



REPORT ON THE STATUS OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA

(Analysis for the period January – December 2008)

No: 04A-02/2009

Sarajevo, February 11, 2009

Introduction

The past year could be referred to as the year of missed opportunities. Despite the pressing need for many reforms, Bosnia and Herzegovina is still tapping in one place, thereby postponing resolution of a deep crisis and missing opportunities for rapprochement with the European Union. The Stabilization and Association Agreement with the EU has not yielded desirable effects, which should have been reflected in harmonization of local legislation with the EU law. In the first nine months of the past year, the Parliamentary Assembly of Bosnia and Herzegovina had adopted only nine laws, in relation to the 101 planned by the Council of Ministers, which illustrates the lack of political will for the country to move forward and closer to the European Union.

The overall political atmosphere in the country was characterized by chauvinistic rhetoric and holding on to power by increasing fear from others. The politicians responsible for the fate of the country have remained dedicated to the well-checked formula for ruling, while their pro-European dedication remains only declarative.

In the field of human rights, Bosnia and Herzegovina has done very little on harmonization of legislation with international norms in force. Harsh violations of human rights and freedoms have continued, and the absence of the rule of law is evident.

The institution of ombudsman of Bosnia and Herzegovina has not become operational over the past year, which has additionally burdened the position of individuals whose rights are not respected. The European Court of Human Rights in Strasbourg has passed five verdicts in which Bosnia and Herzegovina was proclaimed guilty for violation of provisions of the European Convention on Human Rights and Freedoms, while the Court received over a thousand new claims against Bosnia and Herzegovina. Both pieces of information can serve as an illustration of the state of the country.

The past year has seen an escalation of attacks against defenders of human rights, media and journalists.

We see the ratification of the European Social Charter as a positive step. However, it would be very important for Bosnia and Herzegovina to sign the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention against Torture. The joining of the Roma Decade, though delayed, indicates commitment of the authorities to improve the status of Roma, as one of the most vulnerable categories of population.

Although the problem of finding missing persons and their identification is still present, as one of the most painful consequences of the war, progress has been made last year in this field by opening of the Institute for Missing Persons and speeding up of the processes of exhumation and identification of missing persons. Although 1,000 persons were identified, and 2,000 exhumed over 2008, around 13,000 persons are still considered missing, which makes this problem one of the key issues in the domain of human rights.

The arrest of Radovan Karadzic represents a step towards reaching the necessary justice for the crimes committed in the period 1992-1995, but a serious obstacle towards reaching that end is the fact that Ratko Mladic is still at large.

Return of refugees and displaced persons

According to the official information of the UNHCR, the total of 1,496 persons returned to Bosnia and Herzegovina in the first nine months of 2008, of which 854 refugees and 651 displaced persons.

If we remember that the year 2008 started with 45,000 requests for reconstruction of housing, and that over 140,000 expressed the wish to return and waited for assistance, it can be concluded that the process has been almost suspended over the past year.

Apart from the symbolic number of returnees, the conclusion is supported also by results of other planned, but non-fulfilled obligations related to the project of sustainable return, which speaks primarily about the irresponsible and the inconsistent approach of the government at all levels towards implementation of the Annex 7 of the Dayton Agreement in 2008.

The budget of the Joint Institutions for 2008 was adopted three months into the year, and the Agreement on joining of funds in the BiH Return Fund was signed in April. The Commission for Displaced Persons and Refugees of BiH started to make decisions about the projects in May, while the Memorandum on realization of projects for sustainable return was signed only in December of 2008. Among other things, the BiH Ministry for Human Rights and Refugees, the BiH Return Fund, 30 municipalities and relevant power supply companies have agreed to arrange connection of 568 objects to the power supply network, which is a part of a three-year electrification plan which had to be realized in 2008.

Unfortunately, the total of 2,961 returnee households are still waiting to get power supply, according to available data. Some of these have lived in the dark for seven or eight years after the return. In the Podici village, near Drvar, 40 returnee families have lived without electricity for ten years. The planned, but not realized electrification plan for 2008, therefore makes up only 19 per cent of the needs expressed by people who have returned and lived in the dark ever since.

That the loudly announced BiH Return Fund has not yielded any result is demonstrated by the fact that not a single mark was spent from this fund for sustainable return in 2008. This was confirmed at the end of the year by the chairman of the Commission for Displaced Persons and Refugees, accusing "some" municipalities of "not wanting returnees", as they have not used the secured and allocated funds.

And truly, some municipalities have not even managed to make lists of users of funds by the end of the year, some complaining against a complicated project application process, procurement and tendering. All of this happened while the BiH Return Fund had 17.8 million KM at disposal. It needs to be stressed that the Federation Government did not fulfil its obligation towards the Fund in 2008 and did not pay the four million KM.

The objective of formal property return and return of occupancy rights has been reached almost fully. Of the 225,000 claims, the total of 99.7 per cent have been resolved so far. Still, the process of real return is not satisfactory, and the consequence is Bosnia and Herzegovina with a totally different demographic picture in relation to the one in 1991. This particularly applies to the urban centres of Sarajevo, Banja Luka, Mostar, Tuzla, Zenica, Bihac, Travnik, Modrica, Trebinje, Jajce, Foca, Visegrad and other cities. Considerable parts of the country's territory are almost fully ethnically clean.

For example, of the 14,000 Bosniaks from Visegrad, only eight per cent returned. Trebinje is inhabited today by around 300 Bosniaks, which is only one per cent of the pre-war population. Around 400 Serbs returned to Capljina, while there had been close to 4,000, according to the 1991 census. Only 400 pre-war Croat citizens returned to Modrica, of the pre-war number of almost 10,000, while 1,600 returned to Doboje, of the pre-war 16,000. Until the war, Ilidza had 25,029 inhabitants who declared themselves as Serbs, while, according to the Democratic Initiative of Sarajevo Serbs (DIS), around 2,000 live there now. It is a DIS estimate that not more than 30,000 Serbs live in Sarajevo's municipalities today, while there had been 170,000 before the war.

Of the pre-war 20,000 Croats from the Sava river valley, only around 3,000 returned to their homes. The total of 90 of 650 pre-war Serb families returned to Novi Grad, near Odzak. This has been the most successful return in the Posavina Canton. The return of Croats to the areas of Derventa and Banja Luka has been negligible, while Bosanski Samac had had over 250 Croat families before the war, and now there are ten times less. Mrkonjic Grad had 186 families, and today there are only around ten. Until the war, over 13,000 Bosniaks had lived in Rogatica, and today there are only around 1,000. It is estimated that 43,000 Bosnian refugees from Eastern Bosnia live in Sarajevo today, which is many times more than the number of returnees to these areas.

The repeated departures from the places of return have been observed. The return of Bosniaks to Pale, near Sarajevo, started only in 2001, with the modest number of 80 families, while only eight remain there today. In the meantime, the rest have sold or exchanged their reconstructed property. DIS claim that at least 30 per cent of those who are registered as returnees to Ilidza in fact sold their property and left Ilidza. In the Banja Luka village of Simici, the total of 60 Croat returnee houses have been reconstructed, but they are empty and people only visit them occasionally. Serb returnees to Drvar claim they have been 8,500 in 2000, while today they are not even 6,000. According to Cardinal Vinko Puljic, 500 Croat families left Sarajevo over the past two years.

There is no doubt that the stated examples are consequences of a difficult status of returnees. The fundamental obstacles to the process of return are the issues of sustainable return – the right to work and employment, the right to health care, and even the right to security. Enormous infrastructure issues should surely be added to the list.

The state, entity, cantonal and municipal authorities have not used the past year to at least try to ensure a health care system that would ensure equal treatment conditions for all, regardless in which entity their houses are. The authorities have not tried to ensure equal rights and opportunities for education of children, equal opportunities for enjoyment of rights by pensioners, and equal access to social funds for every individual citizen. Political will would be enough for the beginning of resolving of these issues.

The Constitution of BiH is not respected, or the Decisions of the BiH Constitutional Court on the constituent status of peoples, which has had direct effects on the process of return and integration of returnees in the places of pre-war residence. In this moment, only one per cent of working age returnees have a job. The total of 6,000 families have returned to Bosanski Novi. No returnee has been employed, and less than ten per cent managed to ensure the right to health care. Up to 90 per cent of Bosniak refugees returned to Kopaci (RS), near Gorazde. Still, no one has been registered to live in Kopaci, as they exercise the right to health care and education of children in the Federation, in the neighbouring Gorazde.

There are only six Bosniak primary school children in Zepa and Rogatica, which is the general picture of the structure of returnees on the whole territory of Bosnia and Herzegovina. In the villages of Dabar and Bojiste – the municipality of Sanski Most, and in the Crni Lug settlement – the municipality of Bosansko Grahovo, school buildings have been reconstructed for purposes of the return. Over a million KM was spent, but the schools remain empty and in decay. In Martin Brod, there are seven Serb pupils in eight grades of a primary school which is in very poor condition. Fourteen teachers commute to this school by a mini-van from Kulen Vakuf.

Bosnia and Herzegovina has started the year 2009 with 45,000 claims for reconstruction of housing units and over 140,000 people who wished to return to their pre-war homes. According to the data from 1991, there had been 1,074,550 housing units in Bosnia and Herzegovina. The total of 452,673 was damaged during the war, while 140,000 remain to be reconstructed. It is estimated that over a billion KM is required for realization of reconstruction and sustainable return.

Unofficially, there had been around one million displaced persons in BiH in 1995 – around 600,000 in the Federation and 400,000 in the RS. Five years later, in 2000, the total of 556,214 persons were registered as displaced in BiH. A repeated review of the displaced persons status was carried out in 2004, and suggested the number of 256,736. Another review in 2008 showed the number was reduced to 122,738 displaced persons or 40,138 families. According to official information, the total of 18,698 displaced families, or 53,768 displaced persons were registered in September 2008 in the Federation, and 21,040 families and 67,712 persons in the RS, while 400 families or 1,258 persons were registered in the Brcko District.

Around 7,000 persons are still accommodated in collective centres and alternative accommodation. It is alarming that 15.79 per cent of displaced persons need other people's care and that 39.79 per cent have only occasional, or no income at all.

The considerable and continuous decrease in the number of displaced persons cannot in any way be linked to the real return of people. The biggest share of displaced persons in fact lost the status by the very act of the return of property, which they never occupied.

Finally, we remind that the State Strategy for Implementation of Annex 7 of the Dayton Agreement was adopted at the beginning of 2003. A considerable part of this strategy has not been implemented, including the part concerning compensation of damages for refugees and displaced persons. The representatives of international community and the civil society sector worked last year on drafting of a Revised Strategy and submitted it for parliamentary procedure at the end of 2008. Many solutions have been offered and they require full coordination among relevant ministries of Bosnia and Herzegovina, the RS, the Federation and local communities.

Naturally, the Strategy should first of all be endorsed and financed from the budget. However, sincere dedication of the ruling parties to embark decisively on the final phase of realization of return was demonstrated the best by the contest surrounding the state budget funds for this purpose. The responsible ministry has asked for around one hundred million, while the Council of Ministers offered 300,000 KM in the first proposal, which is symbolical in comparison with the real needs. The Commission for Finances and Budget of the BiH Parliament then proposed 35 million KM allocation from the state budget for financing of the return in 2009, but the final decision has not been made yet.

Human rights defenders

The status of human rights defenders can be assessed as alarming. This assessment is based on a series of cases of violence and death threats, intimidation and silencing attempts and other attacks against individuals and groups who are trying to protect rights of individuals and contribute to the state of human rights in the country.

In the reporting period, a series of cases supporting this assessment have been registered, most notably the following:

- decapitation death threats against one of the organizers of the First Queer Festival in Sarajevo, Svetlana Djurkovic, at the end of September;
- physical assault and beating up of eight participants of the Festival;
- threats against activists and employees of Transparency International BiH by the Republika Srpska Prime Minister Milorad Dodik and other officials of the SNSD, the ruling political party in this entity;
- threats against people protesting in Sarajevo due to murder of an underage boy Denis Mrnjavac and poor security situation in the capital of BiH by the then premier of the Sarajevo Canton, Haris Silajdzic, who proclaimed the protestors “foreign employees”;
- use of hate speech and inflammatory rhetoric directed against organizers and participants of the Queer Festival, led primarily by the Mostar mufti Seid effendi Smajkic, who qualified them as “Western trash”, the MP of the Party for Bosnia and Herzegovina, medical doctor Amila Alikadic-Husovic, considering them “sick”, which was repeated by the SDA general secretary, Amir Zukic;
- systemic and harsh attacks of the RS Prime Minister Milorad Dodik against journalists and editors of the 60 Minutes current affairs programme, and the reporter Slobodan Vaskovic, and filing of court lawsuits, as a special form of pressure against these persons;
- pressures of the RS prime minister against a number of independent analysts and activists of civil society organizations, who have been critical of the RS authorities’ actions and corruption in this entity;
- physical assault of an MP in the House of Representatives of the BiH Parliamentary Assembly and a member of the Party for BiH, Sadik Bahtic, against reporter Avdo Avdic and cameraman Refik Vejsilagic, as well as the physical assault of a minister in the Federation of BiH Government, Vahid Heco, against photo reporter Samir Jordamovic.

A record-breaking number of attacks against journalists and media was registered over the past year. According to the Journalists’ Help-line, a specialized service of the BH Journalists association, the total of 54 cases of violations of journalists’ rights and media freedoms has been recorded, which is 71 per cent more than the previous year. The total of 25 brutal attacks have been registered, which included physical assaults, threats and death threats.

- political pressures against the Communications Regulatory Agency (CRA), which brought into question its survival as an independent body, along with respect for the professional code and freedom of expression.

These examples, which represent only the tip of the iceberg, illustrate the ways and attempts to neutralize advocacy for respect of human rights and freedoms. Moreover, members of families of human rights defenders are frequently targets of assaults and threats, which says enough about the atmosphere of fear that is being created.

The causes of such a state should be sought primarily in the undemocratic character of the authorities in BiH and the increasingly stronger and more active civil society, which identified the deficiencies of the government and openly pointed them out.

It is the obligation of the government to respect human rights and freedoms, but also to respect the rights of every individual to independently, or together with others, work on improvement of and respect for human rights and fundamental freedoms on the basis of recognized universal standards. In other words, the authorities are obliged to protect defenders of human rights, which includes the obligation of the police, judiciary, and the state administration to secure a safe environment for the activists to monitor the state of human rights and work on its improvement.

Sexual and gender minorities

Homosexuality is decriminalized in BiH, but the family laws still define marriage as “a legal community of a man and a woman”, which represents a form of discrimination and deviation from European norms by the very fact that the law does not recognize same-sex marriages. From the aspect of the legislation in force, the provisions concerning “jeopardizing public moral”, and “insulting patriotic, national, religious and moral feelings of citizens” are problematic, leaving to the free judicial judgement and to the discretion of judges to consider public expression of membership of the gay and lesbian population under these criminal provisions.

Members of the LGBT (lesbian, gay, bisexual and transsexual) community belong to the most vulnerable categories of population, from the aspect of respect for human rights and freedoms. In the country where religious leaders and clerics qualify homosexuality as evil and “Western trash”, where theologians equalize terrorism and homosexuality, where politicians qualify same-sex sexual declarations as “a disease”, the status of these persons is difficult and they are frequently victims of violence and discrimination.

The attempt to organize the First Queer Festival in Sarajevo, at the end of September 2008, fully confirmed the validity of this assessment. The Festival programme had not planned for any public manifestation, but only exhibitions, films, debates and talks. Still, it was met with violence and intolerance.

Prior to the opening of the Festival, the politicians, clerics and a number of media had launched a fierce campaign against the Festival. The campaign featured attempts to qualify homosexuality as “trash” and “disease” on one hand, and on the other, to represent the Festival during the month of Ramadan as an attempt to offend and provoke Muslims. Apart from statements of public personalities, which can be qualified only as hate speech and creating of an atmosphere for lynch, in the eve of the Festival, Sarajevo was covered with posters and leaflets promoting fascist, racist and xenophobic ideology directed against homosexuals.

Under such circumstances, physical assaults against participants of the Festival and the guests followed immediately upon opening of the Festival, which resulted in eight casualties. The Festival was closed down out of fear of repetition of violence.

The freedoms of assembly and expressions were also harshly violated during the events.

It is worth noticing that the police did not carry out their legal obligations, despite the fact that the violence had been announced.

Two political parties, Our Party and the Liberal Party, are the only political groups that condemned the violence and showed a civilized attitude towards the Queer Festival.

The epilogue of these events, which upset both the local and international public and which contributed to rounding up of the picture of the state of human rights in BiH, was launching of processes against the executors of physical assaults. No appropriate measure has been taken against authors of posters with fascist contents, against persons who displayed them, or those who printed them. The responsible prosecutor's office has not taken any action against persons who initiated violence and hate in their statements, and encouraged intolerance and promoted fascist, racist and xenophobic ideas.

Discrimination

The Constitution of Bosnia and Herzegovina carries certain controversies, some of which are related to discrimination. Article 2 of the Constitution guarantees enjoyment of human rights by all persons, without discrimination on any grounds. However, Articles 4 and 5 of the Constitution comprise discriminatory provisions. Namely, Article 4 stipulates that each of the two chambers of the BiH Parliamentary Assembly "shall select from its members one Serb, one Bosniak, and one Croat to serve as its Chair and Deputy Chairs...", which deprives a person who does not belong to one these three peoples to occupy a leading position in the two houses of parliament, which represents discrimination. Article 5 regulates the composition of the BiH Presidency the same way, and says the Presidency shall consist "... of three members: one Bosniak and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of the Republika Srpska." This article discriminates not only those persons who do not belong to the Serb, Croat and Bosniak people, but also the Croats and Bosniaks who are not residing in the Federation of BiH, and the Serbs living outside the Republika Srpska.

Although the responsible institutions, the European Commission for Democracy through Law, better known as the Venice Commission, the UN Human Rights Committee, among others, have concluded that these provisions are contrary to the European Convention on Human Rights, they have still not been amended and harmonized with the mentioned Convention.

Some laws have discriminatory provisions too. This is the case with the Law on Rights of Veterans and their Families of the Federation of BiH. The Constitutional Court of the Federation of BiH proclaimed this law unconstitutional in 2005 due to the discriminatory provisions against members of the army of the Autonomous Province of Western Bosnia and members of their families. However, the Federation Prime Minister Nedžad Branković, who is obliged to implement the decision of the Constitutional Court, has consistently refused to do so.

The Law on Gender Equality and the Law on Rights of National Minorities, which were harmonized with international norms and contain anti-discrimination provisions, were adopted in the previous years. However, these laws have not been applied in an adequate way.

Discrimination is one of the most serious generators of violations of human rights in BiH. Individuals are discriminated against on the grounds of their national, political and sexual

orientation. Moreover, the victims of discrimination are also members of the so-called “vulnerable” groups. Apart from women, sexual minorities, the subjects of discrimination are also persons with disabilities, national minorities, families of missing persons, victims of war, third-age persons, children ... Discrimination is demonstrated in some vital domains of life, such as employment, education, health and social care, pension rights. One of the consequences of this situation is, for example, the fact that 0.8 per cent of working age returnees belonging to an ethnic group that is not dominant in a region, has employment. Furthermore, only 1.5 per cent working age Roma have work, in relation to 50 per cent that had been employed before the war.

The authorities of BiH have consistently delayed adoption of laws for prohibition of discrimination. The Anti-Discrimination Law has not yet been submitted for parliamentary procedure, despite the fact that local non-governmental organizations and the European Union have stressed the necessity of its adoption. The civil society activists have offered a text of the law draft to the authorities. However, the lack of will to stop discrimination, among other reasons, has led to BiH not having sufficient instruments for combating one of the most important causes of violations of human rights and freedoms.

Situation in prisons

There are 12 penitentiaries in Bosnia and Herzegovina, seven of which in the Federation of Bosnia and Herzegovina (Zenica, Tuzla, Bihac, Mostar, Sarajevo, Department of Tomislavgrad penitentiary in Busovaca and Department of Sarajevo penitentiary in Ustikolina), and five in Republika Srpska (Banja Luka, Bijeljina, Doboje, Foca/Srbinje, “Kula” – Istočno Sarajevo).

These institutions are within jurisdictions of the entities, among which appropriate cooperation is lacking.

It is a general assessment that the situation in detention facilities is unsatisfactory and does not match international norms and regulation. The penitentiaries are overcrowded, the hygienic conditions are bad, mostly due to lack of financial means, and the number of staff is lower than prescribed. The closed-type facility in Zenica accommodates the total of 839 persons in 2008, despite the fact that the capacity of the institution is 500. The total number of staff is 353, while it should be 514.

A big problem is posed by the fact that there are no separate correctional penitentiaries for women, juveniles and prisoners who require psychiatric help. For this reason, Zenica accommodates both juveniles and persons under psychiatric care, which is contrary to the norms in force.

There is not a single juvenile prison in the country. An agreement was reached for such an institution to be built in Orasje, but the implementation of this agreement has not started yet.

A special problem is linked with convicted persons with mandatory psychiatric treatment. Although the international regulation and local legislation stipulate accommodation of these persons in a specialized medical institution set up only for this purpose, these persons are still residing in inappropriate institutions such as the penitentiary in Zenica, which lacks adequate medical services and other necessary conditions.

Drug abuse is a general trend in penitentiaries, which has been observed by managers of the institutions, who at the same time express impotence to prevent this, hiding behind the lack of staff and poor equipment. There is an impression that a number of staff in the institutions have been caught up in corrupt activities, and that this has been the cause of unpunished delivery of drugs to the institutions.

Fights among prisoners are a big problem. The fights often result in serious injuries. The prison officials also blame this growing trend on the lack of guards.

Incidents of torture and “use of excessive force”, as this is usually qualified, are alarming. Prisoners have complained of bad treatment by prison guards. The first problem is the lack of a single definition of torture in the legislation in force, which calls for harmonization. The need for adequate training of employees of penitentiaries is evident, as well as their introduction to the regulation banning torture. Very often, persons deprived of freedom are not sufficiently informed about their rights and the rights to complain. Independent internal control, or the work of doctors and inspections, have not been secured, which is why the cases of torture are rarely fully investigated and disclosed. The lack of regular monitoring of the state in penitentiaries by human rights institutions and non-governmental institutions is evident, although it could lead to improvement of the situation. Finally, the state of penitentiaries and the status of persons deprived of liberty are illustrated by the fact that two verdicts of the Court of Human Rights in Strasbourg were related to the rights of these persons and Bosnia and Herzegovina has been punished.

The Status of Foreigners, Asylum Seekers and the issue of citizenship

Last year, the BiH Office for Foreigners issued the total of 787 decisions on expulsion of foreigners from the BiH territory, in accordance with the Law on Movement and Stay of Aliens and Asylum. The total of 484 decisions on cancellation of visa-free and temporary residence were adopted, as well as 32 decisions on cancellation of permanent residence. In total, 172 deportations of foreigners to their countries of origin took place.

At the moment, 135 persons, mostly from Serbia, Kosovo, but also from Turkey, China, Bangladesh, Sri Lanka and Cameroon, are accommodated in the Rakovica Asylum Centre. All of them have the status of asylum seekers. In 2008, 138 requests related to 462 persons were processed. Sixty-nine requests covering 235 persons were resolved, while the rest were carried over to 2009. One request for a person from Palestine has received a positive reply, while 41 claims for 145 persons were rejected. In 26 cases the procedure was interrupted, due to the fact that the applicants did not make themselves available for the interviews. In repeated procedure, one request was rejected.

The Court of BiH accepted complaints of two persons who have been residing in the country since 1999. They turned to the Court after the State Ministry had rejected their asylum claims. Some 400 Roma from Kosovo, as well as Gorans, Ashkals and Albanians are included in the group of asylum seekers that did not return to their homes immediately after the Albanian politicians invited them and were, therefore, classified as "the collaborationists". Members of these minorities still think that the situation in Kosovo is insecure and that, in some situations, it is even dangerous. Incidents, such as intimidation, stoning, insulting graffiti and insults, as well as fear due to the absence of adequate protection, must not be neglected. They feel the fear for their "bare life", they do not believe in safe return and are afraid of revenge of the present authorities, as they disagree with their policies. In their explanatory note on rejection

of the asylum, that are usually rather lengthy, the Ministry of Security mentioned just the reports of those international organisations that write "about undisturbed security situation in Kosovo".

All those asylum seekers, whose requests were rejected, have the right to file a complaint with the Court of BiH. The Court's decisions are final and binding. In case the Court confirms the decisions on rejection of an asylum request, the person is obliged to voluntarily leave BiH 15 days after the decision enters into force. The Department for Asylum forwards the Court's decision to the Office for Foreigners of the Ministry of Security, after which the deportation follows.

The Helsinki Committee expresses its concern over the announcements of forced and mass return of persons coming from Kosovo. This could cause a series of problems, having in mind the fragile and volatile security situation related to returns, as well as unresolved property and legal issues, the state of houses of returnees and business premises, and also sustainability of the returns. It is necessary to assess the need for international protection on individual basis and then make the decisions gradually, taking into consideration current security, economic and social circumstances in Kosovo.

Having in mind the above-mentioned, the information that the Ministry resolved only one asylum application in a positive manner is worrying, taking into account the number of applications that went through the asylum procedure or the procedure for approval of temporary residence due to humanitarian reasons, in accordance with the Law. This underlines the issue of application of regulations harmonised with international conventions, especially the principle of „non refoulement“, which the State of BiH is obliged to respect in accord with its international obligations¹.

During the first six months of the previous year, the Commission for Review of Decisions on Naturalisation of Foreign Citizens of BiH concluded that only 1,600 persons had the new, CIPS identification card, among the 5,000 persons that had received BiH citizenship through the process of naturalisation. These are the persons coming from the territory of former Yugoslavia.

The data that the Commission presented in their Report are alarming. Over 60 per cent of these people do not have addresses or residence in BiH, and they have not been registered in the registry of births.

During the first six months of 2008, the Commission adopted 20 decisions on cancellation of BiH citizenship. During the same period, the Commission took over 19,182 cases from first-instance bodies, of which 1,355 have been processed.

The total of 1,774 cases that were subject to the review have been taken over from the FBiH Interior Ministry. In the take-over, it was observed that these were mostly citizenship claims

¹ The mentioned principle is contained with Article 91 of the Law on Movement and Stay of Foreigners and Asylum published in the Official Gazette of BiH No. 36/08. Article 91 of the Law says "A foreigner will not in any way be expelled or returned ("refoulement") to the border of the territory where his/her life or freedom could be endangered on the grounds of his/her race, religion, nationality, association with a certain social group or political opinion, regardless of whether he/she was officially granted international protection. The prohibition of return or expulsion („non refoulement“) is related also to persons for whom there is reasonable doubt that they could be tortured or treated or punished in an inhumane or degrading. Moreover, a foreigner cannot be expelled or returned to a country which does not protect him/her from being sent to such a territory."

filed through diplomatic and consular offices of our country and processed by the RBiH Interior Ministry. The total of 108 cases have been taken over from the Republika Srpska Interior Ministry.

The Commission received information that the Ministry for Administration and Local Self-Governance of the Republika Srpska received 5,290 applications for citizenship since 1 January 2006. Out of this number, 539 cases are related to naturalisation. There are still 465 cases to be taken over by the Commission from the Ministry.

The largest number of irregularities has been detected in the BiH Foreign Ministry. For the first six months of 2008, the State Commission took over 5,765 cases from that Ministry. It was concluded that there was a significant number of decisions registered under the same reference number, and that in some diplomatic and consular offices a large number of decisions had been issued with the same date. Consequently, some offices had issued 200 decisions or more in one day.

For example – until 31 December 1993, the General Consulate in Stuttgart had been issuing decisions on granting citizenship on the basis of legal regulations that did not exist. The Regulation with the legal power concerning citizenship of RBiH was adopted six months after some persons had been granted citizenship.

In 2008, the Court of BiH received the total of 13 cases related to naturalisation - stripping of citizenships. The decisions on these cases have not yet been made. As these are not the cases considered urgent by the law, the Court's Panel for Administrative Disputes is processing the mentioned cases in chronological order, i.e. in the order they have been received.

The total of 36 cases related to stripping of citizenship was received during 2008. Out of this number, 11 cases were resolved (in three cases the complaints were accepted, in three cases the procedure was interrupted, and in six cases complaints were rejected).

The Federal Court in Washington decided that five of the six members of the so-called Algerian Group, which had been deported by the BiH authorities illegally to the USA over six years ago, can be released from the Guantanamo prison. In mid-December 2008, Mustafa Ait Idir, Mohamed Nechle and Hadj Boudelaa left Guantanamo and returned to Sarajevo, BiH.

Two members of the Algerian group, Saber Lahmara and Boumediene Lakhdera, acquitted by the US court, are still in Guantanamo as, according to the statement of the BiH Security Minister Tarik Sadovic, "the legal basis for their acceptance in BiH almost does not exist", as they now have the status of foreigners. There is a possibility that they would be transferred to a third country that would express its readiness to accept them, as a part of the plan of the new US administration to shut down this camp in Cuba. The BiH authorities have persistently refused to accept their obligation to respect the right of every citizen that stays in the country, and not only the BiH citizens.

We would like to remind that Hadj Boudelaa, Boumediene Lakhdar, Mohamed Nechle and Saber Lahmar from the so-called Algerian group addressed the Human Rights Chamber for human rights protection, and at the same time, they asked for adoption of provisional measures. The Human Rights Chamber had made the Order for the provisional measure and organisation of proceedings on 17 January 2002, which, among other things, "orders the accused party, Bosnia and Herzegovina and the Federation of BiH, to undertake all necessary

measures in order to prevent forced transfer of these applicants from BiH.” This order of the Chamber was sent to all relevant institutions in the country, as well as to relevant international organisations and agencies. Despite this clear order, the authorities handed the mentioned persons over to the representatives of US authorities on 18 January. We would like to emphasise that the Decision of the FBiH Supreme Court of 17 January 2002 on the release of the six defendants from the custody and the Court’s order that “they have to be immediately released”, were ignored.

The Helsinki Committee of BiH, as well as numerous international instances, including the bodies of the European Parliament and the Council of Europe, concluded that the act of extradition of the Algerian Group was a serious violation of human rights and freedoms. Bosnia and Herzegovina violated international conventions it had vouched to respect, including the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights and Fundamental Freedoms and the Convention on the Reduction of Statelessness. The most serious violations in this case comprised the arbitrary and illegal stripping of citizenships and extradition to a state which has a death penalty and where is danger from torture and other inhuman and degrading treatment. The authorities of Bosnia and Herzegovina did not do anything to bring about liberation and return of these persons to the country.

In 2008, the Helsinki Committee of BiH reacted through press releases and statements for printed and electronic media, expressing concern with the continuation of processes for dispossession of citizenship without consideration for the international law and human rights standards.

Imad Al-Husin, alias Abu Hamza, addressed the Helsinki Committee of BiH and asked for protection of his rights when he was stripped of BiH citizenship as part of the naturalized citizens review. Namely, the BiH authorities decided that he represented “a national security threat”. After he had exhausted all legal remedies, which also included seeking of asylum, he filed an appeal with the BiH Constitutional Court. After his address of the European Court of Human Rights in Strasbourg, the Court made a decision on 29 January to temporary ban the extradition of Imad Al-Husin.

The BiH Constitutional Court partially accepted the appeal of Imad Al-Husin. We would like to stress that the Helsinki Committee of BiH and the International Law Clinic for Human Rights Allard K. Lowenstein, the Yale Law School, as amici curiae in favour of Imad Al-Husin, have submitted their professional opinion on dispossession of citizenship.

On 6 October 2008 he was placed under supervision in the Immigration Centre, where he remains until the present day.

In this case too, the Helsinki Committee of BiH got involved and monitored all procedures before relevant institutions and the Court of BiH, demanding application of human rights standards guaranteed by international conventions. Together with the Amnesty International and the Human Rights Watch, we issued a press release on 17 October 2008, asking the authorities not to deport Imad Al-Husin, stressing that in case of a deportation, he would face a serious risk of becoming an object of torture and maltreatment and that he should be released from the Immigration Centre immediately.

Environment and sustainable development

The so-called “third generation” rights, which include the right to a healthy environment and sustainable development, have been sidelined. The reasons are the harsh violations of political, civic, social, economic and cultural rights, which have overshadowed the third generation human rights.

Bosnia and Herzegovina ratified the Aarhus Convention in July, which regulates the right to information in the field of environment, as well as the right of citizens and their organizations to have influence on decisions that can affect the environment and sustainable development. However, the Aarhus Convention has not been adequately implemented yet, and other relevant international documents in the field remain to be ratified.

The seriousness of respect for human rights in this field is illustrated by the fact that the verdicts of the Court for Human Rights in Strasbourg qualified this as violation of the right to life, but also the right to home and privacy.

BiH does not have all-encompassing legislation that would regulate this field, which has resulted in absence of the so much needed Agency for Environment for the whole country. This Agency should, among other things, be the guarantor of professional and independent monitoring in the field of environment, as the first step in respect for regulation concerning the environment. At the moment, there are only entity laws which regulate certain issues, which is insufficient from the aspect of endorsement of European criteria.

The basic problem lies in the fact that the decisions affecting the state of environment are often made without appropriate experts, far from the eyes of the public and without a possibility for the citizens to be involved in the decision-making process. The domains of construction and energy, which are most often linked with environment and sustainable development, are represented by subjects that avail themselves of enormous financial means, which also implies big influence on decision-makers. Sometimes the public hearings about investment projects, changes of urban planning, which are the legal obligation of the authorities, are done formally, ignoring the opinions of experts and citizens.

Limited or non-existent influence of citizens on the environment policy represents a direct violation of human rights.

Under current circumstances, the situation concerning construction of the 5C road corridor, has been alarming, as the national parks Prenj and Cvrstica have been endangered.

**On basis of the analysis of the human rights situation for 2008, the Helsinki
Committee for Human Rights in BiH submits
to the authorities the following**

RECOMMENDATIONS

1. The Council of Ministers of BiH and the BiH Parliamentary Assembly should start the procedure of amending the Constitution of the country, in order to harmonize it with the European Convention on Human Rights and Freedoms and to eliminate discriminatory provisions contained within the BiH Constitution. It would be necessary for these institutions to undertake necessary steps for adoption of a law on prevention of discrimination that would comply with European principles and would incorporate provisions of the EU Anti-Discrimination Directive.
2. The Council of Ministers of BiH and the BiH Parliamentary Assembly, as well as the governments and parliaments of the entities, should provide support to the institution of the BiH Ombudsman as an independent institution that is expected to fulfill the so-called the Paris criteria,² which are related to national institutions in the field of human rights.
3. The Council of Ministers of BiH and the BiH Parliamentary Assembly should ratify the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention against Torture as soon as possible.
4. The Prime Minister of the Federation of BiH, Nedžad Branković, should implement decisions of the Constitutional Court of the Federation BiH related to the Law on the Rights of Veterans and Members of Their Families and the Law on Civil Service in the Federation of BiH.
5. The Ministry for Human Rights and Refugees is recommended to adopt concrete measures and dynamics of their implementation in order to ensure return of all persons who wish to return, in order to respect their right to free choice of the place of residence.
6. The authorities at all levels, the police, judiciary and the public administration in particular, are recommended to provide a safe environment for work of human rights activists monitoring the state of human rights and working on improvement of human rights.

² The criteria that, among other things, define national institutions as the competent and responsible ones, with emphasis on their independence.