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QUESTIONS OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in the former Yugoslavia

Report of Mr. Jiri Dienstbier, Special Rapporteur of the Commission on
Human Rights on the situation of human rights in Bosnia and Herzegovina,
the Republic of Croatia and the Federal Republic of Yugoslavia

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The present report is submitted by Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia. The report covers developments in the area of the Special Rapporteur's mandate until the first week of December 1999 and is based on information gathered by field offices of the Office of the High Commissioner for Human Rights (OHCHR).

I. BOSNIA AND HERZEGOVINA

The Special Rapporteur concludes that, unfortunately, another year has passed with no significant progress to report on respect for human rights and the rule of law. The main reason for this situation continues to be deliberate obstruction by those who hold power in Bosnia and Herzegovina.

The Special Rapporteur's main areas of concern include the role of the police in ensuring protection of human rights. Despite the efforts of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) to restructure local police, police forces remain mono-ethnic in most areas and their effectiveness in crime detection, investigation and response remains low. Police moreover are reluctant to implement court decisions not in accord with the politics of local majority groups.

The lack of a functioning and independent judiciary is another major concern of the Special Rapporteur. Interference of political power structures in the judicial system remains strong. This has been shown in the starkest terms by the almost total failure to implement property laws in either entity.

Overall, security concerns continue to be the main factor hindering returns to most parts of the country. Other major factors are lack of employment opportunities and discrimination. The Special Rapporteur welcomes the tough new approach taken by the High Representative, imposing legislation, removing from public office the main obstructionists, and sending a strong message to the leaders of the country as well as to all citizens. While it is too early to say whether this will bring results, he maintains that it is vital to keep up the pressure now that momentum has been generated.

II. REPUBLIC OF CROATIA

The Special Rapporteur's report focuses mainly on the issues of refugee returns and war-crimes trials. He expresses concern over the low number of returns, which he attributes in part to lingering post-war inter-ethnic tensions and the damaged economies and infrastructure in the areas of return. However, he also calls attention to obstacles for which the Government can be held directly responsible, including discriminatory and deficient legislation, lack of concern at both the

State and local levels, and the lack of accessibility, efficiency and enforcement of judicial remedies.

Concerning war-crimes trials, the Special Rapporteur states that unreasonable delays in war-crimes prosecutions and doubts as to their fairness, as well as a lack of transparency in new indictments, have reinforced the belief on the part of the Serb population that they are being targeted by the Government on account of their ethnicity. He urges that all war crimes be investigated and tried in accordance with international standards, and that perpetrators of war crimes be brought to justice regardless of their ethnic background.

The Special Rapporteur draws particular attention to the scant resources allocated to the judiciary and to the burden of unresolved cases. He states that delays and non-enforcement of court rulings should be of primary concern to the Government of Croatia. He emphasizes that an independent and effective judiciary is synonymous with the rule of law.

III. FEDERAL REPUBLIC OF YUGOSLAVIA (FRY)

Since most of the Special Rapporteur's recent report to the General Assembly was devoted to the situation in Kosovo, FRY, he is taking the opportunity of the present report to focus on issues not immediately related to the Kosovo crisis, but nonetheless crucial to his mandate. He notes that international efforts to avert the looming humanitarian crisis caused by the destruction of FRY's civilian infrastructure have been for the most part limited and politicized. He notes the arrival of the first fuel trucks in the European Union's "Energy for Democracy" programme, but observes that fuel shortages continue throughout FRY, disrupting food and water supplies and preventing the operation of essential equipment. Humanitarian agencies fear increased suffering of the most vulnerable, particularly refugees, internationally displaced persons, the disabled, children, the chronically ill, urban elderly and social cases.

The Special Rapporteur also calls attention to the FRY population's increasing economic hardship, generated in part by the country's long-term economic decline and lack of reform, and worsened as a result of sanctions and the extensive damage to infrastructure and industry caused by the air campaign of the North Atlantic Treaty Organization (NATO).

The Special Rapporteur expresses serious concern about increasing incidents of violations of freedom of expression throughout FRY, particularly in the Republic of Serbia. In Belgrade and in Pristina, selected media have embarked on crusades against independent journalists, while access to a range of information is severely restricted in several additional ways.

The Special Rapporteur makes particular reference to criminal proceedings under way throughout FRY with serious implications for human rights. He expresses grave reservations about the conduct of many proceedings. He recommends that the Government of FRY, including the republics of Serbia and Montenegro, should permit access by OHCHR and the International Committee of the Red Cross (ICRC) to places of detention, and should improve their performance in conforming judicial proceedings with international standards of due process. He further urges the authorities to take measures to end torture and ill-treatment of those in prisons.

The Special Rapporteur calls upon the international community to cease isolating the people of FRY. In particular he urges that bilateral civil society connections be multiplied and that non-governmental organizations in countries outside FRY establish links with counterparts inside the country.

Introduction

The present report of Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights, considers events occurring in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia until the first week of December 1999. The report is based on information gathered from a wide range of sources by field offices of the Office of the High

Commissioner for Human Rights (OHCHR). The Special Rapporteur would like to thank all those individuals and organizations which have supported his mandate since he assumed his position in March 1998. In particular, he would like to pay tribute to the OHCHR human rights field staff, both internationally and nationally recruited, who have demonstrated great dedication to the protection and promotion of human rights, and who conduct their work in often difficult circumstances. The Special Rapporteur also wishes to express his gratitude to the Governments which have provided financial support to OHCHR and enabled him to exercise his mandate effectively.

I. BOSNIA AND HERZEGOVINA

The Special Rapporteur briefly visited Bosnia and Herzegovina in April 1999, focusing on the impact of the Kosovo crisis in discussions with representatives of civil society and international organizations in Sarajevo. From 15 to 20 May 1999 he undertook a more extensive mission to the country, travelling mainly in the Republika Srpska (RS), with visits to Banja Luka, Brcko, and Bijeljina. He met with local authorities and civil society representatives, as well as representatives of human rights institutions and international organizations, in order to get a full picture of the human rights situation. In addition the Special Rapporteur receives information on the human rights situation on a regular basis from the OHCHR field operation in Bosnia and Herzegovina, based in Sarajevo.

A. General observations

In his last report to the Commission on Human Rights (E/CN.4/1999/42), the Special Rapporteur stated that Bosnia and Herzegovina remained divided along ethnic lines and that substantial rights violations were continuing, in particular violations of the rights to property and to return. Unfortunately, another year has passed with no significant progress to report on respect for human rights and the rule of law. The main reason for this unsatisfactory situation continues to be deliberate obstruction by those who hold the power in Bosnia and Herzegovina.

The Special Rapporteur would like to commend the approach taken by the High Representative, Wolfgang Petritsch, in an attempt to overcome this obstruction. In October 1999 the High Representative imposed new property legislation, which was intended to eliminate most obstacles to the implementation of property laws in both entities. As a sign of the new resolve of the international community, on 29 November the High Representative, in concert with the head of mission and the Organization for Security and Cooperation in Europe (OSCE), dismissed 22 officials, all of whom had made a practice of obstructing implementation of the Dayton Agreement in various ways. While it is too early to say whether these actions will lead to improved implementation of the Dayton Agreement and respect for the rule of law, the message sent to obstructionist officials was clear: the international community will no longer tolerate such behaviour. The response from the public was generally positive. Not surprisingly, some of the officials who were removed objected to the decision, but overall reactions from the leading parties were rather muted.

B. Human rights situation

The Special Rapporteur submitted a comprehensive report to the General Assembly (A/54/396-S/1999/1000) on 24 September 1999 as well as an addendum to that report (A/54/396/Add.1-S/1999/1000/Add.1) on 3 November 1999. As only one month has passed since then, the present report will build upon previous submissions rather than repeat them.

The Special Rapporteur has outlined his major areas of human rights concern in Bosnia and Herzegovina, emphasizing the role of the police, as agents of the State, in ensuring the effective protection of human rights. Despite the efforts of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) to restructure the local police, police forces remain mono-ethnic in most areas and their effectiveness in crime detection, investigation and response remains low. The police moreover remain reluctant to implement court decisions not in accord with the politics of the local majority ethnic group. Police reform in both entities suffers from a lack of genuine

political will.

The lack of a functioning and independent judiciary has been another major concern highlighted by the Special Rapporteur. The interference of political power structures in the judicial system remains strong. This has been shown in the starkest terms by the almost total failure to implement property laws in either entity.

Overall, security concerns continue to be the main factor hindering return to most parts of the country. Other major factors in the low rate of minority returns are lack of employment opportunities and discrimination. Authorities at all levels have failed to create conditions conducive to sustainable returns.

C. Right to return and to property

Four years after the Dayton Agreement was signed, it is estimated by the Office of the United Nations High Commission for Refugees (UNHCR) that up to 830,800 people (487,300 in the Federation and 343,500 in the Republika Srpska) remain displaced in Bosnia and Herzegovina, while 324,100 refugees remain in host countries in Europe and elsewhere without durable solutions. Many still wish to return to the properties they occupied prior to the war, but return has been made difficult by complicated property laws that have not been implemented and by the difficult economic, security and political realities facing those who would now be part of ethnic minorities in their pre-war communities.

The Special Rapporteur has been offered a range of reasons and excuses by different authorities when he has inquired why returns were not happening. In addition to those already mentioned, he has often heard the claim that people in fact do not want to return. A survey conducted by UNHCR and the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), made public in November 1999, provides useful insight into the real wishes and intentions of Bosnian refugees and displaced persons.

More than 3,000 interviews were conducted throughout Bosnia and Herzegovina as well as in Croatia and the Federal Republic of Yugoslavia. Respondents were requested to identify how they would prefer to exercise their property rights, and what factors (legal, socio-economic or political) influenced their preferences. The survey confirmed that a large proportion of refugees and displaced persons - 61 per cent of all respondents - still wish to return to the properties they occupied prior to the war. In Bosnia and Herzegovina itself, 76 per cent of respondents currently residing in the Federation of Bosnia and Herzegovina and 34 per cent of those currently residing in RS would prefer to return to their pre-war properties; 76 per cent of all Bosniak respondents, 73 per cent of Croats, and 36 per cent of all Serbs indicated a preference to return to pre-war properties.

One of the main barriers to return identified by respondents was personal security and security of their property. The majority of all respondents who indicated a preference to sell, exchange or lease their properties said that they would return if local authorities guaranteed their safety.

At the same time, there is also a large group of displaced persons and refugees who do not wish to return, but instead would prefer to integrate into communities in which they have been resettled, in some cases for periods of up to eight years. These people will need to be provided with adequate information on their rights so that their interests can also be adequately protected.

Violence targeting returnees and/or their property continued during the reporting period and remains an obstacle to return in many areas of the country. However, there has been some improvement compared to the situation in previous years. The number of incidents overall has decreased and, in particular, in most urban areas security is not a major obstacle. But in some parts of the Republika Srpska and in Bosnian Croat-controlled municipalities in the west of the country, returnees and/or their property have continued to be targets of violent attacks. Local police in most cases have failed to take preventive measures and the perpetrators of crimes are hardly ever arrested or prosecuted.

In October and November 1999 there were a few security-related incidents reported and in some return locations, tensions were on the rise. For example, in Kopaci and Srpsko Gorazde (RS), some 50 displaced persons camped with tractors at the Inter-Entity Boundary Line (IEBL) after local authorities denied them access to their properties. The Mayor of Srpsko Gorazde was one of the local officials dismissed by the High Representative and the OSCE head of mission on 29 November, for "consistent and uncompromising obstruction of return to Kopaci-Srpsko Gorazde and failing to respond in a responsible manner to a crisis in returns in the region." In Gacko (RS), on 1 December, four persons were injured when a mine exploded under their car as they were travelling to a minority return site. According to the International Police Task Force (IPTF), it appears the incident was a deliberate attempt to deter returns.

On 27 October, the High Representative imposed the comprehensive amendments to property laws in both entities which harmonized the legislation between the entities and provided authorities with detailed instructions on the application of property and housing legislation. There is now rough legislative equality between the entities. At the same time, several new provisions were introduced, one of which defines "multiple occupants" and obligates authorities to take immediate action to evict occupants without lawful claims to the properties where they reside. Fines have also been introduced for those who fail to comply with eviction orders as well as for administrative bodies that fail to implement the law, including eviction provisions. There has, however, already been some resistance to the new laws, such as reluctance to execute evictions during the winter.

D. Economic, social and cultural rights

Discrimination on the basis of ethnicity, political opinion and gender remains endemic in Bosnia and Herzegovina. It has been highlighted recently by the Human Rights Chamber as "one of the most severe problems for the return of refugees and displaced persons." There is a continuing failure to re-hire members of ethnic minorities or political opposition groups who were dismissed during the war. There has also been ongoing exclusion of women from employment in favour of demobilized soldiers, and extensive discrimination against teachers from minority ethnic groups. The major obstacle to addressing employment discrimination is the weak rule of law and the lack of legal remedies. Discrimination is perpetuated by the continued strength of the nationalist political parties which control most aspects of economic life in Bosnia and Herzegovina.

On a positive note, on 5 October 1999 a new Federation Labour Law was adopted containing a non-discrimination provision (art. 5) which states: "A person seeking employment, as well as a person who becomes employed, shall not be discriminated against based on race, colour, sex, language, religion, political or other opinion, national or social origin, financial situation, birth or any other circumstances, membership or non-membership in a political party, membership or non-membership in a union, and bodily or mental problems." However, the text preserves strict deadlines (two weeks from awareness of a violation) for filing claims with administrative and legal bodies for alleged violations, leaving little margin of time for employees to react.

Discrimination against women in employment, in the form of non-payment of maternity-leave benefits, has been reported in both entities. In the Federation, women are entitled to one year of maternity leave, to be paid for by the cantons, but the required cantonal legislation is not in place (with the exception of Sarajevo canton). In RS, where women are also entitled to one year of maternity leave, there is evidence that women who become pregnant as well as new mothers frequently are dismissed from their jobs. It may be argued that non-payment of maternity leave entitlement violates international human rights standards, including article 10 of the International Covenant on Economic, Social and Cultural Rights, which provides that paid leave or leave with adequate social benefits should be provided to new mothers. The current practice also violates the federal Constitution as well as those of the two entities.

E. Trafficking of persons

Trafficking of persons for the purpose of forced prostitution has emerged as a major human rights concern in Bosnia and Herzegovina. Of particular concern is the fact that local police until recently have focused more on offences allegedly committed by women than on offences committed *against* them. Deportations from the cantons or across the IEHL have been carried out in a manner that has put women at further risk of abuse. In response to these concerns, in August 1999 the IPTF Commissioner issued an interim directive providing guidance for police operations against premises where it is suspected that procurement of prostitutes is organized.

Following that, on 29 October the High Representative issued a Decision on Trafficking and Deportation, effectively extending the 30 August interim directive issued by IPTF. The Decision requires that any decisions regarding deportation of foreigners should be taken in consultation with IPTF, and is intended to ensure appropriate treatment of persons who are threatened with deportation, particularly those who are victims of trafficking. The Decision is in part a response to the failure of the House of Representatives to adopt a law on immigration and asylum, which would enable the country to address the issue of deportation in a manner consistent with international law.

Despite the failure to adopt adequate legislation including criminal law provisions addressing trafficking, there has been some progress made with regard to State responsibility. Authorities at the State level have indicated their willingness to address some aspects of victim protection, including by providing shelter. Local non-governmental organizations have also shown willingness to provide services for the protection of victims.

F. Freedom of expression

On 22 October Zeljko Kopanja, editor-in-chief of Nezavisne Novine, based in Banja Luka, sustained grave injuries resulting in the amputation of both his legs from a bomb explosion in a parking lot. Mr. Kopanja had been the subject of threats since at least August 1999, when Nezavisne Novine became the first newspaper in the Republika Srpska to publish accounts of wartime atrocities committed by Serb forces. On 3 November, journalist Mirko Srdic, a correspondent for TV Bosnia and Herzegovina and the BETA news agency, was physically assaulted and threatened, allegedly by the present mayor of Doboj. The assault followed two stories aired by TV Bosnia and Herzegovina, which cast the political party SDS Doboj and the mayor in an unfavourable light.

The assassination attempt against Mr. Kopanja and the assault on Mr. Srdic represent the continuation of an alarming trend of violence and threats aimed at undermining the development of a free and independent media throughout Bosnia and Herzegovina, particularly in the Republika Srpska.

G. Missing persons

The Special Rapporteur welcomed the release in November 1999 of the report of the Secretary-General on the fall of Srebrenica (A/54/549). Concerning missing persons, the total number for whom family members have opened a tracing request in Bosnia and Herzegovina is, according to ICRC, 20,286. The total number for whom family members opened a tracing request following the fall of Srebrenica alone is 7,423. It is presumed that most of these persons are dead. More than 4,300 bodies have been exhumed and identified in the country since April 1996.

Since its commencement in November 1997, the Joint Exhumation Process, led by the office of the High Representative (OHR), has encountered fewer and fewer problems in all areas, regardless of who exercises control. Exhumations have been conducted by the parties themselves. It may be noted that even in spring 1999, during the military operation by the North Atlantic Treaty Organization (NATO) against FRY, exhumations continued to be carried out even in RS. According to OHR, cooperation between the three sides has improved, with a joint commission on missing persons established in the Federation. The result is that, as of the end of November, the three sides had worked at over 500 locations during the year. As the exhumations were just

being ended for the winter at the time of writing statistics had not yet been compiled, but at least 2,000 bodies had been exhumed. According to the OHR coordinator, cooperation between the three sides and international organizations has been excellent. The exhumations have been monitored by OHR, Physicians for Human Rights and ICRC (the latter two are also providing expertise in identification and in clarification of the fate of the missing). Of particular concern to the Special Rapporteur is the precarious situation of the many families with missing relatives. Many of these families are themselves displaced and headed by women, in many cases without any surviving male members of the household.

H. Conclusions and recommendations

The Special Rapporteur is once again obliged to conclude that there has been little fundamental change in the situation of human rights in Bosnia and Herzegovina. Public officials and political leaders have perpetuated the results of past population displacements by obstructing returns and undermining the rule of law, particularly in the area of property rights. Discriminatory practices in all areas, including employment and education, continue to flourish.

The Special Rapporteur welcomes the tough new approach taken by the High Representative, imposing legislation, removing from public office the main obstructionists, and sending a strong message to the leaders of the country as well as to all citizens. While it is too early to say whether this will bring results, it is vital to keep up the pressure now that momentum has been generated. Many good initiatives of international representatives in the past have failed owing to lack of systematic and long-term follow-up.

The Special Rapporteur stresses that the transition of Bosnia and Herzegovina to a democratic State built on respect for the rule of law will be a long-term process. International assistance to the country will be needed for a long time to come.

The importance of reforming the police and the judiciary to improve respect for human rights cannot be overestimated. Such reform will not happen, however, without the political will and commitment of local authorities, which so far has not been forthcoming.

The Special Rapporteur notes that four years after the Dayton Agreement, the number of minority returns is still exceedingly low. However, large numbers of refugees and displaced persons still express their wish to return to their pre-war homes. There must be several approaches to assist them to do so. The regional approach must be advocated strongly, as many refugees are living within the region. Political opposition to returns must be overcome, which may require further removals from office of public officials. Respect for the rule of law, in particular in the area of property rights, is critical to making sustainable returns possible.

The Special Rapporteur urges that combating discriminatory practices, including in the areas of economic and social rights, be accorded the highest priority. Particular attention should be paid to gender aspects of discrimination, especially in the restructuring and training of law enforcement agencies and the judiciary.

II. REPUBLIC OF CROATIA

A. Introduction

The present report considers human rights developments in Croatia from mid-March to early December 1999. It focuses on the issues of refugee returns and war-crimes trials, drawing on information culled and analysed by OHCHR staff in Zagreb. In light of the changing political scene in Croatia, with the new interim President calling for parliamentary elections in January 2000, the Special Rapporteur intends to provide an update on the situation to the Commission on Human Rights when it meets in Geneva in March/April 2000.