

# COMMENTAIRES DU GOUVERNEMENT CONCERNANT LE RAPPORT SUR LA BOSNIE-HERZÉGOVINE

## ANNEXE : POINT DE VUE DU GOUVERNEMENT

### **L'annexe qui suit ne fait pas partie de l'analyse et des propositions de l'ECRI concernant la situation en Bosnie-Herzégovine**

Conformément à la procédure pays-par-pays, l'ECRI a ouvert un dialogue confidentiel avec les autorités de la Bosnie-Herzégovine sur une première version du rapport. Un certain nombre des remarques des autorités ont été prises en compte et ont été intégrées à la version finale du rapport (qui selon la pratique habituelle de l'ECRI ne pouvait tenir compte que de développements jusqu'au 25 juin 2010, date de l'examen de la première version).

Les autorités ont demandé à ce que le point de vue suivant soit reproduit en annexe du rapport de l'ECRI.

BOSNA I HERCEGOVINA



Ministarstvo za ljudska prava i izbjeglice

Ministry for Human Rights and refugees

No: 08-2-50-470-3/10

Sarajevo, 26. Januar 2011

Council of Europe

The European Commission against Racism and Intolerance

ECRI Strasbourg

Attn: Mr. Stephanos Stavros, Executive Secretary to ECRI

ECRI Report on Monitoring Visit to Bosnia and Herzegovina

(8-12 March 2010), Comments

Dear,

We wish to inform you that the appropriate authorities of Bosnia and Herzegovina (the Ministry for Human Rights and Refugees of Bosnia and Herzegovina) timely informed of authorities at all levels of Government in Bosnia and Herzegovina , involved in providing the support and adequate information to ECRI during their recent visit to this member State about the Report on Human Rights in Bosnia and Herzegovina , which was made by Commission of COE Against Racism and Intolerance (ECRI) after their monitoring visit of the to Bosnia and Herzegovina in the period from 8 to 12 March this year.

This Ministry, as a coordinating body sent The ECRI Draft Monitoring Report to Authorities at the level of Bosnia and Herzegovina, Federation of Bosnia nad Herzegovina, authorities of the Republika Srpska and authorities responsible for education issues in Hezegovina and Neretva Canton in Mostar, which made the ECRI delegation's a visit to the primary and secondary school in the Municipality Stolac possible, for information , review and any comments, and IV Monitoring Report on Prevention of All Forms of Racism and Intolerance , on which Bosnia and Herzegovina is obliged to submit comments translated into one of the working languages of Council of Europe , latest by the end of January 2011.

In the above mentioned Report, ECRI COE was especially interested in: a progress made in ratification of European Charter on Regional and Minority Languages, discriminatory provisions of Constitution regarding participation of Others at all levels of Government, amending of the Election Law, criminalization of hate crimes, implementation of the Anti-discrimination Law, information on activities related to bringing war crimes suspects to justice, reason for which the Commission for Truth and Reconciliation does not work properly, functioning of the Ombudsmen Office, equal opportunities and prevention of discrimination in: labor and employment, housing, health, access to public services, education, vulnerable groups of population such as refugees and displaced persons, "Non-Constituent" peoples, Roma, asylum seekers, the appearance of cases anti-semitism, violence on racial and national grounds, inflammatory language of hate in media, exploitation of nationalism for political purposes, information related to the census.

Regarding the measures which Bosnia and Herzegovina has undertaken and constantly undertakes in applying the basic principles and international instruments, particularly Convention on Elimination of All Forms of Racial Discrimination, and regarding the comments of ECRI Commission we emphasize the following:

1. The single institution of Ombudsmen for Human Rights in Bosnia and Herzegovina, has been established and begun its activities in full capacity. (The Entity Institutions have been resolved and responsibilities have been transferred to the Institution of Ombudsmen at the State level);
2. Commission for the Human Rights, Immigration, Refugees and Asylum operates within the Parliamentary Assembly of Bosnia and Herzegovina and its mandate is to protect human rights and fundamental freedoms guaranteed by the Constitution and legislation of Bosnia and Herzegovina;
3. Efforts have been made to resolve the issue of the right of the national minorities which are defined as “Others” in the Constitution of Bosnia and Herzegovina as provided in Articles IV and V of the Constitution of Bosnia and Herzegovina, which the Court in Strasbourg in *Sejdić-Finci* found discriminatory, because it gives special privileges and advantages to the “constituent peoples” ( Bosniacs, Serbs and Croats) compared to other ethnic groups- 17 (seventeen) of them in the territory of Bosnia and Herzegovina as determined in the 2003 Law on Protection of National Minorities. The problem Bosnia and Herzegovina is expected to be resolved soon pursuant to the judgment of the Court in Strasbourg will be since the Council of ministers has established the Working Group and adopted the Action Plan for implementation of the above mentioned judgment of the Court for Human Rights in Strasbourg.

The fact is that the elections in Bosnia and Herzegovina are held in accordance with the currently valid legislation since the Constitution of Bosnia and Herzegovina nor the Election Law in Bosnia and Herzegovina have not been amended to reflect the above mentioned requirements.

4. In 2009 the Anti- Discrimination Law was adopted, which was based and designed on European standards. Provisions of the mentioned law protect the citizens of Bosnia and Herzegovina from discrimination in every area of life and labor including: employment, social and health protection, justice, housing, public informing, education, sport, culture, science, economy, all forms of harassment, sexual harassment, mobbing, segregation or incitement to discrimination. According to the Law all public authorities have the obligation and duty to fight against discrimination and to refrain from it, removing obstacles that may directly or indirectly result in the discrimination. These institutions also have a duty to actively create and maintain conditions for equal treatment. To this end they have to do review amend and enact of laws, policies and practices, but everything in the accordance to the Anti-Discrimination Law. According to the Anti-Discrimination Law, Bosnia and Herzegovina has passed the Law Against Violence during Sport Events and amendments to the Law on Civil Service at the level of Bosnia and Herzegovina incorporating in it more detailed provisions related to discrimination and mobbing in the work place.

In accordance with the provisions of the Law on Prevention of Discrimination an Guideline has been prepared which makes it an integral part of the Methodology for collecting data on cases of discrimination, arising from the conclusions, and notes of the authorities of the UN as well as the Council of Europe.

On the basis of primary and secondary legislation it is planned to establish a single database to monitor the implementation of law and multilateral treaties (such as conventions, pacts, charters, etc.)

Bosnia and Herzegovina condemns any form of advertising which encouraging intolerance and racial discrimination and it will draw attention of all authorities about the importance of declaration from Article 14 of the Convention on Elimination of All Forms of Racial Discrimination as recommended during the latest successful presentation of the 7<sup>th</sup> and 8<sup>th</sup> Periodical Report before the competent Committee of UN.

5. In the context of the above, we are currently working on solving the issue of “two schools under one roof”, a blatant example of segregation and division of pupils because of the ethnicity. This activity has included the Ministry for Civil Affairs of Bosnia and Herzegovina, the Parliament and Government of the Federation of Bosnia and Herzegovina, the territory in whose jurisdiction the phenomenon is manifested. Which are determined completely eliminate this phenomenon in all three Cantons where these schools are located in the next school year.

6. The spreading of the ideas of racial discrimination or hatred, is sanctioned by Bosnia and Herzegovina of incitement to ethnic or religious hatred by in criminal legislation at the State level and the levels of entities and Brčko District.

7. In order to implement international instruments, Bosnia and Herzegovina pays special attention to Roma, because they are the largest and most vulnerable national minority according to all parameter of life in Bosnia and Herzegovina. Joining the Decade of Inclusion of Roma 2005-2015 in 2008 Bosnia and Herzegovina was obligated to improve the position of Roma on its territory in all aspects of social development. To this end the Methodology and Spending Plan, for the funds which the State, for the first time in the history, has earmarked appropriated for the implementation of the Action Plan for Roma in Bosnia and Herzegovina to address the Issues of Roma in the areas of: housing, employment and health care. The Action Plan of Education has been adopted earlier. In order to carry out activities more effectively and efficiently needs of Roma in Bosnia and Herzegovina have been registered and now a database of Roma in Bosnia is been developed. The previously adopted Action Plan for Roma Bosnia and Herzegovina is been implemented in the field which a special contribution as a donor gave SIDA Sweden, which, for the purposes of housing of Roma donated BAM 2 million (Euros 1 million).

8. A special chapter of elimination of all forms of intolerance is the attitude towards refugees and asylum seekers. Although the issues of refugees and displaced people in Bosnia and Herzegovina have been settled in a good way for many years, especially regarding property rights issues, where the property is restored almost one hundred

percent, the problems are prevalent in sustainable return. It means that, besides the return to the pre-war homes, returnees should be provided with basis conditions for resuming a normal life. In addition to repairing and reconstruction of residential buildings that were destroyed or demolished, it is necessary to provide returnees with work, school buildings, clinics, road network, electricity and other conditions for normal work and life. Unfortunately Bosnia and Herzegovina has not managed yet to solve the problem of refugees and displaced persons according to the adopted Action Plan at the State level. An assumption is that this problem could be resolved with the assistance of the international community and donors by the end of 2014 and on the basis of the revised Strategy for returnees, adopted in 2010 at the state level.

9. Bosnia and Herzegovina continuously makes efforts together with the Regulatory Agency for Communications, which operates at the state level, to take necessary measures against incitement of violence motivated by hatred, which is disseminated by abuse of the press, audio-visual, electronic media and new communication technologies. In this way, according to the international standards, Bosnia and Herzegovina makes efforts to ensure freedom of the media, speech and expression, and to legally sanction each incitement to hate and violence.

10. Based on previous negative experience and unfortunate tragic conflicts in its own territory, Bosnia and Herzegovina has taken on Law on a Ban All Fascist and Neo-fascist Organizations in Bosnia and Herzegovina, which is currently in Parliament.

11. It is necessary to mention that Bosnia and Herzegovina is upholding multicultural society through strengthening of mutual dialogue as the basic means in connecting diversity and development of tolerance in society.

12. Regarding the Census in Bosnia and Herzegovina, authorities have made certain preparation for the Census (The Agency for Statistics) but political consensus for beginning the process of census has not been reached yet, but it is expected to be achieved during 2011 and that the Census will be carried out.

13. The positive information is that the Ratification process of European Charter on Regional or Minority Languages is finished

14. The Law on Freedom of Religion and the Legal Status of Religious Communities and Churches in Bosnia and Herzegovina ("Official Gazette Bosnia and Herzegovina, No. 5 / 04) creates a legal framework in Bosnia and Herzegovina in which all churches and religious communities in Bosnia and Herzegovina has equal rights and duties without discrimination and it condemns all forms of intolerance and discrimination based on religious beliefs and convictions. The Law is in conformity with international declarations and conventions signed by Bosnia and Herzegovina and which are an integral part of the Constitution and Legal system of Bosnia and Herzegovina. This Law brings the definition of discrimination based on religion or belief, as well as the definition of the church and religious community. In Bosnia and Herzegovina operates the Inter religious Council of Bosnia and Herzegovina, which greatly contributes to the establishment of the dialogue and connection diversity.

The Inter-religious Council of Bosnia and Herzegovina with its work contributes to the truth and reconciliation as well as linking diversity with the aim of living together with mutual respect and cooperation. The Inter-religious Council of Bosnia and Herzegovina are the representatives of the Islamic Community in Bosnia and Herzegovina, the Serbian Orthodox Church, the Catholic Church and the Jewish Community of Bosnia and Herzegovina.

It is interesting to note that the Inter religious Council of Bosnia and Herzegovina, in 1999 printed the glossary of religious terms and thereby contributed to a better understanding of coexistence and linkage of cultural diversity in the region of Bosnia and Herzegovina.

Based on the Law on the Freedom of Religion and the Legal Status of Religious Communities and Churches in Bosnia and Herzegovina, Bosnia and Herzegovina has signed and ratified two internationally legal contracts as follows:

1. The basic agreement between Bosnia and Herzegovina and the Holy See (signed in April 2006.) and the Basic Agreement and Additional Protocol which was signed in September 2006.

2. The basic agreement between Bosnia and Herzegovina with the Serbian Orthodox Church 2007 which was signed and ratified in 2008.

3. It is in the procedure the Basic Agreement between Bosnia and Herzegovina and the Islamic Community in Bosnia and Herzegovina.

15. The certain activities had begun on drafting the Report on the situation of human rights in Bosnia and Herzegovina which will contain an objective picture of the situation of human rights in Bosnia and Herzegovina and to draw attention to the neuralgic point of the Bosnia and Herzegovina society, in the spirit of justice and democracy stemming from the declared Internationally Legal principles incorporated into domestic legislation of positive legal regulations.

Working on these activities, we took into account recommendations of the relevant UN Committees related to the current initial and periodic reports of the Bosnia and Herzegovina and the suggestions of the Council of Europe presented in the form of comments on reports or presented in the form of observations after the completed monitoring visits of the Commissioner for Human Rights on the implementation process of human rights at national level, from Mr. Thomas Hammarberg and from the ECRI Commission of the Council of Europe.

16. The establishment of human rights treaty bodies , including by the Council of Europe (ECRI) and by the UN (CERD) for fight against racism, intolerance and prevention of all forms of discrimination and the adoption of the Durban Declaration and Action Programs contribute to the strengthening of mechanisms for the protection of human rights through raising awareness of target groups in order to

strengthen tolerance, diversity, equality before the law, the right to equal access to the courts, the right to freedom of conscience and religion, right to education, etc.

Regarding the problems in the selection of representatives from Bosnia and Herzegovina into the International bodies for the Protection of Human Rights, we note that Bosnia and Herzegovina makes every effort to accede as soon as the situation resolves, so that Bosnia and Herzegovina do not continue further damage on the field of international action.

We note that, due to increased activities related to the recent elections, we did not get the information from the lower levels of government, and we reserve the right to deliver more detailed comments in the future.

We also repeat that the Ministry for Human Rights and Refugees of Bosnia and Herzegovina is open to all kinds of cooperation with the ECRI in order to prevent all forms of discrimination and intolerance in the European Integration Process.

Yours sincerely,

MINISTER

Dr. Safet Halilović