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## Extract from the IHF report

### *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005 (Events of 2004)*

#### Bosnia and Herzegovina<sup>1</sup>

**IHF FOCUS: elections; freedom of expression, free media and information; freedom of association; national and ethnic minorities; equal rights of women and men; rights of the child; rights of homosexuals; refugees and IDPs; trafficking in human beings.**

The year 2004 in Bosnia and Herzegovina (BH) was marked with a paradox. The authorities expressed their devotion to Bosnia and Herzegovina's alignment to the Euro-Atlantic integration processes, which should also imply their devotion to progress in the area of economy, democracy and human rights. But the country was at a standstill and in many aspects trailed behind its neighboring countries.

The situation in BH in 2004 is best illustrated with the fact that the country only succeeded in becoming a member of the Council of Europe. It was still not a member either of NATO's Partnership for Peace Program, or the World Trade Organization. Furthermore it was still far from meeting the basic preconditions for beginning negotiations on stabilization and association with the European Union.

Nevertheless, positive changes did take place during 2004. The one-millionth refugee had returned to his pre-war home by the end of 2004. In practice, almost 50% of all refugees and displaced persons had returned (amounting to 2.25 million people). However, only a small number of returnees had returned to the areas in which their own ethnic group did not represent the majority – this was the case in only 20% of the total number of returns.

There was a 95% success rate in the cases in which the repossession of houses or apartments had been requested. This showed a serious commitment by the international community and local authorities.

The October local elections were held in accordance with international standards of free and fair elections. However, the voter turnout was very low.

Moreover, the report of the commission for research of the events in and around Srebrenica in the period from 10 July to 19 July 1995 was a positive development. The report not only contained relevant information on the massacre in Srebrenica; the number of victims, location and methods of execution, but it also expressed regret and an apology to the victims and their families on behalf of the authorities of the Republika Srpska (RS). It thus created a basis for the rebuilding of trust and reconciliation between members of different ethnic groups. In line with this, efforts should be made to establish the truth about other war events, which still impede the normalization of the situation in post-

<sup>1</sup> Based on Helsinki Committee for Human Rights in Bosnia and Herzegovina, *Report on the Status of Human Rights in Bosnia and Herzegovina, Analysis for the Period January – December 2004*, No. 06-12/2004, December 2004.

war BH and make it impossible to start the process of rebuilding trust and reconciliation. The most important task is to bring to justice indicted war criminals, including Radovan Karadžić and Ratko Mladić.

In addition, there was some success in shedding light on the fate of the high number of missing persons (about 17,000 at the end of 2004). The search for missing persons no longer seemed as hopeless as it seemed a couple of years ago thanks to the adoption of the Law on Missing Persons and the establishment of the Institute for Missing Persons, as well as the efforts of national and international institutions. There is now reason to hope that the process of discovering graves and the identification of missing persons will be speeded up and that the situation of the missing persons' families will thereby be eased.

On the other hand, the institutional protection of human rights was in stagnation and, in some areas, even degraded in 2004. No adequate replacement was found for the Human Rights Chamber, which was abolished in late 2003, leaving individuals without appropriate and efficient recourse to the courts. Moreover, the institution of ombudsmen of BH in its current form does not correspond either to its name or to its purpose. In 2004, the institution served for the protection of individual interests rather than universal human rights, meaning it was on the verge of collapsing.

The Helsinki Committee for Human Rights in BH stated that the human rights situation was also worsened due to the international community's neglect of human rights. This attitude, particularly shown by the High Representative, was encouraged by local authorities.

## **Elections**

### *Local Elections*

The central characteristic of the local elections held on 2 October was insufficient interest and thus a small voter turnout: only 46.8% of the registered voters went to the poll. A total of 68 political parties, 146 independent candidates, six lists of independent candidates and 18 coalitions vied for the votes. For the position of mayors there were 809 candidates and for members of municipal assemblies 26,618 candidates. The election of mayors was of significant importance as this was the first time that citizens could directly elect a mayor (previously, mayors were appointed by political parties).

The Helsinki Committee in BH stated that the low turnout – the lowest in the post-Dayton BH – was the consequence of a saturation and dissatisfaction due to the inefficiency of the incumbent authorities at all levels and their failure to meet pre-election promises.

Voter abstinence was especially apparent in cities and among young people. It was of special concern that reportedly only 7-15% of under-30-year-olds cast their votes. This confirmed the trend shown by previous studies, which claimed that 60% of young people wished to leave BH because of the lack of prospects, slow reforms in the education system, and unemployment.

Equally worrying was a small voter turnout from abroad. Of 27,500 registered voters, some 17,000 chose to cast their vote. The new election law prescribed that voters living abroad had to re-register by 17 June. However, some were not informed about this obligation and most found the rules for re-registration too complicated and uncertain. The authorities in BH were clearly disinterested in mobilizing this category of citizens and encouraging them to vote.

Mobile observer teams of the Helsinki Committee in BH visited more than 300 polling stations throughout the country on Election Day. They registered a significant number of citizens who were not on voter lists and therefore were not allowed to vote. This failure can be attributed partly to a lack of interest on the part of citizens to register, but also to a failure by municipal authorities to carry out the registration professionally. On some voter lists, names of deceased people appeared. The most serious problem was, however, the failure of a great number of absentee voters to re-register for these elections, and the fact that many of those who did register eventually did not make use of their right.

The elections highlighted the need to carry out a census, which would, among other things, contribute to improved voter lists and allow everyone to use their right to vote if they chose to. The last census was conducted in 1991.

The polling stations were in most cases well organized and no major irregularities concerning the casting of votes were reported. In several places, however, there were changes in the composition of the election boards during the election process.

Some violent incidents were also reported. For example, in Brjestovo (Vranjak, Modriča municipality) physical conflicts occurred between the Serb Democratic Party (SDS) and the Alliance of Independent Social Democrats (SNSD) voters; in Bratunc, the chairperson of the election board was attacked; and in Višići near Čapljina the refusal to allow an accredited party observer to be present at the final count created tension. In addition, at many stations campaign materials were posted within 50 meters of the stations and the election silence was not respected.

The most serious violations of the election process were registered in Zvornik, Tešanj, Kozluk and Jelah, where the elections had to be repeated.

- In Zvornik, the Election Commission of BH had to revoke elections in all 59 polling stations and hold re-elections after it had been discovered that one person had apparently signed the voter lists under several different names. In the Tešanj municipality elections were repeated at two polling stations for the same reason.
- In Kozluk (Zvornik municipality) the elections were stopped because of a disorder. The destruction of the voter list prompted police interference and the closure of the election station. Observers also reported that some voters, who had already cast ballots, were taken to the polling station on a bus and had voted there again. In addition, complaints were filed against the way in which the election had been conducted.
- In Kalesija, after the station was closed, some people entered the premises where the voting material was kept and tried to cast additional ballots.

The reported irregularities did not significantly affect the results, and the local elections in 2004 can be characterized as fair and democratic, according to the Helsinki Committee in BH. The decisions of the Election Commission to organize re-elections at some stations helped prevent attempts of falsification and the final outcome of the elections reflected the will of the voters. Another positive aspect was that the elections were organized by local institutions, with minimum participation by the international community.

During the pre-election campaign, representatives of all political parties were mostly involved in attempts to discredit their political rivals rather than in presenting serious political programs.

- The major blow to the fairness of the election campaign was a gathering of the Serb Radical Party held in Bijeljina (RS) on 3 September, where Deputy Party President Tomislav Nikolić gave a speech imbued with hatred and intolerance in which he expressed territorial aspirations for a Greater Serbia and denied that BH had a right to exist. Songs glorifying the chetnik units which collaborated with the Nazis during WWII were also sung. The Election Commission fined the organizers 10,000 KM (EUR 5,000).
- During the campaign, Croat flags were burned in Stolac and Fata Orlović, a Bosniak returnee, was attacked in Konjević Polje on 11 September, which led to inter-ethnic tensions. After this incident, a line-up of chetniks from Ravna Gora was held in Bratunc, a show which Bosniak returnees saw as a serious threat. Three days later, a bomb was thrown at the house of Budimir Aćimović, a candidate for the mayor of the Zvornik municipality. The head of the Zvornik election headquarters later offered journalists money "in appreciation for fair reporting" of Aćimović's election campaign.

Religious leaders played a central role in the election pre-campaigns, implicitly directing the electorate to vote for the three national parties – the SDS, the Bosniak Party of Democratic Action (SDA) and the Croat Democratic Union (HDZ), including Reis Cerić of the Islamic community, Patriarch Pavle of the Serbian Orthodox Church, as well as Cardinal and Archbishop Vinko Puljić of the Roman Catholic Church. All of them resorted to nationalistic rhetoric and used hate speech against adherents of other religions.

The Election Commission revoked the candidacy of Ljubiša Kragulj, the candidate of eight political parties for the post of mayor of Banja Luka after he used language on TV during the pre-election campaign which incited violence and hatred. The SDS was also fined 10.000 KM (EUR 5,000).

Another candidacy that created public tension was that of Simo Zarić, who was running for the position of mayor of Bosanski Šamac (RS). Zarić was allowed to stand for election, despite having been convicted to six years in prison by the International Criminal Tribunal for the Former Yugoslavia (ICTY) for serious violations of the Geneva Convention and crimes against humanity. Absurd legal provisions allowing those who have already served a sentence to stand for election, made this possible. At the same time, however, those who were sanctioned for something that under the Criminal Code is not a crime were not allowed to run for public office: for example, some who were dismissed from office solely by a decision of the High Representative, the UN International Police Task Force (IPTF) or the Appeals Sub-Commission, were not allowed to run for public office.

The media coverage of the campaign was mostly fair and all parties and independent candidates had equal access to the media. Unfortunately, the media impacted the low voter turnout by publishing statements of popular people and intellectuals who had announced that they would not vote.

### **Freedom of Expression, Free Media and Information**

Journalists and the mass media were less exposed to threats in 2004 than in previous years but, nevertheless; pressure and attacks on journalists and editors were reported. Especially disturbing were statements by governmental authorities, political parties and religious leaders demanding increasing control over the mass media and even inciting physical violence against “disobedient” mass media outlets and journalists.

In late June, the Ministry of Interior of RS officially warned that it would take “appropriate measures” against a journalist who it claimed had tried to ruin its reputation.

The newspaper *Nezavisne Novine* and RS Radio TV, for example, were frequent targets of verbal attacks.

- In August, the RS Chief of Police, Radomir Njeguš, accused the journalists of *Nezavisne Novine* and RS Radio TV of having thought out a plan to damage and tarnish the reputation of the local police and should therefore “end up in jails or in a mental hospital.”
- During the election campaign, former nationalist politicians directed a series of fierce verbal attacks at *Nezavisne Novine* and the RS Radio TV accusing them of “not being Serb enough” or for being “American satellites.”
- On 13 September, Ljubiša Kragulj, a mayoral candidate of Banja Luka, accused *Nezavisne Novine* on TV of being a branch office of the CIA. He also accused the director of RS Radio TV, Dragan Davidović, of having been “installed by the international community to destroy the Republika Srpska.” Furthermore, Kragulj insulted the deputy editor in chief of the paper, Mirjana Kusmuk and the Alternative Television station in Banja Luka.

Bakir Izetbegović, the vice president of the ruling SDA, accused the Federation Radio TV of being prejudiced against his party and threatened to dismiss it.

The most serious attacks on the media came from Muslim leaders, particularly the head of the Islamic Community, Reis-ul-ulema Mustafa Cerić, who targeted independent newspapers such as *Slobodna Bosna* and *Dani* which had criticized Islamic institutions. They were accused of being “enemies of Muslims” and being Serb-minded. He sent a letter to commercial companies asking their owners not to advertise in these papers.

There were physical attacks too. The master of ceremonies at Big Radio, Darko Gunjić was attacked in Banja Luka in the night on 20 September. A cameraman of Radio Television of Republika Srpska and his colleague were attacked on 19 October when reporting on the arrest of a Hague indictee in Bileća. The cameraman was injured and his camera was destroyed.

Journalists with *Slobodna Bosna*, *Dnevni List*, the crew of “60 minuta” on Federation Television, and the editor-in-chief of *Patriot* magazine, Slobodan Vasković, and his family, were all threatened and some received death threats.

The process of establishing a public broadcasting system in Bosnia and Herzegovina was still far away from completion as of the end of 2004. Despite repeated insistence by the Office of the High Representative, the necessary legislation is still to be adopted. On 13 October the House of Representatives turned down the proposed Law on the Public Broadcasting System in BH. The adoption of this law is one of the requirements of the EU in the process of initiating negotiations on stabilization and association.

The adoption of this law was obstructed by the coalition of national parties, supported by religious leaders and protectors of narrow national interests. While the public broadcasting channel BHTV 1 started broadcasting on its own network on 13 August and its signal covered over 97% of the BH territory, there was serious doubt whether the system would ever be able to function to full capacity and with the appropriate quality.

### *Defamation*

After a flood of complaints for defamation in late 2003 and early 2004, their number decreased by the end of 2004. It appeared that a large number of complaints were a result of unprofessional behavior by some journalists and editors and their failure to abide by the media’s Code of Ethics.

With respect to defamation cases in which daily newspapers were involved, the most frequent violations of the Code of Ethics were alleged discrimination and breach of privacy. In the case of weekly and biweekly papers, the most common problems were related to the usage of anonymous sources, mixing of comments, assumptions and facts as well as the violations of editorial responsibility and violations of generally accepted social standards of decency.

Many media reports on sexual minorities were on the verge of vulgarity. Coverage of other sensitive issues, such as trafficking in people, forced prostitution, suicides, was often scandalous, disrespectful and insensitive. When covering court cases, media outlets sometimes failed to respect even basic European principles and regulations, including the right to assumption of innocence, rights of juveniles, and the right to privacy. In many cases, media time and space was given to politicians who publicly commented on on-going court processes.

On the other hand, the passing of the Rules on Media Concentration ensured pluralism in the media field and prevented the concentration of mass media or a monopoly over information. Yet, many media outlets were clearly oriented towards particular ethnic or nationalist groups.

## **Freedom of Association**

Freedom of association is guaranteed by the Constitution of BH as well as by the Constitutions of the Entities. The Law on Associations and Foundations was adopted in 2001 and for the first time provided the right of public associations and NGOs to register for activities within the territory of BH. The law is in compliance with the European Convention on Human Rights and Fundamental Freedoms (ECHR). However, in practice, NGOs have encountered numerous obstacles when trying to register under the provisions of this law.

The Ministry of Justice has been given the task of implementing the law on associations. Deciding which associations should be allowed to register has been a complicated and time-consuming procedure, making registration difficult. Some NGOs operating *de facto* in the entire territory of BH still did not have the required registration as of the end of 2004; as a result many only have registration at the entity or canton level. The difficulties involved in national level registration seriously undermine the reintegration of an extremely divided society.

## **National and Ethnic Minorities**

### *Inter-Ethnic Relations*

The consequences of ethnic cleansing continued to be dominant in all segments of the BH society nine years after peace was restored. The number of returnees, who have returned to areas where their ethnic group constitutes a minority in number, remained unsatisfactory. In pre-war BH, the ethnic composition of only some 20% of municipalities was predominantly mono-ethnic (i.e. Bosniak, Croat or Serb). However as of the end of 2004, only the community of Tuzla had a majority population, which did not make at least 90% of the total population. Most communities were 92-99% mono-ethnic.

Governing nationalistic parties functioned on the basis of preserving ethnic homogenization, and to that purpose, they fuelled fear against the other ethnic groups, which were seen as a threat to one's own existence. Fragile interethnic relations were further burdened by incidences of violence, desecration of tombstones, attacks on religious facilities, and graffiti promoting intolerance, hatred and nationalism. The number of such incidents was lower than it was immediately after the war, but their reverberations were equally disastrous.

Tensions and hostilities were very apparent from 18 to 22 March. The roof of the Orthodox church of the Birth of the Most Holy Virgin in Bugojno was set on fire; the seat of the Islamic religious community in Banja Luka and Baba Bešir's Mosque in Mostar were stoned; two hand grenades were thrown into Tsar's Mosque in Orahova near Gradiška (RS); and sacred objects were damaged in the Church of Saint Apostles Peter and Paul in Vagan, near Glamoč. In addition, to mention just a few incidents:

- On 27 October, insulting graffiti appeared on the door of the Catholic Church in Kakanj, where Bosniaks make up the majority.
- During Ramadan, mosques were attacked in Banja Luka, Mrkonjić Grad, Bosanski Brod, Vlasenica, all in RS. More than ten such attacks were registered.
- On 3 October, three tombstones were overturned in the Jewish cemetery in Sarajevo.
- On 15 October, the graffiti appeared reading "Brčko is Serb" and "Turks, convert to Christianity" on one of the bridges in Brčko, which is predominantly ethnic Serb.
- The orthodox priest Zoran Perković was physically assaulted in Sarajevo by Bosniaks.

- On 9 November, Croat and Bosniak pupils were involved in a fight in Gornji Vakuf – Uskoplje. Three were injured by a knife and a baseball bat.
- On 18 November, highly respected vicar of the Saint Rocco's Church in Bosanska Gradiška, Kazimir Višaticki, was murdered.
- On 2 December, Hrustan Suljić, a returnee and the president of the Gornji Hranković local community, was shot to death at his doorstep on the outskirts of Tešanj, RS. His murder was linked to the fact that he was a witness on the ICTY list.

Although there were more similar cases, these examples illustrate the nature of interethnic relations in BH and their vulnerability. Moreover, many of the perpetrators of the above-mentioned offences were never found and brought to justice. Impunity for committed wrongdoings encouraged violators to maintain a permanent atmosphere of fear and insecurity among citizens. The failure of the police, prosecutor's offices and courts, in preventing, and punishing such incidents continued to have an extremely negative effect on the normalization of the situation in BH.

Interethnic relations were also burdened with a high level of ethnically motivated discrimination. With the exception of the police forces and the courts, the composition of most public institutions and enterprises was mono-ethnic. Access to education, health care and the right to pension also depended on ethnic origin.

#### *Legal Status of National Minorities*

The Law on the Protection of the Rights of National Minorities was adopted in 2003 but was not yet implemented in 2004. In practice, this means that the minority languages were still not in use in administration, courts and education. Moreover, members of minority groups did not have printed media in their own language.

Among the main ethnic minorities in BH are the Roma, Montenegrins, Italians, Ukrainians, Slovenes, and Albanians.

The victims of violations of economic and social rights were in most cases members of minority groups. For example, the high unemployment rate among minorities was characteristic. Social welfare measures and conditions of housing— particularly in the case of Roma – were far below the standards envisaged by the international conventions.

Finally, due to procedural problems, the members of national minorities were not in a position to elect their representatives for local assemblies in the 2004 local elections. As a result, minority members continued to be unable to influence political developments.

#### **Equal Rights of Women and Men**

BH is party to the Convention on the Elimination of All Forms of Discrimination Against Women. It also has signed the Beijing Declaration and Action Platform, thus committing itself to taking all necessary measures to provide a favorable social atmosphere to promote equality. It has also thereby undertaken to pass legislation to promote equal rights for men and women, as well as to create all necessary preconditions for the elimination of gender-based discrimination.

The first national law to promote gender equality and to provide protection against gender-based discrimination was the 2003 Law on Gender Equality of Bosnia and Herzegovina.<sup>2</sup> The law also created preconditions to improve the position of women and foresees an efficient legal protection and harmonization of other regulations of local legislation with this law. Furthermore, it prescribes the

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<sup>2</sup> Official Gazette of BH 16/6 2003

obligations of the state to create the infrastructure and the necessary mechanisms for the implementation of the law.

Agencies were established on entity and local level with the aim of providing the necessary infrastructure and to coordinate the work of the actors of civil society, but in 2004 these agencies were not yet fully equipped for efficient work. In April 2004, the Council of Ministers passed its Decision on the Establishing the Agency for Gender Equality in BH,<sup>3</sup> but this decision was not implemented as of the end of 2004.

Under the Convention on the Elimination of All Forms of Discrimination Against Women, as well as the Beijing Declaration with the plan of action, the state has the obligation to submit to the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) reports on any action taken concerning the application of the convention, including progress achieved within the legislative sector and judiciary as well as administrative and other measures taken. BH has failed to send the periodic reports that were due in 1994, 1998 and 2002. The Ministry of Human Rights and Refugees sent its first report to CEDAW on 1 November 2004.

The Helsinki Committee in BH stated that the authorities could have done more for the promotion of the Convention on the Elimination of All Forms of Discrimination Against Women and the Law on Gender Equality in BH. Although the legislative framework in BH creates a sufficient basis for the protection of human rights of women, there is a huge discrepancy between this legislation and practice.

As a result women continued to be insufficiently represented in public, political, cultural, economic, and social life.

According to the Election Law, political parties must establish a quota of 30% of women candidates for elections. In the October 2004 elections, 9,554 from a total of 27,427 candidates were women and 33 of a total of 908 running for mayor's office.

After the election and according to information of the Election Commission of Bosnia and Herzegovina, from 148 mayor positions in BH, three women were elected as mayors in the municipalities of Drvar, Oštra Luka and Istočni Stari grad. In municipal council elections, of a total of 3,145, only about 18.1% of women were elected as municipal councilors. Only one out of eight ministries in the Council of Ministers was a woman.

Information related to domestic violence was poorly documented in BH but monitors reported that it was on the increase. According to some estimates, more than 55% of women suffered some form of violence in the family. While the new Criminal Code introduced some improvements in the prevention of violence against women, they are not sufficient.

There was no legislation in place on entity level for the protection against family violence. In the BH Federation initial measures to this end were only taken in 2004, while at the same time in RS authorities were only deliberating possibilities to initiate such a legal project. NGOs ran safe houses for women and children who were victims of domestic violence in several towns and a SOS line and mobile teams of the Ministry of Interior were in operation.

About 45% of the unemployed were women – but this figure only included those who had registered with employment bureaus. Women in rural areas were especially unlikely to register. It was estimated that about 80% of people employed in the “gray economy” were women. Social safety nets and women-oriented health projects were missing: for example, 60% of women did not have health insurance.

At work, women were exposed to different types of discrimination in terms of pay, employer stipulations on family planning, and selection on the basis of age and appearance. Many faced sexual

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<sup>3</sup> Official Gazzette of BH 12/4 2004.

harassment at the work place. They were the first to be fired and played a marginal role in the privatization process. Women made up a negligible number in managerial positions.

## **Rights of the Child**

It was estimated that children under 18 years old make up a third of the total population in BH. However, they did not enjoy equal protection and exercise of their rights in the entire territory of the state.

The Ministry for Human Rights and Refugees has drawn up a Plan of Action for the Children of Bosnia and Herzegovina 2002–2010 that rests on the goals of the 1990 World Summit for Children: to put children first; not to neglect a single child; to stop inflicting injuries to children; to stop their exploitation; to protect children from war; to fight against AIDS and poverty; to listen to children; and to protect the planet for children. However, these goals have not been put into practice.

The fact that in 2004, 60% of the population in BH was on the verge of poverty also adversely affected the exercise of children's rights. The lack of political consent to create a single economic space in BH also had an adverse effect on the situation of children.

Neither the law nor the judicature established coherent strategies and basic protection for children in accordance with the UN Convention on the Rights of the Child and other international standards and no court was specialized in children's rights. However, since 1997, the institute of ombudsmen has had a department for the rights of the child and has offices in all the major municipalities in BH. The main task of these offices is to monitor governmental policies on the rights of the child and to react to personal complaints filed by parents and children.

Juvenile delinquency continued to be on the increase in 2004, while the age of perpetrators continued to decrease. There were no official statistics on this issue but according to media information,<sup>4</sup> 1,288 criminal offences were committed by 322 minors in the Sarajevo Canton within ten months in 2004. Out of them, 940 were thefts, 48 robberies, and 63 were cases of serious bodily injuries. Information available from RS indicated an approximately 44-percent increase of juvenile delinquency in 2004.

There were no special institutions for convicted juvenile offenders. As a result, they were not separated from adult convicts, and no adequate re-socialization programs were in place. Nor did the social services have sufficient resources to implement programs for the prevention of juvenile delinquency, alcoholism and drug use, and family violence.

About 60% of children were unable to use public health care services due to the fact that their parents were unemployed or due to the failure of employers to pay social security insurances. The fragile situation of families was also reflected in the fact that the birth rate was falling, from 14,1‰ in 1991 to 10‰ in 2004.

Ninety-four percent of children went to school and 99% of those enrolled in the 1<sup>st</sup> class reached the 5<sup>th</sup> class of primary school. Primary education was free of charge, but in practice parents had to pay high costs for schoolbooks, clothes, transportation, and for an insurance against possible damages to school inventory. The majority of schools were poorly equipped, and there were no school psychologists or social workers.

Under the Law on National Minorities, minority children enjoy equal rights and schooling conditions as majority children, and the law provides that national minorities can define their educational needs themselves. While the Roma were the largest ethnic minority in BH, there were no official figures showing how many Roma children attended school: estimates are 70%. Although a plan of action on educational needs of the Roma and other minorities was signed, not much was done towards its

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<sup>4</sup> Oslobodenje, 24 November 2004.

implementation. No textbooks in minority languages were prepared, meaning that minorities were not entitled to an education in their own language.

### **Rights of Homosexuals**

The everyday lives of those belonging to sexual minorities in BH were characterized by a fear of exposure and facing intimidation and threats. In the generally conservative climate of BH, homosexuality is still seen as a disease.

During 2004, the most common problems faced by homosexuals were verbal threats and intimidation but some were also beaten. In addition, some lost their jobs due to their sexual orientation while others were not hired in the first place. Homosexual men, and especially older men, were exposed to discrimination and intimidation far more often than lesbian women.

While the Criminal Code no longer criminalizes consenting adult homosexual relationships nor restricts other rights of homosexuals, the laws on public law and order contain provisions that potentially jeopardize the rights of sexual and gender minorities. For example, open homosexual behavior in public places can be regarded as “threatening public morality” or “insulting the patriotic, national, religious and moral feelings of citizens.” In RS, the law bans behavior in public places that could “call into question the rights of citizens to a personal security, peace, privacy and human dignity.” Such broad formulations give judges a great deal of leeway for interpretation. Their approach to such cases was influenced by the fact that religious leaders, politicians and journalists commonly designated homosexuality as something “evil,” “disease,” “objectively immoral,” and even brought terrorism and homosexuality into the same category.

The family law describes marriage as a “legal communion between a man and a woman,” and so rule out same-sex marriages in a discriminatory manner.

Despite legal inconsistencies, the main obstacle preventing sexual minorities to exercise their human rights was the general social and cultural environment. Homosexuals faced misunderstanding virtually everywhere – in the family, on the street, in the workplace, in the education process, in contacts with public administration, in the media, etc.

The media tended to avoid issues related to homosexuality in order to avoid possible accusations that they actually promote homosexuality. If problems experienced by the homosexual community were reported, they were often presented in a pejorative and ignorant manner with the facts distorted in some way.

In February, Association Q was set up, the first organization to promote and protect the culture, identity and human rights of sexual minorities. The foundation of this NGO also prompted some homosexuals to come out and get involved with issues concerning themselves. Association Q monitors cases of discrimination, the role of the media and administration in questions relating to sexual minorities.

### **Refugees and IDPs**

According to the official data of the international community and the state Ministry for Refugees and Displaced Persons, between the signature of the Dayton Peace Agreement and October 2004, more than a million refugees and displaced persons had returned to their pre-war addresses. The total number of people who had fled their homes during the war was more than 2,200,000. According to the same sources, approximately 450,000 out of the one million returnees had been internally displaced in BH, and approximately 550,000 returned from abroad. Three quarters of all returnees returned to the Federation of BH and one quarter to the RS. Again, officially, of the 16,500 returnees in the ten first months of 2004, more than 12,000 belonged to an ethnic group that composes a minority in the areas to which they returned.

However, the Helsinki Committee in BH held the number of one million returnees absolutely unrealistic, basing its statement on the reports of monitors, visits to a number of municipalities, contacts with citizens, and data collected in local communities. The committee estimates that the realistic figure of returns amounts to approximately 30% of the total number of over two million refugees. The over-optimistic official figures are based on the number of approved requests for the return of a house/apartment, multiplied with the number of household members who applied for the return. Such figures do not reflect the genuine number of returns because as soon as the "returnees" officially had their houses/flats back in their possession, they sold the immovable property or exchanged it. In addition, some used their pre-war houses only as weekend houses or simply rented them out. Quite a number of rebuilt houses have never been moved into.

Again, according to official data, a total of 4,000 refugees have returned to the area of Srebrenica. In practice, however, more than 60% of them have stayed there only periodically. For example, in the village Moračići near Zvornik, 60 houses belonging to Bosniaks were rebuilt in 2004 but by the beginning of November none of the owners had moved into them permanently.

Using legal loopholes, a significant number of citizens simply registered at the pre-war addresses, waited to get their ID cards and returned to another place of residence. Yet, the statistics counted all such citizens as returnees. In addition, in many cases, only one or two members of a household, mainly elderly people, returned to the pre-war homes.

The RS territory had a Croat population of approximately 220,000 prior to the war. As of the end of 2004, ca. 15,000 Croats lived there. The situation in the Federation of BH was somewhat less dramatic, although there were huge differences between the official data and that gathered by the associations representing the returnees. Officially, 13,000 Croats out of the pre-war 17,000 lived in Bugojno at the end of 2004. According to information that the Helsinki Committee has gathered however, in reality no more than 7,000 Croats live there. Similarly, of the pre-war 6,000 Serbs in the Tešanj municipality, only ca. 300 Serbs lived there as of the end of 2004.

The municipality of Konjic showed a typical pattern: by October 2004, 290 persons returned to Konjic, while in the same period 77 persons left the municipality. Out of all returnees, there was the greatest number of Bosniaks – 150, then Croats – 110 and 28 Serbs. Two persons belonging to a different minority group also returned. From the period beginning with the signature of the Dayton Peace Agreement until 1 October 2004, a total of 3,034 persons returned, out of which there were 1410 Croats, 1237 Bosniaks, 379 Serbs and 8 persons from other groups.

The process of returning property was almost completed in the course of 2004. However, the Helsinki Committee expressed its concern about the fact that the number of those still considering to return shrank. For example, only 8% of the Croat refugees and IDPs living in Croatia expressed any intention to return to BH and 71% had decided to never return, according to an OSCE survey.

The difficult economic and social situation in BH in 2004 was a factor that hampered the return of many. Due to difficulties in finding a job and inadequate education and health care, many returnees decided to leave again. One reason for leaving again was the lack of adequate medical care: for example Kozarac, which had 15,000 returnees, had only one general practitioner and a medical technician to render health services to patients in an improvised clinic.

Returnees all over BH often complained of discriminatory treatment by municipal authorities, particularly when it comes to getting or doing private business in urban areas. In addition, public enterprises frequently refused to provide electricity, water, telephones, road repair and other municipal services to them. Central sources for discrimination were the existence of parallel health care and pension schemes, different school curricula and some entity and even cantonal laws.

In a positive development, the security situation improved in 2004, but cases of physical assault on returnees, their property, and national and religious monuments were still registered.

As of the end of 2004, the international community was gradually withdrawing from the process of return. Since the end of 2003, when the Reconstruction and Return Task Force (RRTF) that had operated within the OHR was closed down, BH institutions have been officially in charge of this area on the basis of Annex 7 of the Dayton Agreement. However, few of the planned achievements had been met by the end of 2004. Nine years after the signature of the Dayton Peace Agreement, there were still 33 collective centres, nine collective settlements and three transit centres, with a total of 6,549 persons living in them.

Moreover, the 2003 Law on Amendments to the Law on Refugees from BH and Displaced Persons in BH, which provided for a single Fund for Return, was not implemented. The fund was to have been provided by resources from all levels of administration in BH, the Council of Europe Development Bank, and other loans and donations. The funds should be spent on the final closing of collective centres and solving the problem of returnees living in provisional buildings, as well as for provision of alternative accommodation.

The deadline of sixty days following the adoption of the 2003 law, within which the entities were obliged to harmonize their laws with the state laws, was not met. The RS had not managed to do so even by the end of 2004 – not to mention the adoption of necessary by-laws. The Council of Europe Development Bank granted a 24-million KM (EUR 12 million) loan to BH for the project as late as November 2004. The BH state should participate in this project by donating 25% of the funds, which was a precondition for obtaining the loan. The High Representative claimed in 2004 that BH had received more aid from the international community than Germany did after WWII through the Marshall Plan, but that the money was misspent and misappropriated, which resulted in the setting up of a local investigating commission. This commission, however, never published any specific findings on how much money BH has received or where the funds have been invested.

BH institutions failed to actively take part in solving crucial issues concerning the status of refugees and IDP. Two of the questions that remained unresolved were the issue of citizenship and housing. A great number of Bosnians who lived abroad feared that they might lose their BH citizenship because they had not yet completed the necessary legal work. As for housing, it is still necessary to rebuild approximately 50,000 housing units, which will cost ca. 900 million KM. As of this writing, there are no indications where these funds could be found.

### **Trafficking in Human Beings**

Post-war BH has been facing a serious problem of trafficking in human beings, notably women and children. In the first post-war years, Bosnia and Herzegovina was a transit country, and more recently it is becoming the country of origin of trafficking victims for sexual exploitation. The state has adopted the Action Plan for Human Trafficking and established a state commission charged with monitoring the implementation of this plan. Furthermore, the Council of Ministers passed a decision on establishing a task force combating human trafficking and organized illegal immigration.<sup>5</sup> The mandate of this task force, headed by the Ministry of Security in BH, is to act in the prevention of human trafficking and prostitution, in cooperation with representatives of various ministries, the international community and the European police.

The decisions on procedures and methods of coordination of activities aimed at preventing human trafficking and illegal immigration in BH, passed by the Council of Ministers,<sup>6</sup> established a position of state coordinator. The role and the task of the state coordinator is to ensure co-ordination between all activities with the relevant ministries, and to prepare and propose measures for the implementation of the national plan of activities to the Council of Ministers. He/she represents BH in international bodies involved in trafficking and is tasked with initiating meetings with all organizations and institutions that are involved in the activities aimed at preventing human trafficking and illegal immigration. Furthermore it is his/her duty to collect relevant information for reports and to monitor

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<sup>5</sup> Official Gazette of Bosnia and Herzegovina, 3 February 2004.

<sup>6</sup> Official Gazette of Bosnia and Herzegovina, 24 March 2004.

the implementation of the National Plan of Action combating human trafficking. Shelters for women and trafficking victims have been opened by a RING network, organized by a group of NGOs.

Women who were victims of trafficking found themselves under the almost exclusive care of local NGOs and the International Organization for Migration. Such organizations cared for the women, organized their rehabilitation and provided return to the country of origin. Judicial proceedings against local citizens who were involved in trafficking in women were usually monitored by the High Commissioner's Office for Human Rights (UNOHCHR).

In the Federation of BH, a total of seven criminal reports against ten people were filed involving prostitution. In RS, five cases were being processed against nine defendants, while some 30 people were in the investigation or accusation stage. All these proceedings were time-consuming and a satisfactory outcome seemed unlikely.

There was no relevant statistical information as to the number of trafficking victims in BH. All estimates were based on partial reports of court proceedings, the State Boarder Service, and the number of entries and departures of foreign female citizens at the airports. According to a UNOHCHR report,<sup>7</sup> ending with December 2003, a total of 264 foreign female citizens were registered departing from BH through Sarajevo Airport who had been in the country illegally. According to estimates from early 2004, it could be assumed that the number of foreign female citizens who were victims of trafficking was reduced. Unfortunately, there was no official data or relevant research concerning the number of citizens of Bosnia and Herzegovina who were victims of trafficking, however, there were estimates indicating that trafficking with local citizens with an aim of sexual exploitation was on the rise.

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<sup>7</sup> UNOHCHR , Report on Human Trafficking, July 2004, p. 9.

