I believe, sufficient to address the main human rights issues that arise in Bosnia, although some development of case law is required. It is an effective, flexible legal instrument that can be used in a post-war, post-communist country, but the procedures cannot be those of Strasbourg; they must be adapted to the context if they are to have any relevance at all.

If the Ombudsperson used her powers to take an active role in investigating individuals' complaints against the authorities, that work would be of assistance not only to the individual, but to the other bodies that work towards the same end. For the Convention is only one of the ways towards a society that respects fundamental rights. The same end is pursued in Bosnia from an economic perspective, for example the withholding of aid, through political means and through practical initiatives: NGOs, education, legal aid, awareness building, information. A coherent approach to the use of those means is needed.

Further, references to “human rights” as if they are something separate and independent from the other elements of a democracy is not helpful. The international community often puts “individual human rights” into a different “implementation” category from free elections, free media, freedom of movement, missing persons, mass graves, etc., which can be destructive: it emphasises the individual in a country where, before the war, the “social” was paramount, and during, the “group” was all defining. At a political level a violation of an individual's rights today is openly viewed as irrelevant in the light of the mass human rights abuses that occurred during the war. In addition, allegations of abuses are commonly countered with the response “the other side are worse”: polarised victim mentality prevails. Without democratic structures, an independent judiciary, free media, free communications and movement, and an acceptance of responsibility on the part of the Parties (including the arrest of war criminals), a judicial determination of a human rights violation is made in a vacuum and has a strange emptiness to it. This is the challenge of Bosnia: “democratisation”, the changing of mentalities, the teaching of tolerance and pluralism, the re-instatement of the rule of law. I

cannot say I am optimistic; so much needs to be forgiven.

July 1997

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1. Four agreements including the Preliminary Agreement concerning the establishment of a confederation between the Federation of Bosnia and Herzegovina and the Republic of Croatia and the proposed Constitution of the Federation of Bosnia and Herzegovina. Signed on March 18, 1994.

2. The General Framework Agreement for Peace in Bosnia and Herzegovina, signed in Paris on December 14, 1995.

3. *The Washington Agreement (the Federation of Bosnia and Herzegovina Constitution)* provides that the Federation shall ensure the application of the highest level of internationally recognised rights and freedoms provided in the following 21 instruments: (1) The 1948 Convention on the Prevention and Punishment of the Crime of Genocide, (2) the 1948 Universal Declaration of Human Rights, (3) the 1949 Geneva Convention I-IV on the Protection of Victims of War, and the 1977 Geneva Protocols I-II, (4) 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Protocols thereto, (5) 1951 Convention relating to the Status of Refugees and the 1996 Protocol thereto, (6) 1957 Convention of the Nationality of Married Women, (7) The 1961 European Social Charter and Protocol 1 thereto (8) 1961 Convention on the Reduction of Statelessness, (9) 1965 International Convention on the Elimination of All Forms of Racial Discrimination, (10) 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Protocols thereto, (11) 1966 International Covenant on Economic, Social and Cultural Rights, (12) 1979 International Convention on the Elimination of All Forms of Discrimination against Women, (13) 1981 [UN] Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief, (14) 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (15) 1987 European Convention on the Prevention of Torture or Degrading Treatment or Punishment, (16) 1989 Convention on the Rights of the Child, (17) 1990 Convention on the Rights of Migrant Workers and Members of their Families, (18) 1990 Document of the Copenhagen Meeting of the Conference of the Human Dimension of the CSCE, Part IV, (19) 1990 Council of Europe Parliamentary Assembly Recommendation on the Rights of Minorities, paras. 10-13, (20) 1992 [UN] Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, (21) 1992 European Charter for Regional and Minority Languages. *The Dayton Agreement* (Annex 6) provided that the Parties shall secure to all persons within their jurisdiction the highest level of internationally recognised rights including those referred to as numbers 3, 4, 8-17 and 21 above and, in addition: (a) 1948 Convention on the Prevention and Punishment of the Crime of Genocide, (b) 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto, (c) 1994 Framework Convention for the Protection of National Minorities. Under the Constitution (Annex 4 Dayton) the rights protected by the European Convention of Human Rights and its Protocols apply directly in Bosnia and Herzegovina and have priority over all other law (Article II, para. 2). Further, these rights, as well as the rights provided in the sixteen international instruments listed in Annex I to the Constitution, shall be provided to all persons without discrimination on any ground.

4. The Constitution is set out at Annex 4 of Dayton.

5. Despite continued effort from the international community, Herceg-Bosna continues to operate. It has strong links with Croatia, particularly with the HDZ party of President Tudjman. Recently, it has re-named itself the Croat Community of Herceg-Bosna.

6. The **Parliamentary Assembly** has responsibility for enacting legislation, deciding on revenue, budget and the ratification of treaties and other necessary matters assigned to it by the Entities. It is made up of two chambers, the **House of Peoples,** made up of fifteen delegates, five Croats and five Bosniaks selected from the House of Peoples of the Federation, and five Serbs selected by the National Assembly of the Republika Srpska, and the **House of Representatives,** an elected body comprising two thirds elected in the Federation and one third elected in the Republika Srpska. These instutions are not yet functioning effectively; for example, the Parliamentary Assembly has only met once in January 1997.The **Presidency** has, amongst others, responsibility for foreign policy, including the appointment of ambassadors and the negotiation in international institutions, the execution of decisions of the Parliamentary Assembly and the proposing of an annual budget to the Parliamentary Assembly. It consists of three members, one Bosniak and one Croat (each directly elected from the Federation) and one Serb (directly elected from the Republika Srpska). The first **Chair of the Presidency,** presently Ilajja Izetbegovic, was selected according to the highest number of votes. The future method of selecting the Chair should be decided by the Parliamentary Assembly. The Chair is responsible for nominating the **Council of Ministers,** who take office on approval of the House of Representatives. No more than two-thirds of the Council of Ministers shall be from the territory of the Federation. Deputies to the Ministers shall not be the same constituent people as their Ministers. On a vote of no-confidence the Council of Ministers shall resign. Each member of the Presidency shall by virtue of the office have civilian command authority over armed forces.The nine members of the **Constitutional Court** were finally agreed upon in May 1997. The first session was held on May 23, 1997 to adopt Rules of Procedure. Four members were to have been selected by the House of Representatives of the Federation, two members by the Assembly of the Republika Srpska and the three remaining members by the President of the European Court of Human Rights, one being the Swedish member of the European Commission of Human Rights, Hans Danelius. Disputes concerning issues arising between the Entities, between BiH and the entities or between the institutions of BiH may only be referred to the Court by a member of the Presidency, the Chair of the Council of Ministers, by the Chair or deputy Chair of the Parliamentary Assembly or by one fourth of either chamber of a legislature of an Entity. The Court also has full appellate jurisdiction from any court in BiH and the normal Constitutional jurisdiction to determine whether a law is in conformity with the Constitution, the European Convention of Human Rights, the laws of BiH, or the existence or scope of a rule of public international law

pertinent to the court's decision.

7. Annex 4, Article III, para. 2(a) of Dayton.

8. The State of BiH, acting through its common institutions, was given responsibility for foreign policy, including trade and customs, monetary policy, finances of the institutions and for the international obligations of the State, immigration, asylum, international and inter-Entity criminal law enforcement, establishment and operation of common and international communications facilities, regulation of inter-Entity transportation and air traffic control.

9. Annex 4, Article III, para. 3(a) of Dayton.

10. Annex 4, Article III, para. 4 *ibid.*

11. Annex 5: Arbitration, Annex 6: Human rights, Annex 7: Refugees and displaced persons, Annex 8: Commission to Preserve National Monuments.

12. On asking the authorities of the Republika Srpska for a copy of their laws in 1996, the Office of the Ombudsperson was informed that they were confidential!

13. In BiH: the Constitutional Court, the Ombudsperson and the Chamber of Human Rights. In FBiH: the Constitutional Court, the Supreme Court, the Human Rights Court and the Federation Ombudsmen, the Federation Implementation Council. In RS: the Constitutional Court and the Supreme Court.

14. Article X, para. 2, Constitution (Annex 4 Dayton) provides that no amendment of the Constitution may eliminate or diminish any of the rights and freedoms referred to in Article II of the Constitution.

15. Annex 4, Article II, para. 2 Dayton.

16. Annex 4, Article II, para. 4 *ibid.*

17. Annex 4, Article II, para. 6 *ibid.*

18. Annex 4, Article II, para. 1 *ibid.*

19. Annex 6, Article 1 *ibid.*

20. See footnote 11.

21. Dr Gret Haller, referring to herself as the Ombudsperson, was appointed for the first five years by the Chairman in office of the Organisation for Security and Co-operation in Europe (“the OSCE”), Mr Frowick. After that period the power to appoint is transferred to the Presidency of BiH. Presently, there is an office in Sarajevo and an office in Banja Luka (Republika Srpska). Dayton requires a further office within the Federation, the most likely place for which would be in the divided city of Mostar. As yet finances do not appear to allow such an office to be established.

22. The Chamber is made up of 14 members, four appointed by the Federation and two by the RS. The remaining eight, including the President of the Chamber, were appointed by the Committee of Ministers of the Council of Europe pursuant to resolution (93)6, as foreign members who were not citizens of neighbouring states: P. Germer, R. Aybay, H. Balic, M. Dekovic, G. Grasso, Z. Juka, V. Markotic, J. Moller, M. Nowak, M. Pajic, M. Picard, D. Rauschning, A. Zielinski, A. Grotrian (Registrar).

23. As of May 31, 1997, 1,003 provisional files had been opened in Sarajevo and 463 in Banja Luka, of which 427 and 189 respectively, had been registered. Six final reports had been issued, of which four found violations by the Republika Srpska (illegal detention, inhuman and degrading treatment and non-enforcement of judgments) and two by the Federation (illegal detention and inhuman treatment, right to respect for the home). Four special reports had been issued relating to non-discrimination in medical treatment, freedom of expression, freedom of correspondence and the right to life). Twenty-eight cases had been referred to the Human Rights Chamber.

24. See footnote 3 above.

25. Annex 6, Article V, para. 3 and Article VIII, para. 2(e) of Dayton.

26. It is unlikely that Annex 6 in fact gives the Ombudsperson the mandate to do this, as only the Parties to the agreement have undertaken to secure the rights set out therein.

27. The rules of procedures of June 14, 1997, Rules 21 and 23.

28. *ibid.* Rules 20, 21 and 23. The ratione temporis date of 15.12.95 should have been 14.12.95 when the Agreement in fact came into force.

29. Annex 6, Article V, para. 4 of Dayton.

30. Annex 6, Article V, para. 5 *ibid.*

31. Annex 6, Article V, para. 3 *ibid.*

32. Annex 6, Article VI, para. 1 *ibid.*

33. Annex 6, Article V, para. 7 *ibid.*

34. International Crisis Group Report: “Going Nowhere Fast: Refugees and Internally Displaced Persons in Bosnia and Herzegovina.” April 30, 1997 (“ICG Report”).

35. Fifth Report of the High Representative of the Bosnian Peace Agreement to the Secretary General of the United Nations, para. 220.

36. The World Bank estimates that half a million flats and houses were damaged or destroyed during the war, that is 56 per cent of the housing in the Federation and 29 per cent in the RS. During 1996 only 40,000 housing units were repaired through international assistance programmes: see also ICG Report. The Annex 7 Commission for Real Property has determined that out of a total number of property units of 63223, 34 per cent had been destroyed, 32 per cent were intact, 24 per cent were unknown, and 10 per cent had been partially damaged.

37. One of Tito's trio of advisers and a main proponent in the creation of “self-management”: the Yugoslav alternative to Soviet communism.

38. Amendment LXIX of July 31, 1989 to the 1974 Constitution of SRBiH (SRBiH Official Gazette 21/90).

39. Despite the fact that an occupancy right cannot be sold, its permanent character, the fact that it can be inherited and the payment of social security contributions to attain it, are strong grounds for arguing that it is “property” for the purposes of Article 1 of Protocol No. 1 to the Convention. However, it cannot remain property irrespective of whether the claimant returns, as private property could.

40. The Law on the Transformation of Social Property, in force January 1, 1995 (RBiH Official Gazette 33/94).

41. The Law on Transformation of Social into State Property, Official Gazette No. 4/93, 29/94, 31/94, 8/96.

42. Official Gazette 6/92 and 13/94.

43. State Succession to the Immovable Assets of Former Yugoslavia, ICG Report of February 6, 1997, prepared by Public International Law and Policy Group.

44. On June 15, 1992 the Presidency of the RBiH issued a Decree with Legal Force on Abandoned Apartments, it was adopted as a Law on June 1, 1994 and amended in 1992, 1994, 1995 (Official Gazette 8/92, 12/92, 16/92, 13/94, 36/94, 9/95, 33/95).

45. The cessation of a state of imminent war danger was not however declared until December 1996.

46. Official Gazette of RS 3/96, adopted on February 26, 1996.

47. Official Gazette of SFRY 14/84, Official Gazette of RS 19/93 of October 9, 1993.

48. Articles 47 and 48 *ibid.*

49. Ombudsperson Report June 19, 1997, Application No. 124/96, *Predrag Gaji# v. RS.*

50. Eur. Court HR, *Sunday Times v. United Kingdom,* Series A, No. 30, (1979) 2 E.H.R.R. 245, para. 49.

51. Eur. Court HR, *Stran Greek Refineries and Stratis Andreadis v. Greece,* Series A, No. 301-B, (1995) 19 E.H.R.R. 293, paras. 68-75 and *Hentrich v. France,* Series A, No. 296, (1994) 18 E.H.R.R. 440, paras. 43-48.

52. Opinions of the Legal Adviser to the High Representative.

53. Eur. Court HR, *Lithgow & Others v. United Kingdom,* Series A, No. 102, (1986) 8 E.H.R.R. 329, paras. 120-121.

54. United Nations Protection Force.

55. United Nations Implementation Force.

56. The Bosnian Serbs declared the creation of a Republic on March 27, 1992, but were never internationally recognised. The property was possessed by the Republic of Bosnia and Herzegovina, internationally recognised as an independent State by the European Union on April 6, 1992 and the United States on April 7, 1992. On November 24, 1994, all socially-owned property in the State was transformed into State-owned property, except socially-owned property over which the Federation held rights: The Law on the Transformation of Social Property, Official Gazette 33/94, see footnote 40 above.

57. A parallel could be found in international law where a successor State has responsibility for the conditions and population on its territory, population having a “territorial” or local status, unaffected by whether there is a cession or a relinquishment by one State followed by a disposition by international authority. See Ian Brownlie, *Principles of Public International Law* (4th Ed.), pp. 664-665.

58. Comm. Dec. No. 11716/85, Dec. 14.5.86, D.R. 76, p. 80.

59. An extension of Eur. Court HR, *Gillow v. United Kingdom,* Series A, No. 109, (1989) 11 E.H.R.R. 335, para. 46, and *Buckley v. United Kingdom,* (1997) 23 E.H.R.R. 101 and *Loizidou v. Turkey,* (1997) 23 E.H.R.R. 513 (both to be published in Decisions and Reports 1996).

60. *Hornsby v. Greece,* (1997) 24 E.H.R.R. 250. Despite the absolute finding of the European Court of Human Rights in that case, in cases where the eviction itself might be found to violate the occupant's right to a home under Article 8, it would be inconsistent to say that the failure to enforce the eviction was in violation of Article 6. Reference was therefore made in the Special Report on non-enforcement of judgments (May 12, 1997) to Article 17 of the Convention, which could be applied in such cases.

61. Ombudsperson Report February 27, 1997, B93/96, *Dautchajic v. RS,* and Report April 4, 1997, B 18/96, *F.G. v. Republika Srpska.*

62. March 11, 1997.

63. A Special Report calling for a judgment was adopted on June 3, 1997 but the judgment had already been issued the same day.

64. Eur. Court HR, *Artico v. Italy,* Series A, No. 37, (1981) 3 E.H.R.R. 1, para. 33.