

Report on Bosnia and Herzegovina

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For further information about the work of the European Commission against Racism and Intolerance (ECRI) and about the other activities of the Council of Europe in this field, please contact:

Secretariat of ECRI
Directorate General of Human Rights – DG II
Council of Europe
F - 67075 STRASBOURG Cedex
Tel.: +33 (0) 3 88 41 29 64
Fax: +33 (0) 3 88 41 39 87
E-mail: combat.racism@coe.int

Visit our web site: www.coe.int/ecri

TABLE OF CONTENTS

FOREWORD	5
EXECUTIVE SUMMARY.....	6
SECTION I: OVERVIEW OF THE SITUATION.....	7
INTERNATIONAL LEGAL INSTRUMENTS	7
CONSTITUTIONAL PROVISIONS AND OTHER BASIC PROVISIONS	8
CRIMINAL LAW PROVISIONS	10
CIVIL AND ADMINISTRATIVE LAW PROVISIONS.....	11
ADMINISTRATION OF JUSTICE.....	11
SPECIALISED BODIES AND OTHER INSTITUTIONS	12
RETURNEES AND INTERNALLY DISPLACED PERSONS.....	13
RECEPTION AND STATUS OF NON-CITIZENS	15
- Refugees and Asylum seekers.....	15
ACCESS TO PUBLIC SERVICES.....	16
- Access to social services.....	16
- Access to education	17
EDUCATION AND TRAINING/AWARENESS-RAISING.....	19
EMPLOYMENT	19
VULNERABLE GROUPS.....	20
- Roma	20
- Minority returnees.....	20
- “Non-constituent” peoples	22
- Victims of trafficking.....	23
ANTISEMITISM	23
CONDUCT OF LAW ENFORCEMENT OFFICIALS	24
MONITORING THE SITUATION IN THE COUNTRY.....	24
MEDIA	25
EXPLOITATION OF NATIONALISM IN POLITICS.....	25
SECTION II: ISSUES OF PARTICULAR CONCERN.....	26
THE SITUATION OF THE ROMA POPULATION	26
THE NEED TO GRADUALLY MOVE TOWARDS THE ACKNOWLEDGMENT OF FULL BOSNIAN DEMOCRATIC CITIZENSHIP	30
BIBLIOGRAPHY.....	32

Foreword

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4/5 year cycles, covering 9/10 countries per year. The first round of reports was completed at the end of 1998 and the second round at the end of the year 2002. The third round of reports started in January 2003. This round of country reports therefore includes the preparation of a report on the situation as concerns racism and intolerance in Bosnia and Herzegovina for the first time.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to propose, if they consider it necessary, amendments to the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 25 June 2004 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.

Executive summary

Bosnia and Herzegovina has taken a number of positive steps towards combating racism and intolerance. These steps include the ratification of a considerable number of relevant international legal instruments, including Protocol N°12 to the European Convention for the Protection of Human Rights. The process of repossession of property of people displaced during the war has almost been finalised. Some progress has been made towards ensuring representation of Bosniaks, Croats and Serbs in political, administrative and judicial institutions throughout the country. Some initiatives have been taken to address the position of other groups composing Bosnia and Herzegovina's society, such as the adoption of a Law on Protection of Rights of National Minorities and an Action Plan aimed at accommodating the educational needs of Roma children and of children of other national minorities. Initiatives have also been taken against trafficking of persons for the purposes of sexual exploitation.

However, severe problems of racism and racial (including ethnic and religious) discrimination and segregation persist in the country, often as a result of nationalist policies pursued by ethnically based political parties. Such problems aggravate the situation of certain groups within a society globally affected by very difficult post-war socio-economic conditions. These groups include: minority returnees; the Roma population, whose situation of extreme marginalisation is of particular concern to ECRI; other national minorities; and other individuals unable or unwilling to identify with these categories of persons. Problems of direct and indirect discrimination and of segregation are pervasive in virtually all areas of life and particularly in education, employment, housing and access to health services and social security. The strong link currently existing between the enjoyment of rights and ethnic affiliation makes it difficult for those not belonging to locally or nationally dominant ethnic groups to access rights and opportunities in many of these areas.

In this report, ECRI recommends that the authorities of Bosnia and Herzegovina take action in a number of fields, including: the need to fine-tune the existing legal framework against racism and racial discrimination and to ensure its implementation; the need to ensure ethnic diversity in political, administrative and judicial institutions throughout the country; the need to address the position of the Roma population, including through measures specifically targeted at them; the need to ensure that those persons not belonging to locally or nationally dominant ethnic groups are able to access rights and opportunities in all areas of life in practice; and the need to gradually move from an approach heavily based on ethnic affiliation towards the acknowledgment of full Bosnian democratic citizenship.

SECTION I: OVERVIEW OF THE SITUATION

International legal instruments

1. Bosnia and Herzegovina has signed and ratified many international instruments relevant in the field of combating racism and intolerance. On acceding to the Council of Europe in April 2002, Bosnia and Herzegovina committed itself to ratifying, within one year of its accession, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Protocol N°12 to the ECHR and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. ECRI welcomes that Bosnia and Herzegovina has ratified these instruments. ECRI also welcomes that Bosnia and Herzegovina acceded to the Framework Convention for the Protection of National Minorities in February 2002.
2. On acceding to the Council of Europe, Bosnia and Herzegovina also committed itself to signing the European Social Charter within two years, to ratifying it as soon as possible, and, in the meantime, to endeavouring to implement a policy in accordance with the principles it contains. Bosnia and Herzegovina furthermore committed itself to signing and ratifying, within two years, the European Charter for Regional or Minority Languages and the Convention on Cybercrime. ECRI notes that Bosnia and Herzegovina signed the European Social Charter (Revised) on 11 May 2004. The authorities have stated, however, that the present socio-economic conditions of the country render the implementation of the provisions contained in this instrument extremely problematic. ECRI nevertheless strongly encourages the authorities of Bosnia and Herzegovina to continue the work with a view to ratifying this instrument and, in the meantime, to endeavour to implement the principles contained therein. ECRI notes that Bosnia and Herzegovina has not yet signed the European Charter for Regional or Minority Languages and recommends that this instrument be ratified without delay. Bosnia and Herzegovina has also not yet signed the Convention on Cybercrime. ECRI recommends that the authorities of Bosnia and Herzegovina ratify this convention and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. In addition, ECRI encourages the authorities of Bosnia and Herzegovina to ratify the European Convention on Nationality, the Convention for the Participation of Foreigners in Public Life at Local Level and the European Convention on the Legal Status of Migrant Workers.
3. Bosnia and Herzegovina is a party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). ECRI recommends that the authorities of Bosnia and Herzegovina make the declaration under Article 14 of the ICERD, recognizing the competence of the Committee for the Elimination of Racial Discrimination to receive and consider communications from individuals and groups of individuals alleging violations by the State of any of the rights set out in the Convention.
4. Several international treaties have been appended to the Constitution of Bosnia and Herzegovina by the Dayton-Paris General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP)¹ and have therefore been

¹ The Dayton-Paris General Framework Agreement for Peace in Bosnia and Herzegovina was signed on 14 December 1995 by the Republic of Bosnia and Herzegovina, the Republic of Croatia and the then

incorporated into the domestic legal order before being formally ratified². The Constitution makes the rights and freedoms enshrined in the ECHR directly applicable in Bosnia and Herzegovina and establishes that they have priority over all other law (Article II.2). The Constitution also prescribes that Bosnia and Herzegovina and both Entities³ shall ensure the highest level of internationally recognized human rights and fundamental freedoms (Article II.1).

Constitutional provisions and other basic provisions

5. The Constitution of Bosnia and Herzegovina, adopted as Annex 4 of the GFAP, contains provisions against racial discrimination. The rights set out in the ECHR are enumerated in Article II.2 of the Constitution as fundamental rights that shall be enjoyed by all persons on the territory of Bosnia and Herzegovina. Article II.4 provides that the enjoyment of these rights and of all the rights set forth in the other listed international instruments that the GFAP makes directly applicable in Bosnia and Herzegovina shall be secured to all persons without any discrimination on grounds, *inter alia*, such as race, colour, religion, national or social origin and association with a national minority.
6. Article II.6 of the Constitution of Bosnia and Herzegovina provides that all refugees and displaced persons have the right to freely return to their homes of origin. They have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them.
7. The Constitution of Bosnia and Herzegovina defines Bosniaks, Croats and Serbs, along with "Others", as the constituent peoples of Bosnia and Herzegovina. In accordance with the partial decision of 30 June and 1 July 2000 of the Constitutional Court⁴ (hereafter: Constituent Peoples' decision), Bosniaks, Croats and Serbs are to be considered constituent peoples throughout the territory of Bosnia and Herzegovina, irrespective of the Entity in which they reside. ECRI notes that, following this decision, the constitutions of the Entities have been amended by decisions of the High Representative⁵, so as to provide for proportional representation, in accordance with the pre-war

Federal Republic of Yugoslavia, as a result of the efforts of the international community to stop the war in Bosnia and Herzegovina.

² These instruments are: 1) 1948 Convention on the Prevention and Punishment of the Crime of Genocide; 2) 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto; 3) 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto; 4) 1957 Convention on the Nationality of Married Women; 5) 1961 Convention on the Reduction of Statelessness; 6) 1965 International Convention on the Elimination of All Forms of Racial Discrimination; 7) 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto; 8) 1966 Covenant on Economic, Social and Cultural Rights; 9) 1979 Convention on the Elimination of All Forms of Discrimination against Women; 10) 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 11. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; 12) 1989 Convention on the Rights of the Child; 13) 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; 14) 1992 European Charter for Regional or Minority Languages; 15) 1994 Framework Convention for the Protection of National Minorities.

³ Bosnia and Herzegovina consists of two Entities, the Federation of Bosnia and Herzegovina and Republika Srpska (Article I.3 of the Constitution of Bosnia and Herzegovina). In addition, Bosnia and Herzegovina includes a single administrative unit of local self-government, the Brcko District.

⁴ U 5/98 III

⁵ The High Representative is tasked with overseeing the implementation of the civilian aspects of the GFAP on behalf of the international community and with co-ordinating the activities of the civilian organisations and agencies operating in Bosnia and Herzegovina.

(1991) census, of the constituent peoples in political, administrative and judicial institutions throughout the country. In this respect, ECRI notes that some progress towards the restoration of ethnic diversity has been achieved in a number of fields. These include political representation -- although it has been reported, for instance, that Serb representation in the House of Peoples of the Federation of Bosnia and Herzegovina (hereafter: the Federation) is still unsatisfactory -- but also the judiciary and the police. ECRI notes, however, that many public institutions throughout the country are still to a large extent mono-ethnic and that much remains to be done in order to ensure ethnic diversity in public institutions throughout the territory of Bosnia and Herzegovina. ECRI will address in other parts of this report the position of disadvantage of those defined as "Others" by the Constitution in the process of ensuring ethnic diversity in public institutions in Bosnia and Herzegovina⁶. It will also address the need to move away, in the long term, from the all-encompassing emphasis on ethnic belonging prevailing in the country at present⁷. In the short and medium term, however, ECRI strongly urges the authorities of Bosnia and Herzegovina to ensure ethnic diversity in all public institutions of Bosnia and Herzegovina, in accordance with the Constituent Peoples' decision.

8. ECRI notes that the constitutions at State and Entity level reserve certain public positions for persons belonging to specific ethnic groups. Thus, persons non-identifying themselves as members of the required ethnic group are legally barred from holding these positions⁸. This situation mainly concerns persons not identifying themselves as either Bosniaks, Croats or Serbs, although ECRI notes that, in some cases, persons belonging to these groups are also legally prevented from accessing certain positions⁹. While it recognises that these constitutional arrangements derive from the GFAP and have therefore been instrumental to guaranteeing peace and stability, ECRI considers that the ethnically discriminatory nature of these arrangements will have to be addressed.
9. More generally, ECRI has registered in different circles in Bosnia and Herzegovina an emerging awareness of the need to carry out a revision of the Constitution at the State level and, subsequently, to reform the Constitutions at Entity level. To this end, the need for a broad consensus across constituent peoples and among those in charge at Entity and State level has been stressed. ECRI strongly encourages the authorities of Bosnia and Herzegovina to promote public debate in this area and to ensure thorough involvement in such debate of all groups composing the society of Bosnia and Herzegovina, in order to ensure that constitutional arrangements allow for participation of all in public life and do not impact in a discriminatory manner on any minority group.

⁶ See below, Vulnerable groups -- "Non-constituent" peoples

⁷ See below, The need to gradually move towards the acknowledgment of full Bosnian democratic citizenship

⁸ At State level, for instance, only Bosniaks, Croats and Serbs are eligible to the Tripartite Presidency of Bosnia and Herzegovina, to the House of Peoples of Bosnia and Herzegovina and to Chair and Deputy Chair of both Chambers of the Parliament of Bosnia and Herzegovina. At Entity level, for instance, only Bosniaks, Croats and Serbs are eligible to President and Vice-President of the Federation and to President and Vice-President of both Chambers of the Parliament of the Federation.

⁹ For instance, Serbs residing in the Federation and Bosniaks or Croats residing in Republika Srpska are not eligible to the Tripartite Presidency of Bosnia and Herzegovina or to the House of People of Bosnia and Herzegovina.

Criminal law provisions

10. The Criminal Code of Bosnia and Herzegovina, enacted by decision of the High Representative and entered into force in March 2003, contains provisions prohibiting discrimination by public officials on grounds, *inter alia*, of race, skin colour, national or ethnic background, religion and language and prohibiting the restriction by public officials of the language rights of the citizens in their relations with the authorities (Article 145/1 and 145/2). The Criminal Codes at the Entity level contain provisions against discrimination by any individual on similar grounds (Article 162/4 of the Criminal Code of Republika Srpska and Article 177/4 of the Criminal Code of the Federation) and provisions, albeit differently formulated¹⁰, against incitement to national, racial or religious hatred (Article 390/1 of the Criminal Code of Republika Srpska and Article 163/1 of the Criminal Code of the Federation). The Criminal Codes in both Entities also contain provisions against restrictions of the right of citizens to use their language or alphabet (Article 163/1 of the Criminal Code of Republika Srpska and Article 177/9 of the Criminal Code of the Federation) and provisions against prevention of return of refugees or displaced persons (Article 146 of the Criminal Code of Republika Srpska and Article 178 of the Criminal Code of the Federation).
11. ECRI draws the attention of the authorities of Bosnia and Herzegovina to its General Policy Recommendation N°7 on national legislation to combat racism and racial discrimination¹¹ (hereafter: General Policy Recommendation N°7), where ECRI sets out the provisions, including criminal law provisions, that it considers should feature in an effective national legislation to combat these phenomena. These provisions include in particular: incitement to racist violence, hatred or discrimination; racist insults and defamation; expression of a racist ideology; dissemination or distribution of racist material; and denial or justification of crimes of genocide, crimes against humanity and war crimes. In its General Policy Recommendation N°7, ECRI further more recommends that the law should explicitly provide that racist motivation constitutes an aggravating circumstance in respect of all offences. ECRI recommends that the authorities of Bosnia and Herzegovina keep the effectiveness of their criminal law provisions against racism and racial discrimination under review and that they complement them taking into account ECRI's General Policy Recommendation N°7.
12. The authorities of the Federation report that, in 2003, three offences were committed under Article 163 of the Criminal Code of the Federation, one under Article 177 and one under Article 178. ECRI has not been made aware of the figures on the implementation of the corresponding provisions in Republika Srpska. In general, however, non-governmental organisations report that figures relating to the implementation of these provisions throughout the country do not reflect the reality of the situation and that instances of discrimination, incitement to racial (including ethnic or religious) hatred and racially motivated offences are much more numerous than shown by these figures. It has been reported to ECRI, in particular, that ordinary offences committed for racist

¹⁰ Article 390/1 of the Criminal Code of Republika Srpska punishes "Whoever incites and inflames national, racial or religious hatred, discord or hostility, or spreads ideas of superiority of one race or nation over another (emphasis added)". Article 163/1 of the Criminal Code of the Federation punishes "Whoever publicly incites and inflames national, racial or religious hatred, discord or hostility among constituent peoples and others who live in the Federation"

¹¹ CRI (2003) 8

(including ethnic or religious) motives are often not prosecuted and that, when they are, prosecution takes place on the basis of the ordinary offence and that the racist motivation is consequently overlooked. ECRI strongly urges the authorities of Bosnia and Herzegovina to improve the implementation of the existing criminal law provisions against racism and racial discrimination. To this end, it stresses that all those working in the criminal justice system, and particularly the police, prosecutors and judges, should be thoroughly trained on the content of these provisions, and that they should be made aware of the need to take all acts of racism and racial discrimination seriously and to bring their perpetrators to justice.

Civil and administrative law provisions

13. There is no comprehensive body of civil and administrative legislation at present in Bosnia and Herzegovina against discrimination on grounds such as race, colour, language, religion, nationality and national or ethnic origin. The authorities of Bosnia and Herzegovina have stated that, in the context of the wide-ranging process of legal reform currently taking place in the country, the adoption of such a body of legislation is not yet envisaged as a priority. They have also pointed out that the Constitutional prohibition of discrimination, the existing criminal law provisions and the Offices of the Ombudsman at State and Entity level provide legal means of which persons who believe that they have been discriminated against can avail themselves.
14. ECRI nevertheless considers that many of the provisions that are necessary to provide effective legal remedies to victims of racial discrimination, including discrimination on grounds of ethnic origin, religion or language, are currently missing from the legislation of Bosnia and Herzegovina. These include clear legal definitions of direct and indirect discrimination, provisions establishing a shared burden of proof in discrimination cases, and provisions enabling non-governmental organisations with a legitimate interest in combating racial discrimination to bring cases or to intervene in administrative proceedings. ECRI considers that the adoption of such a legislation could also be a powerful educational and awareness raising tool for the population at large. In particular, ECRI believes that the debate around the adoption of such legislation would stimulate research into the phenomena of direct and indirect racial discrimination and the extent to which these are present in Bosnia and Herzegovina, as ECRI believes that there is at present a general lack of awareness of these issues. While ECRI understands the difficulties posed by the current intensive process of legal reform, it strongly recommends to the authorities of Bosnia and Herzegovina to consider the adoption of comprehensive civil and administrative legislation against racial discrimination. In this respect, it draws the attention of the authorities to its General Policy Recommendation N^o7, which provides detailed guidance on the provisions that should be contained in such a legislation, including those mentioned above.

Administration of justice

15. A sweeping reform of the judicial system, including the system for the appointment of judges, has taken place in Bosnia and Herzegovina in recent years and is currently underway. In order to comply with the Constituent Peoples' decision, recruitment of judges from under-represented constituent peoples has started. However, recruitment of these judges has not been equally successful throughout the country and is notably difficult or impossible in those

areas where minority returns¹² generally are not yet sustainable. ECRI notes reports of continuing lack of independence and impartiality of the judges and, in particular, of favouritism based on ethnic origin or on affiliation with ethnically based political parties. It has also been reported to ECRI that the mono-ethnic composition of the courts in many municipalities in both Entities still seriously undermines the confidence of persons not identifying with that ethnic group in the justice system. ECRI reiterates its call for efforts to ensure ethnic diversity in the criminal justice system throughout Bosnia and Herzegovina.

16. ECRI considers that punishment for war crimes and crimes against humanity and genocide committed during the war are particularly important in exorcising the past and in promoting reconciliation within Bosnia and Herzegovina's society. ECRI notes however, that many persons indicted by the International Criminal Tribunal for the former Yugoslavia (ICTY) are still at liberty and expresses concern, in this respect, at reports according to which the co-operation of the authorities of Republika Srpska with ICTY has been unsatisfactory. Domestic courts are also responsible for investigating and prosecuting war crimes and can do so after they obtain clearance from the ICTY. Although figures in this respect are not available to ECRI, ECRI notes that several trials for war crimes are undergoing, notably in the Federation. ECRI is concerned, however, at reports that domestic courts have failed in a number of occasions to take steps to actively prosecute alleged perpetrators and that lack of co-operation between the judiciary and the police forces of the two Entities, particularly in enforcing arrest warrants, has resulted in continuing impunity. ECRI notes that a special chamber for war crimes, which includes both international and national judges, is being established at the State Court of Bosnia and Herzegovina. In the interest of the victims, their families and of reconciliation and integration of a still divided society, ECRI strongly urges the authorities of Bosnia and Herzegovina to deploy all efforts to bring to justice all persons responsible for war crimes, crimes against humanity and genocide committed during the war¹³.
17. ECRI has registered growing support both at domestic and at international level for the establishment of a Truth and Reconciliation Commission. ECRI considers that the work of such a commission would further contribute to the promotion of reconciliation and to the re-establishment of mutual trust between different communities. ECRI therefore urges the authorities of Bosnia and Herzegovina to provide the necessary political and material support to this initiative.

Specialised bodies and other institutions

18. There are at present three Offices of the Ombudsman in Bosnia and Herzegovina, one at the State level, one in the Federation and one in Republika Srpska, each comprised of three ombudspersons, one from each of the three constituent peoples. In addition, each of the Cantons of the Federation¹⁴ also has its own Ombudsman institutions. The Offices of the Ombudsman at the

¹² See below Vulnerable groups – Minority returnees

¹³ A June 2004 report by a Republika Srpska government commission concerning the Srebrenica events of July 1995 recognizes that "several thousands Bosniaks (Muslims) were liquidated in a way which represents grave violations of international humanitarian law".

¹⁴ The Federation is divided in ten Cantons, whose competence extends to a number of important areas, including education and provision of health services and social security.

State and Entity level report that the areas concerned by the complaints they have received have shifted, in recent years, from repossession of property to social rights, such as employment, pensions or access to health services, as well as to other areas such as length of judicial proceedings. The Offices of the Ombudsman at Entity level report that, although most of the claims concerning repossession of property came from minority returnees, ethnic or religious discrimination was generally not alleged by these complainants or, when alleged, was not found. Although most of the decisions of the Offices of the Ombudsman at all levels are reportedly complied with¹⁵, a number of decisions, notably concerning repossession of property still have to be complied with by the relevant administration. ECRI urges the authorities of Bosnia and Herzegovina to ensure that all decisions of the Offices of the Ombudsman at State and Entity level are complied with.

19. Since January 2004, the Constitutional Court of Bosnia and Herzegovina has taken up the responsibilities of the Human Rights Chamber, set up as a temporary measure by the GFAP to consider alleged violations of the ECHR. The Constitutional Court has also registered in recent years a decrease of the number of claims concerning repossession of property. ECRI notes that the Human Rights Chamber has found cases of violation of Article 14 of ECHR (Prohibition of discrimination), notably in the field of employment and social security. ECRI notes that the Constitutional Court is currently preparing a report that will review compliance with its decisions in respect of all rights enshrined in the ECHR, including the right protected by Article 14. ECRI strongly urges the authorities of Bosnia and Herzegovina to ensure that all the decisions of the Human Rights Chamber and of the Constitutional Court are swiftly and thoroughly complied with.
20. In spite of the existence of a number of mechanisms to ensure protection of human rights, ECRI notes that there is no specialised body in Bosnia and Herzegovina to combat racism and racial (including ethnic and religious) discrimination. ECRI attaches importance to the existence and functioning of specialised bodies that can effectively and independently monitor the situation as concerns racism and racial discrimination at national level and provide effective means of redress. ECRI has provided detailed guidance on the forms that such a body might take, its functions, responsibilities and style of operation in its General Policy Recommendation N°2¹⁶ and in its General Policy Recommendation N°7. ECRI strongly encourages the authorities of Bosnia and Herzegovina to consider the establishment of such a body, especially in connection with the adoption of anti-discrimination legislation, as suggested above¹⁷, whose implementation this institution could be entrusted to monitor.

Returnees and Internally Displaced Persons

21. Out of a pre-war population of about 4 300 000, around 2 200 000 persons had to leave their homes as a result of the 1992-1995 war in Bosnia and Herzegovina, which also left over 200 000 persons dead. A number of those who had to flee took refuge abroad, while others moved to other parts of Bosnia and Herzegovina. At present, around 990 000 persons are registered as having

¹⁵ The Office of the Ombudsman of the Federation reports, for instance, a rate of compliance of 70%

¹⁶ CRI (97) 36: ECRI General Policy Recommendation n° 2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.

¹⁷ Civil and administrative law provisions

returned to their pre-war homes from abroad or from within the country. Of these, approximately 436 000 are so-called minority returnees¹⁸. In addition, approximately 325 000 persons still live displaced in the country. ECRI notes that rates of return have slowed down in recent years (approximately 108 000 in 2002, 54 000 in 2003 and 3 000 in the first two months of 2004) a phenomenon reportedly closely linked to the finalisation of the vast majority of property repossession claims, but also to a reduction in funds available for reconstruction assistance.

22. The implementation of the property laws which has enabled claimants to establish their property claims and repossess their property has been central to the return process. In this respect, ECRI welcomes the fact that, at the time of writing, over 93% of such claims have been successfully dealt with. ECRI notes however, that repossession of property does not imply for claimants actual return and resumed life in their pre-war places of residence. Although projects are underway to determine, through the municipalities, the number of persons who came back to live permanently in their pre-war homes, no exact figures are available at present on this. However, ECRI notes reports according to which most of those to whom property has been returned keep such property empty, use it occasionally, sell it, or exchange it with property elsewhere, generally in an area predominantly inhabited by people of their same ethnic origin. For instance, non-governmental organisations estimate that, in Republika Srpska, only between 20 and 30% of those to whom property has been returned actually live there. It would also appear that persons who have repossessed property located in rural areas are more likely to go back and live there than persons who have repossess property located in urban areas, where non-governmental organisations estimate that around 75% of repossessed property is sold. In Mostar, a city where Bosniaks and Croats live since the war in two separate neighbourhoods, returnees whose repossessed property is located in the neighbourhood inhabited by the other ethnic group are for the most part reported to sell their flats or exchange them with flats located in the other neighbourhood. More generally, although it is reported that there are at present no areas where no minority returns have taken place, many municipalities in Bosnia and Herzegovina are still to a large extent mono-ethnic.
23. While ECRI welcomes the attention devoted to property repossession and the successful results of this process, it stresses that priority attention should now urgently be devoted to ensuring the sustainability of returns, in order to put people who are enabled to return in a position where they are also enabled to stay. In ECRI's view, sustainability of returns includes thorough protection of the human rights of the returnees and their economic and social integration. This includes ensuring that returnees are guaranteed personal security and that they are not discriminated against directly or indirectly in access to jobs and social security, that their continuing needs for reconstruction assistance for destroyed property are met and that their children have access to unbiased education in a non-segregated manner. As will be mentioned below¹⁹, ECRI is seriously concerned that these conditions are at present far from being met. ECRI is pleased to note that both domestic and international attention is increasingly focused on how to ensure sustainable returns. It strongly encourages the

¹⁸ See below Vulnerable groups – Minority returnees. Of these 436 000, approximately 265 000 returned to their homes in the Federation, 150 000 in Republika Srpska and 21 000 in Brcko District)

¹⁹ Vulnerable groups - Minority returnees

authorities of Bosnia and Herzegovina to devote to these aspects absolute priority.

Reception and status of non-citizens

- *Refugees and Asylum seekers*

24. A new Law on Movement and Stay of Aliens and Asylum is in force in Bosnia and Herzegovina since October 2003 and has been complemented by regulations governing refugee-determination procedures that entered into force in February 2004. ECRI notes that, at present, the United Nations High Commissioner for Refugees (UNHCR) continues to conduct refugee status determination, while at the same time focussing on building the capacity of the authorities of Bosnia and Herzegovina to progressively take over this function.
25. Approximately 19 500 Serb refugees from Croatia still remain registered as refugees in Bosnia and Herzegovina, predominantly in the North-western part of Republika Srpska. In addition, it is estimated that some 15 000 to 20 000 Croatian Serbs still reside in Republika Srpska unregistered. ECRI is deeply concerned at the very precarious situation of these persons due to the uncertainty of their legal status and urges the authorities of Bosnia and Herzegovina to clarify the number of these persons and to provide them, in collaboration with UNHCR, with a clearly defined legal status.
26. Of the almost 6000 persons from Serbia and Montenegro who were living in Bosnia and Herzegovina in 2002 with temporary protection, only around 3000 still live in the country. These persons are almost exclusively from Kosovo and predominantly Roma, although persons of other ethnic minority origin are also present. ECRI understands that, in view of the current situation in Kosovo, temporary protection status for these persons has been extended to June 2004. ECRI urges the authorities of Bosnia and Herzegovina to closely co-operate with UNHCR concerning these persons' status, and to ensure that no person is forcibly returned to his or her country of origin contrary to the principle of non-refoulement and Article 3 of the ECHR. ECRI notes that one third of these 3000 persons are at present accommodated in reception centres, where they have access to basic health services and to education. ECRI is, however, seriously concerned at reports of stigmatising remarks made by local authorities concerning the persons living in these camps, of hostile attitudes displayed by officials and the local population, and at reports that, in some cases, opposition has had to be overcome in order to have Roma children from these camps enrolled in the local schools. ECRI urges the authorities of Bosnia and Herzegovina to address all manifestations of hostility and discrimination *vis-à-vis* the inhabitants of the reception centres.
27. ECRI is aware of the difficult humanitarian situation presently prevailing in Bosnia and Herzegovina. However, it strongly encourages the authorities to cater for needs of, and to provide protection to, all refugees present on its territory. To this end it stresses that the authorities at all levels should avoid using a discourse that may fuel hostility and animosity *vis-à-vis* refugees and communicate widely among the general population about the need to respect the international obligations of Bosnia and Herzegovina.

Access to public services

- Access to social services

28. While access to healthcare is reported to be problematic for many of the citizens of Bosnia and Herzegovina, it has been reported to ECRI that minority returnees encounter even more serious difficulties in accessing health services. Contrary to the pre-war situation, which was characterised by the existence of a single nation-wide health insurance scheme, there are at present three separate basic health insurance schemes in Bosnia and Herzegovina: one in the Federation, the responsibility for the operation of which has effectively been delegated to the ten Cantons; one in Republika Srpska; and one in Brcko District. The complexity of this institutional framework results in a number of difficulties -- including the inability to transfer coverage from one location to another and the absence of inter-Entity co-operation on health insurance issues -- compounded by non-payment of contributions into the different health funds. It has been pointed out to ECRI that some of these difficulties, and notably the impossibility to transfer coverage between cantons and between entities acts as a deterrent to potential returnees and that it also constitutes a powerful obstacle for those who have already returned, since many of them are required, in practice, to travel to the other Entity to access health services. ECRI notes that an inter-Entity Agreement on Health Insurance has been concluded with the aim to overcome the difficulties in accessing healthcare faced by insured people, mostly returnees, who have had to move from one Entity to the other. However, the implementation of the Agreement is reported to be not satisfactory. ECRI strongly urges the authorities of Bosnia and Herzegovina to thoroughly implement the inter-Entity Agreement on Health Insurance. In addition, ECRI has received numerous reports according to which the mono-ethnic composition of the staff in health provision facilities in a number of municipalities negatively affects minority returnees' confidence in these institutions. It has also received some allegations according to which health care services are not equally provided to members of all ethnic groups. ECRI urges the authorities of Bosnia and Herzegovina to ensure that all persons living in Bosnia and Herzegovina enjoy adequate access to healthcare in a manner that is not directly or indirectly discriminatory *vis-à-vis* particular ethnic groups.
29. As concerns pensions, although negotiations have been undergoing for some time in order to unify the three different pension funds of the Federation, Republika Srpska and Brcko district, ECRI notes that such a unified system is not yet in place. ECRI notes that the pensions paid out of each of these funds differ in amount. In particular, pensions paid out of the Federation fund are considerably higher than those paid in Republika Srpska. It has been reported to ECRI that such a system impacts in a discriminatory way *vis-à-vis* people who have been forced to move due to the war, and notably those who live at present in the Federation and receive pensions from the Republika Srpska's fund. ECRI notes that the Human Rights Chamber has found that this arrangement is discriminatory and has highlighted that differential treatment based on displaced status cannot be justified, especially where it carries with it a connotation of discrimination on ethnic grounds²⁰. ECRI strongly urges the authorities of Bosnia and Herzegovina to address this situation and to ensure

²⁰ Decision delivered on 10 January 2003 on Cases No. CH/02/8923, CH/02/8942, and CH/02/9364

that provision of social security takes place in a manner that is not directly or indirectly discriminatory vis-à-vis particular ethnic groups.

- **Access to education**

30. In spite of existing legislation and of agreements signed by the authorities of Bosnia and Herzegovina at different levels, often under the auspices of the international community, and in spite of initiatives taken at the international and domestic level, ECRI is concerned that pupils in Bosnia and Herzegovina still predominantly access education in a segregated way. Schools are reported to often still be mono-ethnic, with pupils and teachers speaking only one language and using only one alphabet. They are also reported to often follow curricula imported from neighbouring countries, depending on the ethnic and political affiliation of the local authorities, including in the area of religious education. ECRI is deeply concerned that such situation, which is disputably often upheld by some on grounds of protection of the right to ethnic and national identity, runs counter to efforts to build an integrated society where pupils are taught mutual respect and are encouraged to develop interest in other cultures. ECRI is concerned that, if not adequately and urgently addressed, this situation entails the risk of inter-ethnic prejudice and animosity being perpetuated through the younger generations, who, unlike their parents, have little or no experience of life in an ethnically diverse environment and who are being educated in a post-conflict context. In this connection, ECRI notes with concern signs that the current situation of separation and opposition between pupils belonging to different ethnic groups has already resulted in conflicts between pupils involving, notably, physical violence and bullying. ECRI is furthermore concerned that this situation of separation in education works as a powerful deterrent for potential returnees and undermines the sustainability of minority returns.
31. ECRI notes the agreement signed by the Ministries of Education of the Entities and of the Cantons (which are responsible for education matters in the Federation) on the single common core curriculum. ECRI notes that each of the subjects of the common core curriculum contains a part that is the same for all pupils in Bosnia and Herzegovina, and a part that varies according to the ethnic origin of the pupil. The share between these two parts varies according to the subject: while the common part covers virtually the whole content of subjects such as mathematics or science, it covers smaller parts of subjects such as language and literature, history, geography and nature and society. ECRI notes that the common core curriculum was designed to allow children to attend classes together regardless of their ethnic background, while preserving at the same time their cultural identity.
32. ECRI also notes that framework legislation on primary and secondary education was adopted in June 2003 at State level and that laws in conformity with this framework legislation have been adopted in Republika Srpska and in most Cantons of the Federation. These laws provide for one single common core curriculum and for the right of pupils and teachers to use their own language. ECRI strongly urges the authorities of Bosnia and Herzegovina to ensure that legislation in conformity with the framework law on primary and secondary education is in force in all Cantons of the Federation.

33. There are consistent reports, however, that these laws and agreements are not respected in practice. This is particularly the case for the so-called “two schools under one roof”, 54 of which still exist at present in three Cantons in the Federation. In these schools, pupils of different ethnic origin use the same facilities. However, these facilities host, in actual terms, two schools segregated along ethnic lines. These two schools are administratively separate, and the children follow different curricula. In addition, pupils, teachers, and non-teaching school staff of different ethnic origins often go to the same school in different shifts or use separate entrances and occupy separate sections of the same building. ECRI is aware of initiatives, especially under the auspices of the international community, aimed at reforming these schools, notably by promoting administrative unification and joint extra curricular activities. ECRI welcomes these initiatives. It calls, however, for a thorough implementation of the common core curriculum in these schools as soon as possible. Although the “two schools under one roof” provide a particularly clear example of non-implementation of the laws and agreements mentioned above, ECRI is concerned at reports that there are many other instances in the Federation and in Republika Srpska where the needs of children and teachers of minority ethnic background are still not accommodated. For instance, it is reported that common core curricula are not used in a number of schools and that pupils and teachers of ethnic background other than the majority one do not use their language in practice. It is also reported that, although in theory schools are obliged to provide to the children who opt for religious instruction courses in their own religion, in practice only courses in the religion of the majority ethnic group is provided.
34. An Agency on educational standards and evaluation has existed in the Federation since 2002. ECRI has been informed that the authorities of Bosnia and Herzegovina plan to establish such an Agency within the Council of Ministers of Bosnia and Herzegovina. ECRI also notes that the planned Agency on the implementation of the common core curricula has not yet been established and urges the authorities of Bosnia and Herzegovina to do so without delay. The authorities have also reported to ECRI that the Council of Textbooks has removed all offensive content from textbooks currently in use in schools in Bosnia and Herzegovina. ECRI furthermore notes that work is underway to come up with guidelines for the preparation of future textbooks. Finally, ECRI notes interesting initiatives coming from the non-governmental sector aimed at de-politicising the appointment of school headmasters in order to favour a more thorough application of the laws and of the agreements on education in place.
35. ECRI strongly urges the authorities of Bosnia and Herzegovina to ensure a thorough implementation of the laws and of the agreements on education currently in place. It stresses that all public schools in Bosnia and Herzegovina should be organised as multicultural, multilingual, multireligious, open and inclusive schools for all children. ECRI underlines in particular the need for the common core curriculum to be applied in all schools in the country. It also stresses that the right of pupils and teachers to use their own language should be respected and that this is compatible with children of the three constituent peoples being taught in the same classes. ECRI also considers that a more multicultural atmosphere in education could be promoted by providing education in the languages of national minorities, such as the Roma or Albanians, alongside education in the languages of the three constituent peoples in the same schools. ECRI furthermore underlines that provision of

religious instruction should be available also for religions other than that of the majority ethnic group in a given school.

Education and training/awareness-raising

36. ECRI has been informed that education in human rights and democracy is provided to primary and secondary school students in schools throughout Bosnia and Herzegovina as part of extra-curricular activities. Through support, notably, from the international community, teachers have reportedly been trained to teach these subjects and the relevant textbooks have been made available. ECRI encourages the authorities of Bosnia and Herzegovina to ensure that human rights education is introduced as a compulsory subject in all levels of schools throughout Bosnia and Herzegovina.

Employment

37. In order to comply with the Constituent Peoples' decision²¹, recruitment of persons from under-represented constituent peoples in public sector employment has started. However, although precise figures are not available to ECRI, non-governmental organisations report progress in this field to be minimal. As will be mentioned below²², most public administrations and state-owned companies at local level are still reported to be to a large extent mono-ethnic. In certain localities the employment situation has progressed only for one under-represented constituent people and not for the other -- for instance, in Republika Srpska, some progress has reportedly been registered for Bosniaks but not for Croats. ECRI is pleased to note that, in certain localities, specific action plans have been drawn up in order to increase the number of civil servants from under-represented groups. ECRI encourages the authorities of Bosnia and Herzegovina to extend these initiatives. More generally, ECRI notes that the successful implementation of the Constituent Peoples' decision is closely intertwined with the process of minority returns. It therefore stresses that efforts to implement the Constituent Peoples' decision in public institutions should be accompanied by a wide range of measures aimed at ensuring sustainability of minority returns, as suggested below²³.
38. ECRI notes that Article 143 of the Labour Code of the Federation and Article 152 of the Labour Code of Republika Srpska enable those persons who were unlawfully dismissed during the war to file a claim before *ad hoc* commissions at Entity or, for the Federation, at Canton level. In case of a positive decision, the employer is required, in the Federation, to re-integrate the employee or, in both Entities, to pay compensation. However, in spite of the many thousands of claims filed (80 000 in Republika Srpska alone), only a few cases appear to have been solved to date. Those cases which have been solved in favour of the claimant have, in the Federation, almost never resulted in re-integration but only, at best, in compensation of up to 1700 KM (approximately 850 €). In Republika Srpska, a committee is reported to have started issuing decisions in 2003. However, the Office of the Ombudsman of Republika Srpska reports that actual payments may not be carried out for lack of financial means. ECRI strongly urges the authorities of Bosnia and Herzegovina to ensure a thorough

²¹ See above, Constitutional provisions and other basic provisions

²² Vulnerable groups – Minority returnees

²³ Vulnerable groups – Minority returnees

implementation of Article 143 of the Labour Code of the Federation and Article 152 of the Labour Code of Republika Srpska.

Vulnerable groups

This section covers certain minority groups which may be particularly vulnerable to problems of racism, discrimination and intolerance in the country in question. It is not intended to provide an exhaustive overview of the situation of all minority groups in the country, nor to imply that groups not mentioned face no problems of racism and discrimination.

- Roma

39. See Section II of this report.

- Minority returnees

40. ECRI is concerned that minority returnees, i.e. persons belonging to a constituent people returning to areas predominantly inhabited by another constituent people, are particularly vulnerable to racism and racial (including ethnic and religious) discrimination. Although the difficult socio-economic conditions prevailing in the country as a whole undermine the possibility of all citizens of Bosnia and Herzegovina to fully enjoy their rights, ECRI notes that minority returnees are faced with even more serious difficulties, including in accessing employment, health services, pensions and adequate education. In addition, although the situation is reported to have improved from previous years, minority returnees still experience hostility from the local population, including in some cases physical violence. Such hostility is often prompted by statements and actions of the local political leadership and local authorities, whose purpose or result is making minority returnees feel threatened or, at best, unwelcome. ECRI points out that, although the term "minority returnees" is generally used with exclusive reference to persons belonging to one of the three constituent peoples, returnees not belonging to any of these groups, including Roma, have also experienced special difficulties and discrimination.

41. It is generally reported that the security conditions for minority returnees have considerably improved in the last few years. ECRI notes, however, that 277 return-related incidents have been recorded by UNHCR in 2003, 23 of which consisted in physical attacks, and the rest mainly in threats, insults and damage to personal property, memorials or religious objects. It has been reported to ECRI that, in at least two cases in 2003 -- one in Republika Srpska and one in West Mostar -- these incidents have resulted in death. Some 40 return-related incidents were recorded in the first four months of 2004, with a noted peak around the explosion of violence in Serbia and Montenegro (Kosovo) in March. ECRI expresses its deep concern at the continuing occurrence of return-related incidents and strongly urges the authorities of Bosnia and Herzegovina to thoroughly and swiftly investigate these incidents and to bring the perpetrators to justice.

42. There is still a pressing need for financial assistance for reconstruction of returnees' damaged or destroyed property. It is reported, however, that funds available to this end have considerably decreased over recent years. The authorities of Bosnia and Herzegovina have reported that they provide reconstruction assistance within the limited funds available to them and that

they are pursuing international funding possibilities. ECRI notes reports, however, that minority returnees have in some cases been unable to access reconstruction assistance at the same level as the local majority population. ECRI strongly encourages the authorities of Bosnia and Herzegovina to strive to provide reconstruction assistance to all returnees that require it and to ensure that all returnees, including minority returnees, have access to such assistance on an equal footing.

43. Employment opportunities in Bosnia and Herzegovina are very limited at present, partly as a result of the difficulties inherent to the transition to a market-led economy through mass privatisation. ECRI notes, however, reports according to which, in addition, minority returnees are widely discriminated against both in private and in public sector employment. The only minority returnees reported to have found regular employment are those hired in public institutions in order to restore the ethnic balance in accordance with the Constituent Peoples' decision. ECRI notes, however, that their number is still reported to be extremely limited in most municipalities throughout the country. Virtually no minority returnees are reported to be employed in the private sector. As mentioned above²⁴, returnees have so far been largely unable to re-integrate their pre-war jobs through the operation of existing legal provisions. In addition, in most municipalities, public administrations and state-owned companies reportedly tend to employ only members of the majority ethnic group or persons affiliated with the ethnically based political party in power. As a result, most minority returnees are forced into the grey economy, which further deteriorates their situation in respect of social and health protection as described in other parts of this report²⁵. ECRI strongly urges the authorities of Bosnia and Herzegovina to address as a priority the employment situation of minority returnees throughout the country. ECRI also recommends that the authorities of Bosnia and Herzegovina raise the awareness of public institutions, public companies and the private employment sector of the illegality of current ethnically discriminatory practices. ECRI finally reiterates in this context its call for the adoption of effective civil and administrative antidiscrimination provisions and for a thorough implementation of the existing criminal law provisions against discrimination.
44. As mentioned above²⁶, the needs of children of an ethnic background other than the majority one are not yet met in practice in schools in Bosnia and Herzegovina. The Ministries of Education at State and Entity level have signified to ECRI their commitment to providing children of minority returnee families with school education that meet their needs. ECRI notes reports, however, according to which many minority returnee children do not yet have access to this type of education. It notes, in particular, that there are still children of minority returnee families who have to travel long distances in order to receive education that is acceptable to them, including in terms of the curriculum and language used and of the religious instruction imparted. ECRI urges the authorities of Bosnia and Herzegovina to provide children of minority returnee families with access to education, in integrated multicultural schools in their area of return, that is free from political, religious and cultural bias and discrimination.

²⁴ See Employment

²⁵ See Access to public services – Access to social services

²⁶ See Access to public services – Access to education

45. ECRI has received numerous reports according to which the local political leadership has actively contributed to creating a threatening and hostile climate *vis-à-vis* minority returnees, which not only undermines the sustainability of their return but also deliberately discourages those who have not yet returned from doing so. These actions have included public condoning of the activities of war criminals, discriminatory allocation of financial resources to build or reconstruct religious premises, and generally intolerant and stigmatising statements *vis-à-vis* the constituent people to which minority returnees belong. ECRI addresses the issue of the exploitation of nationalism in politics in another section of this report²⁷.

- **“Non-constituent” peoples**

46. ECRI is concerned that the emphasis currently put on ensuring representation of the three constituent peoples at the political level, in public administration and in a wide range of public enterprises places those who do not belong to one of these groups in a situation of serious disadvantage and, in many cases, discriminates against them on the basis of ethnicity. These “non-constituent” peoples comprise persons who identify with other ethnic groups, but also persons who are unwilling or unable to identify with any ethnic group, including notably many persons from mixed marriages.

47. ECRI notes that, in April 2003, a Law on Protection of Rights of Persons belonging to National Minorities (hereafter: Law on National Minorities), which contains a non-exhaustive list of 17 such minorities, was adopted at State level. Representatives of some national minorities have complained, however, that the provisions set out in this law are at present not implemented in practice. For instance, Article 19 of the Law on National Minorities provides for the right for persons belonging to these minorities to be represented in the bodies of public authorities and other civil services at all levels, proportionally to their share in the population of Bosnia and Herzegovina, in accordance with the last census. However, representatives of national minorities have complained that, at present, effective mechanisms to ensure political representation of national minorities are not in place, including in cases where legislation provides for a possibility for them to be represented in elected bodies through the category of “Others”²⁸. They have furthermore expressed concern that national minorities will not be allowed to elect representatives in the municipal elections scheduled in October 2004, although recent amendments to electoral legislation enable them to do so. ECRI urges the authorities of Bosnia and Herzegovina to ensure that effective mechanisms to ensure political representation of national minorities at all levels are in place and that the representatives of the national minorities are enabled to elect their representatives in the October 2004 municipal elections. As concerns representation in non-elected bodies, although figures are not available to ECRI, it has been reported that national minorities are still largely under-represented in the civil service and in public enterprises. ECRI recommends to the authorities of Bosnia and Herzegovina to ensure that national minorities are covered by efforts aimed at increasing the number of persons from under-represented groups in the civil service and in public enterprises, as suggested in other parts of this report²⁹.

²⁷ Exploitation of nationalism in politics

²⁸ See above, Constitutional provisions and other basic provisions

²⁹ See Administration of justice, Employment, and Conduct of law enforcement officials

48. Representatives of national minorities have also expressed to ECRI their wish for the provisions of the Law on National Minorities concerning education to be applied³⁰. On this and on all other aspects relating to the implementation of the Law on National Minorities, ECRI strongly encourages the authorities of Bosnia and Herzegovina to co-operate closely with the representatives of the national minorities. In this respect, ECRI regrets to note that the Council of National Minorities, which, in accordance with Article 21 of the Law on National Minorities, should have been established as an advisory body to the Parliamentary Assembly, has not yet been set up and that similar bodies have equally not yet been established in the Entities. ECRI strongly urges the authorities of Bosnia and Herzegovina to establish such bodies at all levels and to ensure constant and meaningful co-operation with them.

- **Victims of trafficking**

49. Bosnia and Herzegovina is a destination and transit country, and, to a lesser extent, a country of origin for women and girls trafficked for purposes of sexual exploitation. Over 90% of trafficked women are reported to come from Romania, Moldova, Ukraine and Russia. The International Organisation for Migration manages shelters where victims receive medical attention, counselling and assistance in repatriation and, as necessary, resettlement. The number of women that were provided assistance in these shelters reportedly went down from more than 200 in 2002 to less than 100 in 2003. ECRI notes that a commission was established at State level to co-ordinate anti-trafficking efforts. However, there are reports according to which this commission is not given adequate support by the State government. ECRI notes with interest that, in March 2003, the Tuzla Cantonal Court handed down to the owner of a local nightclub the first sentence in the Federation for enslavement, contrary to previous practice consisting in applying the criminal provisions against procurement. ECRI encourages the authorities of Bosnia and Herzegovina to closely co-operate with international organisations active in the field of providing protection to victims of trafficking, and to support the work of the commission established to co-ordinate anti-trafficking efforts at State level.

Antisemitism

50. The Jewish community of Bosnia and Herzegovina numbers around 1000 persons, less than 100 of whom live in Republika Srpska. ECRI is concerned at the availability in bookstores of antisemitic books, including *Mein Kampf* and *The Protocols of the Elders of Zion*, and at the reported presence of antisemitic articles in certain newspapers, notably in Republika Srpska. In addition, ECRI notes reports according to which antisemitic undertones can sometimes be detected in public debate, including in the press. ECRI urges the authorities of Bosnia and Herzegovina to counter the circulation of antisemitic material, including by enacting adequate legal provisions, as suggested above³¹. ECRI stresses the role to be played by the various opinion leaders in society, be they

³⁰ Article 14 of the Law on National Minorities obliges Entities and Cantons to provide education in a minority language at pre-primary, primary and secondary school level, provided that certain requirements concerning the size of the national minority are met, and to provide, on demand and irrespective of the size of the national minorities, teaching of their language, literature, history and culture in the minority language, as additional training. Article 14 also obliges the competent authorities to ensure, *inter alia* the financial resources, the training material for teachers and the printing of textbooks in minority languages.

³¹ See Criminal law provisions

politicians, religious groups, the media or other civil society actors, in consistently speaking out against any manifestations of antisemitism.

Conduct of law enforcement officials

51. A sweeping reform of the police system of Bosnia and Herzegovina was initiated by the United Nations and is continuing at present with the assistance of the EU Police Mission in Bosnia and Herzegovina, whose tasks include the development of police independence and accountability as well as institution and capacity building. All police officers currently working in Bosnia and Herzegovina are reported to have received training in human rights, including non-discrimination. ECRI notes reports, however, according to which the conduct of law enforcement officials *vis-à-vis* Roma has not met in some cases human rights and non-discrimination standards of policing. Police officers are, for instance, reported to have harassed Roma vendors in markets and to have carried out illegal police raids in Roma settlements. ECRI notes that the international community still plays an important role in supervising the conduct of law enforcement officials in Bosnia and Herzegovina. It also notes that alleged instances of misbehaviour of the police can be addressed both through control mechanisms internal to the police and through the courts. However, ECRI encourages the authorities of Bosnia and Herzegovina to consider the establishment of an independent body entrusted with the investigation of all allegations of ill-treatment by police officers.
52. ECRI notes that progress has been achieved in recent years towards ensuring ethnic diversity in the police, although the composition of the police is not yet in conformity with the situation as reflected in the 1991 census. ECRI encourages the authorities to continue and strengthen their efforts in this field and to ensure that groups other than the three constituent peoples are also covered by these efforts.

Monitoring the situation in the country

53. ECRI stresses the importance of data broken down by categories such as national or ethnic origin, religion, language and nationality in order to better assess the situation of the various groups composing Bosnia and Herzegovina's society in different fields of life and to target tailored measures, as necessary, to redress imbalances. Due to the massive displacement of population caused by the war, it is generally accepted that the results of the pre-war (1991) census do not reflect at present the demographic composition of the country. ECRI understands the concerns expressed by many that a new census should not be organised before the process of return of refugees and displaced persons is finalised. In this respect, ECRI expresses the hope that the necessary conditions for the organisation of a new census in Bosnia and Herzegovina will be met soon. In the meantime, it invites the authorities to start considering the modalities of such an exercise in co-operation with international organisations and in close consultation with all the groups composing Bosnia and Herzegovina's society. In this respect, ECRI stresses that data collection on people's national or ethnic origin, religion, language and nationality, including through the census, should be done with due respect to the principles of confidentiality, informed consent and voluntary self-identification of persons as belonging to a particular group. In this connection, ECRI stresses that such a census should provide to people who wish to do so the possibility to identify as "Bosnians". ECRI considers that such a possibility would constitute a step

towards the acknowledgment of full Bosnian democratic citizen, as suggested below³², and cater for the needs of those persons, including persons from mixed marriages, who may feel uncomfortable to identify as belonging to a specific ethnic group. ECRI finally stresses that the present situation of lack of accurate data on the population of the country should not be used as a pretext by the authorities of Bosnia and Herzegovina to avoid taking positive measures specifically targeted to segments of the population obviously in need³³.

Media

54. Electronic and print media in Bosnia and Herzegovina are still divided along ethnic lines and report on different issues and events, or on the same issues and events in a strikingly different fashion. ECRI considers that such a situation runs counter to efforts to promote an integrated society. It encourages the authorities of Bosnia and Herzegovina to support initiatives aimed at reaching all communities simultaneously, such as newspapers presenting the same articles in different languages, and television broadcasts of interest to all communities and made accessible to all residents of the country. In this respect, ECRI notes reports according to which the state-wide Public Broadcasting System, which gained its own frequency in 2003, enjoys growing popularity.
55. The situation as concerns the dissemination of ethnically inflammatory material and the presence of stigmatising or insulting reporting on certain ethnic or religious groups is reported to have improved in the broadcast media in recent years, notably due to the presence of the Communications Regulatory Agency in this sector. However, ECRI notes that this type of material and reporting is allegedly still widely present in the print media, especially in Republika Srpska. In most cases, this type of material and reporting has targeted persons not belonging to the locally dominant constituent people or members of national minorities, such as Roma or Albanians. ECRI notes that Articles 3 and 4 of the Press Code contain self-regulatory provisions against incitement to, *inter alia*, racial, ethnic or religious hatred and provisions against the use of references to a person's racial, ethnic or religious background that are stigmatising or insulting or simply irrelevant to the event being reported. ECRI welcomes that a Press Council monitors the implementation of these provisions. ECRI encourages the authorities of Bosnia and Herzegovina to impress on the media, and particularly the print media, without encroaching on their editorial independence, the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards members of any ethnic and religious group and to the need to play a proactive role in countering such an atmosphere.

Exploitation of nationalism in politics

56. ECRI is concerned at the extensive use made by political parties of a nationalist discourse that fosters division, including geographical separation, between constituent peoples and, more generally among the different ethnic groups composing Bosnia and Herzegovina's society. Such discourse typically advocates for the rights and interests of one constituent people and holds the persons belonging to the other constituent peoples responsible for the non-

³² See The need to gradually move towards the acknowledgment of full Bosnian democratic citizenship

³³ See below, The situation of the Roma population.

realisation of such rights and interests. It also typically denies recognition of human rights violations when the victims of such violations are the members of the other constituent peoples. ECRI is concerned that the use of this type of discourse has not only generated an atmosphere in which integration of the different ethnic and religious groups is obstructed, but also created a climate where the extreme nationalist segments of the population, ready to engage in violent and other criminal activities, have felt unhindered in pursuing their activities.

57. ECRI stresses that political parties should resist the temptation to resort to a type of nationalist discourse that fosters ethnic division and animosity. It also stresses that political parties have a central role to play in promoting internal cohesion and a feeling of belonging to the same society. Political parties should also take a firm stand against any forms of racism and of religious or ethnic discrimination. ECRI urges the authorities of Bosnia and Herzegovina to take *ad hoc* measures targeting specifically the use of ethnically inflammatory discourse by exponents of political parties, including, for instance, legal provisions allowing for the suppression of public financing for those political parties whose members are responsible for racist or discriminatory acts. In this respect, ECRI draws the attention of the authorities of Bosnia and Herzegovina to the relevant provisions contained in its General Policy Recommendation N°7.

SECTION II: ISSUES OF PARTICULAR CONCERN

In this section of its country-by-country reports, ECRI wishes to draw attention to a limited number of issues which in its opinion merit particular and urgent attention in the country in question. In the case of Bosnia and Herzegovina, ECRI would like to draw attention to the situation of the Roma population and to the need for Bosnia and Herzegovina to gradually move towards the acknowledgment of full Bosnian democratic citizenship.

The situation of the Roma population

58. ECRI expresses deep concern at the situation of extreme poverty and marginalisation of the Roma population in Bosnia and Herzegovina. While this situation is also partly linked with the difficult economic conditions prevailing in the country as a whole, the Roma of Bosnia and Herzegovina are particularly affected by these conditions and their position is further compounded by prejudice and discrimination both at societal level and by public authorities. The disadvantaged position of Roma is evident across all fields of life. In addition to those that are common to all non-constituent peoples of Bosnia and Herzegovina, such as political participation, these fields include education, housing, health, employment and access to public services. ECRI considers that comprehensive and targeted measures are urgently needed to address the situation of the Roma population of Bosnia and Herzegovina.
59. Although only about 8 900 persons identified themselves as Roma in the last (1991) census, the authorities estimate that at least 20 000 Roma presently live in Bosnia and Herzegovina. Non-governmental and other observers estimate their number to be two or three times higher or more. Most Roma used to live on the territory of what is today Republika Srpska. The vast majority of them had to leave during the war. Only a limited number of Roma, however, are reported to have returned to the places of their former residence. As a result,

most of the Roma in Bosnia and Herzegovina are reported to live today on the territory of the Federation.

60. An aspect that is of particular concern to ECRI, as it affects the enjoyment of many rights by Roma, including fundamental human rights, is Roma's lack of personal documents. These documents include birth certificates, personal identity documents, documents related to the provision of health insurance and social benefits and passports. The fact that many Roma live in informal settlements³⁴, whose residents are not registered with the local authorities, has an obviously negative impact on the possibility for the Roma to obtain at least some of these documents. ECRI notes that the Advisory Board for Roma³⁵ has identified the lack of birth certificates as a priority issue in its Work Plan for 2002-2006. ECRI strongly urges the authorities of Bosnia and Herzegovina to implement this Plan without delay and to address through a more general strategy the situation of lack of documentation of the Roma population. Although, as mentioned, Roma's lack of documents affects the latter's possibility to exercise a wide range of rights, ECRI emphasizes that, given the health and economic situation of the Roma population at present, it is particularly important to ensure that the Roma possess the necessary documentation to enable them to access health services and social benefits.
61. Roma are reported to have experienced serious difficulties and discrimination in exercising property rights and, therefore, their right to return to their pre-war homes. It has been reported to ECRI that, since many Roma lived in social housing before the war, this group of persons has been particularly negatively affected by the fact that property laws passed after the war do not recognise in principle social housing as a form of tenure to which one might claim repossession rights. Furthermore, many of the Roma who used to live in informal settlements before the war have been unable to return there, as such settlements had been destroyed and no alternative provision of accommodation has been made. Those Roma who could claim repossession of personal property are also reported to have experienced serious difficulties and, often, discrimination by the authorities and by other citizens. There are reports, for instance, that local authorities have often obstructed Roma repossession claims on grounds that temporary occupants of their property had nowhere to go. In cases where Roma were successful in establishing their claims, the authorities have often reportedly been slow in removing occupants and, in some cases, Roma have had to pay temporary occupants in order to have them leave their property. Temporary occupants are also reported to have looted or vandalised Roma property before leaving, without the authorities taking action to punish the perpetrators. ECRI urges the authorities of Bosnia and Herzegovina to make all local authorities aware of the illegal nature of these practices and to ensure that acts of damage to Roma property are investigated and their perpetrators brought to justice.
62. At present, between 50 and 70 % of the Roma of Bosnia and Herzegovina are estimated to live in informal settlements, where conditions are extremely poor and, in some cases, such that the health and lives of their inhabitants are seriously threatened. Many of these settlements lack basic facilities such as access to drinkable water, electricity, reliable sources of heating, sewage system or garbage disposal. Furthermore, people living in settlements are

³⁴ See below, paragraph 62

³⁵ See below, paragraph 68

vulnerable to forced evictions, following which, in a number of reported cases, alternative accommodation has not been provided. ECRI strongly urges the authorities of Bosnia and Herzegovina to address without delay the housing situation of the Roma population and to ensure, in the short term, that all Roma dwellings meet, at the very least, basic standards of adequate housing. ECRI notes that, in some municipalities, such as in Sarajevo, and in Brcko district the authorities have taken some steps to legalise settlements or to provide alternative accommodation to their inhabitants and strongly recommends to the authorities of Bosnia and Herzegovina to extend these initiatives.

63. ECRI is also concerned at reported instances of return-related violence and of manifestations of hostility *vis-à-vis* Roma. Although, as highlighted above³⁶, the security conditions of minority returnees in general have improved in recent years, it is not clear that such improvement has concerned the returning Roma population to the same extent as other groups of returnees. Verbal abuse and threats of violence have been widely reported and physical attacks have also taken place. There have also been demonstrations of local residents against plans to establish facilities for Roma. ECRI recommends that the authorities of Bosnia and Herzegovina ensure that all episodes of violence and manifestations of hostility against the Roma are thoroughly investigated and their perpetrators brought to justice.
64. The Roma in Bosnia and Herzegovina are also disproportionately disadvantaged on the labour market. Different sources report that as little as 2% of the Roma population are in regular employment and that, within this already minimal share, women face particularly difficult barriers. This situation is obviously connected for many Roma to the lack of qualifications that would improve their chances to integrate the labour market and to the generally poor labour market situation prevailing in Bosnia and Herzegovina as a whole. However, ethnic discrimination also appears to play an important role, as illustrated by the widely reported reluctance of many private employers to hire Roma. ECRI recommends that the authorities of Bosnia and Herzegovina address the labour market position of the members of the Roma communities as part of a more global strategy to improve the situation of this part of the population of Bosnia and Herzegovina, as suggested below³⁷.
65. Relations with law enforcement officials are also reported to be a problematic area for Roma. Members of the Roma communities are allegedly the objects of disproportionately frequent checks and sometimes of harassment by law enforcement officials. Prejudice *vis-à-vis* Roma still appears to be widespread and some law enforcement officials have been reported to have held Roma responsible of crimes on the basis of little or no evidence and to have failed to investigate crimes committed against Roma. ECRI urges the authorities of Bosnia and Herzegovina to take measures to put an end to these practices³⁸.
66. ECRI is deeply concerned at the extremely low rate of participation of Roma children in education. Figures reported to ECRI in this respect vary widely, but international observers estimate that less than 15% of Roma children are actually integrated into the school process throughout the country, although they also report that the rate of participation is slowly growing. Such a low

³⁶ Vulnerable groups – Minority returnees

³⁷ See below, paragraph 68

³⁸ See above, Conduct of law enforcement officials

participation rate is linked to several factors, including poverty -- which affects parents' possibilities to pay for textbooks, clothing and transport -- but also discrimination and harassment, including, in some cases, manifestations of prejudice by teachers, school authorities and the school community *vis-à-vis* Roma children and parents. More generally, it has been reported that, so far, the efforts of the authorities of Bosnia and Herzegovina to enforce the obligation of compulsory schooling for Roma children have been very limited. ECRI considers that the disadvantaged position of Roma children in education should be addressed in a multi-dimensional way as a matter of urgency. In this respect, ECRI welcomes the February 2004 adoption by the Ministries of Education of the Entities and of the Cantons, under the auspices of the OSCE, of an "Action Plan on the Educational Needs of Roma and Members of Other National Minorities in Bosnia and Herzegovina". The stated goals of the Plan, for the attainment of which specific actions and responsibilities are identified, include the promotion of systemic changes to ensure accommodation of the educational needs of Roma, the removal of financial and administrative barriers to school enrolment and completion, the preservation of Roma language and culture and the gaining of support and participation of Roma parents and communities. ECRI strongly urges the authorities of Bosnia and Herzegovina to thoroughly implement the Action Plan. In this respect, ECRI is pleased to note that funds have already been earmarked for the implementation of the Plan in several Cantons and in Republika Srpska and urges the authorities of Bosnia and Herzegovina to ensure that all other necessary appropriations are secured swiftly.

67. More generally, it appears to ECRI that, at present, the approach of the authorities of Bosnia and Herzegovina at all levels is that measures generally aimed at improving the situation of all citizens in key areas of life, such as education, employment or access to health and social benefits, are bound to impact favourably on the situation of the Roma population as well. In ECRI's opinion, however, the situation of marginalisation and disadvantage of the Roma population of Bosnia and Herzegovina today is such that it minimises the latter's possibility to benefit from general measures at the same level as other groups. ECRI therefore considers that there is an urgent need for the authorities of Bosnia and Herzegovina at all levels to become aware that the situation of disadvantage of the Roma population can only be adequately addressed if general measures are coupled with the adoption of positive measures specifically targeted at this part of the population.
68. To this end, and taking into consideration the interconnected nature of the different areas in respect of which Roma currently experience serious disadvantage, ECRI considers that an overall strategy should be designed in order to address in a comprehensive and multi-dimensional way the situation of this part of the population of Bosnia and Herzegovina. Such a strategy should be designed in close co-operation with representatives of a broad range of Roma communities in order to ensure that it reflects as much as possible the needs of these communities and that it enjoys their support. Representatives of the Roma communities should be meaningfully involved not only in designing such strategy, but also in its implementation, evaluation and, as necessary, development. In this respect, ECRI notes that an Advisory Board for Roma, made up of Roma representatives and of representatives of different ministries, was established in November 2003 as an advisory body for the Council of Ministers. It has been reported to ECRI that the Board is currently working on the preparation of a global strategy to address the position of the Roma

communities in Bosnia and Herzegovina. However, ECRI notes reports that the Board has so far been unable to work effectively, including due to lack of resources but also to lack of co-operation on the part of the authorities. ECRI urges the authorities of Bosnia and Herzegovina to consider ways to strengthen the role of the Board and, more generally, to ensure meaningful participation of Roma representatives in the elaboration and implementation of policies concerning them. ECRI also considers that the designation within the executive authorities at all levels of persons responsible for co-ordinating the action of the authorities on Roma issues would be a helpful measure. Finally, ECRI would like to stress that the lack of accurate data on the situation of the population affects the ability of the authorities to design measures aimed at promoting the effective equality of target groups, and makes it very difficult to evaluate any such measures. Pending the organisation of a census³⁹, ECRI considers that alternative monitoring means could be developed. ECRI notes, for instance, that the Ministry of Human Rights and Refugees of Bosnia and Herzegovina has attempted to collect updated statistical information through questionnaires sent to municipalities where Roma residents have been registered since 1991. ECRI encourages the authorities to expand these initiatives.

The need to gradually move towards the acknowledgment of full Bosnian democratic citizenship

69. As highlighted in different parts of this report, in today's Bosnia and Herzegovina there is a close connection between, on the one hand, the entitlement to, and the enjoyment of, individual rights and, on the other, the ethnic affiliation of the individual concerned. In some cases, for instance within the areas of political representation or public employment, only those persons who declare a certain ethnic affiliation are entitled to specific rights or opportunities⁴⁰. In other, more numerous, cases, although rights are recognised to individuals irrespective of their ethnic origin, the latter constitutes, in practice, a necessary requirement for the actual exercise of these rights.
70. ECRI notes that the efforts of the international community to stop the war and to bring about peace and stability through the GFAP have had to rely heavily on the systematic use of ethnic affiliation in many areas of life and on institutional arrangements essentially designed to cater for the needs and interests of the three main constituent peoples. ECRI recognises that such an approach may have been necessary in a post-conflict situation. It notes, however, that, at present, persons who do not identify with one of the three constituent peoples, either because they have other ethnic affiliations or because are unable or unwilling to choose an ethnic affiliation, are in a position of serious disadvantage and, in many cases, victims of ethnic discrimination. ECRI considers that the pressure currently put on individuals to display ethnic affiliation promotes the persistence of a society in which communities are divided along ethnic lines and marginalises those persons who, in fact, could act as bridges between communities. Furthermore, as mentioned above⁴¹, ECRI underlines that the strong emphasis currently put on ethnicity and on the rights granted to the three constituent peoples greatly favours the support for political parties that use national identity and ethnicity as a means to promote

³⁹ See Monitoring the situation

⁴⁰ For instance, see above, Constitutional provisions and other basic provisions

⁴¹ Exploitation of nationalism in politics

separation and to delay the integration of the society of Bosnia and Herzegovina.

71. ECRI therefore considers that there is a need to gradually move towards a system centred around the concept of full Bosnian democratic citizenship and where individuals are not forced to identify themselves ethnically in order to access rights or participate in the political or other processes. For instance, in order to render access to political posts less dependent on ethnicity, ECRI considers that, in the medium term, consideration could be given to removing the obligation for candidates standing for elections to declare their ethnicity. Parallel to efforts in this direction, ECRI believes that the authorities of Bosnia and Herzegovina should take positive steps to promote participation of all segments of society of Bosnia and Herzegovina, and particularly of those who are currently identified as "Others". ECRI has registered growing support among the general population for this approach and urges the authorities of Bosnia and Herzegovina to support civil society movements who can contribute to the development of initiatives stressing the value of Bosnian democratic citizenship and attenuating the currently all-encompassing emphasis on ethnic affiliation.

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