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JUSTITIA ET PAX

REPORT ON THE STATE OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA IN THE YEAR 2008

IZVJEŠĆE O STANJU LJUDSKIH PRAVA U BOSNI I HERCEGOVINI ZA 2008. GODINU

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

Pređođeno od Komisije Justitia et Pax Biskupske
konferencije BiH.

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PREFACE

The situation in Bosnia and Herzegovina is still not being discussed frequently in the German public. It is true that the international community, especially the European Union, continues to render its indispensable services. However, attention of the public is focussed on political problems in Afghanistan, Iraq and Kosovo for many reasons. As this year's report on the situation of human rights in Bosnia and Herzegovina shows, one should not be deceived by the relative stability of the situation there. Poverty is increasing and the situation of young people is characterized by a lack of prospects. In Bosnia and Herzegovina a generation of people without hope is growing up. Being in the process of the European unification we cannot remain indifferent to this situation. Of course we must take care not to find too simple answers. Is it really sufficient to state that the citizens of Bosnia and Herzegovina are solely responsible for their destiny? Aren't we evading our responsibility?

I think that the public has lost sight of the situation in Bosnia and Herzegovina, because there are deficits in European policy. The Dayton Agreement is no masterpiece of statesmanship as it is based on too many uncertain assumptions. Therefore Europeans are responsible to develop the framework created by this agreement in a way that real perspectives for peace and reconciliation in the region might be found.

The wars in former Yugoslavia and especially in Bosnia und Herzegovina were a European disaster. They did not only cause unspeakable suffering and destruction but they also revealed a considerable disagreement between the European states. Fortunately the European Union has learned from this experience. At the same time the people in the region have undergone severe changes. By no means have they remained passive. Nevertheless results are not satisfactory, if the whole situation is taken into account. So the indifference of many Europeans towards the problems in Bosnia and Herzegovina indicates limits to European awareness and a lack of maturity as policy of peace is concerned. The seeds of peace need care and protection. Without patience and perceptiveness nothing will be achieved. So the relative stability in Bosnia and Herzegovina should be used to include this country in European discourse in many different ways. Then we all could learn to get a better understanding of Europe and to create a promising future for the whole community.

The problems of the region provide the chance not to be content too fast with formal arrangements.

I am glad to be able to present, also this year, the report on the situation of human rights in Bosnia and Herzegovina by the local Commission for Justice and Peace. It is an offer and a challenge to carry out a dialogue. If this report contributes to promote necessary talks about Bosnia and Herzegovina and with Bosnia and Herzegovina it will have fulfilled its purpose.

Finally I would like to express my gratitude to the Commission of Bosnia and Herzegovina for initiating this talk.

+ Bishop Dr. Stephan Ackermann

President of the German Commission for Justice and Peace

BISHOPS 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
FOR THE YEAR 2008**



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I. INTRODUCTION

It appears that the Country of Bosnia and Herzegovina ("BiH"), as of the first mention of it¹ up until the present, has been predestined to an uncommon destiny. It is located on a specific geographic position where different cultures and civilizations overlap and different nations and religions meet. Even the different, not to say contrary, climates such as the Mediterranean and Continental, overlap on its territory. Thus, in its past the contradictions of the East and the West, Rome and Constantinople, communism and capitalism, had met here and had left their mark so that they still continue to meet and confront here. In a way, it may be said that this place is visible west in the southeast and the east in the west. Substituting from time to time the tsars of the east with the kings of the west, Islamic sultans and other rulers, this country had not only changed its borders and its internal organization, its demographic structure and physiognomy, but also, in a manner, changed its soul in the same body, the core of its being.

However, the location and experience of this country have not only brought pauperization but also enrichment. It is not only a place of conflicts but also a place of productive meetings. To be truthful, as a place of conflicts it represents the realistic presumption of substantial complication, competition and confrontation. Also, one cannot but recall that despite all the turbulences there has been a lot of tolerance, besides all the conflicts there has been coexistence and after the warfare there have been processes of silent but true conciliation. Seen and wanted as a meeting-place, BiH is a possible opportunity and offer of healthy communication, coexistence, and cooperation within the context of political association. Although the fear that the state of mind, largely conditioned and instigated by unacceptable structural wrongs, has been inclined to exclusiveness still, more than to tolerance, the Commission is of the opinion that BiH remains the open opportunity and challenge to all positive powers of the International Community. The organization of the Brčko District of Bosnia and Herzegovina is the best substantiation of this claim of ours and, therefore, as a model and incentive we will separately deal with it in the Report. This Report palpably confirms the current negative politic and social trends and indicates to the necessity of prudent compromises and just solutions.

¹ See PORPHIROGENETH, *De administrando imperio*, p. 30. The source mentions only the name of *Bosnia*, as *Herzegovina* appears as a notion only in the second half of the 15th century only on the territory of Hum and Zahumlje. The current title of BiH appeared in the second half of the 19th century and it may be connected to the events of the Berlin Congress of 1978.

II. BASIC CAUSES OF GENERAL DEPRIVATION OF RIGHTS IN BiH

From the very moment BiH obtained the international legal subjectivity in 1992, this country has passed the thorny path of transition from a totalitarian single-party social system to the modern democratic society of freedom and justice. This generally difficult transition path is even more aggravated on the territory of BiH and especially so by the historically inherited burden and by the still fresh wounds of the war hostilities that were stopped in 1995 by the direct military and political intervention of the International Community.

Since the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina² ("the Dayton Agreement") the specific form of political and military (semi) protectorate of the International Community has been installed on the territory of this State. Namely, The Office of the High Representative in BiH³ ("the OHR") – as the irrefutable supreme interpreter of the Dayton Agreement – has at his disposal the powers for the adoption of final decisions in the field of legislative, executive and judicial authority. The attributes of the military protectorate have been given to the OHR by the presence of the military troops. At the end of 2008, in BiH some 2.200 of the EUFOR soldiers were stationed with the task of keeping the peace⁴.

Notwithstanding the aforesaid fact and substantial funds and efforts that the International Community invested into the stabilization of the Country, neither the International Community nor the national social factors could take pride in the level of democracy

² Under the pressure and hospices of large powers (primarily of the USA), the General Framework Agreement for Peace has been initialed on 25 November 1995 in Dayton – Ohio – USA, and signed on 14 December 1995 in Paris. Within the so-called Dayton Agreement, amongst other things, the Annex IV was adopted – it represents the new Constitution of Bosnia and Herzegovina. The BiH Constitution as the administrative and legal act of this country has never been published in the Official Gazettes or ratified by the Parliamentary Assembly of BiH. The original version of Annex IV was prepared in English language, and it has never been officially translated to any of three official languages of BiH. The different interpretations thereof are still to appear and there are some dilemmas regarding its original contents. On the issues of legitimacy and legality of the Constitution of BiH and fairness of adopted constitutional solutions, the Commission wrote extensively on several occasions in its previous Reports. (www.ktabkbih.net/files/file/justitiaetpax/)

³ Office of the High Representative – OHR, at the head of it the High Representative is positioned and he is, at the same time, the representative of the EU in BiH. By the decision of the so-called Venice Commission, formed on the Peace Implementation Conference held in Bonn on December 9 and 10, 1997, the OHR has been given the extensive powers of intervention in all the forms of authority (legislative, executive and judicial) – which has been relentlessly and (over) extensively used during the mandate of some of the High Representatives in BiH.

⁴ For the sake of comparison in BiH, in December 1995, the military contingent of the international peace forces of the SFOR (under the NATO command) numbered more than 60.000 soldiers. The police forces of EUPM (police mission of EU in BiH) have still been present in BiH, besides the EUFOR army.

reached or the conditions for establishment of the civilized society and protection of fundamental human rights. Bosnia and Herzegovina has remained very distant from the rule of law based upon the consistent respect of both, the individual and collective human rights. The dignity and personal integrity of citizens has been substantially derogated by the extremely grave situation in the social field since BiH has remained still on the bottom of the scale of the least developed and poorest states in Europe.

BiH is a deeply and unjustly divided State, amongst other things, because the Dayton Agreement has confirmed and legalized war conquests. The "Peace Implementation" additionally deepened such division and in the opinion of sincere analytics, it escalated the tensions amongst peoples and citizens of this country in relation to the situation as it was just after the war. The peoples and citizens of BiH have remained the victims of war and imposed unfair peace as they continue to live under the conditions of a complex and dysfunctional state apparatus and a society burdened by the constant frictions and confrontations of three national politics.

Unfortunately for all the aforementioned, even fourteen years after the end of the war, the living conditions have not improved substantially, nor could the progress in the development of national relations between the three of its constituent peoples⁵ be seen for BiH citizens. Tensions generate on all the levels of social life and reflect through the systematic actions of the political elite of all three peoples. The permanent state of politic confrontation between ethnic groups and unsatisfactory relations on the political scene have a direct negative reflection on the possibility of consistent and just realization of human rights in BiH. As the democratization of society and the transition of the social system should be immediately followed by progress in the field of human rights, it is understandable that the setbacks in the transition of society and social organization represent an obstacle in the affirmation of human rights in BiH. The crisis of morality is the worst of all crises, and thus of the political one as well, and the crisis of the political system and the State generates and feeds the crisis of moral that culminates in organized crime and corruption. Crime and corruption are undermining even the best foundations of society, threatening it to cave in. Therefore, it seems to us that the urgent finding of the fair political solution in BiH is the only one that may

⁵ The Constitution of BiH proclaims constitutional status of three peoples in BiH: Croats, Bosnians and Serbs. According to the last census of 1991, in BiH 4,364,574 citizens had lived of which 43.7 percent of Muslims (Bosnians), 31.4 percent of Serbs, 17.4 percent of Croats and 7.6 percent of others (5.5 percent of others had declared themselves as Yugoslavs). By the dissolution of the former SFRY the nationality of "Yugoslavs" had almost disappeared in its entirety from the territory of BiH, and that part of population have mainly returned to their national belongings in accordance with their ethnic origin. To be true, the new term „Bosnian“ has been made up and offered as a substitute for the term Yugoslav. Besides, it may be presumed that the number of those that, unsatisfied by the state for which they blame the national parties and for some other reasons as well, feel and declare themselves as others.

become a fundamental presumption for prevalence of the deprivation of its nations' and citizens' rights and at the same time, for protection of human rights and stability of social organization and social peace in this country.

III. GENERAL IMPRESIONS IN RELATION TO THE YEAR 2007 – THE CRISIS OF SOCIETY, OF MORALITY AND OF AN INDIVIDUAL

The Commission "*Justitia et pax of BC BiH*" in its former work has continuously followed the development of the social and political situation that directly influences the state of human rights in BiH, and has regularly prepared the yearly Reports on it⁶, with the aim of indicating the existing state of human rights in all the aspects of society. We do not want to deal exclusively with the consequences, but we have the intention of detecting the causes of such a state.

Although certain shifts towards better could be noted in some fields, it is necessary to conclude that during 2008 the state of human rights and freedoms in BiH has not substantially improved in relation to previous times. In the political sense, it could be said that in 2008 some signs of possible political agreement between three nations could be glimpsed, that could accrue the more fair political solutions and better times for all the citizens of BiH, but experience has taught us that any of the initiatives of the political establishment in BiH should always be approached with reservations and a large dose of caution – if they are infusing optimism or not, is of no relevance.

The Commission is worried by more and more obvious intensification of the already mentioned climate of intolerance and insensibility amongst the citizens, where, often, the poor relations between nations, although they should not, have been the main reason.

All previous Reports of the Commission have indicated that the state of deprivation of rights as a constant amongst almost all the categories of citizens in BiH is primarily the result of structural mistakes, i.e. unjust solutions incorporated into the very foundations of the constitutional and legal system of the State. Unfortunately, through a longer period of observing the state of society and the state of human rights in BiH, we could not perceive any substantial improvement in the resolution of the existing crisis of society and general crisis of morality. Although the majority of citizens in BiH feel the burden of injustices and deprivations on their own shoulders under such conditions of life, in everyday life they give the impression as if they have been manipulated with a total lack of fairness. The lack of feeling for justice and lack of compassion for the deprived is what is worrying. We frequently witness solidarity between citizens and those that with no reasonable cause discriminate against "others and different ones" so that on the whole territory of BiH we witness more and more obvious discrimination of

⁶ Yearly Reports of the Commission are published on www.ktabkbih.net.

the majority over the minority. In such a situation of polarization of society, gradually but irrevocably, as we dread, it comes to the position of the crisis of moral, the caving in of the fundamental human values and the increase of crime. General uncertainty is of no surprise.

The impoverishment of the populace and the fresh wounds of war have obviously been fertile ground for the rutting of egotism and egocentrism that are affecting all the spheres of social life. In BiH, society is in a lethargic state of sort and a general lack of feeling of justice, no matter if it concerns others of different ones, may be felt more and more. Such a crisis of moral gradually becomes an obvious division on the national or religious belonging. The constant breaches of human rights and dignity during the war and post war period have escalated, it appears, to such extent that it has become a standard of behavior in the mind of an individual and it has been treated as a normal phenomenon.

The insight into the burdened everyday life, brings us to the conclusion that the transition crisis of BiH State has overgrown the institutional frameworks and has become an even more complex sociological problem, which manifests broadly by the instillation of wrong value criteria into the conscience of individuals which, with the passing of time, becomes the characteristic mentality with the basic features representing stronger cruelty towards his/her own person, conformism and consumerism. In all of this, the media in BiH plays an important, negative role. The permanent state of deprivation of rights and constant presentation of intolerance as a "necessary evil" in the present moment, influences the caving in of fundamental human values and dangerously and permanently erodes the basic human values of the society in whole and the moral integrity of citizens as individuals of the society concerned. It must be concluded that the intolerance and exclusivity, after the end of the war operations, continued its growth instigated in great measure by the media under the control of political and party elites and their followers⁷. It is worrying that the media, with the intention of exposing criminals, often publicly put them to trial before the courts do, and it results in the direct confrontation thereof. Their attempts to expose political and social power-wielders, who in their reactions do not shrink from the public threats or the use of physical force, is significant as well. In this confrontation even the right to a good reputation, moral security, security of person and the freedom of speech.

⁷ On any of the legislative levels of BiH (state, entity, cantonal) the possibility of harmonization or adoption of the law on lustration has been considered. In the existing political structures of authority in BiH, the majority is still represented by the people that had directly participated and served in the totalitarian, mono-party system of the former State as well as in the systematic violation of human rights and freedoms in BiH.

For all stated above, the insensitive and inconsiderate relation of (co)-citizens towards evil or obvious breaches of human rights that have been unfamiliar to this society until recently, but currently disturbingly present. It most often manifests in the gesture of “looking to the other side” or using the mentality of an ostrich and “hiding ones’ head in sand”. By rooting of such values into the mentality of citizens, i.e. overpowering the conscience of collective and individual egoism, explains the reasons for undergrowth of the institutions of civil society in BiH. In those institutions the proper initiative and expected influence to the social development are lacking and, therefore, the same happens in the area of protection of human rights and freedoms.

The increase in consumerism mentality, the decrease in moral values in the BiH society and the individual structure of the State are permanently and systematically disturbing the basic standards of human behavior, which in general causes the inflation of the basic values and continues to disturb the already disturbed relation of an individual towards his fellowmen, regardless of him/her being different or not. As the result of all aforesaid, insecurity, lack of prospects and the feeling of being imperiled are prevailing among the citizens of BiH. In the conditions of general poverty, lack of functional rule of law and the lack of civil initiative, the political crisis of the state organization of BiH grows into the crisis of an individual and the general moral crisis, which could not, if not promptly stopped, be easily overpowered by any structural reform of the state and society. Therefore, the reforms of the society must be dealt with due attentiveness and within the broader context. Parallel to the structural reform of the state apparatus (that should be performed from above towards the bottom), it is necessary to deal more with the moral and spiritual reconstruction of the society, which necessarily goes from the bottom towards the top. Any turn from bad to better must be of radical nature and the spiritual transition of Bosnia and Herzegovina may not be treated as an exception.

IV. RIGHTS OF CHILDREN AND OF YOUTH IN BOSNIA AND HERZEGOVINA

Previous Reports of the Commission have clearly indicated that the human rights and dignity of almost all categories of its citizens in BiH have been endangered, which is most certainly instigated by the permanent political, economic, moral, social and structural crisis of the society. We would like to especially indicate the alarming state in the field of protection of the rights of children.

IV.1 Legal Grounds for Protection of Children in Bosnia and Herzegovina

By the succession of the International Agreements ratified by the former SFRY, on November 23rd, 1993, BiH took over by the notification the UN Convention on the Rights of the Child⁸ of 1989, which, in the form of law⁹ had been applied in the former SFRY since 1990. For the aforementioned, the act of notification should have represented the continuation of the application of the aforesaid Convention in the previously "well-established" legal practice. The Convention imposes on the States parties the obligation to harmonize their legislation with all provision set forth in the Convention with the aim of protection from the discrimination of any kind of each child¹⁰, his or her parents or legal guardians "*irrespective of their race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*"¹¹

Regarding Article 44 of the Convention on the Rights of the Child, BiH as the State Party, was obliged within two years of the Convention being put in action, to submit to the UN Committee for the Rights of the Child a report on the measures it had adopted which give effect to the rights recognized in it and on the progress made on the fulfillment of those rights. The first report to the UN Committee, BiH submitted only in 2005, thus, with a delay of ten years. The aforesaid fact clearly indicates the nature of relation of the State towards internationally ratified treaties and, subsequently, to the alarming situation in the area of protection of children's rights.

⁸ Notification published in the *Official Gazette of the RBiH*", no. 25/93 of 15 December 1993.

⁹ The Law on Ratification of the UN Convention on the Rights of the Child – *Official Gazette of SFRY*, no. 15/90 of 21 December 1990.

¹⁰ Within the meaning of Article 1 of the Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.

¹¹ A part of the quotation under Article 2, paragraph 1 of the Convention.

The Constitution of BiH or the Annex IV to the Dayton Agreement stipulates the highest standards in the field of protection of human rights and freedoms, including the Convention on the Rights of the Child of 1989¹². By the aforementioned, the provisions of the Convention have been given the power of the Constitutional norm, which, on the whole territory of BiH, imposes the obligation of harmonization of all laws and by-laws therewith. Therefore, the fact that the Convention has been listed in the Annex to the Constitution of the Federation of Bosnia and Herzegovina¹³ ("the FBiH") together with the other widely recognized instruments for protection of human rights, and, for example, not to explicitly state it in the Constitution of the Republika Srpska¹⁴ ("the RS") since all the provisions of the Constitution of BiH should oblige in the entirety the Entities in respect of the appropriate harmonization of the legislation in the field of the protection of the rights of the child as well.

IV.2 Basic Principles of Protection of the Rights of the Child and its Realization in Bosnia and Herzegovina

The Convention on the Right of the Child lies on four basic principles:

1. the right of each child to equality and the right of each child not to be discriminated against
2. the right of each child to survival and development
3. the right of each child to freedom of expression in conjunction with all the issues associated thereto
4. the obligation of all public and private institutions to act with the aim of insuring the realization of the best interest of the child (which purports the obligation of harmonization of the legislation with the Convention as whole, with the appropriate institutional framework)

The basic principles of the Convention have been formally implemented and incorporated into the legal system of BiH, but the system could not be commended in

¹² Within the meaning of Article II(2) of the Constitution of BiH, the rights and freedoms set forth in the European Convention on Protection of Human Rights and Fundamental Freedoms and the Protocols thereto shall apply directly in Bosnia and Herzegovina and those international standards shall have priority over any other law.

¹³ The Annex is published in the *Official Gazette of the FBiH*, no. 1/94.

¹⁴ The Amendment LVI to the Constitution of the Republika Srpska prescribes the provisions on human rights and freedoms shall be realized in accordance with Articles 8 to 11 of the European Convention on Protection of Human Rights and Fundamental Freedoms.

the practice by the thorough care of the rights of the child and consistent protection of the rights of children.

IV.3 The Right not to be Discriminated Against

The discrimination that rules the world of adults in BiH is directly reflected on the rights of children. In all of it, it is necessary to emphasize the existence of discrimination of children from, so called, minority groups belonging to the constituent peoples (on the ethnically cleansed territories). This is an especially sensitive issue. Namely, the consequences of war and of the peace thereafter are influencing most of the members of the constituent peoples that became the minority in the places they used to live before the war. Their fundamental freedoms have been systematically violated in a planned manner with the aim of forcing them to leave their places of residence. That is especially obvious in the field of right to education in their native language and the right to education in the spirit of the culture of their ethnic belonging. Since the representatives of the International Community do not completely understand all the delicacy and balefulness of the coarse approach to this issue, the public authorities do not even attempt to prepare a program and school system that, within the healthy integration processes, would affirm the rights of “minor” constituent peoples in the education. Some symbolic steps towards the aforementioned field have been made by the Catholic Church by the foundation of multinational and multi-religious “Schools for Europe” in BiH, but the support of an entity of the State administration, and of specially installed bodies of the International Community, failed to take place.

Due to the fact that the constitutive peoples could not realize the rights arising from their own national and confessional identity on the whole territory, it cannot come as a surprise that such rights for national minorities in BiH¹⁵ are almost nonexistent.

The discrimination in the field of employment and realization of social rights that is suffered by the parents as the members of so-called minority groups, necessarily reflects the discrimination against their children in the form of direct lack of equality, worse social status and prospects in life.

Generally speaking, the poor country and the expensive and nonfunctional state apparatus are convenient for the survival of the atmosphere of intolerance and the state of systematic collective and individual discrimination. The lack of functionality of law

¹⁵ The national minority rights in BiH are regulated by the Law on Protection of Rights of National Minority Members (*Official Gazette of BiH*, nos. 12/03, 76/05 and 93/08).

institutions and of the real political will for legal equality, after the ethnic “cleansing” of all regions in BiH, serve to the further expansion of discrimination in all the fields of social life. The lack of sensitivity of the state and society institutions towards the apparent breaches of children’s rights is only one of a number of indicators of the alarming state of general deprivation of rights in BH society.

IV.4 Feeling of the Lack of Prospects Amongst the Youth in Bosnia and Herzegovina

The polls made among the students of secondary schools and universities in three of the cities of FBiH, showed overwhelming results according to which around 70 percent of this part of the population would gladly and permanently leave BiH, if the possibility should arise. Traveling to countries within the European Union and the majority of the countries of the world is not possible with BiH passports without previously obtaining a visa. The visa regime between the EU countries and BiH has been made substantially stricter regardless of the strivings of national politicians and authorities to be removed. Improvement of this situation is in question and it directly depends on the speed in recession resolving in the world economy that became apparent by the end of 2008.

The impossibility of free travels and familiarization with other cultures has a special impact on the state of mind of youth in BiH. Besides the inefficient and poor State and very low level of social and educational standards, the aforementioned specific isolation of BiH citizens, strengthens the feeling of lack of prospects among the youth of this country. All stated above influence, in one way or another, the decreased feeling of patriotism and the creation of apathy towards this State. These circumstances do not work in favor of subsiding the nationalistic feeling or stabilization of the State and society in the near future.

IV.5 Institutional Unwillingness of the State of Bosnia and Herzegovina to Protect the Rights of Children and Youth

Continuous degradation of fundamental human and moral values reflects especially on the worsening of an already difficult position of children and youth in BiH. In everyday life we have witnessed situations that indicate obvious and blunt exploitation of children, which represents the most direct violation of their rights. For example,

organized exploitation of children for mendacity¹⁶ continues openly before the eyes of the public on a regular basis. To do so, the children are "engaged" on the streets since an early age (as soon as they start walking), where a lot of them could hardly pass through the dense traffic of vehicles. It is not necessary to emphasize how the life and health of children exploited in the above-mentioned manner are endangered. One must keep in mind the fact that some of the children on the streets are so small that it is hard to even notice them as they are often smaller than the wheels of vehicles they are getting through all day long, in the struggle for their own existence and the profit of a small number of criminals – organizers of this profitable business.

Notwithstanding the obvious, regular exploitation of children's labor and reckless trampling of their fundamental rights, the institutions of the system show absolutely no reaction to such phenomenon. The citizens of BiH do not react at all to such things and treat them as completely usual and "normal". Indifference of the institutions of society to such obvious exposing of even the youngest ones to the danger and total resignation of the population, clearly indicate that the events of war and postwar contributed to the increase of dangerous insensitiveness of BiH society. If in Bosnia and Herzegovina the sensitivity for protection of rights of even the youngest children has been lost, the issue arises as to what the grounds are for such needed affirmation of human rights? The total insensibility of the State and society towards the flagrant examples of exploitation of children's labor and evidently blunt violation of children's rights, indicates that the crisis of moral in BiH society should be put before the social, political, economic and other causes.

Generally speaking, the institutions of the State on all levels appeared to be totally inadequate for the educational problems of the youth. Dysfunctional and therefore unsustainable political and administrative structures of the State¹⁷, widely spread social poverty, insufficient social programs and the lack of strategy of the socially sustainable development have an additional impact on the increase of crimes committed by juveniles and represent the perfect environment for the rooting of destructive and asocial behavior amongst youth. According to the official statistics of the Federal Police

¹⁶ This mainly concerns the ethnic Rom children. Although lately, a special program for socialization of Rom in BiH appeared, it must be noted that the state institutions have done almost nothing on this issue and the Rom remain socially the most endangered group in BiH. According to the data of the OSCE Mission in BiH, Rom is the most numerous national minority in BiH.

¹⁷ Besides the State level of authorities, the Dayton structure of Bosnia and Herzegovina consists of: two Entities (the Federation of BiH and the Republika Srpska), one district (Brčko District), ten Cantons (within the Federation of BiH). Each of the aforementioned territorial and administrative units has broad legislative, administrative and budgetary autonomy. The lower levels of authority are the Municipalities of which in BiH 141 are functional (in the FBiH 79 and in the RS 62). Research shows that the citizens realize almost 90 percent of their administrative needs in the Municipalities.

Administration for 2008, juveniles constitute 9.1 percent of the total number of perpetrators charged for criminal offences. Although they are pointing out an alleged decrease in the juveniles' crime level, the before mentioned statistics show the increase in the number of more serious criminal offences that have been committed by minors in 2008 and the Federal Police Administration should not have avoided this fact in their Report¹⁸.

A large number of recidivists have been obvious in the perpetration of criminal offences by juvenile criminals. This has a direct connection with the institutional deficiencies in the judicial, social and educational structures of the State in the segment of such important prevention, protection and reeducation of juvenile felons. One of the severe problems in the field of juvenile delinquency in BiH is the lack of institutions for accommodation of minors that are educationally neglected and of children that have committed a criminal offence. In the FBiH there is just one institution¹⁹ of this kind while in the RS there are no institutions dealing with caring for juvenile delinquents. This institutional problem is of legal nature and it is a result of the legal gap that originated after the signing of the Dayton Agreement. Namely, the issues of caring, re-socialization and reeducation of the juvenile delinquents was under the competence of the then Republic in former SR BiH (which had been regulated by the special legislation of 1983²⁰), and the Dayton Constitution has not assigned the competencies over the institutions of social protection to the State of BiH – but pursuant to Article III (3)(a) those have been transferred to the competence of the Entities (the FBiH and the RS).²¹ Thus, as of the 14th of December 2005 (date that the Dayton was put into play) the organization of the country, the competence of the State in the field of reeducation and caring for juveniles, ceased and the legislation of the Republic relating to this issue became inappropriate legal framework²². Since the Entities had not regulated this legal field at all, it remained in the sphere of legal lacuna until 2008.

Centers for social work in BiH function on the level of the Municipalities in the RS and of the Cantons in the FBiH, thus, in conditions that lack of legislative solutions in the field of institutionalized education of juveniles with behavioral problems, they could not

¹⁸ Source: the Federal Police Administration "*Criminality State in the year 2008*" (<http://www.fup.gov.ba>)

¹⁹ Institution for Upbringing of Male Children and Juveniles "HUM" in Sarajevo

²⁰ "*Law on Institution for Upbringing of Male Children and Juveniles in Sarajevo*" and the "*Law on Institution for Upbringing of Female Children and Juveniles in Sarajevo*" – both published in the "*Official Gazette of SR BiH*", no. 37/83;

²¹ Article III (1) of the Constitution of BiH contains the list of the responsibilities of the State and of the "Institutions of BiH", amongst which there is no mentioning of the social policy, and Article III (3)(a) defines that the responsibilities which have not been explicitly given to the Institutions of Bosnia and Herzegovina shall be within the responsibilities of the Entities.

²² The same legal situation occurred in the field of accommodation of mentally retarded persons including juveniles – which had been regulated by the Republic *Law on the Institution for Care of Mentally Disabled Persons* (OG of SRBiH, nos. 4/72 and 36/76), and partly by the *Law on the Institution for Protection of Children and Juveniles* (OG of SRBiH, no. 24/74).

establish the work in this area. The aforementioned situation of lack of legal regulations inevitably caused chaos in this field. The particularly chaotic consequences have occurred in the only existing institution for reformation of children in Sarajevo. For example, the case of a thirteen-year-old child that was accommodated in the same room with an eighteen-year-old perpetrator of the criminal act of murder (which he performed as an older juvenile) is noted, or the case of the murder of a juvenile in 2006 in the Institution concerned. Those cases clearly indicate the deficiency of the system and the lack of appropriate solutions when working with juveniles is concerned. Undefined legal framework and status of the Institution "HUM" in Sarajevo, as the sole institution for the accommodation of juvenile delinquents after the war, gave motive to judges and centers for social work to avoid at almost any cost to accommodate "problematic" children in that institution. Therefore, only the "most problematic" children for whom the society could not have found any other solution have been accommodated in it.

IV.6 Increase of the Juvenile Delinquency and Criminal and Legal Solutions in this Area

The year 2008 has been marked by a number of brutal events and bloody crimes the perpetrators of which, often and with no direct cause, have been underage children. Unfortunately, events such as the brutal incineration and murder of an old lady which was carefully planned and performed in broad daylight by three younger juveniles²³, the cold blooded murder of a student in the tram, without any cause²⁴ or the attacks with a hand weapon or fire-arm against professors and teachers in schools have become a part of everyday life in BiH. A dramatic decline of security, that became even more alarming at the beginning of 2008, caused mass demonstrations of citizens in front of buildings of the Cantonal governments. In that occasion the arrogant reaction of some public officials shocked the public. The graveness of the situation for the first time "forced" citizens to

²³ Three juvenile perpetrators of this brutal murder in Sarajevo of which the direct perpetrator was only 14 years old, previous to the act cold-bloodedly prepared themselves in such manner that they obtained a canister than stole the fuel by "sacking it out" from the car reservoir and then, in the broad daylight, poured fuel on, for them, completely unfamiliar old lady and put her to fire alive. The old woman subsequently died in the hospital of the consequences of severe burns. Although caught and apprehended, the boys were subsequently released for the lack of institutions for re-socialization of younger delinquents. Not long after that event one of them was arrested for the insolent theft ...

²⁴ Also, this murder of completely unfamiliar sixteen years old pupil happened in the tram in Sarajevo and also in the broad daylight and without any cause. The juvenile perpetrator, in front of a large number of citizens present, with the assistance of his "friends" he stabbed the victim with a knife, because, according to statement given latter on, he "looked at him with no reason". In 2008, the perpetrator has been sentenced (not enforceable yet) to the sentence of 9,5 years of imprisonment and at the beginning of 2009 his punishment has been modified to 10 years of imprisonment and became final and binding.

more thorough organizing of the civil society institutions (although mostly of demonstrating character).

Directly instigated by the aforementioned events, the impossibility to institutionally accommodate a number of juvenile perpetrators of the gravest criminal acts and the turbulent demonstrations of citizens, the Entity authorities in the FBiH started the process of regulating this field as a matter of urgency. This represents only the continuation of some initiatives on the draft laws proposed in 2005 and 2006. Following the aforesaid, in June 2008 the Law on Transfer of Rights and Obligations over the Institutions of Social Protection in the Federation of Bosnia and Herzegovina to the Founders (OG FBiH no. 32/08 of 4 June 2008) was promulgated and its adoption just started the process of legal regulation in this sensitive field and the Federation of BiH took over and established the responsibilities in the social protection of the institutionally accommodated children but also the competencies for caring for mentally-invalid persons within five of already existing institutions²⁵.

Special problems are also clearly expressed in the institutional vagueness of the State and its Entities in relation to the non-existence of special institutions for punishment serving of sentenced juvenile perpetrators (sentenced to serve punishment of juvenile prison). As in the previous case, for the lack of specialized institutions of the aforesaid character, the juvenile perpetrators of serious criminal acts are sent to serve their punishments into the penalty institutions for adults. While accommodated in such institutions the juvenile delinquents are "learning the trick of the trade" from their more experienced colleagues instead of re-socialization. In that sense, the aim and purpose of punishment is transferred from the sphere of social rehabilitation and re-education to the sphere of punishment and revenge over a juvenile delinquent.

The punishment policy against juvenile perpetrators of criminal offences has also proved to be completely inefficient and inadequate in the (re)-education of juvenile delinquents and this sphere needs a thorough mandatory reform²⁶.

²⁵ The following institutions have existed and became the public institutions in the ownership of the FBiH: the "Institution for Accommodation of Mentally Invalid Persons in Fojnica", the "Institution for Accommodation of Mentally Invalid Persons Bakovići", the "Institution for Protection of Children and Juveniles in Pazarić", the "Institution for Upbringing of Male Children and Juveniles in Sarajevo" and the "Institution for Upbringing of Female Children and Juveniles Ljubuški".

²⁶ The only prewar correctional institution for reeducation of juveniles located in Stolac has been out of function since the beginning of war and almost all initiatives for establishment of new institutions of this sort have been followed by substantial opposition of local communities to have them opened on their territories. Thus, for example, besides the initiative for the reconstruction of a correctional facility in Stolac, there's the initiative for the construction of a new correctional institution in Sanski Most.

The increase of juvenile delinquency, deviant and asocial behavior of juveniles and the constant degradation of family, a fundamental institution of society, clearly indicate that the seriously ill society of Bosnia and Herzegovina does not pay enough attention to the upbringing and education of its children and youth. The degradation of fundamental spiritual values cannot be stopped solely by the structural (institutional) reforms of society. The establishment and building of institutions and of appropriate legislative framework is a necessary process that is still waiting to take place in Bosnia and Herzegovina but it has to be followed by the spiritual transformation, i.e. parallel work "from the bottom to the top". Such transformation necessarily starts by reconsideration of one's individuality and it becomes of importance for the society only when the personal metamorphosis is transferred in the form of particular love towards the fellow human. In such construction of the society the love towards one's own children must be the main guiding star.

IV.7 Deprivation of the Right of Family and Children to Survive and Develop in Their own Homes and Native Land – Permanently Infringed Right to Return of Refugees and Displaced Persons

The legalization of effects of the ethnic cleansing that had been supported and committed with the "blessing" of the International Community is in direct relation with the lack of realization of children's rights to an equal status and realization of the right to survival and equal development of any child as proclaimed by the Convention. Namely, as of the beginning of the war to the signing of the Dayton Agreement approximately 2,680,000 persons had been expelled from their homes, which constitute some 59,6 percent of citizens of BiH²⁷. Within the meaning of Annex VII to the Dayton Agreement all of three parties that were once conflicted in BiH should have enabled the process of return of all the refugees and displaced persons to their homes with the aid of the International Community.

Although the substantial progress in the field of repossession of property has been made, the implementation of Annex VII appeared to be a failed project, since the lack of conditions for the sustainable return remains constant. The political obstruction of the return won at the end and permanently divided the State on ethnic grounds. In the RS it happened openly where even the Law on Restitution should have confirmed what was conquered in the war and in the FBiH in more subtle and hidden manner. The

²⁷ During the war (1992-1995) around 1,250,000 persons or 28.4 percent of the whole population of the country had been expelled to other countries from Bosnia and Herzegovina and within the country around 1,370,000 or 31.2 percent of population had been displaced.

responsibility for such a situation lies partially on the International Community by allowing the Law on Restitution, but it also lies on the political representatives of all three nations in BiH as they did not and have not shown the courage for true democratic steps towards the affirmation of basic human rights.

It is necessary to especially underline the lack of prospects for the returnees as well as the prospects for their children in the conditions of dominance of majority and discrimination over the minority, as one of the main reasons for the weak effects regarding the return. Unfortunately, as this process has been going on, the appropriate social ambience has not been created to generate the feeling of security and prospects for the returnees and their families and, most importantly, for their children. Notwithstanding the Annex VII, instead of the process of return, the process of ethnic cleansing of entire territories in BiH has continued even after the war. That is how, with the passing of time, almost all hope aimed towards the realization of the project of return to the territories inhabited by their predecessors, has been lost. The impossibility of returning to their homes and native land since the very beginning prevents the creation of fundamental preconditions for the realization of the right of the child to survival and development, which is proclaimed by the Convention on the Rights of the Child as the constitutional category in Bosnia and Herzegovina.

V. RIGHTS OF WOMEN

The realization and protection of women's rights in Bosnia and Herzegovina has been insufficient, and the violation of human rights of this part of the population has remained explicit. The improvement in the level of efficiency and functionality in the protection of women's rights has been imposed as a priority for the authorities and politic subjects in Bosnia and Herzegovina.

The authorities have achieved some forward steps in the field of legislation by the adoption of the Law on the Equality of Genders and the Family Law, and both Entities rendered the Law on Protection from Family Violence. Until now, some legislative and other measures have taken the task of enforcing the policy of equality of genders in the area of political and public life as well. However, these measures have proved to be insufficient for the substantial change in the status of women in political life. Women have still remained on the margin of political power, deprived of the influence on the policy of the state.

Regardless of all activities taken, women in BiH are victims of the increased discrimination in the economic sphere, victims of family violence and violence against women; a percentage of women participating in the bodies of law enforcement and legislative authorities is unacceptably low as well as in places where important political decisions have been made. Some researches have shown that for the same jobs, women have been paid lower wages than their male colleagues. The employers often do not respect the Labor Law and the Collective Labor Agreement and don't allow women to use their whole maternity leave and sick leave for nursing of sick children. They also lay women off during their pregnancy period. The number of examples where women have been dismissed from employment, because of pregnancy, increases.

The women in BiH, although being the simple majority of population (51 percent), have not been present in the area of labor and social relations even close to the aforesaid percentage (the rate of unemployment of women arises to 44 percent), in the political life (14.2 percent), in the political parties (around 18.5 percent). A substantially larger amount of women have been employed in the educational, health and social welfare (62 percent). The general state of poverty and grave economic and social position of BiH society has the hardest impact on the population of women and children.

The Entity for labor legislation has equalized the right of employment of men and women, but the situation has remained totally different in practice. The employers hardly ever decide to employ a woman justifying it by the increased costs of business transactions, due to the fact that women have to have the security of use of sick leave for the care of children or possible maternity leave. Besides this form of discrimination, the discrimination of women according to their age also exists; in many job adverts published in the daily newspapers relating to employment, the female labor force is requested to be within the age of up to 35 with the frequent note that another condition is "to be attractive".

It is considered that women in BiH may get a job substantially faster if they are younger, but they also face with fast unlawful dismissals of the labor contract. Therefore, the women have started to work in "gray economy", and to earn money for the survival of their families. This way they have brought themselves to an even more unfavorable position as they do not have mandatory health insurance, determined working hours, established labor value, and they have no syndicate organization.

The most worrying situation has become the one concerning women who are victims of violence. As an answer to this phenomenon, the authorities in Bosnia and Herzegovina have tried to find solutions for those problems by installing SOS lines for victims of violence, better coordination with the Social Work Centers, Ministry of Internal Affairs, Health Centers and NGOs. However, the expected results have failed. On an every day basis the articles on family violence within black chronicles of newspapers have been present. The public often has to face titles such as "Charged her spouse for violence", "Molested wife", "Beaten woman hospitalized", "Boyfriend beat up his girlfriend" etc. Such cases often pass without any judgment or punishment.

Unfortunately, all of the mentioned facts indicate in sufficient manner the gravity of the problem of violence against women in BiH. But it does not point out the fact that all factors included are insufficiently efficient in pronouncing of sanctions against the perpetrators. The proceedings are not conducted pursuant to the applicable Law against the Family Violence or the Law on Equality of Genders, but are mainly conducted pursuant to the Criminal Code, which brings the victim of violence into the substantially unenviable position, and the consequence thereof is the pronouncement of lenient punishments, which diminish any effect of the judgment.

The situation is the same with women who are victims of sexual violence. This form of violence has remained a taboo topic in BiH. Women avoid charging the perpetrator as

the environment often sees the victim as a culprit. That is the result of the upbringing and customs in certain environments. For this form of violence, although taken as a serious criminal offence, the courts pronounce minimal punishments. If a perpetrator of sexual violation comes from a public life, women hardly ever decide to initiate judicial proceedings for the fear of the consequences.

The trafficking of women in BiH creates serious concern. Different from previous times when BiH was the transit country, the women and girls, citizens of BiH, have become the subject of trafficking. The traffickers are going to rural areas of BiH in their search for women to be employed for "fictitious jobs", and those women end up as victims of trafficking.

The women in BiH are also exposed to different forms of sexual harassment while looking for a job or in their working place. The research done by gender centers in the FBiH and the RS, within the project of Gender Equality in BiH, on the sample of 600 examinees, shows that sexual harassment or maltreatment exists in all environments. Unemployment of the female population has substantial influence in the approach of women to health insurance. BiH has no unique health policy or organization of health protection for preservation and improvement of its population's health. This area as well as the area of education and social protection is within the competence of Entities and in the FBiH within the competence of cantons. Regarding the substantial unemployment of the population of BiH, more than 50 percent of the female population has practically not had health insurance.

According to the warning of the UN Development Program one of the phenomena in BiH is the feminization of poverty. Because of conditions they live in, women are more affected by poverty. That is why female retirees are in the worse financial position than their male colleagues as their pensions are lower. The very transition creates unequal effects in men and women in the field of work and employment. Women were the first to feel the impact of reforms and dismissals and as a rule they are able to get a job only after striving a lot more.

The authorities are facing the obligation to change their previous practice and to establish the appropriate coordination with the goal of consequent and responsible implementation of the legislation concerning the protection and improvement of women's positions. The realization of better cooperation with the NGOs is necessary to achieve more efficient results in the protection of women's rights.

VI. ECOLOGY – THE RIGHT TO HEALTHY LIFE

Since the establishment of the Austro-Hungarian Empire in BiH in 1878 up to the present moment, Bosnia and Herzegovina has been evaluated primarily as a raw material and energy base. Through the mentioned period, outdated technologies were applied that led to devastation and pollution in a large scale. It is a paradox, but the truth, that the recent war (1992 -1995), with regard to the environment, brought certain improvements because of termination of production in the majority of industrial facilities but, on the other hand, it brought new problems; destruction, mined territories and radiation.

After the war, the awareness of the necessity of a radical change in relation towards the environment and exploitation of natural resources is more present. Honestly speaking, all of it remains on the level of declarations, plans and projections. When the pollution of the environment is concerned; air, water, land and forests, then the main polluters are the large cities and large-scale industrial facilities that are overly polluting the air and the environment.

We shall present in brief that both the biological and geological diversity have been endangered in BiH, as well as the waters, agricultural land and forests.

While in June 1992 the whole world was busy with the idea of sustainable development, Bosnia and Herzegovina was entering the third month of the grave imposed war (1992-1995). After the war, BiH just partially managed to get involved in the process of coming up with an idea for sustainable development. Under *sustainable development* we understand the balanced relation between the *economy and ecology*, in brief, that the economy must not ravage biological and geological diversity and natural resources of BiH. It is necessary to note that BiH has been classified as the territory with the largest level of biological diversity in Europe and that it's, keeping in mind its geological diversity, the most unique in Europe. BiH also disposes of important natural resources. Today, all this is endangered in BiH.

It is necessary to remember the factors that are endangering biological and geological diversity in BiH. Those are as follows:

1. autocracy over the space (illegal construction of settlements and production facilities, lack of infrastructure, irregular growth of urban zones etc.)
2. excessive exploitation of natural resources (violent and excessive cutting of woods, poaching, unbalanced agricultural production)

3. unbalanced industrial production (non-existing, irrational use of energy, low efficiency use of resources and other)
4. unbalanced energy politics (almost nonexistent investments towards the environment, lack of development strategy, lack of existence of a program for better efficiency, application of outdated management, lack of existence of program for recovery and so on)
5. insufficient legislative, professional and practical preparedness and skill for prevalence of natural disasters (floods and fires)
6. non-existence of a development strategy that would be consistent with the international documents signed by Bosnia and Herzegovina.

As far as natural resources are concerned, waters, agricultural lands and forests are endangered in BiH. Bosnia and Herzegovina has very good water potential, which when regarding the drinking water reserves per capita, is ranked in the world's top. As of late, the substantial pressure of foreign investors in the area of exploitation of drinking water is notable. Water resources in BiH could be commercially exploited only on the basis of franchise license, which means that they cannot be transferred to private ownership. As the water management comes within the jurisdiction of the Entities and Cantons, in conditions of general impecuniosity, the concessions are allocated with no plan and with no strategy at all. Such sale of rights to the disposal of this key resource could, in a foreseeable future, have catastrophic consequences towards the population of BiH.

Draining of wastewaters and purification thereof is almost non-existent. All the rivers near large settlements and industries in BiH are mostly polluted. Possible pollution remains a constant threat to the health of people because of outdated and damaged piping and uncontrolled chlorination. Water springs are not sufficiently protected and the quality of drinking water becomes disputable. Many of the Municipalities in BiH have sewage systems that serve only for collecting and draining of fecal waters directly to open canals and rivers, mainly without purification of wastewaters, and only 56 percent of the urban population has connection to the sewage systems. It is necessary, therefore, to improve the quality of water in BiH and efficiency and transparency in water management.

Agricultural land is together with water and air the most important natural resource, which represents the precondition of life. While water and air are renewable, land is not, since it's being destroyed by covering it with asphalt or concrete, or destroyed by erosion; it's impossible to regenerate. Once destroyed by an asphalt or concrete cover

or by erosion, it is permanently lost. The loss of agricultural land after the war is much more substantial. If the destruction of agricultural land in BiH continues at the present rate, it will be completely lost within the following 50 years. It should be noted that large surfaces of land in BiH are still covered by mines. For the preservation of agricultural land in BiH, the new legal and institutional measures are needed both on the level of the State and the units of local self-management.

Of the total surfaces covered by forests and forestland in BiH, degraded forest surfaces and barren land represent around 53 percent, which is considered to be unfavorable structure of the forest fund in BiH. The indicators of how endangered the forests are in BiH come both from past and present.

- Because of its configuration, large inclination and composition of land and long-lasting (more than a century) intensive exploitation (permanent cutting of woods without any planning) of its forests, BiH is one of the most eroded regions in Europe and the most endangered erosion region of the Balkans.
- The forests of Herzegovina are totally devastated and they are simply disappearing. The erosion of this barren, rocky and steep area is really evident. The biodiversity of rare species of plants is endangered as well.
- Mined areas in BiH cover a surface of approximately 540,000 hectares. Mines cut off the forest roads and the work of people on the protection of woods from any detrimental developments has been prevented.
- Massive drying of larger areas of forest occurred because of the attacks by insects. The pinewoods are especially endangered. In the endangered (dry) forests, forest fires are a common occurrence as well as other unfavorable events.
- In the forests and forestland of BiH there are more than one thousand active erosive regions. Lower flora and fauna disappear and it can hardly be renewed on barren land. The forest roads are buried. The neglected, damaged and devastated forestland has become overgrown with weeds.
- Overly and illegal cutting of woods by the forest roads, endangers the forest fund. The biodiversity of flora and fauna changes. Floods and erosion occur more often. The springs for drinking water are drying out. A change in the microclimate can be detected.
- Bad organizational and personal structure of forestry in BiH prevents development and expansion of the forest fund. It is, therefore, necessary to create new institutional and legal preconditions for sustainable use of forests in BiH.

Regard the absolute lack of care towards their own citizens and their basic problems of existential nature, the completely ignorant behavior of authorities in BiH in relation to the protection of nature and environment is not surprising at all. The lack of strategy for sustainable development, total lack of care and invalid behavior of bodies of the State administration towards destruction of the natural potential of BiH, leaves hardly repairable consequences on the environment and future of the territory of BiH.

VI.1 Contamination of the Environment with Mines and Explosive Devices

Amongst other clustered ecological problems in BiH, it is of special importance to emphasize the problem of unexploded mines and explosive devices that remained after the war. The assessment is that around 3.42 percent²⁸ of the territory of BiH or approximately 1,755.00 square kilometers, are directly affected by unexploded mines and explosive devices. In its Report of 2007, BHM MAC defined the total number of 12,717 mined micro-locations with an average surface of 0.14 square kilometers per micro-location.

Demining is a very expensive and complex process and in BiH it is additionally aggravated because of the massive use of mines and explosive devices with almost no registered minefield records. Also because of the large intensity of war confrontation on the territory of BiH during World War II, the finding of remaining unexploded devices from that period does not come as a rare occurrence. The total number of victims of mines and explosive devices since the beginning of 1996 till the end of 2007 amounts to the number of 1,608 of mine casualties out of which 472 victims²⁹ died. Regarding the number of impacted communities and mine impact level, Bosnia and Herzegovina is one of the most impacted countries in the world. The large area of territory covered by mines and explosive devices substantially complicates the economic development of the entire region. It also has an important psychological effect on the process of return of the refugees and displaced persons.

²⁸ Evaluation of the Mine Action Centre (BHM MAC) - Mine Action Report for the year 2007 (www.bhmac.org)

²⁹ Source: Mine Action Report for the year 2007 (www.bhmac.org)

VII. SOCIAL INSECURITY SITUATION

In previous Reports of this Commission we have continually endeavored to indicate to the serious state of economy in BiH, which causes bad social status of its citizens. In 2008, no progress in the BiH economy has occurred and it substantially falls behind the developed economies within the EU and even behind the economies of other countries in transition. The end of 2008 in the whole world was marked by the beginning of global crisis that unavoidably reflects to the economy and standard of BiH citizens. The impression imposes that the political elite of BiH does not strive to take serious steps on the reduction the effects of economic crisis, as there were almost no debates on this topic in the state institutions. Light-minded approach of politicians and authorities of BiH to the problems of global economic crisis comes as no surprise at all. Namely, in this country the crisis has remained a constant for quite some time with almost no prospects for solution in recent future. Since the authorities on all levels in BiH, and especially on the State level, possess almost nonexistent strategy for the development of any field of social life, the lack of systematic economic and/or social strategy is of no surprise.

VII.1 Problem Area of Population Census and Census of Other BiH Resources – Hypocrisy of Policy

As before, even in this Report, it is necessary to underline the fact that since 1991 no census had been conducted in BiH. That aggravates and disables in a substantial measure any serious elaboration of economic and social trends (fluctuations). Although the census is primarily the social but also professional-statistic issue, and, therefore, it falls within the scope of competencies of the Bureau of Statistics, in this country it also became a political issue of the highest importance. On the reasons of the opposition to the thorough population and economic resources census on the State level that are of political nature we wrote in detail in our previous Reports³⁰. The conclusions of the Commission given previously regarding this issue have proven completely justified in 2008. The opposition of political leaders of all three constituent peoples to the performance of population and economic resources census are completely exposed during the political negotiations previous to the so called Prud Agreement. Namely, while harmonizing the enforcement of the future census performed amongst the presidents of the three most numerous national parties of all three peoples in BiH the

³⁰ www.ktabkbih.org

opposition to the conduct of census in the segments of ethnic belonging, religion and language have aroused, primarily for the reason of fear of devastating slashing results of ethnic cleansing on the entire territory of BiH and of lost of positions of power. This especially indicates to the hypocrisy of national politic elite, which puts as its first place of interest, instead of legitimate and undisputable democratic interest of all the citizens, their own positions and chairs. Such hypocritical character of the politics in BiH in its essence represents only the continuation of the hypocritical behavior of the massive transfer of the servants of the totalitarian one-party regime to the structures of the young "democratic" State.

VIII. BASIC ECONOMIC AND SOCIAL INDICATORS IN 2008

As a difference from previous years, for the first time from the moment the State has become independent, the data on some economic and social indicators in BiH of importance have been statistically processed for the year 2008. Our previous Reports on these issues had mainly relied on incomplete statistic data of the Entities Institutions, data/ assessments of International Community Institutions and data/evaluations of certain civil society institutions.

VIII.1 Employment Situation

The total number of unemployed in BiH in November 2008 amounted to 479,296 persons, while the total number of employed in the same month amounted to 708,173 persons³¹. If this information is compared to the data of November 2007, it may be concluded that the decline in the unemployment amounted to 7.5 index points or in the absolute amount of number of persons registered as unemployed, which decreased for 38,884 persons³². According to the criteria of International Labor Organization (ILO)³³, in relation to the previous year, in 2008 the unemployment rate (according to ARS) also decreased from 29.00 to 23.40. The better statistic results in this segment are in direct cause and consequence link with the intensifying activities of the inspection bodies of the State with the aim of eradication of "black labor"³⁴. Namely, at the end of 2007 and first half of 2008, because of crisis of budget and pension funds, the inspection bodies all over BiH started application of intensified activities on detection of the "black labor". To such actions the employers replied by registration of employees with the minimal legal basic salaries but also with temporary registration of employees, just until the action of the inspection bodies abates. The monthly statistics indicate to the substantial variation of the number of employed that are inappropriate for the normal situation on the labor market.

The activities of the State in this field clearly indicate that even the slightly more serious approach of the state authorities may result in the substantial progress to the benefit of

³¹ Statistic data of the Agency for Statistic of BiH

³² Dito

³³ International Labor Organization (ILO)

³⁴ Large number of employers (especially in the private sector) has employed the labor force exclusively paying wages, and such employees do not realize any of the social rights such as the right to health and pension insurance. Such employment in the jargon and it even becomes natural in the professional terminology is defined as the "black labor".

citizens and economy. Unfortunately, the crisis of the budget, i.e. the desperate situation, is the only situation that instigates the State and political elite to react.

VIII.2 Decline in Purchasing Power and Living Standard

The average net salary on the territory of entire BiH in November 2008 amounted to KM 776.00 (EUR 396.76), which represents the increase in relation to December 2007 of 13.9 percent.³⁵ The index of consumer's prices in November 2008 in relation to December 2007 is higher for approximately 3.8 percent, while the price growth for twelve months in 2008 amounted for average of 7.4 percent. The aforesaid statistical parameters clearly indicate the further declination in the social status of already impoverished citizens of BiH. The substantial decline of purchasing power of the citizens of BiH is primarily the result of global growth of prices of oil and other energy products during three quarters of 2008. Upon the substantial decrease of oil prices on the world marked in the last quarter, no serious decrease of the prices of basic foodstuffs, gas or electric power occurred.

Under the criteria of United Nations, more than one third of BiH population lives in the conditions considered as socially endangered and over 10 percent under the lower poverty limit. The especially socially endangered category of population of BiH is the category of pensioners who are on the edge of survival. The average pension in the FBiH in October 2008 amounted to KM 347.88 (EUR 177.42), while in the RS it amounted to KM 319.00 (EUR 162.69). The survival skill of this endangered group of older age, burdened with health problems and in the aforesaid social-economic conditions is unbelievable.

The poor social-economic conditions, lack of social programs and money in the budgets do not give any reason for optimism in the field of social-economic progress of BiH citizens and especially so with the clear indicators of upcoming global crisis and recession. For all aforesaid it is necessary to create preconditions for use of agriculture as one of the main economic resources of BiH as the matter of urgency since all the perspectives indicate that the possibility of problem with the feeding of the population of this country could occur.

³⁵ Statistic data of the Agency for Statistics of BiH

VIII.3 Basic Trade and Production Indicators of Economy

In 2008, the total export of BiH amounted to KM 6.711.690.000 (KM 1 = EUR 0.51), while the total import for the same period amounted to KM 16.286.056.000. This means that the foreign trade balance indicates the yearly deficit to the detriment of import in the amount of KM 9.574.366.000. Having regard to the lack of development and poor results of the production sector, the realized trade deficit is more than worrying. This is especially so taking into account almost non-existent strategy of economic development on the State level but also on the lower levels. Under the official data of the Ministry of Finances and Treasury of BiH the total external debt of BiH on the date of 31 December 2008 amounts to KM 4.193.261.748, while on 30 September 2007 it amounted to approximately KM 3.930.000.000 – indicating the tendency of growth. The whole gross national product (GNP) in BiH in 2007 amounted to KM 21.64 billion (the gross national product per capita amounted to KM 5.633) while the external debt amounted to KM 3.96 billion. Under the assessment of the Ministry of Finances and Treasury of BiH it may be concluded that BiH is within a „tolerable“ framework as the ratio of public debts and the GNP³⁶ is concerned.

VIII.4 Socio-Economic Prospects

The extreme seriousness of the state of economy that, mandatory, is followed by the grave state of the social sector gives no reasonable reason for optimism. The economy, which is deteriorated by the war and postwar plunder through the privatization process, besides decrease of social prospects of the population, substantially aggravates Euro-Atlantic prospects of BiH. Continuous political confrontations, mainly on national grounds, give an impression of permanent political instability. This permanently repels potential foreign investors. The active (political and military) presence of the International Community, the extensive competencies of the OHR, the cheap labor force and natural and social resources of BiH represent the potential that should have created the presumption of faster economic and social development.

The improvement of the ambience for development of economy and the substantial foreign investments are directly connected to the political image of the State. The fair solution of political crisis in BiH, therefore, should be the universal interest of both, BiH and the International Community. The global economic crisis threatens by acumination

³⁶ At the moment of preparation of this Report the official statistic data on the gross national product (GNP) for 2008 have not been published yet, therefore, we had to use the data for 2007.

of political and economic-social tensions. Therefore, all stated here points out to the seriousness of the current situation that continuously worsens and which, at the same time, represents for all relevant national and international factors the alarming call for urgent action.

IX. EVENTS THAT MARKED THE YEAR 2008

IX.1 Adopted Principles of the Police Reform

In the process of accession to the European Union (Road Map), the European Union named the Police Reform on the level of the State of BiH as one of the priorities. During 2007, under the severe pressure of the International Community the basic principles on which the EU insisted were agreed upon. On 28 October 2007, the representatives of six leading political parties of both Entities of BiH signed the declaration on the reform in this field³⁷. Thereby the conditions were met to initial the Stabilization and Association Agreement between BiH and the European Union (SAA), which marked the beginning of creation of the contractual relations between BiH and EU.

Following these events, on 10 April 2008, the House of Representatives of the Parliamentary Assembly of BiH adopted two draft laws relating to the police reform; the Draft Law on Independent and Supervisory Bodies of the Police Structures of BiH and the Draft Law on Directorate for Coordination of Police Bodies and on Agencies for Support to the Police Structures of BiH. On 16 April 2008, the House of Peoples of the Parliamentary Assembly of BiH adopted two aforementioned laws relating to the police reform field. Pursuant to the adoption, these laws entered into force. The adoption of aforementioned laws was a precondition for signing of the Stabilization and Association Agreement with EU. The laws concerned have created seven new police institutions on the level of the State of BiH, with the limited competencies. The organization of the local police levels should be agreed upon simultaneously with the adoption of the new Constitution of BiH, which, of course, renders the importance of the legislative solutions and the final use of adopted principles on which EU insisted relative. Notwithstanding the adoption of aforementioned legal solutions, the reform of police in BiH has not started yet that would function independent of ethnic criteria and current territorial divisions within Bosnia and Herzegovina. Therefore, it may be concluded that the modernization process of police forces remains the task that has to be solved yet by the political establishment of this country for the benefit of its citizens. Rapid increase of criminality rate on the whole territory of BiH during 2008 indicates that that is one of the tasks that should be dealt with as priority. The delay in the police reform process, because of numerous obstructions by the Republika Srpska through the institutions of the State, gives rise to the conclusion that aforementioned legal solutions were not

³⁷ The political crisis caused by the objections of the Republika Srpska against this reform were described in detail in the Report of the Commission for the year 2007.

adopted in good faith and for the benefit of the citizens but solely for the purpose of signing of the Stabilization and Association Agreement. The problems have been just avoided again and again but any of important problems have not been solved. It is true that the obstructions concerned are interpreted as a fear of centralization of this country but that only emphasizes all the deficiencies in the social-political system of this country for who knows which time and which way.

IX.2 Stabilization and Association Agreement Signed between BiH and EU

In 2008, the most important moment for BiH was the moment of signing the Stabilization and Association Agreement between BiH and EU, which occurred on 16 June 2008 in Luxembourg. The Agreement consists of ten chapters, seven Annexes and the same number of Protocols of which we set out the following: Political Dialog, Regional Cooperation, Free Circulation of Goods, Movement of Employees, Business Plans, Provision of Services, Capital, Harmonization of Rights, Realization of Rights and Rules of Market Competition, Judiciary and Internal Affairs, Forms of Cooperation, Financial Cooperation and Institutional, General and Concluding Provisions. This International Agreement defines strict rules and procedures that BiH would have to fulfill in order to become the full member of the European Union. The Parliamentary Assembly of BiH ratified the SAA by unanimous vote on 21 October, and the House of Peoples³⁸ confirmed the ratification on 27 October 2008. On its session of 22 and 23 October, the European Parliament issued the resolution by which the Union member States were invited to approach the ratification of the Agreement with BiH as soon as possible.

By the signing of the Agreement BiH became the associated member of the European Union but the Agreement will become formally binding when the process of ratification in all the EU member States be finalized. The Stabilization and Association Agreement of BiH to the European Union has been signed on the indefinite period of time, but any party to it may suspend it if the other party does not comply any of the key elements thereof. Having regard to the delay in the police reform process and also the general paralyze of the institutions of the State in the association process it is completely reasonable to expect the ratification of the Agreement in the EU member States to last longer than usual. The political sequence of events reveals the hypocrisy of the BiH policy where the consensus of all relevant political options is unchallenged only in the declaratory determination and devotion to the "European Road", although a part of

³⁸ The Constitution of BiH prescribes the bicameral legislative body on the level of the State.

political forces have not yet decided on the factual adoption of the principles on which the EU is based.

IX.3 Radovan Karadžić Brought before the ICTY

One of the most spectacular events that characterized 2008 the most certainly is the arrest and apprehension of Radovan Karadžić – Bosnian Serbs war and political leader. The European Commission, amongst others, named as one of the key conditions for BiH association process the improvement of cooperation with the International Criminal Tribunal for the Former Yugoslavia in Haag (ICTY)³⁹. The main obstacle to the compliance with the aforesaid condition was the resilient obstruction of the Republika Srpska and the Republic of Serbia to the apprehension of the main actors and initiators of the war to that International judicial institution and this especially relates to the arrest of the accused Serb war political and military leaders Radovan Karadžić and Ratko Mladić.

As the leader of Bosnian Serbs and the President of the Republika Srpska during the entire war, Radovan Karadžić started his political carrier of exclusivity on 12 May 1992, when he was elected the President of self-proclaimed RS and he remained on that position until 30 June 1996. As he transferred his negotiation competencies to the Vice-President of RS, Biljana Plavšić⁴⁰, even at the time the negotiations in Dayton had started, he was not a member of the RS delegation on the Peace Negotiations in Dayton. After the Dayton Agreement had been signed, Karadžić withdraw from public and political life.

On 25 July 1995, the ICTY initiated the first indictment against Karadžić and Mladić, charging them with genocide and crimes against humanity. By the second, expanded indictment of 16 November of the same year, Karadžić has been indicted for the massacre of Muslims in Srebrenica and the third, amended indictment of 31 May 2000 joined the two previous indictments into one and his case was separated from the case of Mladić. This indictment was unsealed in October 2002 and it charged Karadžić in 11 items for the participation in genocide, crimes against humanity and violation of laws and customs of war.

³⁹ International Criminal Tribunal for the Former Yugoslavia (ICTY) has been established in 1993, as an *ad hoc* Court for processing of war crimes and other violations of humanitarian law committed during the wars on the territory of the former Yugoslavia.

⁴⁰ On the basis of binding judgment, adopted on the grounds of judicial settlement with the ICTY Prosecutor, Biljana Plavšić serves her sentence for war crimes of 11 years of imprisonment in Sweden.

In the course of his trial, Karadžić insists on the claims that he concluded secret agreement with the American Envoy Richard Holbrook by which the USA Administration guaranteed him that no charges for war crimes against him would be initiated if he withdraws from the public and political life. This thesis is interesting if one takes into account that the International Community had actively negotiated with Karadžić regardless of the indictments filed before the International Tribunal in Haag. It is also indicative that the NATO–pact intervened directly in BiH in 1995, only after the Serb military forces had been brought to the complete military breakdown⁴¹.

Karadžić was seen and photographed for the last time in Han-Pijesak in the middle of 1996, since when he had been on the run. The INTERPOL warrant was opened for him. Thirteen years after the initiation of indictment, on 21 July 2008, under the pressure of the International Community, Radovan Karadžić was arrested in Belgrade and brought before the International Court for War Crimes in Haag.

On 24 July 1995, after the genocide in Srebrenica, the Haag Tribunal confirmed the indictment against Radovan Karadžić. He was indicted on the basis of individual criminal responsibility⁴² and command criminal responsibility⁴³ for genocide, participation in genocide, extinction, murders, intentional deprivation of life,

⁴¹ The International Community had put the embargo to the import of arms for the region of the ex Yugoslavia in 1991 – that should have stack the determined political blow to the young democratic states in their struggle for independence against one of the most powerful military forces of that time. The NATO military operations under the title of "Resolute forces" started only after the joined forces of Croats (HV and HVO) and Bosnian–Muslims (ABiH) in 1995, by the fast and efficient military action "Oluja", had come to the outskirts of Banja Luka. The following statement of Peter Galbraith, the then Ambassador of USA in the Republic of Croatia, that he gave in October 2008 to the American National Public Radio ("the NPR"), on the course of events just before the end of war is a significant one. Here, we give a part of his statement as published in „Dnevni avaz“ newspaper in relation to the interview of the fascistic quality of the then army and the political leadership of the Republika Srpska:

"I don't know what exact words I used on NPR. That was an academic discussion on the wars on Balkans and in BiH. I was one of their gests. Maybe I said something similar there, made the parallels with Germany after the World War Two. But, I don't think that Bosnian Serbs are like a fascists and genocidal. The leadership of the RS and the Army of the RS of that time – they are! – states Galbraith

...

- NPR made the broadcast. I spoke about the then situation and speculated what would happen if we had let the Croats to take over Banja Luka. I said that the then leadership of Bosnian Serbs were like a fascists and genocide and that, maybe, it would have been better, that the region would be more stabile, that we allowed their total defeat instead that we decided to obtain the compromise.

However, if Banja Luka was taken we would have at least some 300-400 thousands of people in the Posavina corridor and a really complex situation. We already had a lot of refugees from Krajina. Them and the Bosnian Serbs in exodus would have led to a catastrophe. We could not have allowed that. There were a lot more factors that we had taken into account." said Galbraith, amongst other things, (conveyed from Pincom.info of 17 October 2008).

⁴² Article 7(1) of the Haag Tribunal Statute

⁴³ Article 7(3) of the Haag Tribunal Statute

expulsions, deportations, inhuman acts, unlawful treatment of civilians and taking hostages.

The fact that he, together with Ratko Mladić the most wanted Haag accused, had lived peacefully for years in Belgrade under the mask of Dr Dragan Dabić just confirms that in Serbia there was no political will to apprehend the suspects for the most serious war crimes for full thirteen years. The especially indicative fact is that Karadžić as of lately started the public appearances in Serbia, in the direct broadcasts on TV, and until 2002, Ratko Mladić had been on the payroll of the Army of SR Yugoslavia – and SRY as legal predecessor of the current Republic of Serbia.

Bringing this accused from the most serious war crimes to justice may, at least in a small measure, could be a satisfaction to the numerous victims of mass crimes committed on the wings of large-Serbian ideology that this at some other time anonymous psychiatrist from Sarajevo had leaded wholeheartedly and with cruelty. Although hundreds of thousands of victims of large-Serbian ideology are crying for justice, the future will say in what manner their cry would be satisfied.

IX.4 Municipal Elections

On 5 October 2008, on the whole territory of Bosnia and Herzegovina the local (Municipal) elections were held where the Municipal Heads and representatives of the Municipal Councils as Parliamentary bodies of this authority level were elected. The Municipalities as basic units of local self-government in both of the Entities. The total response of voters on the local elections amounted to 55.3 percent. Final official results of the local elections indicate to the continued domination and political power of so-called national parties. The largest number of positions of Municipal Heads was obtained by SNSD (Savez nezavisnih socijaldemokrata⁴⁴) the total of 39, than SDA (Stranka demokratske akcije⁴⁵) follows with 36 of positions, while HDZ BiH (Hrvatska demokratska zajednica BiH⁴⁶) got 16 positions of the Municipal Heads.

The period before the Local elections were held, was characterized by the Decision of the Central Election Commission of BiH (“the CEC BiH”) that prevented 2,084 Croat refugees from Posavina to take vote in Bosanska Posavina (currently under competence of the Republika Srpska), which, under the law, represents completely legal procedure. The CEC BiH disputed the validity of the BiH citizenship certificates that the Croat refu-

⁴⁴ SNSD- the most numerous Serb parliamentary party

⁴⁵ SDA - the most numerous Bosnian-Muslim parliamentary party

⁴⁶ HDZ - the most numerous Croat parliamentary political party

gees from the region of Bosanski Brod and Derventa possessed as these were made by the Office for Refugees in the neighboring Croatia on the basis of the original Register of Births which had been transferred to Slavonski Brod because of war activities. After the adoption of the Decision, on 12 September 2008, the Registers of Births are handed over to the Ministry of Foreign Affairs of BiH. Thereafter, the procedure of preparation of personal identification documents of BiH for the Croat refugees from Posavina started. By this act they are enabled to possibly obtain the right to vote on some future local elections. The previously mentioned fact confirms, as so many times before, that the basic democratic preconditions to hold free elections have not been met in BiH to this day. On the contrary, the administrative "consistency" served the authorized bodies to deny the election right to their citizens.

Election and politic embezzlements regarding the Dayton territories, on this occasion as well, appeared more important to the International Community than the essential democratization of the BH society. Besides permanently denied, as it seems, the fundamental right to actual return of refugees and displaced persons from almost all parts of BiH (especially from the RS territory; Bosanska Posavina and East Bosnia) the signal is again given to them that they are not welcome to the places of their prewar residence. All of the above indicates that the project of division and ethnic cleansing in BiH is almost finalized.

IX.5 EUFOR Mandate in BiH Extended

On 20 November 2008, the UN Security Council unanimously adopted the decision on extension of mandate of EUFOR in BiH for one-year period. The EUFOR forces in BiH currently consist of around 2,200 soldiers, which is less than in 2007 when this mission has around 2,500 soldiers. The need for presence of the International Peace Keeping Troops on the territory of BiH shows that in the International circles BiH is still treated as potential crisis point. Although the number of International Peace Forces in the meantime has been substantially decreased (at the end of 1995 on the territory of BiH there were active 60,000 soldiers of SFOR, under the joined command of NATO Pact, present) because of constant political threats and turbulent events in BiH and constant threats to its stability, the agreement exists between the NATO Pact forces and EUFOR enabling fast intervention of the part of Peace Forces in Kososvo ("the KFOR") for the purpose of urgent necessity.

Besides all the aforementioned, the forces of EUPM, as the Police Mission of the European Union with the task of reorganization and modernization of the BiH Police Institutions⁴⁷, are active in the civilian sector of BiH. The presence of the International Military Peace Keeping Forces in the State is a serious psychological obstacle to the inflow of foreign investments into BiH.

IX.6 Political Negotiations and the Prud Agreement

In the previous Reports on the human rights state in BiH, the Commission has often pointed out to the necessity of radical modifications of the internal constitutional-legal organization of BiH and need to be liberated from the chains of the Dayton Agreement that has not been based on the truth and justice.

After the pressure for cosmetic amendments, i.e. legalization of the existing constitutional organization⁴⁸ failed in 2007, the Presidents of three political parties; HDZ BiH, SDA and SNSD, for which one may claim that they are currently the three most powerful parties from all of three constituent peoples in BiH, on 8 November 2008, in the village Prud in Posavina, signed a political agreement on the basic principles of modifications in the constitutional organization of the State, which still remains non-obligatory and illegitimate. Although the real contents of the Agreement have been shrouded in secrecy, the following principles of pretended reform came into the open:

- The modification of the Constitution of BiH would be made through the amendments to the applicable Constitution, with the expert aid of the International institutions and the process itself would imply the harmonization of the Constitution of BiH with the European Convention for Protection of Fundamental Human Rights and Freedoms, competencies of the State, functioning of the institutions of BiH and territorial organization of the State.
- Upon the issuance of the Law on Census on the level of BiH the census of population should be organized in 2011. Till 2014, the ethnic representation in the governmental institutions should be based on the 1991 census.
- The Parliament of BiH should adopt a program of measures for aid to the return of refugees and displaced persons and sustainable stay and such program should be implemented in the period between 2009 and 2014.

⁴⁷ The mandate of EUPM arises from Annex 11 while the mandate of EUFOR arises from Annex 1A and Annex 2 to the Dayton Agreement.

⁴⁸ The more detailed report is given on pgs. 63 - 66 of the Report on the state of human rights in BiH for the year 2007 (www.ktabkbih.org)

- The State property, depending on its designation, should be allocated to both the State of BiH and its Entities, i.e. Cantons and Municipalities.
- A separate, special law, i.e. the law with a constitutional two-thirds majority, should solve the issue of the legal status of Brčko District.

So called "Prud Agreement" represents the first initiative for amendments to the Constitution of BiH initiated from within, at least in a formal sense, as some indications exist to the effect that it is the result of systematic pressure made by great powers (mainly by USA). Primarily, therefore, the leadership of EU and the Ambassador of USA in BiH gave support to the Prud Agreement. The Presidents of the three most powerful parties of the three constituent peoples in BiH agreed that it is necessary to organize on territorial basis the middle level of authorities, which has been supported by the International Community.

The Commission salutes and supports any form of democratic agreement between the democratically elected representatives of all three constituent peoples in BiH.

Our experience confirms that up to this moment all of the imposed solutions had an unfair result as the outcome. Bosnia and Herzegovina and its peoples need the aid of the International Community without mediation of which all national determining participants would not accept the necessity to try and find a fair solution. The need for the efficient aid does not exclude but only confirms the fact that the true justice, as a token of future coexistence, may only flow from the agreement of all three peoples. And such agreement has to be based on principles of fairness and mutual respect. Namely, those that have got the present political solution are not willing to find and accept the solution that would be the expression of equality of all the citizens and political respect of all three peoples in BiH by their free will. All the solutions finding the acceptable compromise for all of three peoples must be directed towards the implementation of the decision of the Constitutional Court of Bosnia and Herzegovina⁴⁹ on the constitutionality and sovereignty of all three peoples on the whole of its territory.

In the State like BiH only the negotiations and agreements of the representatives of all three peoples, and not of the leaders of three political parties, may guarantee the results but the majority of circumstances surrounding the "Prud Agreement" do not give rise to any optimism. That is, first of all, caused by the exclusion of a large part of democratically elected representatives of leading parties and opposition. We already

⁴⁹ In 2000, the Constitutional Court of BiH adopted the decision on constitutive status of all three peoples (Croats, Serbs and Bosniacs) on the entire territory of BiH, thus declaring unconstitutional all the provisions under which the FBiH was solely the Entity of Bosniacs and Croats and the RS solely the Entity of Serbs.

emphasized that the experience thought us to approach with caution and doubt to all initiatives of the existing political establishment in BiH. The statements given by three leaders of political parties after the "Prud Agreement" are contradictory and indicate the essential failure to achieve something new. What could be considered as the real agreement or one of the main reasons for political negotiations, most probably, could be the agreement between national political leaders on the final division of property in ownership of the State of BiH. The remaining principles of the Agreement are, in the assessment of this Commission, acceptable in principle but completely buried by the political rhetoric of some politicians even before they are truly born. The impression is that the thick layers of hidden interests surround the "Prud Agreement". It is necessary to emphasize the fact that it has the powerful opponents also because in this initiative, it seems, the prevalence lays clearly in the "interests of parties" of three leaders. It is hard not to think that each of the „leaders“ of the meeting in Prud finds as an important factor the possibility of elimination of some opposition from the ranks of their own peoples. It is hard to qualify something as an Agreement not knowing what it is they agreed upon. It would be sad if it appears that the main intention of this "Agreement" is to give evidence to the world public, which obviously took the bait, that our national politicians could agree on something, and on nothing at the same time!

Since the Decision of the Arbitration Commission of 5 March 1999, which was supposed to solve the status of strategically important region of the prewar Municipality Brčko after the Dayton, the region concerned became the condominium of both Entities – or, in fact, the third Entity in the form of district, the political negotiations from Prud in respect of Brčko District could give results similar to those in the case of auction of the State property. In the following chapter, as a separate part of this Report, we elaborate on the legal position and status of Brčko District of BiH, with its specific solutions that could be applied partly to the future constitutional organization of BiH.

X. BRČKO DISTRIKT OF BOSNIA AND HERZEGOVINA

- Legal status and protection of human rights -

In its previous Reports, the Commission dealt with the issue of legal organization and protection of human rights of Bosnia and Herzegovina as a whole or of its two Entities; FBiH and RS. There was no special reference to Brčko District of Bosnia and Herzegovina although it has a special legal and political status in the very complex organization of Bosnia and Herzegovina and some legal solutions even relating to the protection of human rights that are differently set up than those of two Entities. In fact, the International Community tries to establish in Brčko District the model of multiethnic, multi-confessional and multicultural society of importance for survival and functioning of Bosnia and Herzegovina that they would probably try to implement on the whole territory of BiH if this project succeeds. Therefore, it seems important to look into the solutions offered in Brčko District and the implementation thereof.

X.1 Peace Conference of Bosnia and Herzegovina

The International Conference on solution to the crisis in BiH, after long preparations and almost four years of war, was held, as already mentioned, between 1 and 21 November 1995, in USA, Ohio State, city of Dayton, Wright Petterson Military Base.

Besides the confronted parties from BiH (Bosniacs, Serbs and Croats), the participants were the neighboring states, the Republic of Croatia and SR Yugoslavia with their highest political leaders: The President of Serbia Slobodan Milošević represented the Serbs from BiH as well. The participants were also the representatives of the then members of European Union and Russian representatives.

The USA Administration leaded the negotiations and coordinated relations between the confronted parties and with the International Community too. After twenty days of complex talks and negotiations, the Peace Conference reached the point when it had to be finalized. Namely, the organizers of the Conference concluded that any further negotiations were useless as no consent could be reached in relation to the territory of the Municipality Brčko that seems to be the key issue for all the sides. The Serb representatives insisted that this region should remain in the composition of the RS as it would secure continuity of territories that should be the part of the RS (connecting of the west and the east part) and on the other side, Bosniacs and Croats that were majority of

almost 80 percent of population of this region could not give this concession because in that way, amongst other things, the ethnic cleansing would be recognized that the Serbs on the territory of the city of Brčko and wider area of the west and east access roads to the city committed during the war. Moreover, the only one developed river harbor in BiH is situated in Brčko and some economic capacities of importance as well as the railroad communication with Croatia and subsequently with Hungary and other countries. Furthermore, the forces of the Army of BiH and HVO, at the time of negotiations, had kept the sustainable part of the territory of the Municipality Brčko to which Bosniac and Croat population moved in larger numbers from cities and villages occupied by the RS Army and who waited for return to their homes.

During the night between 20 and 21 November 1995, the agreement was reached that the issue of the status of Brčko should be solved as an additional issue through the special International Arbitration Tribunal consisting of three members to which the international member would preside and the FBiH and the RS should give one member each. To the moment of the issuance of the decision by the Arbitration body, the state would remain the same, i.e. as it was on the day the Agreement was initiated. Thanks to this Agreement, the peace negotiations on the crisis in BiH were finalized on 21 November 1995 by initialing of the General Framework Agreement for Peace in Bosnia and Herzegovina with 11 Annexes (Annex 4 is the Constitution of Bosnia and Herzegovina). The same Agreement was officially signed in Paris on 14 December 1995, which is the date of its entry into force.

X.2 Arbitration Decision

After several years long preparations and couple of partial decisions relating to the functioning of the territory of the Municipality Brčko (issued by the President of the Arbitration Tribunal alone), in February 1999 the final conference of the Arbitration Tribunal was held in Vienna. On 5 March 1999, the President of the Tribunal adopted and published the Final Award of the Arbitration Tribunal on the status of the Municipality Brčko. These Decisions have not been signed by any of two national members of the Tribunal. By the Arbitration Decision Brčko got the status of the District within BiH and the official title the **BRČKO DISTRICT OF BOSNIA AND HERZEGOVINA**. It is a **condominium**, i.e. the ownership of both Entities under the direct sovereignty of BiH. By the Arbitration Decision, therefore, Brčko is not an Entity (as the Constitution provides for no more than two Entities) or a Canton, the way the FBiH is organized.

Having regard to its competencies, level of independence in organization of legal and economic life, the Brčko District is much closer to an Entity than to a Canton. That especially relates to the legislative authority as it independently adopts practically all the laws starting from the public administration and up to the privatization of banks. Moreover, the executive authority is independent in the enforcement of all authorities as established by the laws in the Brčko District. This independence is additionally determined by the organization of judiciary that has two levels (Basic and Appellate Court) and all the disputes (with the exception of constitutional) are finalized in Brčko District. Also, there is an independent police structure. Further, the Brčko District is demilitarized, thus having no military units based there, and the residents of the Brčko District are not subject to compulsory military service.

Even before the issuance of the Final Arbitration Award, through the several partial Decisions of the President of the Arbitration Tribunal, Owen R. Roberts, Brčko got a special international **Supervisor** who was, at the same time, one of the Deputies and High Representatives for BiH. He practically had all the competencies that the High Representative had, i.e. to adopt mandatory legislation, other decisions, to vrši smjene i appointments of certain cadres, which he used in abundance. In this Arbitration Decision, which would later on be transferred to the highest legal act of the Brčko District - the **STATUT**, the solutions that are not typical for the remaining part of BiH exist.

Of the special importance is the Annex to this Decision as it gives practical instructions on how to establish the authorities in the District. Namely, the International Community, instructed by negative experience of the implementation of the Dayton Agreement, was much more specific this time on how to implement the Final Award of the Arbitration Tribunal. Therefore it is stipulated that the District residents may choose which Entity citizenship they would take and for which Entity government they would vote, and: „If he finds it necessary, the Supervisor may create and insert into the Statute **'the ethnic formula' which would derive any ethnic group of the intention to increase number of their citizens in the District with the aim of obtaining the exclusive political control and/or the provision on protection of 'vital interests'**“. Moreover, „the ethnic formula,“ is also provided for in the election of the executive authorities, but also „...**in order to secure the appropriate division of positions in the public sector amongst different ethnic groups**“, which is not the case in the remaining part of BiH.

Only after the issuance of the Decision of the Constitutional Court on the constitutive status of all three peoples on the whole territory of BiH, the International Community

started insisting on employment in the administrative bodies, judiciary, police and generally in the public sector in accordance with the „ethnic formula“ which has not yet been correctly and concretely implemented. „The ethnic formula“ is also provided for in the appointment in the judicial bodies. It is necessary to emphasize that this „ethnic formula“ for some of the bodies has been included into the Statute of District, and somewhere only into the applicable law. Although there are some critics against this solution it is necessary for the environment such as the District is (but also the entire BiH). Also, it is the best manner to annul the consequences of the ethnic cleansing at least at some extent. The President of the Arbitration Tribunal himself gave in his Final Award, the Annex thereof, all the reasons for the introduction of the „ethnic formula“. A separate Article of the Annex relates to the organization of police service with the total independence of the Entities, the professionalism and the „ethnic formula“ emphasized.

X.3 The Statute

On 8 March 2000, the High Representative for BiH, Wolfgang Petritsch, issued the Decision proclaiming the Statute of the Brčko District. By this act the Brčko District has been established, which **“is a single administrative unit of local self-government existing under the sovereignty of Bosnia and Herzegovina”** (Article 1 of the Statute). The Brčko District derives its powers of local self-government by virtue of each Entity having delegated all of its powers of governance (in accordance with the Final Arbitration Award) although not entirely same as the powers of Entities (exp. demilitarization of the District, so the Entities could not delegate it etc.) The Constitution of BiH, as well as relevant laws and decisions of the institutions of BiH, are directly applicable throughout the territory of the District. The laws and decisions of all District authorities must be in conformity with the relevant laws and decisions of the institutions of BiH.

The flag and Coat-of-Arms of BiH are also the flag and Coat-of-Arms for the District. The Statute guarantees equality of application of the two alphabets and the three languages of the constituent peoples. All human rights guaranteed by the Constitution of BiH and laws of BiH and the laws of the District are guaranteed with no discrimination of any kind. Everyone has the right to access all public institutions and facilities in the District; to move and determine freely his or her place of residence, business or work in the entire territory of the District; and purchase and sell movables and real estates in accordance with the law, the right to freedom of peaceful assembly and association including forming of political parties and business associations.

Elementary education is obligatory and free of charge. Secondary education is free of charge, and may be obligatory if District legislation so provides. The Statute stipulates that private schools and academic institutions may be established. Both alphabets and all of three languages are obligatory learned in schools and the parents may decide what alphabet the child will learn when starting school. Additionally, the law and by-laws in this field prescribed for nine years instead of eight years of primary education and harmonized adoption and harmonization of curriculums, employment of teachers and other issues relating to the education.

Moreover, the Statute stipulates that legal assistance in criminal and civil matters is available to District residents who have insufficient means to meet all or part of the legal costs.

The Statute explicitly prescribes that the public employment with the District is based on professional merit and open competition, and reflects the composition of the population. The problem with this provision is that it does not provide for employment to reflect the composition of population of the last census (of 1991). In this manner the ethnic cleansing is legalized because the non-Serb population had been expelled by force and the return was prevented with all the means and in the largest possible extent to the moment the Final Arbitration Awards was issued in 1999. Besides, all the persons that settled in this area during the war and especially after the war when the largest part arrived, (by reintegration of Sarajevo into the FBiH) the status of Brčko citizens was recognized to all of them. That is one of the large injustices committed by the International Community as it represents *de iure* and *de facto* recognition of the ethnic cleansing. To make it even worse, it mostly happened after the end of war. That the decision was, for example, that the employment should reflect the composition of population of the last census of 1991, it would, in a substantial measure, give hand to the return of non-Serb population and in the same time it would be good for all BiH as the Serbs would return in a considerable larger numbers to the territories they had left such as Sarajevo, Vogošća, Jajce etc. This would, simultaneously, significantly contribute to the restoration of the authentic multi-ethnicity of BiH.

The implementation of the Final Arbitration Award and the Statute gave rise to the need for adjustment of the Statute, i.e. for amendments thereof. Therefore, till 2 February 2007, five amendments were issued to the Statute and all of the amendments were made on the basis of the appropriate Supervisory Order of the Brčko Supervisor. So, the District Assembly issued not a single amendment but the bodies of the District participated in the discussions and preparations of the solutions that were stipulated by the amendments concerned.

These amendments could be, generally speaking, categorized in three groups: a) financial-economic field, b) administration and c) judiciary. Since very significant for all the segments of social life in Brčko, and especially for preservation of multi-ethnicity and protection of outvoting, and that a possible model for all of BiH could be perceived through these amendments, we will present in brief some of the aforementioned solutions.

a) Financial-economic field

The Customs and Border Administration that was under the jurisdiction of the District has been closed and transferred to the unique State level. The Brčko District participates with a certain coefficient in the division of revenues collected by the unique Agency for Indirect Taxation. The Finance Directorate for finances of the District is set up to collect public revenues and other financial businesses of the District and it consists of the Tax Administration and the Treasury. The special Office for management of public property that is responsible exclusively for the management of public property the Director of which is not a member of the District Government. If the Mayor does not sign the recommendation of the public property executive on the manner of disposal within fifteen days and does not give his written reasoning for that, it shall enter into force by the virtue of automatism.

The Annual Budget, before being sent to the Assembly for adoption by the Mayor, must be adopted by at least simple majority of the Government under the condition that the majority concerned must contain the vote of the Mayor, Deputy Mayor, Heads of Departments for professional and administrative affairs, education, health care and public affairs.

It is necessary, here, to point out to an injustice by which the fundamental right to property has been denied to the non-Serbs on the entire territory of the Republika Srpska and in the Brčko District as well. Namely, even during the war the Republika Srpska enacted the Law on Restitution of property nationalized on different grounds ("the Law on Restitution"). The claims were submitted during the war and immediately after the war and the repossession of property took place with no delay. The Serbs could only submit these requests to 99 percent as two other ethnic groups were expelled from the territory of the RS and those that remained were not free to initiate this issue. Soon after the end war this Law was put out of force, (on the level of BiH and the FBiH it has never been enacted at all) thus depriving citizens of non-Serb origin even of the right to submit the request for repossession of property. This was also the case in the District.

This related to the Churches, i.e. religious communities and other national culture associations. As an example, the Serb Orthodox Church in the District was restituted all its property but that is not the case with the Rome-catholic or Islamic Religious Community. Instead of legal repossession, the Supervisor issued some partial solutions thereof.

b) Administration

Some important novelties have been inserted into the amended Statute in the part relating to the Administration and public companies or public administration.

- Amendments to the Statute may be adopted by three-fourths of majority votes of the total number of Councilors of the Assembly.
- The Mayor is elected amongst the Councilors by three-fifths majority votes of the total number of Councilors.
- The three-fifths majority is necessary for adoption of the most of the decisions of the Assembly, such as the budget, adoption of laws, election and dismissals of all persons appointed by the Assembly, consents on appointments, use of veto etc.
- The mayor proposes laws to the Assembly (except those relating to the judiciary) that previously passed voting in the Government securing not only simple majority but votes of the deputy mayor (who may not be of the same peoples as the mayor) and some of the governmental departments depending on the field that is subject-matter of the law, thus securing affirmative votes of all of the three constituent peoples.
- The government must be composed of the representatives of all three constituent peoples and reflect the composition of the population. When adopting decisions, the "larger consensus" must be obtained in the government.
- It is strictly prohibited to hold two or more public offices simultaneously. The conflict of interests is precisely regulated. The largest part of offices held by the officials in the state administration is forbidden to take part in the political parties and these functions are filled by the public vacancy announcement.
- The Office of the Coordinator for Brčko District is established in the Council of Ministers of Bosnia and Herzegovina with the aim of representing the interests of the District before the institutions of BiH.
- Public companies are established by the law and supervised by the District Assembly.
- The draft laws on education, religion, language and culture, before submitted for adoption to the Assembly by the Mayor, are voted on by the members of the District

Government. It has to be adopted by the simple majority including the affirmative votes of the Mayor, Deputy Mayor, Heads of Departments for professional and administrative affairs, education, economic development, physical planning and property affairs and displaced persons, refugees and housing issues.

- Out of the comparison of the manner of adoption of law, for example, on budget or education it is obvious that those cannot be adopted by voting of the same Heads of Departments, which is a total novelty in relation to the work of governments of Entities and Cantons. In this manner all Departments are brought to the same position. It also brings all the Heads of Departments to the more equal position with others, i.e. they all have larger respect for each other (the possibility of “imposed solutions” is decreases).
- In the Election Law of Brčko District the “ethnic formula” is used again. Namely, Article 8(2) of the Law prescribes that the Assembly has the minimum of three Councilors of each of the constituent peoples and Article 8(1) that two mandates are reserved for the national minorities, i.e. 35 percent of total of 31 mandates. It is interesting to point out that the Statute prescribes 29 mandates in the Assembly and the Election Law 31 mandates (29 plus 2 of national minorities). This in itself is in conformity with the European standards and the European Convention on Minorities, but what is unusual, looking from the legal aspect, is inconsistency of the Law with the Statute as the District’s act of highest importance.

c) Judiciary

Brčko District has totally independent judiciary established under the Statute. Namely, the District has its laws on judiciary, both substantial and procedural, (which is not the case in the Cantons in the FBiH, and this indicates that the District is closer to the Entity than the Canton as considers its responsibilities and organization); the Criminal Code, The Criminal Procedure Code, the Law on Administrative Procedure, the Civil Procedure Code, the Law on Courts, the Law on Prosecutor’s Office, the Law on Attorney’s Office etc. Therefore, it has totally encircled judiciary system. There are two instances: The Basic Court which is the court of general jurisdiction (which is also different in relation to the jurisdiction of these courts on the lavel of both the RS and the FBiH) and the Appellate Court which has the appellate jurisdiction. There is no Supreme Court nor is possible to address the Court of BiH to appeal against the decisions of the courts in District. The only remaining protection is the constitutional one by addressing the Constitutional Court of BiH but only with regard to the aspect of violation of constitutional rights and rights guaranteed by the international documents (Conventions) that are integral part of the Constitution of BiH.

The Judiciary Commission of Brčko District performs the tasks of the Ministry of Justice. It had appointed and relieved the judges and prosecutors. This competence has been transferred to the High Judicial and Prosecutorial Council of BiH as of two years ago.

The “ethnic formula” is also applied when the appointment of the judges and prosecutors but also of the other administrative personnel is concerned.

Brčko District formed the Legal Aid Agency. That is the Office that gives legal aid to the citizens of the District in need thereof but no possibility to pay for it, which has not yet been done by the Entities.

X.4 Example and Moral

As mentioned before, the International Community tries to establish in the Brčko District a model that could and should function in the entire BiH. That is something to be greeted but a crucial issue arises as to; how long this model may function and how efficient it could function without the aid of the International Community. It is necessary to note the Statute, as the High Representative or the District Supervisor thereto, enacted the highest act and all the amendments. The Supervisor himself imposed many of the laws, and the Assembly passes no law without previous agreement given by the International Community. The punishments imposed to the Councilors and other governmental and administrative personnel by the Supervisor are not a rare event.

In these circumstances it is not easy to make a realistic evaluation of the real possibilities of functioning of the legal-political system established here. The financial element should especially be taken into account (the average salaries the employed people have are largest in the State) and the economic power of the District as well.

The District is the most developed part of BiH, thanks primarily to the foreign investments and the development that the International Community participates in. This area has the largest rate in the reconstruction of devastated facilities and repossession of property; it has the best-developed infrastructure in the country etc., which should represent the motive for permanent preservation of this model.

Some legal and political solutions are better than those of the Entities but some are only good as the paper they were written on while in practice it does not function so good as,

for example, respect of „ethnic formula“ in employment, equal development of all parts of the District etc. This automatically influences the better/worse return of refugees and displaced persons and, consequently, the preservation of its multiethnic, multi-cultural and multi-confessional character.

The more complete evaluation of this model will be possible only after passing of several years upon the termination of functioning of the Office of the Supervisor for Brčko District.

XI. CONCLUSION

BiH has always had a lot of problems but its greatest problem is the approach to another and different one. That is where the motives of various systematic negation of basic human rights amongst which, as it became obvious, the most explicit one is the violation of the right to return and stay of the members of minor constituent peoples, are induced from. Someone said that distress is an instrument on which truth plays. In BiH the hardships are numerous, thus the truths are numerous as well. The still unfinished war in BiH, regardless of the silence of arms for quite some time, sacrificed the human being to „values“ beyond the human. The unfortunate war and numerous mistaken ideologies have directed man against man and nations against nations. Some wanted, regardless of the cost, to create identities in this country by appropriating, even by use of arms, what they disputed for others. That has always brought a curse instead of a blessing, poverty instead of wealth, and therefore, despair instead of hope, to this country and its citizens and peoples. The result of such moral stumbling creates a climate in which, on one hand, the accused and even condemned criminals have been praised as heroes, the murderers have been protected and the witnesses prosecuted and, on the other hand, as an answer, whole nations have been burdened by the responsibility for committed war crimes and simultaneously, the criminals from own ranks praised as the only defenders of the statehood of BiH. In such manner a climate turned against the human has been created, where it is believed, and acted upon, that for some to prosper, others must suffer. That is why it is necessary to imprint into the hearts and minds of the people of this country, and especially the generations of youth, that happiness and the future of one is inseparably intertwined with the happiness of others. We cannot but believe that the human being in BiH has not lost his capability and readiness to respect others if he would be certain that it would be a pledge and guarantee that he himself would be respected. That is why we in this country need to have a state, and its social and political organization, that the citizens and nations thereof recognize as being in their own interest.

Such a state, tailored to man, for now, does not exist in BiH. A general deprivation of rights based on the general crisis of society and the moral of both the institutions and individuals function here. In BiH, as it becomes clear from this Report, not even the children or youth, women or elderly have been sufficiently protected, because for all of them their fundamental rights have been violated. Even if legal regulations exist, and most often those are not in full function for a man because he is a man, but rather because he is a member of this or that nation and this or that group of interest. This

situation cannot but result in negative consequences. Those are felt in the present time in the overwhelming lack of prospects for all and especially for the youth – through the delinquency of minors. It seems that the youth have been consciously forced to look for solutions in the use of drugs, alcohol, which then, in the natural manner of things, give birth to violence and crime. The internal disorientation, social and political uncertainty, mental turmoil, psychological instability and the uncertainty of the future are widely spread.

Problems of BiH are the issues of “to be or not to be”, primarily for its citizens and nations but also for the credibility of the International Community and especially that of Europe. However large their responsibility for the present situation, it would not be fair to attribute it solely and exclusively to the national politicians. In fact, the Dayton solution remains the fundamental obstacle because it gave the impossible task of putting the just picture of peace and life into the unfair and erroneous legal and political framework⁵⁰, as the Bishops' Conference of Bosnia and Herzegovina claimed immediately after the Dayton. Therefore we reiterate, upon the signing and guaranteeing of an unfair and unjust political solution that became the permanent source of friction between citizens and peoples of BiH, the International Community, and primarily the USA, cannot wash their hands in the manner of Pontius Pilate by telling us that the citizens and peoples of BiH should solve their problems on their own. This country will not find an escape from the vicious circle without the same measure of aid the International Community had already given in Dayton. However, the new measures would have to take into account, first of all, justice, as an ideal at least, because without justice, that implies legal and political frame of true legal equality of peoples and guarantee of political and civil rights to all of its citizens in BiH, would not exist. Therefore, the messages advocating the current state of BiH, uniquely and totally unfairly divided into two entities, are strange and unacceptable. All the indicators unambiguously point towards the urgent need of a thorough reform of BiH reality. In the name of a better and more secure future for its citizens, the Commission invites both national and international politicians to recognize and accept that need as their own obligation and opportunity!

⁵⁰ See Epistle of the Bishop of the Bishops' Conference of Bosnia and Herzegovina “... Praise to the peacekeepers, for they shall be named the sons of God.”, 25 January 1996 in the *Pastor's Epistyles, statements and appeals of the Catholic Bishops of BiH 1990-1997*, Sarajevo, 1997.



**BISKUPSKA KONFERENCIJA BOSNE I HERCEGOVINE
KOMISIJA "JUSTITIA ET PAX"**

IZVJEŠĆE O POLITIČKO-SOCIJALNOM OKVIRU STANJA LJUDSKIH PRAVA U BOSNI I HERCEGOVINI U 2008. GODINI

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I. UVOD

Kao da je zemlji Bosni i Hercegovini (BiH), od njezinog prvog spomena¹ pa do danas, dodijeljena čudna sudbina. Smještena je na specifičnom geografskom prostoru na kojem se isprepliću različite kulture i civilizacije i susreću različite nacije i religije. Na njezinom području susreću se čak i različita, da ne kažemo oprečna, klimatska strujanja, kao što su primjerice mediteranska i kontinentalna klima. Dakle, ovdje su se tijekom povijesti susretale i sučeljavale suprotnosti Istoka i Zapada, Rima i Carigrada, komunizma i kapitalizma i svoj pečat su ostavile tako da se i danas susreću i sučeljavaju. Na neki način se može reći da je ovo područje istovremeno vidljivi zapad na jugoistoku i istok na zapadu. Mijenjajući katkad istočne careve i zapadne kraljeve, islamske sultane i druge vladare, ova zemlja nije mijenjala samo svoje granice i svoja ustrojstva, svoju demografiju i svoju fizionomiju, nego je, u neku ruku, mijenjala i svoju dušu u istom tijelu, svoj bitak u svome biću.

Međutim, položaj i iskustvo ove zemlje nisu joj donosili samo osiromašenje, nego i obogaćenje. Ona nije samo sukobište, nego je i plodno susretište. Istina, ona je kao sukobište realna pretpostavka oštih komplikacija, konkurencija i konfrontacija. Napominjemo da je ovdje uz turbulencije bilo i tolerancije, uz konflikte i koegzistencije, a nakon ratovanja su slijedili procesi tihoga, ali stvarnog mirenja. Viđena i željena kao susretište, BiH je moguća prilika i ponuda zdravoj komunikaciji, koegzistenciji, suradnji u kontekstu političke konsocijacije. Iako potrebno bojati se da stanje duha i duhova, uvelike uvjetovanih i poticanih neprihvatljivim strukturalnim nepravdama, još naginje više isključivosti, negoli toleranciji, Komisija je uvjerena da BiH i dalje ostaje otvorena prilika i izazov svim pozitivnim snagama u zemlji, ali joj je nužna iskrena i efikasna pomoć međunarodne zajednice. Ustroj Distrikta Brčko je najbolja potvrda ovoj našoj tvrdnji i zato ga, kao model i poticaj, u Izvješću posebno obrađujemo. Ovo Izvješće zorno potvrđuje trenutne negativne političko-socijalne trendove i ukazuje na neophodnost mudrih kompromisa i pravednih rješenja.

¹ Usp. PORPHIROGRNETH, *De administrando imperio*, c. 30. Izvor spominje samo ime *Bosna*, jer se *Hercegovina* kao pojam pojavljuje tek u drugoj polovini 15. stoljeća samo za područje Huma i Zahumlja. Današnji naziv BiH nastao je u drugoj polovini 19. stoljeća i vezan je uz događanja oko Berlinskog kongresa 1978. god.

II. OSNOVNI UZROCI OPĆE OBESPRAVLJENOSTI U BiH

Od stjecanja međunarodno-pravnog subjektiviteta 1992. godine, BiH prolazi trnovit put tranzicije iz totalitarnog jednopartijskog društvenog uređenja k modernom demokratskom društvu slobode i pravde. Ovaj, inače težak, tranzicijski put je na prostorima BiH posebno otežan teretom povijesnog naslijeđa i još uvijek svježim ranama ratnog sukoba koji je 1995. godine zaustavljen izravnom vojno-političkom intervencijom međunarodne zajednice.

Od potpisivanja Okvirnog sporazuma za mir u BiH² (Daytonski sporazum) na prostoru ove države instaliran je svojevrsan oblik političkog i vojnog (polu)protektorata međunarodne zajednice. Naime, Ured visokog predstavnika u BiH³ (OHR) - kao neprijeporan vrhovni tumač Daytonskog sporazuma - ima na raspolaganju nadležnosti za donošenje konačnih odluka u oblastima zakonodavne, izvršne i sudske vlasti. Atribute vojnog protektorata OHR-u daje nazočnost stranih vojnih trupa. U BiH je krajem 2008. godine bilo nazočno oko 2.200 vojnika EUFOR-a, sa zadaćom očuvanja mira⁴.

I pored navedene činjenice te znatnih sredstava i napora koje je međunarodna zajednica uložila u stabilizaciju zemlje, ni međunarodna zajednica ni domaći društveni čimbenici se ne mogu pohvaliti dosegnutom razinom demokratizacije, niti uvjetima za uspostavu civiliziranog društva i zaštitu temeljnih ljudskih prava. BiH je još vrlo daleko od pravne države zasnovane na dosljednom poštivanju individualnih i kolektivnih ljudskih prava. Dostojanstvo i osobni integritet građana znatno narušava i izuzetno teško

² Pod pritiskom i pokroviteljstvom velikih sila (poglavito administracije SAD), Okvirni sporazum za mir je parafiran 25. studenog 1995. godine u Daytonu – Ohio – SAD, a potpisan u Parizu 14. prosinca 2005. godine. U okviru tzv. Daytonskog sporazuma, između ostalog, donesen je i Aneks IV – koji predstavlja novi Ustav Bosne i Hercegovine. Ustav BiH kao vrhovni ustavno-pravni akt ove zemlje nije nikad objavljen u službenim glasilima, niti ga je ratificirala Parlamentarna skupština BiH. Originalna verzija Aneksa IV je sačinjena na engleskom jeziku, a isti do današnjeg dana nije doživio službeni prijevod na jedan od tri službena jezika BiH, pa se danas još uvijek pojavljuju različita tumačenja i nedoumice oko njegovog izvornog sadržaja. O pitanjima legitimnosti i legalnosti Ustava BiH te o pravičnosti iznjedrenih ustavnih rješenja Komisija je opširnije pisala u više navrata u ranijim izvješćima. (www.ktabkbih.net/files/file/justitiaetpax/)

³ Office of the High Representative – OHR, na čijem čelu se nalazi visoki predstavnik koji je, ujedno, i predstavnik EU u BiH. Odlukom tzv. Venecijanske komisije, donesenom na Konferenciji za implementaciju mira, održanoj u Bonnu 9. i 10. prosinca 1997. godine, OHR-u su dane široke ovlasti interveniranja u svim oblicima vlasti (zakonodavnoj, izvršnoj i sudskoj) – što je nemilice i (pre)obilno korišteno tijekom mandata pojedinih visokih predstavnika u BiH.

⁴ Usporedbe radi, u prosincu 1995. godine vojni kontingent međunarodnih mirovnih snaga SFOR-a (pod zapovjedništvom NATO-a) u BiH je brojao preko 60.000 vojnika. Pored vojske EUFOR-a u BiH također su još uvijek nazočne i policijske snage EUPM (policijske misije EU u BiH).

stanje u socijalnom sektoru jer se BiH i dalje nalazi na dnu ljestvice najnerazvijenijih i najsiromašnijih država u Europi.

BiH je duboko i nepravедno podijeljena država prored ostalog i zbog Daytonskim sporazumom potvrđenog i ozakonjenog ratnog osvajanja. „Implementacija mira“ je dodatno produbila tu podjelu i, prema mišljenju ozbiljnih analitičara, povećala napetosti među narodima i građanima ove zemlje u odnosu na stanje neposredno nakon rata. Živeći u uvjetima složenog i nefunkcionalnog državnog aparata te društva opterećenog stalnim trvenjima i sučeljavanjima triju nacionalnih politika, narodi i građani BiH ostaju žrtvama rata i nametnutoga nepravédnog mira.

Nažalost, zbog svega spomenutog, za građane BiH se, ni četrnaest godina po svršetku rata, nisu znatno popravili uvjeti života, niti se vidi napredak u razvitku nacionalnih odnosa tri njena konstitutivna naroda⁵. Tenzije na svim razinama društvenog života se izravno generiraju i odražavaju kroz sustavno suprotstavljeno djelovanje političkih elita sva tri naroda. Trajno stanje međunacionalnog političkog sukobljavanja i loši odnosi na političkoj sceni izravno se reflektiraju na nemogućnost dosljednog i pravičnog ostvarenja ljudskih prava u BiH. Budući da bi demokratizaciju društva i tranziciju društvenog sustava trebao u stopu pratiti boljitak u oblasti ljudskih prava, razumljivo je da zastoji u tranziciji društva i državnog uređenja predstavljaju zapreku u afirmaciji ljudskih prava u BiH. Kriza morala je u dnu svih kriza, a tako i političke, a kriza političkog sustava i države generira i hrani krizu morala koja kulminira u organiziranom kriminalu i korupciji. Kriminal i korupcija potkopavaju i najdublje temelje društva prijeteći njegovim urušavanjem. Stoga nam se čini da samo hitno iznalaženje pravičnog političkog rješenja u BiH može postati temeljnim preduvjetom u prevladavanju obespravljenosti njenih naroda i građana te, tako i time, zaštititi ljudskih prava i stabilnosti društvenoga uređenja i socijalnog mira u ovoj zemlji.

⁵ Ustav BiH proklamira konstitutivnost tri naroda u BiH: Hrvata, Bošnjaka i Srba. Prema posljednjem popisu stanovništva iz 1991. godine u BiH je živjelo 4.364.574 stanovnika, od čega 43,7 % Muslimana (Bošnjaka); 31,4 % Srba; 17,4 % Hrvata i 7,6 % ostalih (od čega 5,5 % Jugoslavena). Raspadom SFR Jugoslavije nacionalnost "Jugoslaveni" je skoro potpuno iščezla s prostora BiH, a taj dio populacije uglavnom se vratio nacionalnom opredjeljenju sukladno etničkim korijenima. Istina, stvoren je pojam „Bosanac“ i ponuđen kao nadomjestak pojmu Jugoslaven. K tomu, za pretpostaviti je da nije posve zanemariv broj i onih koji se, nezadovoljni stanjem za koje okrivljuju nacionalne stranke, ali i zbog drugih razloga, osjećaju i izjašnjavaju kao ostali.

III. OPĆI DOJAM U ODNOSU NA 2007. GODINU – KRIZA DRUŠTVA, KRIZA MORALA I KRIZA POJEDINCA

Komisija "*Justitia et pax BK BiH*" u svom dosadašnjem radu kontinuirano prati razvoj društveno-političkoga stanja od kojega izravno zavisi i stanje ljudskih prava u BiH, o čemu redovito sačinjava godišnja izvješća⁶, a sve u cilju ukazivanja na postojeće stanje ljudskih prava u svim sastavnicama društva, pri čemu se ne želi baviti isključivo posljedicama, nego ima namjeru detektirati uzroke takvog stanja.

Iako se u određenim oblastima mogu uočiti određeni pomaci nabolje, moramo konstatirati kako se tijekom 2008. godine stanje ljudskih prava i sloboda u BiH nije znatno popravilo u odnosu na ranije godine. U političkom smislu moglo bi se reći da se u 2008. godini maglovito pojavljuju naznake mogućeg političkog dogovora tri naroda iz kojeg bi se mogla iznjedriti pravednija politička rješenja i bolja vremena za sve građane BiH, ali iskustvo nas uči da svakoj inicijativi političkog establišmenta u BiH uvijek treba prilaziti s rezervama i većom dozom opreza – bez obzira ulijevale one optimizam ili ne. Komisiju zabrinjava sve očitije zaoštavanje, već spomenute, klime netolerancije i neosjetljivosti među građanima - pri čemu loši međunacionalni odnosi često jesu, ali i ne moraju biti, glavnim uzrokom.

Sva dosadašnja izvješća Komisije ukazuju kako je konstantno stanje obespravljenosti skoro svih kategorija BH stanovništva prvenstveno rezultat strukturalnih pogreški, odnosno nepravednih rješenja ugrađenih u same temelje ustavno-pravnog sustava države. Nažalost, kroz duži period praćenja stanja društva i stanja ljudskih prava u BiH, ne uočavamo veći napredak u prevladavanju postojeće krize društva i opće krize morala. Iako u takvim uvjetima življenja većina pučanstva BiH na vlastitoj koži osjeća breme nepravde i obespravljenosti, građani u svakodnevnom životu sve više ostavljaju dojam krajnje i konačne izmanipuliranosti - često do mjere potpunog izostanka temeljnih kriterija pravičnosti, zabrinjava sve rašireniji nedostatak osjećaja za pravdu te nedostatak suosjećanja s obespravljenima. Prečesto bivamo svjedoci solidariziranja građana s onima koji bez ikakvog razumnog razloga diskriminiraju "drugog i drukčijeg", tako da smo na cijelom teritoriju BiH i dalje svjedoci sve očitije diskriminacije većine nad manjinom. Pri takvoj polarizaciji društva postupno, ali strahovati i nepovratno, dolazi do krize morala i urušavanja temeljnih ljudskih vrijednosti, pa ne čudi porast kriminaliteta i opće nesigurnosti.

Osiromašenje puka i svježije ratne rane su očito bile pogodno tlo za ukorjenjivanje egoizma i egocentričnosti, koji zadiru u sve pore društvenog života. U BH društvu se

⁶ Godišnja izvješća Komisije su objavljena na www.ktabkbih.net.

sve više osjeća svojevrsna letargija i opći izostanak osjećaja pravde, bez obzira radi li se o "drugim" ili drukčijim. Takva kriza morala postupno prerasta i evidentnu podijeljenost po nacionalnoj ili vjerskoj pripadnosti. Konstantno gaženje ljudskih prava i dostojanstva čovjeka tijekom rata i poraća je, čini se, eskaliralo do te mjere da u svijesti pojedinca postaje standard ponašanja i biva tretirano normalnom pojavom.

Uvid u bremenitu svakodnevicu navodi na zaključak kako tranzicijska kriza države BiH sve više prerasta institucijske okvire te postaje sve kompleksnijim sociološkim problemom, koji se široko manifestira usađivanjem krivih mjerila vrijednosti u svijest pojedinaca, što tijekom vremena postaje karakteristikom mentaliteta – čija osnovna obilježja predstavljaju sve veća okrenutost prema sebi, konformizam i konzumerizam, pri čemu mediji u BiH imaju vrlo značajnu, negativnu ulogu. Stalno stanje obespravljenosti i konstantno medijsko prikazivanje netolerancije kao "nužnog zla" u postojećem trenutku utječe na urušavanje temeljnih ljudskih vrijednosti te opasno i trajno nagriza osnovne ljudske vrijednosti društva u cjelini i moralni integritet građana kao jedinki tog istog. Mora se konstatirati da su netolerancija, netrpeljivost i isključivost, nakon prestanka ratnih djelovanja, nastavili s bujanjem, obilno poticani medijima pod kontrolom političkih i stranačkih elita i njihovih poslušnika⁷. Zabrinjava svojevrsan frontalni sukob medija, koji, u nakani raskrinkavanja kriminala, nerijetko javno sude prije sudskih presuda, i političkih i društvenih moćnika koji u svojim reakcijama ne prezaju ni od javno izrečenih prijetnji ni od uporabe fizičke sile. U ovome sukobu se krši i pravo na dobar glas i pravo na moralnu i tjelesnu sigurnost, te slobodu medija.

Sve to potiče, ovome društvu donedavno nepoznat, a sada zabrinjavajuće prisutan, neosjetljiv i bezobzira odnos (su)građana prema zlu, odnosno prema očitim kršenjima osnovnih ljudskih prava, koji se najčešće manifestira u gesti "okretanja glave" ili u pribjegavanju nojevskom mentalitetu „zabijanja glave u pijesak“. Ukorjenjivanje takvih vrijednosti u mentalitet građana, odnosno prevladavanje svijesti kolektivnog i individualnog egoizma, objašnjava razloge zakržljalosti institucija civilnog društva u BiH, kojima nedostaje prava inicijativa i očekivani utjecaj na društvene tokove, pa tako i u oblasti zaštite ljudskih prava i sloboda.

Porast konzumerističkog mentaliteta, pad moralnih vrijednosti u BH društvu te invalidna struktura države trajno i sustavno narušavaju osnovne standarde humanog postupanja, što općenito uzrokuje inflaciju temeljnih vrijednosti te nastavlja urušavati ionako narušen odnos pojedinca prema bližnjemu, bio on "drugi i drukčiji" ili ne. Kao rezultat svega toga kod građana BiH sve više prevladavaju, s razlogom, osjećaj nesigurnosti,

⁷ Ni na jednoj od zakonodavnih razina BiH (državnoj, entitetskoj, županijskoj) nikad nije razmatrana mogućnost usuglašavanja ili donošenja zakona o lustraciji. U postojećim političkim strukturama vlasti u BiH pretežnu ulogu još uvijek drže ljudi koji su izravno sudjelovali i služili totalitarnom, jednopartijskom sustavu bivše države pa tako i u sustavnom gaženju ljudskih prava i sloboda u BiH.

besperspektivnosti i ugroženosti. U uvjetima općeg siromaštva, nedostatka funkcionalne pravne države i nedostatka civilne inicijative, politička kriza državnog sustava BiH sve više prerasta u krizu pojedinca i opću krizu morala, koja će se, ako se žurno ne zaustavi, u dogledno vrijeme teško prevladati bilo kakvom strukturalnom reformom društva i države, stoga se pri reformama društva mora postupati vrlo pažljivo i u širem kontekstu. Usporedo sa strukturalnom reformom državnog aparata (koja se odvija odozgo prema dolje), potrebno je puno više poraditi i na moralno-duhovnoj obnovi društva, koja nužno i uvijek ide odozdo prema gore. Svaki zaokret od zla prema dobromu nužno mora biti radikalne prirode, pa ni duhovna tranzicija Bosne i Hercegovine pri tomu nije nikakav izuzetak.

IV. PRAVA DJETETA i PRAVA MLADIH U BiH

Prethodna Izvješća Komisije jasno ukazuju da su u BiH ugrožena ljudska prava i dostojanstvo skoro svih kategorija njezina stanovništva – čemu zasigurno pogoduje konstantna politička, gospodarska, moralna, socijalna i strukturalna kriza društva. Ovdje posebno ističemo alarmantno stanje u oblasti zaštite prava djece.

IV.1 Pravni temelj zaštite djeteta u Bosni i Hercegovini

Sukcesijom međunarodnih ugovora bivše SFRJ, BiH je 23. studenog 1993. godine notifikacijom preuzela UN Konvenciju o pravima djeteta⁸ iz 1989. godine, koja je u formi zakona⁹ bila u primjeni u bivšoj SFRJ od 1990. godine. Iz navedenog razloga činom notifikacije je trebala biti samo nastavljena primjena navedene Konvencije u već "uhodanoj" pravnoj praksi. Konvencija nalaže državama pristupnicama usklađivanje zakonodavstava sa svim njenim odredbama u cilju zaštite od bilo kakve diskriminacije djeteta¹⁰, njegovih roditelja ili zakonskih skrbnika "*bez obzira na rasu, boju kože, spol, jezik, vjeru, političko ili drugo uvjerenje, nacionalno, etničko ili socijalno podrijetlo, imovinu, teškoće u razvoju, obiteljsko podrijetlo ili kakve druge okolnosti.*"¹¹

U smislu članka 44. Konvencije o pravima djeteta, BiH je kao potpisnica bila dužna, u roku od dvije godine podnijeti izvješće Odboru UN za prava djeteta o usvojenim mjerama kojima se ispunjavaju prava djece, a što ujedno uključuje i izvješće o napretku - koji je nakon pristupanja države potpisnice postignut u uživanju tih prava. Svoj prvi izvještaj BiH je dostavila Odboru UN tek 2005. godine, dakle s deset godina zakašnjenja. Navedena činjenica jasno ukazuje na prirodu odnosa države prema međunarodno preuzetim obvezama, a ujedno i na alarmantno stanje u oblasti zaštite prava djece.

Ustav BiH, odnosno Aneks IV Daytonskog sporazuma, navodi najviše standarde na polju ljudskih prava i sloboda, među kojima i Konvenciju o zaštiti prava djeteta iz 1989.

⁸ Notifikacija je objavljena u "*Službenom listu RBiH*", br. 25/93 od 15. prosinca 1993. godine.

⁹ Zakon o ratifikaciji Konvencije Ujedinjenih naroda o pravima djeteta - "*Službeni list SFRJ*", br. 15/90 od 21. prosinca 1990. godine.

¹⁰ U smislu članka 1. Konvencije, djetetom se smatra svaka osoba mlađa od 18 godina, osim ako se zakonom, koji se primjenjuje u državi potpisnici, ne određuje ranija granica punoljetnosti.

¹¹ Dio citata iz članka 2. stavak 1. Konvencije.

godine¹². Time je odredbama Konvencije dana i snaga ustavne norme - što na cijelom teritoriju BiH znači obvezu usklađivanja svih zakonskih i podzakonskih akata s istom. Stoga nije od većeg pravnog značaja činjenica da se Konvencija također navodi i u Dodatku Ustava Federacije Bosne i Hercegovine¹³ (FBiH) zajedno s ostalim široko usvojenim instrumentima za zaštitu ljudskih prava, ili da se, primjerice, eksplicitno ne navodi u Ustavu Republike Srpske¹⁴ (RS) jer bi sve odredbe Ustava BiH trebale u potpunosti obvezivati entitete pa tako i u pogledu shodnog usklađivanja zakonodavstava u oblasti zaštite prava djeteta.

IV.2 Osnovna načela zaštite prava djeteta i njihovo ostvarivanje u BiH

Konvencija o pravima djeteta počiva na četiri temeljna principa:

1. pravu svakog djeteta na ravnopravnost, odnosno na pravu svakog djeteta da ne bude diskriminirano
2. pravu svakog djeteta na opstanak i razvoj
3. pravu svakog djeteta na slobodno izražavanje vlastitog mišljenja u svezi sa svim pitanjima koja ga se tiču
4. obvezi svih javnih i privatnih institucija da djeluju u cilju ostvarivanja najboljih interesa djeteta (što podrazumijeva obvezu usklađivanja zakonodavstva sa svim odredbama Konvencije, uz odgovarajući institucijski okvir)

Temeljna načela Konvencije su formalno-pravno implementirana u pravni sustav BiH, ali se sustav u praksi ne može pohvaliti temeljitom brigom o pravima djeteta i dosljednom zaštitom prava djece.

IV.3 Pravo na nediskriminaciju

Diskriminacija koja vlada svijetom odraslih u BiH izravno se preslikava i na prava djece. Pri tomu je posebno potrebno istaći postojanje diskriminacije djece iz tzv. "manjinskih skupina" koje pripadaju konstitutivnim narodima (na etnički očišćenim teritorijima). Riječ je o posebno osjetljivom pitanju. Naime, posljedice rata, ali i mira, najteže

¹² U smislu članka II.2. Ustava BiH prava i slobode određene u Europskoj konvenciji za zaštitu ljudskih prava i osnovnih sloboda u njenim protokolima se trebaju izravno primjenjivati u Bosni i Hercegovini i ti međunarodni standardi imaju prioritet nad svakim drugim zakonom.

¹³ Dodatak je objavljen u "*Službenim novinama FBiH*", br. 1/94.

¹⁴ Amandmanom LVII. na Ustav Republike Srpske propisano je da će se odredbe o ljudskim pravima i slobodama ostvarivati sukladno članku 8-11 Europske konvencije o zaštiti ljudskih prava i osnovnih sloboda.

pogađaju upravo one pripadnike konstitutivnih naroda koji su postali manjina u mjestima u kojima su živjeli prije rata. Njihova temeljna prava se posve planski i sustavno krše kako bi ih se prisililo da napuste mjesta svoga prebivališta. To je naročito izraženo u oblasti prava na obrazovanje na materinjem jeziku te prava na odgoj u duhu nacionalne kulture. Kako predstavnici međunarodne zajednice u cijelosti ne razumiju svu delikatnost i pogubnost grubog pristupa ovome pitanju, javne vlasti i ne pomišljaju na izradu programa i školskog sustava koji bi, u okviru zdravih integrativnih procesa, afirmirali prava "manjinskih" konstitutivnih naroda u obrazovanju. Određene simbolične iskorake u navedenoj oblasti učinila je Katolička Crkva osnivajući višenacionalne i viševjerske „Škole za Europu“ u BiH, ali i za taj pokušaj je izostala podrška nekih entitetskih i nižih tijela državne administracije, a napose instaliranih tijela međunarodne zajednice.

S obzirom da ni konstitutivni narodi ne mogu na cijelom teritoriju ostvarivati prava koja proističu iz vlastitog nacionalnog i konfesionalnog identiteta, ne čudi skoro potpuni izostanak takvih prava i za nacionalne manjine u BiH¹⁵.

Diskriminacija u oblasti zapošljavanja i ostvarivanja socijalnih prava, koju trpe roditelji kao pripadnici tzv. "manjinskih skupina", također se nužno reflektira i na diskriminaciju njihove djece u vidu izravne neravnopravnosti, lošijeg socijalnog statusa i slabije životne perspektive.

Općenito govoreći, siromašna država te skup i nefunkcionalan državni aparat pogoduju održanju atmosfere netrpeljivosti i netolerancije, odnosno stanja sustavne kolektivne i individualne diskriminacije. Nefunkcioniranje institucija pravne države i nepostojanje prave političke volje za jednakopravnošću, i nakon etničkog "pročišćenja" čitavih regija u BiH, pogoduje daljem širenju diskriminacija na svim poljima društvenog života. Neosjetljivost institucija države i društva prema očitim kršenjima prava djece samo je jedan od indikatora alarmantnosti općeg stanja obespravljenosti u BH društvu.

IV.4 Osjećaj besperspektivnosti kod mladih u BiH

Ankete provedene među srednjoškolcima i studentima u tri grada u FBiH dale su porazne rezultate po kojima bi oko 70 % tog dijela populacije rado i trajno napustilo BiH, ukoliko bi im se za to ukazala prilika. Putovanja s BH putovnicama u zemlje Europske unije i većinu zemalja svijeta nisu moguća bez prethodnog pribavljanja viza. Vizni režim između zemalja EU i BiH je posljednje vrijeme znatno pooštren i pored

¹⁵ Prava nacionalnih manjina u BiH su regulirana Zakonom o zaštiti prava pripadnika nacionalnih manjina („Službeni glasnik BiH“, br. 12/03, 76/05 i 93/08).

nastojanja domaćih političara i vlasti da se ukine. Poboljšanje stanja u ovoj oblasti je pod znakom pitanja i izravno ovisi i o brzini razrješenja recesije u svjetskom gospodarstvu, čije su se ozbiljnije naznake pojavile krajem 2008. godine.

Nemogućnost slobodnog putovanja i upoznavanja drugih kultura posebno se odražava na stanje duha mladih u BiH. Uz neefikasnu i siromašnu državu te vrlo nisku razinu socijalnih i obrazovnih standarda, ova svojevrsna izolacija BH državljana, kod mladih u BiH pojačava osjećaj besperspektivnosti. Sve, manje - više, nužno utječe na smanjen osjećaj patriotizma i stvara klimu apatije prema vlastitoj državi. Navedene okolnosti ne idu na ruku stišavanju nacionalnih strasti, niti stabilizaciji države i društva u bližoj budućnosti.

IV.5 Institucionalna nespremnost države BiH za zaštitu prava djece i mladih

Kontinuirano urušavanje osnovnih ljudskih i moralnih vrijednosti se posebice reflektira na pogoršanje ionako teškog položaja djece i mladih u BiH. Svjedoci smo svakodnevnih slika iz života koje ukazuju na očito i bezobzirno izrabljivanje djece kao najizravnijeg oblika kršenja njihovih temeljnih prava. Primjerice, svakog dana se naočigled javnosti neskriveno odvija organizirano izrabljivanje djece radi prosjačenja¹⁶. Pri tomu su na prometnicama "angažirana" djeca od njihove najranije dobi (čim prohodaju), pri čemu se mnoga jedva provlače u gustom prometu vozila. Nije potrebno naglašavati koliko su život i zdravlje tako izrabljivane djece ugroženi, posebice ako se ima na umu da su pojedina djeca na ulici tako mala da ih je ponekad vrlo teško i uočiti jer su često manji od kotača vozila kroz koje se po cijeli dan probijaju u borbi za vlastitu egzistenciju i profit malog broja kriminalaca - organizatora ovog unosnog biznisa.

Unatoč očitom, svakodnevnom izrabljivanju dječjeg rada te bezobzirom gaženju osnovnih prava djeteta, institucije sustava apsolutno ne reaguju na ovakve pojave. Stanovništvo BiH na ovakve pojave skoro da uopće ne reagira i tretira ih kao posve obične i "normalne". Indiferentnost institucija društva, na ovako očitu izloženost pogibelji i najmlađe djece te potpuna rezignacija stanovništva, jasno ukazuju kako su događanja rata i poraća doprinijela porastu opasne neosjetljivosti BH društva. Ako je u BiH izgubljen senzibilitet za zaštitu prava i najmlađe djece, postavlja se pitanje na čemu temeljiti tako potrebnu afirmaciju ljudskih prava? Posvemašnja neosjetljivost države i društva prema flagrantnim primjerima iskorištavanja dječjeg rada i očiglednim grubim

¹⁶ Uglavnom se radi o djeci romske narodnosti. Iako se u posljednje vrijeme pojavljuju posebni programi za socijalizaciju Roma u BiH, mora se uočiti kako institucije države do današnjeg dana nisu učinile skoro ništa na ovom planu te Romi ostaju socijalno najugroženija skupina u BiH. Prema podacima Misije OSCE-a u BiH, Romi su najbrojnija nacionalna manjina u BiH.

kršenjima prava djece ukazuje kako krizu morala u BH društvu treba ipak staviti ispred socijalnih, političkih, gospodarskih i drugih uzroka.

Općenito uzevši, institucije države svih razina su se pokazale potpuno nedoraslim problematici odgoja mladih. Nefunkcionalna, pa stoga, i neodrživa politička i administrativna struktura države¹⁷, rašireno stanje socijalne bijede, nedostatni socijalni programi i nedostatak strategije socijalno održivog razvoja, dodatno pogoduju porastu maloljetničkog kriminaliteta i predstavljaju izvrsnu klimu za ukorjenjivanje destruktivnog i asocijalnog ponašanja kod mladih. Prema službenim statistikama Federalne uprave policije za 2008. godinu, maloljetnici čine 9,1% od ukupnog broja prijavljenih počinitelja kaznenih djela. Iako se statistički ističe navodni pad maloljetničkog kriminaliteta, navedene statistike evidentiraju porast broja težih kaznenih djela koja su u 2008. godini počinili maloljetnici, a koji Federalna uprava policije ipak nije mogla zaobići u svom izvješću¹⁸.

Kod maloljetnih prijestupnika je također uočljiv velik stupanj recidiva u vršenju kaznenih djela. Ovo je izravno vezano za institucionalnu neizgrađenost pravosudnih i socijalno-odgojnih struktura države u segmentima, tako potrebne, prevencije, zaštite i preodgoja malodobnih prijestupnika. Jedan od akutnih problema u oblasti maloljetničke delinkvencije u BiH je nedostatak institucija za zbrinjavanje maloljetnih osoba koje su odgojno zapuštene, kao i djece koja su počinila kazneno djelo. U FBiH postoji tek jedna takva ustanova¹⁹ dok u RS ne postoji niti jedna ustanova koja se bavi zbrinjavanjem maloljetnih delikvenata. Ovaj institucionalni problem je pravne prirode i rezultat pravnog vakuuma koji je nastao nakon potpisivanja Daytonskog sporazuma. Naime, problematika zbrinjavanja, resocijalizacije i preodgoja malodobnih delikvenata je u bivšoj SR BiH bila u nadležnosti tadašnje Republike (što je bilo regulirano posebnim Zakonima iz 1983. godine²⁰), a daytonskim Ustavom BiH državi nisu dodijeljene nadležnosti nad ustanovama socijalne zaštite – nego su one člankom III.3.a) neizravno prenesene u nadležnosti entiteta (FBiH i RS).²¹ Dakle, od 14. prosinca 2005. godine,

¹⁷ Pored državne razine vlasti, strukturu daytonske Bosne i Hercegovine sačinjavaju: dva entiteta (Federacija BiH i Republika Srpska), jedan distrikt (Brčko Distrikt), deset županija/kantona (u Federaciji BiH). Svaka od navedenih teritorijalnih i administrativnih jedinica ima široku zakonodavnu, administrativnu i proračunsku autonomiju. Niže razine vlasti predstavljaju općine, kojih u BiH funkcionira 141 (u FBiH 79 i u RS 62). Istraživanja pokazuju kako građani skoro 90% svojih administrativnih potreba ostvaruju u općinama.

¹⁸ Izvor: Federalna uprava policije " *Stanje kriminaliteta u 2008. godini*" (<http://www.fup.gov.ba>)

¹⁹ Zavod za odgoj muške djece i mladih osoba "HUM" u Sarajevu

²⁰ "Zakon o Zavodu za vaspitanje muške djece i omladine u Sarajevu" i "Zakon o Zavodu za vaspitanje ženske djece i omladine u Sarajevu" – oba objavljena u "Službenom listu SR BiH", br. 37/83;

²¹ Člankom III.1. Ustava BiH su taksativno pobrojane nadležnosti države, odnosno "institucija BiH", među kojima nije i socijalna politika, a člankom III.3.a) definirano je da nadležnosti koje nisu izričito dane institucijama Bosne i Hercegovine imaju biti u nadležnosti entiteta.

odnosno od dana stupanja na snagu daytonskog ustroja zemlje, prestala je nadležnost države u oblasti preodgoja i zbrinjavanja maloljetnika, a republički zakoni iz ove oblasti su postali neodgovarajući pravni okvir²². Budući da entiteti sve do 2008. godine uopće nisu regulirali ovu zakonodavnu oblast – cijelo vrijeme ona ostaje u sferi pravnog vakuuma.

Centri za socijalni rad funkcioniraju u BiH na razini općina RS i županija FBiH pa, u uvjetima pravne nereguliranosti u oblasti institucionalnog odgoja maloljetnika problematičnog ponašanja, nisu ni mogli uspostaviti rad na pravi način. Navedena situacija pravne nereguliranosti je neminovno uzrokovala nered u ovoj oblasti, a posebno kaotične posljedice osjetile su se u jedinoj instituciji za preodgoj djece u Sarajevu. Primjerice, zabilježen je slučaj trinaestogodišnjeg djeteta koje je smješteno u istu sobu s osamnaestogodišnjim počiniteljem kaznenog djela ubojstva (koje je izvršio kao stariji maloljetnik) ili slučaj ubojstva maloljetnika u toj ustanovi 2006. godine, jasno pokazuje na defektnost sustava i na nedostatak pravih rješenja kad je u pitanju rad s mladim osobama. Nedefiniran pravni okvir i status Zavoda "HUM" u Sarajevu, kao jedine ustanove za zbrinjavanje malodobnih delikvenata poslije rata, su sucima i centrima za socijalni rad dali povoda da skoro pod svaku cijenu izbjegavaju smještanje "problematične" djece u tu ustanovu, tako da su tamo smješšana samo "najproblematičnija" djeca za koju društvo nije nalazilo drugih rješenja.

IV.6 Porast maloljetničke delinkvencije i kriminaliteta te zakonodavstveno uređivanje u ovoj oblasti

Protekle 2008. godinu obilježio je čitav niz brutalnih događaja i krvnih delikata kojima su, često i bez ikakva izravna povoda, vinovnici malodobna djeca. Nažalost, događaji poput brutalnog spaljivanja i ubojstva starice – koje su pomno isplanirala i u sred bijela dana izvela tri mlađa maloljetnika²³, hladnokrvnog ubojstva učenika u tramvaju - bez ikakva povoda²⁴ ili napada hladnim i vatrenim oružjem na profesore i nastavnike u

²² Ista pravna situacija je nastala i u oblasti zbrinjavanja mentalno zaostalih osoba, pa tako i maloljetnika – što je također bilo regulirano republičkim *Zakonom o Zavodu za zbrinjavanje mentalno invalidnih osoba* ("Službeni list SR BiH", br. 4/72 i br. 36/76), a djelomice i *Zakonom o Zavodu za zaštitu djece i omladine* ("Službeni list SR BiH", broj 24/74).

²³ Tri malodobna počinitelja ovog brutalnog ubojstva u Sarajevu, od kojih je izravni izvršitelj bio star samo 14 godina, prethodno su se hladnokrvno pripremili na način da su pribavili kanister, zatim ukrali gorivo "isisavši ga" iz rezervoara automobila, da bi potom njima nepoznatu staricu, usred dana, polili gorivom i živu zapalili. Starica je naknadno preminula u bolnici od posljedica teških opekline. Iako su uhvaćeni i privedeni, dječaci su naknadno pušteni na slobodu zbog nepostojanja institucija za preodgoj mlađih delikvenata, da bi za kratko vrijeme nakon toga jedan od njih ponovno bio uhićen zbog drskog razbojstva...

²⁴ I ovo ubojstvo, potpuno nepoznatog šesnaestogodišnjeg učenika, se dogodilo u sarajevskom tramvaju također usred bijela dana i bez ikakvog povoda. Malodobni počinitelj je u nazočnosti mnoštva građana i uz asistenciju "prijatelja" žrtvu izbo nožem jer ga je prema kasnijem iskazu "gledao bez

školama, su postali dio svakodnevnice u BiH. Dramatično pogoršanje sigurnosti, koje je početkom 2008. godine postalo više nego alarmantno, izazvalo je masovne prosvjede građana pred sjedištima županijskih vlada – pri čemu su šokantno djelovale bahate reakcije pojedinih javnih dužnosnika. Težina situacije po prvi put "tjera" građane na ozbiljnije organiziranje institucija civilnog društva (iako još uvijek uglavnom prosvjednog karaktera).

Izravno ponukane navedenim zbivanjima i nemogućnosti institucionalnog zbrinjavanja niza malodobnih počinitelja najtežih kaznenih djela te i burnim prosvjedima građana, entitetske vlasti u FBiH su ubrzano krenule u reguliranje ove oblasti – čime su u biti samo nastavljene određene inicijative po prijedlozima zakona iz 2005. i 2006. godine. Slijedom navedenog, u lipnju 2008. godine je donesen *Zakon o preuzimanju prava i obveza osnivača nad ustanovama socijalne zaštite u Federaciji Bosne i Hercegovine* ("Službene novine Federacije BiH" broj 32/08 od 04. lipnja 2008. godine), čijim donošenjem je tek započet proces zakonske regulacije u ovoj osjetljivoj oblasti, a Federacija BiH je preuzela i tek uspostavila nadležnosti u resoru socijalne zaštite institucionalno zbrinute djece, ali i nadležnosti za zbrinjavanje mentalno-invalidnih osoba u pet već postojećih ustanova²⁵.

Posebni problemi su također jako izraženi i u institucionalnoj nedorečenosti države i njenih entiteta u pogledu nepostojanja posebnih institucija za izdržavanje osuđenih maloljetnih počinitelja kaznenih djela (osuđenih na izdržavanje kazne maloljetničkog zatvora). Kao i u prethodnom slučaju, u nedostatku posebnih ustanova ovog karaktera malodobni počinitelji težih kaznenih djela se upućuju na odsluženje kazni u penalne institucije za odrasle osobe. Boraveći u takvim institucijama malodobni prijestupnici umjesto resocijalizacije "peku zanate" iskusnijih kolega – čime se cilj i svrha kažnjavanja prebacuju iz sfere društvene resocijalizacije i preodgoja u sferu kazne i osвете nad malodobnim počiniteljem.

Kaznena politika prema maloljetnim počiniteljima kaznenih djela također se pokazala potpuno neefikasnom i neprimjerenom u (pre)odgoju maloljetnih prijestupnika pa je i u navedenoj oblasti nužna korjenita reforma²⁶.

razloga". Počinitelj je 2008. godine nepravomoćno osuđen na kaznu od 9,5 godina zatvora, a kazna mu je početkom 2009. godine pravomoćno preinačena na 10 godina zatvora.

²⁵ Riječ je o slijedećim institucijama koje su postale javne ustanove u vlasništvu F BiH: "Zavod za zbrinjavanje mentalno invalidnih osoba u Fojnici", "Zavod za zbrinjavanje mentalno invalidnih osoba Bakovići", "Zavod za zaštitu djece i omladine u Pazariću", "Zavod za odgoj muške djece i omladine u Sarajevu", "Zavod za odgoj ženske djece i omladine Ljubuški".

²⁶ Jedini predratni kazneno-popravni zavod za preodgoj maloljetnika, koji se nalazio u Stocu, od početka rata je izvan funkcije, a skoro sve inicijative za otvaranje novih ustanova ovog tipa bivaju popraćene znatnim otporima lokalnih zajednica za otvaranje na njihovim područjima. Tako je

Porast maloljetničke delikvencije, devijantno i asocijalno ponašanje mladih te konstantno narušavanje obitelji kao temeljne institucije društva jasno ukazuju kako teško oboljelo bosansko-hercegovačko društvo ne posvećuje dovoljno pažnje odgoju i obrazovanju djece i omladine. Narušavanje temeljnih duhovnih vrijednosti ne može se zaustaviti samo strukturalnim (institucionalnim) reformama društva. Izgradnja institucija i odgovarajućeg zakonodavno-pravnog okvira su nužan proces koji tek čeka Bosnu i Hercegovinu, ali on, također, mora biti popraćen duhovnom preobrazbom, odnosno paralelnim radom "odozdo prema gore". Takav preobražaj nužno započinje preispitivanjem vlastite osobnosti, a za društvo postaje od značaja tek kad se vlastiti preobražaj transferira u vidu konkretne ljubavi prema bližnjemu. U takvoj izgradnji društva ljubav prema vlastitoj djeci treba biti glavna zvijezda vodilja.

IV.7 Onemogućenost prava obitelji i djece na opstanak i razvoj u vlastitom domu i zavičaju - trajno narušeno pravo na povratak raseljenih i izbjeglih obitelji

Legalizacija učinaka etničkog čišćenja, koja je podržana i provedena uz "blagoslov" međunarodne zajednice, u izravnoj je svezi s neostvarivanjem prava djece na ravnopravan status, odnosno na ostvarenje Konvencijom proklamiranog prava na opstanak i jednakopravan razvoj svakog djeteta. Naime, od početka rata do potpisivanja Daytonskog sporazuma iz svojih domova je protjerano oko 2.680.000 osoba ili oko 59,6% građana BiH²⁷. U smislu Aneksa VII Daytonskog sporazuma sve tri, nekad zaraćene, strane u BiH su, uz pomoć međunarodne zajednice, trebale omogućiti proces povratka svih raseljenih i izbjeglih u svoje domove.

Iako je ostvaren znatan napredak u oblasti povrata imovine, u nedostatku uvjeta održivog povratka, implementacija Aneksa VII se pokazala potpuno propalim projektom. Političke opstrukcije povratka u konačnici su odnijele pobjedu trajno podijelivši državu po etničkoj osnovi, u RS posve otvoreno gdje je i Zakon o restituciji trebao potvrditi ratom osvojeno a u FBiH suptilno i prikriveno. Odgovornost za ovakvo stanje snosi i međunarodna zajednica onemogućavanjem Zakona o restituciji, ali i politički predstavnici sva tri naroda u BiH jer nisu pokazivali niti pokazuju hrabrost za istinski demokratski iskorak k afirmaciji osnovnih ljudskih prava.

primjerice pored inicijative za obnovu KP doma u Stocu, iz navedenog razloga propala i inicijativa za izgradnju novog KP doma u Sanskom Mostu.

²⁷ Tijekom rata (1992-1995) iz Bosne i Hercegovine je prognano i izbjeglo u inozemstvo oko 1.250.000 osoba ili oko 28,4% od sveukupnog stanovništva zemlje, a unutar države je raseljeno oko 1.370.000 ili oko 31,2% stanovništva.

Kao jedan od glavnih razloga slabih efekata u oblasti povratka treba posebno istaknuti izostanak osjećaja perspektive povratnika, kao i perspektive njihove djece u uvjetima dominacije većine i diskriminacije manjine. Nažalost, tijekom odvijanja ovog procesa nije stvoren odgovarajući društveni i socijalni ambijent u kojem bi povratnik osjetio sigurnost i osjećaj perspektive za sebe, svoju obitelj, a poglavito i za svoju djecu. Unatoč Aneksu VII, umjesto procesa povratka, proces etničkog čišćenja čitavih teritorija BiH se nastavio odvijati i nakon rata. Tako se, s vremenom, gube skoro sve nade usmjerene k ostvarenju projekta povratka u zavičajne prostore predaka. Okolnost nemogućnosti ostvarenja prava obitelji na povratak u svoj dom i zavičaj, od početka onemogućava stvaranje osnovnih preduvjeta za realizaciju prava djeteta na opstanak i razvoj – koje proklamira Konvencija o pravima djeteta, kao ustavna kategorija u BiH.

V. PRAVA ŽENA

Ostvarivanje i zaštita prava žena u Bosni i Hercegovini je nedovoljna, a kršenja ljudskih prava ove populacije su još uvijek izražena. Podizanje nivoa efikasnosti i funkcionalnosti u zaštiti prava žena nameće se kao jedan od prioriteta vlastima i političkim subjektima u Bosni i Hercegovini.

Vlasti su na planu zakonske regulative napravile iskorake donošenjem Zakona o ravnopravnosti spolova i Obiteljskog zakona, a u oba entiteta usvojeni su i Zakoni o zaštiti od nasilja u obitelji. Do sada su poduzete određene zakonske i druge mjere u cilju provođenja politike ravnopravnosti spolova i u oblasti političkog i javnog života. Međutim, ove mjere su se pokazale nedovoljnim za bitnu promjenu statusa žene u političkom životu. Žene su i dalje na marginama političke moći, lišene utjecaja na politiku koja se vodi u državi.

Usprkos svim poduzetim aktivnostima, žene BiH su žrtve porasta diskriminacije u ekonomskoj sferi, nasilja u obitelji i nasilja nad ženama; nedopustivo je nizak postotak sudjelovanja žena u tijelima izvršne i zakonodavne vlasti, kao i na mjestima gdje se donose važne političke odluke. Neka od provedenih istraživanja, su pokazala kako su žene za iste poslove slabije plaćene od svojih muških kolega. Poslodavci u nerijetkim slučajevima ne poštuju odredbe Zakona o radu i Kolektivni ugovor o radu, te onemogućuju ženama korištenje potpunog porodiljskog bolovanja ili ne dolaska na posao zbog bolesti djece. a daju i otkaze za vrijeme trajanja trudnoće. U porastu je broj primjera žena koje su zbog trudnoće otpuštene s posla.

Žene u BiH, iako čine natpolovičnu većinu stanovništva (51%), nisu ni približno u tom postotku prisutne u oblasti radnih i socijalnih odnosa (stopa nezaposlenosti žena je 44%), u sudjelovanju u političkom životu (14,2%), u političkim strankama (oko 18,5%). Znatno veći postotak žena je zaposlen u obrazovanju, zdravstvenoj i socijalnoj zaštiti (62%). Opće siromaštvo i težak ekonomsko – socijalni položaj BH društva, najteže pogađa upravo žensku i dječju populaciju.

Entitetskim zakonima o radu izjednačeno je pravo na zapošljavanje muškaraca i žena, ali u praksi je sasvim drukčija situacija. Poslodavci se teško odlučuju zaposliti ženu pravdajući to poskupljenjem troškova poslovanja jer ženama je potrebno omogućiti korištenje pogodnosti bolovanja radi njege djece ili eventualno korištenje porodiljskog dopusta. Uz ovaj vid diskriminacije, postoji diskriminacija žena po starosnoj dobi; u mnogim oglasima koji se objavljuju u dnevnom tisku, a odnose se na zaposlenje, traži

se ženska radna snaga koja je starosne dobi do 35 godina, uz čestu napomenu da je uvjet i «atraktivan izgled».

Smatra se kako žene u BiH znatno brže bivaju uposlene u mlađoj životnoj dobi, ali isto tako se suočavaju s brzim nezakonitim otkazima ugovora o radu. Stoga žene počinju raditi u „sivoj ekonomiji“ i zarađivati za prehranjivanje obitelji, čime sebe dovode u još nepovoljniji položaj, nemaju obavezno zdravstveno osiguranje, određeno radno vrijeme, utvrđenu cijenu rada, a ni sindikalno nisu organizirane.

Zabrinjavajuća je situacija sa ženama koje su žrtve nasilja. Kao odgovor na ovu pojavu, vlasti Bosne i Hercegovine su uvođenjem SOS linija za žrtve nasilja, kao i s većom koordinacijom s centrima za socijalni rad, MUP-ovima, zdravstvenim ustanovama i nevladinim organizacijama, pokušale naći odgovore za ove probleme. Međutim, izostali su očekivani rezultati. Svakodnevno su prisutne vijesti o nasilju u obitelji u okviru crnih kronika javnih glasila. Česti su naslovi s kojima se javnost susreće- „Prijavila supruga zbog nasilja“, „Zlostavljao suprugu“, „Pretučena žena završila u bolnici“, „Momak pretukao svoju djevojku“ itd. Spomenuti slučajevi najčešće završavaju bez presude i kazne.

Nažalost, sve ovo dovoljno ukazuje na veličinu problema nasilja nad ženama u BiH, ali i na činjenice da svi uključeni čimbenici nedovoljno efikasno rade na izricanju sankcija prema nasilnicima. Ne vode se postupci prema važećem Zakonu protiv nasilja u obitelji, odnosno Zakonu o jednakopravnosti spolova, nego se uglavnom vode prema Krivičnom zakonu, što dovodi u vrlo nezavidan položaj žrtvu nasilja, a posljedica je izricanje blagih kazni, što umanjuje svako djelovanje presude.

Istovjetna stvar je i kod žena koje su žrtve seksualnog nasilja. Ova vrsta nasilja i dalje u BiH predstavlja tabu temu. Žene izbjegavaju prijaviti počinitelja jer često sredina žrtvu vidi kao krivca, što je najčešće rezultat odgoja i običaja u pojedinim sredinama. Za ovu vrstu nasilja, iako spada u teško krivično djelo, sudovi izriču minimalne kazne. Ako počinitelji seksualnog nasilja pripadaju krugu javnih osoba, zbog straha od posljedica, žene se vrlo rijetko odlučuju pokrenuti sudske postupke.

Veliku zabrinutost stvara trgovina ženama u BiH. Za razliku od prethodnih godina, kada je BiH bila zemlja tranzita, sada su predmet trgovine žene i djevojke državljanke BiH. Trgovci ljudima sve češće odlaze u ruralna područja BiH u cilju pronalaženja žena za „fiktivne poslove“, a koje završavaju kao žrtve trgovine.

Žene u BiH prilikom traženja posla, ili na samom poslu, izložene su i različitim seksualnim uznemiravanjima. Istraživanje koje su proveli gender centri FBiH i RS u

okviru projekta Gender jednakosti i ravnopravnosti u BiH, na uzoru od 600 ispitanica, govori da seksualno uznemiravanje, odnosno zlostavljanje, postoji u svim sredinama. Nezaposlenost ženske populacije ima velikog odraza i na pristup žena zdravstvenoj zaštiti. BiH nema jedinstvenu zdravstvenu politiku i organizaciju zdravstvene zaštite za očuvanje i unapređenje zdravlja stanovništva. Ova je oblast, kao i oblast obrazovanja i socijalne zaštite, u nadležnosti entiteta, a u FBiH u nadležnosti kantona. S obzirom na veliku nezaposlenost stanovništva u BiH, više od 50% ženske populacije je praktično zdravstveno neosigurano.

Prema upozorenju Razvojnog programa Ujedinjenih Nacija jedan od fenomena u BiH je feminizacija siromaštva. Zbog uvjeta u kojima žive, žene su više pogođene siromaštvom. Tako su umirovljenice u težem materijalnom položaju od umirovljenika jer su im mirovine niže. Sama tranzicija proizvodi nejednak učinak na muškarce i žene na području rada i zapošljavanja. Žene su prve bile na udaru reformi i otpuštanja radne snage, a u pravilu se teže zapošljavaju.

Pred vlastima je obaveza mijenjanja dosadašnje prakse i uspostava pravilne koordinacije u cilju dosljednog i odgovornog implementiranja zakona koji se odnose na zaštitu i unapređenje položaja žena. Potrebno je i ostvarivanje bolje suradnje s nevladinim organizacijama, kako bi se postigli što učinkovitiji rezultati na zaštiti prava žena.

VI. EKOLOGIJA – PRAVO NA ZDRAV ŽIVOT

Od uspostave Austrougarske uprave 1878. u BiH pa do našeg vremena BiH je vrednovana u prvom redu kao sirovinska i energetska baza. Kroz navedeno vrijeme primjenjivane su zastarjele tehnologije koje su dovele do pustošenja i zagađenja golemih razmjera. Paradoksalno je, ali istinito, da je nedavni rat (1992 -1995), s obzirom na okoliš, donio određena poboljšanja zbog prestanka proizvodnje većeg dijela industrije, ali je s druge strane donio nove nevolje - razaranje, minirana područja i radijaciju.

Nakon nedavnog rata nešto je prisutnija svijest o potrebi radikalne potrebe dosadašnjeg odnosa prema okolišu i dosadašnje eksploatacije prirodnih resursa. Pravo govoreći, sve je to još na razini deklaracija, planova i projekcija. Kada je riječ o zagađenju okoliša: zraka, voda, zemljišta i šuma, onda su glavni zagađivači veliki gradovi i velika industrijska postrojenja, koji prekomjerno zagađuju zrak i okoliš.

Ukratko ćemo pokazati da je u BiH ugrožena biološka i geološka raznolikost, da su ugrožene vode, poljoprivredno zemljište i šume.

Kada je cijeli svijet u lipnju 1992. bio zaokupljen idejom održivog razvoja, BiH je ulazila u treći mjesec teškog i nametnutog rata (1992-1995). Nakon rata BiH se samo donekle uspjela uključiti u proces ostvarenja ideje održivog razvoja. Pod *održivim razvojem* mislimo na uravnotežen odnos između *ekonomije i ekologije*, kratko rečeno, na to da ekonomija ne smije razarati biološku i geološku raznolikost i prirodne resurse BiH. Treba napomenuti da je BiH svrstana u područje s najvišim stupnjem biološke raznolikosti u Europi i da je, s obzirom na geološku raznolikost, unikat u Europi. BiH raspolaže također i značajnim prirodnim resursima. Danas je sve to u BiH ugroženo.

Potrebno je spomenuti čimbenike koji ugrožavaju biološku i geološku raznolikost BiH. To su:

7. samovolja nad prostorom (bespravna gradnja naselja i proizvodnih objekata, nedostatak infrastrukture, nereguliran rast urbanih zona itd.)
8. prekomjerna eksploatacija prirodnih resursa (divlja i pretjerana sječa šuma, krivolov, neuravnotežena poljoprivredna proizvodnja)
9. neuravnotežena industrijska proizvodnja (nepostojanje pročištača otpadnih voda, visoka emisija sumpornih spojeva u atmosferu, neracionalna potrošnja energije, niska iskoristivost resursa i dr.)

10. neuravnotežena energetska politika (skoro nikakva ulaganja u životnu sredinu, nepostojanje strategije razvoja, nepostojanje programa bolje iskoristivosti, primjena zastarjelog menadžmenta, nepostojanje programa sanacije i slično)
11. slaba zakonska, stručna i praktična pripremljenost i obučenosť za svladavanje prirodnih nepogoda i katastrofa (poplava i požara)
12. nepostojanje strategije razvoja koja bi bila u skladu s međunarodnim dokumentima koje je BiH potpisala.

Što se tiče prirodnih resursa, u BiH su ugrožene vode, poljoprivredno zemljište i šume. Bosna i Hercegovina ima vrlo dobar vodni potencijal, koji je po zalihama pitke vode po glavi stanovnika svrstava u sam svjetski vrh. U posljednje vrijeme je primjetan znatan pritisak inozemnih investitora u oblasti eksploatacije pitke vode. Vodna dobra u BiH mogu komercijalno eksploatirati samo po osnovu koncesijskih odobrenja, što znači da se ne mogu prenositi u privatno vlasništvo. Budući da je gospodarenje vodama zakonski u nadležnostima entiteta i županija, dodjela koncesija se, u uvjetima opće besparice, vrši stihijski i bez ikakve strategije. Ovakva rasprodaja prava na raspolaganje ovog ključnog resursa mogla bi u dogledno vrijeme imati katastrofalne posljedice na pučanstvo BiH.

Odvodnja otpadnih voda i njihovo prečišćavanje je skoro nikakvo. Sve rijeke u BiH su uglavnom zagađene tamo gdje su velika naselja i industrije. Moguće zagađivanje i dalje ostaje stalna prijetnja zdravlju ljudi zbog zastarjelih i oštećenih cjevovoda i nekontroliranog kloriranja. Izvori voda nisu dostatno zaštićeni i kvaliteta vode za piće postaje sumnjiva. Mnoge općine u BiH imaju kanalizacijske sustave koji služe samo za prikupljanje i ispuštanje fekalnih voda izravno u otvorene kanale i rijeke, i to uglavnom bez prečišćavanja otpadnih voda, a od toga samo je 56% urbane populacije priključeno na kanalizacijske sustave. Zato je potrebno poboljšati kvalitetu vode u BiH, učinkovitost i transparentnost u upravljanju i gospodarenju vodama.

Poljoprivredno zemljište je uz vodu i zrak najvažniji prirodni resurs, koji je uvjet za život. Dok su voda i zrak obnovljivi, zemljište je neobnovljivo jer ako je ono jednom uništeno tako što je pokriveno betonom ili asfaltom, ili ako je uništeno erozijom, ono se trajno gubi. Gubitak poljoprivrednog zemljišta nakon rata je mnogo veći. Ako se nastavi uništavanje poljoprivrednog zemljišta u BiH ovim tempom, onda će ga u BiH nestati za 50 godina. Treba napomenuti da su velike površine zemljišta u BiH još pokrivene minama. Za održivost poljoprivrednog zemljišta u BiH potrebne su nove pravne i institucionalne mjere kako na razini države tako i u jedinicama lokalne samouprave.

U ukupnoj površini šuma i šumskog zemljišta u BiH, degradirane šumske površine i goleti sudjeluju s 53%, što se smatra nepovoljnom strukturom šumskog fonda u BiH. Pokazatelji ugroženosti šuma i šumskih zemljišta u BiH dolaze iz prošlosti i sadašnjosti.

- Zbog svoje konfiguracije, velikih nagiba i sastava tla, te dugogodišnje (više od jednog stoljeća) i intenzivne eksploatacije (česte neplanske sječe) njezinih šuma, BiH je jedno od najerozivnijih područja u Europi i najugroženije erozivno područje na Balkanu.
- Šume su u Hercegovini potpuno devastirane te jednostavno nestaju. Erozijski ogoljelog, kamenitog i strmog područja je jako izražena. Ugrožen je biodiverzitet rijetkih vrsta biljaka.
- Minirana područja u BiH su oko 540000 ha. Minirana su prekinute šumske ceste i time je onemogućen rad ljudi na sprečavanju štetnih pojava u šumi.
- Došlo je do masovnog sušenja većih kompleksa šuma zbog napada insekata. Osobito su ugrožene četinarske šume. U ugroženim (suhim) šumama česti su šumski požari i druge nepovoljne pojave.
- U šumama i šumskim zemljištima u BiH ima preko tisuću aktivnih erozivnih područja. Nestaje prizemna flora i fauna, koja se na ogoljelom području teško obnavlja. Zatrpane su šumske ceste. Na zapuštenom, oštećenom i devastiranom šumskom zemljištu rastu korovi.
- Pretjerana i nelegalna sječa šuma, uz šumske komunikacije, ugrožava šumski fond. Mijenja se biodiverzitet flore i faune. Sve češće nastaju erozije i poplave. Presušuju izvori pitke vode. Osjeća se promjena mikroklimе.
- Loša organizacijsko-kadrovska struktura šumarstva u BiH onemogućuje unapređenje i proširenje šumskog fonda. Zato je potrebno stvoriti nove institucionalno-pravne pretpostavke za održivo korištenje šuma u BiH.

Ukoliko se uzme u obzir potpuna nebriga vlasti u BiH prema vlastitim građanima i njihovim osnovnim problemima egzistencijalne prirode, ne čudi ni potpuno ignorantski odnos vlasti prema zaštiti prirode i zaštiti okoliša. Nedostatak strategije održivog razvitka, potpuna nebriga i invalidno ponašanje tijela državne administracije prema razaranju prirodnog potencijala BiH ostavlja teško popravljive posljedice na životnu sredinu i budućnost prostora BiH.

VI.1 Kontaminacija životnog prostora minsko-eksplozivnim sredstvima

Među nagomilanim ekološkim problemima u BiH posebno je potrebno istaknuti problem zaostalih minsko-eksplozivnih sredstava. Procjenjuje se da je oko 3,42 %²⁸ teritorija BiH ili oko 1.755,00 km² još uvijek prekriveno neeksplozivnim minsko-eksplozivnim napravama. BHMACH je u svom Izvješću za 2007. godinu ukupno definirao 12.717 miniranih mikrolokacija, s prosječnom površinom mikrolokacije od 0,14 km².

Deminiranje je vrlo skup i složen proces, a u BiH je posebno otežan zbog masovne uporabe minsko-eksplozivnih sredstava skoro bez ikakvih evidencija. Zbog velikog intenziteta ratnih sukobljavanja na području BiH i tijekom Drugog svjetskog rata, pronalazak zaostalih neeksplozivnih sredstava iz tog razdoblja još uvijek ne predstavlja rarijtnu pojavu. Ukupan broj nastradalih od minsko-eksplozivnih sredstava, od početka 1996. godine do kraja 2007. godine, iznosi 1.608 osoba od čega su smrtno stradale 472 osobe²⁹. Ovi podatci ukazuju kako se BiH, po pitanju rizika stradavanja od minsko-eksplozivnih naprava, svrstava među najugroženije države u svijetu. Velik postotak pokrivenosti minsko-eksplozivnim sredstvima znatno otežava gospodarski razvitak čitavih područja, a ima i značajan psihološki učinak koji otežava proces povratka izbjeglih i raseljenih osoba.

²⁸ Procjena Centra za uklanjanje mina (BHMACH) – Izvještaj o protuminskim akcijama za 2007. godinu (www.bhmac.org)

²⁹ Izvor: Izvještaj o protuminskim akcijama za 2007. godinu (www.bhmac.org)

VII. STANJE SOCIJALNE NESIGURNOSTI

U dosadašnjim izvješćima ove Komisije konstantno se nastojalo ukazati na teško stanje gospodarstva u BiH koje uzrokuje loš socijalni status njenih žitelja. U 2008. godini nije došlo do napretka BH gospodarstva te ono i dalje značajno zaostaje za razvijenim gospodarstvima unutar EU, pa i za gospodarstvima zemalja u tranziciji. Kraj 2008. godine u cijelom svijetu je obilježio početak globalne gospodarske krize, koja se neminovno odražava na gospodarstvo i standard građana u BiH. Steče se dojam kako politička elita u BiH ne poduzima ozbiljne korake da bi se ublažili efekti gospodarske krize jer gotovo da i nije bilo rasprava u državnim tijelima o ovoj temi. Neozbiljan pristup političara i vlasti u BiH problemima globalne ekonomske krize uopće ne čudi. Naime, u ovoj zemlji kriza već duže vrijeme predstavlja konstantu s malim izgledima za prestanak u dogledno vrijeme. S obzirom da vlasti na svim razinama BiH, a posebice na razini države, ne posjeduju gotovo nikakvu strategiju razvitka bilo koje od oblasti društvenog života, nimalo ne čudi ni izostanak sustavne gospodarske i/ili socijalne strategije.

VII.1 Problematika popisa stanovništva i drugih resursa BiH – licemjernost politike

Kao i ranije, i u ovom izvješću, potrebno je podvući činjenicu da se od 1991. godine u BiH nije proveo popis stanovništva, što znatno otežava i onemogućava ozbiljniju elaboraciju gospodarskih i socijalnih kretanja. Iako je popis stanovništva prvenstveno socijalno, ali i stručno-statističko pitanje, te stoga i u nadležnosti Zavoda za statistiku, i ono je u ovoj zemlji poprimilo prvorazredno političko značenje. O razlozima političkih protivljenja temeljitom popisu stanovništva i gospodarskih resursa na razini države detaljnije smo pisali u ranijim izvješćima³⁰. Ranije izneseni zaključci Komisije u ovom dijelu su se tijekom 2008. godine pokazali potpuno osnovanim. Protivljenja političkih lidera sva tri konstitutivna naroda provođenju temeljitog popisa stanovništva i gospodarskih resursa su potpuno ogoljena tijekom političkih pregovora koji su prethodili tzv. Prudskom dogovoru. Naime, pri usuglašavanju provedbe budućeg popisa stanovništva, provedenom među predsjednicima tri najjače nacionalne stranke sva tri naroda u BiH, javljali su se otpori provedbi popisa u segmentima nacionalnosti, vjeroispovijedi i jezika, prvenstveno zbog bojazni od poraznih rezultata etničkog čišćenja na cijelom teritoriju BiH i straha od gubitka pozicija u vlasti. Ovo posebice ukazuje na dvoličnost nacionalnih političkih elita koje „umjesto nespornog i legitimnog

³⁰ www.ktabkbih.org

demokratskog interesa svih građana, na prvo mjesto stavljaju vlastiti položaj i fotelje. Taj hipokrizijski karakter politike u BiH u biti predstavlja samo nastavak dvoličnog ponašanja prilikom masovnog prelaska sluga totalitarnog jednopartijskog režima u strukture mlade "demokratske" države.

VIII. OSNOVNI EKONOMSKO-SOCIJALNI POKAZATELJI U 2008. GODINI

Za razliku od prijašnjih godina, po prvi put od osamostaljenja države, za 2008. godinu su statistički obrađeni podatci o nekim značajnijim ekonomsko-socijalnim pokazateljima u BiH. Ranija izvješća su se u ovom dijelu uglavnom zasnivala na nepotpunim statističkim podacima entitetskih institucija, podacima/procjenama institucija međunarodne zajednice te i podacima/procjenama određenih institucija civilnog društva.

VIII.1 Stanje zaposlenosti

Ukupan broj nezaposlenih u BiH u studenom 2008. godine iznosio je 479.296 osoba, dok je ukupan broj zaposlenih u istom mjesecu iznosio 708.173 osoba³¹. Ako se usporede ovi podatci sa studenom 2007. godine može se zaključiti kako je došlo do pada nezaposlenosti za 7,5 indeksnih bodova ili u apsolutnom iznosu broj osoba koje se vode kao nezaposlene smanjio se za 38.884 osobe³². Prema kriterijima Međunarodne organizacije rada (ILO)³³, u odnosu na prethodnu godinu, u 2008. godini se stopa nezaposlenosti (prema ARS) također smanjila s 29,00 na 23,40. Poboljšana statistika u ovom dijelu je u izravnoj uzročno-posljedičnoj vezi s intenziviranjem aktivnosti inspekcijskih tijela države u cilju iskorjenjivanja rada "na crno"³⁴. Naime, krajem 2007. godine i u prvoj polovici 2008. godine, zbog krize proračuna i mirovinskih fondova, inspekcijska tijela širom BiH su provodila intenzivnije aktivnosti radi detektiranja rada "na crno". Na ovakve akcije poslodavci su dijelom odgovarali prijavljivanjem uposlenika uz minimalnu zakonsku osnovicu plaće, ali i samo privremenim prijavljivanjem zaposlenika – dok akcija inspekcijskih tijela ne jenja. Mjesečne statistike ukazuju na znatne varijacije broja zaposlenih, neprimjerene normalnom stanju na tržištu rada.

Aktivnosti države u ovoj oblasti jasno pokazuju kako iole ozbiljniji pristup tijela državne vlasti može uroditi značajnim napredcima na dobrobit građana i gospodarstva. Nažalost,

³¹ Statistički podatci Agencije za statistiku BiH

³² Isto

³³ International Labor Organization (ILO)

³⁴ Veliki broj poslodavaca (posebice u privatnom sektoru) godinama upošljava radnu snagu uz isključivo plaćanje nadnice, pri čemu tako angažirani radnici ne ostvaruju nikakva socijalna prava kao npr. pravo na zdravstveno i mirovinsko osiguranje. Takvo upošljavanje se u žargonu, ali već i u stručnoj terminologiji, definira kao rad "na crno".

kriza proračuna, odnosno dogorjelost prstiju do nokata, su jedine okolnosti u kojima država i političke elite reagiraju.

VIII.2 Pad kupovne moći i životnog standarda

Prosječna mjesečna neto plaća na teritoriju cijele BiH u studenom 2008. godine iznosila je 776,00 KM (396,76 EUR), što je povećanje u odnosu na prosinac 2007. godine za 13,9%.³⁵ Indeks potrošačkih cijena u prosincu 2008. godine, u odnosu na prosinac 2007. godine, je u prosjeku veći za 3,8%, dok je dvanaestomjesečni rast cijena u 2008. godini u prosjeku bio 7,4%. Prethodno navedeni statistički pokazatelji jasno ukazuju na daljnje urušavanje socijalnog statusa ionako osiromašenih građana BiH. Značajan pad kupovne moći građana BiH prvenstveno je rezultat globalnog povećanja cijena nafte i energenata tijekom prva tri kvartala 2008. godine. Nakon što je u zadnjem kvartalu cijena nafte na svjetskom tržištu značajno pala, nije došlo do posebnog pada cijena osnovnih živežnih namjernica te plina i električne energije.

Po kriterijima Ujedinjenih Naroda, više od trećine stanovništva BiH živi u uvjetima socijalne ugroženosti, a preko 10% ispod granice siromaštva. Posebno socijalno ugroženu kategoriju stanovništva BiH predstavljaju umirovljenici koji se nalaze na rubu egzistencijalnog preživljavanja. Prosječna mirovina u FBiH u listopadu 2008. godine iznosila je 347,88 KM (177,42 EUR), dok je u Republici Srpskoj iznosila 319,00 KM (162,69 EUR). Nevjerojatna je vještina preživljavanja kojom ova, dobno i zdravstveno ugrožena, populacija pribjegava u socijalno-ekonomskim uvjetima življenja.

Slabi socijalno-ekonomski uvjeti, nedostatak socijalnih programa i novca u proračunima ne ulijevaju nimalo optimizma u oblasti socijalno-ekonomskog boljitka građana BiH, posebice pri jasnim naznakama globalne krize i recesije. Sve navedeno ukazuje na nužnost žurnog stvaranja preduvjeta za korištenje poljoprivrede kao jednog od glavnih gospodarskih resursa BiH jer sve perspektive ukazuju na mogućnost pojave problema u prehrani stanovništva zemlje.

VIII.3 Osnovni trgovinski i proizvodni pokazatelji gospodarstva

Ukupan izvoz u BiH u 2008. godini je iznosio 6.711.690.000 KM (1KM=0,51EUR), dok je ukupan uvoz u 2008. godini iznosio 16.286.056.000 KM, što znači da vanjsko trgovinska bilanca pokazuje godišnji deficit na štetu izvoza u iznosu od 9.574.366.000

³⁵ Statistički podatci Agencije za statistiku BiH

KM. S obzirom na slabu razvijenost i rezultate proizvodnog sektora, ostvareni trgovinski deficit je više nego zabrinjavajući, a posebno ako se uzme u obzir da na državnoj razini, ali i na nižim razinama, ne postoji skoro nikakva strategija gospodarskog razvitka. Prema službenim podacima Ministarstva financija i trezora BiH ukupan vanjski dug BiH na dan 31. prosinca 2008. godine iznosi 4.193.261.748 KM, dok je isti na dan 30. rujna 2007. godine iznosio cca. 3.930.000.000 KM – što ukazuje na tendenciju rasta. Ukupni bruto domaći proizvod (BDP) u BiH u 2007. godini je iznosio 21,64 milijardi KM (bruto domaći proizvod po stanovniku je iznosio 5.633 KM) dok je vanjski dug iznosio 3,96 milijardi KM, te se prema ocjeni Ministarstva financija i trezora BiH može reći da je BiH u „dozvoljenim“ okvirima po pitanju omjera javne zaduženosti i BDP-a³⁶.

VIII.4 Socijalno-gospodarska perspektiva

Vrlo loše stanje gospodarstva, koje nužno prati i loše stanje u socijalnom sektoru ne daje nimalo razumnih razloga za optimizam. Ratom i poratnom privatizacijskom pljačkom uništeno gospodarstvo, pored smanjenja socijalnih perspektiva stanovništva, znatno otežava i euro-atlantske perspektive BiH. Stalna politička trvenja, uglavnom po nacionalnoj osnovi, ostavljaju dojam trajnog stanja političke nesigurnosti – što trajno odbija potencijalne strane investitore. Aktivna (politička i vojna) nazočnost međunarodne zajednice, široke ovlasti OHR-a, jeftina radna snaga, te prirodni i društveni resursi BiH su potencijali koji bi morali stvoriti pretpostavke bržeg gospodarskog i društvenog razvitka.

Poboljšanje ambijenta za razvitak gospodarstva i značajnija strana ulaganja, izravno su povezani s političkim imidžom države. Stoga bi pravično razrješenje političke krize u BiH trebalo biti univerzalan interes i BiH i međunarodne zajednice. Globalna ekonomska kriza prijeti zaoštavanju i političkih, ali i ekonomsko-socijalnih tenzija. Stoga sve ukazuje na ozbiljnost trenutnog stanja koje se kontinuirano pogoršava i koje svim relevantnim domaćim i stranim čimbenicima ujedno predstavlja alarmantan poziv na žurno djelovanje.

³⁶ U trenutku pisanja ovog Izvješća nisu bili objavljeni službeni statistički podatci o bruto domaćem proizvodu (BDP) za 2008. godinu, te su zbog toga razloga korišteni podatci za 2007. godinu.

IX. DOGAĐAJI KOJI SU OBILJEŽILI 2008. GODINU

IX.1 Usvojeni principi reforme policije

U procesu pristupanja Europskoj uniji (Mapa puta), kao jedan od prioriteta Europska unija je označila reformu policije na razini države BiH. Tijekom 2007. godine, pod velikim pritiskom međunarodne zajednice, usuglašeni su temeljni principi na kojima je EU insistirala. Dana 28. listopada 2007. godine predstavnici šest vodećih političkih stranaka iz oba entiteta BiH su potpisali deklaraciju o provođenju reforme u ovoj oblasti³⁷. Time su se stekli uvjeti za parafiranje Sporazuma o stabilizaciji i pridruživanju BiH Europskoj Uniji (SSP), što je označilo početak stvaranja ugovornih odnosa između BiH i EU.

Slijedom navedenih događaja Predstavnički dom Parlamentarne skupštine BiH je 10. travnja 2008. godine usvojio dva prijedloga zakona iz oblasti reforme policije: Prijedlog zakona o neovisnim i nadzornim tijelima policijske strukture BiH i Prijedlog zakona o direkciji za koordinaciju policijskih tijela i o agencijama za podršku policijskoj strukturi BiH. Dom naroda Parlamenta Bosne i Hercegovine je 16. travnja 2008. godine usvojio ova dva zakona koja se odnose na oblast policijske reforme, čime su oni stupili na snagu. Usvajanje spomenutih zakona bilo je preduvjet za potpisivanje Sporazuma o stabilizaciji i pridruživanju s EU. Ovim zakonima je stvoreno sedam novih policijskih institucija na nivou države BiH, koje imaju ograničena ovlaštenja. Organizacija lokalnih policijskih razina treba biti dogovorena prilikom usvajanja novog Ustava BiH, što, naravno, relativizira značaj zakonskih rješenja i konačnu primjenu usvojenih načela na kojima insistira EU. Dakle, bez obzira na usvajanje navedenih zakonskih rješenja, u BiH još uvijek nije započeta reforma policije koja bi trebala funkcionirati neovisno o nacionalnim kriterijima i trenutnim teritorijalnim razgraničenjima unutar BiH. Stoga se može ocijeniti da je proces modernizacije policijskih snaga još uvijek zadaća koju politički establišment ove zemlje tek mora riješiti u interesu svih građana. Rapidan porast stope kriminaliteta na cijelom teritoriju BiH tijekom 2008. godine ukazuje kako to predstavlja jedno od prioritarnih zadataka. Zastoj procesa reforme policije, zbog nastavka višestrukih opstrukcija Republike Srpske kroz institucije države, navodi na zaključak kako navedena zakonska rješenja nisu usvojena u dobroj vjeri i za boljitak građana, nego isključivo u cilju potpisivanja Sporazuma o stabilizaciji i pridruživanju, čime su po tko zna koji put samo zaobiđeni, ali ne i riješeni bitni problemi. Istina,

³⁷ Politička kriza uzrokovana protivljenjem Republike Srpske ovoj reformi detaljno su opisana u Izvješću Komisije za 2007. godinu.

spomenuta opstrukcija se tumači strahom od unitarizacije zemlje koji, tko zna po koji put i na koji sve način, ukazuje na svu manjkavost društveno-političkoga ustroja zemlje.

IX.2 Potpisan Sporazum o stabilizaciji i pridruživanju između BiH i EU

Najvažniji događaj za BiH u 2008. godini je bilo potpisivanje Sporazuma o stabilizaciji i pridruživanju između BiH i EU koji je potpisan 16. lipnja 2008. godine u Luxembourg. Sporazum se sastoji od deset poglavlja, sedam aneksa i isto toliko protokola od čega izdvajamo slijedeće: politički dijalog, regionalna suradnja, slobodno kretanje roba, kretanje radnika, poslovni planovi, pružanje usluga, kapital, usklađivanje prava, provedba prava i pravila tržišnog natjecanja, pravosuđe i unutarnji poslovi, oblici suradnje, financijska suradnja, te institucionalne, opće i završne odredbe. Ovim međunarodnim ugovorom definirana su striktna pravila i procedure koje BiH mora ispuniti kako bi postala punopravna članica EU. Parlamentarna skupština BiH je SSP jednoglasno ratificirala 21. listopada, a Dom naroda³⁸ je potvrdio ratifikaciju 27. listopada 2008. godine. Europski parlament je na zasjedanju od 22. i 23. listopada donio rezoluciju kojom su zemlje članice Unije pozvane pristupiti što bržoj ratifikaciji sporazuma s BiH.

Potpisivanjem Sporazuma BiH je postala pridružena članica Europske unije, dok će Sporazum formalno biti pravosnažan kada se završi proces ratificiranja u svim zemljama članicama EU. Sporazum o stabilizaciji i pridruživanju BiH Europskoj Uniji je potpisan na neodređeno vrijeme, s tim da ga svaka strana može suspendirati ukoliko druga strana ne poštuje bilo koji od ključnih elemenata Sporazuma. S obzirom na zastoj u procesu reforme policije, ali i na općenitu paraliziranost institucija države u oblasti pridruživanja, posve je razumno očekivati da će ratifikacija Sporazuma u država članicama EU trajati duže nego što je to uobičajeno. Politički slijed događaja razotkriva hipokriziju politike u BiH, u kojoj je neupitan konsenzus svih relevantnih političkih opcija u samo deklarativnoj opredjeljenosti i privrženosti "europskom putu", dok kod dijela političkih snaga u biti još uvijek ne postoji opredjeljenje za istinskim prihvaćanjem principa na kojima je zasnovana EU.

³⁸ Ustav BiH propisuje dvodomno zakonodavno tijelo na razini države.

IX.3 Radovan Karadžić priveden Međunarodnom sudu za ratne zločine

Jedan od najspektakularnijih događaja koji su obilježili 2008. godinu svakako predstavlja uhićenje i privođenje Radovana Karadžića - ratnog i političkog vođe bosanskih Srba.

Europska komisija je, između ostalog, kao jedan od ključnih uvjeta za priključivanje BiH postavila poboljšanje suradnje s Međunarodnim kaznenim sudom za bivšu Jugoslaviju u Haagu (ICTY)³⁹. Osnovna prepreka ispunjavanju ovog uvjeta bila je žilava opstrukcija Republike Srpske i Republike Srbije privođenju glavnih aktera i inicijatora rata toj međunarodnoj pravosudnoj instituciji – što se posebno odnosi na slučajeve uhićenja osumnjičenih srpskih ratnih političkih i vojnih lidera Radovana Karadžića i Ratka Mladića.

Kao vođa bosanskih Srba i predsjednik Republike Srpske u tijeku cijelog rata, političku karijeru isključivosti je započeo 12. svibnja 1992. godine izborom za predsjednika samoproglašene RS i na toj funkciji je ostao do 30. lipnja 1996. godine. Budući da je još za vrijeme priprema za pregovore u Daytonu prenio pregovaračke ovlasti na potpredsjednicu RS Biljanu Plavšić⁴⁰, Karadžić nije bio član izaslanstva RS na mirovnim pregovorima u Daytonu. Nakon potpisivanja Daytonskog sporazuma, Karadžić se povukao iz javnog i političkog života.

ICTY je prvu optužnicu protiv Karadžića i Mladića podigao 25. srpnja 1995. godine, tereteći ih za genocid i zločine protiv čovječnosti. Drugom, proširenom, optužnicom od 16. studenog iste godine, Karadžić je optužen i za masakr nad muslimanima u Srebrenici, a trećom, izmijenjenom i dopunjenom 31. svibnja 2000. godine, objedinjene su prethodne dvije optužnice i njegov je predmet odvojen od Mladićevog. Ta je optužnica otpečaćena u listopadu 2002. i njom se Karadžića, u 11 točaka, tereti za sudjelovanje u genocidu, zločine protiv čovječnosti te kršenja ratnih zakona i običaja.

Tijekom suđenja Karadžić insistira na tvrdnjama da je s američkim izaslanikom Richardom Holbrookom sklopio tajni dogovor kojim mu je administracija SAD jamčila da protiv njega neće biti podignuta optužnica za ratne zločine, pod uvjetom da se povuče iz političkog života. Ova teza je interesantna ukoliko se uzme u obzir da je međunarodna zajednica s Karadžićem aktivno pregovarala unatoč podignutim optužnicama pred međunarodnim sudom u Haagu. Indikativno je i to da je NATO–pakt

³⁹ International Criminal Tribunal for the Former Yugoslavia (ICTY) je osnovan 1993. godine kao *ad hoc* sud radi procesuiranja ratnih zločina i drugih kršenja humanitarnog prava počinjenih u ratovima na području bivše Jugoslavije.

⁴⁰ Temeljem pravomoćne presude, donesene po osnovu sudske nagodbe s tužiteljstvom ICTY, Biljana Plavšić u Švedskoj izdržava kaznu za ratne zločine, u trajanju od 11 godina zatvora.

1995. godine izravno vojno intervenirao u BiH tek nakon što su srpske postrojbe dovedene pred potpuni vojni slom⁴¹.

Karadžić je posljednji put viđen i fotografiran u Han-Pijesku sredinom 1996. i od tada je u bijegu, a za njim je raspisana INTERPOL-ova tjeralica. Trinaest godina nakon podizanja optužnice, 21. srpnja 2008. godine, pod pritiskom međunarodne zajednice Radovan Karadžić je uhićen u Beogradu i priveden pred Međunarodni sud za ratne zločine u Haagu.

Haški sud je, nakon genocida u Srebrenici 24. srpnja 1995. godine, potvrdio prvu optužnicu protiv Radovana Karadžića. On je optužen na osnovu individualne kaznene odgovornosti⁴² i kaznene odgovornosti nadređenog⁴³ za genocid, sudjelovanje u genocidu, istrebljivanje, ubojstva, hotimično lišavanje života, progone, deportaciju, nečovječna djela, protupravno teroriziranje civila i uzimanje taoca.

Činjenica da je, uz Ratka Mladića, najtraženiji haški optuženik godinama mirno živio u Beogradu pod krinkom doktora Dragana Dabića, samo potvrđuje tezu kako u Srbiji punih trinaest godina nije bilo političke volje za privođenjem osumnjičenih za najteže ratne zločine. Posebice je indikativna činjenica da je Karadžić u posljednje vrijeme počeo s javnim djelovanjem na području Srbije – u emisijama uz izravne TV prijenose,

⁴¹ Međunarodna zajednica je za područje ex Jugoslavije 1991. godine uvela embargo na uvoz oružja – čime je trebao biti zadan odlučan politički udarac mladim demokratskim državama – u borbi za neovisnost protiv jedne od najmoćnijih vojnih sila tadašnjeg vremena. Vojna operacija NATO-a pod nazivom "Odlučne snage" je započela tek nakon što su združene snage Hrvata (HV i HVO) i Bošnjaka – muslimana (ABiH) 1995. godine brzom i efikasnom vojnom akcijom „Oluja“ došle nadomak Banja Luke. O tijeku dešavanja pred sam kraj rata znakovito govori slijedeća izjava Petera Galbraitha, tadašnjeg veleposlanika SAD u Republici Hrvatskoj – koju je sredinom listopada 2008. godine dao Američkom nacionalnom radiju (NPR). Ovdje prenosimo dio izjave koju prenosi „Dnevni avaz“ u intervjuu vezanom za izjavu o fašoidnosti tadašnje vojske i političkog vodstva Republike Srpske:

“Ne znam koje sam riječi točno koristio na NPR-u. Bila je to akademska rasprava o ratovima na Balkanu i u BiH. Među gostima sam bio i ja. Možda sam tamo rekao nešto slično, poput paralela koje su se povlačile s Njemačkom nakon Drugog svjetskog rata. No, ne mislim da su bosanski Srbi fašistički i genocidni. Rukovodstvo RS i Vojska RS iz tog doba - jesu! – kaže Galbraith ...

- NPR je radio emisiju. Govorio sam o tadašnjoj situaciji i špekulirao što bi se dogodilo da smo pustili Hrvatima da uzmu Banju Luku. Kazao sam da je tadašnje vodstvo bosanskih Srba genocidno i fašoidno te da bi možda bilo bolje, da bi regija bila stabilnija, da smo dopustili da budu potpuno poraženi, umjesto što smo se odlučili na kompromis.

*Međutim, da je Banja Luka uzeta, imali bismo na koridoru u Posavini najmanje 300-400 tisuća ljudi i veoma tešku situaciju. Već smo imali dosta izbjeglica iz Krajine. Oni i bosanski Srbi u egzodusu doveli bi do humanitarne katastrofe. To nismo smjeli dopustiti. Bilo je još dosta drugih faktora koje smo uzimali u obzir.”, kazao je, između ostalog, Galbraith (preneseno iz *Pincom.info* od 17.10.2008. godine).*

⁴² Članak 7.1. Statuta Haškog tribunala

⁴³ Članak 7.3. Statuta Haškog tribunala

a da je Ratko Mladić sve do 2002. godine bio na platnom popisu Vojske SR Jugoslavije – odnosno SRJ kao pravne prednice sadašnje Republike Srbije.

Privodenje "licu pravde" ovog optuženika za najteže ratne zločine može, barem malim djelom, biti zadovoljština brojnim žrtvama masovnih zločina počinjenih na krilima veliko-srpske ideologije, koju je zdušno i bezobzirno vodio ovaj nekad anonimni psihijatar iz Sarajeva. Iako stotine tisuća žrtava velikosrpskog divljanja vape za pravdom, vrijeme će pokazati na koji način će im biti udovoljeno.

IX.4 Općinski izbori

Na cijelom teritoriju Bosne i Hercegovine su 05. listopada 2008. godine održani lokalni (općinski) izbori, na kojima su birani načelnici općina kao osnovnih jedinica lokalne samouprave u oba entiteta, i predstavnici u općinskim vijećima kao parlamentarnim tijelima ove razne vlasti. Ukupan odziv birača na lokalnim izborima je bio 55,3%. Konačni službeni rezultati lokalnih izbora ukazuju na dalju dominaciju i političku prevlast tzv. nacionalnih stranaka. Najveći broj načelničkih mjesta je osvojio SNSD (Savez nezavisnih socijaldemokrata⁴⁴) ukupno 39, zatim slijedi SDA (Stranka demokratske akcije⁴⁵) s 36 osvojenih načelničkih pozicija, dok je HDZ BiH (Hrvatska demokratska zajednica BiH⁴⁶) osvojio 16 načelničkih mjesta.

Vrijeme prije održavanja lokalnih izbora karakterizirala je odluka Centralnog izbornog povjerenstva BiH (CIP BiH) kojom je za 2.084 prognana Hrvata iz Posavine onemogućeno glasovanje u Bosanskoj Posavini (trenutno pod nadležnošću Republike Srpske), što prema Izbornom zakonu predstavlja posve legalnu proceduru. CIP BiH je osporio valjanost uvjerenja o državljanstvu BiH koje posjeduju prognani Hrvati s područja Bosanskog Broda i Dervente jer ih je izdao prognanički ured smješten u susjednoj Hrvatskoj, a na temelju originalnih matičnih knjiga koje su zbog ratnih okolnosti premještene u Slavonski Brod. Nakon ove odluke matične knjige su 12. rujna 2008. godine predane Ministarstvu vanjskih poslova BiH nakon čega je omogućen postupak izdavanja osobnih iskaznica BiH prognanim Hrvatima iz Posavine čime bi na nekim budućim izborima mogli eventualno steći mogućnost glasovanja na lokalnim izborima. Prethodna činjenica, po tko zna koji put, potvrđuje da u BiH ni do danas nisu ostvareni osnovni demokratski preduvjeti za odvijanje slobodnih izbora. Naprotiv,

⁴⁴ SNSD- najjača srpska parlamentarna politička stranka

⁴⁵ SDA - najjača bošnjačko-muslimanska parlamentarna politička stranka

⁴⁶ HDZ - najjača hrvatska parlamentarna politička stranka

administrativna „dosljednost“ je poslužila nadležnim tijelima da svojim građanima zaniječnu biračko pravo.

Izborne i političke malverzacije oko daytonskih teritorija su se također, i ovom neprilikom, i međunarodnoj zajednici pokazale važnijima od suštinske demokratizacije BH društva. Pored toga što je, čini se, trajno zanijekano temeljno pravo na stvarni povratak, izbjeglicama i prognanicima iz gotovo svih dijelova BiH (posebice s područja RS: Bosanske Posavine i Istočne Bosne) ponovo je dan jasan signal da nisu dobrodošli u mjesta svoga predratnog boravka. Sve ukazuje kako je projekt podjele i etničkog čišćenja u BiH priveden samom kraju.

IX.5 Produžen mandat EUFOR-a u BiH

Vijeće sigurnosti UN je 20. studenog 2008. godine donijelo jednoglasnu odluku o jednogodišnjem produženju mandata mirovnih snaga EUFOR-a u BiH. Snage EUFOR-a u BiH trenutno broje oko 2.200 vojnika, što je smanjenje u odnosu na 2007. godinu – kad je ova misija brojala oko 2.500 vojnika. Potreba nazočnosti stranih mirovnih trupa na teritoriju BiH ukazuje na to da se BiH u međunarodnim krugovima još uvijek tretira kao potencijalno krizno žarište. Iako je broj međunarodnih mirovnih snaga u međuvremenu znatno smanjen (krajem 1995. godine na području BiH je bilo aktivno oko 60.000 vojnika SFOR-a, pod udruženim zapovjedništvom NATO pakta), radi stalnih političkih prijetnji i turbulentnih događanja u BiH, odnosno stalnih prijetnji njenoj stabilnosti, između snaga NATO pakta i EUFOR-a egzistira sporazum koji omogućava žurnu intervenciju dijela mirovnih snaga na Kosovu (KFOR) za slučaj potrebe.

Pored navedenog u BiH su u civilnom sektoru aktivne i snage EUPM-a, kao policijske misije Europske unije sa zadaćom preustroja i modernizacije policijskih institucija u BiH⁴⁷.

Nazočnost međunarodnih vojnih, mirovnih snaga u državi znatna je psihološka zapreka priljevu stranih investicija u BiH.

⁴⁷ Mandat EUPM proističe iz Aneksa 11, a mandat EUFOR-a iz Aneksa 1A i Aneksa 2 Daytonskog sporazuma.

IX.6 Politički pregovori i dogovor iz Pruda

U dosadašnjim izvješćima o stanju ljudskih prava u BiH Komisija je često ukazivala na nužnost korjenitih promjena unutarnjeg ustavno-pravnog ustrojstva BiH, te potrebu izlaska iz okova Daytonskog sporazuma koji nije utemeljen na istini i pravdi.

Nakon što su u 2007. godini propali pritisci za kozmetičkim promjenama, odnosno legalizaciji postojećeg ustavno-pravnog uređenja⁴⁸, predsjednici tri političke stranke HDZ BiH, SDA i SNSD, za koje se može reći da su trenutno najjače stranke iz sva tri konstitutivna naroda u BiH, su 8. studenog 2008. godine u posavskom selu Prud potpisali još uvijek neobvezujući i nelegitiman politički sporazum o osnovnim načelima izmjene ustavnog ustrojstva zemlje. Iako je pravi sadržaj Sporazuma još uvijek pokriven velom tajne, na vidjelo su izišla slijedeća načela hinjene reforme:

- Promjena Ustava BiH bi se odvijala putem amandmana na postojeći Ustav, uz stručnu pomoć međunarodnih institucija, a sam proces bi podrazumijevao usklađivanje Ustava BiH s Europskom konvencijom o temeljnim ljudskim pravima i slobodama, nadležnost države, funkcioniranje institucija BiH i teritorijalna organizaciju države.
- Nakon donošenja zakona o popisu stanovništva na razini BiH bi trebalo provesti popis stanovništva 2011. godine. Do 2014. godine nacionalna zastupljenost u institucijama vlasti bi se trebala formirati temeljem popisa stanovništva iz 1991. godine.
- Parlament BiH bi trebao usvojiti program mjera za pomoć povratku izbjeglih i raseljenih te i održivom ostanku i taj program treba provesti u razdoblju od 2009. godine do 2014. godine.
- Državna imovina, u ovisnosti od namjene, treba biti podijeljena između države BiH i njenih entiteta, odnosno županija i općina.
- Pitanje pravnog statusa Brčko Distrikta potrebno je urediti posebnim ustavnim zakonom, odnosno zakonom s ustavnom dvotrećinskom većinom.

Takozvani "Prudski dogovor" predstavlja prvu inicijativu za promjenu Ustava BiH koja je pokrenuta unutar BiH, barem u formalnom smislu, jer postoje naznake kako je isti rezultat sustavnog pritiska velikih sila (poglavito SAD-a). Stoga je podršku Prudskom dogovoru među prvima uputilo vodstvo EU kao i veleposlanik SAD-a u BiH. Predsjednici tri najjače političke stranke tri konstitutivna naroda iz BiH su se dogovorili kako je potrebno teritorijalno organizirati srednju razinu vlasti što je podržala međunarodna zajednica.

⁴⁸ Detaljniji o istom Komisija izvještavala na str. 63 - 66 Izvješća o stanju ljudskih prava u BiH za 2007. godinu (www.ktabkbih.org)

Komisija pozdravlja i podržava svaki oblik demokratskog dogovaranja demokratski izabраних predstavnika sva tri konstitutivna naroda u BiH.

Iskustva govore kako su dosad sva nametnuta rješenja u konačnici imala nepravedan ishod. Bosni i Hercegovini i njenim narodima je potrebna pomoć međunarodne zajednice jer bez čijega posredovanja svi domaći odlučujući akteri neće prihvatiti potrebu traženja pravičnih rješenja. Potreba efikasne pomoći ne isključuje nego potvrđuje činjenicu da istinska pravda, kao zalog budućeg suživota, može proisteći isključivo iz dogovora sva tri naroda – koji mora biti zasnovan na načelima pravičnosti i međusobnog uvažavanja. Naime, dobitnici sadašnjega političkoga rješenja nisu voljni svojevrijem tražiti i prihvatiti rješenje koje bi bilo izraz jednakosti svih građana i političkoga uvažavanja sva tri naroda u BiH. Sva rješenja u kojima se nađe prihvatljiv kompromis za sva tri naroda moraju biti usmjerena k implementaciji Odluke Ustavnog suda BiH⁴⁹ o konstitutivnosti i suverenosti sva tri naroda na cijelom njenom teritoriju.

U državi kakva je BiH samo pregovori i dogovori predstavnika tri naroda, a ne čelnika tri političke stranke, jamče napredak, ali većina okolnosti koje prate "Prudski sporazum", prije sveg isključivanje velikoga dijela demokratskih izabраних predstavnika stranaka na vlasti kao i opozicije, ne ulijevaju optimizam. Već smo ranije istaknuli kako nas iskustvo uči na oprezno i sumnjičavo pristupanje svim inicijativama postojećeg političkog establišmenta u BiH. Izjave koje su trojica lidera političkih stranaka davali poslije "Prudskog dogovora" su vrlo oprečne i ukazuju na suštinsko nepostizanje ničeg novog. Ono što bi se moglo smatrati stvarnim dogovorom, odnosno jednim od glavnih razloga političkog pregovaranja, vrlo vjerojatno bi mogao biti dogovor nacionalnih političkih vođa o konačnoj podjeli imovine čiji titular je država BiH. Ostala načela Sporazuma su, po ocjeni ove Komisije, načelno prihvatljiva, ali ih politička retorika pojedinih političara u cijelosti pokapaju i prije nego što su se istinski rodila. Stiče se dojam da je „Prudski sporazum“ obavijen debelim slojevima prikrivenih interesa. Treba naglasiti činjenicu da on ima silnih oponenta i zbog toga što u ovoj inicijativi, čini se, prevladavaju čisto „stranački interesi“ trojice lidera. Ne može se ne pomisliti da je svakom „lideru“ Prudskog susreta jako važan faktor eliminacije neke opozicije iz vlastitih naroda. „Prudski sporazum“ više liči na sporazumijevanje da sporazuma nema. Teško je nešto okvalificirati kao sporazum, a da se bitno ne zna o čemu su se sporazumjeli. Bilo bi žalosno, ako je glavna nakana ovoga „sporazuma“ dati samo dokaz svjetskoj javnosti, koja je očito zagrizla udicu, kako se neki domaći političari oko nečega, a ustvari ničega, mogu dogovarati!

⁴⁹ Ustavni sud BiH je 2000. godine donio odluku o konstitutivnosti sva tri naroda (Hrvata, Srba i Bošnjaka) na čitavom teritoriju BiH, te time proglasio neustavnim odredbe po kojima je F BiH bila entitet samo Bošnjaka i Hrvata, a RS entitet samo Srba.

S obzirom da odlukom Arbitražne komisije od 05. ožujka 1999. godine, koja je nakon Daytonu trebala riješiti status strateški važnog područja predratne općine Brčko, to područje postalo kondominijem oba entiteta – odnosno faktički treći entitet u formi distrikta, politički pregovori iz Pruda vezani za Brčko Distrikt mogli bi uroditi plodom, kao i u slučaju krčmljenja državne imovine. U nastavku, kao poseban dio Izvješća, elaboriramo pravni položaj i status Brčko Distrikta u BiH, sa svojim specifičnim rješenjima koja bi se djelomično mogla primijeniti i na buduće ustavno-pravno ustrojstvo BiH.

X. BRČKO DISTRIKT BOSNE I HERCEGOVINE

- Pravni položaj i zaštita ljudskih prava -

U svojim dosadašnjim izvješćima Komisija se bavila pitanjem pravnog uređenja i zaštite ljudskih prava promatrajući BiH kao cjelinu ili njezina dva entiteta FBiH i RS. Do sada nije bilo posebnog osvrta na Brčko Distrikt Bosne i Hercegovine, koji ima posebni pravno-politički status u vrlo složenom uređenju BiH, a i neka pravna rješenja koja se odnose i na zaštitu ljudskih prava, a drukčije su postavljena nego u dva entiteta. U stvari, međunarodna zajednica u Brčko Distriktu pokušava uspostaviti model multietničkog, multikonfesionalnog i multikulturalnog opstanka i funkcioniranja Bosne i Hercegovine, koji bi vjerojatno poslije, ako ovdje uspije, pokušali implementirati na cijelom području BiH. Stoga nam se čini važnim sagledati rješenja koja se nude u Brčko Distriktu i njihovu implementaciju.

X.1 Mirovna konferencija o Bosni i Hercegovini

Međunarodna konferencija o rješavanju krize u BiH, nakon dugih priprema i blizu četiri godine rata, održana je, kako je već navedeno, od 01. do 21. studenog 1995. godine u SAD, država Ohio, grad Dayton, vojna baza Wright Petterson.

Pored sukobljenih strana iz BiH (Bošnjaci, Srbi i Hrvati), sudjelovale su i susjedne države, Republika Hrvatska i SR Jugoslavija sa svojim najvišim političkim vrhom, s tim što je službeno predsjednik Srbije Slobodan Milošević predstavljao i Srbe iz BiH. Pored susjednih država sudjelovali su predstavnici država tada članica Europske zajednice i predstavnici Rusije.

Pregovore je vodila i koordinirala odnose, kako sa sukobljenim stranama tako i s međunarodnom zajednicom, administracija SAD. Nakon dvadeset dana teških razgovora i pregovora, mirovna konferencija je došla do točke kada se morala završiti. Naime, organizatori konferencije su zaključili da je beskorisno daljnje pregovaranje jer se nikako nije mogla postići suglasnost oko teritorija općine Brčko koja je bila ključna za sve strane.

Predstavnici Srba su inzistirali da ovo područje ostane u sastavu RS jer na taj način osigurava kontinuitet teritorija koji bi trebao pripasti RS (povezivanje zapadnog i istočnog dijela), a s druge strane Bošnjaci i Hrvati koji su prije rata na ovom području činili gotovo 80% stanovništva, nisu mogli pristati na ovaj ustupak jer bi na taj način, između ostalog, bilo priznato etničko čišćenje koje su Srbi tijekom ovog rata izvršili na

području grada Brčkog kao i na širim područjima zapadnog i istočnog prilaza gradu. Osim toga u Brčkom se nalazi jedina razvijena riječna luka u BiH te značajni gospodarski kapaciteti i željeznička komunikacija s Hrvatskom i dalje Mađarskom te drugim državama. Nadalje, snage Armije BiH i HVO su, u vrijeme pregovora, držale značajan teritorij općine Brčko na koji se doselilo i mnogobrojno bošnjačko i hrvatsko pučanstvo iz grada i sela koje su zauzele jedinice vojske RS, i čekali su povratak u svoje domove.

Tijekom noći od 20/21.studenog 1995. godine postignut je dogovor da se pitanje statusa Brčkog riješi naknadno putem posebnog međunarodnog arbitražnog Tribunala od tri člana i na način da će istim predsjedati međunarodni član, a FBiH i RS će dati po jednog člana. Do odluke arbitražnog tijela, stanje bi ostalo isto, tj. onakvo kakvo je zatečeno danom parafiranja sporazuma. Zahvaljujući ovom kompromisu, mirovni pregovori o krizi u BiH okončani su 21.studenog 1995. godine parafiranjem Općeg okvirnog sporazuma za mir u BiH s jedanaest Aneksa (Aneks 4 je Ustav Bosne i Hercegovine). Isti sporazum je službeno potpisan u Parizu 14. prosinca 1995. godine kada je i stupio na snagu.

X.2 Arbitražna odluka

Poslije višegodišnjih priprema i nekoliko djelomičnih odluka oko funkcioniranja područja općine Brčko (koje je donosio sam predsjednik arbitražnog Tribunala), u veljači 1999. godine održana je završna konferencija arbitražnog Tribunala u Beču, a predsjednik Tribunala je 5. ožujka 1999. godine donio i objavio Konačnu Arbitražnu Odluku o statusu općine Brčko. Ovu Odluku nije potpisao ni jedan od druga dva domaća člana Tribunala. Ovom arbitražnom odlukom Brčko je dobilo status Distrikta unutar BiH i službeni naziv BRČKO DISTRIKT BOSNE I HERCEGOVINE. Ono je **condominium**, tj. vlasništvo oba entiteta pod direktnim suverenitetom BiH. Dakle, arbitražnom Odlukom Brčko nije niti entitet (jer po Ustavu su samo dva entiteta), niti je kanton, kako je uređena FBiH.

Brčko Distrikt je po svojim ovlastima, stupnju samostalnosti u uređenju pravnog i gospodarskog života, daleko bliži entitetu nego kantonu. To se posebno odnosi na zakonodavnu ovlast jer samostalno donosi praktično sve zakone počevši od javne uprave do privatizacije banaka. Isto tako izvršna vlast je samostalna u vršenju svojih ovlasti utvrđenih zakonima Brčko Distrikta. Ovu samostalnost dodatno utvrđuje i uređenje pravosuđa koje ima dva stupnja (Osnovni i Apelacioni sud) i svi se sporovi (osim ustavnih) okončavaju u Brčko Distriktu. Također, tu je i samostalna policijska

struktura. Nadalje, Brčko Distrikt je demilitariziran, tako da nema stacioniranih vojnih jedinica, niti su građani Brčko Distrikta obvezni služiti vojni rok.

Još prije donošenja konačne arbitražne odluke, putem nekoliko djelomičnih odluka predsjednika arbitražnog Tribunala, Roberts R. Owena, u Brčkom je uveden posebni međunarodni upravitelj, **Supervizor** koji je ujedno bio i jedan od zamjenika Visokog Predstavnik za BiH. Praktično je imao sve ovlasti koje je imao i Visoki Predstavnik, tj. da donosi obvezujuće zakone, druge odluke, vrši smjene i postavljenja određenih kadrova, što je obilato i koristio. U ovoj arbitražnoj Odluci, a što će kasnije biti pretočeno u najviši pravni akt Brčko Distrikta - **STATUT**, ima rješenja koji nisu tipična za preostali dio uređenja BiH.

Posebno je značajan Aneks uz ovu Odluku jer se njime daju praktične upute kako formirati vlast u Distriktu. Naime, međunarodna zajednica je poučena negativnim iskustvom implementacije Daytonskog sporazuma, ovoga puta bila znatno određenija kako implementirati Konačnu arbitražnu odluku. Tako je navedeno da građani Distrikta biraju koje će entitetsko državljanstvo uzeti, za koju će entitetsku vlast glasovati, zatim: „U koliko nađe za shodno, Supervizor može kreirati i unijeti u Statut '**etničku formulu**' koja bi odvratila bilo koju etničku skupinu od namjere da poveća svoje stanovništvo u Distriktu kako bi postiglo isključivu političku kontrolu i/ili odredbu o zaštiti '**vitalnih interesa**'“. Također „etnička formula„ je predviđena i kod popune izvršne vlasti, ali i „...kako bi se među raznim etničkim skupinama osigurala odgovarajuća raspodjela radnih mjesta u javnom sektoru“, što nije slučaj s ostalim dijelovima BiH.

Tek nakon odluke Ustavnog suda o konstitutivnosti sva tri naroda na cijelom teritoriju BiH, međunarodna zajednica je počela inzistirati na popuni organa uprave, pravosuđa, policije i općenito javnog sektora po „etničkoj formuli“ što još uvijek nije korektno i konkretno provedeno. „Etnička formula“ je predviđena i kod popune pravosudnih tijela. Treba naglasiti da je ova „etnička formula“ za neke organe unesena samo u Statut Distrikta, a negdje samo u odgovarajući zakon. Iako ima određenih kritika ovom rješenju, ono je bilo nužno u sredini kakva je Distrikt (a i cijela BiH), i najbolji način da se koliko-toliko anulira etničko čišćenje. Sam Predsjednik arbitražnog Tribunala dao je u svojoj Konačnoj odluci-Aneksu, razloge za uvođenje „etničke formule“. Posebna točka Aneksa se odnosi na ustroj policije, uz naglašenu potpunu samostalnost i neovisnost od entiteta, te profesionalnost i „etničku formulu“.

X.3 Statut

Dana, 8. ožujka 2000. godine Visoki Predstavnik za BiH, Wolfgang Petritsch donio je Odluku kojom je proglasio Statut Brčko Distrikta. Ovim je praktično uspostavljen Brčko Distrikt koji **„je jedinstvena administrativna jedinica lokalne samouprave koja je pod suverenitetom Bosne i Hercegovine“** (čl.1. Statuta). Ovlast Brčko Distrikta proizlazi iz delegiranih ovlasti entiteta (prema Konačnoj arbitražnoj Odluci), iako se one u cijelosti ne podudaraju s ovlastima entiteta (npr. demilitarizacija Distrikta, pa to entiteti nisu mogli ni prenijeti i dr.) Ustav BiH i zakoni te odluke institucija BiH direktno se primjenjuju na područje Distrikta, a zakoni, koje donosi Distrikt, ne mogu biti u suprotnosti s Ustavom i zakonima BiH.

Obilježja BiH (zastava i grb) su ujedno i obilježja Distrikta.

Statut garantira ravnopravnost upotrebe dva pisma i tri jezika konstitutivnih naroda. Garantiraju se, bez diskriminacije, sva ljudska prava koja garantira Ustav BiH, zakoni BiH i zakoni Distrikta. Posebno se naglašavaju pravo na pristup javnim institucijama, sloboda kretanja i boravišta, raspolaganje imovinom, sloboda udruživanja uključujući i formiranje političkih stranaka, kao i profesionalno udruživanje.

Osnovno obrazovanje je obvezno i besplatno, dok je za srednje obrazovanje propisano da je besplatno a može biti i obvezno, što bi se propisalo zakonom. Također je Statutom propisana sloboda osnivanja privatnih škola i akademija. U školama je obvezno učenje oba pisma i sva tri jezika, s tim što roditelji imaju pravo izbora s kojim pismom će djeca započeti školovanje u prvom razredu osnovne škole. Kasnije je zakonom i podzakonskim aktima iz ove oblasti, utvrđeno, umjesto osmogodišnjeg, devetogodišnje osnovno obrazovanje te razrađeno donošenje i usuglašavanje nastavnih programa, popuna kadrovima i druga pitanja vezana za izobrazbu.

Također sam Statut propisuje besplatnu pravnu pomoć i u kaznenim i građanskim stvarima onim građanima koji to ne mogu sebi osigurati u sudskim postupcima.

Statut izričito propisuje da zapošljavanje javnog sektora mora odražavati sastav stanovništva. Loše je što ova odredba ne predviđa da zapošljavanje treba odražavati sastav stanovništva posljednjeg službenog popisa (1991. godine). Na ovaj način je legalizirano etničko čišćenje jer je silom otjerano nesrpsko stanovništvo, a povratak je maksimalno sprječavan na razne načine sve do donošenja Konačne arbitražne Odluke 1999. godine. Osim toga, svim osobama koje su se naselile na ovo područje tijekom rata, a posebno poslije rata, kada je i došao najveći dio, (reintegracijom Sarajeva u

Federaciju BiH) priznat je status građanina Brčkog. Ovo je jedna od velikih nepravdi međunarodne zajednice jer je i de iure i de facto priznato etničko čišćenje, a da tragedija bude veća, najvećim dijelom poslije rata. Da je npr. odluka bila da se zapošljavanje vrši sukladno posljednjem službenom popisu iz 1991 godine, to bi značajno pripomoglo povratku nesrpskog naroda, a istovremeno to bi bilo dobro i za cijelu BiH jer bi se srpski narod u znatno većem dijelu vraćao na područja s kojih je odselio npr. Sarajevo, Vogošća, Jajce itd. Ovo bi ujedno znatno pridonijelo vraćanju izvorne multietničnosti BiH.

Implementiranjem Konačne arbitražne odluke i Statuta, pokazala se potreba prilagodbe Statuta, tj. njegova izmjena i dopuna. Tako je do 02. veljače 2007.godine izvršeno pet izmjena i dopuna Statuta i to svih pet odgovarajućom Odlukom Supervizora za Brčko. Dakle, ni jedna izmjena i dopuna nisu donesene od strane Skupštine Distrikta, ali su organi Distrikta sudjelovali u dogovaranju rješenja koja su izmjenama i dopunama predviđena.

Ove promjene mogle bi se, generalno uzeto, svrstati u tri skupine: a) finansijsko-gospodarska oblast, b) uprava i c) pravosuđe. Budući da su vrlo znakovite za sve segmente društvenog života u Brčkom, posebno očuvanje multietničnosti i zaštite od preglasavanja, te da se preko ovih izmjena nazire i mogući model za cijelu BiH, ukratko ćemo ukazati na neke od ovih rješenja.

c) finansijsko-gospodarska oblast

Carinska i pogranična uprava koja je bila u nadležnosti Distrikta je ukinuta i prenesena na jedinstvenu državnu razinu. Brčko Distrikt participira s određenim koeficijentom u raspodjeli prihoda ubranih od strane jedinstvene Agencije za indirektno oporezivanje. Formirana je Direkcija za financije Distrikta radi ubiranja prihoda i drugih finansijskih poslova, a sastoji se od Porezne uprave i Trezora. Uspostavljena je posebna Kancelarija za upravljanje javnom imovinom, koja je isključivo odgovorna za upravljanje javnom imovinom i čiji rukovoditelj nije član vlade Distrikta. Ukoliko gradonačelnik ne popiše preporuku rukovoditelja javnom imovinom o načinu raspolaganja u roku petnaest dana i ne da pismeno obrazloženje za neprihvatanje prijedloga, ista će automatizmom stupiti na snagu.

Godišnji proračun, prije nego što ga gradonačelnik uputi Skupštini na usvajanje, mora biti usvojen od strane najmanje proste većine vlade s tim da se u toj većini moraju sadržavati glasovi gradonačelnika, zamjenika gradonačelnika, šefova odjela za stručne i administrativne poslove, obrazovanje, zdravstvo i javne poslove.

Ovdje je nužno ukazati na jednu nepravdu kojom je nesrpskom narodu na području cijele Republike Srpske, pa i u Brčko Distriktu, zaniijekano temeljno pravo na imovinu. Naime, Republika Srpska je još za vrijeme rata donijela zakon o povratu, po raznim osnovama nacionalizirane imovine (Zakon o restituciji). Zahtjevi su se podnosili u vrijeme rata i neposredno poslije rata i odmah se i vršio povrat imovine. Ove zahtjeve u 99% slučajeva su mogli podnijeti samo pripadnici srpskog naroda jer druga dva naroda su bila protjerana s područja RS, a i oni koji su ostali nisu smjeli pokretati ovo pitanje. Ubrzo nakon završetka rata ovaj zakon je stavljen van snage, (na razini BiH i Federacije BiH nikad nije ni donesen) tako da je nesrpskom narodu uskraćeno pravo i samog podnošenja zahtjeva za povrat imovine, što se odnosilo i na Distrikt.

To se odnosilo i na Crkve, odnosno vjerske zajednice, kao i razna nacionalna kulturna društva. Tako je npr. Srpskoj pravoslavnoj crkvi u Distriktu vraćena sva imovina, ali ne i Rimokatoličkoj, odnosno Islamskoj vjerskoj zajednici. Umjesto zakonskog povrata, Supervizor je donosio neka parcijalna rješenja.

d) uprava

Značajne novine unesenu su u izmijenjeni Statut u dijelu koji se odnosi na upravu i javna poduzeća, odnosno javnu upravu.

- Izmjene i dopune Statuta mogu se vršiti tročetvrtinskom većinom zastupnika u Skupštini.
- Gradonačelnik se bira iz reda zastupnika tropetinskom većinom.
- Tropetinska većina je nužna kod većine odluka Skupštine, kao što je npr. proračun, donošenje zakona, izbor i razrješenje svih osoba koje bira Skupština, suglasnost na imenovanja, korištenje veta itd.
- Gradonačelnik predlaže donošenje zakona Skupštini (osim iz oblasti pravosuđa), ali koji prethodno moraju proći glasovanje u vladi i to tako da se osigurava ne samo prosta većina nego i afirmativni glasovi zamjenika gradonačelnika (koji ne može biti iz istog naroda kao i gradonačelnik) te pojedinih resora, koji ovise od prirode oblasti koja su predmet zakona, a time se ujedno osiguravaju afirmativni glasovi sva tri konstitutivna naroda.
- Vlada mora biti sastavljena od predstavnika sva tri naroda i mora odražavati sastav stanovništva. Pri donošenju odluka u vladi se mora postići «širi konsenzus».
- Strogo je zabranjeno istovremeno obnašanje dvije ili više javnih funkcija. Precizno je reguliran je sukob interesa. Većini pozicija, koje popunjavaju službenici u državnoj upravi, zabranjeno je članstvo u političkim strankama i popunjavaju se javnim natječajem.

- Pri Vijeću ministara Bosne i Hercegovine formirana je Kancelarija koordinatora za Brčko Distrikt čiji je cilj zastupanje interesa Distrikta pred institucijama BiH.
- Javna poduzeća se osnivaju zakonom, a njihov rad nadgleda Skupština Distrikta.
- O nacrtima zakona iz oblasti obrazovanja, religije, jezika i kulture, prije nego što ih gradonačelnik uputi Skupštini na usvajanje, glasuju članovi vlade Distrikta, s tim što zakon mora odobriti najmanja prosta većina koja mora uključivati afirmativne glasove gradonačelnika, zamjenika gradonačelnika, šefove odjeljenja za stručne i administrativne poslove, obrazovanje, privredni razvoj, prostorno planiranje i imovinsko pravne poslove i raseljene osobe, izbjeglice te stambena pitanja.
- Iz komparacije izglasavanja zakona, npr. za proračun, i iz oblasti obrazovanja vidljivo je da ih ne mogu izglasati isti šefovi odjeljenja, što je potpuna novina u odnosu na rad vlada po entitetima i kantonima. Na ovaj način se dovode u ravnopravniji položaj sva odjeljenja, a time i ravnomjernije rješavanje problema odnosno da svaki šef odjela mora uvažavati jednako drugog šefa odjela (smanjuje se mogućnost „naturanja rješenja“).
- U Izbornom zakonu Brčko Distrikta također je korištena „etnička formula“. Naime, člankom 8.2. Zakona je propisano da u Skupštini ima minimalno po tri zastupnika iz tri konstitutivna naroda, a čl.8.1. da dva mandata pripadaju nacionalnim manjinama. Na ovaj način po etničkom principu već je u startu osigurano jedanaest mandata, tj. 35%, od ukupno 31. mandata. Interesantno je ukazati da Statut propisuje 29 mandata u Skupštini, a Izborni zakon 31 (29+2 nacionalne manjine). Ovo je samo po sebi sukladno europskim standardima i Europskoj konvenciji o manjinama, ali ono što je neobično, gledajući s pravnog aspekta, jest neusklađenost Zakona sa Statutom kao najvišim pravnim aktom u Distriktu.

c) **pravosuđe**

Prema Statutu Brčko Distrikt ima potpuno samostalno ustrojeno pravosuđe. Naime, Distrikt ima svoje zakone iz oblasti pravosuđa, kako materijalne tako i procesne (što npr. nemaju kantoni u FBiH, a ovo opet ukazuje da je po svojim ovlastim i uređenju bliže entitetu nego kantonu); Kazneni zakon, Zakon o kaznenom postupku, Zakon o upravnom postupku, Zakon o parničnom postupku, Zakon o sudovima, Zakon o tužiteljstvu, Pravobraniteljstvu itd. Dakle, potpuno zaokružen pravosudni sustav. Sudi se na dvije instance: Osnovnom sudu koji je sud opće nadležnosti (što je također razlika u odnosu na nadležnost i u RS i FBiH) i Apelacionom sudu koji je žalbeni sud. Nema Vrhovnog suda, niti se na odluke sudova u Distriktu može obratiti putem žalbe Sudu BiH. Ostaje jedino ustavna zaštita obraćanja Ustavnom sudu BiH, ali samo s aspekta povrede ustavnih prava i prava garantiranih međunarodnim dokumentima (konvencijama) koji su sastavni dio Ustava BiH.

Poslove ministarstva pravde vrši Pravosudna komisija Brčko Distrikta koja je sve do prije dvije godine vršila i izbor i razrješenja sudaca i tužitelja. Sada je ova nadležnost prenijeta na Visoko sudačko i tužiteljsko vijeće BiH.

Također je propisana „etnička formula“ kod popune sudaca i tužitelja, ali i kod popune administrativnog osoblja.

Brčko Distrikt je ustrojio Kancelariju za pružanje besplatne pravne pomoći građanima kojima je potrebna, a koji to ne mogu platiti, što još uvijek nisu učinili entiteti.

Procjena je da oblast pravosuđa po svojoj organizaciji, tehničkoj opremljenosti i materijalnim uvjetima za obavljanje svoje nadležnosti, jedna od najbolje provedenih reformi u Distriktu.

X.4 Primjer i pouka

Kako je naprijed rečeno, međunarodna zajednica pokušava u Brčko Distriktu uspostaviti model koji bi mogao i trebao funkcionirati u cijeloj BiH. Svakako da je to za pozdraviti, ali se nameće jedno krucijalno pitanje: koliko dugo može ovaj model funkcionirati i kako efikasno, bez međunarodne zajednice. Naime treba znati da je Statut kao najviši pravni akt, kao i sve kasnije izmjene, donio Visoki Predstavnik odnosno Supervizor za Distrikt. Mnoge zakone je nametnuo sam Supervizor, a nijedan zakon nije donesen od strane Skupštine, a da prethodno nije odobren od međunarodne zajednice. Vrlo česta su kažnjavanja zastupnika i drugih u vladi i administraciji vlade od strane Supervizora.

U ovakvim okolnostima teško je realno procijeniti istinsku mogućnost funkcioniranja pravno-političkog sustava koji je ovdje uspostavljen. Treba posebno imati u vidu materijalni element (zaposleni imaju najveći prosjek osobnog dohotka u državi), odnosno gospodarsku snagu Distrikta.

Distrikt je najrazvijeniji dio BiH, zahvaljujući upravo inozemnim investicijama i razvoju u koji se jako uključila međunarodna zajednica. Na ovom području je došlo do najveće obnove porušenih objekata i povrata imovine, ima najrazvijeniju infrastrukturu u zemlji i dr., što bi sve trebalo biti motiv trajnog očuvanja ovog modela.

Neka pravno-politička rješenja su bolja nego u entitetima, ali isto tako neka su samo dobra na papiru dok u praksi to puno lošije funkcionira kao npr. poštivanje „etničke formule“ u zapošljavanju, ravnomjerniji razvoj svih dijelova Distrikta itd., što automatski

utiče na bolji/lošiji povratak izbjeglih i raseljenih osoba, a time i trajno zadržavanje njegove multietničnosti, multikulturalnosti i multikonfesionalnosti.

Cjelovitija ocjena ovog modela bit će moguća tek nakon proteka nekoliko godina od prestanka funkcioniranja kancelarije Supervizora za Brčko Distrikt.

XI. ZAKLJUČAK

BiH je uvijek imala puno problema, ali je njen najveći problem pristup drugome i drukčijem, iz kojega se crpe motivi mnogovrsnoga sustavnoga nijekanja i kršenja temeljnih ljudskih prava, među kojima je, kako se moglo vidjeti, najizraženije kršenje prava na povratak i ostanak pripadnika manjinskih konstitutivnih naroda. Netko je rekao da je nevolja onaj instrument na kome istina svira. U BiH ima puno nevolja, zato i puno istina. Još nezavršeni rat u BiH, makar je oružje davno zašutjelo, žrtvovao je čovjeka «vrijednostima» izvan čovjeka. Nesretni rat i mnoge krive ideologije usmjerile su čovjeka protiv čovjeka i narode protiv naroda. Neki su, pošto po to, htjeli stvoriti identitete u ovoj zemlji prisvajajući i oružjem sebi ono što su nijekali drugima. To je uvijek ovoj zemlji i njezinim građanima i narodima donosilo prokletstvo umjesto blagoslova, bijedu umjesto blagostanja, pa stoga beznađe umjesto nade. Plod takvih moralnih posrtaja jest ozračje u kojemu se, na jednoj strani, osumnjičeni, ali i osuđeni zločinci veličaju kao heroji, štite ubojice, a progone svjedoci, a na drugoj, kao odgovor, cijelim se narodima nameće odgovornost za počinjene zločine, a u istovremeno se zločince iz vlastitih redova veliča kao jedine branitelje državnosti BiH. Tako je stvoreno ozračje okrenuto protiv čovjeka u kojem se vjeruje, i djeluje, da jednima može biti dobro, samo kada je drugima loše. Zato je, prije svega, potrebno ljudima ove zemlje, napose mladim generacijama, utisnuti u srca i pamet da je sreća i budućnost jednih neraskidivo povezana sa srećom drugih. Vjerujemo da čovjek u BiH nije izgubio sposobnost i spremnost poštovati drugoga, ako bi bio siguran da je to zalog i jamstvo da i on sam bude poštovan. Zato nam u ovoj zemlji treba država i njezino društveno-političko ustrojstvo koje će građani i narodi ove zemlje prepoznati kao vlastiti interes.

Takve države po mjeri čovjeka, za sada, nema u BiH. Ovdje je na djelu opća obespravljenost koja se temelji na općoj krizi društva i morala, institucija i pojedinaca. U BiH, kako je vidljivo iz Izvješća, nisu dovoljno zaštićena ni djeca, ni mladi, ni žene, ni starci jer se svima njima krše temeljna ljudska prava. Ako i postoje pravne regulative, one najčešće nisu u punoj funkciji čovjeka jer je čovjek, nego jer je pripadnik ovoga ili onoga naroda, ove ili one interesne skupine. Ovakvo stanje ne može ne uroditi negativnim posljedicama. One se već sada osjećaju u silnoj besperspektivnosti svih, a posebice mladih - u maloljetničkoj delikvenciji. Mladi kao da su svjesno od društva primorani tražiti rješenja u drogi, alkoholu, koji onda, prirodnim putem, rađaju nasiljem i kriminalom. Po svuda se osjeća nutarnja dezorijentiranost, socijalna i politička nesigurnost, duševni nemir, psihička nestabilnost, neizvjesna budućnost.

Problemi BiH su pitanja biti ili ne biti prvenstveno njenih građana i naroda, ali i vjerodostojnosti Međunarodne zajednice, posebno Europe. Koliko god nosili glavnu odgovornost, ne bi bilo pravedno svu krivicu za sadašnje stanje pripisati samo i isključivo domaćim političarima. Naime, daytonsko rješenje ostaje temeljni kamen spoticanja jer je zadalo nemoguću zadaću stavljanja pravedne slike mira i života u nepravedni i krivi političko-pravni okvir⁵⁰, kako je to neposredno nakon Daytonu ustvrdila Biskupska konferencija Bosne i Hercegovine. Stoga ponavljamo, nakon što je potpisala i zajamčila nepravično i nepravedno političko rješenje, koje je postalo trajnim izvorom trvenja među građanima i narodima BiH, Međunarodna zajednica, prije svega SAD, ne mogu „pilatovski“ prati ruke poručujući kako građani i narodi u BiH trebaju sami riješiti svoje probleme. Ova zemlja neće naći izlaza iz začaranoga kruga bez one mjere pomoći Međunarodne zajednice koju joj je dala u Daytonu. Međutim, nova mjera bi, prije svega, morala voditi računa o pravdi, barem kao idealu, jer bez pravde koja u BiH podrazumijeva pravno-politički okvir stvarne jednakopravnosti naroda i jamstvo političkih i građanskih prava svim građanima neće biti. Stoga su čudne i neprihvatljive poruke zagovaranja sadašnjega stanja prividno jedinstvene, a u biti posve nepravedno dvoentitetski podijeljene BiH. Svi pokazatelji nedvosmisleno upućuju na žurnu potrebu temeljite reforme bosansko-hercegovačke stvarnosti. U ime bolje i sigurnije budućnosti ove zemlje i njezinih građana Komisija poziva domaće i međunarodne političare da tu potrebu prepoznaju i prihvate kao vlastitu obvezu i priliku!

⁵⁰ Usp. Poslanica biskupa Biskupske Konferencije Bosne i Hercegovine „...blago mirotvorcima, oni će se sinovima Božjim zvati.“, 25. siječnja 1996. u: *Pastirske poslanice, izjave i apeli katoličkih biskupa BiH 1990-1997*, Sarajevo, 1997.