

# BOSNIA-HERZEGOVINA

## BOSNIA AND HERZEGOVINA

**Head of state:** rotating presidency – Sulejman Tihić, Mirko Šarović and Dragan Čović (replaced Beriz Belkić, Jožo Križanović and Živko Radišić in November)

**President of the Muslim/Croat Federation of Bosnia and Herzegovina:** Safet Halilović

**President of the Republika Srpska:** Dragan Čavić (replaced Mirko Šarović in November)

**Head of state government:** Dragan Mikerević (replaced Zlatko Lagumdžija in March)

**Death penalty:** abolitionist for ordinary crimes

**International Criminal Court:** ratified

The human rights situation continued to be dominated by the unresolved legacy of the 1992-1995 war, and in particular impunity for massive human rights violations committed during that period. The number of refugees and displaced persons who returned to their pre-war homes increased significantly, although many returns were not sustainable. Human rights institutions were unable in several cases to prevent or redress violations as their decisions were not implemented by the authorities. Cooperation with the International Criminal Tribunal for the former Yugoslavia (Tribunal) was still inadequate in the Republika Srpska (RS), where authorities failed to arrest any suspects indicted by the Tribunal. Few past human rights violations were investigated.

## Background

Bosnia-Herzegovina comprises two semi-autonomous entities, the Federation of Bosnia and Herzegovina (Federation) and the RS, as well as the autonomous district of Brčko. The country continued to be under the authority of the international community, in particular the High Representative appointed by the UN Security Council. The High Representative has far-reaching powers allowing him to dismiss public officials, including government and judicial officials. Throughout 2002 significant efforts were made to strengthen state institutions. In December the High Representative imposed new legislation, restructuring the state government and establishing new state ministries for internal affairs and justice.

In April, Bosnia-Herzegovina became the 44th member state of the Council of Europe. The Parliamentary Assembly of the Council of Europe is responsible for monitoring the implementation of commitments made by the government and parliamentary authorities of Bosnia-Herzegovina, most relating to legal reform and ratification of Council of Europe treaties.

In March, politicians representing key political parties reached a partial agreement – the Sarajevo Agreement – on the implementation of decisions reached by the Constitutional Court in 2000. This provided that all Bosnians throughout the

country should enjoy equal status. The constitutions of the Federation and of the RS were amended, but the RS parliament subsequently adopted restrictions which contradicted the Sarajevo Agreement. In April the High Representative imposed amendments to both constitutions. These provided for proportional representation in political, administrative and judicial institutions, in accordance with the 1991 population census, until a durable solution is found for all Bosnian refugees and displaced persons.

In general elections in October, ethnically identified parties – the Party of Democratic Action (SDA), the Serbian Democratic Party (SDS) and the Croatian Democratic Union (HDZ) – gained the most votes, although they did not secure an outright majority in either parliament.

## Legal reform

The international community continued its efforts to reform the legal system and legislation. In May the first judges of the State Court were appointed. In September the High Judicial Council, a mixed body of international and national jurists, was set up to screen judges and prosecutors. Also in September the High Representative established the Prosecutor's Office in the State Court.

## International prosecutions for war crimes

Ten trials, involving a total of 13 accused, were conducted before the Tribunal.

✉ In October, Bosnian Serb Milan Simić was convicted of war crimes and crimes against humanity in Bosanski Šamac and sentenced to five years' imprisonment.

✉ Biljana Plavšić, the Bosnian Serb wartime Deputy President, pleaded guilty in October to one count of crimes against humanity as part of a plea agreement with the Prosecutor, who dismissed the remainder of the indictment. Biljana Plavšić acknowledged her full responsibility for the crimes, expressed remorse to the victims, and called upon other leaders in the conflict to follow her example.

✉ In late November, Mitar Vasiljević was convicted of crimes against humanity and war crimes and sentenced to 20 years' imprisonment.

The Office of the Prosecutor unsealed charges against seven suspects, four of whom remained at large, and announced that it expected to charge a further 100 individuals currently under investigation.

Twenty-four publicly indicted suspects remained at large, most reportedly in the Federal Republic of Yugoslavia and the RS. The RS did not apprehend a single suspect indicted by the Tribunal. Stabilization Force (SFOR) troops arrested four Bosnian Serbs in April, June, and July, but failed to deliver on earlier promises to arrest the Bosnian Serb wartime political leader, Radovan Karadžić, and military commander, Ratko Mladić, both indicted for genocide.

## Domestic prosecutions for war crimes

Despite thousands of investigations relating to war crimes, few suspects were brought to justice in proceedings in domestic courts, largely as a result of the lack of cooperation between the criminal justice systems of the two entities. According to unofficial estimates, some 10,000 potential suspects were

listed in local investigation files, of which 2,500 had been reviewed by the Tribunal Prosecutor who approves domestic prosecutions in individual cases.

A proposal to establish a special division in the State Court to prosecute violations of international humanitarian law was debated within the international community for several months, upon the insistence of the Tribunal Prosecutor, in view of the Tribunal's termination in 2008. However, the proposal had not been officially adopted at the end of 2002, apparently because of insufficient funds.

☞ In the RS, five former Bosnian Serb police officers were arrested in May on suspicion of involvement in the "disappearance" of the Matanović family in 1995. The police investigation into the case, which had been ordered by the Human Rights Chamber in 1997, only progressed after intense pressure from the UN Mission in Bosnia and Herzegovina (UNMIBH) and the International Police Task Force (IPTF). Evidence implicating a further 18 former and serving police officers in Prijedor was revealed in May. In November the Tribunal approved the opening of judicial investigations relating to these additional suspects, after judicial proceedings were delayed for several months by counter-complaints from the suspects.

In October, AI wrote to the European Union making recommendations about the proposed structure and objectives of the European Union Police Mission (EUPM), which was due to take over police monitoring from the UNMIBH/IPTF in January 2003. AI's recommendations included the establishment of a human rights unit which would continue the supervision of investigations into human rights violations, including war crimes. AI was informed that the EUPM does not have the executive authority to investigate allegations of human rights violations itself.

### Prosecutions for post-war abuses

Members of ethnic minority groups who returned to their pre-war homes faced violence and harassment. The response of the police and the judiciary remained inadequate and proceedings were subject to delays. Even in cases where the IPTF provided considerable support, perpetrators responsible for organizing and committing serious violent acts continued to escape justice.

☞ Two trials relating to violent riots which erupted during a rebuilding ceremony for the *Ferhadija* mosque in Banja Luka in mid-2001 concluded after sustained pressure by the international community. In April, seven men were convicted of violent behaviour – mainly for assaults on RS police officers in June 2001 – and sentenced to imprisonment of up to four months. In October, 14 men were sentenced to up to 13 months' imprisonment for violent assaults committed on 7 May 2001. However, no one was brought to justice for the death of one elderly man or the ill-treatment of scores of others. The police and judicial investigations preceding the trial were reportedly inadequate and UNMIBH/IPTF criticized the lack of professionalism of the judiciary.

### Right to return in safety and with dignity

More than 90,000 members of ethnic minorities were registered as having returned to their pre-war homes by the end of 2002. Legislation enabling them to regain possession of property was implemented in more than 60 per cent of the country.

However, many of those who returned appeared unlikely to be able to remain, as they faced inadequate funding for rebuilding, lack of economic development and employment opportunities in return areas, discriminatory practices leading to the denial of social and economic rights, violence and harassment. In many parts of the country communities remained divided

on ethnic lines, despite sustained efforts by the international community to recruit members of minorities into the police force, and steps to establish multi-ethnic authorities.

In June the UN High Commissioner for Refugees (UNHCR) made an urgent appeal for continued international funding. UNHCR stated that tens of thousands of homes in need of urgent reconstruction still required funding. In November, Bosniak leaders in the eastern RS stated that hundreds of returnees to Zvornik, Srebrenica and Bratunac had temporarily returned to the Federation, awaiting the arrival of previously announced reconstruction funding.

### 'Disappearances'

Thousands of cases of "disappearances" remained unresolved. Despite the partial progress made in the Matanović case (see above), few other cases of "disappearance" were investigated and no perpetrators were brought to justice. Legal provisions criminalizing "disappearances" were lacking, and there was insufficient cooperation between the entities, between the police and judicial systems, and between Bosnia-Herzegovina and neighbouring Croatia and the Federal Republic of Yugoslavia, whose armed forces had been involved in many of the cases.

Significant progress was made in the DNA identification program, led by the International Commission on Missing Persons. By the end of 2002 the total number of human remains identified in this way in Bosnia-Herzegovina reached 1,200, compared to 70 in the previous six years. However, it became increasingly difficult to locate the sites of mass graves, reportedly because of the failure of the armed forces and the authorities to disclose information.

### 'Anti-terrorism' measures violating human rights

In January, the Federation and state authorities handed over six Algerian men – who had held Bosnian citizenship – to US custody, without obtaining guarantees that they would not be subjected to the death penalty, torture or ill-treatment, or unfair trial. The transfer ignored a decision of the Human Rights Chamber which stated that four of them should not be forcibly removed from Bosnian territory, pending a full examination of their case. The six men were reportedly taken to the US-run detention facility in Guantánamo Bay, Cuba. They had been arrested by Federation police in October 2001 on suspicion of "international terrorism" in connection with an alleged plan to attack foreign embassies in Sarajevo. On 17 January the

Federation Supreme Court ordered their release from custody but instead the men were immediately redetained by Federation special police forces and hours later handed over to US officials. Federation police reportedly used excessive force against demonstrators protesting against the transfer of these men. In October, the Human Rights Chamber ruled that the Federation and state authorities had violated multiple human rights, and ordered the authorities to compensate the four men and to retain lawyers to represent them in any forthcoming trial proceedings in the USA.

A Bosnian citizen, Sabahudin Fiuljanin, was detained without warrant by SFOR in late October, reportedly on suspicion of illegal possession of weapons and documents, and of espionage against SFOR. He was held at the US Task Force Eagle Base near Tuzla, and denied access to a lawyer and visits from his family, in contravention of national and international standards. AI wrote to SFOR in November, questioning the legal basis of his detention and urging SFOR to hand him over to the local authorities so that he could have access to a court. A few days after AI's intervention, Sabahudin Fiuljanin was allowed some very restricted contact with his lawyer, but remained in detention at the end of 2002.

## **AI country reports/visits**

### **Reports**

- Bosnia-Herzegovina: Amnesty International's concerns in the case of Edin Garaplija (AI Index: EUR 63/002/2002)
- Bosnia-Herzegovina: Memorandum to the High Representative of Bosnia-Herzegovina (AI Index: EUR 63/009/2002)
- Bosnia-Herzegovina: Memorandum to the Secretary-General of the Council of the European Union (AI Index: EUR 63/018/2002)

### **Visits**

In May and August AI visited the country to carry out research into domestic war crimes prosecutions and "disappearances".