

DEUTSCHE KOMMISSION

JUSTITIA ET PAX

REPORT ON THE STATE OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA IN THE YEAR 2009

IZVJEŠĆE O STANJU LJUDSKIH PRAVA U BOSNI I HERCEGOVINI ZA 2009. GODINU

Presented by the Justice and Peace Commission of
Bishop Conference B&H.

Predloženo od Komisije Justitia et Pax Biskupske
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PREFACE

The situation in Bosnia and Herzegovina is still not being discussed often in the countries of the European Union. For many reasons political attention is directed to the pressing problems in Afghanistan, Pakistan, Iran and in other countries. Bosnia and Herzegovina are living in the shadow of the bright spotlights of the interests of the world community. If one considers the connection between social and political attention as well as the political capacity to act, as it is characteristic of democratic societies, this growing blind spot should set us thinking. Is it possible that many have come to terms with the ethnic segregation of Bosnia and Herzegovina on the quiet, despite all official declarations, following a mixture of reluctance in view of the poor developments and the deceptive hope that things will change for the better some day?

This year's report on the situation of human rights in Bosnia and Herzegovina illustrates the difficult social and political situation as well as the growing tension in the country. The population in Bosnia and Herzegovina feels the effects of the International Financial Crisis. 30 % of the people are living in extreme poverty. Especially affected are women, children and old people. The report shows in a sobering way the specific problems of a post-war society that at the same time is marked by 40 years of communist dictatorship. The war in Bosnia and Herzegovina took place 15 years ago, but peace has not been achieved yet. One gets the impression that peace is still a very long way off. The ethnic segregation still continues. Unless this process is stopped, the fragile union of Bosnia and Herzegovina will be threatened. This union, however, was and is one of the objectives of the international community of states, that has contributed to overcome the effects of the war and to build up a democratic society in Bosnia and Herzegovina. The commitment of the states, however, has not always been successful.

The Commission for Justice and Peace in Bosnia and Herzegovina demonstrated sound judgment when they asked for the foundations and prerequisites for a sustainable peace and a fair development in their country. With perseverance the commission points at the basic mistakes of the Dayton Agreement. The question of a revision or a substantial further development has still got to be answered. The political reluctance to approach this subject matter and with this the own mistakes and responsibilities, which can often be found, indicates that there is still a long way to go. To leave out the subject matter or to refer to the responsibility of the local active people would mean not to do justice to one's own responsibility. The assumption of this joint responsibility will require the

creation of a resilient political determination and a continuous, sometimes even contentious dialogue on the situation in Bosnia and Herzegovina.

This is why I am glad to be able to present, also this year, the report on the situation of human rights in Bosnia and Herzegovina by the local Commission for Justice and Peace. It is an offer and a challenge to carry out a necessary dialogue. If this report promotes the necessary talks about Bosnia and Herzegovina and with Bosnia and Herzegovina, it will have fulfilled its purpose. I would like to express my gratitude to the Commission of Bosnia and Herzegovina for initiating this talk and for their willingness to independently and unimpressed by the political situation, pose the question of the perspectives for a peaceful development in Bosnia and Herzegovina for discussion.

+ Bishop Dr. Stephan Ackermann

President of the German Commission for Justice and Peace

JUSTITIA ET PAX
**THE BISHOPS' CONFERENCE OF BOSNIA AND
HERZEGOVINA**

REPORT
ON THE STATUS OF HUMAN RIGHTS AND FREEDOMS
IN BOSNIA AND HERZEGOVINA FOR THE YEAR 2009

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I. INTRODUCTION

Speaking out in support of human rights in Bosnia and Herzegovina may seem a pointless and futile task to many, doomed to failure by the dearth of adequate mechanisms for promoting and protecting these rights. Moreover, the discussion of human rights in this country is not infrequently perceived as Utopian, often met with a lack of understanding from political representatives and disbelief from citizens. The reasons are numerous. When it comes to political representatives, it is difficult to avoid the impression that a feudal mentality prevails where political, economic and social rights are conditional and dependent upon belonging to a certain fief, by which one enters the circle of the protection of the local political leader. For many political officeholders, human rights are not much more than useful verbal insertions in conversation with international representatives. When they are committed to the exercise of certain rights, such rights often only apply to the members of their ethnic or political group. Citizens often view the question of human rights with incredulity, primarily due to the long period during which these rights have not been respected. In fact, we can say that in this country, with the exception of certain brief historical periods, the idea has never taken root that *"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood"* (UN Universal Declaration on Human Rights, Article 1). Through a long historical period, since the late Middle Ages, regimes have alternated here in which discrimination on religious, national or ideological grounds was incorporated into the very nature of governance. The culmination of discrimination occurred during the most recent war (1992 – 1995), when there was an attempt to eliminate members of other (religious or national) groups systematically through the taking of life or expulsion from a particular region. When finally pressed by the international community, this time of madness ceased. A fragmented society has remained in the territory of this land and an inefficient state apparatus has been set up that is neither capable nor willing to protect the individual and collective rights of all its citizens. Not infrequently, the only experience with civil rights that the citizens of Bosnia and Herzegovina have experienced has been during the time they spent as workers or refugees in Western countries. When it comes to respect for these rights in this country, the sad reality is evident that the majority of the citizens view them as something unrealistic and unattainable here and, therefore, see no sense in fighting for them.

As much as the question of human rights and the struggle for them to be respected have been frustrating issues and seemingly pointless, the Justitia et Pax Commission of the

Bishops' Conference of Bosnia and Herzegovina, given the dignity of every human being and carrying out its mission to advocate the promotion of and respect for human rights, denouncing their violation and disregard, regularly compiles the Annual Report on the Status of Human Rights in Bosnia and Herzegovina. Although it is difficult to see any progress in this respect and, moreover, it seems that the state of human rights is regressing in this country from year to year, the Commission presents this report for the year 2009 in the hope that it will help raise awareness and promote greater respect for human rights in Bosnia and Herzegovina.

All the previous reports have noted that the deprivation of nearly all the categories of the population in Bosnia and Herzegovina of their rights is the result of the dysfunctional and unjust constitutional and legal order. Unfortunately, we must reaffirm that this unjust and inefficient state system has continued to generate disregard for human rights in the year 2009. The situation is further exacerbated by the general economic crisis, which is felt even more acutely in this impoverished country. In last year's report, we also called attention to the general crisis in the society, morality and the individual, the long-term unresolved state of which is keeping it alive and causing it to become increasingly deeply entrenched. With sorrow, we most note that this crisis has continued to deepen this year. This will be demonstrated by a review of the political situation in this country, which analyzes the work of the domestic political structures and the representatives of the international community. We again present the current social picture of Bosnian-Herzegovian society, which shows further degradation in the social rights of the citizens of this country. This year's report also contains an analysis of the rights of women, children and the young, with particular emphasis upon education. Perhaps the greatest sources of fear are the structural problems in this society, which lead to the denial, disregard and trampling of human rights. Therefore, we present issues regarding the work of the courts, which should be the fundamental lever of the protection of human rights, and are often one of the mechanisms of the violation of the same, primarily due to their inefficiency. Furthermore, we present an analysis of the implementation of the Law on Freedom of Access to Information, which is supposed to contribute to the open nature of the work of all the public authorities but instead has been implemented to a very limited degree. On the other hand, analysis of the Real Estate Tax Law adopted by the Republika Srpska clearly demonstrates how the authorities can still implement continued ethnic cleansing and build a structure that paves the way for the unfair and arbitrary applications of legal provisions through legislation, ultimately leading to the inequality of citizens and violations of human rights.

In preparing this report, the Commission has sought to substantiate its allegations with facts and sources, to the extent possible. However, there are many areas and realities that cannot be studied by scientific methodology, which are present in the life and realities of this country whose citizens most certainly feel the acute pain caused by these realities. It is like an organism that feels pain but finds it difficult to determine the cause or explain it. As a part and stakeholder of the Bosnian-Herzegovian society, the Commission feels the weight of these unjust situations and realities, and does not want to overlook them merely because it is not always possible to support all assertions in a scientific and exact manner.

II. THE POLITICAL SITUATION – A CLIMATE OF DISTRUST AND INTOLERANCE

II.1 The Political Scene in Bosnia and Herzegovina

Prior to the independence of the country, for nearly half a century the citizens of Bosnia and Herzegovina endured the onus of the totalitarian system of communist Yugoslavia. However, the breakthrough in democracy with a multi-party political system and independence in the early 1990s did not greatly facilitate the exercise of human rights and freedoms.

An ordinary citizen often asks himself what is the basis for the entrenched, hypocritical and numerous affairs of the unmasked ruling elite – who, moreover, have survived in power for decades while, despite everything, their political position seems all the stronger and invulnerable.

The answer, among other things, lies in the fact that for years political parties have remained in power whose quasi-political and economic programs are based upon an alleged concern for national (and even religious) interests, while most often they have no real political or economic concepts, visions or programs, whatsoever. Analysis of the biographies of the majority of Bosnian-Herzegovian political leaders will show that among the authorities of Bosnia and Herzegovina, the main role for the most part is still played by sympathizers and heirs of the failed totalitarian regime. If formerly inveterate atheists and frequent opponents of all national and democratic ideas are now presenting themselves as democrats and protectors of the faith and nation, it is not difficult to discern the real cause of the political hypocrisy that has taken hold in the political arena of Bosnia and Herzegovina. Since the centers of political power are still held by persons who have replaced the ideology of a one-party government with the ideology of national intolerance, the domination of the principle of intolerance in our political arena, which is otherwise characteristic of totalitarian systems, is not surprising.

In the twilight of the political scene in Bosnia and Herzegovina, the opposition, the framework of which consists of parties who want to present themselves as a modern social democratic option, has fit in completely. Although they wish to present themselves as not national, and for solely this reason a genuine democratic political alternative, these political parties have, nonetheless, negotiated to obtain the position of the legal successors to the assets of the Communist Party of Yugoslavia, by which they have acquired a significant infrastructure for their continued political struggle to return to power. In the brief mandate of the alliance government in the Federation of Bosnia and Herzegovina, no significant departure has been noted from the existing nationalistic

rhetoric and practice. In the Republika Srpska, Social Democrats are also in power, who lead through nationalistic rhetoric and practice aimed at the further breakdown of the state institutions and the continuing spread of division.¹

Bosnia and Herzegovina, unlike the majority of other transition countries, has never adopted a lustration law and has not launched a parliamentary initiative for its adoption. A similar situation occurred in neighboring countries with the disintegration of the former Yugoslavia. Therefore, the regional tensions in relations with neighboring states and the strained relations among the three ethnic groups of Bosnia and Herzegovina are not surprising. The involvement of the old political structures in the political scene of Bosnia and Herzegovina and the region prevents genuine democratic development and the affirmation of human rights. Such a personnel structure of the political apparatus in the region and country can hardly produce any equitable agreement that would bring lasting peace in this region.

It is evident that there is no position or opposition on the political scene of Bosnia and Herzegovina which would inspire hope for the well-being of the peoples and the citizens who live in it. There remain too little grounds for optimism because it is difficult to expect any substantial step forward by the existing political powers.

The lack, above all, of moral values and a democratic orientation among the majority of those who should be leading the peoples of Bosnia and Herzegovina cannot bring this state, its citizens and peoples to prosperity, especially if one bears in mind that the fundamental restructuring of the state is needed.

II.2 The Political and Social Climates

In Bosnia and Herzegovina, as a multiethnic state of three constituent peoples,² divided into two nearly ethnically cleansed entities, the exercise of fundamental human rights is

¹ Prime Minister Milorad Dodik of the Republika Srpska is currently the unquestioned leader in the entity and wants to present himself as the most consistent advocate of the solutions achieved in Dayton. Thus far, Dodik has successfully obstructed all attempts at constitutional reform in B&H, which necessarily include the transfer of the authorities of the entity to the state. As his main argument, he uses the threat of a referendum for the secession of the Republika Srpska from Bosnia and Herzegovina – supported by the results of the ethnic cleansing by which the RS has become a nearly mono-ethnic Serbian entity, with extensive powers. According to the Dayton agreement, Serbs obtained 49% of the territory of B&H through the Republika Srpska, and part of the territory that they were beginning to lose rapidly at the end of the war has been returned to them. The military intervention of the NATO Pact saved the Serbs from nearly total military collapse.

² According to the latest census figures from 1991, in B&H there were 4,364,574 inhabitants, of whom 43.7% were Muslims (since 1993 they have assumed the national name of Bosniaks), 31.4% Serbs, 17.4% Croats and 7.6% other (of whom 5.5% were Yugoslavs). To this day, there has neither been another census nor is there any political will to conduct one in the near future.

still dictated by ethnic and religious affiliations. The exercise of individual human rights is often directly dependent upon the will of the local, frequently ethnically colored, policy, which tightly controls the ethnically determined part of the territory. Discrimination against minority groups due to their ethnic or religious affiliations remains a fundamental problem of the Bosnian-Herzegovian society and state.

Unfortunately, even fifteen years after the end of the war, a mood of ethnic, religious and political intolerance prevails throughout the territory of Bosnia and Herzegovina, which is also directly dictated through the functions of the authorities exercised by narrow groups of the domestic political elite. These narrow ruling structures are aware that they can only survive by continuing to generate national tension and intolerance.

There is usually no genuine collective concept behind the omnipresent political rhetoric about the supposed threats to national interests but only hidden aspirations to afford personal gain and privileges to a narrow circle of individuals through their participation in government. Throughout the wartime and postwar periods in Bosnia and Herzegovina, narrow groups of the political elite without genuine political and intellectual profiles have been defined who, under the conditions of the nonfunctioning of the legal state, often fish in trouble waters and thus acquire riches by robbing their own people. Empty nationalistic rhetoric has often been a cover for the shameless plunder of social goods and an excuse for the failure to achieve a modicum of prosperity, at least for their own people. The frightened and impoverished population, which suffered both during the wartime and the postwar periods, under these bleak circumstances has become a mechanical voting machine and firm base upon which the machinery of the ruling quasi-national political elites is standing.

In addition to the narrow political interest groups, the existing climate of distrust and ethnic conflicts is greatly heightened by the media, which frequently approach political events uncritically, without argumentation, together with nationalistic rhetoric or support. In Bosnia and Herzegovina, there is nearly no free and independent journalism. During the year 2009, there were frequent and sometimes vulgar attacks recorded by politicians on journalists. Furthermore, the voice of independent intellectuals seems to be completely silenced or all the evils of society are uncritically attributed to ethnic and religious differences. The institutions of the civil society also seem inadequate for such a situation and their voices sound soft or incomprehensible. Nearly no resources are being invested in culture. B&H is also lagging behind other countries in transition in the field of education.

The situation in the Bosnian-Herzegovian society seems quite unripe for radical changes and democratization. Therefore, any talk of universal human rights here often seems meaningless, and every written word is condemned to be unread. This should not dis-

courage us. On the contrary, for the Commission and all thinking people in this country, this is an additional challenge for us to persist in pointing out the causes for the general deprivation of rights.

II.3 The Need for the Structural Reform of Bosnia and Herzegovina, and the Role of the International Community

The survival of opposing and mutually exclusive structures in the tissue of the political authorities of Bosnia and Herzegovina has been especially served by the constitutional-legal structure of the state, according to which not only is the state unjustly divided according to ethnicity but also continues to generate the negation of the human rights of the peoples and citizens of Bosnia and Herzegovina.

The undeniable merit of the Dayton agreement of 1995 is in the fact that it finally brought peace and an end to further bloodshed to the citizens of Bosnia and Herzegovina.³ However, it also imposed unjust solutions, according to which the results of aggression and so-called “ethnic cleansing” have been legalized. That is the unacceptable injustice of this agreement, which has proved to be an insurmountable obstacle for the society of Bosnia and Herzegovina. Although imposing peace, the international community also legitimized the unjust and dangerous ethnic division of Bosnia and Herzegovina, founded upon the effects of warfare, and thus has facilitated its further degradation. The war and forcibly drawn borders legitimized in Dayton have made Bosnia and Herzegovina a permanently ethnically divided country. During the strange implementation of the peace, this division has become more unjust and dangerously entrenched.

During the war up to the signing of the Dayton Agreement, approximately 1,250,000 persons, i.e., 28.4% of the total population, were driven from B&H and an additional 1,370,000 persons, 31.2% of the total population, were displaced within the country. This means that during the war, there were approximately 2,680,000 refugees and displaced persons, 59.6% of the total number of the citizens of B&H. Estimates of the number of persons killed or missing range between 100,000 and 200,000.

To this day, the consequences of the war have not been statistically analyzed because the authorities in both entities are not prepared to reach a political agreement on the

³ The General Framework Agreement for Peace, under the pressure and patronage of the great powers, was initialed on November 25, 1995 in Dayton, Ohio, and signed in Paris on December 14, 1995. In addition to representatives of the Croats, Serbs and Bosniaks/Muslims of B&H, the guarantors and co-signers were as follows: William Clinton – President of the United States, Felipe Gonzales – Representative of the EU, Jacques Chirac – President of the Republic of France, Helmut Kohl – Chancellor of Germany, Victor Chernomyrdin – Prime Minister of the Russian Federation, and John Major – Prime Minister of the United Kingdom, as well as Franjo Tuđman – President of the Republic of Croatia and Slobodan Milošević – President of the Federal Republic of Yugoslavia (then the Union of Serbia and Montenegro, also including Kosovo).

manner of conducting a population census. Namely, during the year 2009 the Bosniak parties openly opposed any census that would record information on ethnic, religious and linguistic affiliation, while insisting upon a census at the level of the entire country.⁴ In addition, the most influential Bosniak parties⁵ justified their opposition by the fact that the standards of EUROSTAT⁶ do not stipulate that it is necessary to record ethnicity. On the contrary, the authorities of the Republika Srpska insist upon a census in which ethnic, religious and linguistic characteristics are indicated. Moreover, the nationalistic authorities in the RS welcomed the political concept of the Bosniak parties and, based upon the aforementioned arguments, are insisting that the census should be conducted at the entity level. In this sense, the authorities in the RS launched pre-parliamentary initiatives in 2009 for the implementation of the census, which, according to announcements, is to be held in 2011 at the level of the Republika Srpska.

According to the Action Plan of the Council of Ministers for the Implementation of the Obligations of European Partnership, the law on the population census should be adopted no later than 2010. However, it is nearly certain that the planned population census cannot be conducted in the year 2011, and it is quite clear that the EU will not accept a state for membership where no one knows the number of inhabitants (estimates vary by up to 1,000,000)⁷ or the educational structure of the population, and where, for example, it is not even possible to calculate the GDP.

The Commission is of the opinion that a population census at the level of the entire B&H is an essential task which, for many reasons, should be performed as soon as possible, primarily because a comprehensive census would reveal the actual demographic consequences of the war and postwar policies imposed upon the peoples with the blessing and instruction of the international community. Moreover, we are also of the opinion that the violent changes in the demographic structure of Bosnia and Herzegovina should not be permitted to reflect upon the constituent rights of the peoples in B&H or upon their participation in the government. Furthermore, we are of the opinion that the only just solution for sharing power at the local and entity levels should be the ethnic

⁴ In the latest population census of 1991, the categories of national affiliation, religious affiliation and mother tongue were statistically processed.

⁵ The Party of Democratic Action (SDA) and the Party for B&H through such positions actually retain the concept of the unitary state of B&H. A census that would cover the categories of national and religious affiliations would certainly also precisely reveal the disastrous results of ethnic cleansing in the Federation of B&H. This would correct the completely unfounded perception that Bosniaks were the sole victims of the war, which the majority of the current Bosniak political elite have selectively espoused at the international level.

⁶ EUROSTAT – the statistical office of the European Union.

⁷ According to the latest census from 1991, there were 4,364,574 inhabitants of B&H.

structure of the population prior to the war, i.e., according to the population census of 1991.⁸

Pursuant to Annex IV of the Dayton Agreement, B&H was divided into two entities.⁹ During the war, the Republika Srpska was nearly entirely “cleansed” of the non-Serbian population, while a substantial percentage of the Serbs were expelled or emigrated from the other entity, the Federation of B&H, in which the other two constituent ethnic groups (Bosniaks/Muslims and Croats) coexist. During the war, the population structure of the other parts of B&H (the Federation of B&H and the Brčko District) also changed considerably, a trend that continued with intensity, even after the war.

Whether one wants to admit it or not, by imposing the Dayton solutions the great powers, like Pilate, washed their hands of the crimes in Bosnia and Herzegovina. Thus, they legalized the results of the Greater Serbian policy of “*fire and sword*,” also arousing and transmitting to others the ideology of hatred and the persecution of the other and the different.¹⁰ To this day the Dayton agreement is reflected in the unfavorable social and political situation in B&H. As an example of the direct projection of Dayton on the current situation in B&H, we can cite the example of the welcome that the authorities of the Republika Srpska prepared for Biljana Plavšić when she returned from Sweden, having served a prison sentence there for war crimes.¹¹ On October 27, 2009, she returned

⁸ Pursuant to the Decision of the OHR, the census of the population in B&H in 1991 was supposed to be used as the basis for the distribution of authority until the final implementation of Annex VII of the Dayton Agreement.

⁹ Within the framework of the Dayton agreement (The General Framework Agreement for Peace), Annex IV, among others, has been adopted, which is the new Constitution of Bosnia and Herzegovina. The Constitution of B&H, as the supreme constitutional and legal document of this country, has never been ratified by the Parliamentary Assembly of B&H or published in the official gazettes. The original version of Annex IV was in the English language. Up to the present, there has not been an official translation into any of the three official languages in B&H, so there are still various interpretations and dilemmas concerning its original content.

¹⁰ The fact that the international legal institutions have not succeeded in adequately punishing the main promoters of the ideology of the crimes systematically implemented in the territories of B&H during the war (1992 – 1995), reveals the hypocritical face of international policy and its role in this area. By forcing the pragmatic political concept of equal guilt, which is systematically implemented in the inconsistent practice of the International Criminal Tribunal for the Former Yugoslavia (ICTY), it is desired to erase the dirty role of the politics of the great powers in the wars that occurred with the disintegration of Yugoslavia. Through the litigation of the Hague Tribunal, international law has apparently failed the examination of fairness, and justice for the many victims of crimes has remained slow and inaccessible.

¹¹ Pursuant to the verdict of the International Tribunal for the Former Yugoslavia of February 2003, the wartime President of the Republika Srpska, Biljana Plavšić, was sentenced to 11 years of prison for crimes against non-Serbs in the course of the war in B&H. During the court proceedings, in October 2002 Biljana Plavšić pleaded guilty to the persecution of Croats and Muslims in 37 municipalities in B&H in 1992. Among other things, the verdict states the following: “*Biljana Plavšić participated in the most serious crimes, including a campaign of ethnic separation that killed tens of thousands of people, and expelled thousands from their lands with great brutality* (www.dw-world.de – October 29, 2009).

Biljana Plavšić was released from a Swedish prison after serving two thirds of her sentence. The former Swedish minister of justice, Thomas Bodstrom, has directly blamed the minister of foreign affairs,

at the taxpayers' expense on an airplane belonging to the Government of the Republika Srpska, and in Belgrade a welcome was personally prepared for her by the Prime Minister of the Republika Srpska, Milorad Dodik. From this example, it is quite clear what kind of creation the Dayton agreement spawned. It is no wonder that Greater Serbian policy was transformed from Dayton's greatest opponent to its greatest advocate and "patron."

For a long time, the international community presented the Dayton agreement as its best and only possible solution, in line with the global interest of the great powers for peace in and around the Balkan powder keg. Although the *Justitia et Pax* Commission of the Bishops' Conference of B&H understood that the democratic organization of the country and the human rights situation in B&H were never the dominant motives of the international community for any political or economic initiative, for years it has consistently called attention to the untenable political concept of Dayton and, therefore, has been criticized by political officials and representatives of the international community in B&H.

We are convinced that the blind insistence by the international community on the Dayton division has contributed to intolerance among the peoples in B&H and the continuation of ethnic cleansing, even after the war. Although the OHR¹² announced the "full implementation" of Annex VII of the Dayton agreement on December 31, 2003, the existing (and it is feared the final) demographic picture of Bosnia and Herzegovina clearly indicates the complete failure of the project for the return of refugees and displaced persons to their homes. Although the implementation of Annex VII has achieved significant results in the restitution of usurped property, there has not been a program for sustainable return. Systematic discrimination against the so-called "minority returnees" has brought about permanent changes in the demographic situation in B&H. Instead of displaced persons and refugees to their prewar homes, statistics indicate increasing numbers of emigrants from B&H. The survival of B&H and the future of its citizens and peoples do not need a greater threat than the perpetuation of the existing ethnic divisions and the dysfunction of the political organization.

Carl Bildt, the former High Representative in B&H, for the early release of Plavšić: *"It is the responsibility of the Swedish government that Plavšić is now at large in Serbia. They wanted to do it but did not have to do so,"* said Bodstrom, adding that this decision had been directly influenced by Bildt, who is on friendly terms with Plavšić. Due to this decision, Bodstrom reported Bildt to the Swedish Parliament, accusing him of a conflict of interests. *"He (Bildt) simply did not have to decide in this case,"* said Bodstrom, who is now the head of the Parliamentary Justice Committee (Source: HINA - www.m.dnevnik.hr).

¹² OHR – Office of the High Representative in B&H. Through the so-called Bonn Powers, adopted on December 10, 1997 at the Bosnia Peace Implementation Conference held in Bonn, the Venice Commission gave the OHR broad authorization for legislative, executive and judicial powers in B&H, which it could use indefinitely as the ultimate interpreter of the Dayton agreement.

Although not a single government institution in B&H has ever declared opposition to the return of refugees and displaced persons, the national governing policies of intolerance, together with the pragmatic and unprincipled approach of the OHR, created a favorable climate even after the war for continued ethnic cleansing throughout nearly the entire territory of B&H. This has certainly further cemented the devastating results of war crimes and persecution.

After the war, and thus also in the year 2009, further ethnic cleansing, migration and displacement of citizens occurred within the nationally divided territory of B&H, although not a single institution in Bosnia and Herzegovina has accurate data. Through EUROSTAT, the Ministry for Human Rights and Refugees of Bosnia and Herzegovina is currently collecting data on emigration from B&H, which should be published within the migration profile of B&H in the year 2010. According to estimates by this ministry, currently 1,350,000 citizens of B&H are living outside the country, including citizens who, in the meantime, have also acquired citizenship in their recipient countries. According to the World Bank, currently 1,471,594 emigrants from B&H are living out of the country, i.e., 37.7% of the total population of Bosnia and Herzegovina, ranking the country second in the world according to the number of emigrants in relation to the total population.¹³

The statistics of the Catholic Church in B&H show, for example, that out of the prewar number of 220,000 Catholics (roughly the same as the number of Croats) who lived in the part of B&H which was transformed into the Republika Srpska according to the Dayton agreement, there remained approximately 14,000 Catholics living there at the end of 2009, i.e., 6.36% of the prewar number. The emigration trend has not stopped during the postwar years and has the characteristics of a structurally caused constant.

The situation is similar, although indeed somewhat less dramatic but nonetheless catastrophic, in the Federation of B&H, where erosion continues of the centuries-old multi-ethnic and multi-confessional demographic situation in this region. For example, at the end of 2008 in the deanery of Sarajevo, there were only 13,328 Catholics living in 6,703 households,¹⁴ while according to the 1991 census there used to be 34,873 Croats living in ten Sarajevo municipalities.¹⁵ Thus, the number of Catholic Croats in Sarajevo (the capital city of B&H and the Federation of B&H) in 2008 was reduced by approximately 38.2% in comparison to the year 1991.

¹³ Source: *Večernji list*, January 15, 2010, p. 9.

¹⁴ Source: *Svjetlo riječi*, December 2009, p. 4.

¹⁵ According to official data from the population census of 1991, in the territory of the city of Sarajevo (10 municipalities) there were 527,049 inhabitants, of whom 259,470 (49.23%) were Muslims, 157,143 (29.81%) Serbs, 34,873 (6.61%) Croats, 56,470 (10.71%) Yugoslavs and 19,093 (3.62%) others. The number of Croats in Sarajevo shows a trend of numerical and percentile decrease in comparison to the 1971 census, when 41,354 (11.5%) registered Croats lived in Sarajevo – Source: Wikipedia (www.hr.wikipedia.org).

Church statistics on the number of Catholics per diocese provide the following information:

1. Mostar-Duvno Diocese: 193,633 Catholics in 2007 and 191,556 in 2008 (a decrease of 2,077),
2. Trebinje-Mrkan Diocese: 21,242 Catholics in 2007 and 20,661 in 2008 (a decrease of 581),
3. Banja Luka Diocese: 38,099 Catholics in 2007 and 37,997 in 2008 (a decrease of 102) and
4. Vrhbosna Archdiocese: 206,138 Catholics in 2007 and 204,060 in 2008 (a decrease of 2,125).

According to published Church statistics, 459,102 Catholics were living throughout the territory of B&H in the year 2007, while in 2008 there were 454,247 recorded, indicating that the number of Catholics in B&H over a one-year period decreased by 4,838 persons, i.e., 1.05%, and that a trend of decrease has been recorded in the entire territory of B&H.

The above indicators of the decreased number of Catholics are mainly the result of emigration from B&H, without taking the factor of natality into account. This is confirmed by the official statistical institutions in B&H, which indicate that there was a natural increment in the year 2008. According to the data of the Agency for Statistics of Bosnia and Herzegovina, at the national level there was a natural population increment of only 150 persons,¹⁶ while the data of the Federal Bureau of Statistics indicate that during the year 2008 in the Federation of B&H there was a natural population increment of 3,440 persons (the difference between the number of births and deaths in the Federation of B&H).¹⁷ The birth rate cannot be determined accurately because the precise number of inhabitants is not known.

In any case, according to these exact figures, the birth rate in the Federation of B&H is positive, which indicates that the decrease in the number of Catholics in B&H is primarily the result of the migration of this part of the population, i.e., emigration due to adverse socioeconomic conditions and the political environment.

Taking into account that all Croats are not professed Catholics (over 85%) and that in B&H there are also a small number of Catholics of other nationalities, Church statistics on the number of Catholics approximately correspond to the number of Croats as the smallest of the constituent peoples in B&H.

¹⁶ The number of live births in B&H: 34,176; the number of deaths: 34,026 – Source: www.bhas.ba.

¹⁷ The number of births in the Federation of B&H: 22,920; the number of deaths in the Federation of B&H: 19,480 – Source: www.fzs.ba.

The Catholic Church does not have precise statistics for other confessions but evidently the situation on the terrain indicates that the supremacy of the majority over “minority ethnic groups” is the main reason for the migration and displacement of all three constituent peoples within B&H. Forcing representatives of all three constituent peoples to sign the Dayton agreement, by this international legal act the international community attempted to mitigate the consequences of the armed conflict. In this sense, the peace agreement determined the entire set of solutions which were supposed to correct the injustices inflicted by violence and war (e.g., Annex VII on the return of displaced persons and refugees to their prewar homes). Nevertheless, the pragmatic nature of politics led the international community on the wrong path in the implementation of this goal. The results were the most disastrous precisely for the “minority groups” and the smallest constituent people in B&H.

Initially intended to achieve any type of compromise needed to stop the warfare, Dayton has spawned the unwieldy and administratively divided country of Bosnia and Herzegovina.¹⁸ According to this compromise, the constituent peoples were supposed to exercise their constitutional rights through the administrative units of the newly created state structures. The untenably cumbersome state administration, internal conflicts and the overlapping of the responsibilities of the administrative units logically led to forcing the international administration in Bosnia and Herzegovina (OHR) through imposed legal and constitutional solutions to cede partial authority of the entities to the state institutions of B&H and that of the cantons to the entity of the Federation of Bosnia and Herzegovina. This is an entire process that continuously occurs within the Dayton framework. The international community is only able to implement it through constant political pressure on the political representatives of all three nations. The pragmatic nature of the policy resulted in the exertion of pressure on the nation with the smallest population, and thus politically the weakest, in order to yield the greatest fruit. With the previously described centralization and devaluation of the authority of the cantons and entities, Croats as a constituent people lost almost all their political influence. Since this process had to occur according to the form of the Dayton division,¹⁹ the result of such

¹⁸ Pursuant to the Dayton agreement, B&H is divided into two ethnically cleansed entities: the Federation of B&H and the Republika Srpska. Until the signing of the Order on the Implementation of the Decision of the Constitutional Court, B&H was legally the entity of two of the constituent peoples of B&H: Croats and Bosniaks-Muslims, while the Republika Srpska was the entity of the Serbian people. In Dayton, the Federation of B&H was administratively divided into ten cantons (counties). Each of them had its own government and parliamentary body. The cantons were divided into a total of 84 municipalities, and the Republika Srpska was also administratively divided into five regions and 64 municipalities. In addition, the Brčko District (a condominium of two entities) was a separate administrative unit in B&H.

¹⁹ According to the interpretation of the so-called Venice Commission (Bonn, December 1997), the OHR is the supreme interpreter and implementer of the Dayton agreement, with the broadest powers in the legislative, executive and judicial authorities.

an approach by the OHR in B&H was that Croats became/remained the victims of the supremacy of the majority at both the entity and state levels. In the end, as the minority in the Parliament of the Federation of Bosnia and Herzegovina, Croats are not able to exercise their constitutionally proclaimed constituent rights because they have always been outvoted by the Bosniak majority, while through the work of the Parliamentary Assembly of B&H they are also completely blocked from decision making – which is reflected through the institution of entity voting.²⁰ In contrast, such a constitutional order has afforded the Bosniaks and Serbs the possibility of exercising their constituent rights through parliamentary majorities in the entity assemblies. Therefore, it is obvious that the existing solutions have caused inequality and the loss of the constituent position of Croats in B&H.

Although the international community has initiated constitutional reforms with (we believe) the good intentions of creating a functional and viable state, having taken the wrong path, it has favored the continued reinforcement of the supremacy of the majority over the minority and, in addition to the already widespread discrimination at the individual level experienced by the minority groups, it has also promoted discrimination at the collective level of the entire country.

The chief driving force of the continued process of the deprivation of the rights of the Croats in B&H is the misguided preference for the principle of “one person – one vote” by the international community. This democratic principle is favored together with the remaining unjust principle of the division of the country according to Dayton. However, when Croats are in question, the international administration in Bosnia and Herzegovina has not even consistently upheld this principle, as is obvious from the example of the imposition of the Statutes of the City of Mostar, the sole urban entity in Bosnia and Herzegovina where Croats constitute the absolute majority after the war.²¹

²⁰ The problems imposed by the constitutional reforms are discussed in detail in *The Report of the Justitia et Pax Commission of the Bishops' Conference of B&H on the Human Rights Situation in B&H for the Year 2002*. The analysis clearly indicates the discriminatory nature of the constitutional solutions imposed by the OHR (pp. 4-6 in the Croatian version and pp. 44-47 in the English version) – www.ktabkbih.net.

²¹ According to the latest official population census in 1991, the prewar Municipality of Mostar had a total of 126,628 inhabitants, i.e., 43,856 (34.63%) Muslims, 43,037 (33.98%) Croats, 23,846 (18.83%) Serbs, 12,768 (10.08%) Yugoslavs and 3,121 (2.46%) others. Despite the insistence of the Croatian and Bosniak political representatives that the Municipality of Mostar should be divided according to the wartime demarcation lines, immediately after the war the OHR divided it into six municipalities (three with a Croat majority and three with a Bosniak majority). Statistics of the Catholic Church from 2009 indicate that about 64,000 Catholics live in Mostar (mostly Croats), who constitute more than half of the total population – Source: Wikipedia (www.wikipedia.org).

II.4 The Public Administration Crisis in Mostar

Through the intervention of the High Representative in late 2009, the public administration crisis in Mostar was brought to an end. Due to political friction, even 14 months after the elections the City Council of Mostar was incapable of choosing a mayor or adopting a budget. Due to conflicting political options, during this period the Croats and Bosniaks were not even able to adopt a decision on temporary financing, so that nearly all the public services completely collapsed. The inability to achieve political consensus among the national options in Mostar could not, however, result in the Croatian majority outvoting the minority, which is the regular practice in the other parts of B&H, because in 2004 the OHR imposed a form of local self-government in Mostar, according to which it is the only city in Bosnia and Herzegovina where the customary principle of “one person – one vote” does not apply.

Specifically, pursuant to the Decision of the OHR dated January 28, 2004, the new Statutes of the City of Mostar went into force, by which the previous six municipalities of Mostar were transformed into a so-called “city areas” that represent the electoral constituencies in the City of Mostar (three with Croatian majorities and three with Bosniak majorities).²² The solutions imposed by the OHR upon Mostar stipulate that the electoral constituencies, which do not have equal numbers of inhabitants, are each to be represented by the same number of representatives in the City Council as a parliamentary body consisting of 35 councilors. For example, the electoral constituency of the Southwest (with a Croatian majority), which has approximately 30,000 voters, is represented by the same number of councilors in the City Council as the electoral constituency of the Southeast, which has approximately 7,000 voters, which means that one vote in the electoral constituency of the Southeast is approximately worth 4.2 votes in the electoral constituency of the Southwest. Each city area is represented by three councilors in the City Council. The remaining seventeen councilors are elected in the territory of the city as a single electoral constituency. None of the constituent peoples is permitted to have more than fifteen councilors. A further inconsistency in comparison to the practice applying to the other cities in Bosnia and Herzegovina is a provision in the Statutes that a two-thirds majority of the City Council is required to adopt the budget.

²² Mostar is the administrative and economic center of western Herzegovina, as the only remaining major region of Bosnia with an absolute Croatian majority. After a bloody clash, which began in 1992 with shelling from the Serbian positions, a conflict between the Croats and Muslims broke out in 1993 that claimed many victims on both sides and caused major destruction. After the war, despite the insistence of both sides that the city should be divided according to the wartime demarcation lines, the OHR divided the territory of the former Municipality of Mostar into six city-municipalities (three with a Croatian majority and three with a Bosniak majority). Cf. Report of the *Justitia et Pax* Commission of the Bishops’ Conference of B&H for 2004 (www.ktabkbih.net).

The crisis of authority in Mostar clearly indicates that the OHR acts very selectively in exercising political pressure on the authorities in B&H in order to achieve necessary reforms in the public sector. The case of the city of Mostar clearly indicates a discriminatory attitude toward the smallest constituent people in B&H because the OHR does not employ the same measures as for the other two constituent peoples.

The *Justitia et Pax* Commission of the Bishops' Conference of B&H generally supports the application of "*the principle of positive discrimination,*" according to which, within reasonable limits, the members of the so-called "minority groups" are given greater rights than individuals from the "majority group." In the process of return, such practice would greatly facilitate the reintegration of minority groups and we have supported it. However, the application of this principle must be consistently implemented throughout the entire territory of B&H. Speaking within the context of the overall relations in B&H, this Commission cannot consider the selective solution of the problem to be just, without consistent criteria. There is no constitutional basis for the systematic deconstitution of one of the three constituent peoples merely because it is the smallest in number. Moreover, this is also very detrimental in the long run to the democratic processes in B&H. If the reorganization of the city of Mostar is an equitable model for the prevention of the supremacy of the majority over the minority, we are of the opinion that the international community, if it wants to be credible and if it wants to ensure a peaceful future, must consistently apply such a model to the other cities in B&H, especially for the reason that the supremacy of the majority over the minority in the rest of B&H, unfortunately, represents quite normal political practice.

In previous annual reports, the *Justitia et Pax* Commission of the Bishops' Conference of B&H has provided a detailed analysis of the structural unsoundness of the state and legal Dayton structure of B&H, which not only makes inequality possible among the citizens and peoples of B&H but even encourages it. Moreover, we are deeply convinced that after Dayton the international community, using its unlimited powers, has further deepened the division of Bosnia and Herzegovina, and has made unjust solutions even more so. The lack of a consistent position by the representatives of the democratic world is not surprising, considering that the term "*international community*" does not designate any legal subject. Nonetheless, according to the Dayton agreement, the international community in B&H is constituted as a specific subject under the authority of the Office of the High Representative (OHR). Thus, Bosnia and Herzegovina, despite good intentions, has become a victim of the overlapping and conflicting political and economic interests of the major powers.

Even so, the primary cause for injustice and the negation of human rights throughout the territory of B&H must be sought in the local government structures, i.e., the lack of

readiness by the representatives of the three peoples in B&H to create the prerequisites for reconciliation and coexistence, while respecting the principles of justice, equality, civilized dialogue and political compromise. The accumulated unresolved issues among the ethnically divided and conflicting politics of the three constituent peoples increasingly stifle hope for the democratic evolution of mutual relations and the stabilization of the situation in the near future. Under such conditions, it is difficult to expect significant progress toward the affirmation of human rights and civil liberties in Bosnia and Herzegovina.

The view of the Commission is that structural changes in Bosnia and Herzegovina cannot be fairly implemented on the basis of the unjust Dayton division. A country consisting of two entities and three constituent peoples seems to be an unfeasible project under the existing conditions. The peace created by the Dayton agreement in 1995 cannot be built in the future according to the Dayton formula because an inequitable solution merely increases the tensions among the peoples of B&H. The existing political and institutional Dayton model of the organization of B&H has not yielded results in a single segment, and does not leave room for the hope of establishing a just society in this region. Therefore, Bosnia and Herzegovina requires fundamental changes that would allow it to liberate itself finally from the ballast of war and turn toward the future.

Unfortunately, it should be noted that the active presence of the international community in Bosnia and Herzegovina has not significantly helped implement the basic democratic principles, which should issue from the fundamental values of democracy based upon the idea of the equality of all citizens before the law with the goal of affirming the freedom of the individual. Indeed, the insistence of the OHR upon pragmatic solutions and its direct intervention in imposing amendments to the entity constitutions of 2002 achieved the complete negation of the Dayton B&H as a decentralized country of three constituent and equal peoples, so that the Dayton division into two entities was transformed into the division of this country between two peoples.

After fifteen years, some of the representatives of the international community have finally publicly acknowledged that the constitutional solution from Dayton has been a generator of conflict and obstacle to lasting peace in this part of the world. Therefore, in recent years the international community (especially the U.S. and part of the administration of the EU) has been constantly initiating constitutional changes in B&H.

However, it appears that all previous attempts at finding an agreement on the new structure of B&H have merely been cosmetic changes in order to afford legitimacy to the existing solutions imposed in Dayton and afterwards. In our opinion, such an approach cannot yield a fair solution in any case. Therefore, Bosnia and Herzegovina need encouragement and assistance in finding a fair constitutional-legal agreement that would

result in the equality of all the peoples and citizens throughout the territory of B&H. Only such a structural reform could make B&H a stable democratic country, in which citizens could equally and fully exercise their human rights in an appropriate civilized manner.

III. THE SOCIAL RIGHTS SITUATION IN B&H

III.1 The Impact of the Economic Crisis on the Economic Trends in B&H

Under the impact of the global economic recession and the structural anomalies of the state apparatus, the already grave social and economic situations in Bosnia and Herzegovina deteriorated significantly during the year 2009. This was influenced by a number of overlapping adverse circumstances, which afforded Bosnia and Herzegovina (together with Moldavia) the status of probably the poorest countries in Europe. Of particular concern is the continuous trend of economic lag behind other transition countries – so that Bosnia and Herzegovina's chances for inclusion in Euro-Atlantic integration are diminishing from day to day.

Under conditions in which the industrial potential was damaged during the war, and totally destroyed and looted during the postwar period, it is increasingly difficult for the citizens of B&H to find work. Furthermore, the conditions of the global crisis have diminished the already meager material resources of the population and economy in B&H. During 2009, the Council of Ministers of B&H and the governments of both entities did nearly nothing to lessen the impact of the global recession upon the economy, and thus upon the citizens' standard of living.

The inefficient and cumbersome state structure of the Dayton B&H, as a result of the continuous trend of unrealistic consumption and the absence of an economic strategy, has led to the brink of a complete collapse in the institutional and economic senses. There is often no desire to activate the available quality resources under state ownership, in order for them to be sold for next to nothing through privatization.²³

Total exports from B&H during the first nine months of 2009 amounted to 4,046,291,000 KM (1.00 KM = cca. 0.51 EUR), while during the same period the total imports amounted to 9,116,183,000 KM, which represents a huge trade deficit of 5,069,892,000 KM for the impoverished B&H.

In November 2009, the total industrial production index in Bosnia and Herzegovina (the index according to average monthly production in the reference year 2005) was 22.9% lower than the index in October 2009. The index according to average monthly production in 2008 is 98.3. The rate of change in industrial production in comparison to No-

²³ Drastic examples are represented by the military industrial sector and the Oil Terminal of the Federation, where nothing has happened for years, although budgetary funds have been earmarked for their renovation. Taxpayers, therefore, are allocating significant funds for the inactivity of a few employees according to criteria of ethnic and political eligibility, as determined by the political elite in power.

vember 2008 is negative and amounts to -10.5%. The rate of change in cumulative production in comparison to the same period in 2008 amounts to -4.3%.²⁴

During 2009, under these circumstances, the authorities sought additional loans from the IMF²⁵, which were almost entirely used for the consumption of the state apparatus and maintaining unrealistic social programs with which the votes of the most impoverished category of voters were purchased during the last elections. During the fiscal year 2009, on several occasions the ministers of finance pointed out that unrealistic social programs and consumption threaten the state with bankruptcy. Despite this, parliamentary representatives and the state administration raised their own salaries, while the already paltry pensions and welfare benefits are being issued late and called into question.

Since there is no political will to fulfill the obligations assumed in the arrangement concluded with the IMF, which requires a reduction in consumption and structural reforms as the prerequisites for the disbursement of the second credit tranche, the irresponsible and self-satisfied state administration is plunging the country into an increasingly deeper crisis, practically without any long-term program for overcoming it.

III.2 Increasingly Entrenched Poverty and Growing Unemployment

The majority of the citizens have belonged to the socially vulnerable category of the population for a long time. According to UN Criteria, over 30% of the population in B&H is living under conditions of extreme poverty.

Retirees are among the most vulnerable categories of the population. In December 2009, the average pension in B&H was approximately 350.00 KM (178.50 EUR), while the minimum (guaranteed) earned pension is 296.00 KM. Beneficiaries of family pensions (widows, minor children etc.) receive 70% of earned pensions, which is below the minimum for maintaining basic existence.

According to the official figures of the Agency for Statistics of B&H, the total number of registered unemployed persons in September 2009 was 502,192, which represents an increase in unemployment in comparison to September 2008 of 4.2 index points, or an increase in the number of unemployed persons by 21,879. The rising trend in unemployment was particularly acute in the last quarter of 2009. In October 2009, the number of persons employed in the legal entities of B&H was 688,052, of whom 274,862 were women. In September 2009, the total number of registered employed persons in

²⁴ Source: The Agency for Statistics of B&H, www.bhas.ba.

²⁵ IMF – International Monetary Fund.

B&H was 688,636, representing a decline of 2.3 index points in comparison to the year 2008.²⁶

Already in October 2009, the number of persons employed in legal entities in comparison to September of the same year declined by 0.2%, while the number of employed women declined by 0.3%. The number of unemployed persons in October 2009 increased by 0.4%, while the number of unemployed women increased by 0.3% in comparison to September 2009. The rate of registered unemployment in October 2009 was 42.3%, and for women it was 48.1%.²⁷

Labor union statistics indicate that during the year 2009, over 70,000 workers were left jobless, of whom over 56,000 were permanently employed. The president of the Independent Trade Unions of B&H has pointed out that the majority of the workers who lost their jobs were the breadwinners for their families, and particularly emphasizes the vulnerability of the workers in the industrial sector, who are barely surviving.²⁸

The majority of the active working population is also socially at risk. In October 2009, the average net salary was 789.63 KM, while the average gross salary was 1,199.46 KM.²⁹ The so-called "basket" of basic foodstuffs required for the bare existence of a family of four costs around 1,650 KM, and thus the majority of the population cannot even obtain the minimum necessities for life.

According to data from the Agency for Statistics, the average net salary paid during the third quarter of 2009 was 787.00 KM (402.39 EUR), which represents a decrease of 2.61% in comparison to the same period of the preceding year.

The price of the products and services used for personal consumption (the consumer price index) in September 2009 was 1.4% lower than in September 2008, while the twelve-month price increase averaged 1.1%.

The increase in the consumer price index and the decrease in average salaries clearly indicate significant deterioration in the socioeconomic position of the majority of the inhabitants of B&H during the year 2009.

Under conditions of high unemployment, the citizens of B&H are experiencing increased difficulty finding work in foreign countries because in 2009 Bosnia and Herzegovina, together with Albania, remained the only European countries that had visa regimes with the European Union. Those most severely affected are the members of the Bosniak national corpus (Muslims), since members of the Croatian and Serbian peoples

²⁶ Source: The Agency for Statistics of B&H, www.bhas.ba.

²⁷ Source: The Agency for Statistics of B&H, www.bhas.ba.

²⁸ Source: *Večernji list*, January 7, 2010.

²⁹ Source: The Federal Office of Statistics, www.fzs.ba – (in the Federation of B&H, 67% of gross wages consist of contributions and taxes).

are able to acquire dual citizenship from the Republic of Croatia³⁰ or, respectively, the Republic of Serbia.³¹

Under conditions when there is a general scarcity of funds, the state institutions do not have an adequate response and do not show appropriate initiative for resolving the dire social situation in which the majority of the Bosnian-Herzegovian citizens have found themselves for a long time.

The purchasing power of employed citizens has significantly declined during the past year, while the expenditures of an average family have generally been reduced to food and basic necessities (electricity, water, other utilities etc.). Conditions of widespread social deprivation and poverty provide fertile soil for rising crime and the increasingly prevalent phenomenon of begging.

III.3 The Political Manipulation of Social Programs

The year 2009 was marked by numerous public protests, strikes and other protests by various social categories. The most vocal among them were unemployed demobilized veterans and recipients of military honors who had retired under special favorable conditions.

While the recipients of military honors are fairly well off for Bosnia and Herzegovina, the amounts of unemployment compensation paid to demobilized veterans are not even sufficient to cover minimal existential needs (approximately 150.00 KM). Nonetheless, announcements that these amounts of unemployment compensation to demobilized veterans would be reduced or suspended provoked a genuine storm of protests among this part of the population.³²

³⁰ Due to diplomatic obstacles created by the Bosniak political establishment, B&H has still not signed a bilateral agreement with Croatia on dual citizenship, although Croats are guaranteed a “*special connection*” with the Republic of Croatia by the Dayton agreement. The majority of the Croats in B&H have two passports (B&H and the Republic of Croatia). In the meantime, there were no major obstacles posed to the signing of a bilateral agreement on dual citizenship with the Republic of Serbia, which the Bosniak political leaders did not oppose due to the large number of immigrant Muslims from Sandžak and Kosovo.

³¹ The EU visa regime for Serbia was abolished in the year 2009. Croatia was not in it after the war. The unprincipled abolition of the EU visa regime for Serbia in 2009 (although the previously stipulated prerequisites had not been met), without making this possible for B&H is a dangerous political decision that directly ghettoizes the Bosnian-Herzegovian Bosniaks/Muslims and further radicalizes the situation in B&H.

³² The Law on the Demobilization of Veterans in the Federation of B&H was adopted on September 26, 2006 (just prior to the holding of the general elections – October 1, 2006), and was “pushed” by the Bosniak parliamentary majority with opposition from the Croatian representatives, the representative of the OHR and international financial institutions – who warned that accepting it in the proposed form could cause a financial disaster in the budget of the Federation of B&H. The law went into force

Due to the large population of unemployed veterans in the Federation of B&H, even the payment of such low unemployment compensation represents an excessive burden for the modest federal budget. However, it must be noted here that the welfare programs, regardless of how insufficient and small they are for the beneficiaries, have not been directed at the target population of those in the greatest need but have often served as a means for the manipulation of the impoverished masses. A particular dimension of the problem is represented by the lack of systematic programs of welfare assistance through jobs, which would be a more lasting and better way of solving social problems. It appears that the distribution of such small welfare benefits without valid criteria³³ often stimulates some people to engage in illegal work without a permit or lessens their desire and interest to seek employment.

We believe that for the able-bodied population of B&H, the state should implement measures to provide employers with hiring incentives, while welfare assistance should be directed to that part of the population incapable of supporting themselves through their own labors (e.g., the disabled, orphans, the elderly who lack pensions etc.).

It must be mentioned that even in the allocation and distribution of welfare assistance, nontransparent criteria are frequently employed. Owing to corruption, many persons receive welfare payments to which they are not entitled by law. Furthermore, members of minority constituent peoples are frequently discriminated against, i.e., less likely to receive welfare assistance to which they are entitled by law than members of the majority constituent people in a particular territory.

It must be generally concluded that the authorities in B&H devote too little attention to the welfare needs of the population, especially the most vulnerable categories. The limited budget does not absolve the authorities of responsibility for the neediest citizens, especially considering that the final expenses of the administration and state apparatus consume approximately 20% of the GDP of Bosnia and Herzegovina (19.94% of the GDP in B&H in 2008).

on January 1, 2007, and its implementation will continue until the end of April 2010 (an election year).

³³ For example, in the Federation of B&H a main registry has not been established for the beneficiaries of all budget allowances, which would, in itself, eliminate many irregularities and increase the transparency of budget expenditures. The establishment of this registry has been obstructed for years by some of the Bosniak political representatives in the Federation of B&H.

IV. THE REAL ESTATE TAX LAW IN THE REPUBLICILKA SRPSKA

After the implementation of the numerous repressive measures, open persecution, threats and intimidation that prevented refugees from returning after the war and thus completed the ethnic cleansing of the Republika Srpska, it appears that the government of that entity is approaching the same goal with perfidious methods. The newest systematic obstacles to prevent people from returning to their prewar homes are being installed through potentially highly discriminatory instruments in the tax system. While some support the new tax, others see it as an instrument for ultimately achieving an ethnically cleansed Republika Srpska.

The Real Estate Tax Law³⁴ in the Republika Srpska is supposed to go into force on January 1, 2011. Unlike the former property tax, based upon square meters of property, pursuant to the new law the tax would be paid according to the market value of the property at a rate ranging from 0.05% to 0.5%. The tax rate would be determined by the municipality and the amount of the tax would be approximately (by visual inspection) determined by the municipal tax commission, in which a decisive role will certainly be played by members of the majority people in the ethnically cleansed municipalities of the Republika Srpska. This opens the possibility, which in this divided country has become a likelihood, that someone not favored by the commission (e.g., a Croat or Bosniak) would have to pay a ten times higher tax for the same area and same market value than someone whose ethnic, political or religious affiliation is more acceptable to the municipal authorities. In addition to the arbitrary determination of the tax base, the determination of the tax rates, ranging from 0.05 to 0.5%, is also arbitrary. No other country in the world has such a progressive taxation system, where some pay a ten-fold higher percentage of taxes than others. Thus, the municipal commission can assess the property of the few Croats and Bosniaks who remained in or returned to the territory of the RS as having high market value, thereby increasing the tax base, which can be taxed at a progressive rate of up to 0.5% per annum.

Citizens who have real estate properties in the Republika Srpska are required to report and register them in the fiscal real estate property register no later than March 31, 2010. The procedure for the citizens of the Republika Srpska for submitting reports for the fiscal real estate property register is in progress, on the basis of which the new type of real estate tax will be calculated as of January 1, 2011. For now, response by citizens has been very weak. Although the final deadline for the completion of this process is March

³⁴ The Real Estate Tax Law was published in the Official Gazette of the RS, No. 110/08, November 5, 2008.

31, 2010, by mid-December 2009 only 150,000 tax returns had been received, and it is estimated that approximately three million should arrive.

For the population of the RS, as well as for citizens who live in the Federation of B&H but own property in the smaller Bosnian-Herzegovian entity, many aspects are not clear. Even during the adoption of this law, there were complaints that it is difficult to understand and the tax system is too vague.

These objections have proven to be justified in practice because citizens are encountering a series of problems when filling out the tax returns. At the Tax Administration of the RS, they claim that they have done everything to educate the citizens in connection with the difficulties in understanding and filling out the tax forms, and that they have informed the citizens about their responsibility to report properties on time. However, property owners express a different opinion and are complaining about the complicated tax forms and the large crowds at the tax centers. Those citizens who own real estate property in the territory of the RS but are currently not living there have generally not had an opportunity to read the newspapers or listen to the broadcasts by the local media and, therefore, are dissatisfied with the campaign by the Tax Administration of the RS. Citizens also have objections to many questions in the tax form of the Tax Administration of the RS, which they must answer. The tax authorities ask for answers to approximately a hundred questions, including those which, according to citizens, are not easy to answer without considerable thought, e.g., they are required to answer questions about access to land, whether there is public access via the main roads, public access to the main or side streets, other public or private accesses and similar details, which are not easy for citizens with an average education to answer.³⁵

For the failure to report properties, the anticipated penalties are from 500 KM to 1,500 KM.

It is unclear why a new list of real estate properties is being compiled in this manner when all the data on property owners and properties are in the cadastre documentation and land-registry offices.³⁶ Furthermore, the motives for the adoption of such an entity law are also indicative, when it is borne in mind that the ruling political oligarchy in the

³⁵ Tax return forms contain many questions about the land regarding its shape, topography, information about buildings (questions are asked about whether the properties are constructed of concrete, stone or brick, concrete panels, wood, sheet metal or other materials; then about the insulation of the building, what time of roof it has and of what material, copper, shingles, tile, fired clay, stone, salonit or other materials or whether it does not have a roof etc.). Precise details are also asked about the years when buildings were built, renovations, the number of stories above and below ground, the number of rooms, kitchens, bathrooms and, among other things, information on windows, floors and what materials they are made of, the percentage of completion, years when interior renovations were performed etc.

³⁶ Real estate cadastres are kept in the municipalities, while land register books are kept in parallel in the courts. It should be noted that cadastres primarily record information about properties while ownership is recorded in land registers.

Republika Srpska is also opposed to a census of the population and assets at the state level of B&H.³⁷

A particular question is the future of the properties belonging to the displaced and refugee families who were wiped out and eradicated, when there are no heirs and the property remained after their deaths. Given the experience of the recent past, the fear is quite justified that the unreported property could be declared abandoned, then taxed, and finally become part of the assets of the Republika Srpska, since there were thousands of such cases during the war.

Many refugees who have still not returned to the Republika Srpska, as well as those who have returned, fear a scenario in which, the Republika Srpska would confiscate the property piece by piece due to their inability to pay the new property tax, so that they would ultimately be deprived of the property acquired by generations of their ancestors. This mechanism has not been decisively stipulated by law but it is logical that the court, in the event that someone is unable to pay an obligation, will order settlement. If even after this the person is unable to pay the required taxes, the unpaid tax liabilities can be paid by selling the real estate.

The only tax breaks authorized by this law are tax exemptions for cultivated land and real estate located in a mine field. When it comes to a house or apartment, the taxpayer is entitled to a deduction of the value of up to 50 square meters for himself and 10 square meters for each member of his household. However, the majority of the displaced non-Serbian population will not have the opportunity to use these tax exemptions because the prerequisites for their return are lacking, which include employment and their children's education.

In the context of the prevailing nationalistic rhetoric and political practice, particularly evident in the Republika Srpska, the suspicions of refugee and displaced Croats and Bosniaks seem fully justified that this new form of taxation is merely a more sophisticated tool to continue the ethnic cleansing of the territory of the Republika Srpska. Therefore, reactions to such tax solutions are already coming from many sides, especially the diaspora.

The attitude of the authorities of the Republika Srpska toward returnees and the systematic and continuous obstruction of return do not allow one to believe that discrimination against the other two constituent peoples would not be continued through the implementation of this law. Therefore, the implementation of the real estate tax could be just another instrument in the political program of the ethnic cleansing of this territory. The current policies and rhetoric of the RS do not provide a reasonable basis for dispelling such doubts.

³⁷ Following the political program of creating a state within the state, representatives of the ruling Alliance of Socialist Democrats (SNSD) are promoting a census that the RS would conduct itself on the territory of that entity.

V. CHILDREN'S RIGHTS IN BOSNIA AND HERZEGOVINA

Bosnia and Herzegovina ratified the Convention of the Rights of the Child in 1993 but in practice little of it has been implemented. Numerous reports and analyses by domestic and international organizations have continued to indicate that the situation is unsatisfactory regarding respect for the basic rights of the youngest population. This is not surprising when it is known that, with the exception of several non-governmental organizations, almost no one is systematically concerned with this problem, including the authorized state services. Indeed, there are certain initiatives in the public sector but, unfortunately, they do not reflect genuine concern for the rights of children in B&H.³⁸

Despite the early ratification of the Convention of the Rights of the Child and the expression of political will to implement the rights stipulated by the Convention, violations of the rights of children in B&H continue to increase. According to data from numerous non-governmental organizations dealing with the rights of children in B&H, a continued rise in juvenile delinquency, violence against children, sexual exploitation and discrimination has been recorded.

It is evident that the rights of the children in Bosnia and Herzegovina are threatened. It should be emphasized that in B&H, according to some estimates (probably exaggerated), approximately 80 percent of the families are existing at the edge of survival and the fundamental rights of the children from these families, even the right to life, are at risk. According to data based upon systematic physical examinations, an increasing number of children are suffering from anemia and rickets, i.e., the classic diseases of poverty.³⁹

Furthermore, according to the legislation, every child in B&H is entitled to an education and the state is required to provide free primary school. However, this is not fully implemented in practice. Not even the provisions regarding primary education are being implemented because two to four percent of the children are not included in the educational process.⁴⁰

In B&H, not even the right of a child to have a name from birth is respected. There is a problem of not entering children in the birth registries who were not born in health institutions. They are called "ghost children" because a child who is not entered in a birth

³⁸ Within the framework of the activities of the Ministry for Human Rights and Refugees of B&H, in late 2002 the Council for Children was established with the goal of monitoring and implementing the National Action Plan for Children for 2002-2010. Thus far, the Council for Children has mainly attempted to monitor children's rights at the level of B&H, although there have been no notable concrete programs or effects in the area of the protection of the rights of the child.

³⁹ Data of the NGO Vesta of Tuzla (www.vesta.ba).

⁴⁰ Data of the NGO Zdravo da ste of Banja Luka (www.zdravodaste.org).

registry practically does not exist and, therefore, cannot exercise his fundamental rights. Such a child is completely deprived of everything that the state must and can provide for him. Efforts are under way to find these children and change their situation.

The Institution of the Ombudsmen for Human Rights of Bosnia and Herzegovina has declared that violence in the state against children in recent years is worrisome. The basic problem in implementing children's rights is that there is not a single institution on the state level that would deal with this issue.

In Bosnia and Herzegovina, there used to be a Council for Children at the Council of Ministers of B&H, which was the umbrella institution for monitoring compliance with and implementation of children's rights. Unfortunately, this institution has not functioned for two years. The council was established in 2002 and abolished in 2007. The Ministry for Human Rights of B&H is currently trying to perform the work of the council, which, given its jurisdiction, is insufficient. Progress was made this year by the formation of the Department of Children's Rights in the Institution of the Ombudsmen of B&H. Within the Institution of the Ombudsmen of the Federation of B&H, a Department of Children's Rights has also been established, and in the Republika Srpska an entity ombudsman for children's rights was established at the end of 2009. The Department for Monitoring Children's Rights of the Institution of the Ombudsmen for Human Rights of Bosnia and Herzegovina receives complaints regarding violations of the rights and freedoms of children. The Department devotes special attention to the protection of the rights and freedoms of children, especially the vulnerable categories of refugees, displaced persons and socially vulnerable categories; affirmation of the rights and freedoms of children; analyses of key reasons for the lack of action by the government authorities in adopting decisions regarding children; and the removal of barriers to the consistent application of the international conventions ratified by B&H.

Without heightened awareness of the rights of children and increased concern at all levels of the government regarding this problem, the situation in B&H will be difficult to improve in the near future. The quality of the education, healthcare services, child protection and child social welfare assistance in B&H is far below the standards of the EU. On the other hand, our country, as a signatory of the Convention on the Rights of the Child, is obligated to respect their rights. The problems of poverty, the social exclusion of children, especially the more vulnerable categories, such as the children of displaced persons, minorities (Roma children) and children with disabilities are still present in B&H.

In B&H there are violations of children's rights in all areas, as assessed by the Ombudsmen for Human Rights of B&H.⁴¹ This concerns investigations of the degree to which

⁴¹ The preliminary results of three studies on the rights of children in B&H were presented by the Ombudsmen of B&H on the occasion of the International Day of the Child, November 20, and the twentieth anniversary of the adoption of the UN Convention.

children are informed about their rights, the most common forms of the violations of children's rights and the problem of children begging in the B&H, as well as a study on the attitude of the media toward children and children's rights. The preliminary results of the investigation of children's rights in the media indicate that the media almost never deal with the rights of children, their needs or problems. The identity of a child is not infrequently revealed before television cameras. Pictures are even broadcast and published of minors whose rights are endangered (with the exception of public services). There is concern that such engagement by the media shows that children have no importance for the society of Bosnia and Herzegovina as a whole.

Children's rights are most frequently violated due to the poor economic and social situation, and in connection with education, welfare protection and healthcare. In a study on the degree to which children are informed about their rights, it was found that children are not adequately informed about the Convention on the Rights of the Child and have no experience in contacting the Institution of the Ombudsmen of B&H. There has been noticeable progress in protecting children from violence but there is a lack of funding for effective rehabilitation programs for children who are victims of violence.

V.1 Begging – Deliberate Child Abuse

When it comes to the problem of begging, the most frequent victims are children from the Roma community who are under 14 years of age, do not attend school and are being deliberately abused by their parents. A child with an outstretched hand is an image that can be seen in all the cities of Bosnia and Herzegovina. The causes are mainly poverty and difficult material conditions. We have already pointed out in previous reports that the institutional systems in B&H either do not respond to this issue at all or treat begging as customary and "normal," which says enough about the lack of sensitivity of the Bosnian-Herzegovian society regarding the protection of children's rights. The measures that must be taken to combat such phenomena are the adequate resolution of the legal framework, education and improvement in the material status of vulnerable families. Neither the authorized institutions nor non-governmental organizations have records on children engaged in begging.

V.2 Children without Parental Care

The general social and economic situation in B&H is considered to be the main cause for the increased number of children without parental care. This year, there will be a

record number of abandoned children in Bosnia and Herzegovina, predominantly newborn babies. The most common reasons for the abandonment of children are poverty, alcoholism, drug addiction and mental illness. Among the old problems is also the lack of official data on the precise number of children lacking parental care.

In the first ten months of the year 2009, a great increase in the number of abandoned children in Bosnia and Herzegovina was recorded, of whom the largest number were newborns from 5 to 30 days of age. For example, at the Bjelave Children's Home in Sarajevo, 25 children were received in 2009, including 17 babies.⁴² According to the records of this institution, this is the largest number of babies received in a year since 1999. Last year and in all the previous years, with the exception of 1999, older children from 4 to 10 years of age had been received. The situation is similar in other cities of Bosnia and Herzegovina.

In Bosnia and Herzegovina, there are no official statistics on the number of children without parental care. The reason is there is no uniform database. It is estimated that this figure ranges from between 2 to 4 thousand children, of whom approximately a thousand are receiving care.⁴³

One of the problems is the low level of public awareness regarding the needs of children without parental care. This is a problem which this country must face. It will also be necessary to raise public awareness about the needs of children. In B&H, very little is being done to help children without parental care find employment when they reach 18 years of age. An increasing problem is the lack of institutions to care for these children.

V.3 The Legal Protection of Children's Rights

As previously mentioned, B&H is a signatory to the UN Convention on the Rights of the Child. However, little has been done on legislation that would protect children's rights in B&H. First of all, it should be pointed out that legislation at the level of B&H has still not been harmonized with the UN Convention. Moreover, legislation at the state level still does not exist.⁴⁴ There is only the adopted Action Plan for the Children of B&H for 2002 to 2010.

Bosnia and Herzegovina is a country characterized by poverty, unemployment of the young, trafficking in persons and drugs, and serious discrimination. Despite the early ratification of the Convention on the Rights of the Child and the expression of political will to implement the rights stipulated by the Convention, violations of children's rights

⁴² Data from a statement by the head of the institution, Amir Zelić (www.slobodnaevropa.ba).

⁴³ These data were prepared by a professional team from the organization SOS Kinderdorf International.

⁴⁴ From a statement by Branka Raguz, Ombudsman of the Federation of B&H (www.slobodnaevropa.ba).

in B&H continue to increase. B&H fulfills its immediate obligations toward the implementation of the Convention through the revision of its legislation and the development of policy and action plans regarding child welfare, including the National Action Plan for Children, the Medium-Term Development Strategy and political activity in specific sectors of the society.

However, the laws in Bosnia and Herzegovina are not in full compliance with the Convention on the Rights of the Child. Despite B&H's response to its direct obligations, it is far from ensuring the progressive implementation of that which is stipulated by the laws. The principles of nondiscrimination, the best interests of the child and the rights of the child to be heard and participate in public life are far from actual implementation. Access to mechanisms of social welfare is minimal, and in practice a number of issues relating to poverty, marginalization, violence in the family and exploitation, which appeared after the war, have not been resolved adequately. Moreover, the socioeconomic and political structures of the state hinder the state's capacity to fulfill its obligations and to protect and implement children's rights.

Statistical inadequacy prevents the monitoring of children's rights and the development and implementation of policies. The state has undertaken limited efforts to respond to its obligations and promote the children's rights stipulated by Article 42 of the Convention of the Rights of the Child. Acceptance of the Framework Law on Primary and Secondary Education in B&H that defines educational goals, the promotion of human rights, and the introduction of the subjects of democracy and human rights into the curricula of elementary and secondary schools represent rare efforts by the government to promote the Convention.

VI. EDUCATION

VI.1 Two Schools Under One Roof

The concept of *“two schools under one roof”* refers to a form of education in some schools in Bosnia and Herzegovina where students from two ethnic groups, Bosniaks and Croats, are in the same school building but are physically separated from each other. Croats rely on the Croatian curriculum and program, while Bosniaks work according to the federal curriculum and program. The most marked examples of two schools under one roof are in the cantons of Central Bosnia and Herzegovina-Neretva.

Some define this phenomenon as the ethnic division of students in secondary and primary schools in some areas of the Federation of B&H, while parents consider this type of education to be the right one for their children and necessary, in compliance with their wish for their children to receive instruction in their mother tongue and have an appropriate and acceptable curriculum. Namely, minority peoples in certain territories, and in every part of B&H someone is in the minority, do not have the right to receive an education in their mother tongue and in the spirit of their national culture, although this right is guaranteed by law. It should be emphasized that the phenomenon of two schools under one roof occurred for the aforementioned reasons.

According to the Constitution of B&H, education in the Republika Srpska is under the authority of that entity, while in the Federation of B&H it is under the authority of the cantons (counties). Therefore, it would be necessary at the government level to ensure that all students have the opportunity to receive a good quality education, and that the children of members of minority constituent peoples are provided with education in their mother tongues, i.e., the exercise of their right to a suitable education.

In the educational practice in B&H, it is essential to find a solution that will reconcile the principles of nondiscrimination and segregation with those of the right to an education in the mother tongue. With failure to find a way to harmonize these two principles, it is difficult to expect progress in this area.

VI.2 The Reform of Higher Education

In the area of the reform of higher education at the universities of Bosnia and Herzegovina, there are recognized political, institutional, financial and social problems. The act on the signing of the Bologna Declaration and the commitments derived from it for Bosnia and Herzegovina have been transferred declaratively from the state level to lower

levels of authority, i.e., entities in the case of the RS and cantons in the case of the Federation of B&H. However, viewed objectively, these levels of authority are neither competent in terms of personnel nor funding to provide the prerequisites for the complete implementation of the Bologna principles in the educational process. By bearing mind that there are 14 ministries in charge of education in Bosnia and Herzegovina, a clearer picture is obtained of the issues related to the successful implementation of the Bologna Process.

For the implementation of significant projects, political support is essential, without which there can be no success or achievement of the agreed goals. The inappropriate attitude of politics toward educational institutions in the first phase prolonged, and later made possible, the adoption of standards that destabilize the system of higher education. One has the impression that the Bosnian-Herzegovian society is not interested in the adoption and application of European academic values.

Problems are also evident in terms of financing higher education, since the relevant authorities in their appropriate capacities have not supported important reform recommendations, without which a project cannot be carried out successfully. The attitude of the state toward the educational segment is characterized by political indifference, delay in the adoption of a government law on higher education and the lack of a government strategy for the development of higher education. It should be mentioned that the Framework Law on Higher Education in Bosnia and Herzegovina has no chapter on financing.⁴⁵

B&H lags significantly behind the majority of European countries in reforms. One of the main reasons lies in the fact that higher education is not regulated at the state level but is left to the local levels. Therefore, very little has been done at the state level for the uniformity and standardization of higher education. Under such circumstances, efforts at integration into the European system are ineffective and will remain so as long as the educational system continues to be fragmented and uncoordinated.

The current educational situation in Bosnia and Herzegovina is regrettable. If the quality and situation in the area of the education offered to the young do not improve, the state of affairs could become catastrophic. In the majority of cases, students in Bosnia and Herzegovina can only dream about modern instruction. Inadequate school buildings and educational materials, as well as instruction that does not meet the standards, reduces professionalism and competitiveness.

⁴⁵ The problems were highlighted at the Third Symposium – The Reform of Higher Education – Implementation of the Bologna Principles at the University of Sarajevo, April 2009.

In our previous report, we presented the results of surveys that were conducted in three cities in the Federation of B&H, according to which approximately 70% of the young people had permanently left B&H. Daily long lines in front of the embassies of foreign countries provide a clear picture. The young see few chances in Bosnia and Herzegovina and, therefore, are deciding to leave the country in protest.

VII. THE POSITION OF WOMEN IN THE SOCIETY

The introduction of the principle of the equality of women and men in all areas of public and private life does not merely represent the fulfillment of one of the basic standards of the implementation of human rights and the fundamental freedoms, and cannot be reduced solely to issues of social justice. Above all, it is a necessary prerequisite for the sustainable social and economic development of a country, with particular emphasis upon reducing poverty and improving the quality of the lives of all its male and female citizens.

The Constitution of Bosnia and Herzegovina prohibits any discrimination on the grounds of sex, which is an important prerequisite for the protection of the social and economic rights of women. Furthermore, the Law on Gender Equality in Bosnia and Herzegovina guarantees equal rights to healthcare and social welfare, as well equality in employment, at work, and in access to all forms of resources regardless of gender.

VII.1 The Economic Position of Women in B&H

The Law on Gender Equality in Bosnia and Herzegovina regulates the issues of employment, labor and access to all forms of resources. The law prohibits discrimination on the basis of gender in work and labor relations. Legislation prohibits the denial of equal pay for work of equal value for both sexes, the prevention of advancement at work under equal conditions, the denial of equal conditions for education, the unequal adaptation of working and auxiliary areas for the working requirements of both sexes; different treatment due to pregnancy, childbirth or the use of the right to maternity leave; any unfavorable treatment of a parent or guardian in the coordination of obligations from professional and family life, or any other act that represents any of the forms of direct or indirect discrimination. All entity and cantonal laws must be harmonized with the Law on Gender Equality in Bosnia and Herzegovina.

Protection of the economic and social rights of women is stipulated by the laws in force in Bosnia and Herzegovina. In the legislative sphere, there is no formal legal discrimination based upon sex in the areas of employment, labor and access to all forms of resources. However, in practice there are various aspects of discrimination on the basis of gender as well as harassment or sexual harassment at work by a colleague, supervisor or employer. Despite this, women, especially younger employees, frequently do not speak

out publicly or provide the initiative for prosecuting such cases in fear of losing their jobs. Also noticeable are discriminatory practices of advertising or notices for the hiring of only one sex, prohibited questions on family planning and eventual pregnancy, as well being fired during pregnancy or maternity leave.

Discrimination is evident in that women as a rule are not property owners and in most cases cannot start their own businesses or, due to a lack of assets, do not have access to loans. Lack of property ownership, however, is very often not a consequence of idleness but of the social role of women.

In fact, women very often perform unpaid household work and such socially useful work prevents them from taking other jobs that are paid. Finally, there is a noticeable lack of education in the area of gender equality, especially among women in rural areas, but also a lack of education within the authorized organs of authority.

Legislation in the area of labor and employment in the Republika Srpska guarantees the equality of women and men in the process of recruitment, employment, achieving benefits from employment, the principle of equal pay for equally valuable work, the principle of non-discrimination according to gender and other grounds; and the prohibition of harassment, sexual harassment and mobbing. Also guaranteed are the protection of employed pregnant women and mothers, and parental leave for both parents at 100% salary, while in the Federation of B&H the issues of maternity leave benefits under the jurisdiction of the cantons differ greatly in the amounts of payments, so it is possible to speak about discrimination against women-mothers. The regulations in the Federation of B&H, according to data from the relevant entity organs, are also harmonized with the Law on Gender Equality in Bosnia and Herzegovina, in order to eliminate any discrimination on the basis of sex.

In Bosnia and Herzegovina, there is a highly evident connection among the social role of a woman, her education, profession and position on the labor market, from which typical male and typical female occupations ensue. There are still very deep stereotypes about desirable occupations and professions that are more for women or men. The opportunities for Bosnian-Herzegovian women to meet the requirements dictated by the labor market are considerably limited. This is due to several factors, such as the patriarchal concept of the role of women in the family and society, the low levels of education and informedness among women in rural areas, favoritism for men in hiring and low credit standing (high interest rates and the small percentage of women who own real estate).

The unfavorable position of women in the area of employment is also evident from the unemployment figures, where women comprise 44% of the total number of the unemployed. This percentage is greater than their share in total employment (35%) or the working population (37%).

Data on employed persons should be considered according to sector, due to the marked division of labor according to gender. Women predominate among those employed in activities related to care: childcare and education, healthcare and social work; and also in the service industry, commerce and public administration. According to educational levels, the greatest difference in the employment structure in relation to gender is in the qualification structure of skilled and highly skilled workers, the majority of whom are men.

Based upon a review of the legal framework of healthcare in the entities and the Brčko District of B&H, the rights provided by the legal texts allow free access and the exercise of legally guaranteed rights to welfare assistance and healthcare regardless of gender. Analysis of the constitutional and legal solutions in this domain indicates that there is a discrepancy between the established rights and the opportunities to exercise them in practice. The range of welfare rights, although guaranteed by the legal framework and by the international documents and conventions that have the power of constitutional provisions, raise the issues of actual access and the exercise of all the forms of legally guaranteed rights for men and women in B&H due to the highly complex institutional structure, poverty, lack of funding, and lack of coordination among various levels in the welfare system and healthcare.

VII.2 Domestic Violence

In Bosnia and Herzegovina, the problem of domestic violence was only studied seriously after the war, although a large number of women have been faced with the problem of violence in the family. Our society is built upon deep patriarchal foundations, so that female victims of violence do not receive support and encounter many prejudices. Acceptance of the fact that the family can be an exceptionally violent environment in which the basic human rights of its members are violated is a very slow and painful process, which is further delayed by the traditional view that the problems arising among individual family members must be resolved solely within the family.

It is very difficult to determine the range of the presence of domestic violence in Bosnia and Herzegovina. The basic reasons for this are primarily due to the concealed nature of the problem, the failure to report cases of violence in the family, the lack of uniform statistical evidence and the attitude that violence in the family is exclusively a "private problem."

The most common causes that lead to domestic violence are inadequate living conditions, unemployment, financial insecurity, alcoholism, stress, mental illness, drug abuse

and violence as a behavior resulting from a patriarchal attitude toward the relationship between a husband and wife.

VII.3 The Impact of Poverty on the Position of Women in Society

Poverty in Bosnia and Herzegovina affects men and women equally, while the impact of poverty is manifested in different ways for men and women. Women are more willing to accept all types of work, assuming additional responsibility for the support of the family in addition to the traditional roles of mother and homemaker.

Women are exposed to discrimination during hiring, in both the private and public sectors, are paid less for the same work than men and have less opportunity for promotion at work, which is inevitably reflected in their material position.

Women are the first to be fired during restructuring and reform, and have more difficulty finding new jobs. Existing data suggest that households headed by women are at a significantly higher risk of entering the poverty category.

The almost complete lack of childcare facilities is a problem that additionally hinders the hiring of women.

The fact that the average life expectancy of women is longer than that of men additionally contributes to the greater exposure of older women to the risk of slipping below the poverty line. Female pensioners, since they were most commonly employed in poorly paid jobs, receive lower pensions. When one takes into account that the educational level among the members of this group is mostly low and illiteracy is high (according to some indications, 38% of the women over 65 years of age are illiterate), it becomes apparent how difficult it is for the members of this group to take advantage of even the modest existing opportunities.

Impoverished women are particularly affected due to the sense of powerlessness and their inability to express their opinions, whether in their own environment or in dealings with the authorities. Those with the greatest difficulties are single mothers, elderly women, refugees, Roma women, female victims of violence, uneducated and unemployed women, and women in rural areas. Women in returnee households are in the most difficult position due to their minority status and often complete isolation from the surroundings to which they have returned.

VIII. APPLICATION OF THE LAW ON FREEDOM OF ACCESS TO INFORMATION

The Law on Freedom of Access to Information came into effect starting in the year 2001. The scope of its application is reflected in the responsibility and transparency of the public organs in Bosnia and Herzegovina at all levels of government. According to this law, it has been determined that *“the information under the control of public authorities represents a significant public good and that public access to information promotes the greater transparency and responsibility of the public authorities, which is essential for the democratic process.”*

This law contributes to strengthening the image of the public authorities because it provides the public with insight into the manner of decision making, while it is also an effective tool in the battle against corruption. According to the provisions of this law, information is *“any material that communicates facts, opinions, information or any other content, including a copy or a part thereof, regardless of the form, characteristics, time when it was composed or how it is classified.”*

Disclosure of information is the rule, while non-disclosure is the exception. Legislative, judicial and administrative authorities; all who have the characteristics of legal persons with public authority, all state agencies, national institutes, national bureaus; all schools, kindergartens, colleges and universities; all public companies; all public radio and television; all hospitals, health centers etc. as public authorities have the duty to disclose requested information to every physical and legal person who submits a request, unless the right of access to information is limited in a manner and under conditions prescribed by law.

As will be pointed out later, the application of this law is of exceptional significance for the democratization of Bosnia and Herzegovina, as well as for strengthening the law-based state and the rule of law. The law also has a significant impact upon the exercise and protection of human rights, because the exercise of human rights is in a causal relationship with the rule of law: the extent to which the law-based state and rule of law have become a reality is reflected in the scope of the protection of human rights. Therefore, it is not surprising that control of the application of this law has been entrusted to the Ombudsmen for Human Rights, who, in addition to performing their functions within the framework of the regular mandates, can, among other things, propose instruction on the application of this law, consider the guidelines and general recommendations, and resolve complaints from citizens within the framework of their mandates. Specifically, the law has obligated the authorities to publish and deliver guidelines; an index or registry of information, quarterly reports that must be submitted to ombudsmen,

who, in accordance with their powers, may make recommendations to all the authorities at all levels.

According to the annual reports of the Ombudsmen of the Federation of B&H, the ombudsmen have assessed that there are still a large number of public authorities that are not meeting their legal obligations. Thus far, for example, on the territory of the Federation of B&H, only 168 public authorities have prepared guidelines and indices/registries, while only approximately a hundred public authorities have prepared quarterly statistical reports. These are, naturally, devastating results regarding the application of this law.

The Law on Access to Information was primarily used initially by journalists because it provides an opportunity for investigative journalism. Today this right is being increasingly exercised by citizens, students, non-governmental organizations, businessmen, lawyers and others. The contents of information applied for that that citizens could not obtain in this manner mostly refer to that of personal interest (e.g., on the occasion of a published competition, a candidate is not chosen and requests access to the documentation of the candidate who was chosen, in order to determine whether that candidate met the prescribed conditions of the competition etc.). Information is also sought on the privatization of various companies, as well as that of general importance, e.g., the salaries of officials, budget expenditures, expense accounts, investments etc.

The fact is that the developed milieus in B&H act more responsibly in implementing this law because in these areas the attitude of the authorities toward the public is more responsible than in less developed areas.

Ombudsmen have noticed that following the adoption of the Law on Freedom of Access to Information, which compared to other laws is a so-called "*lex specialis*," a number of laws have been adopted that are in conflict with it and do not comply with it. This particularly refers to the automatic limitation or exceptions from disclosure of certain information, without resolving each application from case to case on the basis of the contents of the information requested. Instead, exceptions to the disclosure of public information, as stipulated by the laws adopted after the Law on the Freedom of Access to Information went into force, are solely based upon the form and type of information, and in this manner exclude investigations of public interest. Specifically, pursuant to the provisions of Article 25, Paragraph 3 of this law, it is determined that "*the laws enacted after the adoption of this law, whose purpose is not to amend this law, also cannot in any way limit the rights and obligations established by this law.*" For example, the Law on Criminal Procedure of the Federation of B&H, the Law on the Tax Administration of the Federation of B&H, the Laws on Intelligence Services, the Law on Personal Data Protection of B&H, the Law on the Protection of Classified Information of B&H and the

cantonal laws on employment – all have provisions that limit and reduce the rights stipulated by the Law on Freedom of Access to Information.

The Law on Freedom of Access to Information contains certain deficiencies. First of all, it does not include penalties, i.e., provisions regulating violations in cases when the public authorities do not communicate the requested information. There are also certain discrepancies among three laws of this type – state and entity. Thus, the law in the RS does not provide for a compulsory ruling on an exemption from disclosure, while in the state law the (non)binding role of the ombudsman is not defined.

IX. THE JUDICIAL PROTECTION OF HUMAN RIGHTS

Only an autonomous and independent judicial authority, as an achievement of democratic legal systems, can ensure the equality of all citizens before the law and guarantee their rights and freedoms. The independence of courts is one of the greatest achievements of civilization, and the right to an impartial court of justice and a fair and public hearing within a reasonable time is one of the fundamental human rights. The organization and administration of the judiciary in every country should be inspired by these principles, and the independence of the judiciary must be guaranteed by the state and prescribed by the constitution.

The countries of Southeast Europe, especially those resulting from the disintegration of the former Yugoslavia, are often defined as countries of deep conflicts, countries of a strong tradition of anti-legalism, so that although they have achieved certain progress, they are still not states governed by the rule of law.

Given the structure and manner in which B&H functions, as defined by the Dayton agreement, judicial affairs in this country are much more complicated than in the other transition countries in Southeast Europe, especially in the states that were created by the disintegration of the former Yugoslavia.

In the Constitution of Bosnia and Herzegovina, as in the constitutions of the entities, democratic and civilizational postulates are interwoven that B&H will *“be a democratic state that will function as a law-based state with free democratic elections, and the state of B&H and the entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms.”* International documents on human rights constitute an integral part of the Constitution that guarantees human rights and fundamental freedoms, beginning from the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms etc. Consequently, the courts in B&H, as organs of authority, are obliged to apply and respect the constitutionally guaranteed human rights and freedoms. The European Convention for the Protection of Human Rights and Fundamental Freedoms, as stated by the Constitution of B&H, shall be directly applied in our country and has priority over all other laws. Article 6 of the Convention is a key provision regarding the protection of human rights and fundamental freedoms. However, it is an illusion to speak about human rights if the citizens cannot exercise and enjoy them. Providing effective and complete protection of a specific right of the citizens and the possibility of exercising it is a mirror of the work of the judiciary and administration in a country.

The judicial function is a function of public trust. Just how much the decisions of the judiciary will be appreciated and respected depends upon the public confidence in the integrity and independence of the judges. A judge must respect and abide by the law, and always behave in a manner that instills public confidence in the integrity and independence of the judiciary, since the integrity of the judge is the foundation of the court system. This is what makes it possible for a judge to ignore individual influences, e.g., political, in order to base his decisions independently on the facts and law that can be applied.

Pursuant to the Constitution of B&H, Annex IV of the Dayton agreement (the agreement unfortunately was never officially translated from the English language and has not been published in the official gazettes of B&H), only the work and competence of the Constitutional Court of B&H are regulated at the state level. According to these provisions, the Constitutional Court has nine judges, four of whom are elected by the House of Representatives of the Federation of B&H and two by the Assembly of the RS. The remaining three judges are chosen by the President of the European Court of Human Rights after consultation with the Presidency of B&H, and are not permitted to be citizens of Bosnia and Herzegovina or any neighboring country.

One of the characteristics of the operation of the Constitutional Court is the provision that a majority of all the judges constitutes a quorum that shall rule on all petitions. This is a fairly inefficient system of decision making in that the quorum consists of half of the total number of judges. This means that every ruling must be made by a minimum of five judges, which has resulted in a large number of pending cases (approximately 5,000 at the end of 2008).

The Constitutional Court has exclusive jurisdiction to decide any dispute that arises under the Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina. It is significant to emphasize that the Constitutional Court has jurisdiction over any issues concerning whether any court in Bosnia and Herzegovina by its decision has violated the provisions of the European Convention for Human Rights and Fundamental Freedoms.

According to the Constitution of B&H, a supreme court has not been established at the level of B&H but by judicial authority has been established by the entity constitutions. In the Federation of B&H have been established the Constitutional Court of the Federation of B&H, the Supreme Court of the Federation of B&H and the Court of Human Rights, the last of which never began to function because during the transition period the Council of Europe did not, pursuant to the Constitution of the Federation of B&H, name four foreign judges (who could be neither citizens of B&H nor the neighboring states). By a subsequent amendment to the Constitution of the Federation of B&H, the Court of

Human Rights was abolished and its authorities were transferred to the Constitutional Court of B&H.

Cantonal and municipal courts have been established at the level of the cantons in the Federation, as have the methods for selecting judges and the jurisdictions of the cantonal and municipal courts.

In the Republika Srpska, the Supreme Court of the RS, circuit courts, primary courts and the Constitutional Court of the RS have also been established, as have the methods for selecting judges and their jurisdictions.

Pursuant to the entity constitutions, the autonomy and independence of the judicial authorities are guaranteed. In the former Yugoslavia, in which there was a totalitarian communist system for over 50 years, there was no separation of powers into legislative, executive and judicial but, instead, a system of unified authority. Therefore, all the government bodies were obliged to be guided by the principles of the socialist self-management society and the positions of the League of Communists of Yugoslavia or, respectively, the League of Communists of Bosnia and Herzegovina, who at the time were the holders and drivers of political activity to *“protect the Socialist Revolution and its achievements, as well as socialist self-management social relations and social ownership.”* Therefore, the judiciary, as a part of the government in such a unified system of authority, was also under the control of the sole political party, the League of Communists of Yugoslavia – beginning from the manner of the selection of judges to the mandatory application of the conclusions and attitudes of such politics, especially regarding the policies of prosecution, punishment, reappointment of judges etc.

During the postwar period in B&H, the situation has not changed much. Although the entity constitutions have established that judicial authority is autonomous and independent, as well as the obligation of the courts to ensure equal status to all the parties in court proceedings, powerful interest groups remain protected, which has been particularly evident in the combating of corruption. Much in the government system remains from the earlier system, which was constituted in order to preserve order in the country and the positions of those who controlled it.

One of the key problems of the unsatisfactory situation in the judiciary has been caused by the method of the selection and appointment of judges, which is completely identical to the manner of selection during the period of the previous socialist-communist system. Specifically, the selection of judges during the postwar years has been exclusively a “personnel issue” and selection is performed by holders of authority who are members of the narrowest of the national political parties, because it is carried out solely upon the basis of ethnicity and political acceptability, so that in a large number of courts in B&H the judges selected are exclusively (or almost exclusively) of one nationality, resulting in the citizens’ profound mistrust of the work of the courts. As confirmation of this assess-

ment (political acceptability and national origin), the cases of criminal proceedings against a large number of persons accused of war crimes should be recalled.

For example, there were instances when several hundred persons were accused of the same activity in a single indictment, and all the cases of this type were in registers and only accessible to "trusted judges." Indictments were filed during the war years but the ensuing warrants remained in force for several years after the war and, as a rule, concerned members of other military formations, i.e., national groups in B&H. Other examples refer to the fact that courts during the postwar period issued hundreds of rulings, on the basis of which the prewar holders of tenancy rights had their rights terminated. These court decisions were based upon the peacetime Law on Housing Relations, due to *"not using an apartment for longer than 6 months during the war."* The law was applied without taking into account the fact that these persons were forcibly displaced from their homes, precisely due to their ethnicity. Instead of serving as a guarantee for the protection of the human rights of refugees and displaced persons, who were the victims of ethnic persecution, in this way the courts have directly affected the course of their return and the implementation of Annex VII of the Dayton agreement.⁴⁶

Therefore, judicial reform was a necessity. This reform, like all the others in Bosnia and Herzegovina, was carried out by the international community within the framework of the mandate that it has pursuant to the Dayton agreement. The reform was first approved by UN Security Council Resolution No. 1184, dated July 16, 1998, and carried out according to conclusions and declarations of the Peace Implementation Council and the decisions imposed by the High Representative. This is a very complex and lengthy process that is still in progress up to the present.

Given the complex process of lawmaking and the shared authorities among the government of B&H and the entities, within the framework of the Constitution it was objectively difficult to ensure the necessary coordination between the law and other regulations with the Constitution and with the international documents pertaining to human rights and freedoms. It seems that neither the state Parliament nor the entity Parliaments have been able to monitor all the structures of executive authority. Certainly this is one of the reasons that at parliamentary sessions the representatives of the parliamentary majority support the policies created by "their government" (usually the entity) and thus it is "natural" at the state Parliament for them to defend and vote for its measures, instead of assuming their constitutionally established authority regarding the control of the executive bodies.

Therefore, it is not surprising that the Court of Bosnia and Herzegovina was established by the Law on the Court of Bosnia and Herzegovina, which was imposed by the High

⁴⁶ Cf. *Godišnji izvještaji federalnih ombudsmana o stanju ljudskih prava za 1998. i 99. godinu* [The Annual Reports of the Federal Ombudsmen on the State of Human Rights for 1998 and 1999].

Representative on November 30, 2000 (*The Official Gazette of B&H*, No. 29/2000), using the authority under the Agreement on the Civilian Implementation of the Peace Settlement, as well as the conclusions of the Peace Implementation Council dated 2000, since the Parliament of Bosnia and Herzegovina did not adopt this law according to the customary legal procedure. In fact, as it states in the conclusion, *“The Council believes that the establishment of the rule of law, in which the citizens have confidence, is a prerequisite for lasting peace, and that the strategy of judicial reform is designed with the goal of response to calls by the authorities of Bosnia and Herzegovina, who seek greater involvement by the international community regarding questions of economic crime, corruption and problems encountered by the judicial system...”* Up to the present, there have been eleven amendments to this law!

Upon the request of officials from the RS, during the year 2009 the constitutionality of the law was reviewed with respect to Article 13 of the amended law. At the session of March 28, 2009, the Constitutional Court of B&H denied the petition for a review of constitutionality, and determined that the provisions of Article 13, Paragraph 2 of the Law on the Court of Bosnia and Herzegovina were in compliance with the Constitution of Bosnia and Herzegovina. It is characteristic that the judges of the Constitutional Court of the RS, appointed by the Assembly of the RS, issued a dissenting opinion in which they deemed the provisions of this article to be in conflict with the constitutional provisions.

The High Representative also imposed the Law on the Prosecutor’s Office of B&H, to which there have been seven amendments up to the present. In the Court of B&H, as in the Prosecutor’s Office of B&H, foreign judges appointed by the High Representative were working in the Department for War Crimes and the Department for Organized Crime. The Parliamentary Assembly of B&H passed a decision to terminate the mandates of foreign judges and prosecutors at the end of the year 2009. However in mid-December, the High Representative re-imposed the decision to extend their mandates in the Department for War Crimes of the Court and the Prosecutor’s Office until the end of the year 2012 but not in the Department for Organized Crime. The High Representative appointed foreign judges to serve in the Department for Organized Crime as advisors but no one knows what kind of status they have!⁴⁷

The decision by the High Representative on the extension of the mandates of foreign judges and prosecutors at the Department for War Crimes of the Court and Office of the Prosecutor of B&H was rejected by the Government and Assembly of the RS, and the authorities of the RS decided to call for a referendum in the RS.

Within the framework of judiciary reform, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina was established by the Law on the High Judicial and Prosecu-

⁴⁷ The decision was published in the Official Gazette of B&H, No. 97/09.

torial Council dated June 1, 2004, with the goal, within the scope of its authority, to ensure the preservation of an independent, impartial and professional judiciary in B&H, as the foundation of every democratic state. The High Judicial and Prosecutorial Council has the exclusive authority to appoint and determine the disciplinary authorities of the holders of judiciary functions, and is also the regulatory body at the level of B&H that establishes the ethical and professional standards for the judicial community. The High Representative also extended the mandate for a member of the council who is a foreign national.

However, despite the fact that reform has lasted for over ten years, the situation in the courts is unsatisfactory, particularly regarding *“the right to a trial within a reasonable period.”* The provisions of Article 6 of the European Convention guarantee that *“in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”*

The best testimony for this is provided by the statistics that in the courts of Bosnia and Herzegovina, as of December 31, 2008, there were still 572,293 unresolved court cases, not including data from the area of the so-called *“utility cases,”* i.e., claims relating to the nonpayment of various utility services (heating, radio-television subscriptions, electricity, water, trash collection etc.). At the end of the year 2008, 1,464,454 such *“utility cases”* remained unresolved, of which 1,241,874 were in the courts of the Federation, 216,325 were in the courts of the RS and 3,665 were in the Primary Court of the Brčko District.

According to the above data, it follows that a total of 2,036,757 unresolved cases remained in the courts of Bosnia and Herzegovina at the end of the year 2008!⁴⁸

In addition to the violation of the right to a hearing *“within a reasonable time,”* there is also the problem of the compulsory execution of the decisions of the regular courts. At the end of the year 2008, there remained 180,153 distraint proceedings or 31% of the total number of unresolved cases. Bearing in mind that citizens wait several years for final verdicts by the courts, it is not necessary to emphasize their dissatisfaction that they must also wait several years for the compulsory execution of court orders.

A special problem is represented by cases when distraint is supposed to be carried out to the debit of budgetary funds. Such distraint is for the amount anticipated by the budget in a stipulated item, which is confirmed by the budget beneficiary (municipality, canton, entity etc.). In cases when there are multiple creditors, they settle their monetary claims in the order that they gained the right to settle them from the budget. Due to the difficult economic situation in B&H, creditors are waiting for several years and it is ques-

⁴⁸ Annual Report of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (VSTV BiH) for 2009.

tionable whether they will ever exercise their rights (ownership of old foreign currency savings accounts, war indemnities, severance payment according to Article 143 of the Law on Labor etc.).

Debtors as a rule attempt to avoid having to settle with a distrainor, utilizing, among other things, hidden bank accounts, address changes, opening new accounts etc. The phenomenon and problem of avoiding the payment of child support after a divorce are increasingly present, and it seems that some courts do not take sufficient account of the fact that in such situations the interest of the child should be the primary consideration.

In addition to the European Convention, B&H has also ratified the International Covenant on Civil and Political Rights. These represent the two most important international documents for the protection of the right to the presumption of innocence. The presumption of innocence is also incorporated into the domestic criminal legislation of Bosnia and Herzegovina, which stipulates that *"everyone is considered to be innocent of a crime until a final verdict establishes his guilt."*

This principle of the presumption of innocence must be applied at all stages throughout criminal proceedings. If it does not exist, the overall concept of the fairness of criminal justice process is devoid of meaning. In fact, the presumption of innocence is related to the other rights of the suspect or the accused. There are numerous examples that indicate the existence of the problem of noncompliance with the presumption of innocence, as especially evident in media coverage when criminal proceedings are instituted.

According to available data, somewhat more than 20% of the rulings of the Constitutional Court of B&H concerning established violations of constitutional or human rights are not executed, which represents a serious problem. A significant number of these rulings refer to "system failures" of the government (issues of missing persons, old foreign currency savings accounts, the settlement of war indemnities etc.), representing a difficult problem for the authorities in B&H.

However, it is also a cause for concern that the State Prosecutor has not launched criminal proceedings against the persons responsible for failure to take the appropriate measures established by the rulings of the Constitutional Court. It is not necessary to emphasize what a negative impact this problem has on the very essence of the principle of the rule of law because it considerably undermines the authority of this institution, as well as the authority of the ordinary judicial bodies (prosecutors) and their position in the legal system of Bosnia and Herzegovina.

X. CONCLUSION

In the Annual Report on Human Rights in Bosnia and Herzegovina for 2009, the *Justitia et Pax* Commission of the Bishops' Conference of Bosnia and Herzegovina has called attention to several areas where the human rights of the citizens of this country are not respected or are being systematically violated. The example of the judiciary clearly shows the sorry state of the respect for and protection of human rights in this land. As one of the branches of government, an independent judiciary should be the mechanism that guarantees the protection of rights and equality under the law to every citizen. However, even the statistics on the number of unresolved cases clearly testify to the inefficiency of the judiciary. If to this is added the pressure of the political structures on the judiciary and the lack of security and protection in the battle against organized crime, it will be difficult to expect the judiciary to develop into an authority that will treat all citizens equally on the basis of the law. This pessimistic vision of the development of the judiciary in B&H has also been contributed to by the decision of the Office of the High Representative not to extend the mandate of the international judges who were engaged in the Office of the Prosecutor and the Special Department for Organized Crime. If it is borne in mind that the chief prosecutor in B&H was in favor of their staying, and that the most vocal opponents were actually the politicians against whom investigations had been initiated and lawsuits had been filed, who for the most part had been singled out for crimes, it is difficult to see an indication of improvement in the legal situation in this country. Laws alone, however much they comply with European and world standards, will not significantly contribute to building a just society if there is no authority that will guarantee their compliance and enforcement. We also saw this on the basis of an analysis of the implementation of the Freedom of Access to Information Act. However, the report on the state of the rights of children and young people and the educational system in B&H draws attention to what is still a low level of awareness of the need to protect the rights of the youngest population and the systematic failure to respect these rights.

Nonetheless, however much the dysfunction of the independent judiciary is an alarming aspect of life in B&H, there are elements that cause even greater concern in that they undermine the hope that a normal sociopolitical life will develop over time which will allow its citizens to live a life worthy of man. In this context, the Commission cannot but express its concern over the enactment of laws which are in line with the policy that led this country into the bloodshed and abyss from which it difficult to extricate itself. An example of such legislation is the Real Estate Tax Law of the Republika Srpska. While such a law could be welcomed in a developed democratic country as an attempt by the

authorities to prevent the uncontrolled neglect of arable land, under our circumstances it is impossible not to see this legislation as an attempt to finish the process of persecution and looting that took place in the territory of the RS, as well as the rest of the country during the war. Bearing in mind from one side that the authorities in the RS not only failed to assist but actively obstructed the return of displaced persons to their property,⁴⁹ which resulted in the supremacy of the Serbian population in this territory and, consequently, in the government and administration, and the arbitrary provisions of the law (the assessment of the market value of property and progressive tax rate) on the other side, it is nearly impossible to believe that this law will be applied with the goal of promoting the cultivation of land and rebuilding homes that were destroyed, and that it will not be used for the final act of the plunder of the property of the non-Serbian population.

Starting from the fact that human rights in Bosnia and Herzegovina are not being protected and guaranteed, as pointed out by the reports of this Commission from year to year, the question is whether awareness of the need to respect these rights, for the common good of all citizens, will ever take hold in this region and become the dominant determinate of political activity. In a way, speaking about human rights is always an expression of crisis. Viewed historically, the idea of human rights appeared in European lands at a time of political, Church, scientific and spiritual crises that followed the disintegration of the unified European world at the end of the Middle Ages, with its social and religious-metaphysical structures, when violence and despotism appeared in a previously unseen form.⁵⁰ In our time, after the horrors of World War II, the nations of the whole world gathered within the United Nations, *"determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small ..."* (Preamble to the Charter of the United Nations), and three years later adopted the Universal Declaration of Human Rights, *"whereas recognition of the inher-*

⁴⁹ By way of illustration, all the property of displaced persons was declared "abandoned," as if they had voluntarily left their possessions and, therefore, it was necessary for them to apply for the "return" of the property. The applicants, mostly older persons and other ethnic groups, in addition to the distress they experienced upon arriving in a hostile environment, were also faced with administrative hurdles and the reluctance of personnel to help them file claims. In non-Serbian areas, the registries of births, marriages and deaths had been burned so that applicants first had to be re-entered in the registries. For this they required a baptismal certificate and the registrar would not infrequently make errors in entering the data, requiring the returnees to submit a request to the court to allow the registries to be corrected. Bearing in mind that the majority of the returnees were elderly, without their own means of transportation, and that all these offices were located in different places, it is not necessary to emphasize the extent to which such procedures represented obstacles for them and how many of them gave up trying to return.

⁵⁰ Cf. Walter Kasper, "The theological foundation of human rights" in: Pontifical Council for Justice and Peace, *Human Rights and the Church: Historical and Theological Reflections*, Vatican City, 1990, 47-71, here p. 50.

ent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world ...” and “whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law...” (Preamble to the Universal Declaration of Human Rights).

In Bosnia and Herzegovina, even fifteen years following the unprecedented suffering and brutality of the last war, why has such an attitude not been created and recognition not occurred of the equal dignity of each person and the necessity of respecting his rights, regardless of ethnic, religious or any other affiliations? The Commission is deeply convinced, as it has reiterated and as the bishops of the Bishops’ Conference of B&H have emphasized, that the reason for this lies in the unjust peace imposed by the Dayton agreement. In truth, this agreement did stop the war, an urgent necessity at that moment but, unfortunately, it also stopped the process of reconciliation and the creation of a just socio-legal order. Specifically, the agreement legitimized the results and organization created by warfare. Thereby, the war strategies and tactics, such as the killing and mutilation of civilians, deportation and rape, the burning and destruction of property, the depletion of whole cities and regions by encircling them and preventing the influx of the basic necessities for a normal life such as food, water, energy etc., were recognized as legitimate means for achieving political and nationalistic goals. A creation is incorporated in the constitutional structure of this country that resulted from genocide and crimes against humanity, which will remain a permanent stain upon the modern European order but also a permanent barrier to the creation of a just society. Although individual perpetrators of such policies have been indicted for war crimes (the chief creators of this policy have either still not been arrested or were not convicted), the policies themselves did not endure either condemnation or failure but have continued to exist in these regions in a transformed manner through the institutional arrangements that were made possible by the Dayton agreement. In this way, genocidal and criminal strategies have been indirectly incorporated into the value system of this country. For this reason, among the peoples of Bosnia and Herzegovina there has been no general indignation over the atrocities committed, and under such circumstances it is not possible to arrive at the awareness and decisiveness that the United Nations incorporated in the Preamble to their Charter as a lasting memorial and warning to new generations.

In order for the expression of abhorrence regarding the evil committed and awareness of the need for the *“recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family”* because it is *“the foundation of freedom, justice and peace in the world”* to take hold in this land, it is essential to build a legal system that is based upon and promotes the values of human dignity and rights. In particular, this should be incorporated in the Constitution, as the supreme law that reflects

the value system of a society. Unfortunately, in these territories the person and human dignity have too often served as means and were the price of building the given state order. In such a painful manner, this has also been demonstrated by the past 20 or so years of the creation and preservation of the present order in B&H. Rarely were there historical periods when the state legal system was a means for the promotion of human dignity and rights. However, convinced that this is the way to build freedom, justice and peace in this land, the Commission, determined to persevere in promoting human rights and seek the protection thereof, will not stop calling attention to the necessity of building a just constitutional legal order in this country.

The Commission also hopes that this report will be met with the understanding and support of the domestic and international factors involved in making decisions about the present and future of this country. It especially hopes that this report will strike a responsive chord in religious communities whose specific task is to promote human rights and denounce violations thereof. It seems that during postwar reconstruction, there is no more important or more difficult mission than the renewal of the human spirit, in order for it to become able to distinguish good from evil, condemn evil and do good. Only people with healthy spirits will be able, amidst all the difficulties and burdens of the life and mutual relations in this country, to realize that our faith in one God, confessed by all four religious communities in this country, unites us into a single human family with the same dignity, the same fundamental rights and the same fundamental obligations.

Translated by Margaret Casman-Vuko and Miroslav Vuko

„JUSTITIA ET PAX“
BISKUPSKE KONFERENCIJE
BOSNE I HERCEGOVINE

**IZVJEŠĆE O STANJU LJUDSKIH PRAVA
I SLOBODA U BOSNI I HERCEGOVINI ZA 2009.
GODINU**

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I. UVOD

Govor i zauzimanje za ljudska prava u Bosni i Hercegovini mnogima se čini kao besmislen i uzaludan posao koji je unaprijed osuđen na neuspjeh zbog nepostojanja adekvatnih mehanizama za njihovo promicanje i zaštitu. Povrh toga, tema ljudskih prava u ovoj se zemlji nerijetko očituje kao utopijski govor koji kod političkih predstavnika nailazi na nerazumijevanje, a kod građana na nevjericu. Razlozi za to su mnogobrojni. Kada je riječ o političkim predstavnicima, teško se oteti dojmu da vlada mentalitet feudalnog vremena gdje su politička, ekonomska i socijalna prava uvjetovana i ovisna o pripadnosti određenom „feudu“ čime se ulazi u krug zaštite lokalnog političkog vođe. Za mnoge nositelje političkih funkcija ljudska prava nisu mnogo više od korisnog verbalnog umetka u konverzaciji s međunarodnim predstavnicima, a i kada se zauzimaju za ostvarenje određenih prava, nerijetko se to odnosi samo na pripadnike njihovog naroda ili političke skupine. Građani pak na pitanje ljudskih prava nerijetko gledaju s nevjericom, u prvom redu radi dugog razdoblja nepoštivanja istih. U biti, možemo ustvrditi da se u ovoj zemlji, uz određene izuzetke kraćih povijesnih razdoblja, nikada nije ni ukorijenila ideja da se *„sva ljudska bića rađaju slobodna i jednaka u dostojanstvu i pravima. Ona su obdarena razumom i svijješću i trebaju jedni prema drugima postupati u duhu bratstva.“* (Opća deklaracija UN-a o pravima čovjeka, članak 1). Kroz dugo povijesno razdoblje, još od kraja Srednjega vijeka, ovdje su se izmjenjivali režimi u čijoj je samoj naravi vladavine bila inkorporirana diskriminacija po vjerskoj, nacionalnoj ili ideološkoj osnovi. Kulminacija diskriminacije se dogodila u zadnjem ratu (1992.-1995.) kada se pripadnika druge (vjerske ili nacionalne) skupine nastojalo sustavno eliminirati bilo oduzimanjem života bilo protjerivanjem s određenoga područja. Kada je konačno pod pritiskom međunarodne zajednice to vrijeme ludila prestalo, na području ove zemlje je ostalo fragmentirano društvo i uspostavljen neefikasni državni aparat koji niti je sposoban niti voljan zaštititi osobna i skupna prava svih svojih građana. Nerijetko jedino iskustvo građanskih prava bosansko-hercegovački građani imaju iz vremena koje su proveli kao radnici ili izbjeglice u zapadnim zemljama. Kada je riječ o poštivanju tih istih prava u ovoj zemlji, uviđa se žalosna stvarnost da većina građana gleda na to kao na nešto nerearno i nedostiživo u ovoj zemlji pa stoga ne vidi smisla ni boriti se za njih.

Koliko god pitanje ljudskih prava i borba za njihovo poštivanje bila frustrirajuća tema i činila se uzaludnim poslom, Komisija „Justitia et Pax“ BK BiH, imajući u vidu dostojanstvo svake ljudske osobe i vršeći svoje poslanje da se zauzima za promicanje i poštivanje ljudskih prava te prokazuje njihovo kršenje i nepoštivanje, redovno sastavlja godišnje izvješće o stanju ljudskih prava u Bosni i Hercegovini. Iako je teško vidjeti bilo

kakav pomak u tom pogledu, štoviše, čini se da stanje ljudskih prava u ovoj zemlji iz godine u godinu nazaduje, Komisija donosi ovo izvješće za 2009. godinu u nadi da će ono pomoći produbljanju svijesti i većem poštivanju ljudskih prava u BiH.

Sva dosadašnja izvješća su ukazivala na činjenicu da je obespravljenost gotovo svih kategorija stanovništva u BiH rezultat nefunkcionalnog i nepravednog ustavno-pravnoga poretka. Na žalost, moramo ponovno istaknuti da je takav nepravedan i neefikasan državni sustav nastavio generirati nepoštivanje ljudskih prava i u 2009. godini. Stanje je dodatno pogoršano općom ekonomskom krizom koja se u ovoj osiromašenoj zemlji osjeća s puno više oštine. U prošlogodišnjem izvješću smo također svratili pozornost na opću krizu društva, morala i pojedinca koju dugotrajno neriješeno stanje održava na životu, proizvodi i sve dublje ukorjenjuje. Sa žalošću moramo konstatirati da se ta kriza nastavila produbljavati i u ovoj godini. Pokazat će to prikaz političkoga stanja u ovoj zemlji koji analizira rad domaćih političkih struktura ali i predstavnika međunarodne zajednice. Donosimo ponovno prikaz socijalne slike bosansko-hercegovačkog društva koje pokazuje daljnju degradaciju socijalnih prava građana u ovoj zemlji. I ovogodišnje izvješće sadrži analizu prava žena te prava djece i mladih s posebnim osvrtom na školstvo. Možda najviše straha zadaju strukturni problemi u ovom društvu koji dovode do negiranja, nepoštivanja i gaženja ljudskih prava. Stoga prezentiramo problematiku rada sudova koji bi trebali biti osnovna poluga zaštite ljudskih prava, a često su jedan od mehanizama kršenja istih, ponajprije zbog svoje neučinkovitosti. Također donosimo analizu primjene *Zakona o slobodi pristupa informacijama* koji bi trebao doprinijeti javnosti rada svih organa vlasti, ali koji se primjenjuje u vrlo ograničenom stupnju. S druge pak strane, analiza *Zakona o porezu na nekretnine*, koji je donijela Republika Srpska, zorno prikazuje kako vlast može kroz zakonodavstvo provoditi nastavak etničkoga čišćenja i graditi strukturu koja otvara put za nepravedno i samovoljno primjenjivanje zakonskih odredaba što u konačnici vodi prema nejednakosti građana i kršenju ljudskih prava.

U izradi ovoga izvješća, Komisija je nastojala svoje navode potkrijepiti činjenicama i izvorima koliko god je to bilo moguće. Međutim, mnoga su područja i stvarnosti koja nije moguće obraditi znanstvenom metodologijom, a prisutna su u životu i stvarnosti ove zemlje čiji građani itekako osjećaju oštrinu boli koja je prouzročena tim stvarnostima. Upravo kao što organizam osjeća bol, a teško je ustanoviti što je prouzrokuje i kako je objasniti. Kao dio i dionik bosansko-hercegovačkog društva, Komisija osjeća težinu tih nepravednih stanja i stvarnosti te ne želi preći preko njih samo zbog toga što nije uvijek moguće demonstrirati sve tvrdnje na znanstven i egzaktn način.

II. POLITIČKA SITUACIJA – KLIMA NEPOVJERENJA I ISKLJUČIVOSTI

II.1 Politička scena u Bosni i Hercegovini

Prije osamostaljenja države građani Bosne i Hercegovine su skoro pola stoljeća trpjeli breme totalitarnog sustava komunističke Jugoslavije. Međutim, iskorak u demokraciju s višestranačkim političkim sustavom i neovisnost početkom 90-ih godina prošlog stoljeća nisu uvelike pripomogli ostvarenju ljudskih prava i sloboda.

Običan građanin se često zapita na čemu je utemeljena tako tvrdokorna opstojnost licemjernih i u mnogobrojnim aferama raskrinkanih vladajućih elita – koje, i pored toga, već desetljećima opstaju na vlasti, dok im se pored svega politička pozicija čini sve čvršćom i nedodirljivom.

Odgovor je, uz ostalo, u činjenici da se na vlasti godinama održavaju političke stranke koje svoje kvazipolitičke i gospodarske programe temelje na navodnoj brizi za nacionalne (pa čak i vjerske) interese, pri čemu najčešće uopće nemaju pravog političkog ili gospodarskog koncepta, vizije ili programa. Analiza životopisa većine bosansko-hercegovačkih političkih lidera ukazat će da u vlastima BiH najvećim dijelom glavnu ulogu imaju, još uvijek, poklonici i baštinici propaloga totalitarnog režima. Ako se nekad zagriženi ateisti i nerijetko progonitelji svega nacionalnog i protivnici demokratskih ideja, sada prikazuju kao demokrate te zaštitnici vjere i nacije, nije teško rasvijetliti prave uzroke političkog licemjerja koje je uzelo maha na političkoj sceni Bosne i Hercegovine. Budući da centre političke moći još uvijek drže osobe koje su ideologiju jednopartijske vlasti zamijenile ideologijom nacionalne isključivosti, ne čudi dominacija načela isključivosti na našoj političkoj sceni, koja je inače karakteristika totalitarnih sustava.

U sumrak političke scene u BiH potpuno se uklopila i oporba, čiju okosnicu čine stranke koje se žele prikazati modernom socijaldemokratskom opcijom. Iako se žele prikazati kao anacionalna i samo zbog toga prava demokratska politička alternativa, navedene političke stranke su se ipak izborile za poziciju pravnog slijednika nad imovinom Komunističke partije Jugoslavije (KPJ) – čime su si priskrbile značajnu infrastrukturu za daljnju političku borbu povratka na vlast. U kratkom mandatu vlasti alijanse u Federaciji BiH nije uočen značajan odmak od postojeće nacionalističke retorike i prakse, a u RS su također na vlasti socijaldemokrati koji prednjače nacionalističkom retorikom i praksom usmjerenom daljnjoj razgradnji državnih institucija i daljnjem produljenju podjela.¹

¹ Premijer Vlade Republike Srpske Milorad Dodik je trenutno neupitan politički lider u tom entitetu, a želi se prikazati najdosljednijim zaštitnikom rješenja postignutih u Daytonu. Dodik je dosad uspješno opstruirao sve pokušaje ustavnih reformi u BiH – koje nužno podrazumijevaju prenošenje dijela

Bosna i Hercegovina, za razliku od većine drugih tranzicijskih zemalja, nije nikad donijela zakon o lustraciji, niti je pokrenuta parlamentarna inicijativa za njegovo donošenje. Slična je situacija i u susjednim zemljama nastalim raspadom bivše SFRJ. Stoga ne čudi regionalna zategnutost odnosa susjednih država i opterećenost međunacionalnih odnosa tri bosansko-hercegovačka naroda. Involviranost starih političkih struktura u političku scenu BiH i regije onemogućava pravi demokratski razvitak i afirmaciju ljudskih prava. Takva personalna struktura političke scene u regiji i državi teško može iznjedrati bilo kakav pravičan dogovor koji bi donio trajan mir na ovim prostorima.

Očito je da na političkoj sceni Bosne i Hercegovine ne postoji ni pozicija ni opozicija koja bi ulijevala nadu za boljitak naroda i građana koji u njoj žive pa je ostalo premalo temelja i za umjeren optimizam jer se od postojećih političkih snaga teško može očekivati ikakav suštinski pomak naprijed.

Nedostatak, prije svega, moralnih vrijednosti i demokratskoga opredjeljenja kod većine onih koji bi trebali voditi narode BiH, ni u kom slučaju ne može ovu državu, njezine građane i narode povesti boljitku, posebice ako se ima na umu nužnost temeljitog preustroja države.

II.2 Politička i društvena klima

U Bosni i Hercegovini kao višenacionalnoj državi tri konstitutivna naroda², podijeljenoj u dva etnički, gotovo, očišćena entiteta, ostvarivanje temeljnih ljudskih prava je još uvijek uvjetovano nacionalnom i vjerskom pripadnošću. Ostvarenje individualnih ljudskih prava često je u izravnoj ovisnosti o volji lokalne, najčešće nacionalno obojene politike, koja čvrsto upravlja etnički određenim dijelom teritorija. Diskriminacija „manjinskih skupina“ zbog nacionalne ili vjerske pripadnosti ostala je temeljnim problemom bosansko-hercegovačkog društva i države.

Nažalost, i nakon petnaest godina od svršetka rata na cijelom teritoriju BiH vlada raspoloženje nacionalne isključivosti te vjerske i političke netolerancije - koje izravno diktiraju i kroz funkcije vlasti prakticiraju uske skupine domaćih političkih elita. Te uske

nadležnosti entiteta na državu. Pri tomu kao glavni argument koristi prijetnje referendumom za odcjepljenje RS od Bosne i Hercegovine – za što mu na ruku idu rezultati etničkog čišćenja kojim je RS postao gotovo jednonacionalni – srpski entitet, s velikim ovlastima. Daytonskim sporazumom Srbi su kroz RS dobili 49% teritorija BiH, a vraćen im je i dio teritorija koji su rapidno počeli gubiti krajem rata. Vojna intervencija NATO pakta spasila je Srbe od gotovo potpunog vojnog kraha.

² Prema posljednjem popisu stanovništva iz 1991. godine u BiH je živjelo 4.364.574 stanovnika, od čega 43,7 % Muslimana (od 1993. godine uzeli nacionalno nazivlje Bošnjaka), 31,4 % Srba, 17,4 % Hrvata i 7,6 % ostalih (od čega 5,5 % Jugoslavena). Do današnjeg dana nije održan popis stanovništva niti postoji politička volja da se isti u skoro vrijeme obavi.

vladajuće strukture su svjesne da na vlasti mogu opstati samo daljnjim generiranjem nacionalnih tenzija i isključivosti.

Iza sveprisutne političke retorike o ugroženosti tobožnjih nacionalnih interesa najčešće ne stoji nikakav istinski kolektivni koncept, nego se krije isključivo težnja za ostvarenjem vlastitih probitaka i privilegija koje je uskom krugu pojedinaca priskrbila participacija u vlasti. Kroz vrijeme rata i poraća u BiH su profilirane uske skupine političkih elita bez pravog političkog i intelektualnog profila koje u uvjetima nefunkcioniranja pravne države često *love u mutnom* i tako zgrću bogatstvo pljačkajući vlastiti narod. Prazna nacionalistička retorika često biva pokrićem za bezočnu pljačku društvenih dobara i izgovor za neuspjeh da se, bar za svoj narod, postigne i minimalan probitak. Ratom napaćeno i poraćem zaplašeno i osiromašeno stanovništvo je u navedenoj slici i prilici sumorne zbilje postalo mehaničkim glasačkim strojem i čvrstim stubom temeljcem na kojemu stoji stroj vladajućih kvazinacionalnih političkih elita.

Pored uskih političkih interesnih skupina, postojećoj klimi nepovjerenja i nacionalne sukobljenosti jako doprinose i mediji koji političkoj zbilji često pristupaju nekritički, neargumentirano te uz nacionalističku retoriku ili navijanje. U Bosni i Hercegovini skoro da ne postoji slobodno i neovisno novinarstvo, a tijekom 2009. godine zabilježeni su česti i ponekad vulgarni napadi političara na novinare. Uz to i glas neovisnih intelektualaca kao da je potpuno utihnuo ili sve zlo društva nekritički izvodi iz činjenice nacionalnih i vjerskih različitosti. Institucije civilnog društva se također čine nedoraslim takvom ozračju ili se bar njihov glas čini tihim i nerazumljivim. U kulturu se ne ulažu gotovo nikakva sredstva, a u sferi obrazovanja također se bilježi zaostajanje u odnosu na druge tranzicijske zemlje.

Stanje u bos.-herc. društvu čini se posve nezrelim za korjenite promjene i demokratizaciju. Stoga se ovdje bilo kakav govor o univerzalnim ljudskim pravima često čini besmislenim, a svaka napisana riječ osuđenom na sudbinu nepročitane knjige. To nas ipak ne smije obeshrabriti, dapače, to je Komisiji i svim mislećim ljudima u ovoj zemlji dodatni izazov da još ustrajnije i zajednički ukazujemo na uzroke opće obespravljenosti.

II.3 Nužnost strukturalne reforme BiH i uloga međunarodne zajednice

Opstanku međusobno suprotstavljenih i isključivih struktura u tkivu političke vlasti BiH posebno je pogodovala ustavno-pravna struktura države kojom ne samo da je država nepravedno podijeljena po nacionalnom ključu, nego koja i dalje dodatno generira negaciju ljudskih prava naroda i građana u BiH.

Neporeciva vrijednost Daytonskog sporazuma iz 1995. godine jest u činjenici da je građanima Bosne i Hercegovine napokon donio mir i zaustavio dalje prolijevanje krvi³. Njime su, međutim, nametnuta i nepravedna rješenja kojima su ozakonjeni rezultati agresije i tzv. „etničkog čišćenja“. To je njegova neprihvatljiva nepravda i, pokazalo se, bosansko-hercegovačkome društvu nesavladiva prepreka. Nametnuvši mir, međunarodna zajednica je ujedno ozakonila nepravednu i opasnu etničku podjelu Bosne i Hercegovine zasnovanu na učincima ratnih djelovanja i tako omogućila njezinu daljnju razgradnju. Ratom i silom iscertane, a u Daytonu ozakonjene granice, učinile su Bosnu i Hercegovinu trajno etnički podijeljenom državom, a ta je podjela tijekom čudne implementacije mira još nepravednije i opasnije produbljena.

Tijekom rata do potpisivanja Daytonskog sporazuma iz BiH je prognano oko 1.250.000 osoba ili 28,4% od ukupnog broja stanovnika, a diljem BiH je raseljeno dodatnih 1.370.000 ljudi ili 31,2% ukupnog stanovništva – što znači da je tijekom rata svoje domove napustilo oko 2.680.000 raseljenih i izbjeglih osoba - što predstavlja 59,6% od ukupnog broja građana BiH. Procjene broja ubijenih i nestalih osoba kreću se između 100.000 i 200.000.

Do današnjeg dana posljedice rata nisu statistički obrađene jer se vlasti u oba entiteta nisu spremne postići politički dogovor o načinu provedbe popisa stanovništva. Naime, bošnjačke stranke su se tijekom 2009. otvoreno protivile popisu koji bi raščlanio kategorije nacionalne, vjerske i jezične pripadnosti, pri čemu inzistiraju na popisu koji se ima obaviti na razini cijele države⁴. Pri tomu najutjecajnije bošnjačke stranke⁵ svoje protivljenje opravdavaju činjenicom da standardi EUROSTAT-a⁶ ne propisuju obvezu popisivanja i nacionalne pripadnosti. Nasuprot tomu vlasti Republike Srpske inzistiraju na popisu uz nacionalne, vjerske i jezične odrednice. Pri tomu je nacionalističkim vlatima u RS dobro došao politički koncept bošnjačkih stranaka te na navedenim argumentima inzistiraju na provedbi popisa na razini entiteta. U tom smislu su vlasti RS-a tijekom 2009. godine već pokrenule predparlamentane inicijative za provedbu popisa

³ *Opći okvirni sporazum za mir* je pod pritiskom i pokroviteljstvom velikih sila parafiran 25. studenoga 1995. godine u Daytonu – SAD, a potpisan u Parizu 14. prosinca 1995. godine. Pored predstavnika Hrvata, Srba i Bošnjaka/Muslimana iz BiH, jamci i supotpisnici Daytonskog sporazuma bili su: William Clinton - predsjednik SAD, Felipe Gonzales – predsjedavajući Predsjedništva EU, Jacques Chirac – predsjednik Republike Francuske, Helmut Kohl – kancelar SR Njemačke, Viktor Černomirdin – predsjednik Vlade Ruske Federacije i John Major – premijer Ujedinjenog Kraljevstva te Franjo Tuđman – predsjednik Republike Hrvatske i Slobodan Milošević – predsjednik Savezne Republike Jugoslavije (tada zajednica Srbije i Crne Gore u koju je ulazilo i Kosovo).

⁴ Posljednjim popisom stanovništva iz 1991. godine statistički su obrađene kategorije nacionalne i vjerske pripadnosti te kategorija materinskog jezika.

⁵ Stranka demokratske akcije (SDA) i Stranka za BiH ovakvim stavovima ustvari ostaju na konceptu unitarne države BiH. Popis stanovništva, kojim bi bile obuhvaćene kategorije nacionalne i vjerske pripadnosti, zasigurno bi egzaktno pokazao na porazne rezultate etničkog čišćenja i u Federaciji BiH - čime bi kao potpuno neutemeljena otpala slika bošnjaka kao isključive žrtve rata, a koju veći dio trenutno vladajuće bošnjačke političke elite selektivno plasira na međunarodnom planu.

⁶ EUROSTAT – statistički odjel Europske Unije.

stanovništva, koji bi se prema najjavama imao obaviti 2011. godine na razini Republike Srpske.

Zakon o popisu stanovništva bi prema Akcijskom planu Vijeća ministara za provođenje obveza iz Evropskog partnerstva trebao bi biti usvojen najkasnije 2010. godine. Međutim, gotovo je sigurno da se planirani popis stanovništva neće moći održati 2011. godine, a posve je jasno da EU neće primiti u svoje članstvo državu u kojoj se ne zna ni broj stanovnika (procjene variraju i do 1.000.000)⁷, obrazovna struktura stanovništva niti se primjerice za nju uopće može izračunati BDP.

Komisija se pridržava stajališta da je popis stanovništva na razini cijele BiH nužan posao koji bi se iz više razloga trebao obaviti što prije, a prvenstveno iz razloga što bi cjelovit popis pokazao prave demografske posljedice rata i poratne politike koja je narodima nametnuta uz blagoslov i instrukcije međunarodne zajednice. Pri tomu se također pridržavamo stajališta kako se nasilne promjene u demografskoj strukturi Bosne i Hercegovine ne bi smjele odraziti na konstitutivna prava naroda u BiH i na njihovu participaciju u vlasti. Također smo mišljenja da bi jedino pravično rješenje udjela u vlasti na lokalnoj i entitetskim razinama morala biti nacionalna struktura stanovništva sa stanjem prije rata, odnosno po popisu stanovništva iz 1991. godine⁸.

Aneksom IV Daytonskog sporazuma BiH je podijeljena na dva entiteta.⁹ Republika Srpska je tijekom rata skoro potpuno „očišćena“ od nesrpskog stanovništva, dok je i znatan dio Srba protjeran ili iselio iz drugog entiteta, Federacije BiH, u koju su zbijena druga dva konstitutivna naroda (Bošnjaci/Muslimani i Hrvati). Tijekom rata znatno se promijenila struktura stanovništva i ostalih dijelova BiH (Federacije BiH i Brčko Distrikta), a taj trend se intenzivno nastavio i nakon rata.

Htjelo se to priznati ili ne, nametanjem daytonskih rješenja velike sile su poput Pilata oprale ruke nad zločinima u Bosni i Hercegovini. Njime su ozakonjeni rezultati velikosrpske politike „ognja i mača“, koja je probudila i na druge prenijela ideologiju mržnje i progona drugog i drugačijeg.¹⁰ Daytonski sporazum se do današnjeg dana

⁷ Prema popisu stanovništva iz 1991. godine u BiH je živjelo 4.364.574 stanovnika.

⁸ Prema Odluci OHR-a, popis stanovništva u BiH iz 1991. godine bi se trebao primjenjivati kao osnovica za raspodjelu vlasti sve do konačnog provođenja Aneksa VII Daytonskog sporazuma.

⁹ U okviru tzv. Daytonskog sporazuma (Opći okvirni sporazum za mir), između ostalog, donesen je i Aneks IV – koji predstavlja novi Ustav Bosne i Hercegovine. Ustav BiH kao vrhovni ustavno-pravni akt ove zemlje nije nikad ratificiran u Parlamentarnoj skupštini BiH niti je objavljen u službenim glasilima. Originalna verzija Aneksa IV je sačinjena na engleskom jeziku, a isti do današnjeg dana nije doživio službeni prijevod ni na jedan od tri službena jezika u BiH pa se danas još uvijek pojavljuju različita tumačenja i nedoumice oko njegova izvornog sadržaja.

¹⁰ Činjenica da međunarodne pravne institucije nisu uspjele adekvatno kazniti glavne promicatelje ideologije zločina, koja je na prostorima BiH sustavno provođena tijekom rata (1992.-1995.), razotkriva licemjerno lice međunarodne politike i njene uloge na ovim prostorima. Forsiranjem pragmatičnog političkog koncepta podjednake krivnje, koji je sustavno provođen u nedosljednoj praksi Međunarodnog kaznenog suda za bivšu Jugoslaviju (ICTY), želi se izbrisati prljava uloga politike velikih sila u ratovima koji su nastali raspadom Jugoslavije. Čini se da je kroz sudovanje

odražava na lošu društvenu i političku sliku stanja u BiH. Kao primjer izravnog preslikavanja Dayton na današnjicu u BiH možemo navesti primjer dočeka koji su vlasti Republike Srpske priredile Biljani Plavšić pri povratku iz zatvora u Švedskoj, gdje je izdržavala kaznu za ratne zločine¹¹. Sa izdržavanja kazne Biljana Plavšić se 27. listopada 2009. godine vratila zrakoplovom Vlade Republike Srpske, o trošku poreznih obveznika, a u Beogradu joj je doček osobno priredio premijer Republike Srpske Milorad Dodik. Iz navedenog primjera posve je razvidno jasno kakvu je tvorevinu iznjedrio Daytonski sporazum. Ne čudi da se velikosrpska politika iz najvećeg protivnika Dayton, pretvorila u njegova najvećeg zagovornika i „zaštitnika“.

Dugo vremena je međunarodna zajednica daytonska rješenja predstavljala svojim najboljim i jednim mogućim rješenjem, držeći se globalnog interesa velikih sila za mir u i oko balkanskog bureta baruta. Iako je shvatila da demokratski ustroj države i stanje ljudskih prava u BiH međunarodnoj zajednici nikad nisu bili prevladavajući motivi za bilo kakvu političku ili gospodarsku inicijativu, Komisija „Justitia et Pax“ BK BiH je godinama ustrajno ukazivala na neodrživ politički koncept Dayton, a zbog čega je često bila kritizirana od strane političkih dužnosnika i predstavnika međunarodne zajednice u BiH.

Uvjereni smo da je slijepo inzistiranje međunarodne zajednice na daytonskoj podjeli doprinijelo netrpeljivosti među narodima u BiH i nastavku etničkog čišćenja i nakon rata. Iako je OHR¹² zaključno s 31.12.2003. godine obznanio „potpunu implementaciju“ Aneksa VII Daytonskog sporazuma, postojeća (bojati se i konačna) demografska slika Bosne i Hercegovine očito ukazuje na potpunu propast projekta povratka ratom prognanih i raseljenih osoba svojim domovima. Iako su pri provedbi

Haškog tribunala međunarodno pravo palo na ispitu pravičnosti, a da je pravda za mnogobrojne žrtve zločina ostala i spora i nedostupna.

¹¹ Presudom Međunarodnog suda za bivšu Jugoslaviju (ICTY) iz veljače 2003. godine ratna predsjednica Republike Srpske Biljana Plavšić je osuđena na 11 godina zatvora zbog zločina nad nesrbima tijekom rata u BiH. U sudbenom postupku Biljana Plavšić je u listopadu 2002. godine priznala krivicu za progon Hrvata i Muslimana u 37 općina u BiH 1992. godine. Između ostalog Presudom se konstatira i slijedeće: *“Biljana Plavšić je sudjelovala u najtežem zločinu, uključujući kampanju razdvajanja etničkih grupa u kojoj su tisuće ljudi ubijeni, a tisuće protjerani, u izuzetno surovim okolnostima.”* (prenesen citat iz www.dw-world.de - 29.10.2009. godine).

Biljana Plavšić je oslobođena nakon što je u švedskom zatvoru odslužila dvije trećine kazne. Za prijevremeno puštanje Plavšić iz zatvora bivši švedski ministar pravosuđa Tomas Bodstrom izravno je okrivio šefa švedske diplomacije Carla Bildta, bivšeg visokog predstavnika međunarodne zajednice u BiH: *“Za to što je Plavšić sada na slobodi u Srbiji zaslužna je švedska vlada. Oni su to htjeli ali nisu morali učiniti”,* izjavio je Bodstrom dodajući kako je na takvu odluku izravno utjecao Bildt koji je s Plavšić u prijateljskim odnosima. *Bodstrom je zbog ove odluke Bildta prijavio švedskom parlamentu tereteći ga da je u sukobu interesa. ‘Jednostavno, on (Bildt) nije trebao odlučivati u ovom slučaju’, konstatirao je Bodstrom koji je sada na čelu parlamentarnog odbora za pravosuđe.”* (Izvor: HINA - www.m.dnevnik.hr)

¹² OHR – Office of High Representative (Ured visokog predstavnika u BiH). Tzv. Banskim ovlastima, donesenim 10. prosinca 1997. godine na Konferenciji za implementaciju mira održanoj u Bonu, Venecijanska komisija je OHR dala široka ovlaštenja zakonodavne, izvršne i sudske vlasti u BiH – koje je mogao neograničeno koristiti kao konačan tumač Daytonskog sporazuma.

Aneksa VII postignuti znatni rezultati u oblasti povratka uzurpirane imovine, nedostatak programa održivog povratka i sustavna diskriminacija tzv. „manjinskih povratnika“ je uzrokovala trajnu promjenu demografske slike BiH. Umjesto povratka, statistike ukazuju na porast broja iseljenika iz BiH. Opstanku BiH i budućnosti njezinih građana i naroda ne treba veća prijetnja od očuvanja postojeće etničke podjele i nefunkcionalnosti političkog uređenja.

Bez obzira što se ni jedna institucija vlasti u BiH nije nikad deklarativno usprotivila povratku izbjeglih i raseljenih, nacionalne isključivosti vladajućih nacionalnih politika, uz pragmatičan i neprincipijelan pristup OHR-a, su i nakon rata pogodovali daljnjem etničkom pročišćavanju na skoro cijelom teritoriju BiH. Time su zasigurno dodatno zacementirani porazni rezultati ratnog progona i zločina.

Nakon rata, pa tako i u 2009. godini, nastavilo se daljnje etničko čišćenje te iseljavanje i raseljavanje građana unutar nacionalno podijeljenog teritorija BiH, ali preciznijim podacima ne raspolaže nijedna od institucija u Bosni i Hercegovini. Putem EUROSTAT-a Ministarstvo za ljudska prava i izbjeglice BiH trenutno prikuplja podatke o emigraciji iz BiH, koji bi u okviru migracijskog profila BiH trebali biti objavljeni tijekom 2010. godine. Prema procjenama tog ministarstva izvan BiH trenutno živi oko 1.350.000 bos.-herc. građana, što uključuje i građane koji su u međuvremenu stekli državljanstva država primateljica. Svjetska banka iznosi podatak da trenutno u svijetu živi 1.471.594 iseljenika iz BiH, što je 37,7% od ukupne populacije Bosne i Hercegovine, čime se svrstava na drugo mjesto u svijetu po broju iseljenika u odnosu na ukupan broj stanovnika.¹³

Statistike Katoličke Crkve u BiH pokazuju kako je primjerice od predratnog broja od oko 220.000 katolika (otprilike toliko i Hrvata) koji su živjeli u dijelu BiH koji je Daytonskim sporazumom pretvoren u Republiku Srpsku, krajem 2009. godine ostalo živjeti oko 14.000 vjernika, što iznosi oko 6,36 % od predratnog broja. Trend iseljavanja nije prestao ni u poratnim godinama i ima obilježja strukturalno uzrokovane konstante.

Slična je situacija, istina nešto manje dramatična, ali ipak katastrofalna, i u Federaciji BiH u kojoj se također nastavlja rastakanje višestoljetne multietničke i multikonfesionalne demografske slike ovih prostora. Primjerice u Sarajevskom dekanatu je krajem 2008. godine živjelo samo 13.328 katolika koji žive u 6.703 kućanstva¹⁴, dok je prema popisu stanovništva iz 1991. godine u deset sarajevskih općina živjelo 34.873 Hrvata¹⁵. Dakle, broj Hrvata katolika u Sarajevu (glavni grad BiH i Federacije BiH) je u 2008. godini sveden na oko 38,2% u odnosu na broj iz 1991. godine.

¹³ Izvor: „Večernji list“ od 15. siječnja 2010. godine (str. 9).

¹⁴ Izvor: „Svjetlo riječi“, prosinac 2009. godine (str. 4).

¹⁵ Prema službenim podacima popisa stanovništva iz 1991. godine na području grada Sarajeva (10 općina) živjelo je 527.049 stanovnika, od čega 259.470 (49,23%) Muslimana, 157.143 (29,81 %) Srba, 34.873 (6,61 %) Hrvata, 56.470 (10,71 %) Jugoslavena i 19.093 (3,62 %) ostalih. Broj Hrvata u

Crkvene statistike o broju vjernika katolika po biskupijama daju slijedeće podatke:

5. Mostarsko-duvanjska biskupija: broj vjernika 2007. je bio 193.633, a 2008. godine 191.556 (manje za 2.077),
6. Trebinjsko-mrkanjska biskupija: 21.242 vjernika 2007. godine, a 2008. godine 20.661 (manje za 581),
7. Banjalučka biskupija: 2007. godine 38.099 vjernika, a 2008. godine 37.997 (manje za 102 vjernika) i
8. Vrhbosanska nadbiskupija: 2007. godine 206.138 vjernika, a 2008. godine 204.060 (manje za 2.125 vjernika).

U cijeloj BiH je, prema objavljenim crkvenim statistikama, 2007. godine živjelo 459.102 katolika, dok je u 2008. godine evidentirano 454.247 vjernika – što ukazuje da se broj katolika u BiH u razdoblju od godinu dana smanjio za 4.838 osoba ili za 1,05 % i da se trend smanjivanja bilježi na cijelom području BiH.

Navedeni pokazatelji smanjenja broja katolika su uglavnom rezultat iseljavanja iz BiH, pri čemu nije uzet u obzir faktor nataliteta. To potvrđuju službene statistike institucija u BiH koje ukazuju na prirodni priraštaj u 2008. godini. Prema podacima Agencije za statistiku BiH na razini BiH je u 2008. godini zabilježen prirodni prirast stanovništva od samo 150 osoba¹⁶, a podaci Federalnog zavoda za statistiku ukazuju da je u Federaciji BiH u 2008. godini zabilježen prirodni prirast stanovništva od 3.440 osoba (razlika između broja rođenih i broja umrlih u FBiH¹⁷). Stopu nataliteta nije moguće precizno utvrditi zato što nije poznat precizan broj stanovnika.

U svakom slučaju, prema ovim egzaktnim podacima u FBiH je stopa nataliteta pozitivna što ukazuje da je smanjenje broja katolika u BiH prvenstveno rezultat migracija ovog dijela pučanstva, odnosno iseljavanja uslijed nepovoljnog društveno-ekonomskog i političkog životnog okružja.

S obzirom da svi Hrvati nisu deklarirani vjernici katolici (preko 85 %), a da u BiH ima i manji broj katolika drugih nacionalnosti, crkvene statistike o broju katolika približno odgovaraju broju Hrvata kao najmalobrojnijeg konstitutivnog naroda u BiH.

Katolička Crkva, ne raspolaže preciznijim statistikama za druge konfesije, ali očigledno stanje na terenu ukazuje da je majorizacija većine nad “manjinskim nacionalnim skupinama” glavni uzrok iseljavanju i raseljavanju sva tri konstitutivna naroda unutar BiH. Prisilivši predstavnika sva tri konstitutivna naroda da potpišu Daytonski sporazum, međunarodna zajednica je tim međunarodno-pravnim aktom htjela ublažiti posljedice ratnog sukoba te je u tom smislu u mirovni sporazum uglavljen čitav set rješenja kojima bi se trebale ispraviti nepravde nanese silom i ratom (kao npr. Aneks VII o povratku

Sarajevu ima trend brojčanog i procentualnog opadanja od popisa 1971. godine, kad je u Sarajevu živjelo 41.354 popisana Hrvata (11,5 %) – izvor: Wikipedia (www.hr.wikipedia.org).

¹⁶ Broj živorođenih u BiH : 34.176, broj umrlih : 34.026 - izvor: www.bhas.ba.

¹⁷ Broj rođenih u FBiH: 22.920; broj umrlih u FBiH: 19.480 – izvor: www.fzs.ba.

raseljenih i izbjeglih u svoje predratne domove). Međutim, pragmatična priroda politike navela je međunarodnu zajednicu na pogrešan put u provedbi tog cilja, a rezultati su bili najpogubniji upravo za „manjinske skupine“ i najmalobrojniji konstitutivni narod u BiH.

Da bi se prvotno postigao bilo kakav kompromis potreban za zaustavljanje ratnih djelovanja, Dayton je iznjedrio preglomaznu i administrativno podijeljenu državu BiH¹⁸, a prema tom kompromisu konstitutivni narodi su trebali svoja konstitutivna prava ostvarivati kroz administrativne jedinice novostvorene državne strukture. Neodrživost glomazne administracije države te međusobni sukob i preklapanje nadležnosti administrativnih jedinica, logičnim slijedom su natjerali međunarodnu upravu u BiH (OHR) da kroz nametnuta zakonska i ustavna rješenja dijelom reducira nadležnosti entiteta u korist institucija države BiH i županija u korist entiteta - Federacije BiH. To je čitav jedan proces koji se kontinuirano odvija u daytonskom okviru, a međunarodna zajednica ga je u mogućnosti ostvarivati jedino uz stalni politički pritisak na političke predstavnike sva tri naroda. Pragmatična priroda politike je urodila time da je pritisak na najmalobrojniji, a time i politički „najslabiji“ narod, urodio najvećim plodom te su prethodno opisanom centralizacijom i devalvacijom nadležnosti županija i entiteta Hrvati kao konstitutivni narod izgubili skoro svaki politički utjecaj. Budući da se ovaj proces morao odvijati po obrascu daytonske podjele¹⁹, Hrvati u BiH su takvim postupanjem OHR-a (p)ostali žrtvama majorizacije većine i na entitetskim razinama i na državnoj razini. U konačnici Hrvati kao manjina u Parlamentu Federacije BiH ne mogu ostvarivati ustavom proklamirana konstitutivna prava jer uvijek bivaju preglasani od strane bošnjačke većine, dok su i kroz rad Parlamentarne skupštine BiH također potpuno blokirani u odlučivanju – što se reflektira kroz institut entitetskog glasovanja²⁰. Nasuprot tomu Bošnjacima i Srbima je tako uspostavljeni ustavni poredak dao mogućnosti ostvarivanja konstitutivnih prava putem parlamentarnih većina u entitetskim skupštinama pa je očito da su postojeća rješenja uzrokovala neravnopravnošću i gubitkom konstitutivnog položaja Hrvata u BiH.

¹⁸ Daytonskim sporazumom BiH je podijeljena na dva etnički očišćena entiteta: Federaciju BiH i Republiku Srpsku. Federacija je do potpisivanja Sporazuma o implementaciji odluke Ustavnog suda BiH formalnopravno bila entitet dva konstitutivna naroda BiH: Hrvata i Bošnjaka - muslimana, a Republika Srpska entitet srpskog naroda. U Daytonu je Federacija BiH administrativno podijeljena na deset županija (kantona). Svaka od njih ima svoju vladu i parlamentarno tijelo. Županije su podijeljene na ukupno 84 općine, a Republika Srpska je također administrativno podijeljena na pet regija i 64 općine. Uz sve to kao zasebna administrativna jedinica u BiH egzistira i Brčko Distrikt (kondominij dva entiteta).

¹⁹ OHR je prema tumačenju tzv. Venecijanske komisije (Bohn, prosinac 1997. godine) vrhovni tumač i implementator Daytonskog sporazuma, s najširim ovlastima u zakonodavnoj izvršnoj i sudskoj vlasti.

²⁰ Problematika nametnutih ustavnih reformi detaljno je obrađena u *Izvješću Komisije „Justitia et Pax BK BiH“ o stanju ljudskih prava u BiH za 2002. godinu*. Analiza jasno ukazuje na diskriminacijsku prirodu ustavnih rješenja koja je nametnuo OHR (str. 4-6 hrv. i str. 4-7 eng.). – www.ktabkbih.net.

Iako je u ustavne reforme krenula (vjerujemo) u dobrim namjerama stvaranja funkcionalne i održive države, međunarodna zajednica je, krenuvši krivim putem, pogodovala daljnjem jačanju majorizacije većine nad manjinom, te je, uz ionako raširenu individualnu razinu diskriminacije „manjinskih skupina“, diskriminaciju učvrstila i na kolektivnoj razini cijelog naroda.

Glavni zamašnjak ovomu kontinuiranom procesu obespravljanja Hrvata u BiH je pogrešno favoriziranje principa „*jedan čovjek – jedan glas*“ od strane međunarodne zajednice, pri čemu je taj demokratski princip favoriziran uz ostanak nepravednog principa etničke podjele države iz Dayton. No, kada su Hrvati u pitanju, međunarodna uprava u BiH nije se dosljedno držala ni tog principa, za što je očit primjer nametanja Statuta Grada Mostara, kao jedine urbane cjeline u BiH (nakon rata) u kojoj Hrvati čine apsolutnu većinu²¹.

II.4 Kriza javne uprave u Mostaru

Intervencijom Visokog predstavnika okončana je krajem 2009. godine kriza javne uprave Mostara. Gradsko vijeće Grada Mostara, zbog političkih trvenja, nije bilo sposobno, ni nakon 14 mjeseci po izborima, izabrati gradonačelnika niti usvojiti proračun. Sukobljene političke opcije Hrvata i Bošnjaka u navedenom razdoblju nisu mogle donijeti ni odluku o privremenom financiranju pa su skoro sve javne službe došle u potpuni kolaps. Nemogućnost postizanja političkog dogovora nacionalnih opcija u Mostaru nije, međutim, moglo rezultirati preglasavanjem od strane hrvatske većine, kako je to redovna praksa u ostalim dijelovima BiH, jer je OHR 2004. godine nametnuo oblik lokalne samouprave Mostara po kojoj je to jedini grad u BiH u kojemu ne vrijedi uobičajeno načelo „*jedan čovjek – jedan glas*“.

Naime, Odlukom OHR-a od 28. siječnja 2004. godine stupio je na snagu novi Statut Grada Mostara, kojim je dotadašnjih šest mostarskih općina pretvoreno u tzv. "gradska područja" koja predstavljaju izborne jedinice u Gradu Mostaru (tri s hrvatskom, a tri s bošnjačkom većinom)²². Rješenja, koja je za Mostar iznalazio OHR, propisuju da su

²¹ Prema posljednjem službenom popisu stanovništva iz 1991. godine, predratna Općina Mostar je ukupno imala 126.628 stanovnika, od čega: 43.856 (34,63%) Muslimana, 43.037 (33,98%) Hrvata, 23.846 (18,83%) Srba, 12.768 (10,08%) Jugoslavena i 3.121 (2,46%) ostalih. Pored inzistiranja hrvatskih i bošnjačkih političkih predstavnika da se Općina Mostar podijeli prema ratnim crtama razgraničenja, OHR ju je neposredno poslije rata podijelio na šest općina (tri sa hrvatskom, a tri sa bošnjačkom većinom).

Statistike Katoličke Crkve iz 2009. godine kazuju da Mostaru živi oko 64.000 katolika (uglavnom Hrvata), što čini preko polovine ukupnog stanovništva – Izvor: Wikipedia (www.wikipedia.org)

²² Mostar je administrativno i gospodarsko središte zapadne Hercegovine, kao jedine preostale veće regije BiH sa apsolutnom hrvatskom većinom. Nakon krvavog ratnog sukoba, koji je započeo granatiranjem 1992. godine sa srpskih položaja, 1993. godine u Mostaru se rasplamsao sukob Hrvata i Muslimana koji je uzrokovao velikim žrtvama na obje strane i velikim razaranjima. Nakon rata,

izborne jedinice koje nemaju jednak broj stanovnika zastupljene s istim brojem predstavnika u Gradskom vijeću kao parlamentarnom tijelu sastavljenom od 35 vijećnika. Primjerice, izborna jedinica Jugozapad (s hrvatskom većinom), koja ima oko 30.000 birača, zastupljena je s istim brojem zastupnika u Gradskom vijeću s izbornom jedinicom Jugoistok, koja ima oko 7.000 birača. Što znači da jedan glas u izornoj jedinici Jugoistok približno vrijedi 4,2 glasa izborne jedinice Jugozapad. Svako gradsko područje u Gradsko vijeće daje po tri vijećnika. Preostalih sedamnaest vijećnika se bira na području Grada kao jedne izborne jedinice. Nijedan od konstitutivnih naroda ne može imati više od petnaest vijećnika. Pored navedenog, nedosljednost u odnosu na praksu koja vrijedi za ostale gradove u BiH predstavlja odredba Statuta u smislu koje je za usvajanje proračuna Grada Mostara potrebna dvotrećinska većina u Gradskom vijeću.

Kriza vlasti u Mostaru jasno ukazuje da OHR pri vršenju političkog pritiska na vlasti u BiH radi nužne reforme javnog sektora djeluje vrlo selektivno. Slučaj grada Mostara jasno ukazuje na posve diskriminirajući odnos prema nacionalnim interesima najmalobrojnijega konstitutivnog naroda u BiH jer OHR ne koristi iste mjere i u odnosu na druga dva konstitutivna naroda.

Komisija „*Justitia et Pax*“ BK BiH načelno podržava primjenu „načela pozitivne diskriminacije“ kojim se u razumnim granicama pripadnicima tzv. „manjinskih skupina“ daje više prava u odnosu na prava pojedinaca iz „većinske skupine“. Takva praksa bi u procesu povratka mogla pomoći reintegraciji manjinskih skupina i mi smo je zagovarali, ali je primjenu tog načela potrebno dosljedno provoditi na cijelom području BiH. Govoreći u kontekstu ukupnih odnosa u BiH ova Komisija ne može ocijeniti kao pravično selektivno rješavanje problema, bez dosljednih kriterija. Nema ustavnog utemeljenja za sustavnu dekonstituciju jednog od tri konstitutivna naroda samo zbog toga što je on najmalobrojniji, a k tome ona je dugoročno vrlo negativna i za demokratske procese u BiH. Ako je reorganizacija grada Mostara pravičan model sprječavanja majorizacije većine nad manjinom, mišljenja smo da bi međunarodna zajednica, ako želi biti vjerodostojna i ako želi omogućiti mirnu budućnost, takav model morala dosljedno primijeniti i na druge gradove u BiH, posebice iz razloga što majorizacija većine nad manjinom u ostatku BiH, nažalost, predstavlja posve normalnu političku praksu.

U ranijim godišnjim izvješćima „*Justitia et Pax BK BiH*“ detaljnije je analizirana strukturalna defektnost državno-pravnog daytonskog ustroja BiH koji ne samo da omogućava neravnopravnost građana i naroda u BiH, nego je čak i potiče. Što više, dubokog smo uvjerenja da je međunarodna zajednica nakon Dayton koristeći svoja

unatoč inzistiranju obiju strana da se grad podijeli po ratnim crtama razgraničenja, OHR je područje bivše Općine Mostar podijelio na šest gradskih općina (tri sa hrvatskom i tri sa bošnjačkom većinom). Isp. Izvješće Komisije „*Justitia et Pax BK BiH*“ za 2004. godinu (www.ktabkbih.net).

neograničena ovlaštenja još više produbila podjelu Bosne i Hercegovine, te nepravедna rješenja učinila još nepravедnijim. Nepostojanje dosljednog stava predstavnika demokratskog svijeta ne čudi s obzirom da pojam „*međunarodna zajednica*“ ne podrazumijeva nikakav pravni subjekt. Unatoč tomu, Daytonom je u BiH međunarodna zajednica konstituirana kao konkretan subjekt u ovlastima Ureda visokog predstavnika (OHR) te je Bosna i Hercegovina, i pored dobrih namjera, postala žrtvom isprepletenih i sukobljenih političkih i gospodarskih interesa velikih sila.

Ipak prvenstveni uzrok nepravde i nijekanja ljudskih prava na cijelom teritoriju BiH moramo tražiti u strukturama domaće vlasti, odnosno u nespremnosti predstavnika triju naroda u BiH da, poštujući načela pravde i jednakopravnosti, civiliziranim dijalogom i političkim kompromisa stvaraju preduvjete pomirenja i suživota. Nagomilani neriješeni odnosi između etnički podijeljenih i suprotstavljenih politika tri konstitutivna naroda sve više guše nadu u skorbu demokratsku evoluciju međusobnih odnosa i stabilizaciju stanja. U takvim uvjetima teško je očekivati znatnije pomake u smjeru afirmacije ljudskih prava i građanskih sloboda u Bosni i Hercegovini.

Komisija je stajališta da se strukturalne promjene u Bosni i Hercegovini ne mogu pravično provesti na bazi nepravедne daytonske podjele. Država dva entiteta i tri konstitutivna naroda čini se u postojećim okolnostima neprovedivim projektom. Mir, koji je stvoren Daytonom 1995. godine, u budućnosti nije moguće graditi na daytonskom obrascu jer nepravедna rješenja samo pojačavaju tenzije među narodima BiH. Postojeći politički i institucionalni daytonski obrazac organizacije države BiH niti u jednom segmentu nije dao rezultata, a ne ostavlja mjesto nadi za uspostavu pravičnog društva na ovom prostoru. Stoga je Bosni i Hercegovini potrebna korjenita promjena kojom bi se ona napokon oslobodila balasta rata i okrenula budućnosti.

Nažalost, mora se konstatirati kako ni aktivna nazočnost međunarodne zajednice u BiH nije značajno pripomogla u ostvarivanju osnovnih demokratskih principa iz kojih bi proistekle temeljne vrednote demokracije zasnovane na ideji jednakosti svih građana pred zakonom u cilju afirmacije slobode pojedinca. Dapače, inzistiranje OHR-a na pragmatičnim rješenjima i njegovo izravno interveniranje nametanjem izmjena i dopuna entitetskih ustava 2002. godine, postignuta je potpuna negacija daytonske BiH kao decentralizirane države tri konstitutivna i ravnopravna naroda i daytonsku podjelu na dva entiteta pretvorila u podjelu ove zemlje između dva naroda.

Nakon petnaest godina neki od predstavnika međunarodne zajednice su napokon i javno priznali da ustavna rješenja iz Daytonu predstavljaju generator sukoba i zapreku trajnom miru u ovom dijelu Svijeta. Stoga je tijekom posljednjih godina međunarodna zajednica (poglavito SAD i dio administracije EU) stalnim inicijatorom ustavnih promjena u BiH.

Ipak, stječe se dojam da su svi dosadašnji pokušaji iznalaženja dogovora oko novog ustroja BiH imali također samo karakter kozmetičkih izmjena u cilju davanja legitimiteta postojećim rješenjima nametnutim u Daytonu i nakon njega. Cijenimo da postupanje u tom smjeru ni u kom slučaju ne može rezultirati pravičnim rješenjem. Stoga je Bosni i Hercegovini potreban poticaj i pomoć za iznalaženje pravičnog ustavno-pravnog dogovora iz kojeg bi proistekla ravnopravnost svih naroda i građana na cijelom teritoriju BiH. Samo takva strukturalna reforma može BiH učiniti stabilnom demokratskom državom u kojoj bi građani ravnopravno i u punini ostvarivali ljudska prava na primjerenom civilizacijskoj razini.

III. STANJE SOCIJALNIH PRAVA U BiH

III.1 Utjecaj gospodarske krize na gospodarske tokove u BiH

Pod utjecajem globalne gospodarske recesije i strukturalnih anomalija državnog aparata, ionako teška socijalna i gospodarska situacija u Bosni i Hercegovini znatno se pogoršala tijekom 2009. godine. Na to je utjecao čitav niz isprepletenih negativnih okolnosti, koje su Bosnu i Hercegovinu (uz Moldaviju) dovele u status vjerojatno najsiromašnije države u Europi. Posebno zabrinjava kontinuirani trend gospodarskog zaostajanja u odnosu na ostale tranzicijske zemlje – čime se izgledi Bosne i Hercegovine za uključenje u euro-atlantske integracije iz dana u dan sve više smanjuju.

U uvjetima ratom razrušenih, a u poraću potpuno uništenih i opljačkanih industrijskih potencijala, građani BiH sve teže pronalaze posao, a uvjeti globalne gospodarske krize su suzili i onako oskudne materijalne resurse stanovništva i gospodarstva u BiH. Vijeće ministara BiH i Vlade oba entiteta tijekom 2009. godine nisu skoro ništa učinili da bi se ublažio udar globalne recesije na gospodarstvo, a samim tim i na standard građana.

Neefikasna i preglomazna državna struktura daytonske BiH se uslijed kontinuiranog trenda nerealne potrošnje i nedostatka gospodarske strategije dovela pred potpuni gospodarski krah i u institucionalnom i u gospodarskom smislu. Ni raspoloživi kvalitetni resursi u državnom vlasništvu često se ne žele aktivirati kako bi privatizacijom bili prodani u bescjenje²³.

Ukupan izvoz iz BiH za prvih devet mjeseci 2009. godine je iznosio 4.046.291.000 KM (1,00 KM cca. 0,51 EUR) dok je u istom razdoblju ukupni uvoz iznosio 9.116.183.000 KM, što za siromašnu BiH predstavlja ogroman trgovinski deficit u iznosu od 5.069.892.000 KM.

U studenom 2009. godine bazni indeks ukupne industrijske proizvodnje u Bosni i Hercegovini (indeks prema prosječnoj mjesečnoj proizvodnji iz bazne 2005. godine) je manji od indeksa u listopadu 2009. godine za 22,9 %. Indeks prema prosječnoj mjesečnoj proizvodnji iz 2008. godine iznosi 98,3. Stopa promjene industrijske proizvodnje u odnosu na studeni 2008. godine je negativna i iznosi - 10,5 %. Stopa promjene kumulativne proizvodnje u odnosu na isto razdoblje 2008. godine iznosi - 4,3 %²⁴.

²³ Drastične primjere predstavljaju sektor namjenske industrije ili Naftnih terminala Federacije u kojima se godinama ništa ne radi iako su za njihovu obnovu već izdvojena proračunska sredstva. Porezni obveznici stoga izdvajaju znatna sredstva za nerad nekolicine uposlenih po kriterijima nacionalne i političke podobnosti, koje ocjenjuju političke elite na vlasti.

²⁴ Izvor: Agencija za statistiku BiH, www.bhas.ba.

U navedenim okolnostima vlasti su tijekom 2009. godine posegnule za dodatnim zaduženjima kod MMF-a²⁵, a koja su gotovo u potpunosti usmjerena ka potrošnji državnog aparata i servisiranju nerealnih socijalnih programa kojima su na prošlim izborima kupovani glasovi osiromašenih kategorija birača. Ministri financija su tijekom proračunske 2009. godine u više navrata ukazivali kako nerealni socijalni programi i potrošnja prijete bankrotu države. Unatoč tomu parlamentarni zastupnici i državna administracija su sebi povećali plaće dok isplata ionako mizernih mirovina i socijalnih naknada kasni i dolazi u pitanje.

S obzirom da ne postoji politička spremnost izvršiti obveze koje su preuzete u sklopljenom aranžmanu s MMF-om, a koji davanje druge tranše kredita uvjetuje smanjenjem potrošnje i strukturalnim reformama, neodgovorna i samozadovoljna državna administracija uvlači zemlju u sve dublju krizu za čije prevladavanje nema gotovo nikakvog dugoročnog programa.

III.2 Sve dublje ukorjenjivanje siromaštva i porast nezaposlenosti

Većina građana već duže vrijeme spada u socijalno ugrožene kategorije stanovništva. Prema kriterijima UN-a preko 30 % stanovništva BiH živi u uvjetima ekstremnog siromaštva.

Među najugroženijim kategorijama pučanstva su umirovljenici. Prosječna mirovna u BiH je u prosincu 2009. godine iznosila oko 350,00 KM (cca. 178,50 EUR), dok je minimalna (zajamčena) zarađena mirovina 296,00 KM. Korisnici obiteljskih mirovina (udovice, malodobna djeca i sl.) primaju 70 % od zarađene mirovine, što je ispod svakog minimuma za održavanje osnovne egzistencije.

Prema službenim podacima Agencije za statistiku BiH, ukupan broj registriranih nezaposlenih u rujnu 2009. godine iznosio je 502.192 osobe što predstavlja porast nezaposlenosti u odnosu na rujnu 2008. godine za 4,2 indeksna boda ili povećanje broja nezaposlenih za 21.879 osoba. Trend porasta nezaposlenosti posebice je pojačan u zadnjem kvartalu 2009. godine. U listopadu 2009. broj zaposlenih u pravnim osobama BiH iznosio je 688.052, a od toga 274.862 žena. U rujnu 2009. godine ukupan broj registriranih zaposlenih osoba u BiH iznosio je 688.636 osoba što predstavlja pad u iznosu od 2,3 indeksna boda u odnosu na 2008. godinu²⁶.

Već u listopadu 2009. godine stanje broja zaposlenih u pravnim osobama se u odnosu na rujnu 2009. godine smanjio za 0,2 %, dok se broj zaposlenih žena smanjio za 0,3 %. Broj nezaposlenih u listopadu 2009. povećao se za 0,4 %, a broj nezaposlenih žena

²⁵ MMF – Međunarodni monetarni fond.

²⁶ Izvor: Agencija za statistiku BiH, www.bhas.ba.

povećao se za 0,3 % u odnosu na rujan 2009. Stopa registrirane nezaposlenosti u listopadu 2009. godine iznosila je 42,3 %, a za žene 48,1 %²⁷.

Sindikalne statistike govore kako je tijekom 2009. godine u BiH bez radnih mjesta ostalo preko 70.000 radnika, a od te brojke preko 56.000 uposlenih na neodređeno vrijeme. Predsjednik Samostalnog sindikata BiH navodi da većina radnika koji su ostali bez posla predstavlja hranitelje obitelji, a posebno ističe ugroženost radnika u industrijskom sektoru, koji jedva preživljavaju²⁸.

Socijalno je ugrožena i većina radno aktivnog stanovništva. U listopadu 2009. godine prosječna neto plaća je iznosila 789,63 KM, a prosječna bruto plaća 1.199,46 KM²⁹. Realna sindikalna košara (temeljne prehrambene potrebe za održanje gole egzistencije četveročlane obitelji) iznosi oko 1.650 KM pa većina stanovništva ne može osigurati ni najnužnije za život.

Prema podacima Agencije za statistiku Prosječna isplaćena neto plaća u trećem kvartalu 2009. godine iznosila je 787,00 KM (402,39 EUR) što predstavlja pad od 2,61 % u odnosu na isto razdoblje prošle godine.

Cijene proizvoda i usluga koji se koriste za osobnu potrošnju (indeks potrošačkih cijena) su u rujnu 2009. godine u odnosu na rujan 2008. godine niže za 1,4 %, dok je dvanaestomjesečni rast cijena u prosjeku bio 1,1%.

Porast indeksa cijena i pad prosječnih plaća jasno ukazuju na znatno pogoršanje socijalno-ekonomskog položaja većine stanovništva BiH u 2009. godini.

U uvjetima velike nezaposlenosti, građani BiH izlaz sve teže mogu tražiti u radu u inozemstvu, budući da je 2009. godine Bosna i Hercegovina, uz Albaniju, ostala jedina europska zemlja sa viznim režimom prema Europskoj Uniji. Ovim su najviše pogođeni pripadnici bošnjačkog nacionalnog korpusa (muslimani) s obzirom da pripadnici iz reda hrvatskog i srpskog naroda imaju mogućnosti stjecanja dvojnog državljanstva Republike Hrvatske³⁰ i Republike Srbije³¹.

²⁷ Izvor: Agencija za statistiku BiH, www.bhas.ba.

²⁸ Izvor: "Večernji list" od 7. siječnja 2010. godine.

²⁹ Izvor: Federalni zavod za statistiku, www.fzs.ba – (u Federaciji BiH naknade, doprinosi i porezi imaju udio u bruto plaći od 67 %).

³⁰ Zbog diplomatskih zapreka koje je stvorio bošnjački politički establišment BiH još uvijek nije potpisala bilateralni ugovor s Republikom Hrvatskom o dvojnog državljanstvu iako je Daytonskim sporazumom Hrvatima u BiH garantirane „specijalne sveze“ s Republikom Hrvatskom. Većina Hrvata u BiH ipak ima dvije putovnice (BiH i RH). U međuvremenu je bez većih zapreka potpisan bilateralni ugovor o dvojnog državljanstvu s Republikom Srbijom, kojemu se bošnjački politički vrh nije protivio zbog velikog broja doseljenih muslimana iz Sandžaka i sa Kosova.

³¹ Vizni režim EU za Srbiju je ukinut 2009. godine, a Hrvatska nakon rata nije ni bila u njemu. Neprincipijelno ukidanje viznog režima Srbiji 2009. godine (bez ispunjenja ranije postavljenih uvjeta), a da isto nije omogućeno BiH opasna je politička odluka koja na izravan način getoizira bosansko-hercegovačke Bošnjake/muslimane i dodatno radikalizira situaciju u BiH.

U uvjetima opće besparice, državne institucije nemaju adekvatnog odgovora niti pokazuju primjerenu inicijativu za razrješenje teškog socijalnog stanja u kojemu se već duže vremena nalazi velika većina bosansko-hercegovačkih građana.

Kupovna moć zaposlenih građana je znatno opala u protekloj godini, a troškovi prosječne obitelji uglavnom su svedeni na prehranu i servisiranje osnovnih životnih potreba (električna energija, voda, komunalne usluge i sl.). Uvjeti raširene socijalne oskudice i siromaštva predstavljaju pogodno tlo za porast kriminaliteta i sve raširenije pojave prosjačenja.

III.3 Politička manipulacija socijalnim programima

Protekle 2009. godinu obilježili su brojni javni protesti, štrajkovi i drugi prosvjedi raznih socijalnih kategorija. Među njima su najglasniji bili nezaposleni demobilizirani borci i nositelji ratnih priznanja koji su umirovljeni pod posebnim, povoljnijim uvjetima.

Dok su nositelji ratnih priznanja za bosansko-hercegovačke prilike poprilično dobro socijalno zbrinuti, nezaposlenim demobiliziranim borcima naknade za nezaposlenost isplaćuju se u iznosima koji nisu dostatne ni za minimum egzistencijskih potreba (cca. 150,00 KM). Ipak najave smanjivanje ili ukidanje ovih naknada razvojačenim borcima izazvalo je pravu buru protesta u ovom dijelu populacije³².

Brojnost populacije nezaposlenih boraca u Federaciji BiH utjecala je da i isplata ovako niskih naknada za slučaj nezaposlenosti predstavlja prevelik teret za skromni federalni proračun. Ipak, ovdje se mora primijetiti da socijalni programi, bez obzira koliko nedostatni i mali bili za korisnike, nisu usmjereni ka ciljanoj populaciji onih sa najvećim potrebama, nego često bivaju sredstvom za manipulaciju osiromašenih masa. Posebnu dimenziju problema predstavlja nedostatak sustavnih programa zbrinjavanja kroz zaposlenje, kojim bi se na trajniji i kvalitetniji način rješavali socijalni problemi. Čini se da dodjela i tako malih socijalnih naknada, bez valjanih kriterija³³, često stimulira rad „na crno“ i kod dijela populacije ima destimulativan učinak u pogledu želje i interesa za pronalaženje zaposlenja.

³² *Zakon o razvojačenim braniteljima u Federaciji BiH* je usvojen 26. rujna 2006. godine (neposredno pred održanje općih izbora – 1. listopada 2006. godine), a “progurala” ga je bošnjačka parlamentarna većina uz protivljenje hrvatskih zastupnika, predstavnika OHR-a te i međunarodnih financijskih institucija – koje su upozoravale da bi njegovo prihvaćanje u predloženoj formi moglo prouzročiti financijsku katastrofu u proračunu Federacije BiH. Zakon je stupio na snagu 1. siječnja 2007. godine, a s njegovom primjenom trebalo bi prestati krajem travnja 2010. godine (izborna godina).

³³ Primjerice, u Federaciji BiH uopće nije uspostavljen jedinstveni registar korisnika svih proračunskih davanja, koji bi sam po sebi otklonio mnoge nepravilnosti i povećao transparentnost trošenja proračunskih sredstava. Uspostavu ovog registra već godinama opstruira dio predstavnika bošnjačke politike u Federaciji BiH.

Mišljenja smo da bi država za radno sposoban dio stanovništva BiH trebala provoditi mjere poticaja poslodavcima pri zapošljavanju, a mjere novčanih socijalnih naknada usmjeriti ka dijelu populacije koja svoju egzistenciju ne može ostvariti vlastitim radom (kao npr. u zbrinjavanju invalida, siročadi, starih osoba bez ostvarene mirovine i sl.).

Ovdje se ne bi smjela zaobići činjenica da se ni u oblasti dodjele i raspodjele prava na socijalnih davanja često primjenjuju netransparentni kriteriji, te da uz pomoć korupcije mnoge osobe ostvaruju socijalna prava koja im po zakonu ne pripadaju. Također je često prisutna i diskriminacija pripadnika „manjinskih“ konstitutivnih naroda čime se osobe koje po zakonu imaju prava na socijalnu pomoć diskriminiraju u odnosu na prava pripadnika većinskog konstitutivnog naroda na određenom teritoriju.

Općenito se mora konstatirati kako vlasti u BiH posvećuju premalo pažnje socijalnim potrebama stanovništva, a poglavito potrebama najugroženijih kategorija. Nedostatak novca u proračunu ne abolira vlast od odgovornosti za građane u najvećoj socijalnoj potrebi, a posebice ako se ima na umu da izdatci za krajnju potrošnju administracije i državnog aparata iznose oko 20 % BDP-a Bosne i Hercegovine (u 2008. godini 19,94 % BDP-a BiH).

IV. ZAKON O POREZU NA NEKRETNINAMA U REPUBLICI SRPSKOJ

Nakon primjene brojnih represivnih mjera, otvorenim progonom, prijetnjama, zastrašivanjem, kojima se nakon rata sprječava povratak prognanih i tako dovršava etničko čišćenje Republike Srpske, čini se da vlast tog entiteta s istim ciljem pristupa perfidnijim metodama. Najnovije sustavne zapreke povratku instaliraju se putem potencijalno i vrlo izgledno diskriminirajućih instrumenta poreznog sistema. Dok novi namet jedni podržavaju, drugi ga vide kao instrument za realizaciju posljednjeg čina etničkog čišćenja Republike Srpske.

*Zakon o porezu na nekretninama*³⁴ bi se u Republici Srpskoj trebao primjenjivati od 1. siječnja 2011. godine. Za razliku od poreza koji se nekada plaćao kao porez na imovinu, a prema kojem je osnovica bila kvadratura nekretnina, prema novom zakonu porez će se plaćati prema tržišnoj vrijednosti imovine i to po stopi koja će se kretati od 0,05% do 0,5%. Poreznu stopu utvrđivat će općine, a visina poreza bi aproksimativno („od oka“) određivale općinske porezne komisije, u kojima će zasigurno odlučujuću ulogu imati pripadnici većinskog naroda u etnički očišćenim općinama Republike Srpske. Time se otvara mogućnost, koja u ovako podijeljenoj zemlji postaje vjerojatnost, da će netko, tko se komisiji ne dopadne, (npr. Hrvat ili Bošnjak) za istu površinu i istu tržišnu vrijednost nekretnina plaćati deset puta veći porez nego netko čija nacionalna, politička ili vjerska pripadnost bude po mjeri općinskih vlasti. Osim proizvoljnog određivanja porezne osnovice proizvoljne su i porezne stope koje se kreću od 0,05% do 0,5%. Ni u jednoj zemlji na svijetu ne postoji toliko progresivan sustav oporezivanja, da jedni plaćaju desetostruko veći postotak poreza od drugih. Dakle, malobrojnim Hrvatima i Bošnjacima koji su ostali ili su se vratili na područje RS općinska komisija može procijeniti imovinu kao tržišno veoma vrijednu što povećava poreznu osnovicu, a time upadaju u progresivnu poreznu stopu, koja ide i do 0,5% godišnje od vrijednosti imovine.

Građani koji imaju nekretnine u Republici Srpskoj dužni su ih prijaviti i upisati u fiskalni registar nekretnina najkasnije do 31. ožujka 2010. godine. U tijeku je postupak podnošenja prijave građana u Republici Srpskoj za upis u fiskalni registar nekretnina, temeljem čega bi se od 1. siječnja 2011. godine obračunavao novi vid poreza na nekretnine, a odziv građana je za sada veoma slab. Iako je krajnji rok za završetak tog procesa 31. ožujka 2010. godine, do sredine prosinca 2009. godine je zaprimljeno svega 150.000 poreznih prijava, a procjenjuje se da bi ih trebalo pristići oko tri milijuna.

³⁴ „Zakon o porezu na nepokretnostima“ je objavljen u „Službenom glasniku RS“, br. 110/ 08 od 5. studenog 2008. godine.

Kako za stanovništvo RS-a, tako i za građane koji žive u Federaciji BiH, a imaju imovinu u manjem bos.-herc. entitetu, postoji niz nejasnoća. Naime, već pri donošenju ovog zakona bilo je zamjerki da on nije dovoljno jasan, a da je sustav oporezivanja i suviše neodređen.

Te zamjerke pokazale su se i opravdanim na licu mjesta, jer se građani susreću s nizom problema prilikom popunjavanja prijave. U Poreznoj upravi RS-a tvrde da su učinili sve na educiranju građana u vezi s nejasnoćama koje se odnose na popunjavanje prijave te da na vrijeme obavijeste građane RS-a o obavezi prijavljivanja nekretnina, dok vlasnici nekretnina imaju drugačije mišljenje i žale se na komplicirane obrasce i velike gužve u poreznim centrima. Oni građani koji imaju nekretnine na prostoru RS-a, a trenutno tu ne žive, uglavnom nisu bili u prilici čitati novine ili slušati program nekog od lokalnih medija pa su nezadovoljni kampanjom Porezne uprave RS-a. Građani također imaju primjedbe na brojna pitanja u prijavi Porezne uprave RS-a na koja moraju odgovoriti. Poreznici traže odgovore na stotinjak pitanja među kojima ima i onih na koje, kažu građani, nije lako odgovoriti bez puno razmišljanja, gdje se od njih traži da odgovore na pitanja za prilaz zemljištu, da li je javni prilaz putem glavne prometnice, javni prilaz sa glavne ili sporedne ulice, ostali javni prilazi ili privatni prilaz i slični detalji, na što mnogim prosječno obrazovanim građanima nije lako odgovoriti³⁵.

Za neprijavljivanje nekretnina predviđene su prekršajne kazne od 500 KM do 1.500 KM.

Nejasno je zašto se vrši novi popis nekretnina na ovaj način kada u katastarskim operatima i zemljišno-knjižnim uredima³⁶ postoje svi podaci o vlasnicima nekretnina i nekretninama. Također su indikativni i motivi donošenja ovog i ovakvog entitetskog zakona ukoliko se ima na umu da se vladajuća politička oligarhija u Republici Srpskoj u isto vrijeme protivi popisu stanovništva i dobara na razini države BiH³⁷.

Posebno je upitna budućnost imovine prognanih i iseljenih obitelji koje su zbrisane, uništene, gdje nema nikog od nasljednika, a ostala je imovina nakon njihove smrti. S obzirom na iskustva iz bliske prošlosti posve je opravdan strah da bi neprijavljena imovina mogla biti proglašena napuštenom, a potom oporezovana i napokon bi postala društvenim dobrom Republike Srpske, a takvih primjera je u ratu bilo na tisuće.

³⁵ Obrasci za prijavu sadrže mnoštvo pitanja o samom zemljištu, kakvog je oblika, topografiji, podacima o građevinskim objektima (traže se odgovori i o tome je li nekretnina konstruirana betonom, kamenom ili ciglom, betonskim panelima, drvetom, limom ili ostalim materijalom, zatim o izolaciji objekta, o tome kakav je krov i od kojeg materijala, bakra, šindre, crijepa, pečene gline, kamen, salonita, ostalih materijala ili nema krova i sl.). Također se traži preciziranje detalja o godini izgradnje objekata, renoviranju, broju katova iznad i ispod zemlje, broju soba, kuhinja, kupatila, te između ostalog podaci o prozorima, podovima i od kakvog su materijala, postotku završenosti, godina unutarnjeg renoviranja i sl.).

³⁶ Katastri nekretnina vode se u općinama, a ZK uredi paralelno u sudovima, uz napomenu da se u katastru prvenstveno vodi računa o posjedu dok su za vlasništvo mjerodavni upisi u zemljišne knjige.

³⁷ Slijedom političkog programa stvaranja države u državi predstavnici vladajućeg SNSD-a propagiraju provedbu popisa koji bi RS sama provela na teritoriju tog entiteta.

Mnogi prognanici koji se još nisu vratili u Republiku Srpsku, a i oni koji su se vratili pribojavaju se scenarija u kojemu bi im zbog nemogućnosti plaćanja novog poreza na nekretnine Republika Srpska oduzimala imovinu komad po komad, pri čemu bi u konačnici u potpunosti ostali bez generacijama stjecanih nekretnina. Taj mehanizam nije decidno propisan Zakonom, ali je logično da će sud, u slučaju da netko nije u stanju platiti obavezu, naložiti izmirivanje istih. Ako ni nakon toga osoba nije u mogućnosti podmiriti tražene poreze, neplaćene porezne obveze mogu biti naplaćene prodajom nekretnina.

Kao jedine porezne olakšice ovaj Zakon predviđa oslobađanje poreza za zemljište koje se obrađuje i nepokretnosti koje se nalaze u minskom polju. Kada je riječ o kući ili stanu, porezni obveznik ima pravo na umanjenje osnovice za vrijednost do 50 kvadratnih metara za sebe i po deset kvadrata za svakog člana svog domaćinstva. Međutim, većina prognanog nesrpskog stanovništva neće biti u prilici iskoristiti ove porezne olakšice zbog još uvijek nepostojećih uvjeta za njihov povratak, što uključuje mogućnost zapošljavanja i školovanja djece.

U kontekstu prevladavajuće nacionalističke retorike i političke prakse, koja je posebno izražena u Republici Srpskoj, posve opravdanim se čine sumnje izbjeglih i protjeranih Hrvata i Bošnjaka da je ovaj vid oporezivanja novo, samo sofisticiranije, oruđe za nastavak etničkog čišćenja prostora Republike Srpske. Stoga reakcije na ovakva porezna rješenja već stižu s mnogih strana, naročito iz dijaspore.

Odnos vlasti Republike Srpske prema povratnicima te sustavno i kontinuirano opstruiranje povratka ne daju im nikakav kredibilitet uslijed kojeg bi se moglo povjerovati da u provedbi navedenog Zakona neće nastaviti diskriminaciju pripadnika druga dva konstitutivna naroda. Stoga bi provedba Zakona o porezu na nekretnine mogla biti samo još jedan instrument provođenja političkog programa etničkog čišćenja tog prostora. Tekuća politika i retorika vlasti RS-a ne daju razumnog osnova za otklanjanje ovakve sumnje.

V. PRAVA DJECE U BOSNI I HERCEGOVINI

Bosna i Hercegovina je ratificirala Konvenciju o pravima djeteta još 1993. godine, ali u praksi se malo od toga provodi. Brojni izvještaji i analize domaćih i međunarodnih organizacija kontinuirano ukazuju na nezadovoljavajuće stanje u pogledu poštivanja osnovnih prava najmlađe populacije. To i ne začuđuje kada se zna da se, osim nekolicine nevladinih organizacija, ovim problemom skoro nitko sustavno ne bavi, računajući i nadležne državne službe. Istina, postoje određene inicijative u javnom sektoru – koje nažalost ne odražavaju pravu brigu za prava djeteta u BiH³⁸.

Usprkos ranom ratificiranju Konvencije o pravima djeteta i izražavanju političke volje za implementaciju prava predviđenih Konvencijom, kršenja prava djece u BiH i dalje se nastavljaju povećavati. Prema podacima brojnih nevladinih organizacija koje se bave pravima djece u BiH zabilježen je porast maloljetničke delikvencije, nasilja nad djecom, seksualnog iskorištavanja i diskriminacije.

Evidentno je da su prava djece u Bosni i Hercegovini ugrožena. Potrebno je naglasiti da se u BiH prema nekim (vjerojatno pretjeranim) procjenama oko 80 % obitelji nalazi na rubu egzistencije i da su djeci iz tih obitelji ugrožena osnovna prava, pa čak i pravo na život. Prema podacima na temelju sistematskih pregleda, sve više djece boluje od anemije i rahitisa, dakle, od klasičnih bolesti siromaštva³⁹.

Nadalje, prema zakonima svako dijete u BiH ima pravo na obrazovanje, a obaveza države je osigurati besplatno pohađanje osnovne škole. Međutim, u praksi se to u potpunosti ne provodi. Čak se ne provodi ni odredba o osnovnom obrazovanju jer dva do četiri posto djece nije uključeno u nastavni proces⁴⁰.

U BiH se ne poštuje ni pravo djeteta da od rođenja ima pravo na ime. Prisutan je problem neupisivanja djece, koja nisu rođena u zdravstvenim ustanovama, u matične knjige rođenih. Nazivaju ih „djeca duhovi“, jer dijete koje nije upisano u matičnu knjigu rođenih za državu praktično ne postoji i ono ne može samim tim ostvariti ni svoja osnovna prava. Potpuno je uskraćeno za sve ono što mu država mora i može osigurati. Postoje napori da se ta djeca otkriju i da se njihova situacija promijeni.

³⁸ U okviru djelovanja Ministarstva za ljudska prava i izbjeglice BiH, krajem 2002. godine je uspostavljeno Vijeće za djecu - u cilju praćenja i implementacije Državnog akcijskog plana za djecu za razdoblje 2002. - 2010. godine. U dosadašnjem radu Vijeće za djecu uglavnom pokušava obavljati monitoring dječjih prava na razini BiH, ali nema zapaženijih konkretnih programa niti učinaka na polju zaštite prava djeteta.

³⁹ Podaci NVO Vesta iz Tuzle, (www.vesta.ba).

⁴⁰ Podaci NVO „Zdravo da ste“ iz Banja Luke, (www.zdravodaste.org).

Iz Institucije ombudsmana za ljudska prava BiH ističe se kako je u državi zabrinjavajuće i nasilje nad djecom posljednjih godina. Osnovni problem u provođenju prava djece je da na nivou države ne postoji nijedna institucija koja bi se bavila ovim pitanjem.

U Bosni i Hercegovini je postojalo Vijeće za djecu pri Vijeću ministara BiH koje je bilo krovna institucija za praćenje poštivanja i ostvarivanja prava djece. Na žalost, ova institucija ne funkcionira već dvije godine. Vijeće je bilo uspostavljeno 2002., a ugašeno je 2007. Rad tog vijeća trenutno pokušava nadomjesti Ministarstvo za ljudska prava BiH, što je, s obzirom na ingerencije koje ono ima, nedovoljno. Pozitivni pomak ove godine je napravljen formiranjem Odjela prava djece u Instituciji ombudsmana BiH. U Instituciji ombudsmana Federacije BiH je također utemeljen Odjel za prava djeteta, a u Republici Srpskoj krajem 2009. godine ustanovljen je entitetski ombudsman za prava djece. Odjel za praćenje prava djece institucije Ombudsmana za ljudska prava Bosne i Hercegovine vrši prijem pritužbi zbog kršenja prava i sloboda djece. Odjel posebnu pažnju posvećuje: zaštiti prava i sloboda djece, posebno ugroženih kategorija izbjeglica, raseljenih lica i socijalno ugroženih kategorija; afirmaciji prava i sloboda djece; analizi ključnih uzroka nefunkcioniranja struktura vlasti kod donošenja odluka koje se tiču djece; uklanjanju prepreka za dosljednu primjenu međunarodnih konvencija ratificiranih od strane BiH.

Bez jačanja svijesti o pravima djece i povećanja brige svih razina vlasti u pogledu ove problematike, stanje u BiH teško da će se popraviti u narednom razdoblju. Kvaliteta obrazovanja, zdravstvenih usluga, dječje zaštite te socijalne zaštite djece u BiH je daleko od standarda EU. S druge strane, naša zemlja, kao potpisnica Konvencije o pravima djeteta, ima obvezu poštivati njihova prava. U BiH je i dalje prisutan problem siromaštva, socijalne isključenosti djece, posebno ranjivih kategorija kao što su djeca raseljenih osoba, manjina (romska djeca) i djeca s invaliditetom.

U BiH postoje kršenja dječjih prava u svim oblastima, ocjena je Ombudsmena za ljudska prava BiH⁴¹. Riječ je o istraživanjima stupnja informiranosti djece o dječjim pravima, najčešćim oblicima kršenja dječjih prava, zatim problema prosjačenja djece u BiH, te o istraživanjima o odnosu medija prema djeci i dječjim pravima. Preliminarni rezultati istraživanja o dječjim pravima u medijima pokazuju da se mediji gotovo nikako ne bave pravima djece i njihovim potrebama ili problemima u kojima žive. Nerijetko se pred televizijskim kamerama otkriva i identitet djeteta. Čak se objavljuju i snimci maloljetnika čija su prava ugrožena (osim na javnim servisima). Postoji zabrinutost da ovakvim angažmanom mediji pokazuju kako djeca nemaju nikakav značaj za bosanskohercegovačko društvo u cjelini.

⁴¹ Preliminarni rezultati triju istraživanja u vezi s pravima djece u BiH koje su u Sarajevu prezentirali Ombudsmeni BiH povodom 20. studenoga, Međunarodnog dana djeteta, i 20 godina od usvajanja UN Konvencije.

Prava djece najčešće se krše zbog loše ekonomske i socijalne situacije te u vezi s obrazovanjem, socijalnom i zdravstvenom zaštitom. U istraživanju o informiranosti djece o njihovim pravima, utvrđeno je da djeca nisu u dovoljnoj mjeri informirana o Konvenciji o pravima djeteta te nemaju iskustva s obraćanjem Instituciji ombudsmena BiH. Primjetan je napredak u zaštiti djece od nasilja, ali nedostaju financije za djelotvornije programe rehabilitacije djece žrtava nasilja.

V.1 Prosjačenje - svjesna zlouporaba djece

Kada je riječ o problemu prosjačenja, najčešće žrtve prosjačenja su djeca iz romske zajednice mlađa od 14 godina koja ne idu u školu, a koju roditelji svjesno zloupotrebljavaju. Dijete s ispruženom rukom slika je koja se može vidjeti u svim bosanskohercegovačkim gradovima. Uzroci su uglavnom siromaštvo i teško materijalno stanje. Već smo u prethodnim izvješćima isticali kako institucije sustava u BiH uopće ne reagiraju na ovakve pojave, te ih tretiraju kao uobičajene i „normalne“ što dovoljno govori o neosjetljivosti bos.-herc. društva za zaštitu prava djece. Mjere koje je potrebno poduzeti za suzbijanje ove pojave su adekvatno rješavanje zakonskog okvira, edukacija i poboljšanje materijalnog statusa ugroženih obitelji. Nadležne institucije kao ni nevladine organizacije nemaju evidenciju o djeci koja se bave prosjačenjem.

V.2 Djeca bez roditeljskog staranja

Opće socijalno i ekonomsko stanje u BiH smatra se glavnim uzrokom povećanog broja djece bez roditeljskog staranja. Bosna i Hercegovina će ove godine zabilježiti neslavni rekord po broju napuštene djece, među kojima dominiraju novorođene bebe. Najčešći uzroci napuštanja djece su siromaštvo, alkoholizam, narkomanija, kao i duševne bolesti. Jedan od starih problema je i nepostojanje službenih podataka o točnom broju djece bez roditeljskog staranja.

U prvih 10 mjeseci 2009. godine u Bosni i Hercegovini zabilježen je veliki porast broja napuštene djece, od kojih je najveći broj novorođenčadi u starosti od pet do 30 dana. Kao primjer ovdje navodimo Dječji dom Bjelave u Sarajevu u kojem je u 2009. godini primljeno 25 djece, od kojih je čak 17 beba⁴². Od 1999. godine, po evidenciji ove Ustanove, nije stiglo više beba nego ove godine. Prošle godine i svih godina unazad, izuzimajući 1999. godinu, primljena su djeca 'starije' dobi - od 4 do 10 godina. Slično stanje je i u drugim gradovima Bosne i Hercegovine.

⁴² Podaci iz izjava ravnatelja ustanove Amira Zelića, (www.slobodnaevropa.ba).

U Bosni i Hercegovini ne postoje službeni podaci o broju djece bez roditeljskog staranja. Razlog tomu je nepostojanje jedinstvene baze podataka. Procjenjuje se da se ta brojka kreće između 2 i 4 tisuće djece, od kojih je oko tisuću zbrinuto⁴³.

Jedan od problema je i nizak stupanj svijesti javnosti o potrebama djece bez roditeljskog staranja. To je problem s kojim se ova zemlja mora suočiti i djelovati na podizanju svijesti javnosti o potrebama djece. U BiH se jako malo radi i na zapošljavanju djece bez roditeljskog staranja kada navrše 18 godina, a sve veći problem je nedostatak ustanova za zbrinjavanje ove djece.

V.3 Zakonska zaštita prava djece

Kao što je rečeno, BiH je potpisnica UN-ove Konvencije o pravima djeteta. Međutim, malo se uradilo na zakonskoj regulativi koja bi štitila prava djece u BiH. Prije svega potrebno je naglasiti kako zakonodavstvo na razini BiH još uvijek nije usklađeno s Konvencijom UN. Štoviše, zakonodavstvo na razini države još niti ne postoji.⁴⁴ Tek postoji usvojeni Akcijski plan za djecu BiH za razdoblje od 2002. do 2010. godine.

Bosna i Hercegovina je zemlja koju karakterizira siromaštvo, nezaposlenost mladih, trgovina ljudima i drogom i ozbiljna diskriminacija. Usprkos ranom ratificiranju Konvencije o pravima djeteta i izražavanju političke volje za implementaciju prava predviđenih Konvencijom, kršenja prava djece u BiH se nastavljaju povećavati. BiH ispunjava svoje neposredne obaveze prema implementaciji Konvencije kroz reviziju svog zakonodavstva i izradu politike i planova djelovanja koji se odnose na dobrobit djece, uključujući Državni plan aktivnosti za djecu, Srednjoročnu razvojnu strategiju i politiku djelovanja u posebnim društvenim sektorima.

Zakoni u Bosni i Hercegovini, međutim, nisu u potpunosti usklađeni s Konvencijom o pravima djeteta. Usprkos svom odgovoru na neposredne obaveze, BiH je daleko od osiguravanja progresivne implementacije onoga što zakoni predviđaju. Načela nediskriminacije, najbolji interesi djeteta i pravo da se dijete sasluša i sudjeluje u društvenom životu daleko su od stvarne implementacije. Pristup mehanizmima socijalne zaštite je minimalan, a u praksi se na adekvatan način ne rješava čitav niz pitanja koja se odnose na siromaštvo, marginalizaciju, nasilje u obitelji i izrabljivanje, koji su se pojavili nakon rata. Osim toga, socijalno-ekonomske i političke strukture države ometaju kapacitete države u ispunjavanju svojih obaveza te u zaštiti i ispunjavanju prava djece.

⁴³ To su podaci koje je uradio stručni tim organizacija SOS Kinderdorf International.

⁴⁴ Iz izjave Branke Raguz, ombudsmena Federacije BiH (www.slobodnaevropa.ba).

Statistička neadekvatnost sprječava praćenje poštivanja prava djece te izradu i provedbu politike djelovanja. Država je poduzela ograničene napore kako bi odgovorila na svoje obaveze i promovirala prava djece predviđene Člankom 42. *Konvencije o pravima djeteta*. Prihvatanje *Okvirnog zakona o osnovnom i srednjem obrazovanju u BiH*, koji uređuje ciljeve obrazovanja i promoviranje ljudskih prava, uvođenje predmeta demokracija i ljudska prava u nastavne planove osnovnih i srednjih škola, predstavljaju rijetke napore vlasti na promoviranju Konvencije.

VI. OBRAZOVANJE

VI.1 Dvije škole pod jednim krovom

Pojam „Dvije škole pod jednim krovom“ označava oblik obrazovanja u nekim školama u Bosni i Hercegovini gdje se u istoj školskoj zgradi obrazuju učenici iz dvije etničke grupe, Bošnjaci i Hrvati, ali fizički odvojeni jedni od drugih. Hrvati se naslanjaju na hrvatski nastavni plan i program, a Bošnjaci rade prema federalnom nastavnom planu i programu. Najizrazitiji primjeri dvije škole pod jednim krovom su u Srednjobosanskom i Hercegovačko-neretvanskom kantonu.

Neki definiraju ovu pojavu kao nacionalnu podjelu učenika u srednjim i osnovnim školama u nekim područjima Federacije BiH, dok roditelji smatraju ovakav način obrazovanja pravom za svoju djecu, potrebom i željom roditelja da njihova djeca pohađaju nastavu na materinskom jeziku te prikladnom i prihvatljivom nastavnom programu. Naime, manjinski narodi na određenom području, a u BiH na svakom njenom dijelu netko je manjina, nemaju pravo na obrazovanje na materinskom jeziku i odgoj u duhu nacionalne kulture, iako je to pravo zakonski zajamčeno. Potrebno je naglasiti kako je pojava dviju škola pod jednim krovom i nastala iz spomenutog razloga. Prema Ustavu BiH obrazovanje u Republici Srpskoj je u nadležnosti tog entiteta, dok je u Federaciji BiH u nadležnosti županija. Stoga bi bilo potrebno da te razine vlasti osiguraju svim učenicima mogućnost kvalitetnog obrazovanja, te da se djeci pripadnika manjinskog konstitutivnog naroda osigura izobrazba na materinskom jeziku, odnosno ostvarivanje njihovog prava na prikladno obrazovanje.

Neophodno je u obrazovnoj praksi u BiH naći rješenje koje će pomiriti načelo zabrane diskriminacije i segregacije i načelo prava obrazovanja na materinskom jeziku. Nepronalaženjem načina usklađivanja ova dva načela, teško se može očekivati napredak u ovoj oblasti.

VI.2 Reforma visokog obrazovanja

Na području reforme visokog obrazovanja na bosanskohercegovačkim sveučilištima problemi su prepoznati kao politički, institucionalni, financijski i socijalni. Akt o potpisivanju Bolonjske deklaracije i obvezama koje iz nje proizlaze za Bosnu i Hercegovinu, prenesen je deklarativno s državnih na niže razine vlasti, dakle na entitetske u slučaju RS-a, odnosno kantonalne u slučaju FBiH. Međutim, objektivno gledajući, ove razine vlasti nisu ni kadrovski ni financijski kompetentne osigurati uvjete

za potpunu implementaciju Bolonjskih načela u nastavnom procesu. Ukoliko se ima u vidu činjenica da je u Bosni i Hercegovini za obrazovanje nadležno četrnaest ministarstava dobiva se jasnija slika o problematici vezanoj za uspješno provođenje Bolonjskog procesa.

Za realizaciju značajnih projekata neophodna je politička podrška bez koje nema uspjeha i ostvarenja dogovorenih ciljeva. Neprimjeren odnos politike prema obrazovnim institucijama u prvoj fazi je prolongirao, a kasnije i omogućio donošenje normativa koji destabiliziraju sustav visokog obrazovanja. Dobiva se dojam da je bos.-herc. društvo nezainteresirano za usvajanje i primjenu europskih akademskih vrijednosti.

Problemi su evidentni i u pogledu financiranja visokog obrazovanja budući da mjerodavne vlasti nisu u odgovarajućem kapacitetu podržale važnije reformske preporuke bez kojih nema uspješne realizacije projekta. Odnos države prema obrazovnom segmentu karakteriziraju politička indiferentnost, kašnjenje s donošenjem državnog zakona o visokom obrazovanju, te izostanak državne strategije o razvoju visokog obrazovanja. Potrebno je spomenuti kako Okvirni zakon o visokom obrazovanju Bosne i Hercegovine uopće nema poglavlja o financiranju⁴⁵.

BiH značajno zaostaje u reformi za većinom europskih država. Jedan od glavnih razloga leži u činjenici da visoko obrazovanje nije regulirano na državnoj razini, nego je prepušteno lokalnim razinama. Stoga je na državnoj razini učinjeno vrlo malo u cilju ujedinjenja i standardizacije visokog obrazovanja. U takvim okolnostima su napori za integraciju u europski sustav obrazovanja neučinkoviti i ostat će takvi sve dok je obrazovni sustav tako rascjepkan i nepovezan.

Trenutno stanje u oblasti obrazovanja u Bosni i Hercegovini vrijedno je žaljenja, a ukoliko se njegova kvaliteta ne poboljša i ako se stanje u oblasti obrazovanja, koje se nudi mladima, ne popravi, situacija može postati katastrofalna. Učenici u Bosni i Hercegovini, u većini slučajeva, mogu samo sanjati o suvremenoj nastavi. Neadekvatan školski prostor i obrazovni materijal, kao i nastava koja ne ispunjava standarde, umanjuju stručnost i konkurentnost.

U našem prethodnom Izvješću smo donijeli rezultate anketa koje su provedene u tri grada u FBiH, prema kojima bi oko 70% mladih trajno napustilo BiH. Svakodnevni dugi redovi ispred veleposlanstava stranih zemalja su jasna slika. Mladi vide male šanse u Bosni i Hercegovini i u znak protesta opredjeljuje se za odlazak iz zemlje.

⁴⁵ Problemi istaknuti na III. Savjetovanju - Reforma visokog obrazovanja – primjena Bolonjskih principa na Univerzitetu u Sarajevu, travanj 2009.

VII. POLOŽAJ ŽENA U DRUŠTVU

Uvođenje načela jednakopravnosti žena i muškaraca u sve oblasti javnog i privatnog života ne predstavlja samo ispunjenje jednog od osnovnih standarda ostvarivanja ljudskih prava i temeljnih sloboda, niti se može svesti samo na pitanja socijalne pravde, nego se, prije svega, radi o neophodnom uvjetu za održiv društveni i ekonomski razvoj jedne zemlje, sa posebnim naglaskom na smanjenje siromaštva i poboljšanje kvalitete života svih njezinih građana i građanki.

Ustav Bosne i Hercegovine zabranjuje svaku diskriminaciju na temelju spola, što je važan preduvjet za zaštitu socijalnih i ekonomskih prava žena. Isto tako, *Zakon o jednakopravnosti spolova u Bosni i Hercegovini* jamči jednaka prava na zdravstvenu i socijalnu skrb, te jednakopravnost spolova pri zapošljavanju, na radu i u pristupu svim oblicima resursa bez obzira na spol.

VII.1 Ekonomski položaj žene u BiH

Zakonom o jednakopravnosti spolova u Bosni i Hercegovini regulirano je pitanje zapošljavanja, rada i pristupa svim oblicima resursa. Zakon zabranjuje diskriminaciju na osnovu spola u radu i radnim odnosima. Zakonom je zabranjeno uskraćivanje jednake plaće za rad jednake vrijednosti za oba spola, onemogućavanje napredovanja na poslu pod jednakim uvjetima, onemogućavanje jednakih uvjeta za obrazovanje, neravnomjerna prilagođenost radnih i pomoćnih prostorija za rad potrebama osoba oba spola, različit tretman zbog trudnoće, porođaja ili korištenja prava na porodiljsko odsustvo, bilo koji nepovoljan tretman roditelja ili staratelja u usklađivanju obveza iz profesionalnog i obiteljskog života ili svaka druga radnja ili djelo koje predstavlja neki od oblika izravne ili neizravne diskriminacije. Svi entitetski i kantonalni zakoni moraju biti usklađeni sa Zakonom o jednakopravnosti spolova u Bosni i Hercegovini.

Zaštita ekonomskih i socijalnih prava žena je razrađena zakonima koji vrijede u Bosni i Hercegovini. U zakonodavnoj sferi nema formalno-pravne diskriminacije na temelju spola u oblasti zapošljavanja, rada i pristupa svim oblicima resursa. Međutim, u praksi se javljaju razni vidovi diskriminacije na osnovu spola, uznemiravanja, seksualnog uznemiravanja od strane radnih kolega, pretpostavljenog ili samog poslodavca. Usprkos tome, žene, pogotovo mlađe zaposlenice, iz straha od gubitka posla o tome često javno ne pričaju niti daju inicijativu za procesuiranje takvih slučajeva. Primjetne su također diskriminatorne prakse oglašavanja ili pozivanja na zaposlenje samo jednog spola, te

nedopuštena pitanja o planiranju obitelji i eventualnoj trudnoći, kao i otkazi za vrijeme trudnoće ili porodiljskog dopusta.

Jedan od evidentnih slučajeva diskriminacije je i u tome što žene u pravilu nisu vlasnice imovine i u većini slučajeva ne mogu pokrenuti vlastiti poduzetnički posao niti su im, uslijed nedostatka imovine, dostupna kreditna sredstva. Nedostatak vlasništva nad imovinom, međutim vrlo često nije posljedica nerada, nego društvene uloge žene.

Naime, žene vrlo često obavljaju rad kod kuće u kućanstvu koji se ne plaća, a obavljanje tog društveno korisnog rada im onemogućava rad na drugim poslovima koji se plaćaju. Konačno, primjetan je nedostatak edukacije u oblasti jednakopravnosti spolova, posebno žena u ruralnim oblastima, ali i nedostatak edukacije unutar nadležnih organa vlasti.

Zakonskim propisima iz oblasti rada i zapošljavanja Republike Srpske zagwarantirana je jednakopravnost žena i muškaraca u postupku zapošljavanja, u radnim odnosima, ostvarivanja beneficija iz radnog odnosa, načela jednake plaće za rad jednake vrijednosti, načela nediskriminacije po spolu i drugim osnovama, zabrane uznemiravanja i seksualnog uznemiravanja te *mobbinga*. Također je zajamčena zaštita zaposlenih trudnica i majki, te omogućeno roditeljsko odsustvo za oba roditelja, uz naknadu osobnog dohotka od 100%, dok je u Federaciji BiH pitanje naknade porodiljskog dopusta u nadležnosti kantona i veoma su velike razlike u visini ove naknade, pa se može govoriti o diskriminaciji žena- majki. Propisi u Federaciji BiH, prema podacima mjerodavnih entitetskih organa, također se usklađuju sa *Zakonom o jednakopravnosti spolova u Bosni i Hercegovini* kako bi se otklonila svaka diskriminacija na osnovu spola.

U Bosni i Hercegovini je izrazito vidljiva veza između društvene uloge žene, njezinog obrazovanja, zanimanja i položaja na tržištu rada iz čega se pojavljuju tipično ženska i tipično muška zanimanja. Još uvijek su stereotipi o poželjnim zanimanjima i profesijama kojima se više bave žene ili muškarci veoma duboki. Mogućnost bosanskohercegovačkih žena da odgovore na zahtjeve koje diktira tržište rada znatno je ograničena. Na tu činjenicu utječe više faktora kao što su: patrijarhalno poimanje uloge žene u obitelji i društvu, niska razina obrazovanja i informiranosti žena u ruralnim oblastima, favoriziranje muškaraca pri zapošljavanju, slaba kreditna sposobnost (visoke kamate, mali postotak žena koje imaju vlasništvo nad nekretninama).

Nepovoljniji položaj žene na području zapošljavanja je vidljiv također iz broja nezaposlenih gdje one čine 44% ukupnog broja nezaposlenih. Taj postotak je veći od njihovog udjela u ukupnoj zaposlenosti (35%) ili radno aktivnom stanovništvu (37%).

Podatke o zaposlenim osobama treba promatrati sektorski zbog izražene rodne podjele rada. Žene prevladavaju među zaposlenima u djelatnostima koje se odnose na brigu: odgoj i obrazovanje, te zdravstveni i socijalni rad, zatim u uslužnim djelatnostima,

trgovini te državnoj upravi. Prema školskoj spremi, najveća razlika u strukturi zaposlenosti u odnosu na spol postoji kod kvalifikacijske strukture kvalificiranih i visokokvalificiranih djelatnika gdje su muškarci u većini.

Na temelju pregleda zakonskog okvira zdravstvene zaštite u entitetima i Brčko Distriktu BiH, prava osigurana zakonskim tekstovima omogućavaju slobodan pristup i ostvarivanje zakonom zajamčenih prava na socijalnu i zdravstvenu zaštitu bez obzira na spol. Analiza ustavnih i zakonskih rješenja u ovoj domeni pokazuje kako postoji razlika između utvrđenih prava i mogućnosti za njihovo ostvarenje u praksi. Opseg socijalnih prava, iako zajamčen zakonskim okvirom kao i međunarodnim dokumentima i konvencijama koji imaju snagu ustavnih odredbi, zbog izrazito složenog institucionalnog okvira, siromaštva, nedostatka financijskih sredstava, nedostatne koordinacije između različitih razina u sustavu socijalne skrbi i zdravstvene zaštite, otvara pitanje stvarnog pristupa i korištenja svih oblika zakonom zajamčenih prava za muškarce i žene u BiH

VII.2 Nasilje u obitelji

U Bosni i Hercegovini se ozbiljnije pristupilo istraživanju problema nasilja u obitelji tek poslije rata iako se veliki broj žena suočava s problemom obiteljskog nasilja. Naše društvo izgrađeno je na dubokim patrijarhalnim temeljima, tako da žene žrtve nasilja ne uživaju podršku društva i suočene su s brojnim predrasudama. Prihvatanje činjenice da obitelj može predstavljati izuzetno nasilno okruženje u kojemu se krše osnovna ljudska prava njezinih članova je veoma spor i bolan proces, koji je dodatno usporen tradicionalnim stavom da se problemi nastali između pojedinih članova obitelji moraju rješavati isključivo unutar same obitelji.

Veoma je teško utvrditi opseg prisutnosti obiteljskog nasilja u Bosni i Hercegovini. Osnovni razlozi za to se prije svega nalaze u skrivenoj prirodi problema, neprijavlivanju slučajeva nasilja u obitelji, nepostojanju jedinstvene statističke evidencije i tretiranju nasilja u obitelji kao isključivo „privatnog problema“.

Najčešći uzroci koji dovode do nasilja u obitelji su: neadekvatni uvjeti života, nezaposlenost, financijska nesigurnost, alkoholizam, stres, mentalne bolesti, narkomanija te nasilje kao način ponašanja proistekao iz patrijarhalnog shvaćanja odnosa žene i muža.

VII.3 Utjecaj siromaštva na položaj žene u društvu

Siromaštvo u Bosni i Hercegovini jednako zahvaća žene i muškarce, a sam utjecaj siromaštva se ispoljava na različite načine kod muškaraca i žena, koje su i spremnije prihvatiti se svih vrsta poslova, preuzimajući dodatnu odgovornost za izdržavanje obitelji, uz tradicionalnu ulogu majke i domaćice.

Žene su izložene diskriminaciji prilikom zapošljavanja, i u privatnom i u javnom sektoru, manje su plaćene za isti posao nego muškarci, a imaju i manju mogućnost napredovanja u poslu, što se neminovno odražava na njihov materijalni položaj.

Žene su prve koje podliježu otpuštanju u vremenu restrukturiranja i reformi i teže pronalaze novi posao. Postojeći podaci navode na zaključak da je domaćinstvo na čijem se čelu nalazi žena izloženo znatno većem riziku da dođe u kategoriju siromašnih.

Gotovo potpuno nepostojanje ustanova za brigu o djeci problem je koji dodatno otežava zapošljavanje žena.

Podatak da je prosječan životni vijek kod žena duži, doprinosi dodatno većoj izloženosti starijih žena riziku zapadanja ispod granice siromaštva. Žene umirovljenice, pošto su najčešće bile zaposlene na lošije plaćenim radnim mjestima, primaju niže mirovine. Kad se uzme u obzir da je među pripadnicama ove grupe najčešće nizak nivo obrazovanja i nepismenosti (prema nekim pokazateljima 38% žena starijih od 65 godina nije pismeno), postaje očito koliko je pripadnicama ove skupine teško iskoristiti čak i skromne postojeće mogućnosti.

Siromašne žene posebno su pogođene zbog osjećaja nemoći i zbog nemogućnosti da iskažu svoje mišljenje, bilo u vlastitoj sredini ili u odnosu sa vlastima. Naročite teškoće imaju: samohrane majke, stare žene, izbjeglice, Romkinje, žene-žrtve nasilja, neobrazovane i nezaposlene žene, i žene u ruralnim područjima. Žene u povratničkim domaćinstvima su u najtežem položaju zbog manjinskog statusa i često potpune izoliranosti od sredine u koju su se vratile.

VIII. PRIMJENA ZAKONA O SLOBODI PRISTUPA INFORMACIJAMA

Zakon o slobodi pristupa informacijama na snazi je počevši od 2001. godine i opseg njegove primjene ogledalo je odgovornosti i transparentnosti rada javnih organa u Bosni i Hercegovini na svim razinama vlasti. Ovim zakonom utvrđeno je ...*"da informacije pod kontrolom javnog organa predstavljaju značajno javno dobro, te da javni pristup informacijama potiče veću transparentnost i odgovornost javnih organa, što je neophodno za demokratski proces."*

Ovaj zakon doprinosi jačanju ugleda javne vlasti jer omogućava javnosti uvid u način odlučivanja, ali isto tako je i efikasno sredstvo u borbi protiv korupcije. Prema odredbi ovoga zakona informacije su "svaki materijal kojim se prenose činjenice, mišljenja, podaci ili bilo koji drugi sadržaj, uključujući preslik ili njezin dio, bez obzira na oblik, karakteristike, vrijeme kad je sačinjena i kako je klasificirana".

Objavljivanje informacije jest pravilo, a neobjavljivanje je izuzetak. Zakonodavne, izvršne, sudske i upravne vlasti, zatim svi koji imaju svojstvo pravne osobe s javnim ovlastima; sve državne agencije, državni instituti, državni zavodi; sve škole, vrtići, fakulteti i sveučilišta; sva javna poduzeća; sve javne radio i televizije; sve bolnice, domovi zdravlja... kao javni organi imaju obvezu priopćiti tražene informacije svakoj fizičkoj i pravnoj osobi koja je podnijela zahtjev, osim ako pravo pristupa informacijama nije ograničeno načinom i uvjetima koji su određeni zakonom.

Kako je naprijed istaknuto, primjena ovoga zakona je od izuzetnog značenja za demokratizaciju Bosne i Hercegovine, kao i za jačanje pravne države i vladavine zakona. Zakon ima značajan utjecaj i na ostvarivanje i zaštitu ljudskih prava, jer je ostvarivanje ljudskih prava u uzročnoj vezi s vladavinom zakona: obim u kojem je zaživjela pravna država i vladavina zakona odražava i obim zaštite ljudskih prava. Stoga ne čudi da je kontrola u primjeni ovoga zakona povjerena ombudsmanima za ljudska prava, koji, pored obavljanja svoje funkcije u okviru redovnog mandata, mogu, između ostalog, predlagati naputke o primjeni zakona, razmatrati vodiče i opće preporuke, te u okviru mandata rješavati žalbe građana. Naime, zakon je obvezao vlasti na objavljivanje i dostavljanje vodiča, indeksa odnosno registra informacija, tromjesečnih izvješća, koji se moraju dostaviti ombudsmanima, a koji, u skladu sa svojim ovlastima, mogu upućivati preporuke svim organima vlasti na svim razinama.

Prema godišnjim izvješćima Ombudsmana Federacije BiH, ombudsmeni su ocijenili da još uvijek veliki broj javnih organa ne ispunjava svoju zakonsku obvezu. Tako je do sada, primjerice, na području Federacije BiH samo 168 javnih organa uradilo vodiče i indekse/registre, dok tromjesečna statistička izvješća uradi tek oko stotinu javnih organa. To su, naravno, poražavajući rezultati primjene ovoga zakona.

Zakon o pristupu informacijama u početku su najviše koristili novinari, jer pruža mogućnost za istraživačko novinarstvo. Danas to pravo sve više koriste građani, studenti, nevladine organizacije, privrednici, odvjetnici i dr. Sadržaj zahtjeva za pristup informaciji koju građanin nije mogao dobiti, odnosi se najviše na informacije koje su od osobnog interesa (primjerice: povodom objavljenog natječaja, kandidat nije izabran i traži na uvid dokumentaciju kandidata koji je izabran, kako bi utvrdio da li ovaj ispunjava propisane uvjete natječaja i sl.). No traže se i informacije o privatizaciji raznih poduzeća, pa i one od općeg značenja - npr. o plaćama dužnosnika, trošenju proračunskih sredstava, reprezentacijama, ulaganjima i dr.

Činjenica je da razvijenije sredine u BiH odgovornije postupaju u primjeni ovog zakona jer je u tim sredinama odnos javnih organa prema javnosti odgovorniji nego u manje razvijenim sredinama.

Ombudsmani su uočili da je, nakon usvajanja *Zakona o slobodi pristupa informacijama*, koji je u odnosu na druge zakone tzv. "*lex specialis*", ipak donesen znatan broj zakona koji su u suprotnosti s ovim zakonom, budući da nisu usuglašeni s njime. To se posebice odnosi na ograničavanje, odnosno izuzeće od objavljivanja određene informacije po automatizmu, bez rješavanja svakog zahtjeva od slučaja do slučaja na temelju sadržaja tražene informacije. Umjesto toga, izuzetak od priopćavanja javne informacije, kako je to utvrđeno zakonima koji su doneseni nakon stupanja na snagu Zakona o slobodi pristupa informacijama, temelji samo po formi i po vrsti informacije, te se na ovaj način isključuje ispitivanje javnog interesa. Naime, odredbama članka 25., stavak 3 ovog zakona utvrđeno je da: "*zakoni koji se usvoje nakon donošenja ovog zakona, a čija svrha nije izmjena ili dopuna ovog zakona, ni na koji način ne mogu ograničiti prava i obveze utvrđene ovim zakonom*". Primjerice, Zakon o kaznenom postupku Federacije BiH, Zakon o Poreznoj upravi Federacije BiH, Zakoni o obavještajnim službama, Zakon o zaštiti osobnih podataka BiH, Zakon o zaštiti tajnih podataka BiH, kantonalni zakoni o zapošljavanju – svi oni svojim odredbama ograničavaju i reduciraju prava utvrđena *Zakonom o slobodi pristupa informacijama*.

Zakon o slobodi pristupa informacijama sadrži i određene manjkavosti. Prije svega ne sadrži sankcije, odnosno prekršajne odredbe u slučajevima kad javni organ ne priopći traženu informaciju. No postoje i određene neusuglašenosti između tri zakona ove vrste - državnog i entitetskih. Tako Zakon u RS ne predviđa obvezno donošenje rješenja o izuzeću od objavljivanja informacije, dok u državnom zakonu nije definirana (ne)obvezujuća uloga ombudsmana.

IX. SUDSKA ZAŠTITA LJUDSKIH PRAVA

Samostalna i neovisna sudačka vlast, kao tekovina demokratskih pravnih sustava, jedina može osigurati jednakost svih građana pred zakonom i zaštititi zajamčena prava i slobode građana. Neovisnost i samostalnost sudova je jedno od najvećih civilizacijskih dostignuća, a pravo na nepristran sud, te pravično i javno suđenje u razumnom roku je jedno od temeljnih ljudskih prava. Organizacija i uprava u pravosuđu u svakoj zemlji treba biti inspirirana ovim načelima, a neovisnost sudstva mora biti zajamčena od strane države i propisana ustavom.

Zemlje jugoistočne Europe, posebno one nastale raspadom bivše Jugoslavije, nerijetko se određuju kao zemlje dubokih konflikata, zemlje snažne tradicije antilegalizma, pa iako su postignuti određeni napreci, one zasigurno još uvijek nisu pravne države.

Imajući u vidu ustroj i način funkcioniranja BiH, kako je to utvrđeno Daytonskim sporazumom, kada je riječ i o pravosuđu, stvari su u BiH mnogo složenije nego u drugim tranzicijskim zemljama jugoistočne Europe, a posebno u državama nastalim raspadom bivše Jugoslavije.

U Ustavu Bosne i Hercegovine, kao i u entitetskim ustavima, utkani su demokratski i civilizacijski postulati, da će BiH *“biti demokratska država koja će funkcionirati kao pravna država sa slobodnim demokratskim izborima, a država BiH i Entiteti će osigurati najviši stupanj međunarodno priznatih ljudskih prava i temeljnih sloboda”*. Međunarodni dokumenti o ljudskim pravima sačinjavaju sastavni dio Ustava kojim se jamče ljudska prava i temeljne slobode, počevši od Opće deklaracije o pravima čovjeka, Međunarodnog ugovora o ekonomskim, socijalnim i kulturnim pravima, Međunarodnog ugovora o građanskim i političkim pravima, Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda i dr. Slijedom toga i sudovi u BiH, kao organi vlasti, su dužni primjenjivati i poštovati Ustavom zajamčena ljudska prava i slobode.

Europska konvencija za zaštitu ljudskih prava i temeljnih sloboda, kako je to utvrđeno Ustavom BiH, izravno će se primjenjivati u našoj zemlji i ima prioritet nad svim drugim zakonima. Članak 6. ove Konvencije je ključna odredba kada je u pitanju zaštita ljudskih prava i temeljnih sloboda. Međutim, iluzija je govoriti o ljudskim pravima ako građani to pravo ne mogu ostvariti i uživati. Djelotvorno i potpuno pružanje zaštite određenom pravu građanina i mogućnosti njegovog ostvarivanja, ogledalo je rada pravosuđa i uprave u državi.

Sudačka funkcija je funkcija od javnog povjerenja i upravo od toga koliko će biti cijenjene i poštovane odluke sudova zavisi i javno povjerenje u integritet i neovisnost sudaca. Sudac mora poštivati i pridržavati se zakona i uvijek se ponašati na način da potiče javno povjerenje u integritet i neovisnost sudstva, budući da je integritet suca

temeljac u sudskom sustavu. To je ono što sucu omogućava da može ignorirati pojedinačni - kao i politički - utjecaj, kako bi svoje odluke samostalno temeljio na činjenicama i na zakonu koji se može primijeniti na te činjenice.

Ustavom BiH (Aneks IV Daytonskog sporazuma - sporazum nažalost nikada nije službeno preveden s engleskog jezika i nije objavljen u službenim glasilima BiH) reguliran je na razini države samo rad i nadležnost Ustavnog suda BiH. Prema tim odredbama, Ustavni sud ima devet sudaca, s tim da četiri suca bira Zastupnički dom Federacije BiH, a dva Skupština RS. Preostala tri suca bira predsjednik Europskog suda za ljudska prava nakon dogovora s Predsjedništvom BiH koji ne smiju biti državljani Bosne i Hercegovine ili bilo koje druge susjedne zemlje.

Jedna od karakteristika rada Ustavnog suda je odredba da većina svih sudaca čini kvorum koji odlučuje o svim zahtjevima. To predstavlja prilično nedjelotvoran sustav odlučivanja tako što utvrđen kvorum čini polovina članova ukupnog broja sudaca. To znači da svaku odluku mora donijeti najmanje pet sudaca, što za posljedicu ima veliki broj neriješenih predmeta (oko 5000 neriješenih predmeta na kraju 2008.godine).

Ustavni sud ima isključivu nadležnost odlučivati o svim sporovima koji proisteknu iz Ustava BiH između Entiteta, između Bosne i Hercegovine i Entiteta, ili Entiteta, ili između institucija BiH. Značajno je naglasiti da je Ustavni sud nadležan rješavati pitanja je li neki sud u BiH svojom odlukom prekršio odredbe Europske konvencije za ljudska prava i temeljne slobode.

Ustavom BiH nije uspostavljen vrhovni sud na razini BiH, ali je entitetskim ustavima uspostavljena sudbena vlast. U Federaciji BiH su ustanovljeni: Ustavni sud Federacije BiH, Vrhovni sud Federacije BiH i Sud za ljudska prava, koji nikada nije otpočeo s radom jer Vijeće Europe u prijelaznom razdoblju nije sukladno Ustavu FBiH imenovalo četiri strana suca (koji nisu mogli biti državljani BiH, kao ni državljani susjednih država). Kasnijim izmjenama Ustava FBiH, Sud za ljudska prava je ukinut, a njegove nadležnosti su prenesene na Ustavni sud BiH.

Na razini kantona u Federaciji su ustanovljeni kantonalni i općinski sudovi, a utvrđen je i način izbora sudaca kao i nadležnosti kantonalnih i općinskih sudova.

U Republici Srpskoj su također ustanovljeni Vrhovni sud RS, okružni i osnovni sudovi, te Ustavni sud RS, kojim je također utvrđen način izbora sudaca kao i njihova nadležnost.

Entitetskim ustavima zajamčena je neovisnost i samostalnost sudbene vlasti. U bivšoj Jugoslaviji, u kojoj je bio totalitarni komunistički sustav, više od 50 godina nije bilo diobe vlasti na zakonodavnu, izvršnu i sudbenu vlast, nego je bio sustav jedinstva vlasti. Stoga su svi državni organi bili dužni rukovoditi se načelima socijalističkog samoupravnog društva i stavovima SKJ odnosno SK BiH, kao tadašnjih nositelja i pokretača političkog djelovanja radi *“zaštite socijalističke revolucije i njenih tekovina,*

kao i socijalističkih samoupravnih društvenih odnosa i društvenog vlasništva". Stoga je i sudstvo, kao dio vlasti u ovakvom jedinstvenom sustavu vlasti i bilo pod kontrolom jedne političke partije SKJ - počevši od načina i izbora sudaca do obvezne primjene zaključaka i stavova te politike, posebno glede politike gonjenja, kažnjavanja, reizbornosti sudaca i dr.

U poratnom razdoblju u BiH stanje se nije umnogome izmijenilo. Iako je entitetskim ustavima utvrđeno da je sudačka vlast samostalna i neovisna, te utvrđena obveza sudova da će osigurati jednak položaj svim stranama u sudskim postupcima, moćne interesne skupine ostaju zaštićene, što se pokazalo osobito u suzbijanju korupcije. U sustavu vlasti prisutno je mnogo ostataka ranijeg sustava koji je bio konstituiran tako da sačuva red u državi i položaj onih koji su ga kontrolirali.

Jedan od ključnih problema nezadovoljavajućeg stanja u sudstvu bio je uzrokovan načinom izbora i imenovanja sudaca, koji je bio potpuno istovjetan s načinom izbora kao i u vrijeme ranijeg socijalističkog–komunističkog sustava. Naime, izbor sudaca je u poratnim godinama bio isključivo "kadrovsko pitanje" i izbor je vršila izvršna vlast čiji su nositelji članovi najužih političkih nacionalnih stranaka, te je izbor vršen isključivo po nacionalnom ključu i političkoj podobnosti, tako da su u velikom broju sudova u BiH bili birani suci isključivo (ili skoro) jedne nacionalnosti, što je za posljedicu imalo ogromno nepovjerenje građana u rad sudova. Kao potvrdu za ovakve ocjene (politička podobnost i nacionalna pripadnost) valja podsjetiti na slučajeve kaznenog postupka protiv velikog broja optuženih za ratne zločine.

Primjera radi, bilo je slučajeva da je samo u jednoj optužnici bilo navedeno i po više stotina osoba optuženih za istu radnju i svi predmeti ove vrste nalazili su se u registraturi i bili su dostupni samo "sucima od povjerenja". Optužnice su bile podignute tijekom ratnih godina, ali su po njima raspisane tjeralice koje su bile na snazi i više godina nakon prestanka rata, i u pravilu se radilo o pripadnicima drugih vojnih formacija, odnosno nacionalnih skupina u BiH. Drugi primjeri se odnosi na činjenicu da su sudovi u poratnom razdoblju donijeli na stotine presuda temeljem kojih je prijeratnim nositeljima stanarskog prava prestalo stanarsko pravo. Ove odluke sudova su se temeljile na mirnodopskom Zakonu o stambenim odnosima zbog "nekorištenja stana duže od 6 mjeseci tijekom rata". Zakon je primjenjivan ne uvažavajući činjenicu da su te osobe bile silom prognane iz svojih domova upravo zbog svoje nacionalne pripadnosti. Umjesto da budu jamac zaštite ljudskih prava protjeranih i izbjeglih osoba, koji su bili žrtve etničkog progona, sudovi su na ovaj način izravno utjecali na tijek povratka i implementiranje Aneksa VII Daytonskog sporazuma⁴⁶.

Stoga je reforma pravosuđa bila nužnost. Ovu reformu, kao i sve ostale u Bosni i Hercegovini, provodila je međunarodna zajednica u okviru mandata koji ima na temelju

⁴⁶ Usp. Godišnji izvještaji federalnih ombudsmana o stanju ljudskih prava za 1998/99. godinu.

Daytonskog sporazuma. Reforma je najprije odobrena Rezolucijom Vijeća sigurnosti UN br. 1184 od 16.7.1998. godine, a potom je provedena zaključcima i deklaracijama Vijeća za implementiranje mira, te preko nametnutih Odluka Visokog predstavnika. Ovo je veoma složen i dugotrajan proces, koji traje sve do danas.

S obzirom na složeni postupak u donošenju zakona i podijeljene nadležnosti između države BiH i entiteta, u ovakvom ustavnom okviru, objektivno je bilo teško osigurati potrebnu usklađenost zakona i drugih propisa s Ustavom odnosno s međunarodnim dokumentima koji se odnose na ljudska prava i slobode. Čini se da još uvijek državni parlament, kao ni entitetski parlamenti, nisu u mogućnosti nadzirati sve strukture izvršne vlasti. Svakako da je jedan od razloga što u sazivima parlamenta u pravilu zastupnici parlamentarne većine podržavaju politiku koju kreira "njihova vlada" (u pravilu entitetska) i onda je "prirodno" da u državnom Parlamentu brane i da glasuju za njene mjere, umjesto da preuzmu svoju, Ustavom utvrđenu nadležnost u vezi kontrole rada izvršnih tijela.

Stoga ne iznenađuje da je Sud Bosne i Hercegovine ustanovljen Zakonom o Sudu Bosne i Hercegovine koji je nametnuo Visoki predstavnik 30.11.2000. godine (*Službene novine BiH br. 29/2000*) koristeći se ovlastima iz Sporazuma o civilnom provođenju Mirovnog ugovora, kao i zaključcima Vijeća za implementiranje mira iz 2000. godine, budući da Parlament Bosne i Hercegovine nije donio ovaj zakon po uobičajenom zakonskom postupku. Naime, kako stoji u zaključku, "*Vijeće smatra da je uspostava vladavine zakona, u koju građani imaju povjerenja, preduvjet za trajni mir, te da je strategija sudske reforme osmišljena s ciljem odgovora na pozive vlasti Bosne i Hercegovine koje traže jači angažman međunarodne zajednice povodom pitanja privrednog kriminala, korupcije i problema s kojima se suočava sudski sustav...*". Ovaj Zakon je do danas pretrpio čak jedanaest izmjena i dopuna.!!

Po zahtjevu dužnosnika iz RS, Zakon je tijekom 2009. godine bio i na ocjeni ustavnosti s obzirom na članak 13. izmijenjenog Zakona. Ustavni sud BiH je na sjednici od 28.3.2009. godine odbio zahtjev za ocjenu ustavnosti, te utvrdio da su odredbe članka 13. stavak 2. Zakona o sudu BiH sukladne Ustavu BiH. Karakteristično je da su suci Ustavnog suda iz RS, koje je imenovala Skupština RS, izdvojili mišljenje smatrajući da su odredbe ovog članka u suprotnosti s ustavnim odredbama.

Visoki predstavnik je nametnuo i Zakon o tužiteljstvu BiH koji je do danas pretrpio sedam izmjena i dopuna. U Sudu BiH, kao i u Tužiteljstvu BiH, također rade suci stranci, koje imenuje visoki predstavnik i to u Odjelu za ratne zločine i u Odjelu za organizirani kriminal. Parlamentarna skupština BiH je donijela odluku kojom prestaje mandat stranim sucima i tužiteljima krajem 2009. godine. Međutim, visoki predstavnik je sredinom prosinca ponovno nametnuo odluku kojom im je produžen mandat do kraja 2012. godine i to samo u Odjelu za ratne zločine suda i tužiteljstva, ali ne i u

Odjelu za organizirani kriminal. U ovaj odjel je imenovao strane suce kao savjetnike, ali nitko ne zna kakav im je status⁴⁷!

Odluku visokog predstavnika o produženju mandata stranim sucima i tužiteljima u Odjelu za ratne zločine suda i tužiteljstva BiH odbacili su Vlada i Skupština RS, a vlasti RS su donijele zaključak da će u svezi s ovom Odlukom raspisati referendum u RS.

U sklopu reforme pravosuđa ustanovljeno je i Visoko sudačko i tužiteljsko vijeće Bosne i Hercegovine koje je utemeljeno *Zakonom o Visokom sudačkom i tužiteljskom vijeću* (Zakon o VSTV) od 1.6.2004. godine, u cilju da u okviru svojih nadležnosti, osigura očuvanje neovisnog, nepristranog i profesionalnog pravosuđa u BiH, kao temelj svake demokratske države. VSTV ima isključivu nadležnost za imenovanje i utvrđivanje stegovne odgovornosti nositelja pravosudnih funkcija, te je ujedno i regulaciono tijelo koje na razini BiH uspostavlja etičke i profesionalne standarde za pravosudnu zajednicu. Visoki predstavnik je produžio mandat i jednom članu savjeta, koji je također strani državljanin.

Međutim, i pored činjenica da reforma traje već više od deset godina, stanje u sudovima nije zadovoljavajuće, posebno kad je u pitanju "pravo na razuman rok". Odredbama članka 6. Europske konvencije je zajamčeno da *"svatko ima pravo da zakonom određeni, neovisan i nepristran sud pravično, javno i u razumnom roku ispita njegov predmet i da odluči bilo o sporu u pogledu prava i obveza građanske naravi ili o opravdanosti svake krivične optužbe koja je protiv njega podignuta"*.

O ovome najbolje svjedoče podaci da je u sudovima Bosne i Hercegovine, zaključno s 31.12.2008. godine ostalo neriješeno 572.293 predmeta, s tim da ovi podaci ne uključuju podatke iz područja tzv. *"komunalnih predmeta"* – tj. tužbama koje se odnose na neplaćanje raznih komunalnih usluga (grijanje, RTV pretplate, struja, voda, odvoz smeća i dr.). Na kraju 2008. godine u sudovima BiH ostalo je neriješeno 1.464.464 ovakvih *"komunalnih predmeta"* od čega 1.241.874 u sudovima Federacije; 216.325 predmeta u sudovima RS te 3.665 predmeta u Osnovnom sudu Brčko Distrikta.

Imajući u vidu prethodno navedene podatke proizlazi da je na kraju 2008. godine ostalo neriješeno ukupno 2.036.757 predmeta u sudovima BiH⁴⁸!

Pored kršenja prava na "razuman rok", prisutan je i problem prinudne ovrhe odluka redovnih sudova. Na kraju 2008. godine ostalo je neriješeno 180.153 ovršnih predmeta ili 31 % od ukupnog broja neriješenih predmeta. Imajući u vidu da građani po nekoliko godina čekaju na pravomoćnu odluku sudova, nije potrebno posebno isticati i njihovo nezadovoljstvo da na prinudne ovrhe također moraju čekati nekoliko godina.

Poseban problem predstavljaju slučajevi kada se ovrha treba provesti na teret proračunskih sredstava. Ova ovrha se provodi u visini predviđenoj na određenoj poziciji

⁴⁷ Odluka je objavljena u "Službenom glasniku BiH", br. 97/09.

⁴⁸ Godišnji izvještaj VSTV BiH za 2009. godinu.

proračuna, koji utvrđuje proračunski korisnik (općina, kanton, entitet i dr.). U slučajevima ako postoji više povjerilaca, oni svoja novčana potraživanja namiruju onim redom kojim su stekli pravo da se namire iz proračuna. S obzirom na tešku ekonomsku situaciju u BiH, povjerioci čekaju "na red" po više godina i upitno je da li će i kada uopće ostvariti ta prava (pitanja stare devizne štednje, ratne štete, isplate otpremnina po članku 143. *Zakona o radu...*).

Dužnici u pravilu idu za tim da izbjegnu namirenje tražitelja ovrhe, služeći se pored ostalog, skrivanjem računa kod banaka, promjenama adresa, otvaranjem novog računa i sl. Pojava i problem izbjegavanja plaćanja uzdržavanja djece nakon razvoda braka je sve više prisutan, i čini se da pojedini sudovi ne vode dovoljno računa o tome da je u ovakvim i sličnim situacijama primaran interes djeteta.

Pored Europske Konvencije, BiH je ratificirala i Međunarodni ugovor o građanskim i političkim pravima, koja predstavljaju dva najvažnija međunarodna dokumenta za zaštitu prava na pretpostavku nevinosti. Pretpostavka nevinosti je ugrađena i u domaće kazneno zakonodavstvo Bosne i Hercegovine, koji propisuje da „*svatko se ima smatrati nevinim za kazneno djelo dok se pravomoćnom presudom ne utvrdi njegova krivnja*”.

Ovo načelo pretpostavke nevinosti se mora primjenjivati u svim stadijima tijekom čitavog kaznenog postupka i ako se ono ne poštuje, onda ukupna ideja pravičnosti kaznenog postupka ostaje lišena svog smisla. Naime, pretpostavka nevinosti je vezana i za druga prava osumnjičenog odnosno optuženog. Brojni su primjeri koji ukazuju na postojanje problema nepoštivanja pretpostavke nevinosti, što je posebno izražen problem kod medijskog izvještavanja kada je u pitanju pokretanje kaznenog postupka.

Prema dostupnim podacima, nešto više od 20% odluka Ustavnog suda BiH u kojima je utvrđena povreda ustavnih odnosno ljudskih prava nije izvršena, što predstavlja ozbiljan problem. Znatan broj ovih odluka odnosi se na "sustavne propuste" vlasti (pitanje nestalih osoba, stara devizna štednja, izmirenje ratne štete i dr.) što realno predstavlja teško rješive probleme za vlasti BiH.

Međutim, također zabrinjava činjenica da Državno tužiteljstvo nije pokretalo kaznene postupke protiv osoba odgovornih za nepoduzimanje odgovarajućih mjera utvrđenih odlukama Ustavnog suda. Nije potrebno posebno isticati koliko ovaj problem negativno utječe na samu bit načela vladavine prava jer se time u velikoj mjeri narušava autoritet ove institucije, ali isto tako i autoritet redovnih pravosudnih tijela (tužiteljstvo) i njihov položaj u pravnom sustavu Bosne i Hercegovine.

X. ZAKLJUČAK

U svom godišnjem izvješću o stanju ljudskih prava u Bosni i Hercegovini za 2009. godinu, Komisija „Justitia et Pax“ Biskupske konferencije Bosne i Hercegovine je svratila pozornost na nekoliko područja gdje se ljudska prava građana ove države ne poštuju ili se sustavno krše. Primjer sudstva zorno pokazuje žalosno stanje poštivanja i zaštite ljudskih prava u ovoj zemlji. Kao jedna od grana vlasti, neovisno sudstvo bi trebalo biti mehanizam koji svakom građaninu jamči zaštitu njegovih prava i jednakost pred zakonom. Međutim, već statistički podaci o broju neriješenih predmeta govore dovoljno jasno o neučinkovitosti sudstva. Ako se tomu pridoda pritisak političkih struktura na sudstvo i nepostojanje sigurnosti i zaštite u borbi protiv organiziranog kriminala, teško će biti očekivati da sudstvo izraste u instancu koja će na temelju zakona sve građane tretirati jednako. Ovoj pesimističnoj viziji razvoja sudstva u BiH doprinosi i odluka Visokog predstavnika (OHR) da ne produži mandat međunarodnim sucima koji su bili angažirani u tužiteljstvu i uredu za borbu protiv organiziranog kriminala. Ako se ima u vidu činjenica da se npr. glavni tužitelj u BiH zalagao za njihovo ostajanje, a da su najglasniji u protivljenju tome bili upravo političari protiv kojih su pokretane istrage i podizane tužbe te su najviše prozivani za kriminal, teško je vidjeti naznaku poboljšanja pravne situacije u ovoj zemlji. Sami zakoni, koliko god bili usklađeni s europskim i svjetskim standardima, neće značajno doprinijeti izgradnji pravednoga društva ukoliko ne postoji vlast koja će jamčiti njihovo poštivanje i provođenje. Vidjeli smo to i na temelju analize o primjeni Zakona o slobodi pristupa informacijama. Izvješće pak o stanju prava djece i mladih te o obrazovnom sustavu u BiH skreće pozornost na još uvijek nizak stupanj svijesti o potrebi zaštite prava najmlađe populacije te na njihovo sustavno nepoštivanje.

Međutim, koliko god nefunkcioniranje neovisnog sudstva bila zabrinjavajuća datost života u BiH, postoje elementi koji izazivaju još više zabrinutosti utoliko što potkopavaju nadu da će se barem s vremenom u ovoj zemlji razviti normalan društveno-politički život koji će omogućiti njezinim građanima život dostojan čovjeka. U tom kontekstu Komisija ne može ne izraziti svoju zabrinutost zbog donošenja zakona koji su na liniji politike koja je ovu zemlju odvela u krvoproliće i ponor iz kojega se teško može izvući. Primjer takvoga zakonodavstva je Zakon o porezu na nekretnine Republike Srpske. Dok bi u jednoj razvijenoj demokratskoj državi ovakav zakon mogao biti pozdravljen kao pokušaj vlasti da se obradivo zemljište otme procesu divljeg zapuštanja, u našim okolnostima je nemoguće ne vidjeti ovaj zakon kao pokušaj dovršetka procesa progona i pljačke koji se na prostorima RS-a, kao i u ostatku zemlje, odvijao tijekom rata. Imajući u vidu s jedne strane da vlasti RS-a ne samo da nisu

pomogle nego su i aktivno opstruirale povratak prognanih na njihova imanja⁴⁹ što je rezultiralo prevlašću srpskoga stanovništva na tome teritoriju, konzekventno u vlasti i administraciji, te arbitrarne odredbe zakona (procjena tržišne vrijednosti imovine i progresivna porezna stopa) s druge strane, gotovo je nemoguće povjerovati da će taj zakon biti primjenjivan s ciljem poticanja obrađivanja zemljišta i obnavljanja porušenih domova, a da neće biti iskorišten za konačni čin pljačke imovine nesrpskog stanovništva.

Polazeći od činjenice da ljudska prava u Bosni i Hercegovini nisu zaštićena i zajamčena, na što izvješća ove Komisije upozoravaju iz godine u godinu, postavlja se pitanje hoće li svijest o potrebi poštivanja tih prava, radi zajedničkog dobra svih građana, ikada zaživjeti na ovim prostorima i postati dominantna odrednica političkog djelovanja. Govor o ljudskim pravima je uvijek na određeni način izričaj krize. Povijesno gledajući, ideja ljudskih prava se pojavila na europskim prostorima u vrijeme političke, crkvene, znanstvene i duhovne krize koja je uslijedila nakon raspada jedinstvenog europskog svijeta na kraju Srednjeg vijeka sa svojim društvenim i religijsko-metafizičkim strukturama, a pojavili se nasilje i samovolja u do tada neviđenom obliku.⁵⁰ A u naše doba, nakon strahota Drugog svjetskoga rata, narodi cijeloga svijeta okupljeni u Organizaciju ujedinjenih naroda, „odlučni da sačuvaju buduće generacije pošasti rata, koji je dva puta tijekom našega života donio čovječanstvu neviđenu patnju, i da ponovno potvrde vjeru u temeljna ljudska prava, i dostojanstvo i vrijednost ljudske osobe, u jednaka prava muškaraca i žena, naroda velikih i malih...” (Preambula Povelje Ujedinjenih naroda) donijeli su tri godine kasnije Opću deklaraciju o pravima čovjeka „budući da je priznavanje urođenog dostojanstva i jednakih i neotuđivih prava svih članova ljudske obitelji temelj slobode, pravde i mira u svijetu...” i „budući da je bitno da prava čovjeka budu zaštićena pravnim poretom kako čovjek ne bi bio primoran da kao krajnjem izlazu pribjegne pobuni protiv tiranije i ugnjetavanja...” (Uvod Opće deklaracije o pravima čovjeka).

⁴⁹ Samo kao ilustraciju možemo spomenuti da je sva imovina prognanih bila proglašena „napuštenom“, kao da su posjednici dobrovoljno napustili svoje posjede, pa je stoga bilo nužno podnijeti zahtjev za „povrat“ imovine. Podnositelji zahtjeva, mahom starije osobe i druge nacionalnosti, osim nelagodnosti dolaska u neprijateljski raspoloženu sredinu, suočavali su se s administrativnim poteškoćama i nespremnošću djelatnika da im pomognu pri podnošenju zahtjeva. U pojedinim područjima su spaljivane matične knjige rođenih u nesrpskim mjestima pa su podnositelji zahtjeva najprije morali biti ponovno upisani u matične knjige. Za to im je bio potreban krsni list, a matičar je nerijetko pravio pogreške u upisivanju podataka radi čega su povratnici morali podnositi zahtjev sudu da dopusti ispravak u matičnim knjigama. Imajući u vidu da je većina povratnika bila starije dobi, bez vlastitoga prijevoza, a svi ovi uredi su nalazili u različitim mjestima, ne treba posebno naglašavati koliko je takav postupak za njih predstavljao prepreku i koliko ih je zbog takvog postupka odustalo od povratka.

⁵⁰ Usp. Walter Kasper, „The theological foundation of human rights“ u: Pontifical Council for Justice and Peace, *Human Rights and the Church: Historical and Theological Reflections*, Vatican City, 1990, 47-71, ovdje 50s.

Zašto u Bosni i Hercegovini, nakon neviđene patnje i brutalnosti zadnjega rata, ni petnaest godina kasnije nije došlo do stvaranja takvoga stava i zašto se nije nametnula svijest o jednakom dostojanstvu svake osobe i neophodnosti poštivanja njezinih prava, bez obzira na nacionalnu, vjersku ili bilo koju drugu pripadnost? Komisija je duboko uvjeren, što je više puta već rekla kao što su i biskupi BK BiH isticali, da razlog za to leži u nepravednom miru, nametnutim Daytonskim sporazumom. Ovaj sporazum je istina zaustavio rat, što je bila goruća potreba onoga trenutka, ali on je, na žalost, zaustavio i proces pomirenja i stvaranja pravednog društveno-pravnoga poretka. Naime, sporazum je legitimirao rezultate i ustrojstvo koji su nastali ratnim djelovanjima. Time su ratne strategije i taktike, kao što su ubijanje i masakriranje civila, protjerivanje i silovanje, paljenje i uništavanje imovine, iscrpljivanje čitavih gradova i regija zatvaranjem u obruče i sprečavanjem dotoka osnovnih potrepština za normalan život kao što su hrana, voda i energenti..., priznati kao legitimno sredstvo za ostvarenje političkih i nacionalističkih ciljeva. U samo ustavno ustrojstvo ove zemlje je utkana tvorevina izrasla iz genocida i zločina protiv ljudskosti što će ostati trajna ljaga za suvremeni europski poredak, ali i trajna zapreka za stvaranje pravednoga društva. Iako su pojedini izvršitelji takve politike optuženi za ratne zločine (glavni kreatori te politike ili nisu još uhićeni, ili nisu osuđeni), sama politika nije doživjela osudu i neuspjeh, nego nastavlja egzistirati na ovim područjima u transformiranom obliku kroz institucionalno uređenje koje je omogućio Daytonski sporazum. Na taj način su genocidne i zločinačke strategije indirektno ugrađene u sustav vrednota ove zemlje. Upravo zbog toga među bosansko-hercegovačkim narodima nije došlo do općeg zgražanja nad zlodjelima koja su počinjena, i u ovakvim okolnostima ne može doći do stvaranja svijesti i odlučnosti koju su Ujedinjeni narodi zapisali u preambuli svoje Povelje na trajni spomen i kao upozorenje novim generacijama.

Da bi zgražanje nad počinjenim zlom i svijest o potrebi „priznavanja urođenog dostojanstva i jednakih i neotuđivih prava svih članova ljudske obitelji“ jer je to „temelj slobode, pravde i mira u svijetu“ zaživjeli u ovoj zemlji, neophodno je graditi pravni poredak koji će biti utemeljen na i promovirati vrednote dostojanstva ljudske osobe i njezinih prava. Poglavitito to treba sadržavati Ustav kao vrhovni zakon koji odražava sustav vrednota jednoga društva. Na žalost, na ovim područjima su osoba i njezino dostojanstvo prečesto služili kao sredstvo i bili cijena izgrađivanja određenoga državnog poretka. Na tako bolan način to pokazuje i zadnjih 20-ak godina stvaranja i očuvanja sadašnjega poretka u BiH. Rijetka su bila povijesna razdoblja kada je državno-pravni poredak bio sredstvo za promicanje dostojanstva osobe i njezinih prava. Ali uvjeren da je to način za izgradnju slobode, pravde i mira u ovoj zemlji, ova Komisija, odlučna ustrajati u promicanju ljudskih prava i traženju njihove zaštite, neće prestati svraćati pozornost na nužnost izgradnje pravednoga ustavno-pravnog poretka u ovoj zemlji.

Komisija se također nada da će ovo izvješće naići na razumijevanje i potporu domaćih i međunarodnih čimbenika koji sudjeluju u odlučivanju o sadašnjosti i budućnosti ove zemlje. Posebno se nada da će ovo izvješće naići odjeka u vjerskim zajednicama čija je specifična zadaća promicati ljudska prava i prokazivati njihovo kršenje. Čini se da u poslijeratnoj obnovi nema važnijeg, ali ni težeg, poslanja od obnove čovjekovog duha kako bi bio kadar razlučiti dobro od zla i osuditi zlo a činiti dobro. Samo će ljudi zdravog duha biti sposobni, posred svih teškoća i opterećenosti života i međusobnih odnosa u ovoj zemlji, biti kadri spoznati da nas vjera u jednoga Boga, koju ispovijedaju sve četiri vjerske zajednice u ovoj zemlji, veže u jednu ljudsku obitelj s istim dostojanstvom, istim temeljnim pravima i istim temeljenim obvezama.

