

BISHOPS CONFERENCE OF BOSNIA AND HERZEGOVINA

COMMISSION “JUSTITIA ET PAX”

**REPORT ON THE
STATE OF HUMAN RIGHTS
IN BOSNIA & HERZEGOVINA
IN THE YEAR 2002**



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INTRODUCTION

The area that Bosnia and Herzegovina (B&H) covers has been the centre of all important geopolitical, cultural and religious influences of the European powers for centuries. Throughout the whole history of Bosnia and Herzegovina the contradictions of the East and the West, of Istanbul and Rome, Islam and Christianity, communism and capitalism, have almost always met here.

Bosnia and Herzegovina, as the permanent sphere of interest of the East and West, has always been a battlefield for interests of the European major powers. The complete and constant reaching for and claiming of Bosnia and Herzegovina culminated in the bloody war between 1992 and 1995, the consequences of which are still felt today.

The tragedy of Bosnia and Herzegovina reaches through almost the whole of its history: since the feudal misery followed by the pastoral neglecting in the education of the Bosnian people, the Turkish aggression and occupation, the Austro-Hungarian annexation and the weight of World War One, the great-Serbian reign of the Kingdom of Yugoslavia, fierce World War Two, communist totalitarian regime, to the most recent hostilities and the after-war poverty.

Throughout the whole history, the complete burden of bloody events has been sustained exclusively by people of this area. The hardy Bosnian people has always resisted and survived troubles, and the fine taste of life in Bosnia and Herzegovina existed only because of rooted tolerance as fundamental fund of the survival here.

The burden that is put on the backs of the peoples of Bosnia and Herzegovina became (or remained) really too big even in this after-war period.

I. POLITICAL TURMOILS IN BOSNIA AND HERZEGOVINA

I.1. Geopolitical importance of Bosnia and Herzegovina

Bosnia and Herzegovina is situated on the west part of the Balkan peninsula. On the North, West and South it shares its borders with the Republic of Croatia and in the East with the FR Yugoslavia.

With its total surface of 51.209,2 square kilometres (12,2 square kilometres of which are the sea surface), Bosnia and Herzegovina hardly represents a big spot on the world map. But whenever the clouds of war darkened the sky of Bosnia, the high thrones of the European capitals were shaking as well, because the war in Bosnia always threatened to spread the intoxicating blood to all four sides of the world.¹

Being on the borderline of the spheres of interest, the problem of Bosnia and Herzegovina became the obstacle and the root trouble in the construction of the New World order. Therefore, it is necessary to find a solution of any kind for this area, as soon as possible, and at any cost. By inconsistent solving of the problem of Bosnia and Herzegovina, it has started on its way on the unclear path with no true vision of realising proclaimed democratic goals. Namely, by signing the peace agreement in 1995, in Dayton the international community introduced a new political solution for Bosnia and Herzegovina by a compromise "solution" of war activities. The new complex organisation of Bosnia and Herzegovina brought to the level of utopia a chance to join the family of modern democratic European states.

I.2. Quiet modification of the Dayton Agreement

By the Dayton Agreement of 1995, Bosnia and Herzegovina is factually divided to two entities (the Federation of B&H and the Republika Srpska). The Federation, until the signing of the Agreement on Implementation of the Decision of the Constitutional Court of B&H, was the entity of two constitutive peoples of Bosnia and Herzegovina: Croats and Bosniacs – Muslims², and the Republika Srpska is the entity of Serb people. By the Dayton Agreement the Federation of B&H is administratively divided to ten Cantons. Each of them has its Government and Parliamentary Body. The Cantons are divided into Municipalities, and on the territory of the Federation there are 84 of them. The Republika Srpska is also administratively divided to five regions and 64 Municipalities. Besides all of that, the District of Brčko also exists as a separate administrative unit.

As it is known from previous Reports of the Commission³, the Constitutional Court of B&H issued the decision in the year 2000 on the constitutionality of all three nations (Croats, Serbs and Bosniacs) on the whole territory of Bosnia and Herzegovina, and therefore declared unconstitutional the provisions under which the Federation was

¹ For example, the direct reason for the beginning of WWI. was the assassination of Franz Ferdinand, the Austro-Hungarian heir, on the 28th of June 1914, by a Serb extremist!

² By the SFRY Constitution of 1974 the then communist authorities gave to the Muslims of Bosnia and Herzegovina as a specific ones the status of nation, and until the fall of the communist regime in 1991 they declare themselves as Muslims, and since 1991 as Bosniacs. The political will of this corps of the citizens of B&H is finally defined on the Bosniacs' congress held 27 September 1993.

³ Reports of the Commission *Justitia et Pax* of the Diocesan Conference of B&H on the status of human rights in B&H for the years 2000 and 2001.

the entity of Bosniacs and Croats only and the RS the entity of Serbs only. The signed decision of 2002 was partly realised. Since there was not enough political will to issue the amendments provided for in the prescribed procedure, thus, in both entities they were imposed by the High Representative. The imposed amendments have to be adopted by both Parliaments, which has not been done in whole until this moment.

The former High Representative for B&H, Wolfgang Petritsch, organised negotiations between political parties from the Federation and the RS on implementation of this decision of the Constitutional Court of B&H in March this year. The very procedure that was conducted for the implementation of this decision of the Constitutional Court of Bosnia and Herzegovina speaks of the absurdity of standards in B&H. In any democratic state there is no discussion as to the application of decisions issued by the Constitutional Court, for they are considered obligatory. The negotiations were long and were not participated in by a larger number of parties and some of participating parties retreated during the negotiations. The Agreement on the constitutional amendments was signed in Sarajevo on the 27th March 2002. It was signed by the following parliamentary parties: SDP, the Party for B&H and NHI (from the Federation of B&H), PDP and SDS from the Republika Srpska. The Agreement was not signed by HDZ and SDA, as well as many other parties, and the misunderstandings (or political dissatisfaction) are the cause of fear of these political parties of further diminishing the national rights already reduced by the Dayton Agreement. By the agreement on the implementation of the Constitutional decision, in the Federation of B&H the protection of national interests of all three peoples is realised in the House of Peoples, while in the Republika Srpska it is the task of the Council of Peoples.

The House of Peoples in the Federation of B&H has all the jurisdiction that the House of Representatives of FB&H possesses, while the Council of Peoples in Republika Srpska does not have the same jurisdiction as the National Assembly (as the representatives' body) but the Council of Peoples has about 10percent of the jurisdiction. That means that by this agreement the compromise solution was found to the detriment of Croats and Bosniacs for whom the equal representation in adoption of laws and other provisions in the competence of the Parliament was not guaranteed this way, while the Serbs have got guaranteed equal participation in passing of decisions in the FB&H by the same agreement. The agreement also defined that the President of the RS⁴ has all constitutional competencies of this institution. Two Vice-Presidents from the ranks of two other nations coexist with him and they only help him in those tasks that are given to them by the President, meaning that they have no real power. In the FB&H the President and two Vice-Presidents also exist (all of them of different constitutive nationalities) with the difference that they rotate on the position of the President and have to reach their decisions together and with the consensus. The list of vital national interests, as defined by the Agreement, is compressed to only five items that are considered before the Council of Peoples of the RS, while any issue with no restriction is considered before the House of Peoples of the FB&H. In order to have some issue declared the issue of vital national interest before the Council of Peoples of the RS it is necessary to get consent of two thirds of judges of the Panel of the Constitutional Court, which is not possible because of the very composition of the Court. It is possible in theory but not in practice. Although the danger exists of the assessment

⁴ The President of the RS is always appointed from the ranks of the majority nation, and in the RS these are Serbs.

that would be too subjective, we still think that this Agreement affected Croats the most as they are the least numerous of the constitutional nations in Bosnia and Herzegovina. Namely, under the Agreement the election of entity governments is performed by the House of Representatives in the FB&H and the National Assembly in the RS. So, the governments are elected without consents of the House of Peoples and Council of Peoples. The Government of the Republika Srpska, as provided for by the Agreement, consists of the Prime Minister and 16 Ministers: 8 Serbs, 5 Bosniacs and 3 Croats. The Government of the Federation of Bosnia and Herzegovina besides the Prime Minister has the same number of Ministers: 8 Bosniacs, 8 Croats and 3 Serbs. Thus, both Governments together are consisting of 14 Bosniacs, 12 Serbs and 8 Croats. This makes it obvious that the Croats do not realise more important constitutive powers in neither the FB&H, nor in the RS, which additionally burdens their already bad position. The impression arises that the Croats of Bosnia and Herzegovina are being systematically driven to the position of minority, which they are not under the Dayton Peace Agreement. That is most probably the consequence of the strivings of the international community to reduce the influence of the neighbouring Republic of Croatia to the political situation in Bosnia and Herzegovina in the largest extent possible. We consider that to be the wrong presumption because the Croats will consider Bosnia and Herzegovina to be their state only if they could realise their sovereign rights in it as the other two constitutive nations can. After the signing of the Agreement the Parliament of the FB&H and the National Assembly of the RS should have adopted the constitutional amendments as defined by the Agreement. However, that did not occur and the High Representative in Bosnia and Herzegovina imposed the Constitutional amendments. The Agreement on the constitutional amendments emphasises once more the inconsistency of the international community position for the whole territory of B&H. The Agreement cemented the Republika Srpska as the entity of Serb peoples which is contrary to the decision of the Constitutional Court of Bosnia and Herzegovina on constitutionality of all three nations on the territory of the whole State.

The international community declaratory adhered in its politics towards Bosnia and Herzegovina to the principles defined during the toilsome Dayton negotiations, although such "solution" to the problem did not allegedly satisfy any of three constitutive nations in B&H. Although its primary goal in Bosnia and Herzegovina is to protect and preserve the fundamental human rights, the international community itself violated these by the prohibition of permanent political work for some political figures, who were removed from their office although elected by the people on free elections, and with no evidence of their guilt. The complete situation of chaos in which Bosnia and Herzegovina still is, seven years after the war, shows that the Dayton foundations do not stand as secure ones for the construction of the stable state construction and of the democratic society. Namely, with such unjust and unsustainable division of the State no one dares to invest in it, and it appears to be unacceptable for its citizens from this point as well. Therefore, it is unavoidable that the need would arise to redefine the internal organisation of the state as well as the interrelations of the three constitutive nations.

The Peace Agreement in Dayton, by which the bloody conflict was terminated, is no guaranty of finding the sustainable *modus vivendi* for the nations in B&H. Still fresh scars of deep wounds on bodies and souls of its citizens prevent any progress in creation of life dignified enough for a human, in these parts. All of this inevitably reflects seriously on the situation with human rights. Unorganised state restrains

development of economy and pushes citizens of Bosnia and Herzegovina towards an uncertain future followed by poverty and general uncertainty. According to the speech of the High Representative, Paddy Ashdown, before the Parliamentary Committee of the European Union for Foreign Affairs on the situation in B&H, held in Brussels on the 3rd December 2002, Bosnia and Herzegovina is even nearer to the total collapse, and the whole situation seems to be alarming.

Although Bosnia and Herzegovina was admitted to the Council of Europe on the 24th of April 2002, it is clear that the Peace Agreement concluded in Dayton does not mean a final solution on the basis of which the strong democratic Bosnia and Herzegovina, as the state with the rule of law, and the State where the law and order and economic progress would become a reality.

II. COMPARATION OF THE HUMAN RIGHTS SITUATION IN RELATION TO THE YEAR 2001

In relation to 2001 the situation with human rights in Bosnia and Herzegovina did not substantially improve. Certain positive movements were achieved in the implementation of the Annex VII to the Dayton Agreement⁵. Since the end of war the international community made great efforts and contributed with considerable material aid in order to successfully overcome serious migration consequences of genocide during the war. Overcoming of this problem is very important for recovery and survival of B&H. However, this picture on the return of displaced persons to their homes is not such as it seems to be by the insight to the official statistics.

According to the official statistics of the UNHCR, in B&H the total of 919,746 refugees and displaced persons returning to their pre-war homes have been registered, from the moment of signing the Dayton Agreement until 30 November 2002. Out of the above-mentioned number of returns, 420,485 relates to refugees, and 499,261 to the internally displaced persons in B&H. According to the same official source until the same date 682,365 persons (74,19 percent of the total number) returned to the territory of the FB&H, and 218,996 persons (23,81 percent) to the territory of the RS, and 18,385 persons (2 percent) to the area of the Brčko District.

Given data shows that in 2002 the most successful trend of implementation of Annex VII of the Dayton Agreement was noted, so that during the period between 1 January 2002 and 30 November 2002 the total number of 96,967 returns was registered, and according to the estimate of the Ministry of Human Rights and Refugees of B&H, of that number 91,969 returns related to, so called, "minority returns"⁶ (almost 95 percent).⁷

Unfortunately, the real situation in the field directs to a different picture because the largest number of returnees remained in the places of previous residence even after entry into possession of their property. Besides still existing psychosis of uncertainty and fear, the main reason of impossibility of implementation of the Dayton Agreement is of a social nature, because during the long and, for returnees, painstaking process of return almost nothing was done for creation of conditions that would make this return of displaced persons sustainable. The large rate of unemployment in both of the entities and unreadiness of local authorities and residents to incorporate returnees to their old social environment forces them to permanently leave the place of their fatherland.

The most worrying is the younger – working capable part of the population drain. Bosnia and Herzegovina also lost a significant number of educated younger cadres since the beginning of war despite of the fact that it is impossible to travel abroad without visas if one has the passport of B&H. It is also necessary to point out that the international organisations are helping to this emigration process for their personal interests.

⁵ Annex 7 to the General Framework Agreement for Peace regulates issues of return of refugees and displaced persons to their pre-war homes.

⁶ The "minority return" is to be understood as return of displaced persons and refugees to the areas where the majority of population before the war was of the other origin (nationality).

⁷ "Bulletin for 2002. Refugees from B&H and displaced persons in B&H", prepared by the Ministry of Human Rights and Refugees of B&H.

The statistics based upon larger poll-samples show that the most of those young people polled in B&H (around 70 percent) expresses unconditional readiness for permanent emigration from their fatherland. Lack of perspective and lethargy that overwhelms the young of this county is the result of extremely serious economic and social situation in the country and catastrophically depressing post-war political climate.

Although some changes towards better situation are made in the political plan, in essence nothing changed in the improvement of the quality of life for the citizens of B&H.

III. MIGRATION AND SLOW PROCESS OF RETURN

III.1. Population of B&H and slowness of the implementation of Annex VII to the Dayton Agreement

According to the last census of 1991, 4,354,574 citizens lived in B&H. Of that number, 43,7 percent were Bosniacs, 31,4 percent Serbs, 17,4 percent Croats and 7,6 percent others⁸. The current estimate of present population on the date of 30th June 2000 was 3,781,183 citizens.⁹

During the war (1992-1995), B&H lost approximately 200,000 citizens that are considered dead or missing. More than a million people have fled to refuge from the country and dispersed world-wide. Estimates say that 23 percent less population lives in the country nowadays than in 1991.

III.2. Structure of population in FB&H

According to the census of 1991, on the territory of today's Federation of B&H 2,757,291 citizens (52,18 percent Bosniacs, 22,14 percent Croats, 17,52 percent Serbs and 8,16 percent of others) lived. The Federation of B&H has lost a significant part of its population due to the war activities. Currently approximately 73 percent of previous population lives on the territory of this entity, partly in their homes, partly as displaced persons in the Federation.

The structure of the population has been changed by the consequences of war, and also, largely due to the permanent immigration of a great number of citizens from FR Yugoslavia (Sandžak) and Kosovo – which is the consequence of hostilities, general poverty and insecurity.

Currently 281,652 displaced persons reside in the Federation of B&H, 35 percent of whom are from the FB&H, 65 percent from the Republika Srpska (data according to the so-called re-registration). The repatriation of B&H refugees abroad and in their places of refuge has, as a consequence, the tendency of dislocation of returnees, and it directly influences the permanent increase in the number of displaced persons within the territory of the Federation of B&H. A significant number of returnees have exchanged their status for the status of displaced persons in the Federation of B&H.¹⁰

⁸ A significant part of the population of "others" in 1991 were Yugoslavs as a nation that came to exist through unitarianist strivings of the communist authorities during their fifty-year-long reign. According to the census in 1991, Yugoslavs comprise about 5,5 percent of the population of B&H, so that by the decomposition of former SFRY this national group almost disappeared.

⁹ Estimate of the Institute for Statistics of B&H

¹⁰ Official data of the Federal Institute for Statistics

The national structure of the population in the FB&H according the census of 1991:

No.	CANTON	National structure				TOTAL
		Bosniacs	Croats	Serbs	others	
1	2	3	4	5	6	7 (3+4+5+6)
1.	Una–Sana	247.856	10.886	72.644	13.141	344.527
2.	Posavina	8.107	44.657	7.955	2.906	63.625
3.	Tuzla	361.566	46.908	67.559	48.368	524.401
4.	Zenica–Doboj	280.262	88.042	70.625	39.350	478.279
5.	Bosansko–Podrinjski	28.794	81	11.183	1.370	41.428
6.	Srednjobosanski	147.607	130.663	40.158	20.547	338.975
7.	Hercegovačko-Neretvanski	100.040	108.867	37.651	21.075	267.633
8.	West-Herzegovina	1.611	86.164	231	986	88.992
9.	Canton Sarajevo	250.928	34.577	133.646	74.291	493.442
10.	Canton no.10	12.041	59.553	41.561	2.834	115.989
TOTAL in the FB&H:		1.438.812	610.398	483.213	224.868	2.757.291

The national structure of previously residing population by cantons of the FB&H on the date 31st of December 2000:

No.	CANTON	National structure				TOTAL
		B	H	S	O	
1	2	3	4	5	6	7 (3+4+5+6)
1.	Una–Sana	231.004	5.797	6.289	1.416	244.506
2.	Posavina	7.026	39.752	638	290	47.706
3.	Tuzla	385.715	28.112	14.210	17.892	445.929
4.	Zenica–Doboj	290.720	48.782	10.596	15.970	366.068
5.	Bosansko–podrinjski	39.329	364	72	22	39.787
6.	Srednjobosanski	118.251	79.341	3.539	2.783	203.914
7.	Hercegovačko-neretvanski	72.436	106.668	5.805	784	185.693
8.	West-Herzegovina	436	85.644	174	960	87.214
9.	Canton Sarajevo	246.469	23.233	29.470	8.753	307.925
10.	Canton 10	9.316	56999	7750	301	74.366
TOTAL in the FB&H:		1.400.702	474.692	78.543	49.171	2.003.108

The national structure of displaced persons in the FB&H according to the Cantons of their residence and pre-war residence:

No.	CANTON OF RESIDENCE	No. of displaced persons	National structure of displaced persons				Pre-war residence of disp. persons	
			Bosniac	Croat	Serb	others	FB&H	RS
1	2	3 (8+9)	4	5	6	7	8	9
1.	Una–Sana	26.699	25.672	72	870	85	6.841	19.858
2.	Posavina	1.028	624	382	7	15	49	979
3.	Tuzla	68.727	68.347	90	56	234	2.014	66.713
4.	Zenica–Doboj	34.382	33.180	1.038	93	71	10.205	24.177
5.	Bosansko–Podrinjski	7.048	7.034	0	7	7	1.202	5.846
6.	Srednjobosanski	26.834	14.437	11.954	239	204	22.233	4.601
7.	Hercegovačko–Neretvanski	33.922	17-194	16.168	277	283	29.727	4.195
8.	West-Herzegovina	1.400	21	1.349	12	18	1.370	30
9.	Canton Sarajevo	72.329	70.700	631	500	498	18.335	53.994
10.	Canton 10	9.283	189	8.863	206	25	8.058	1.225
TOTAL FB&H		281.652	237.398	40.547	2.267	1.440	100.034	181.618

III.3. Structure of population of the Republika Srpska

As it is obvious for the above-stated, according to the census of 1991, on the territory of the former SR B&H there was approximately 31,4 percent of the population of Serb nationality. Since 1992 they have homogenised on the territory of Republika Srpska, so that more than 90 percent of Serb population currently resides in the RS.¹¹ The officially used language in that part of B&H is Serb language and the most commonly used is the Cyrillic alphabet (which is also the official alphabet). Most of the population of the RS is of the Orthodox religion. The Serb Orthodox Church is the only Religious Community that has regulated legal status.

According to the statistics of 1996, in the RS 1,391,593 citizens lived. The average density is 56 residents per square kilometre, “which enlists it in the rank of sparsely populated European countries”¹².

It is obvious that the implementation of the Annex VII to the Dayton Agreement has not realised the effects, which have been insisted upon by the international community.

¹¹ Data according to the web site of the Government of the RS

¹² Statement quoted from the web site of the Government of the RS (www.vladars.net), which clearly points to the official politics of authorities in the RS and their position towards B&H.

The national structure of displaced persons in the RS by regions and pre-war residence¹³:

No.	REGION OF RESIDENCE	No. of disp. persons	National structure of displaced persons				Pre-war residence r.o.	
			Bosniacs	Croats	Serbs	others	RS	FB&H
1	2	3	4	5	6	7	8	9
1.	Banja Luka	74.511	51	246	73.815	193	206	74.305
2.	Bijeljina	70.703	36	153	69.334	258	922	69.781
3.	Vlasenica	35.109	11	55	33.428	41	1574	33.535
4.	Višegrad	44.696	18	126	43.571	223	758	43.938
5.	Trebinje	18.367	7	76	18.127	48	109	18.258
Total: RS		243.386	123	656	238.275	763	3569	239.817

Overview of the status of displaced persons in the RS by region of residence¹⁴:

No.	REGION OF RESIDENCE	CANTON OF RETURN										No. of displaced persons
		USK	PŽ	TK	ZDK	BPK	SBŽ	HNŽ	ZHŽ	KS	K10	
1	2	3	4	5	6	7	8	9	10	11	12	13
1.	Banja Luka	31.874	17	728	5.423	33	15.792	517	0	4.291	15.630	74.305
2.	Bijeljina	6.144	1.950	20.493	25.395	27	3.633	538	0	8.554	3.047	69.781
3.	Vlasenica	1.414	19	9.347	7.580	75	3.001	361	5	11.330	403	33.535
4.	Višegrad	184	1	86	2.277	6.713	281	1.699	1	32.615	81	43.938
5.	Trebinje	23	0	36	250	37	45	14.419	21	3.401	26	18.258
TOTAL:		39.639	1.987	30.690	40.925	6.885	22.752	17.534	27	60.191	19.187	239.817

Return of displaced persons to their pre-war residences represents one of fundamental preconditions of the survival of B&H. As it is obvious in the tables above the process of return goes slowly. After more than seven years since the General Framework Agreement for Peace in Dayton was concluded approximately 900,000 displaced persons and refugees still wait for the return to their homes. Estimate of the Ministry of Human Rights and Refugees of B&H¹⁵ speaks about a little bit more than 500,000 citizens of B&H with the status of refugees (residing outside of B&H) at the end of 2002, and of that number approximately 400,000 already integrated in the new environment by receiving permits for permanent residence or gaining citizenship of host countries This Ministry assesses that around 114,000 refugees still seeks permanent solution of their status. This estimate should be taken with certain reservation because the solution of the status of refugees in the host countries does

¹³ Official data of the Federal Ministry of Social Politics, Displaced Persons and Refugees

¹⁴ Same as above

¹⁵ Bulletin for 2002

not necessarily mean that these persons do not have wish for return, and also it must not represent the reason to eliminate these persons with regard to their right to return. Impossibility of return is also represented by the fact that in 2002 some 300,000 facilities destroyed or damaged because of war remained unprepared. These are mainly destroyed residential units. Official statistics show that the result of return is devastating, especially to the Eastern parts of the RS. Certainly the barriers for return exist on all levels of the state authorities on the whole territory of B&H. The structure of international aid was mainly targeted to the reconstruction of damaged homes, which does not mean, at the same time, creation of conditions for sustainable return. One of main reasons for refugees and displaced persons to seldom decide to return permanently to their pre-war places of residence is the impossibility of solving their social status and finding permanent source of income.

We give the overview of number of refugees from B&H according to the host countries¹⁶ in the following table, and it relates to the period until the 1st of December 2000:

No.	Host Country	No. of refugees 1992-1995	No. of refugees 1/12/2000	Solved status in asylum country	Need permanent solution	Returnees to B&H	Left for 3 rd countr.
1.	Germany	320.000	34.400	1.400	33.000	235.000	50.000
2.	FR Yugoslavia	297.000	225.000	20.000	205.000	28.000	44.000
3.	Austria	86.500	71.000	69.200	1.800	10.000	5.500
4.	Croatia	170.000	85.000	62.000	23.000	33.000	52.000
5.	Slovenia	43.100	4.900	4.200	700	15.000	23.200
6.	France	6.000	5.000	4.200	800	900	100
7.	Switzerland	24.500	10.900	5.000	5.900	11.000	2.600
8.	Italy	12.100	8.100	2.200	5.900	2.000	2.000
9.	Turkey	23.500	1.200	1.000	200	4.500	17.800
10.	Luxembourg	1.500	1.300	1.300	0	0	200
11.	Holland	22.000	16.500	7.500	9.000	3.500	2.000
12.	Belgium	5.500	5.000	3.000	2.000	500	0
13.	Liechtenstein	500	250	0	250	250	0
14.	Sweden	58.700	56.800	52.500	4.300	1.900	0
15.	Denmark	17.000	15.500	14.900	600	1.500	0
16.	Norway	12.000	8.200	8.200	0	2.500	1.300
17.	Finland	1.500	1.150	1.150	0	250	100
18.	Hungary	7.000	3.500	3.200	300	2.500	1.000
19.	Check	5.000	3.000	3.000		1.000	1.000
20.	Spain and Portugal	4.500	2.500	1.500	1.000	1.000	1.000
21.	Macedonia	9.000	450	450	0	3.750	4.800
22.	USA	20.000	17.500	17.500	0	1.500	1.000

¹⁶ Official data of the Ministry for Human Rights and Refugees of B&H

23.	Canada	20.000	18.400	18.400	0	600	1.000
24.	Australia	15.000	14.200	14.200	0	800	0
25.	Greece	4.000	3.000	2.700	300	600	400
26.	UK and Ireland	4.100	3.000	2.000	1.000	1.000	100
27.	Other countries	10.000	8.500	6.000	2.500	500	1.000
	TOTAL	1.200.000	624.250	326.700	297.550	363.050	212.700

As it may be seen, the largest number of refugees abroad until the 1st of December 2000 had staid in the FR Germany, FR Yugoslavia and the Republic of Croatia. The number of persons dislocated to third countries, which on the above-mentioned date was 212,700, speaks for the fact that the largest number of this population have no intention to return to B&H any more.

Refugees to the FR Yugoslavia and the Republic of Croatia mostly assimilated in these countries. The most questionable one is the return of Croats fled to the Republic of Croatia, since they have right, under their positive legislation, to dual citizenship, and, at least, in that respect there are no barriers to start life in the new environment.¹⁷

Generally speaking, the process of return goes slowly and it is hard to assess the real situation in the field but it is certain that front and backside of the structure of population in Bosnia and Herzegovina is permanently changed.

¹⁷ In principle, by the Law on Citizenship of B&H dual citizenship is not allowed, except when prescribed otherwise by international agreement. The FR Yugoslavia and B&H already signed such agreement but it has not been signed with the Republic of Croatia yet. This is very important issue since on the 31st December 2002 the time-limit prescribed by the Law on Citizenship of B&H expires, until when the possibility for dual citizenship is left opened for persons that on the date of 6th April 1992 were citizens of B&H, and who, in the meantime, acquired the citizenship of one of newly formed states on the grounds of former SFRY. In case that this international agreement is not signed with the Republic of Croatia, persons with dual citizenship will have to give one up *in favore* of the other one. In the last moment, by the decision of the High Representative for B&H, on the 30th December 2002, the Law on dual citizenship was after all declared. It prolongs the time-limit for signing the agreement with other states on the dual citizenship until the 1st January 2013.

IV. ECONOMIC AND SOCIAL SITUATION IN B&H –RESULT AND CONSEQUENCE OF DENIAL OF FUNDAMENTAL HUMAN RIGHTS

IV.1. Destruction of economic potential of B&H

The most clear picture of the sudden plunge of the life standard of citizens of B&H may be got by the comparison with the economic parameters that existed for B&H just before the war.

Bosnia and Herzegovina was, before the war, one of most developed federal units of the Socialist Federative Republic of Yugoslavia (SFRY). Its gross national product (GNP) for 1990 was assessed by the World Bank to 10,6 billion US \$, or approximately 1,980 US \$ per capita. For comparison, the then FR Slovenia as the most developed republic of Yugoslavia had the GNP of around 6,500 US \$ per capita. FR Macedonia with its 1,400 US \$ per capita was considered to be the least developed republic of the SFRY. According to the then socialist doctrine of the unique Yugoslav market and the then strategy of unique development, all better developed republics had to help the development of undeveloped regions of Monte Negro and Kosovo¹⁸.

Bosnia and Herzegovina, with its four active universities had relatively highly educated labour force. The economy of Bosnia and Herzegovina was fairly various and it was based upon large companies in the state (social) ownership. With the large industrial basis and relatively capable entrepreneurs' class, sophisticated products such as aircraft, medications, modern military and engineering equipment etc. were produced in B&H. Around half of production and employment was guaranteed through the heavy industry, concentrated around sectors of energy and raw materials production (especially the production of the electric power, wood, coal, bauxite and coke), as well as of textile, leather, footwear... In the service sector Bosnia and Herzegovina possessed strong capacities in the construction. Almost 500 construction companies, before the aggression, worked abroad and successfully matched its competitors on the world market. It is necessary to note that because of inflexibility of the system of socialist business activities B&H lost some extremely good chances for the development of the winter truism¹⁹, for which it has excellent natural resources.

The agricultural production and production of food generated less then 10 percent of its gross national product. Because of division of farms and impossibility of private entrepreneurs' initiative, in this sector the production was limited more to the extensive farming.

Anyway, with its natural resources and large concentration of basic (heavy) industry, Bosnia and Herzegovina was one of key propelling forces of the Yugoslav's economy. More than a half of its direct products had been sold on the western markets for the hard currency. Since it is situated in the geographical centre of the former Yugoslavia, the key facilities of specified-purpose (military) industry were situated in B&H.

¹⁸ Kosovo has lost its status of autonomous region in the beginning of the year 1989 under the pressure of the Serb state leadership.

¹⁹ The XIV Winter Olympic Games were held in Sarajevo in the year 1984.

During and after the aggression on B&H, the economic system of B&H completely collapsed. The consequences of war destruction are importantly influencing it even today. Until 1995 the gross national product fallen to approximately 2,1 billion US \$, which is less then one third of the pre-war state. The gross national product per capita in 1995 is under 500 US \$.

Total war damages are estimated to 50-70 billion US \$, and assessments of the value of destroyed production capacities are from 15 to 20 billion US \$. Indirect damage because of lack of maintenance and lost of market is assessed to tens of billions of US \$. By the long absence from the world market the businessmen of B&H lost their hardly build business relations with their partners on the market throughout the world.

Almost all business activities have ceased, and the industrial production decreased in relation to the pre-war period for around 90 percent. The experts of the World Bank estimated that since the end of World War II none of countries of central or eastern Europe suffered such a serious fall as it is the case with Bosnia and Herzegovina.

The whole situation enabled a smaller number of individuals in B&H to gain material wealth while the majority of population fights to secure the basic existential minimum. A very small number of new found tycoons obtained their estate (property) by creative labour, while the most of them hoarded the wealth in a conspicuous manner – the most often in the direct coupling with the political power structures. The differentiation of population based upon crime and corruption produces constantly growing dissatisfaction in the population and it reflected in the decrease of interest for participation in the last parliamentary elections.

The catastrophic situation in which the economy of B&H is multiplies its negative connotations to all spheres of social life in B&H. The administrative and economic chaos²⁰ influenced the general state of material poverty of almost all structures of its population.

IV.2. Main economic indicators of quality of life in B&H

Of approximately 3,4 millions of citizens²¹ currently living in B&H, according to the official assessments of the OHR, the total of only 622,430 individuals are employed, which is less then 50 percent in relation to the situation with employment before the war.

The assessments of the experts of the World Bank speak that the normal gross national product (GNP) of B&H for the year of 2001 amounted to 9,118 billion KM (1 EUR = 1,9558 KM)²², of that amount for the FB&H 6,698 billion KM, and around 2,420 billion KM for the RS. The estimates of the OHR point out that the GNP of B&H in relation to 1999 increased nominally for 10 percent, i.e. 9 percent for the FB&H and 13 percent for the RS.

Taking into account the inflation index, real increase of the gross national product for the FB&H is 7,8 percent while in the RS it is decreased for 0,6 percent, the real

²⁰ The state of administrative-normative chaos in B&H is described in detail in the Report of the Commission *Justitia et Pax* of the Diocesan Conference of B&H on the human rights situation in B&H for 2001, and it is a consequence of complex and inefficient Dayton organisation of B&H.

²¹ No precise data exists because since 1991 no complete census was performed for B&H.

²² Rate of the convertible mark (KM) was fixed with the rate of the German mark (DEM), in ratio 1:1.

increase of the GNP of B&H for the period 1999 – 2001, according to the estimate of the OHR, is total of 5,5 percent.

The index of industrial production for August 2002 in comparison with 2001, according to the official data of the Federal Institute for Statistics in the FB&H marks an increase of 15,3 percent. If we use the same parameters for comparison, the index of industrial production in the RS has at the same time been decreased by 1,1 percent²³.

In the same period, the index of retail prices in FB&H has decreased by 0,8 percent and increased by 0,9 percent in RS.

The minimal amount of money necessary to sustain a four-member family in FB&H was 455,08 KM in November of the year 2002, according to the data of the Federal Institute for Statistics. These are the basic necessities of life, necessary for an existential minimum. At the same time this amount accounts to 430 KM in the RS.

The average paycheque in the FB&H amounted to 499,69 KM in November 2002, and the Canton Sarajevo is first on the list with an average salary of 661,21 KM²⁴.

IV.3. Unemployment

The serious economic situation in B&H, which is the consequence of direct war activities and the unadjustable structure of B&H economy²⁵ - unready for contest on the world market, has imminently had a high rate of unemployment as a consequence. The economic situation has been serious even before the war, and has become catastrophic when the war started. Unemployment in B&H has attained a great proportion, and as such presents a clear indicator of the status of the society in whole. A corrupted, awkward and expensive state machinery has shown itself as totally incapable of grappling with key economic problems. Unofficial assessments of experts clearly speak of the seriousness of the situation, and how the awkward Dayton state machinery, by the way of its numerous, expensive and ineffective services, takes up about 62 percent of the gross national product of B&H. The data which states that of 391.547 registered employees of FB&H (in November 2002) every second is employed in the service trade – of which the majority is employed in local and entity administrative bodies – shows the awkwardness of the administration of B&H, especially of FB&H.

According to official data for 1991 there were 1,3 millions of employed persons. In the middle of the year 1998 that number was only 361,516 persons, and today it is around 622,000.

Official statistics of employment situation should be taken as relatively correct, taking into account the great number of unregistered employed people. The status of these employees is especially hard and with no prospects because they do not realise any of the rights from labour relations. The employers use the excess of work force on the market, and pay unregistered employees very small wages.

²³ The industrial production for first 11 months of 2002 increased for 8,7 percent in relation to the same period of previous year – data of the Federal Institute for Statistics. According to all indicators, the RS again will finish this year with the significant decrease in the industrial production for the difference of the FB&H. The estimates speak that for the first 9 months of this year the decrease is more than 13 percent.

²⁴ Official data of the Federal Institute for Statistics

²⁵ The socialistic economic system in former SFRY was based upon the striving to complementary of the then resources of that state, which by its decomposition brought all its economic subjects to the unfavourable position.

The number of employed persons deriving from official statistics should be considered with some reservations, having in mind that a large number of employees on the waiting lists (laid off) are included in the number. In November 2001, of 636,275 registered employees, those on so called waiting list reached the number of 53,752. This category of "employed persons" formally has rights deriving from labour relation guaranteed by the Law on Labour but since they are employees of bankrupt companies in the social (state) ownership, in the largest part, the employers are not in the position to fulfil their legal obligations. Employees on the waiting lists eventually realise with their employers the minimal monthly compensation that are usually amounting to 30 - 50 KM. Contributions to pension and health fund regularity remain unpaid, so that these persons are forced the same way as unemployed persons to look for any "unregistered" employment to secure the minimum of conditions for bare existence.

Bearing in mind the relativity of official statistics, it is necessary to note that small steps towards better situation in the area of employment continuously happen. The number of employed in B&H, in November 2001, according to the official statistics was 636,275 employees, including employees on waiting lists (laid off). Participation of laid off employees in that number was at that time 53,752 persons. In 2002 the number of laid off employees in the FB&H had to be substantially decreased because of application of Article 143 of the Law on Labour (OG FB&H, nos. 43/99 and 32/00), determining the obligation of the employer that the status of such an employee can last no longer than six months after the entry into force of the Law on Labour. The Law on Labour entered into force on the 5th November 1999 and, as such, the deadline for the regulation of status of laid off employees expired on the 5th May 2000. The employer was, in the sense of the quoted legal provision, obligated to terminate contracts of these employees, paying in full their severance wage and regulation of payment of all unpaid contributions for pension insurance.

By this legal provision, the legislator was striving to remove any consequences of fictive employment in a large part of actively employed citizens. There is still a great number of laid off employees in FB&H, even with the real effects of this legal solution. Employers of these "employees" are, most of the time, ruined companies of socialistic economy.

By the end of December 2001, 429,563 unemployed persons were on the records of the Employment Bureau, which represents a decrease of 906 or 0,21 percent in relation to November 2001. According to the Institute for Statistics of the FB&H, the number of employed persons in the Federation in August 2002 was 390,708, and the number of registered unemployed persons 287,302, while, by the data of the Institute for Statistics of the RS, the number of employed persons in the RS was 232,722 (March 2002), and the number of registered unemployed for July this year amounted to 143,504 persons.

As it was stated above, according to the estimate of the OHR, for July of the year 2002²⁶, the total number of employed persons in B&H amounted to 622,430 persons, and the number of registered unemployed to 430,806 persons. This data also cannot be considered trustworthy evidence in respect of the fact that the State almost in no way subsidises citizens who are unemployed, and that especially relates to persons who have been unemployed for a longer period. For example, of approximately 288,000 unemployed persons in the FB&H only 3,000 realised

²⁶ Economic Task Force Secretariat OHR

material compensation – in average amount of 150 KM²⁷. Non-existence of adequate social and employment politics has as a result that a larger number of labour capable citizens have not register themselves in the records of the Employment Bureaux in their places of residence. In that sense, it is not appropriate to say that the adequate employment agency exists in B&H that would enable activating the best quality human potential of this State in the effort of overcoming the problems the State has.

IV.4. Population of pensioners and poverty of this category of citizens

Poverty that overwhelmed the most of the citizens of B&H especially influenced a large population of pensioners in B&H. A small number of pensioner with maximum possible pensions in B&H, according to the world criteria of poverty, are concerned extremely poor people. In B&H until recently existed three separate pension systems based upon national criteria. Since the 1st January 2002 in the FB&H the unique pension fund started to operate. Although in the organisational sense this system does not completely function yet, we may speak of two entity systems in the B&H.

According to the official data of the Institute for Statistics of the RS, in August 2002, 182,456 of pensioners were registered in the RS. According to the same source, the average pension for the month of august amounted to 120.02 KM. The official statistics of the Federal Institute for Statistics shows that the number of registered pensioners in August of this year in the FB&H was 287,840, and they realised average pension in the amount of 189.80 KM.

Economic index in this segment shows as well drastically worse situation in economy of the RS in relation to the FB&H. Having in mind that in the same time in the RS 232,000 persons were employed, it is clear that a small number of employees have to sustain excessive burden of labour-passive population (pensioners, unemployed and children). This should be underlined with regard to fact that pensions are paid each month only out of assets that arrived during the current month. Namely, after the payment of pensions both funds remain empty, and it is not possible to speak of the accumulation of assets in pension funds because they hardly succeed to fulfil the needs of pensioners.²⁸

According to the official assessments of the OHR in August 2002 in B&H the total of 470,296 pensioners²⁹ were registered, and the average pension the level of B&H amounted to just 154.91 KM – which is less than enough for realisation of the existential minimum and not to mention life appropriate for man.

As this is the oldest part of the population in B&H with largest needs in the area of health insurance, inadequacy of budgetary means and decrease in number of medical personal during and after the war, makes the situation of this already endangered part of population even worse.

²⁷ The data of the Federal Institute for Statistics for November 2002.

²⁸ In 2001, the former High Representative, Wolfgang Petritstch, stopped the continuity of subsidising the pension funds from the entity budgets and ordered payments of pensions according to the assets coming into funds during the current month.

²⁹ The information according to the Economic Task Force Secretariat of the OHR. Data represents summation of pensioners of both entities because the population of pensioners of the District Brčko, by its rights under their pension relations, gets pensions from the entity funds.

V. CONCLUSION

The lack of adequate legal and economic framework restricts expansion of free enterprising that is main driving force for the development of modern democratic State based upon market economy and firm social state.

The international community invested huge material assets into the survival of unnaturally big State, the building of which is constructed on the shaking grounds and without firm fundamentals. The legal insecurity is main barrier to the entry of foreign investments to the sectors of production and secondary sector that would have as a direct consequence the improvement of the material conditions of life and geopolitical stability of the whole region.

The statement of Doris Pack³⁰, that she gave on 22nd November of this year, on the occasion of tenth anniversary of independence of Bosnia and Herzegovina clearly speaks of the failure of the European politics in B&H .

In the conversation with the topic "Ten years of B&H", on the Diplomacy Academy in Vienna, she especially criticised the international community for " throwing nationally oriented parties of Bosniacs, Serbs and Croats into the "nationalist corner", and giving support only to other groups.

"That, as the bottom line, was counter-productive", stated Doris Pack³¹.

On the same occasion the former High Representative for B&H, Wolfgang Petritsch, referred to the unsatisfying election results for the multiethnic Social-democratic party of B&H on the elections held in October. According to his words, these results are the consequence of serious economic situation in the county, and in such a situation, the electoral body of other states turned to the opposition as well.

Petritsch stated that after the performed reforms in the county the nationalist parties were "not so dangerous any more" as they used to be³².

It all points out to the fact that the international community still has no clear vision of the solution to the Gordian knot in B&H. Or, in fact, there is no overwhelming political will in the international community for effective aid to the development of our State. Reanimation of economic flow would enable the political stabilisation of shaking Balkan grounds and of the whole region.

The structure of invested international aid shows that the strategy of survival of B&H on the Dayton fundamentals (at any cost), is in its essence a fairly missed economic and political project. The Dayton State machinery appeared to be too expensive and inefficient in whole. For Bosnia and Herzegovina to develop into state, it is necessary to have thorough reform of the whole state, and its economic and legal system. That way the need for presence of international forces in B&H. More favourable political milieu for respect of human rights on the European cultural level would most certainly be created by the economic recovery.

³⁰ Doris Pack is a member of the European Parliament and Acting-president of the parliamentary delegation for relations with North-east states of Europe.

³¹ Statement given in Vienna on 24th November 2002 was published by the FENA (press agency).

³² As above

Disrespect of human rights in B&H is in the largest part the consequence of non-functioning of the rule of law, and it is not for the reason that some primitive, savage people live here. As long as in B&H exists undeclared but real international semi-protectorat, Bosnia and Herzegovina will, in the sense of respect of fundamental human rights, represent the black spot on the map of Europe. The semi-protectorat gave all powers in the rule of state to the High Representative, with the mandate of its preservation, but without the responsibility for its real progress. The economic development is the only way that may get Bosnia and Herzegovina closer to becoming a part of large family of democratic states of the Europe. In order to realise that, it is necessary to set B&H free of the unfair political noose from Dayton and give it a normal democratic structure. That step is the necessity of life, that can be made only by the international community, and without which there is no progress, as shown by the current political and social situation. The hope remains that its representatives will get courage and, while there is still time for it, decide for, obviously serious, but for the survival of B&H and well being of its citizens, the inevitable step.

VI. SPECAL REPORT – RELATION OF THE STATE TOWARDS CHURCHES AND RELIGIOUS COMMUNITIES IN B&H

VI.1. Confessional wide variety of Bosnia and Herzegovina

Bosnia and Herzegovina is famous for wide variety of its religious and cultural life. Sarajevo, the capital of B&H, had the vocation of the European Jerusalem. Unfortunately, beauty of this variety in B&H is permanently distracted by the war destruction and ethnical cleansing of its territory. The genocide war that outraged on its territory did not circumvent religious facilities and religious officials.

According to the census in B&H of 1991, three traditional religious groups prevailed:

- Islam 40 percent,
- Orthodox religion 31 percent and
- Catholic religion 15 percent.

We may also consider the Judaism as traditional confession in B&H but in statistic dimensions the number of Jews and of other religious groups is really symbolic. The largest number of remaining population of B&H, for this census, expressed themselves as atheists which is direct consequence of almost half century of antitheistic ideology ruling in these parts.

VI.2. Legal position of Churches and religious communities³³ in B&H

Bosnia and Herzegovina is, maybe, the only State in Europe that did not solve the issue of legal position of Churches and Religious Communities because the unique solution of this problem on the level of B&H has not been found.

For normal development of a State, in social and economic sense, in the construction of efficient system of the rule of law and application of the highest standards of the democratic structure developed by the international community, it is necessary that the State has organised legal system that guarantees, as we often like to say, the functioning of the rule of law.

Religious communities or Churches are unavoidable part of social life of any state community, with the immense contribution and influence in the everyday life of citizens of that state, regardless of political and legal structure or ideology that follows its social organisation. Therefore, in and legally organised state, it is necessary to precisely regulate all matters relating to religious communities and Churches through its nominal legal part in order to enable, first of all, foundation and functioning of religious communities and churches, and also the relation of the state towards religious communities and churches.

³³ It is needed to point out the necessity of differentiation of terms church and religious community, with regard to the notion of church in Christianity which is, because of its spiritual dimension, much broader than the notion of a group of believers – religious community. The most important representative of religious communities in B&H is certainly the Islamic Religious Community although there is a whole line of less numerous religious groups.

What is the current situation in this respect in B&H we will try to explain in the following paragraphs.

VI.3. Constitutional position of Churches and religious Communities

As it is known to the most of our citizens and a small number of people outside of B&H borders, currently in B&H there are thirteen Constitutions and one Statute in force, which relates to legal organisation of the Brčko District, and which is, by its competencies or legal power given by this Statute to the Brčko District, completely identical to the Constitutions of entities.

We will briefly “stroll” through the provisions of these Constitutions-Statutes, that relate to Religious Communities and Churches.

VI.4. Constitution of Bosnia and Herzegovina

There are no direct provisions that would speak some more about Religious Communities and Churches or generally about religion in the Constitution of B&H. The issue of religion is treated in Chapter II of the Constitution “Human Rights and Fundamental Freedoms”, as follows:

“II.1. Human Rights: Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms...

II.2. International Standards: The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.

II.3. Enumeration of Rights:.....paragraph 1(g) mentions:

Freedom of thought, conscience and religion.

II.4. Non-discrimination: The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin...”

Thus, it clearly follows from these provisions of the Constitution of B&H that matters relating to religion and therefore to the Religious Communities and Churches, as form of organised functioning, are placed into category of most important human rights together with right to life, freedom etc., and any violation of this right is subject to sanctions. The Constitution especially emphasises the issue of prohibition of discrimination in the line of protected rights, among those the prohibition of discrimination with regard to religious beliefs. Normally, it is one thing to prescribe these rights and the other thing is to implement them in the everyday life. The level of the state’s democratic development is also measured by the realisation of these standards in that state and regulation of sanctions for breaches of these rights.

VI.5. Constitution of the Federation of Bosnia and Herzegovina

Matters relating to the freedom of religion in this Constitution are in the Chapter II.- Human Rights and Fundamental Freedoms. These are the following provisions: “II.A. Article 2(1) All persons within the territory of the Federation shall enjoy the rights:

d) To freedom from discrimination based on race, colour, sex, language, religion or creed, political or other opinions,

1) To fundamental freedoms: free speech and press; freedom of thought, conscience, and belief; **freedom of religion, including private and public worship;.....** “

As it is obvious from the above provisions, here, for the difference to the Constitution of B&H, religious liberties are elaborated more broadly as, for example, “freedom of religion, including private and public worship”. However, as we will see later on, these constitutional provisions have not been converted into the law.

VI.6. Constitution of the Republika Srpska

The Constitution of the RS regulates the matter of religion, i.e. Religious Community and Churches is also regulated in the Chapter II-Human Rights and Freedoms.

Article 10 stipulates: “Citizens of the Republic shall be equal in their freedoms, rights and duties; they shall be equal before the law and they shall enjoy equal legal protection irrespective of their race, sex, language, national origin, **religion**, social origin...”

Article 28: **“Freedom of religion shall be guaranteed. Religious communities shall be equal before the law and shall be free to perform religious affairs and services. They may open religious schools and perform religious education in all schools at all levels of education; they may engage in economic and other activities, receive gifts, establish legacies and manage them, in conformity with law.**

The Serbian Orthodox Church shall be the church of the Serb people and other people of Orthodox religion.

The State shall materially support the Orthodox church and it shall co-operate with it in all fields and, in particular, in preserving, cherishing and developing cultural, traditional and other spiritual values.”

In these provisions, in comparison with the Constitution of B&H and the FB&H, it is clear that the Constitution of the RS does not regulate only the general human right to religion within the freedom of thought but also establishes some rights of Religious Communities that are not listed in the above-mentioned Constitution in the Constitution itself. We emphasise the right to establish religious schools at all levels of education, engaging in economic and other activities, establishment of endowments/legacies, management thereof, etc. Thus, everything that should be in essence elaborated and organised by a law from the sphere of activities of Religious Communities, or Churches.

However, Article 28 paragraphs 3 and 4 contain interesting provisions as to the status of the Serb Orthodox Church in relation to the Serb people and state (entity).

It is necessary to mention that this provision of the Constitution of the RS is disputed by the Constitutional Court of B&H.

VI.7. Constitutions of Cantons – 1 to 10

Not one of the ten Cantonal Constitutions has but one provision that would directly relate to the issues of religion or Religious Communities. All these Constitutions direct to the appropriate human rights provisions in the Constitution of the FB&H in the chapter that relates to human rights.

VI.8. Statute of the District Brčko

In the Statute of the Brčko District of Bosnia and Herzegovina there is also no direct provision that would speak of religious rules or Religious Communities but there is a provision (Article 13 of the Statute) that contains the general reference to the rights and freedoms guaranteed by the Constitution and laws of B&H and laws of the Brčko District without discrimination under any grounds.

VI.9. Legislation of the level of B&H and the FB&H

VI.9.1. General overview

The issue of freedom of religion, free expression of religion in public, performance of religious ceremonies by the Religious Communities and right of Religious Communities to, in accordance with the law, establish schools, universities, social and welfare institutions, and to manage them, and to enjoy the protection and aid of the State, and some other issues of importance for Religious Communities are partly organised in B&H in the several laws, and some areas are not organised at all.

On the level of the State of B&H, until now, in accordance with appropriate provisions of the Constitution of B&H (Annex IV to the General Framework for Peace in Bosnia and Herzegovina), the law on legal position of Religious Communities and Churches has not been issued.

On the 15th of December 1976, the Socialist Republic of Bosnia and Herzegovina passed the Law on Legal Position of Religious Communities, that is formally and legally still in force. It regulates, amongst other issues, that citizens may found Religious Communities that gain the quality of civil-legal person on the date of submission of their application to the Municipal administrative organ where the seat of community is. This Law restricted in large extent the public operations of Religious Communities. For example, under this Law the right to found new institutions and schools, except for needs of education of its own youth, is not permitted. Religious education is permitted but within facilities of Religious Communities and with some other restrictions. Also some substantive restrictions exist with regard to property. Article 6 speaks clearly of restrictions in this Law, as follows: "It is forbidden to perform activities of general or special social interest and establishment of bodies for such activities within Religious Communities, their organs and organisations." This Law was issued in completely different social, economic, legal and political environment in relation to the situation today, and it has not been harmonised with changes that occurred, first of all, in completely different constitutional position.

The characteristic of civil and political person established by the existing law is not complete and precise enough with a lot of legal dilemmas and lagoons, especially with regard of the realisation of legal personality.

This law, in accordance with Article 2 of Annex II to the Constitution of B&H (Continuity of legal provisions), and Article IX. 5 of the Constitution of the FB&H is applied on the territory of the Federation of Bosnia and Herzegovina, as provision of the Federation.

The Republika Srpska as well has not pass a new law on the legal position of Religious Communities but applies the existing one, but in the RS the explicit

provisions exist on the actions of Religious Communities in the Constitution and these are directly applied.

VI.9.2. The Decree with the Force of Law on Institutions (OG RB&H no. 6/92³⁴)

On the 8th of June 1992, the Presidency of the RB&H passed the Decree with the Force of Law on Institutions, and in this Decree in Article 3 paragraph 3 it is stated: “Public Institution may be found by the Assembly of the Republic of Bosnia and Herzegovina (hereinafter the “Assembly of the RB&H”), the Municipality Assembly, the Assembly of the City Community and Religious Community, individually or together with other legal or natural person when the competent Municipality estimates that the public interest exists for its foundation”.

Thus, the competencies of Religious Communities to found public institutions under the condition that “the competent Municipality estimates that the public interest exists for its foundation” clearly follow from this provision. Which Assembly (or Council, because titles are nowadays different), that depends on the activity concerned; whether this activity is within the competence of the Municipality, City, Canton, or the Federation.

Article 1 of this Decree regulates what is considered to be the institution. Under this provision the area of social activities in which Religious Communities may participate is really broad, starting with education, medical protection and social securing.

On the level of the FB&H the law on institutions has not been passed, so, this provision is applied except when determined otherwise by the Cantonal provision, having in mind the division of competencies between the Federation and the Canton.

VI.9.3. The Law on Pension and Disability Insurance (OG FB&H no. 29/98)

Article 11 paragraph 1 subpara. 2 of this Law regulates the issue of obligatory insurance in such way that the obligatory insurance is prescribed for the whole territory of the FB&H for persons “who, in accordance with special provisions, individually perform professional activities in form of profession and for religious officials”.

In other provisions of the Law the technique of insurance is explained.

The same law by the RS (OG RS no. 36/97) in its Article 15 distinguishes the insurees – religious officials and prescribes that “the insuree – religious official, within the managing of this Law, is a person that on the grounds of the procedural decision of the competent religious organ or Religious Community performs the official duty or religious service”.

The difference of responding provisions in the laws of the FB&H and the RS is obvious.

The Law of the FB&H only mentions religious officials in the group of obligatory insurees and goes no further, while the Law of the RS determines it in detail, so that the procedural decision on performance of religious official duty of a competent religious organ or a Religious Community is needed.

This matter may be regulated in this Law, and may be generally regulated also by the Law on Legal Position of Religious Communities³⁴.

³⁴ Irregular and low pensions, in average amount of 155 KM in the FB&H and 120 KM in the RS, are indication enough of really serious situation of pensioners.

VI.9.4. Law on Defence of the FB&H and the RS

In both Laws the provisions exist that relate to the “objection of conscience”, which, amongst other issues, is connected to the religious beliefs of some Religious Communities although it does not have to be the issue of religion but also of broader freedom of beliefs and conscience.

The issue of presence of Religious Communities within the professional military units is for this moment regulated by the applicable regulations that are issued by the Minister of Defence.

VI.9.5. Law on Implementation of the Penal Sanctions (OG FB&H no. 44/98), (OG RS nos. 27/93 and 16/95)

Article 12 (FB&H) prescribes that “Convicted person has the right to satisfy his religious needs. Institutions are obliged to secure conditions for fulfilling of religious needs”.

By-law elaborates on these provisions, and as such they are applied mainly in the FB&H.

The Law of the RS has separate chapter that has a title “fulfilment of religious ceremonies” and articles 107 to 111 consider the rights of condemned persons in the time observing sentence of imprisonment and the role of Religious Communities.

We are of the opinion that this solution is better than the one in the Law of the FB&H, because the Law has priority over the applicable regulation and cannot be amended so easily as the applicable regulation.

VI.9.6. Law on Humanitarian Activity (OG FB&H no. 35/98)

This is one of activities where Religious Communities have very active role and contribute immensely to the solving of the humanitarian issues especially in crisis situations such as a war or catastrophes and in the poor regions of our planet.

Article 7 paragraph 1 of this Law regulates that “Humanitarian organisations may be founded by... Religious Communities and their organisations...”

So, the Religious Communities and their organisations are explicitly named here, and Article 13 paragraph 1 subpara. 4 prescribes who is competent to pass the decision on foundation of the humanitarian organisation, and that is: “authorised body of the Religious Community and its organisation if the founder id the Religious Community or its organisation”.

VI.9.7. Law on Primary Education (OG of the Canton Sarajevo no. 7/98)

There is no unique law on primary or secondary education on the level of B&H and FB&H. According to the Constitution of FB&H, this is the competence of Cantons. These laws are passed in all Cantons and we will consider here, from the aspect of Religious Communities, the Law of the Canton Sarajevo.

Foundation and work of primary schools is regulated in Chapter II. Article 7. Article 7 paragraph 2 prescribes that “ the Primary schools, as public institution, may be established by the Canton or the Religious Community individually or together with

other legal or natural person when the Canton estimates that for the establishment of it the public interest in accordance with the law exists”.

The education plan, where the Canton is not the founder, is subject to the previous approval by the Minister of Education.

Formally speaking, the procedure is very simple. The decision of the competent body of the Religious Community and the statement of the Canton that the public interest exists are required.

One of conditions for performance of this activity is also the consent for the education plan in order to secure unique education plan in its largest part on the territory of one Canton.

As far as we know, this issue is regulated in the same or similar way in the corresponding legislation of other Cantons as well.

VI.9.8. Law on Secondary Education of the Canton Sarajevo (OG of the Canton Sarajevo nos. 11/98 and 9/00)

In relation to the provisions on the Primary education, there are no substantive differences in this Law. Article 9 regulates the right of all Religious Communities to establish a secondary school as a public institution, individually or together with some other legal or natural person.

These schools operate with the same rights and obligations as other that are founded by the, for example, the Canton (i.e. they have to be registered in the evidence of schools, court evidence etc.).

When the status changes of schools that are founded by the Religious Communities are in question, they may be performed only with the previous consent of the Minister of Defence.

VI.9.9. Law on Pre-school Education (OG of the Canton Sarajevo nos. 1/96, 3/96, 16/97 and 9/2000).

In this area the Religious Communities are also given possibility to establish the pre-school facility, either individually or together with other legal or natural persons, when the existence of the general interest is established (Article I paragraph 2). Here, in the procedure, the approval is requested of the Municipal Councils or Municipal Services.

VI.9.10. Other Legislation

There are some other parts of legislation that in general give the same rights to the Religious Communities as to other legal persons but a large number of situations are not regulated. Here, we will point out only to some of the open issues that are regulated only in part, inadequately regulated or not regulated at all.

For example, the Law on Ownership and other real rights where the right of Religious Communities to have the title of the owner and other real rights should be regulated; the Law on Business Companies which should clearly regulate the right of Religious Communities to establish business companies; the Law on Enforcement Procedure which should regulate that the seizure cannot be executed on the property and rights that are necessary for performance of their activities; the Law on Health Protection which should clearly regulate the possibility of Religious Communities to be owners of the institutions for house care, clinics, general hospitals, special care hospitals, health centres and local health centres; the Law on

Public Information where the issue of press, radio, television, programmes of press agencies and other public and electronic media should be regulated; (the Law on Telecommunications relates to this one); the Law on Press which should not have any restrictions with regard to publishing of books and other publications in the sense of the current restriction relating only to the religious press; and also important: the Law on Public Assembly, which should regulate assembly of citizens for the purpose of securing their religious interests, and some provisions of the Family Law could also be of interest (issues relating to the registration of marriage).

Since the Religious Communities do not perform their religious activities with the aim of gaining profit, they should not be taxpayers of profit taxes or value-add taxes.

We are waiting, with special interest, for the issuance of the Law on restitution of B&H, its entities and the Brčko District. It is expected that this Law will regulate repossession of property of the Religious Communities that was expropriated (seizure) from them in the period of the communist regime.

The Agreements between the Holy Chair and the Bosnia and Herzegovina would be of a special importance for the Catholic Church. Not a single one of such Agreements has been signed yet, and the ex Yugoslavia has the signed Protocol on Negotiations that were performed between the Government of the SFRY and the Representatives of the Holy Chair (Vatican), concluded on the 25th June 1966 in Belgrade.

Bosnia and Herzegovina did not overtake this Protocol as its own.

VI.10. Conclusions

1. The Constitutions of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, of the Cantons in the FB&H and the Statute of the Brčko District are treating the issue of religion in the Chapter of human rights and freedoms guaranteed by the European Convention. Not a single word on the activities of the Religious Communities.
2. The Constitution of the Republika Srpska contains provisions on the freedom of religion but also on the activities of Religious Communities. This Constitution prefers one Religious Community (Serb Orthodox Church) in its constitutional provisions, which automatically put other Religious Communities existing in the territory of the RS into the unequal position.
3. The existing law on the position of the Religious Communities is anachronic and it is necessary to pass a new one as soon as possible.
4. The issue of legal personality of Religious Communities must be regulated by a new law on the legal position of Religious Communities because in B&H, and in other countries as well, the legal personality is acquired by the registration in the appropriate books on the basis of law. Here, it would be natural that the registration of Religious Communities is performed by a competent administrative body on the level of the State. This law should be passed on the level of the State and not on the level of entities.
5. It is indisputable that the Religious Communities are *sui generis* different then the other possible forms of organisation of citizens and political parties, and cannot be equalised with these.

6. Also, the Law on the Legal Position of Religious Communities should not interfere with the internal organisation of Religious Communities because that is the matter of the legal acts of the Religious Communities.
7. Therefore, by this Law it is necessary to prescribe that Religious Communities are legal persons, and that they acquire this legal personality by their registration in the records of legally prescribed State administrative body. Characteristics that mark a Religious Community and make it different from other legal persons should be prescribed. This have to be based upon Article 9 of the European Convention on Protection of Human Rights and Fundamental Freedoms, under which everyone has the right to express his/her religious beliefs together with others, and to practice it freely and publicly, and following that, it marks Religious Communities as legal persons that are founded for the practising of organised religious life, and especially because of public and equal practising of religion, performance of religious services, businesses and other activities.
8. In accordance with the European Convention (Article 9 paragraph 2) some restrictions are possible in the activities of Religious Communities and even refusal to register them, if a Religious Community expresses its religion on the detriment of life, health and property of its believers and other citizens or contrary to the legal order or public moral, and the final decision on that should be passed by the judicial body.
9. The new Law should also organise the issue of inviolability of Religious Communities space/territory.
10. The aid of the State to the Religious Communities must also be organised precisely and must not depend on the will of individuals. The issue of enforcement of so called Church taxation is one of issues that should be discussed when issuing this new Law, as well as the issue of non/payment of taxes and custom tariffs for things that are serving to the Religious Community or its officials for their religious needs.

The whole line of opened issues remain that should be discussed when issuing the new Law on the Legal Position of Religious Communities in order to organise transparently the relation between Churches or Religious Communities and institutions of authority of Bosnia and Herzegovina, with the view of enabling the functioning of Religious Communities of B&H in the sense of full equality and security.

The complete presentation made above shows that in a large number of different positive legal provisions in B&H it is spoken about Churches and Religious Communities as about legal subjects. However, the problem is not solved in its essence since the *specificum* of Churches and Religious Communities has not yet been solved and legally defined as social phenomena.³⁵ The irregularity of legal status of Churches and Religious Communities in B&H causes to them a lot of problems in the areas of life that should have been considered banal. For example, the simple opening of the bank account for Churches and Religious Communities represents a problem because they are neither legal nor natural persons. Also, in the realisation of rights of Churches and Religious Communities in regular administrative and judicial proceedings, these bodies have a discretion right to decide on their legal personality. Decisions of courts or other organs rejecting requests of Churches and Religious Communities with no consideration as if submitted by an unauthorised

³⁵ We are speaking here of Churches and Religious Communities in the social context.

person are not a rare thing – which is incompatible with modern democratic principles. Lack of legal regulations (legislation) in this area we also consider as a relict of former socialist system but also the consequence of post-Dayton anarchy caused by existence of numerous bodies with legislative power and their mutual inconsistency.

As it is obvious in the whole Report things do not function as they should in this field as well. After the initiative of all four traditional religious confessions in B&H, through the institution of the Inter-religious Council of B&H, for issuance of the Law on the Legal Position of Churches and Religious Communities, it may be stated that solution of this problem came to the phase of pre-parliamentary consideration. Since this is completely harmonised text of the Law, the initiative should be seen as a serious step on the road of tolerance and mutual indulgence without which Bosnia and Herzegovina, most certainly, cannot survive.

(TRANSLATION FROM CRAT LANGUAGE)