

DEUTSCHE KOMMISSION

JUSTITIA ET PAX

REPORT ON THE STATE OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA IN THE YEAR 2007

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

115

Schriftenreihe
Gerechtigkeit und Frieden

Schriftenreihe Gerechtigkeit und Frieden
Editor: Gertrud Casel

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Schriftenreihe Gerechtigkeit und Frieden, Heft 115

Bonn, April 2008

Available at
Justitia et Pax, Kaiserstr.161, D - 53113 Bonn,
Phone +49-228-103217 - Fax +49-228-103318 - Internet: www.justitia-et-pax.de
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PREFACE

The public has generally lost sight of the situation in Bosnia and Herzegovina. It is true that the international community, in particular also the European Union, continues to render its indispensable services. But the attention of the political world is in fact focused on the pressing problems in Afghanistan, Iraq and Kosovo, and this for various reasons. Therefore, it is certainly no accident that there is hardly any prospect of reasonable, tangible and durable plans for the development in Bosnia and Herzegovina. Instead, a cynicism driven by frustration threatens to spread among the people, which is often disguised as realism. The question remains as to how the international community, in particular the European Union, intends to fulfil its responsibility. Primary responsibility must remain in the hands of the people of Bosnia and Herzegovina, of course. However, this good basic attitude must not prevent the international decision-makers from keeping out of the difficult conflicts related to Bosnia and Herzegovina. This way of handling the situation – which is characterized by a sometimes understandable political reluctance – does not only undermine the required solidarity with the people of Bosnia and Herzegovina, but is also a short-sighted and imprudent approach.

The greatest threat to Bosnia and Herzegovina today is emanating from indifference and the temptation to search for simple answers. This report on the situation of human rights in Bosnia and Herzegovina, which has been presented by the local Commission for Justice and Peace on behalf of the Bishops' Conference, shows that the problem of poverty with all its typical consequences is aggravating every year. The resulting problems and dangers faced by Bosnia and Herzegovina, the regional neighbours and all Europe can only be addressed in a joint effort. A reliable, determined and considerate dialogue and a great readiness to learn are indispensable prerequisites for this path. If this year's report can make a contribution to this, it will have fulfilled its purpose.

+ Dr. Stephan Ackermann

President of the German Commission for Justice and Peace

BISHOP'S CONFERENCE
OF BOSNIA AND HERZEGOVINA
COMMISSION "JUSTITIA ET PAX"

REPORT ON THE STATE OF HUMAN RIGHTS
IN THE CONTEXT OF POLITICAL AND SOCIAL EVENTS
IN BOSNIA AND HERZEGOVINA IN THE YEAR 2007

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INTRODUCTION

In a society with a widespread lack of concern for life and numerous human right violations it is a difficult task to investigate, record and get to the root of the problems found in Bosnia and Herzegovina. However, the aim of this commission is to look into the urgent problems from an insider's point of view as we examine the perspective of the citizens burdened by the millstone of the recent past and the desperate nature of its consequences.

The fundamental rights, both individual and collective, that all citizens deserve are endangered in Bosnia and Herzegovina. The prevailing human rights situation has not shown significant gains since the period of conflict. Often gains are slow coming and achievements are too insignificant to measure. The largest majority of Bosnian citizens live in abject poverty, general uncertainty and in total disregard by the state authorities. They live with the humiliation suffered from the war and continue to suffer systematic humiliation through the institutions of their state. Efforts to improve human rights conditions meet opposition from the status quo; Bosnia and Herzegovina is making no progress and remains without a vision or meaningful plan for its way out of the vicious cycle of contradicting politics. This report strives to look for indicators which point to abuse of individual and collective rights and the need for a more just democratic society based on the rule of law to insure the fundamental human rights and freedoms for citizens of Bosnia and Herzegovina are secure.

1. INABILITY OF REALIZING HUMAN RIGHTS

The United Nations adopted the General Declaration on Human Rights sixty years ago this year. To date, Bosnia and Herzegovina is still non-compliant with the General Declaration. The political system of this country operates in negation of its basic purpose as underlined by the Dayton Constitution (i.e., the International Community). Unfortunately, almost none of the original principles of human and civil rights, outlined by the Dayton Constitution, remain in practice.¹

1.1. Citizens and People of BiH are Hostages of a Dysfunctional and Unjust Legal System of the State

The basis for the system of Bosnia and Herzegovina has been established under the support and pressures of the big powers held at the 1995 peace conference in Dayton, Ohio, USA. The General Framework Agreement for Peace was initiated on 22nd November, 1995 in Dayton and formally signed on 14th December, 1995 in Paris.² The swift military operation of the NATO pact titled "Resolute forces", brought the armed conflict to a swift conclusion.

In annex IV of the peace agreement, Bosnia and Herzegovina got its new constituent framework imposed with guarantees that it would be drafted into the development of a democratic and prosperous new state. The new Constitution established Bosnia and Herzegovina as a state of three sovereign and constituent peoples. However, it was divided into two entities: the Federation of Bosnia and Herzegovina, and the Republika Srpska, which claims 49 percent of BiH territory.³ It appears that, in the light of recent Kosovo developments, it becomes completely clear how and why Bosnia and Herzegovina was divided in such unnatural and unjust manner!

The Dayton Accords division of BiH was performed according to the ethnic lines and the reality of the reorganization of people caused by the war.⁴ This territorial

¹ Besides being specially incorporated in Annex IV of the Dayton Agreement, the respect of human rights is especially guaranteed by separate Annex VI - Human Rights Agreement, but the realization of human rights proclaimed in such manner still can be considered only in the normative sense.

² General Framework Agreement for Peace has never passed the Parliamentary procedure of ratification and Annex IV – Constitution of BiH as the highest constitutional legal act of this country has never been published in the Official Gazettes or been officially translated to one of three official languages in BiH, and to this day the dilemmas arise with regard to its original contents.

³ According to the last census of 1991, population of BiH amounted to 4,364,574 citizens, consisting of 43,7 percent of Muslims (Bosniacs), 31,4 percent of Serbs, 17,4 percent of Croats and 7,6 percent of others (5,5 percent of Yugoslavs).

⁴ At the very beginning of war, with the aid of heavily armed Yugoslav National Army, Serbs conquered over 70 percent of BiH territory, and grave position of Croat and Muslims was further aggravated by the effect of the arms embargo imposed immediately by the decision of the UN Security Council. When signing the Dayton Agreement, Croats gave the largest „concessions“, giving

reorganization is understandably the reason of permanent dissatisfaction of the members of all three ethnic groups, as they became victims of a kind of "humane displacement".

Signing of the General Framework Agreement for Peace finally brought to the citizens of this country the end of hostilities as the basic precondition of promised survival of the State. The Dayton Agreement ended the war in Bosnia and Herzegovina, which took hundreds of thousands of lives and displaced many from their homes. About 2,680,000 persons, or around 59.6 percent of BiH citizens,⁵ were displaced. Unfortunately, the price of peace was the establishment of an unjust political and legal system which legalized the effects of war and genocide. The state has been split by ethnic lines and it has become obvious that this dynamic is not conducive to functioning as one cohesive unit.

The Dayton Accord established Bosnia and Herzegovina as a kind of protectorate of the international community through the office of the High Representative. The institution of the Office of the High Representative (OHR)⁶ who is the bearer of legislative, judicial and executive power, has not succeeded to get this country on the right track of prosperity and democratic development. On the contrary, the politics of ethnic cleansing started during the war have been "successfully" finalized during the OHR's mandate by the continuing displacement of people and ethnic division of territories in Bosnia and Herzegovina.⁷ Due to the inefficiency of state organs and wide spread lack of protection human rights, Bosnia and Herzegovina is a black spot on the map of Europe. Due to legal uncertainty and social insecurity, young people feel it is a place with no attraction or a vision for improvement, which prevents future economic and democratic prosperity.

the largest part of territory they controlled especially those they controlled upon successful military operations in 1994 and 1995.

⁵ The last census was performed in 1991. For the lack of adequate statistic data the assessments of basic statistics substantially differ (for example, the assessment of the current number of citizens of BiH differ even to the number of 1,000,000 persons).

⁶ OHR – Office of High Representative.

⁷ The International Community proclaimed that with 31st December 2003 the implementation of property legislation relating to the Annex VII to the Dayton Agreement and the return of displaced persons and refugees has been finalized. Claims of the OHR, OSCE and the competent State Ministry on realization of over million returns after the war seem to be ironic and in fact are totally incorrect because their statistics are based upon the count going according to the formula "one return = one property issue solved". The statistics of the Catholic Church in BiH show that, for example, out of prewar number of approximately 220,000 catholic (and around the same number of Croats), today in the Banja Luka Diocese (territorially in the largest part in the Serb Entity) less than 15,000 Catholics have remained and that is around 6.6 percent of prewar number. The Catholic Church has no precise data with regard to the members of other religious groups. When the Federation of Bosnia and Herzegovina is concerned, the return of Croats to the territories with the Bosniac majority is not possible, and vice versa! On that issue we gave detailed report in the Report of 2006.

Dayton organization of Bosnia and Herzegovina is the original sin of the democratic world.⁸ However, one cannot and must not, avoid the fact that the main culprit for this situation is the traditional political and cultural exclusiveness of the political programs in place for all three parties in Bosnia and Herzegovina. During the hostilities their political agendas gained enormous speed and the speed with which it grew after the war, with the ardent support and help from the media become entrenched as the normal way of life. Unfortunately, this exclusiveness that deprives all the citizens of the right to a dignified life became a constant in this country. The violation of human rights and disrespect of democratic standards in Bosnia and Herzegovina is, therefore, seen as unavoidable consequence of the state organization that is currently tolerated.

Widespread ethnic and religious division of the citizenry has nearly destroyed the spirit of tolerance that has always been fragile. It has erased the culture of coexistence that was previously accepted. Often irrational ethnic (Serbs, Bosniacs, Croats) or over-national (Bosnians) politics, under the mask of protecting of real or programmed collectivities, forget, as a rule, the fundamental rights of the citizen and individual. Still unhealed wounds of war and after-war injustices represent the ideal grounds for manipulation of the electoral base.

At first glance it may seem that the citizens of this country bear the guilt for the catastrophic state of human rights in Bosnia and Herzegovina according to the principle that each nation has the state, government and the politics that it deserves; in other words, the citizens elected their leaders by their own free will. Nevertheless, one must note that the current political dynamic was not chosen by the people, but was imposed on the people by the will of the powers that be in Dayton. The indifferent, non-principled politics of the International Community, according to the nature of this situation and given authorities⁹ should have been the guarantee of the realization of the project of democracy and prosperity in Bosnia and Herzegovina with the rule of law and equality of all its citizens, by all means contributed to intensify the crisis in BiH society. Is it necessary for Bosnia and Herzegovina to accept the "imported form of democracy" that brings permanent tensions instead of peace? It is obvious that the international experimental project was "stacked" from the very beginning in its own

⁸ Besides the representatives of Croats, Serbs and Bosniacs – Muslims, guarantees and cosigners of the Dayton Agreement were as follows: William Clinton – President of USA, Felipe Gonzales – chairman of the EU Presidency, Jacques Chirac – President of the Republic of France, Helmut Kohl – Chancellor of the FR Germany, Viktor Černomirdin – President of the Government of the Russian Federation and John Major – Prime minister of the United Kingdom.

⁹ By the Decision of the so called Venice Commission, passed on the Implementation of Peace Conference - held in Bonn on 9-10 December 1997, the OHR has been given wide intervention competencies in performance of their mission in BiH, including legislative, enforceable and judicial powers. The OHR profusely used these, so called, Bonn powers in its mandate and instead of being the highest interpreter and translator of the Dayton Agreement put itself into position of creator of modification of the constitutional legal system of the State and of all consisting parts of the organization of social community on the basis of said powers.

moral ambivalence. The hypocrisy and non-sustainability of Dayton project, arising from the legalization of the right of force and the war crimes, and not for the first time in its history, has been paid by all citizens of Bosnia and Herzegovina, because, with no difference, they all became hostages of the sick state and social system surviving on the ideology of distrust and intolerance. Intolerance is further guaranteed by the politics of exclusiveness and ethnic nepotism constantly present on the whole territory of the State.

1.2. State of Human Rights Regarding Problem Areas

In such grave and complex social and political circumstances, during the whole year, the media inform on the numerous and merciless violations of fundamental human rights and civil freedoms. These are outlined here coupled with general evaluation.

1.2.1. Physical Violence and Delinquency

According to some official reports, the whole security situation in country is somewhat better than in previous years. Nevertheless, in some areas, and especially in the capitol Sarajevo, the situation may be assessed as substantially worse than in previous years, especially this last year. What is most concerning is increasing attacks on innocent citizens, especially targeting women, children and teenagers.

Almost in all settlements, and especially in larger cities such as Sarajevo, Tuzla, Banja Luka, Zenica, Mostar, citizens have been exposed to a variety of violence, as well as, apartment and other facility break-ins by a large number of violent groups and individuals almost on a daily basis.

One cannot avoid noting a large number of attacks against the religious facilities of all three religions. A number of explosions have occurred as well. Windows were broken, inventory destroyed, cemeteries and tombstones desecrated. Numerous cases have been left unsolved to the consternation of citizens. This has increased the loss of trust in the security services and representatives of authorities in general.

The level of crime has been at an unacceptably high level for years now. The causes may be found in the wide spread poverty and unsatisfying social protection programs. Especially worrisome is the increase of crime, more specifically amongst underage persons; a direct consequence of structural understatement of the social system of Bosnia and Herzegovina. It is necessary to underline that there is not a single correctional institution for juvenile delinquents in BiH. Lack of preparation and

inclination of the judicial system for adequate sanctioning and re-socialization of youth with problematic behavior induces the juvenile delinquents to repeat the criminal acts and sink in crime. The lack of preparedness on the part of judiciaries to deal with this problem gives the wrong signal to the youth with asocial behavior that their problematic behavior should be considered socially acceptable.

It is also necessary to underline that many signs indicate that systematic criminal activities of individuals and whole groups of people of influence are directly involved in the structures of the social and political life of the State. It is telling of a judicial system that does not react at all, or reacts in an inappropriate manner, to these behaviors.

Unfortunately, the high level of influence of politically highly ranked individuals in the criminal circles affects almost all events in the society of Bosnia and Herzegovina. The state of crime in BiH points more and more to the fact that, instead of speaking of crime in the society, one must speak of the criminality of a large part of the social and political system.

1.2.2. Returnees and Refugees

The most flagrant violation of human rights relates to the refugees and displaced people. The state authorities and even the international community act as if the Annex VII of the Dayton Peace Agreement has been realized in whole. In their view, they believe the repatriation of refugees has been completed to satisfaction. The truth is completely contrary to that. One really cannot recall that in the course of last year there was anything important going on in that area to attract the attention of citizens. We still notice attacks on the property and people, previous returnees, impossibility finding jobs, aggravating conditions in education field, etc. Because of the impossibility to have a normal life and employment, because of impossibility of sustainable return, numerous returnees, under different kinds of duress and faced with the lack of care of local and state authorities, without wanting to they are forced to sell their land, are returning to places where they can survive. This is nothing short of ethnic cleansing and homogenization of society in almost all macro areas in Bosnia and Herzegovina. Thus, the results of war are still felt on a daily basis thirteen years later.

Today we have nearly homogeneous ethnic groups in Bosnia and Herzegovina. It is alarming that near 220,000 persons were expelled from the territory of Bosanska Posavina, and that only around 13,000 of them have returned to date. This point is illustrated in Derventa where, according to the census of 1991, 21,972 Croats had lived (39 percent), while currently only 685 of Croats, mostly elderly, live there (this amounts to 2 percent). Although many reiterate that Croats do not want to return to the Posavina

area, which does not correspond to the truth. The Sarajevo Declaration, signed by the governments of three States (Bosnia and Herzegovina, Republic of Croatia and Serbia and Montenegro) where the signers obliged to finalize the process of return of refugees before the end of 2006, has been entirely forgotten and the process of return has stopped. Those processes that have been started are realized very slowly, and no talks about new actions and activities have been initiated.

The property return process goes slowly. Intolerance and discrimination are present, especially towards the other two nations. As soon as one began to think that the process of return and reintegration has started to improve, progress has become stagnate during the last year. This is evident in the employment of returnees, in the issuance of permits for the construction of houses or business, trade or similar. New ethnic homogenization is rising. Local and state authorities both act as if all benefits are reserved for the majority nation in the concerned area. The matrix is completely the same in all parts of Bosnia and Herzegovina. Wherever one ethnic group is in the majority, the rights of the other two constituent peoples are mercilessly violated.

Persons belonging to the minority in any given territory can hardly gain employment in public institutions or civil service. It can be said that a fictitious ethnic balance has been established in the police forces of the Federation. However, even in that segment, and especially in the Sarajevo Canton and Zenica-Doboj Canton,¹⁰ silent removal of the members of minority peoples from all the commanding posts is in progress.

The right to education of returnees and members of "minority" constituent peoples in their own language is not at all on the level that it should, and must, be. The rights of the returnees in this field are far from the standards of ethnic minority rights. Still, care is taken only by the majority, while the rights of "minority" peoples or refugees are violated. The above stated indicates that even the minimum conditions for the sustained return of persons displaced during the war has not been met. The systematic disrespect of collective and individual rights of returnees has subsequent post-war emigration as a consequence.

¹⁰ During 2007, the Zenica-Doboj Canton started initiative to close two police administrations in the Municipalities where Croats are important part of population (Žepče and Vareš). According to the census of 1991, on the territory of Municipality Žepče lived 9,081 Croats, 10,780 Muslims and 2,289 Serbs, while in Vareš lived 8,982 Croats, 6,721 Muslims and 3,630 Serbs. In 2007, in the Police Administration of Zenica-Doboj Canton 22 employees were employed and all of them are of Bosniac origin while not a single Croat or Serb was employed. In the commanding structures of the Police Administration of the same Canton no Croats are employed. On the territory of Zenica-Doboj Canton lived over 40 percent of non-Muslims according to the census of 1991.

1.2.3. Rights of Women

When the rights of women are concerned some developments are obvious but only in the legislative field. Together, with previously adopted legislation (Law on Equality of Genders and the Family Law), both entities adopted the Law on Protection of Family Violence. However, none of this has reduced the numerous cases of violence against women that has been noticed not only in the families but also in the working places.

A disproportional and small percentage of women are appointed in the legislative and executive bodies (for example, in the Council of Ministers of Bosnia and Herzegovina and in the state authorities, not a single woman is in the position of Minister), and employment areas, as well as in all places where important political decisions are adopted. Please note information on lower salaries, systematic prevention of using whole maternity or sick leave because of child's illness, and some dismissals during the pregnancy period, etc. It is important to note the increasing number of cases of women trafficking as slaves.

1.2.4. Rights of Children

Protection of the most endangered age groups, especially children, is on a very low level. Their rights have been protected (if at all) on the local level. According to their assessment, the state and its bodies are free of such responsibility. However, the state should be the one to secure equal rights for all children. The right to mandatory social and health protection and the equal right to be educated in their native language is essential to help avoid further discrimination.

Children with no parental care create special problems. Data approximates that 3,500 children in Bosnia and Herzegovina have no parental care. A large number of these children are accommodated in institutions established by churches or religious communities. They have no adequate support from the state administration. Additional problems arise in regard to the sizable population of Gypsy children, the majority of who are deprived of a basic education.

Violence against children is a frequent occurrence. Verbal and physical maltreatment is widely spread. In recent times, many have voiced their concern for the protection of children. The problem of juvenile delinquency is growing quickly and has manifested in different forms with serious and unpredictable consequences.

The phenomenon of begging has increased, especially among underage children. The victims of their supervisors, children have been increasingly sighted wandering through

the larger cities such as Sarajevo, Tuzla, Mostar, Banja Luka, Zenica. These cases are no longer rare in the smaller towns and suburban areas.

Human rights concerns between children and family is becoming more prevalent. An alarming rate of custody issues are unfairly settled which assign care to only one parent taking the parental rights away from the other.

1.2.5. Citizenship and other Documents

Human rights have been violated in the process of obtaining and losing citizenship for individuals or whole groups of citizens. In recent times, those who are requesting renouncing of one's citizenship, individuals belonging to another State, to obtain the right to citizenship of this State, are increasing. The political reluctance, motivated by the wish for ethnic domination, is obvious, this enables displaced citizens of Bosnia and Herzegovina to keep the citizenship of Bosnia and Herzegovina although they obtained also the citizenship of the state to which they fled. This represents not only a human rights violation but also the impoverishment of Bosnia and Herzegovina. By obtaining numerous documents issued by an overburdened and inefficient government citizens face many inconveniences and violations of their fundamental human rights.

1.2.6. Property Repossession

The violation of human rights is especially obvious in relation to the repossession of an apartment or property in general. With respectable exceptions, this process is slow, distressing, and painstaking. The process of repossession of property, expropriated under the previous system, is far from being solved. Instead of approaching the restitution problem in an efficient manner, the process is unnecessarily complicated and labor intensive. If this continues, the rights of both the owners of expropriated property and users of the same property who have been suffering discrimination of a kind for more than a decade, have been consciously and deliberately violated. Problems concern accommodation of returnees, former occupancy right holders, for whom it is necessary to secure separate residential units.

1.2.7. Courts and Court Proceedings

In December 2007, the backlog of courts in Bosnia and Herzegovina amounted to approximately two million unsolved cases.¹¹ The largest part of these cases are small claims litigations, also known as, “utility litigations.” Utility litigations concern unpaid bills for services (electricity, water, telephone and other bills). In 2003, the new legislation of entities was passed and adopted providing for regulation of civil and enforcement proceedings. However, the bureaucratic inefficiency in dealing with such cases remains. Court proceedings are stalled due to the intercession of international community representatives and local persons of power. Their influence aggravates the operations of the court and just verdicts. This leaves the citizens of Bosnia & Herzegovina with a feeling of helplessness and injustice. More and more citizens are complaining regarding the work of courts on the cantonal, entity or state level. The discussion at the Round Table, organized by this commission on the occasion of the Human Rights Day with the topic: Human Rights in the Chains of State Administration, pointed with deliberate zeal in this direction.

In the press we note that the human rights violations occur more often in prisons and different correctional institutions on one hand, and on the other, requests by citizens for the establishment of correctional institutions for accommodation of juvenile delinquents.

1.2.8. Labor Disputes and Violation of Labor Rights

A large number of information relates to labor disputes and to the human rights violations in the work force. Many employees are working as “black laborers” are not registered and have no social or health insurance. There are also a large number of cases of human rights violations by unduly dismissing people from the work force that forces them to seek justice from the legal system.

1.2.9. Rights Arising from Health Insurance

The citizens of Bosnia and Herzegovina are not receiving the right to health insurance. It is nearly impossible to obtain the right to sick leave or compensation for sick leave. The previously stated ethnic discrimination is involved. The health insurance system relies on the principal that all employed individuals will contribute to the system, which will then be used by the sick. The budgetary allocation by the state for health

¹¹ Only in the Municipal Court in Sarajevo the backlog is around million of unsolved cases.

care is minor. The whole burden of this system weighs on individual contributions, or the legally employed. The insured are awarded these health services (treatment of cancer, dialysis) only within the Canton, and not the entire of the Federation of Bosnia and Herzegovina or the State. Namely, the rights differentiate from canton to canton, so that the insured in some cantons have better access to free medication. Others pay a higher percentage for the same services, if even available, than the insured in other cantons.

1.2.10. Pension and Social Rights

The already grave social status of many BiH citizens is worsened by the violation of retirement and social rights. The neglect and disregard by state bodies and the local community endangers pensioners, invalids, the sick and disabled, and those with special needs. Most of these groups especially pensioners and the unemployed, are deprived of many rights or such rights are given in certain dosage. The problem of war veterans, military issues, and the missing or killed, is a story on its own. Unsolved issues of war veterans, demilitarized defenders, members of different associations resulting from war, are a special field where dissatisfaction of different kinds frequently arise. A separate problem relates to persons missing or killed, the basis of these cases are often relating to issues of war crimes deserving much needed attention.

For all stated above on the state of particular fundamental human rights this commission is convinced that radical structural reform is necessary to improve general state of human rights in Bosnia and Herzegovina, and this reform is not possible without the respect of principle of humanity, fairness and readiness for painful political compromises of the representatives of all three constituent peoples.

2. ECONOMIC – SOCIAL INDICATORS OF THE STATUS OF THE POPULATION IN BOSNIA AND HERZEGOVINA

Economic - social indicators of the situation in Bosnia and Herzegovina in the last two years have indicated a trend of constant decline in the living standard of the largest part of the population. A comparison of the situation of the economy this year to previous years leaves depressing images that make it obvious that the economy of Bosnia and Herzegovina, instead of representing an upwards trend, in fact goes deeper and deeper into the abyss of poverty.

2.1. General Economic Indicators

During the war the economy was destroyed almost in total. That economy was based on the system of a centrally planned economy and complementarities of the so called “unique Yugoslav market” of the former state.

The total external debt of Bosnia and Herzegovina on the date of 30th September 2007 amounted to KM 3,930,000,000 (KM 1 = EUR 0.51), and it has been insignificantly decreased in comparison to the same period in 2006, due to the servicing of the external debt.¹² With the end of November 2007, Bosnia and Herzegovina realized a visible trade deficit in the total amount of KM 7.2 billions. In the period between January and November 2007, export amounted to KM 5.5 billions, which is 15.1 percent more in comparison to the same period of the previous year, and import amounted to KM 12.7 billion and is 23.1 percent higher. The import/export ratio (coverage of imports by exports) within the same period amounted to only 43.2 percent. Although the economy has grown since the war, the statistics may be deceiving; Bosnia and Herzegovina started from a non-existent point of development in the economic and democratic sense. Growth in real terms in the last five years period is higher than 5 percent, but it is inadequate due to the level of poverty and unemployment that is too high, therefore ranking Bosnia and Herzegovina as one of the poorer countries in Europe, and perhaps even the poorest.

¹² Statistic data of the central Bank of BiH.

2. 2. Poverty and the Difficult Economic Status of the Population in Bosnia and Herzegovina

According to official statistics, the total number of employed individuals in the Federation of Bosnia and Herzegovina was 413,669 in October 2007, which represents an increase of 6.18 percent in the number of employed individuals in relation to the annual average in 2006. The reason for this increase is due to more frequent checks performed by Cantonal Employment Services in 2007. Their task is to sanction the employers in the case of discovering employees employed in “black” labor, i.e. unregistered employees. This is why many employers registered previously unregistered employees and thus influenced the increase of the number of employed individuals in the BiH Federation. This process may be characterized as a positive because the competent authorities enabled the realization of labor rights guaranteed by the legislation of this state, which have been brutally violated by a large number of employers.¹³ The total number of unemployed individuals in the BiH Federation was 371,342 in October 2007. Therefore, it may be concluded that there was a 3.02 percent increase in the number of unemployed in comparison to November 2006. Although it was expected that more frequent checks performed by the Cantonal Employment Services would result in a decrease in the number of unemployed, the result is contrary to expectations. This proves the dire nature of the situation.¹⁴

Official statistical data on the number of employed and unemployed individuals in the Republika Srpska, at the moment of preparation of this report, was not published and it was not possible to present it and, therefore, the precise statistical data for the whole state could not be prepared.

According to official statistical data the average salary paid in the BiH Federation for the month of October 2007 amounted to KM 679.14 (EUR 347.24), while in the RS in September 2007 it amounted to KM 598.00 (EUR 305.75). At the same time, the average consumer goods basket (consisting of the most basic needs for the support of an average family of four) in the BiH Federation amounted to KM 538.05 (EUR 275.10), and in the RS it amounted to KM 488.53 (EUR 249.78).¹⁵

In comparison to 2006 it may be concluded that there was an increase in the average net salary in the BiH Federation and the Republika Srpska. However, this increase had not followed the growth of the cost of living. Unfortunately, in a short period of time, poverty and the serious social position of the majority of the population of both entities of Bosnia and Herzegovina substantially worsened during 2007.

¹³ When systematically performing inspections in the BiH Federation some companies were found to work illegally, having employed in “black” labor even to several hundreds of employees.

¹⁴ Statistic data of the Federal Bureau of Statistics.

¹⁵ Statistic data of the Federal Bureau of Statistics and the Republic Bureau of Statistics of RS.

The status of pensioners as the most endangered part of the population has not changed in 2007, and it could be said that this social group lives at the verge of existence. The average pension in the BiH Federation amounted to KM 299.46 (EUR 153.11) in October 2007, while in the RS it amounted to KM 250.17 (EUR 127.91) in September 2007.

A disturbing fact is the trend of increase in the index of retail prices, which was 5.2 percent higher in the BiH Federation in October 2007 in comparison to the average index in 2006. Also, the index of retail prices is evident in the RS where in September 2007 it was 2.0 percent higher in comparison to the average index in 2006.

The growth of prices of foodstuffs, energy products and utility services has had a serious impact on the living standard of the population. For example, the index of retail prices of industrial foodstuffs in the BiH Federation in November 2007 was 8.7 percent higher in comparison to the same month of 2006, while the index of agricultural products in November 2007, in comparison with the same month in 2006, was 9.5 percent higher.¹⁶ This statistical data is relevant, since the higher growth of prices occurred in the last quarter of 2007. The reason for the growth lies in the fact that in the period between 1st October 2007 and 31st December 2007, the world market suffered a 21 percent increase of oil prices,¹⁷ which directly effected the explosion of retail prices and prices of energy products.

Since food represents the largest expenditure of the poorest of the population, the most endangered categories are mostly affected by the growth of prices.

So the economical situation in Bosnia and Herzegovina, in the period from the conclusion of the Dayton Peace Agreement (14th December 1995) to the end of 2007, indicates the necessity of previously mentioned radical changes of the economy system. Otherwise, we will remain paralyzed by an inefficient state administration. The lack of functioning of the rule of law, inefficiency of the institutions of the state apparatus and political instability within the state and the whole region, make Bosnia and Herzegovina unattractive or simply make it a place of high risk for larger foreign or local investments that would give rise to a higher economical growth.

Poverty in Bosnia and Herzegovina is one of the biggest problems of this State, which destroys the dignity of its citizens. The only hope giving them strength is their expectation that the standard and their social rights would gradually improve by

¹⁶ In relation to November 2005, growth of prices of industrial foodstuffs amounts to 18.1 percent and of the agricultural products 14 percent. Data of the Federal Ministry of Trade – Information on Fluctuation of Prices of Energy Products and Essential Foodstuffs in 2007 and Intervention Measures of the Government of FBiH – January 2008.

¹⁷ According to the same source the price of the barrel on the World market for the given period increased from the amount of USD 79.13 to USD 94.13 (fr. Info of the Federal Ministry of Trade – Information on Fluctuation of Prices of Energy Products and Essential Foodstuffs in 2007 and Intervention Measures of the Government of FBiH – January 2008).

successive acceptance of conditions imposed in the process of association with the European Union. However, the perception of this process as long lasting and uncertain does not infuse too much optimism.

The improved fiscal stability of the state has indisputably been achieved by the reform of the taxation system of BiH, but at the same time no attention has been paid to its influence on the social circumstances and deterioration of an already poor financial state of the majority of BiH citizens.

This commission would like to especially emphasize that an insufficient engagement of the state with the aim of improving the social image exists on all levels of the enforcement authorities of BiH. Regardless of the chronic lack of financial means, the state does not show any social sensitivity for the distribution of resources in a more just manner.

2.3. High Level of Social Exclusion and Modest Effect of Civil Society Institutions

According to the surveys of the United Nations Development Program (UNDP¹⁸), over 50 percent of the population of Bosnia and Herzegovina is socially excluded in some way, around 47 percent of the population has a limited choice regarding the improvement of their situation, and that classifies them as a risk group for long-term social exclusion. The surveys also reveal that around 22 percent of the population is deprived of the most basic needs, which classifies them as a risk group of long-term social exclusion. The UNDP in Bosnia and Herzegovina assesses that the most endangered social groups are, first of all, national minorities, then women, disabled persons, pensioners and youth. This international organization also prepares a rank-list of the states regarding humane development on the basis of surveys performed in 177 countries of the World, under which Bosnia and Herzegovina was ranked 66th in 2007. Although they are not to be considered completely consistent, the devastating results of these systematic surveys clearly indicate the status of an unorganized state with a total lack of concern by the authorities for its citizenry. Poor organization and insufficient participation of civil society institutions in social life are the main cause, and partly even a consequence of the high level of social exclusion of a large part of the population of Bosnia and Herzegovina.

¹⁸ UNDP – United Nations Development Program, Report on Human Development of Social Exclusion in BiH for 2007.

2.4. Defectiveness of State Legal System and Necessary Reorganization of Public Sector

The assessment of the BiH Central Bank is that the total public expenditure¹⁹ in Bosnia and Herzegovina amounts to approximately 50 percent of its gross social product (GSP), and the salaries of employees of BiH public services have a 12 percent share in the entire GSP, which puts Bosnia and Herzegovina at first place in Europe. If one bears in mind the efficiency of public services and their attitude towards the citizens, it may be claimed that the office-holders on every level of state are not serving the primary interests of the citizens and peoples for whom they have been elected but they are serving their own interests.

In 2007 the data of some NGO's that are monitoring the work of authority in Bosnia and Herzegovina state is characterized by inactivity and obstructions of different kinds, speak loudly enough. Of the 103 pieces of legislation planned by the Program of the Government of the Federation of BiH to be passed in 2007, the Government sent only 31 laws planned and 22 laws not planned by the Program to Parliamentary procedure. The Parliament of the Federation of BiH adopted only 26 laws, or approximately 47 percent of the laws, sent to Parliamentary procedure by the Government. Such activity, solely of the Parliament of the Federation of BiH, during 2007, cost citizens of this Entity 9 million and 750 thousand KM. The results of activities of the Government and Assembly of the RS are inconsiderably better but still far from being satisfactory. While only 40 laws were adopted on a State level (half of that number imposed by the High Representative), the adoption of 135 laws was proposed in the Work Plan of the Parliament of Bosnia and Herzegovina for 2007. It is clear that Bosnia and Herzegovina, as a country in transition on the path to Euro-Atlantic Integrations, requires constant work of the political and administrative apparatus, hundreds of adopted laws, radical reforms, development programs of good quality and especially vision and a more significant dedication to the interests and needs of citizens.

This indicates that the growth of public expenditures in Bosnia and Herzegovina has been higher than the growth of the GSP for several consecutive years. This indicates that it is necessary to initiate the rationalization of the state administration and the whole public sector in Bosnia and Herzegovina, and the social effects of such a reform should primarily be taken into account while doing so. The structural reforms in a state as complex as Bosnia and Herzegovina requires complex solutions. Structural reform is essential, but the work force needs to be chosen in a manner to allow for fairness. To

¹⁹ Unofficial data on public expenditure that relates to the budgetary and extra-budgetary expenditure in BiH, for the moment, are only published by the BiH Central Bank (www.cbbh.ba). The public expenditure consists of spending or expenses of the public sector, including budgetary, funding and other extra-budgetary public expenditures.

solve this we need to take into account the organization of employees in the public sector; the first consideration for public employees should be based on ability as opposed to ethnic preference. Secondly, the national structure of the public institutions should be based on pre-war demographics. With organization of the state structure based on pre-war figures this would avoid a majority group overruling a minority population. This would act as a safeguard to protect the rights of all citizens.

2.5. Crisis of the Constitutional-Legal and Political System in Bosnia and Herzegovina

In previous reports on the state of Human Rights we described in a more detailed manner the continuing intensification of the constitutional, legal and social crisis in Bosnia and Herzegovina. This continuing state of tension negatively influences the quality of life and at the same time threatens to escalate, which could again result in physical violence.

The Dayton Constitution has represented a kind of dogma of international politics for years. This Commission pointed out in detail, in its previous reports, the insustainability and defectiveness of the constitutive-legal organization of Bosnia and Herzegovina. It was often confronted with severe criticism and a lack of understanding, especially with regard to some of the International Community representatives. During its mandate, the OHR significantly amended original constitutional solutions of 1995 by a number of unilateral administrative and legislative measures instead of finding a more efficient solution. In the opinion of this Commission, the OHR made unjust constitutional solutions from Dayton even more unjust and peoples on the whole territory of Bosnia and Herzegovina more unequal by its preference of democracy under the principle "one person, one vote" in combination with the firm standing regarding the preservation of the Dayton territorial division of the State based on ethnic grounds.

The International Community invested substantial efforts and financial means into the stabilization of Bosnia and Herzegovina, but could not compensate for the lack of legitimacy of the Dayton Constitution that clearly follows from the fact that the Annex IV of the Dayton Agreement was not reached by an agreement of the democratically elected representatives of all three of the constituent peoples and has never been ratified in the parliamentary procedure of the State.

The unsustainability of the existing state-legal organization of the country is evident in international legal and national political circles. It is obvious that the Dayton legal framework of the State became ballast that brought Bosnia and Herzegovina to the bottom of the rank-list regarding the successfulness of the European states.

In 2005, the US administration intensified their efforts to solve serious constitutional crises in Bosnia and Herzegovina with the intention of legalizing the existing situation through the operations of the parliamentary parties in BiH. The project of finding an agreement on the constitutional amendments was initiated under the hospices of the American Peace Institute²⁰ and with the support of OHR and OSCE Missions. Under severe pressure, all larger political parties from all three peoples participated in the negotiations. Negotiations were performed in secret without any public presence. According to the opinion of this Commission, the legitimate representatives of the people, and not parties, should participate in the negotiations. Amendments to the Constitution proposed on that occasion were only of a cosmetic nature. The fundamental aim of this attempt, together with the amendments to the Entities' Constitutions of 2002 (unilaterally passed by the OHR), was to give the form of the legitimate will of three peoples to the existing constitutional state through the procedure of the Parliamentary Assembly of Bosnia and Herzegovina. In that manner the situation in BiH should have been permanently solved and the International Community should have been released of the responsibility for the resulting situation. Under the pressure of the international community representatives, the agreement in principle of the most relevant parties of all three peoples was reached, but this initiative failed because the offered package of the constitutional amendments did not receive the necessary majority in the session of the House of Representatives of the Parliament of BiH of 26th April 2006.²¹ The representatives of the international community are sending a clear message that they did not give up the said project although it does not offer fair or enforceable solution.

The political and constitutional crisis has continued through the course of 2007, but this time due to the insisting of the OHR on the enforcement of reforms, and primarily the police reform, that are a requirement for the signing of the Agreement on Stabilization and Association of Bosnia and Herzegovina to the European Union. The crisis substantially intensified, in comparison to 2006, because of the opposition of the RS to the enforcement of any reform that would limit competencies determined in the Dayton Agreement. Regardless of their internal political differences, the parties from the RS are totally united in the defense of their entity. That is why the Serbs, after being the greatest opponents of the Dayton Agreement, became its greatest defenders. All that is stated here clearly indicates that twelve years of active operations of the International Community in Bosnia and Herzegovina have not, in practice, achieved the spirit of the peace agreement signed in Dayton or fulfilled the task of fair implementation of peace

²⁰ Major leader of the politic negotiations on modification of the constitutional organization of BiH was former Deputy of the High Representative in BiH – American Diplomat Donald Hays.

²¹ On this issue we wrote more extensively in the Report on State of Human Rights in Bosnia and Herzegovina for the Year 2006. (Chaper 2.1, pgs 6-8).

in this part of the World. The crisis of authority in 2007 culminated with the resignation of the Serb politician Nikola Špirić from the position of the Chairman of the Council of Ministers of Bosnia and Herzegovina (the President of the BiH Government) after the Administrative Board of the Peace Implementation Council in BiH supported the High Representative's Amendments to the Law on the Council of Ministers of BiH.

Regardless of the fact that the said legislative amendments, imposed by the OHR, remained of the cosmetic and not essential nature, the Serbs induced the political crisis, in accordance with the usual scenario, threatening a total blockade of the state. After statements on the need of cancellation of the Republika Srpska, some political representatives of Serbs in BiH sent a message to the International Community and citizens of this country that they would perform the referendum for secession of the RS from Bosnia and Herzegovina and its annexation to the Republic of Serbia.

This time the International Community did not resort to the Bonn Competencies that it used in abundance concerning remotely harmless political claims of the representatives of the other two peoples.²² The crisis was overpowered after the OHR conceded to the pressure of Serb politics with the excuse that the future destiny of BiH must be agreed upon primarily by its three constituent peoples. In that way the International Community transferred all responsibility to domestic politicians.

This Commission agrees with the OHR that an achievement of compromise by the legitimate representatives of all three peoples is the best possible solution. The Commission, however, again must emphasize the inconsistency of actions of the International Community representatives that does not go in the direction of democratization of the society and equality of its peoples, but in the opposite direction. If the International Community was ready to take Military action in 1995 to prevent total destruction and military collapse of the Serb Entity in BiH, then it should consistently take a more active role in the creation of a more just and democratic future for Bosnia and Herzegovina. The current Bosnia and Herzegovina is a result of solutions imposed by the major powers and not of the will of the constituent peoples living in it.

²² In 2002, the OHR quashed the almost totally plebiscite election results by the total removal of politically elected representatives of Croat peoples from office and appointment of politicians and political parties as the representatives of the concerned constituent peoples that obtained almost marginal results on the elections. Not to be forced to do so, the OHR previous to that amended the Law on Elections in the manner that influenced the most the smallest group of peoples in BiH. However, that was not enough and in the end, it had to use its Bonn Competencies and deprived all Croat politicians, and not only the politicians of Croatian Democratic Union (HDZ), the right to be elected and the voting right, and in that manner, by the total deprivation of their fundamental human rights, excluded them from the political life in whole. The main reason for such activities of the OHR was the HDZ's announcement on the establishment of the third (Croat) Entity. Upon installation of the politically acceptable structure, the International Community, through the OHR, imposed the amendments to the Constitution of Bosnia and Herzegovina cementing the Dayton organization of the State and strengthen the position of the Entities in it.

The democratic compromise that would guarantee the equal realization of all national and human rights on any part of the BiH territory (regardless of ethnic, religious or other affiliation of any individual) have to be understood and accepted as the joined task of both national and international politicians. But for this process to be opened, justice should be considered the aim sought.

This commission is convinced that, because of the complexity of the ethnic issue in Bosnia and Herzegovina, the guiding idea and basic criterion for application of the structural reform of this State should be the principle of constructiveness of all three peoples on the whole territory of Bosnia and Herzegovina in accordance with the decision of the Constitutional Court of Bosnia and Herzegovina. To avoid majority dominance over minority groups on all levels of authority, it is necessary to consistently apply the principle of positive discrimination of the minority peoples, since that is the only way all peoples and citizens of Bosnia and Herzegovina shall feel equal on its whole territory.

3. PROCESS OF BiH APPROACHING EURO-ATLANTIC INTEGRATIONS

As an disorganized and poor state, where the most basic standards of human rights and legal certainty have not been reached, Bosnia and Herzegovina is positioned on the very end of the train composed of countries that have not been associated to the European Union. A significant sign is the fact that BiH, regardless of its geopolitical importance, has not been accepted into full membership of NATO Pact. Although it was accepted into the Partnership for Peace in 2006, because of the non-existence of the appropriate standards of democracy, it is hard to believe that BiH would be accepted into full membership in this case as well.

The situation in the State is primarily the result of the impossibility of reaching compromised solutions amongst the representatives of the three constituent peoples and the lack of existence of a real desire to achieve a radical transformation that would be a substantial step, and not a cosmetic one, towards democratization of the society. It seems that obstinate opportunism is the largest obstacle to the necessary reforms, primarily concerning the political representatives of the RS, but also of others but in a different way, that stands behind a permanent intention of keeping and achieving a simulated "state-building" status of the ethnically cleansed RS. Such attitude, tolerated by the representatives of the International Community, favors even more serious division to the ethnic factions „camps“, where centers of power have no interest in surrendering the acquired domination of their ethnic group over minority groups on a certain part of the territory. All of it leaves BiH unready for true democracy of the pro-European type. Regardless of the aforementioned, the European Union persistently leaves its door slightly opened to Bosnia and Herzegovina. While doing so, the EU insists on the realization of certain reforms that would move Bosnia and Herzegovina closer to that objective to which (at least declaratively) all political options of importance in this country are inclined.

It seems to us that it is necessary to speak of these issues because the approach of BiH to the full membership of EU and NATO is unbreakably connected with and conditioned by the realization of high standards in the protection of human rights.

3.1. Bosnia and Herzegovina Signed the Agreement on Stabilization and Association with EU

The initialing of the Agreement on Stabilization and Association (ASA) between BiH and EU was performed on 4th December, 2007, in Sarajevo, should be singled as a very important event.

It is clear that the Agreement was only initiated but not signed. This difference bears a great significance because the act of initiating the ASA represents only the beginning of contractual relations between BiH and EU.

The ASA is a 615-page document. It contains production and trade quotas and provides for free trade. It also defines the reforms and obligations that BiH must fulfill or perform during the process of stabilization:

- Police reform in accordance with EU criteria
- Finalization of cooperation with the Hague Tribunal for War Crimes²³ (extradition of the major suspected BiH war criminals) and
- Public Broadcasting System and State Administration reforms.

The above stated reforms represent the issues that the three constituent peoples have confronted for a long period while simultaneously maintaining polar opposite positions. While the representatives of RS bear responsibility for non-enforcement of the police reform and non-cooperation with the Hague Tribunal (ICTY), the representatives of Croat peoples do not accept the Public Broadcasting System reform. They argue that they, as constituent peoples, do not possess any public media in the Croat language, and, thus, have no right to their culture, language and identity.

Bosnia and Herzegovina has just begun its process of association with the EU. The initialing of the Agreement may be considered a formal act that aims to encourage BiH on its way to EU membership. BiH has a number of benchmarks to reach before it becomes a full member of the EU. The possible signing of the ASA would open the door to government and NGO for the use of pre-association EU funds, at the value of hundreds of million Euros.

By signing the ASA, Bosnia and Herzegovina would obtain the right to submit for official candidate status for EU membership. It may be said that the European future of BiH lies primarily in the hands of its politicians. The rapidity of its association depends on the swiftness of agreement and implementation of reforms. Bosnia and Herzegovina will need aid from the EU since assessments show that the EU/BiH harmonization process (or screening process) will cost tens of billions of Euros, that cannot be funded by the economy of BiH. This process concerns the alignment of legislation in 35 fields –

²³ ICTY – International Criminal Tribunal for the Former Yugoslavia.

including the issuance and harmonization of several thousands of laws and by-laws. The moment in which BiH will become a full member of EU depends upon the speed and quality of the adjustment of the state and social system of Bosnia and Herzegovina to European standards.

In any case, it could be expected that the process of association to the EU would strengthen political stability and reduce inter-ethnic tension. These are basic preconditions for the transformation of Bosnia and Herzegovina into a civilized and democratic state. The stabilization of BiH is a requirement for the stabilization of the entire region, even the whole of Europe, and, therefore, it is not a task to be undertaken by national politicians only.

3.2. BiH Parliamentary Assembly Ratified the Fundamental Agreement and Additional Protocol between the Holy See and Bosnia and Herzegovina

After lengthy negotiations, which intensified in 2002, the Fundamental Agreement between the Holy See and Bosnia and Herzegovina was ratified in 2006. During the period of negotiations, and upon signing of the Agreement, unjustified contesting of this international agreement came from other churches and religious communities in Bosnia and Herzegovina. The alleged reason was, that by the signing of the Agreement, they would be put in an unequal position with regard to the Catholic Church in Bosnia and Herzegovina. Because of said contesting, the content of the Fundamental Agreement was changed on several occasions. The original version was modified to say that a church wedding should be recognized as legal in the same way a civil marriage is. This statement was omitted in the final version.

Because of opposition within Bosnia and Herzegovina, it was necessary to wait for the regulation of legal position of the churches and religious communities in the BiH legislation to sign this Agreement. This was done in 2004 by issuance of the Law on Freedom of Religion and Legal Position of Churches and Religious Communities in BiH.²⁴

The Fundamental Agreement was finally signed on 19th April 2006. After that it should have been sent to the parliamentary ratification procedure.

However, because of Article 10 paragraph 3, which stated that Bosnia and Herzegovina shall be obliged to return to the Catholic Church all nationalized real-estates, or provide equal compensation, within a period of ten years, the national and international community exerted intense pressure and challenge of these contractual rights. After the

²⁴ The Law was published in the OGBiH no. 40/04 of 25th August 2004 and entered into force on 2nd September 2004. See the Report on State of Human Rights in BiH for the Year 2004. (www.ktabkbih.net).

additional negotiations that aimed toward the removal of stated objections, the Additional Protocol was agreed upon as follows:

1. That the restitution of real-estates or properties seized without compensation shall be performed under the future law that shall regulate the restitution problem in Bosnia and Herzegovina;
2. That the determination of real-estates that should be returned into possession shall be performed by the joint commission composed of the representatives of both parties;
3. With regard to the matters requiring additional solution, the mixed commission shall be established as well, which shall present its propositions to the competent authorities for approval.

The Fundamental Agreement and Additional Protocol were finally ratified before the Parliamentary Assembly of Bosnia and Herzegovina on 23rd May 2007. The rights of Catholic Church have been confirmed in the form of the international agreement with regard to: legal distinction, openly practice of the apostolic mission, freedom of religious observance and the right to act freely through the established institutions; educational, charitable work, etc.

The decision of both houses of the parliamentary assembly of BiH giving consent for ratification of the Fundamental Agreement between the Holy See and Bosnia and Herzegovina and the Additional Protocol thereto was published upon its ratification in the Official Gazette of Bosnia and Herzegovina – International Agreements, no. 8/07 of 20th September 2007. The exchange of the ratification instruments was performed in Vatican on 25th October 2007. By that act, the Agreement between two international-legal subjects entered into force on the formal level as well.

By the signing and entry into force of this international agreement, the legal framework for operations of the Catholic Church in Bosnia and Herzegovina has been strengthened and reinforced, which represents for the Catholic congregation an additional guarantee in the realization of their rights to free choice of religion and beliefs and freedom of worship. However, because of the crisis of the government, the application of this agreement has not yet started. On the contrary, many people support the law of “denationalization” and oppose the law of “restitution”. At the same time there are many who resist religious education in public schools. The additional problem represents the long lasting obstruction of the signing of the agreement between the Serb Orthodox Church and Bosnia and Herzegovina.

3.3. Ratified Agreement on CEFTA²⁵ Modification and Association

CEFTA is the international economy and trade association established in 1992 in Krakow. Before joining the EU its members were the Czech Republic, Slovakia, Hungary, Poland and Slovenia. When these states became full members of the European Union, the CEFTA agreement much of its influence and importance.

In October 2006, the Agreement on Amendments and Association with CEFTA was initiated by seven state members and Kosovo through UNMIK.²⁶ Bosnia and Herzegovina first refused to sign this Agreement because it requested more favorable conditions for import and export of several agricultural products in relation to the bilateral agreement it achieved with Croatia and Serbia.²⁷ Serbia also rejected to initial the agreement at first, claiming better conditions for the tobacco industry.

After additional deliberations and coordination of positions, on 19th December 2006, the Agreement was signed by all ten member-states, including Bosnia and Herzegovina. The Parliamentary Assembly of BiH, on its session in July, August and September 2007, and on the 8th session of the House of Peoples of 24th September 2007, gave consent for ratification of the Agreement on Amendments and Association with CEFTA 2006.²⁸

Finally, on the urgent 4th session of the Presidency of BiH of 25th September 2007, the Agreement on Amendments and Association with CEFTA 2006, was ratified by the Presidency, in accordance with the prescribed constitutional procedure,²⁹ in the agreement of both Houses of the parliamentary assembly of BiH. By the entry into force of the Agreement on Amendments and Association with CEFTA on 22nd November 2007, BiH became one of ten member-states of the free trade zone, which is a market of approximately 30 million consumers.

The importance of this event is reflected in the fact that CEFTA is designed as the first step in the integration of market of Southeast Europe that, with no exceptions, see their future in the European Union. The Agreement on Amendments and Association with CEFTA or association with the new zone of free trade of restricted nature represents, in that sense, the preparation of a kind for all member-states for the procedures for association to a much more challenging association such as the European Union.

²⁵ CEFTA - Central European Free Trade Association.

²⁶ The membership got the following: Albania, Bulgaria, Monte Negro, Croatia, Macedonia, Moldavia and Romania, and the market of Kosovo was also included into the CEFTA zone of free trade, for which, on the basis of the Resolution 1244 of the UN Security Council, the UNIMK (UN Mission for Temporary Management of Kosovo) signed the accession.

²⁷ BiH insisted on the provisions under the meaning of which the existing custom duties of 40 percent for the import of milk, meat and milk and meat products from Croatia and Serbia would remain the same even when the application of CEFTA starts.

²⁸ The decision on consent for ratification was published in the OGBiH - International Agreements - no. 9/07 of 27th September 2007.

²⁹ Transferred powers of the BiH Presidency under Article V(3)(d) of Annex IV (BiH Constitution).

CEFTA agreement provides for the creation of free trade zone on the territory of Southeast Europe that implies progressive cancellation of duty-taxes and trade boundaries no later than 31st December 2010 and total freedom of the market afterwards.

CEFTA participation represents the new international breakthrough of Bosnia and Herzegovina on its path towards the European Union and the beginning of a new phase of development, especially in the field of trade. This, amongst other things, opens the possibility of faster growth of the private sector and especially small and medium-size enterprises. This Agreement, therefore, opens possibilities of economic growth, easier employment of impoverished citizens of BiH and improvement of their impaired social-economic status.

3.4. Extended Mandate of OHR and EUFOR

In July 2007, the Slovakian diplomat Miroslav Lajčák took over from the German diplomat Cristian Schwarz-Schilling the duty of High Representative of the International Community in Bosnia and Herzegovina. Although previous announcements stated that Mr. Schwarz-Schilling is probably the last High Representative in Bosnia and Herzegovina, because of the intensified political and general social crisis, it is not realistic to expect swift withdrawal of the OHR from our country.

The fact that the peace forces of the European Union are still present on the territory of our state clearly indicate that in Bosnia and Herzegovina the state of legal certainty for its citizens is not yet secure.

In December 2004, EUFOR replaced the NATO forces in Bosnia and Herzegovina,³⁰ which ended their mission after almost ten years since the end of war. At the beginning of their mission peace keeping forces consisted of 6,300 soldiers while their number in 2007 is approximately 2,500 plus forces of 1,000 soldiers in reserve. These numbers signify a gradual stabilization of the situation in Bosnia and Herzegovina has been achieved. One should not forget that EUFOR and NATO forces in Kosovo (KFOR) have an agreement that allows, if needed, fast transfer of KFOR forces to Bosnia and Herzegovina.

In November 2007, the United Nations Security Council authorized a one-year extension of the mandate of the European Stabilization Forces in Bosnia and Herzegovina (EUFOR). In the resolution unanimously adopted by all five members, as on any previous occasion, the UN Security Council expressed its support to the Dayton

³⁰ SFOR forces were under the command of NATO. For the comparison, we would like to note that in the Dayton time, in 1995, the military contingent of international peace keeping forces in BiH numbered over 60,000 soldiers!

Agreement that ended the war in Bosnia and Herzegovina 12 years ago. It also approved the member-states, acting in cooperation with NATO, to keep the headquarters of NATO in Bosnia and Herzegovina, for the time being.

The need of extension of the OHR mandate and of the continued presence of NATO and EUFOR forces in Bosnia and Herzegovina clearly indicates that the situation in Bosnia and Herzegovina has not reached a stabilization point, furthermore, according to the standards of the International Community, Bosnia and Herzegovina continues to represent a potential crisis point. Human rights are dependent upon a feeling of security and social progress that, as we already saw, does not yet exist in Bosnia and Herzegovina.

3.5. Police Reform

The year 2007 has been marked by the negotiations of leading political parties in Bosnia and Herzegovina on the police reform indicated by the European Union as one of priority preconditions for the signing of the Stabilization and Association Agreement. With the majority committed for the European future of the State, on 5th October 2005, the Parliaments of State and both Entities accepted three principles of the European Union on the police reform in principle, which clearly define the path in which the reform should go. The principles, in short, relate to the following:

1. All legislative and budgetary competencies relating to the police organization should be on the state level,
2. No interference of politics into the operational work of police, and
3. Functional police regions have to be determined on the basis of technical criteria for police operations and not on the basis of ethnic criteria or ethnic boundaries.

Regardless of the declarative consent of all relevant parliamentary parties, after numerous meetings held by the representatives of leading political parties in Bosnia and Herzegovina until the end of 2007, no concrete agreement has been reached that would satisfy the EU criteria and as such be transferred into the appropriate law on the level of the State.

It is easy to notice that the largest obstacle for the achievement of political compromise on this issue appeared to be the obstinate insisting of the RS representatives for the keeping (survival) of police powers exclusive to the entity level, i.e. survival of the RS police. Contrary to such a political conception, the European Commission insists on the organization of police through four compact regions, irrespective of national criteria and existing territorial solutions.

It is necessary to notice here that the political representatives of Serbs, defending their position, logically used the legal arguments in the sense of which the police reform was represented as just one act more directed to the restriction of sovereign rights of Serbs arising from the Dayton Agreement. But it is also necessary to emphasize that the proponents of the same politics did not express the same consistency and dedication to the original solutions of the Dayton Agreement when the constitutional amendments in 2002 were unilaterally imposed, contrary to the spirit of the Dayton Agreement, and the constituent rights of the Serbs in both entities were strengthened while, at the same time, the rights of two other ethnic groups in the RS were completely deconstituted.³¹

The ardent intercession of the RS representatives for the survival of their entity police, in the opinion of this Commission, in no event is aimed to support and enforce the principles of constitutionality and legality, but it is just one more of their political actions aimed to the perseverance of their entity as an entity of one people. Their entity received its confirmation as a para-state in the Dayton Accord under the hospices of big powers. Thus, although it could be concluded that the police reform under the principles of the European Union is not in full consistency with the Dayton constitutional solutions, it also must be concluded that the largest number of already implemented reforms under the instructions of the OHR or the pressure of International Community were performed in the same manner with no regard for the equal legal treatment of the constituent peoples.

Only when the International Community unsuccessfully tried to restrict unjustly broad powers of institutions in the Republika Srpska which is a state within the state, it finally realized, it appears, that it is detrimental and in collision with the norms of the constitutional order of the state to forcibly impose the police reform. That is why, it seems, it abandoned its often used, with no consideration for the principle of legal equality of all three peoples,³² practice of uncontrolled use of the Bonn powers. It would be a sign of hope if whatever was done, was done under the pressure and threat of politicians from the RS that in the case the solution is imposed on them by the OHR they would organize a referendum for secession of the Republika Srpska.

³¹ Imposed constitutional solutions of 2002 influenced Croats the most since they are the constituent peoples with the smallest number of citizens in Bosnia and Herzegovina, because they were deprived of their constitutivness on the territory of the Federation of BiH since no mechanisms of deciding in the meaning of which they could realize their constitutive rights. As a greater irony, the OHR initiated the constitutional amendments of 2002 with the alleged aim of implementation of the Decision of the Constitutional Court of Bosnia and Herzegovina on the constitutivness of all three peoples on the whole territory of Bosnia and Herzegovina, as we wrote in detail in all previous yearly Reports (www.ktabkbih.net).

³² Namely, by the use of broad powers of the International Community already passed a large number of new laws and provisions contrary to the constitutions of Bosnia and Herzegovina and its Entities (for example, defense reform, tax system reform, legislation in the public information area, education etc.).

Nevertheless, under the pressure of the International Community and realistic threat of total loss of the European perspective of Bosnia and Herzegovina, as a precondition for the signing of the Agreement on Stabilization and Association with the EU, the signing of the declaration on implementation of the police reform was performed on 28th October 2007 by six leading political parties in Bosnia and Herzegovina. The signers of the declaration agreed to take all actions necessary for the police reform in accordance with the EU principles. The time will show whether this document, as many others, would in reality remain an empty promise.

3.6. Judgment of the International Court of Justice in Haag on the Complaint of Bosnia and Herzegovina against SR Yugoslavia (Serbia and Monte Negro)

The year 2007 will also be remembered by the adoption of the judgment of the International Court of Justice (ICJ³³) in The Hague, in the proceedings initiated by the action Bosnia and Herzegovina lodged against SR Yugoslavia in 1993.

On behalf of the Republic of Bosnia and Herzegovina the action against the then SRY was filed by the war Government of BiH for the violation of:

- Convention on Genocide of 1948,
- Breach of obligations towards the population and State of Bosnia and Herzegovina arising from the Geneva Convention of 1949, its additional Protocols of 1977, customs of international war law – including the Haag regulations for the countries in the war of 1907 and other fundamental principles of the international humanitarian law.

The action claim also pointed out that the SR Yugoslavia, as legal predecessor of Serbia and Monte Negro, breached the largest number of provisions of the General Declaration on Human Rights³⁴ against the citizens of BiH.

Further, Yugoslavia was accused of the violation of obligations set forth in the general and customary international law; killings, woundings, rapes, plunders, tortures (violence), kidnappings, unlawful arrests, expulsion and eradication of BiH citizens, and that it has continued to do so³⁵;

Further, Yugoslavia was accused of the following:

- that it violated the dignity of BiH citizens by the treatment against them and that it used force and threats of the use of force against Bosnia and Herzegovina thus

³³ ICJ – International Court of Justice.

³⁴ Articles 1 to 26 and Article 28.

³⁵ Thus, at the time the action was lodged.

violating the United Nation Charters, contrary to the obligations arising from the general and customary international law as well.

- that while Yugoslavia violated its obligations under the general and customary international law it violated the sovereignty of Bosnia and Herzegovina by military attacks against BiH from air and earth – and that by the violations of border lines of the territory of Bosnia and Herzegovina, in a direct and indirect manner, striving to force and threaten the Government of BiH, etc.

At the end, the plaintiffs requested the Court establish the obligation of Yugoslavia (Serbia and Monte Negro) to pay war damages and reparations caused by the violations performed in breach of the international law.³⁶

On 26th February 2007, the International Court of Justice (ICJ) passed its judgment under which in 1995 the genocide was performed only in a part of Bosnia and Herzegovina – on the territory of the UN protection zone of Srebrenica, but the said genocide was not performed by Serbia as legal successor of SR Yugoslavia, i.e. Serbia and Monte Negro. The judgment in question thus did not grant the claim of the plaintiff that the genocide was conducted on the whole territory of Bosnia and Herzegovina but it is stated that at the time of war on the whole territory of Bosnia and Herzegovina “with no doubt” the systematic acts of crime were widely spread.

Although the judgment states that it has not been proven that the SR Yugoslavia conducted genocide, it was a co-perpetrator in the genocide and instigated its perpetration – ICJ also established beyond any doubt that Belgrade offered substantial military and financial support to the armed forces of Bosnian Serbs, but allegedly it is not proven that the authorities in Belgrade were aware that their aid would be used for the purpose of genocide.

In its judgment the ICJ, however, established responsibility of Serbia for not doing enough to prevent and punish those guilty of genocide, violating in that way the Convention on Prevention and Punishment of Genocide of 1948. Serbia is, therefore, declared guilty because it did not punish the persons responsible for genocide and did not extradite the main accused – the General of the SRY Army and at the same time the Commander in Chief of the RS Army, Ratko Mladić³⁷ to the International Criminal Court

³⁶ The original action of 1993 contained nineteen accusing items and a substantive number of subparagraphs in individual items. The action was subsequently supplemented and modified on several occasions. But the whole content has not yet been available to the wider public in Bosnia and Herzegovina since the integral complete official translation does not exist yet.

³⁷ In 1996, the ICTY prosecution failed an indictment against Ratko Mladić for breach of the international conventions and provisions of international customary law that he committed by active participation in the war actions on the territory of the Republic of Croatia (1991-1995) and on the territory of Bosnia and Herzegovina in the period between 1992 and 1995. Ratko Mladić and Radovan Karadžić, together with the late Slobodan Milošević (died in the Haag prison), are considered to be the main participants of the war and crimes committed in Bosnia and Herzegovina, and both of them are still at large and unavailable for the International Court. It interesting to mention

for Former Yugoslavia in Haag (ICTY). The Court also established the guilt of Serbia assessing that the Belgrade authorities had not done anything to prevent crimes on the territory of Bosnia and Herzegovina, which indicates that the SR Yugoslavia is at least indirectly responsible for the violation of international law on the territories of Bosnia and Herzegovina.

With regard to the Judgment of the ICJ the following issues have arisen:

1. Why the official translation of the judgment available to the public has not been prepared since this day?³⁸
2. Because of the lack of existence of the appropriate official translation it also remains unclear whether the Court found responsibility for the genocide in Srebrenica of the Army of Republika Srpska or only marked "Bosnian Serbs" as responsible.
3. It is unclear, if so, why the ICJ characterized in its Judgment the indictment for genocide perpetrated and directed against non-Serb population as the indictment for genocide perpetrated against Bosniac-Muslims. Does a readiness on the part of the International Community exist to confront the crimes committed on the territory of Yugoslavia?³⁹
4. The arguments for which the Court did not allow presentation of numerous evidences relating to the responsibility of SR Yugoslavia that were (it seems) used in the proceedings against Milošević and others before the International Court in Haag (ICTY) and by which the ICJ was guided when deciding on this very important procedural issue remains uncertified.
5. Why the issue of compensation for the war damages in the Judgment is exclusively linked to the responsibility of SRY for genocide and not directly to the responsibility for war damages that SRY caused to Bosnia and Herzegovina?
6. The issue arises, why did the proceedings lasted for so long, i.e. fourteen years.

This Judgment caused intense reaction and division to two sides. The reactions were intense by the numerous victims of the Serb aggression. As anything else in this state, the judgment divided the public in Bosnia and Herzegovina. Nevertheless, it has to be assessed that the public in Bosnia and Herzegovina from the very beginning has been

that Ratko Mladić was on the payroll records of the defendant state (i.e. in labor relation in the SRY) until 2002.

³⁸ Although it invested a lot of efforts to succeed, this Commission could not get into its possession a single version of unofficial translation of the Judgment.

³⁹ Amongst other things, the context of this issue imposes in correlation with the fact that the International Community directly negotiated with Karadžić and Mladić, although the indictment was already filed against them by the ICTY Prosecution, but also in relation to the fact that to the JNA commanders of, so called, Vukovar trio were forgiven in an extremely benignant manner all their commanding responsibilities (although it was proven for some of them that as competent commanders they were on the spot at the time of the war crime of massive liquidation in Ovčara). On the other hand, „Oluja“, as a legal and legitimate action of the Republic of Croatia for liberation of the occupied territories of the internationally recognized and sovereign State of 1995, according to some indictment of the ICTY Prosecution is treated as „association in the criminal undertaking“.

divided with regard to these proceedings. The representatives of the Republika Srpska disputed the validity of standing to sue to the plaintiff⁴⁰ from the very beginning and obstructed any financing of this project from the state budget. The Croat politics⁴¹, in the opinion of this Commission, acted vague and passive during these proceedings. It also seems that the Bosniac side, with no grounds at all and no valid reason, totally seized this project as its own and not as the project of the State of Bosnia and Herzegovina. Duly, the issue is put forward why the indictment for genocide on the whole territory of Bosnia and Herzegovina was presented as the indictment for genocide “against non-Serb population” (and not against the precise group for which it was intended). Having in mind the huge amount of evidence on the direct participation of Belgrade (generally known to the wider public and publicly presented in the media) it also appears that the legal representation in this was not the most adequate, because, in the opinion of this commission, the prosecution survived the real debacle.

Even to one who superficially followed the events in the area affected by the war it is totally clear that Belgrade was the main creator and instigator of all wars on the territory of former Yugoslavia. With no wish to bring into doubt the objectivity and independence of the ICJ and ICTY, it nevertheless seems that the work of courts was influenced, directly or indirectly, by certain circles of international politics and exactly by those circles that tried to prevent the disintegration of Yugoslavia by the embargo on arms import and thus disabled non-Serb peoples to realize their legitimate right to realize sovereignty and independence.⁴² It also may be noted that in the work of two international courts (ICJ and ICTY) some irreconcilable contradictions with regard to some crucial issues, which unavoidably brings into question the objectiveness of the international judiciary.

Not going into further legal analyses of the judgment, this commission gives its opinion. Non-existence of the official translation gives space to manipulations by the concerned judgment. Namely, everyone states what suits him/her for the use of everyday politics. Serbs, regardless of being in Serbia or Republika Srpska, objected from the very beginning to the action, and have continued to claim that in said proceedings it was proven that no guilt exists on the part of Serbs or Serbia of genocide or other war crimes in Bosnia and Herzegovina.

On the other hand, Bosniacs claim totally contrary by stating that the judgment indisputably established the guilt of the Republika Srpska for the genocide in Srebrenica,

⁴⁰ Illegitimate war Government of the Republic of BiH.

⁴¹ Over 98 percent of Catholics in BiH are Croats.

⁴² The finding of the Badinter’s commission establishes that the right to independence and secession of the Republics of former Yugoslavia (SFRY) is in consent with the Helsinki Protocol of 1975. On the basis of the finding of the Badinter’s commission the boundaries of the Republics of former Yugoslavia determined by AVNOJ subsequently got the character of internationally recognized borderlines.

and also of Serbia and Montenegro. This issue is of extreme importance since its clarification would definitely confirm or reject constant repetition of the thesis under which the Republika Srpska emerged from genocide as the worst form of the war crime. It appears strange that no adequate translation of the judgment exists, neither officially or unofficially, bearing in mind that the official translation of Annex IV to the Dayton Agreement – Constitution of Bosnia and Herzegovina, nothing can surprise those familiar with the situation in Bosnia and Herzegovina. It is obvious that the verdict was not important to the political elite, both national and international, moreover, the verdict was important as a means to manipulate and create a division in the electoral body of Bosnia and Herzegovina.

4. CONCLUSION

Notwithstanding that the state of human rights in Bosnia and Herzegovina is completely unacceptable and that all state institutions reflect deficiencies in the social system, events in 2007 indicated that Bosnia and Herzegovina continues to move at a painstakingly slow pace on the path towards the general welfare and well being of BiH citizens, i.e. on the road to Euro-Atlantic Integrations.

It is, however, clearly visible from all stated here that with such development of the society of Bosnia and Herzegovina even the minimum preconditions are met to influence substantial improvement of the actual social position of citizens and peoples in Bosnia and Herzegovina. On the contrary, the catastrophic state of the economy indicates that the position of the largest part of population grows worse; this trend needs to be remedied immediately.

Bosnia and Herzegovina still remains under the burden of tragedy from its near and distant past. Numerous crimes cry out for justice; numerous injustices seek to be remedied. Only upon achieving equality for all people through systematic and fair political solutions is it possible to expect the fundamental human rights of all citizens to be granted through the democratic institution. Long-term stability may only be secured by decentralization and democratization of all parts of economic and social life.

The process of building a fair society, in which all the human rights and all the freedoms of individuals will be fully realized, represents a long and complicated path. Contrary to those that are giving numerous counter-arguments, regardless of how difficult the endeavor, we maintain our belief that this path is just, necessary, and realizable for Bosnia and Herzegovina.