

REPORT ON THE STATE OF  
HUMAN RIGHTS IN BOSNIA &  
HERZEGOVINA IN THE YEAR 2006

**IZVJEŠĆE O STANJU LJUDSKIH  
PRAVA U BOSNI I HERCEGOVINI  
ZA 2006. GODINU**

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

Published by the German Commission for Justice and  
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and Peace Commissions.

Predloženo od Komisije Justitia et Pax Biskupske  
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**BISHOPS CONFERENCE OF BOSNIA AND HERZEGOVINA**

**COMMISSION "JUSTITIA ET PAX"**

**REPORT ON THE  
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IN BOSNIA & HERZEGOVINA  
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## INTRODUCTION

Regardless of where in the territory of Bosnia and Herzegovina (the BiH, or BH) they are situated, the citizens of this state continuously have difficulties in realizing their constitutionally guaranteed human rights. Despite it being under the specific protectorate of the international community for eleven years already, the polarized society of Bosnia and Herzegovina has not only failed to emerge from the crisis caused by the war, but this crisis has even further intensified resulting in the divisions among its three constituent groups to become even deeper.

Through the General Framework Agreement for Peace in Bosnia and Herzegovina<sup>1</sup>, as a concession to peace, the “law of the strongest” was legalized and the state of the “ethnically cleansed” areas that were established by the war, aggression and open genocide. Although some benefits relating to the end of hostilities arose from the Dayton Agreement, Bosnia and Herzegovina remained completely paralyzed especially in its economic and democratic development by the new complex and dysfunctional state organization.

The unsustainable state organization is an obstacle to the democratic, economic, and social progress of the state. For the given reasons, Bosnia and Herzegovina remain last in line of European states waiting for the desirable association with the European institutions. The unjust constitutional and legal organization and non-functioning of the rule of law, has meant that even in 2006 the largest number of citizens of this country are being exposed to utter poverty and social uncertainty. It is obvious that the international community’s project in Bosnia and Herzegovina reached a dead end and that from the very beginning it has not led to the affirmation of the high human rights standards proclaimed first of all in Annex IV and in the other Annexes to the Dayton Agreement such as Annexes VI and VII. Although the international community has been actively present at all times in our country since the end of war, it has not yet achieved the necessary minimum standard for a civilized civil democratic state.

Through the unjust solutions from Dayton which divided the state into two ethnical entities, i.e. the way that it was planned by the war lords, it prevented the creation of preconditions for the sustainable return of refugees and displaced citizens of Bosnia and Herzegovina. This same reason prevented a solution to the very complex and important issue of the relations among the three constituent groups of this country. Due to all

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<sup>1</sup> General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter the „Dayton Agreement“) was initiated in Dayton (USA) on 21 November 1995, and officially signed in Paris on 14th December 1995.

these reasons the citizens of Bosnia and Herzegovina are still suffering from general poverty and the deprivation of rights. The Dayton Agreement and the acts of the international community after the conclusion of the Agreement have failed to remove the causes or consequences of the war in Bosnia and Herzegovina. The national politicians largely contribute to this as they care only for their own benefit and interests of their parties instead of the benefit of the citizens.

# 1. SYSTEMATIC DENIAL OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA<sup>2</sup>

The thesis has spread through the diplomatic lobbies in Bosnia and Herzegovina as an anecdote on the state of Bosnia and Herzegovina. It states that there are three kinds of states in Europe namely; members of the European Union, candidates for membership to the EU and... Bosnia and Herzegovina.

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<sup>2</sup> On 14 December 2006 the Justitia and Pax Commission organized the Round Table with the topic „BiH – the structure of negations of human rights“. In the opening speech, the President of the Commission, Dr. Pero Sudar, amongst other things, stated: “This Commission decided on the given topic because of its belief that the organization of B&H does not only enable but stimulates the systematic negation of the fundamental rights of all citizens. When hundreds of thousands of individuals were brutally forced out of their life and millions out of their homes by the terror of war because of completely opposite visions of the organization of this country, the tragedy of survivors and others has continued for longer than a decade. The state of fundamental human rights in all spheres of life starting from a kindergarten to the Supreme Court, today, in this country, primarily depends on the place of residence and the ethnic origin. The project of such structurally established conditioning of the fundamental human rights is sealed by the stamp of the world that claims justice but keeps the injustice alive. I do not believe that there is an honest person in this world that does not consider the state of this country a nightmare. That is confirmed by the avalanche of symposiums, round tables, discussions, polemics, and some even speak of it as a soap opera because it never ends, and we have every right to feel tired by all of it. And while the caravan passes the hopeless situation of the largest number of citizens becomes a kind of tangible apathy. Any effort towards a different path even strengthens the feeling of helplessness. Regardless of that, or even more because of that, it seems necessary for us not to give up efforts to find an acceptable solution. Notwithstanding the success or the lack of it, is not and cannot be the same whether we speak or be silent on some phenomenon in the society. That is especially the case with the state of injustice!

It is more and more obvious that no one will or could determine help to this country and its citizens and people if the decisiveness and strivings of national forces fail to happen. A very important question is, therefore, whether, after all that has happened, there is enough strength to believe that the solution exists and enough prudence to search for it? It is said that there is no individual or nation or society that does not have its, often hidden, acceptable part. It is recognized and used for the common good only by the rare individuals who have enough patience and motive to understand and in certain measure tolerate the other ugly and intolerable part of it. I am afraid that that is the chest in which the key is hidden for the possible recovery of the society of Bosnia and Herzegovina. I strongly believe that people in Bosnia and Herzegovina have enough brains and strength to help them. Justitia and Pax Commission would like to participate and give its contribution in finding all that is positive and acceptable in and amongst all of us so that this country would become the place for reconciliation of differences and respect for human rights for all of us equally. “ The opening speaker Prof. Dr. Asim Mujkić stated: “No state may be a candidate for legitimacy if it systematically oppresses the dignity of a free citizen, if, on the constitutional basis, it not only lives off the parliamentary crises caused by the nationalism but it generates crisis by its form that prevents any kind of rational state organization showing continuous lack of need to act in the direction of 'common good'. In Bosnia and Herzegovina, the humiliating ethnic maltreatment of citizens is at issue and it is performed by the ethnic politics joined around so called “national parties” and the representatives of the international community, which is legalized by the Constitution with the devastating realization that the Dayton Bosnia exists on the basis of the worst kind of discrimination based upon the collective characteristics of ethnic origin constructed as biological where notorious right of peoples to self-determination totally exterminated the other civilizing older right, the right of a citizen to self-determination. The story of the Dayton Bosnia is the story on what happens if the right to self-determination of an individual is subjected to the right of self-determination of a nation, and if, only from the context of collective right, individual rights and freedoms may be deducted and implemented.”

Although it is only an anecdote, unfortunately, we cannot escape the impression that this statement is closer to the truth than to a joke. But what is the truth in Bosnia and Herzegovina? It appears that everyone has some truth of his own. The manipulations of national and international politicians of “truths” in Bosnia and Herzegovina is endless but still we do not even have the basic information which would precisely show the consequences of the war. For example, we still have no idea as to the exact number of people wounded and killed during the war, the new demographic structure of citizens, the amount of material damage, etc. Additionally, despite the war having ended a long time ago a basic census has still not been conducted.

It would only be proper to finally determine the amount of people who were wounded and died, the amount war damages caused as well as to see what is left at the disposal of this state. Such a census, however, is not favoured by the Serbs because it would point out the crushing results of the ethnic cleansing and genocide which they were responsible for. Additionally, the census would also show the unacceptably insignificant representation of Bosnians and Croats in the Republika Srpska. The Croat political representatives are afraid that the devastating results of the war, may have halved the number of their national body in Bosnia and Herzegovina and would have a detrimental effect in their political participation in future solutions. Politicians who represent the Bosnian people are mostly afraid that a basic census and analyses of the war effects would shake the political perception of Bosnians – Muslims as the exclusive victims of the aggression as they strive to present this at an international level as a thesis of their nation. At the same time, the Office of the High Representative (the “OHR”)<sup>3</sup> which has been in effect for already eleven years, and is also the highest power in Bosnia and Herzegovina, is the one which would least of all favour a thorough census of the population and its assets as this would finally draw attention to the failed projects of reconstruction and return. It is indisputable that the OHR, within the legislation of the Bonn powers<sup>4</sup>, could prescribe such a census by a simple act but it has not done so as this would also put forward the question of where vast financial assets are which were invested in this country by the international community.

Thus, it is obvious that it would not suit the OHR or the prevailing national politicians to establish the truth as a precondition for transformation of Bosnia and Herzegovina into a civilized, democratic state.

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<sup>3</sup> OHR - Office of the High Representative;

<sup>4</sup> By the Venice Commission’s decision issued on the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, the OHR was given broad powers of intervention into the all pores of the BH society (legislative, executive and judicial authority) that were used in abundance by the predecessors of the current High Representative, Christian Schwarz-Shilling. The German diplomat Schwarz-Shilling took over the duty of the High Representative in Bosnia and Herzegovina from the British Lord Paddy Eshdown on 31 January 2006, and he is the only one in that function who really used the broad Bonn powers to interfere with the work of national institutions.



With regard to the credibility of historical, sociological and political science presentations of the truth it may be stated that Bosnia and Herzegovina is a fairly invalid and morally disabled country. Media in Bosnia and Herzegovina are on a day to day basis full of partial interpretations of war events and assumptions regarding the number of people killed and the numerous lies or half-truths of the events that determined the fate of the Bosnia and Herzegovina citizens. Interested politicians and quasi- intellectual elite have spread such "information" most often for the purpose of national homogenization of their own people, in order to make them feel threatened by everything and everybody that is different. Behind all of this most often stands the interests of the elite in question that is, the preservation of the existing state of separation and disagreement. It is clear that, eleven years after the end of the war, that neither the political elite of all three groups in Bosnia and Herzegovina nor the international community have in mind the well-being of the people, i.e. to finally overpower the atmosphere of hostility and uncertainty, and to start building a better future for all citizens.

The escribed social environment keeps all citizens of Bosnia and Herzegovina under the impression that the war has never ended. One thing is certain, the assumptions of the amount of victims during the war and quasi- interpretation of war events for current political purposes and more and more present manipulation with the human tragedy by the media, has meant that individuals and their personal sufferings are being forgotten. In this report, our goal is not to present some "truth" of our own but to focus on the rights of these individuals which have been forgotten in a way, and who completely realize his/her own un-repeatability by the recognition of their personal, religious and ethnic disposition. Such total affirmation of a human being as an individual in a layered society such as Bosnia and Herzegovina is possible to achieve only under the hospices of a pluralist democratically organized society and a pluralist (multiethnic, multi-confessional and multicultural) society is the unavoidable destiny of complex states such as Bosnia and Herzegovina.

## 2. EVENTS THAT MARKED THE YEAR 2006

Almost any interference and especially that of a non-democratic nature, in the political and social system of a state, unavoidably impacts the state of human rights and civil freedoms of that state. In Bosnia and Herzegovina it is additionally interfering with the equality of its people. It, therefore, appears necessary to us to at least mention the events that directly influence the level and quality of human rights and position of the constituent groups.

### 2.1. The Attempt of the Constitutional Amendments Implementation

During 2005, until the last days of March 2006, the attempts of amending the constitutional and legal organization of Bosnia and Herzegovina were an issue. Negotiations started under the hospices of the American Peace Institute, and the main administrator of the negotiation among the political parties project was the former Deputy of the High Representative in Bosnia and Herzegovina, the American diplomat Donald Hays. Under certain pressure, all political parties of importance from both entities participated in these negotiations<sup>5</sup>.

Negotiations were held in secret and without any media presence. Since the Dayton Constitution had never been ratified by the Parliamentary Assembly of Bosnia and Herzegovina, the aim of the political pressure of the international community (especially the USA) was to legitimize this international, constitutional and legal document, under the mask of cosmetic constitutional amendments that would be harmonized and adopted through parliamentary procedure. In this way, besides the Annex IV, the legitimacy and form of the constitutional will of all three constituent groups would be given to the direct intervention in the constitutions of entities<sup>6</sup> and also to a number of legislations on the level of the state that had been imposed in the meantime by the international community. At its session in Mostar on 22 March 2006, the Bishop's Conference expressed its negative position towards the proposed amendments<sup>7</sup>.

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<sup>5</sup> The SDA, SBiH, SDP, SDS, SNSD, PDP, HDZ of BiH and HNZ parties participated in the final negotiations. Only the SBiH gave up negotiations in the end and the representative of the HDZ did not sign the final Agreement.

<sup>6</sup> Decisions of the High Representative Wolfgang Petritsch on the amendments to the Constitution of the FBiH and the Constitution of the RS, nos. 161/02 and 162/02 of 23 May 2002 were published in the Official Gazette of B&H no. 13/02.

<sup>7</sup> Statement of the Bishop's Conference of B&H state as follows: "Following the course of negotiations on the amendments of the Constitution of B&H through the period of several months, we, the Catholic Bishops in B&H have to conclude with regret that the modification of this fundamental document of

Pressure imposed by the International community has not bore fruit even though a final agreement was reached among six political parties because the session of the House of Representatives of the Parliament of Bosnia and Herzegovina of 26 April 2006 did not give the necessary majority of votes to the proposed package of constitutional amendments.

At the beginning of 2006, the given episode of the political life of Bosnia and Herzegovina was the main topic in the country's media raising a lot of discussions and as a result it pointed out the immaturity of democracy and the non-existence of professionalism in the political scene of Bosnia and Herzegovina. While Serbs show that they have harmonized positions focussed towards close protection of their interests, the credibility, inconsistency and irresponsibility of politicians in the Federation of Bosnia and Herzegovina that were supposed to represent the interests of their people, was expressed in the fact that under the political pressure the Agreement on Constitutional Amendments was signed by leaders of the biggest ethnic parties of Croats and Bos-

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statehood and democracy of our country has been performed in a non-democratic and almost conspiracy manner. We asked ourselves, and we now ask the organizers and participants of negotiations on the amendments to the Constitution, how and with whose authority they are changing the International Peace Agreement from Dayton without participation or consent of all the signing parties and without asking the opinion of the citizens of this country? Since when are international agreements not changed at least in the same manner in which they were originally made? Having in mind the agreement, as the result of negotiations conducted in such manner, we rightfully fear that it represents a direct threat to a better future and the equality of citizens because this constitutional category would confirm the ethnic cleansing realized by the war and legalized by the Dayton and unjust division of B&H as well. Thus, is it not possible to ask, in a critical moment of such importance in our country, in the name of what democracy and justice and future of B&H, the entity principle of deciding in the House of Representatives is introduced (Article IV, para. 10 f), and by what constitutional category the destiny of this country is put in the hands of delegates of two people that are the only ones to secure "one third of delegates or members from the territory of each of the entities"?

*We deeply regret that our numerous appeals remained fruitless during ten years of "silent review" of the Dayton Agreement establishing unfair division of B&H and systematic degradation of the Croat people to the level of minority. Even so, we are unable to do anything else but ask by what principle of democracy the Croat people, who are a constituent group in this country, are deprived of their fundamental right to participate on equal grounds in the political life and adoption of legislation with the other two constituent groups? Who has an interest in bringing to question the possibility of coexistence of its people in this country and notifying that there is no place in it for all of its citizens and people?*

Because of this, in this moment crucial to the future of the Croat people and B&H we invite the representatives of the Croat people, all authorized politicians and other people that have the multi-ethnicity and democracy of this country in their heart to do everything possible to prevent constitutional amendments as prepared currently to get the parliamentary confirmation, all of it with the common good and democratic principles as a leading point.

*We would like to note that ten years of experience and quality of the "first phase" of constitutional amendments give no guarantees that in some "second phase" anything better could and would be done. The fear that the acceptance of proposed amendments would open the way for annulment of the remaining Washington-Dayton mechanisms protecting the interests of Croat people such as Cantons and vital national interests has its grounds. If, notwithstanding guarantees of the Dayton Agreement, the Croats in B&H cannot even have their television channel or schools in Croat language, these are the clearest signs of what standards we should be dedicated to at the beginning of the third millennium!*

As Catholic bishops and members of the Croat people, we maintain the encouragement of our believers to stand up with determination for their inalienable rights and to build a just peace in this country *together with all others.*"

nians<sup>8</sup>, although such an agreement would totally cement and worsen the already discriminatory position of both their people in the Republika Srpska (the RS) and of the Croats in the whole territory of Bosnia and Herzegovina. Thus, by signing the agreement the political representatives of Croats and Bosnians gave consent to finally cement the solution given in Dayton which gave them no possibility of being a constitutive group in the territory of the Republika Srpska. In addition, by the constitutional amendments imposed in 2002 the discrimination of Bosnians and Croats in the RS was confirmed and the Croats lost their position as a constitutive group in the FBiH.

This is to say, the agreement on amendments to the Constitution of Bosnia and Herzegovina harmonized by six political parties contained the amendments that would worsen the position of Croats with regard to the catastrophic constitutional solutions made in 2002.

Thus, under the political agreement on the constitutional amendments of 2006, the competencies of the House of Peoples as the upper house of the Parliamentary Assembly of Bosnia and Herzegovina would be reduced and the House of Representatives would get more importance and in it the Croats cannot in any way realize the majority and in such a way protect their own interests, i.e. block the issuance of laws that are detrimental to their interests. On the other hand, such a solution would enable Serbs and Bosnians to protect their interests through the entity voting because they could stop the issuance of laws through the provided entity majority in the House of Representatives.

The above mentioned amendment, is however, in fact of no fundamental importance since under the existing constitutional solutions when the Parliamentary Assembly of Bosnia and Herzegovina is deciding, the entity voting exists that is temporarily transferred to the House of Peoples of Bosnia and Herzegovina, where the Croats, by the majority vote of their representatives, may initiate the protection of their vital national interest<sup>9</sup>. Thus, the initiation of the institute of the protection of the vital national interest through the House of Peoples of Bosnia and Herzegovina in the meaning of the applicable Article IV(3)(e) of the BiH Constitution has a restricted character because if one of the remaining to people objects the request for protection of the vital national inter-

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<sup>8</sup> The president of the party, HDZ of BiH is Dragan Čović and the president of the SDA party is Sulejman Tihić – both of whom were former members of the Presidency of BiH. At the previous general elections of 2002 the HDZ of BiH obtained almost complete plebiscitary support of the Croat people, while the SDA then had the position of the most influential Bosnian political party with the largest number of representatives in the parliament.

<sup>9</sup> The House of Peoples consists of five Croats, five Serbs and five Bosnians, and the procedure of protection of the vital national interest may be initiated on the basis of a request by the majority of delegates regardless of their ethnic origin.

est, the disputed decision is transferred to the Constitutional Court of BiH for a decision. Since the quorum of the Constitutional Court of BiH consists of at least five judges<sup>10</sup>, two judges of ethnic origin of the people who claim protection of the vital national interest may always be outvoted, as it already happened in 2006, so that the effective protection of vital national interest does not exist in practice.

The fact is that by diminishing the powers of the House of Peoples in accordance with the signed political agreement, the right of veto of the group that is the least in its number would be limited in the decisions of the parliament. However, since the Croats are already not in the position to block decisions through the entity vote or through the institute for protection of the vital national interest, these amendments may be assessed as cosmetic ones and initiated with the aim of legitimizing the existing solutions through the BiH Parliamentary Assembly's procedure. In this manner, Bosnia and Herzegovina would definitely be divided not only between two entities but also between two people.

Negotiations on the constitutional amendments cleared to the bone all the hypocrisy of the Croats and in a certain measure of Bosnian politicians in power in Bosnia and Herzegovina who, by putting signature to such an agreement, put their small private interests before the crucial interests of the people they represent.

In the attempt to make the constitutional amendments we have to mention a positive factor, that is, that the politicians of both entities, under strong pressure, agreed on something. This is another confirmation that the international community representatives may efficiently influence the national politicians. As the modification to the constitution is a condition for normalization of the situation in Bosnia and Herzegovina and its association to the EU, the hope and suggestion remains that all international and national factors maintain their efforts to find a fair political solution for this country.

## 2.2. The Law on Defense of Bosnia and Herzegovina

Upon the adoption of the Law on Defense of BiH in 2003, its gradual implementation was finalized on 1 January 2006 when the entity ministries of defense were closed and the system of mandatory military serving ceased.

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<sup>10</sup> In accordance with Articles VI(1)(a) and VI(1)(b) of Annex IV to the Dayton Agreement (the Constitution of Bosnia and Herzegovina), the Constitutional Court of Bosnia and Herzegovina has nine members of which two are from each of the constituent groups and the remaining three are appointed by the President of the European Court of Human Rights. The quorum for the adoption of decisions represents the majority of all members of the Court, thus, at least five members (judges) and two judges of Croat origin cannot get the necessary majority in any case.

New army forces consist of 10 000 members that are exclusively professional staff. The active military reserve is restricted to the half of the active military forces number. The application of the unique state budget for the defense started on 1 January 2006. It is provided that the complete reform of the defense in Bosnia and Herzegovina should be finalized before 31 December 2007.

This reform established the unique army defense system at the state level; although the Annex IV to the Dayton Agreement prescribes that the defense is under the competence of the entities<sup>11</sup>. It must be noted, therefore, that this law as many others imposed by the OHR, has not been harmonized with the BiH constitution or the entity constitutions of the FBiH and the RS. However, the reform of the defense may be assessed as completely rational and necessary because it decreases unnecessarily high budgetary expenses made by the ministries of defense of both entities. Also, the joint army at state level is a prerequisite to our joining to the NATO pact.

### 2.3. The VAT LAW

In Bosnia and Herzegovina the application of the Value Added Tax (VAT) Law started on 1 January 2006. This law introduced a 17 percent VAT flat tax rate on all products. Many anticipated that the introduction of VAT under the flat rate would cause a substantial increase in prices, and thus also social turmoil. The fact is that the increase of prices did occur and that the social status of the largest part of the population in Bosnia and Herzegovina worsened but it may be concluded that a larger scale of social turmoil did not occur.

Of course, we should not avoid the positive effects of the VAT introduction. According to the data of the Indirect Tax Administration, 4.109 billion KM<sup>12</sup> was collected on the basis of the indirect tax in 2006. For the first time in the period of the last eleven years the foreign trade deficit of BiH was reduced from 7.5 billion KM to 5.9 billion KM. Unfortunately, the fact remains that the introduction of VAT has not helped to eradicate the generally spread "gray market" in Bosnia and Herzegovina.

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<sup>11</sup> Competences of the Federation of BiH in the area of defense are derived from Article III (1)(b) of the Constitution of the FBiH. Article III (1) of the Constitution of BiH prescribes competencies of the institutions of the State of B&H amongst which the competences of the State in the defense area are not prescribed while Article III (3)(a) provides for: "All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities".

<sup>12</sup> Fix rate is KM 1.00 ca. EUR 0.51

Nevertheless, the taxation system under the flat rate of VAT cannot be assessed as socially fair because it mostly influences population groups that are socially the most threatened. It is illogical and unfair to equally burden with taxes the luxury products and the essential foodstuffs under a flat rate. The assessments show that in the structure of expenditure of the most threatened population groups in the BiH food amounts to 50 to 70 percent of monthly costs. The price increase of the essential foodstuffs<sup>13</sup> thus additionally aggravated the already impoverished majority of the population, while the rich classes of society have gained more from such tax reforms because the luxury tax has been decreased by the introduction of the flat rate taxes. We estimate that for the sake of the social fairness it is necessary to introduce the taxation system with a number of different tax rates within a certain period of time, and it would be preferable that the essential foodstuffs, books, baby care products etc. would have a zero value added tax rate.

As the VAT does not flow to the treasuries of entities<sup>14</sup> but rather to the state treasury as of 1 January 2006, the serious problem with the introduction of the unique VAT system at the state level represents the non-existence of the agreement on the criteria of the funds allocation between the Federation of BiH, the Republika Srpska and the Brčko District of Bosnia and Herzegovina, which resulted in the blocking of the unique account on several occasions during 2006. If the issue of the VAT fund allocation is not systematically solved it could become the cause of a constant fiscal crisis in the whole territory of the country in the future.

Finally, it is necessary to emphasize that the tax reform in Bosnia and Herzegovina has not been harmonized with the constitutional solutions as well, which indicates the disorganization of the state legal system of Bosnia and Herzegovina. It is completely clear that the tax reform should have been conducted as a matter of necessity. This example, as many others, indicates the necessity of the restructuring of the constitutional and legal organization of Bosnia and Herzegovina.

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<sup>13</sup> The majority of basic living food was taxed according to the previous tax system under the 10 percent rate (Tb-1 of the turnover tax).

<sup>14</sup> The turnover tax on goods and services was the revenue of the entities and the District of Brčko before the introduction of VAT, and in the sense of Annex IV to the Dayton Agreement the authority in the area of tax collection also belonged to the entities.

## 2.4. Negotiations on the association of Bosnia and Herzegovina to the European Union and admission to the Partnership for Peace

On 25 January 2006, Bosnia and Herzegovina commenced its technical part of negotiations on the association to the European Union. At the beginning of December 2006 the technical part of negotiations ended with the signing of the Agreement on Stabilization and Association to the EU. However, the EU insists on the implementation of the PBS reform and police restructuring<sup>15</sup> that are currently representing the biggest obstacles on the BiH's road to Europe.

After not being admitted to the NATO's Partnership for Peace Programme<sup>16</sup>, the green light for Bosnia and Herzegovina was given on the NATO Summit held in Riga on 28 November 2006. Upon finalizing the defense reform, Bosnia and Herzegovina signed the framework document for the Partnership for Peace but it still does not guarantee Bosnia and Herzegovina its permanent and full (valid) participation.

## 2.5. Decision on non-compliance of the entity symbols with the Constitution

Deciding upon the appeal by the Bosnian member of the presidency of Bosnia and Herzegovina, the Constitutional Court of Bosnia and Herzegovina, at its session held on 31 March 2006, issued the decision that the entity symbols of both entities and provisions of the entity legislation on the coat of arms and flag<sup>17</sup> were not in conformity with the Constitution of Bosnia and Herzegovina. The decision was issued in the sense of a previous Constitutional Court's decision that all three people are constituent in the whole territory of Bosnia and Herzegovina<sup>18</sup>.

Although the Constitutional Court of BiH gave a time limit of six months for the entities to bring their legislation in line with the decision, until the end of 2006, both entities

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<sup>15</sup> The police reform that should, according to the directions given by the OHR, be performed at the regional level (and not on the entity level as before) has started in 2005 but the implementation in 2006 remained completely blocked by the authorities of the Republika Srpska.

<sup>16</sup> At the NATO summit held on 28 June 2004 in Istanbul, Bosnia and Herzegovina was not accepted to the "Partnership for Peace" primarily because of its failure to fulfil its obligations towards the Haag Tribunal for War Crimes. On that occasion the NATO leaders especially pointed out, as the reason for not accepting us, the obstruction by the RS to cooperate in the arrest of the accused for the war crimes. Radovan Karadžić and Ratko Mladić have not been arrested and brought before justice to this date.

<sup>17</sup> The initiation of the procedure on protection of vital national interest implied simultaneous contesting of the Law on Holidays of the RS.

<sup>18</sup> The politics was that in the RS, exclusively the Serbs were a constituent group and in the FBiH only Bosnians and Croats were constituent groups until the said decision of the Constitutional Court of BiH in the case no. 5/98 of 30 June and 1 July 2000.



failed to do so within the given time limit and that clearly indicates to the non-existence and non-functioning of the rule of law in Bosnia and Herzegovina.

## 2.6. The Law on PBS of BiH and assessment of conformity of the Law of PBS on the FBiH with the Constitution

On 5 January 2006, the law on PBS of Bosnia and Herzegovina entered into force regulating the Public Broadcasting Service of Bosnia and Herzegovina.

At the 43<sup>rd</sup> session of the House of Peoples of the Parliamentary Assembly of BiH, held on 29 June 2005, the draft law on the PBS of BiH was adopted in the first reading without a single vote by the Croat caucus and in that manner the initiative was started for the adoption of this law. The law was passed through the legal procedure of the Parliamentary Assembly of BiH after the issuance of the decision of the Constitutional Court of BiH in the case no. U-10/05 of 22 July 2005. This decision dismissed the appeal by the Croat parliamentary representative for the protection of the vital national interest in relation to the new legislative solutions in the area of the public media. In accordance with the said decision of the Constitutional Court of BiH, the parliament of the Federation of BiH was obliged to harmonize the Entity Law on the PBS of the Federation of BiH and in that sense the new bill of entity law was prepared and entered in the parliamentary adoption procedure.

The draft law on the PBS of the Radio and TV Service of the Federation of Bosnia and Herzegovina (the "PBS FBiH") entered into proceedings of assessment of its conformity to the constitution at the proposal of the Croat caucus and it was conducted before the Council for Protection of Vital National Interest of the Constitutional Court of the FBiH. The same as in the proceedings conducted before the Constitutional Court of BiH, the initiative was made because Croats, as a constituent people, have no public media in the Croat language or appropriate presentation time in the programmes of media of the FBiH (the same as at the state level)<sup>19</sup>. The procedure of protection of the vital national interest was initiated because the given draft enables full domination of Bosnians in the media presentation in the Public Radio and Television Services of the FBiH.

Regardless of this fact the Constitutional Court of BiH issued the decision on 22 July 2005 confirming that the draft law on the PBS of BiH is not destructive to the vital in-

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<sup>19</sup> In the FBiH the Croats have no public television station in Croat language, and no funds are delegated out of the budget of the FBiH to finance any radio station in this group's mother's tongue. In the RS only the media in Serb language functions.

terest of the Croat people<sup>20</sup>, the Constitutional Court of the FBiH established in its additional decision of the Panel of the Constitutional Court FBiH in the case no. U-11/06 of 19 July 2006 that in the said Law there is a violation of vital national interest, i.e. that it is destructive to the interests of Croats in BiH<sup>21</sup>. A paradox that the Constitutional Court of the FBiH adopts the decision contrary to the previous decision of the Constitutional Court BiH arises not only from the disharmony between the Constitutions of entities and the Constitution of BiH (Annex IV to the Dayton Agreement)<sup>22</sup>, but also from the fact that under the provisions of the Constitution of the FBiH the possibility of over-voting of judges from one group in the procedure of assessment of destructiveness of certain laws on the vital national interest does not exist.

It is undisputable that the decision of the Constitutional Court of BiH of 2005 meant that the interest of Croats as a constituent group was circumvented although its legitimate parliamentary representatives clearly expressed their thoughts on that issue.

All of this is a consequence of unfair constitutional legal organization imposed by the international community in Dayton and confirmed in a different form in 2002. In this constellation of relations, the RS is established as the entity of only one group where the Serbs are the exclusive holders of power, while de-constitution of Croats in the Federation of BiH was finalized through the constitutional amendments imposed by the

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<sup>20</sup> The decision of the Constitutional Court of B&H of 22 July 2005 (according to which the laws of entities in this area should have been harmonized) was published in the OGBiH no. 64/05 of 19 September 2005 (pages 5110 - 5117).

<sup>21</sup> We quote a part of the reasons for the decision of the Constitutional Court of the FBiH in establishing the violation of the vital national interest of the Croat people as follows: "And it is for this reason that the principle of the programme is the basic principle which is crucial for the functioning of the Public Radio and Television Broadcasting Service (the PBS) of the Federation of Bosnia and Herzegovina and in that part it is necessary to clearly establish the legal instruments of protection for all three constituent groups and citizens in such a way that any possible favouring of any ethnic group and thus also to prevent any discrimination with regard to the equal use of language and script, respect of national, regional, traditional, religious, cultural and other particularity of the constituent people and all citizens of Bosnia and Herzegovina. To substantiate this claim we have standards of the European Court for Human Rights and the principle of the rule of law, that the bill of law must contain clear and precise statements and the legal consequences have to be certain and appropriate to the needs of those that *will apply them which does not follow from the proposed draft law... Also, the protection from over-voting by one of the constituent groups in the issuance of decisions has not been secured..., because under Article 24 of the draft law any decision may be passed by two members of the Steering Board of the PBS of the FBiH..., where the vote of the Chairman is the casting vote. In such situations the decisions of the Steering Board do not guarantee full equality established by the stated Article of the draft law, which is guaranteed by the Amendment XXVII to the Constitution of the Federation of Bosnia and Herzegovina. Namely, according to the draft law the decision may be passed by two of the members of the Steering Board meaning the representative of one group and one of the others which puts in the unequal, discriminatory position the representatives of the other two groups and in that sense no effective legal protection exists..."*

<sup>22</sup> The Constitution of the Federation of BiH was passed on 30 March 1994, and it was harmonized on the basis of the Washington Agreement signed on 18 March 1994. Therefore, the Constitution of the FBiH is older than the Constitution of BiH (Annex IV to the Dayton Agreement) since the Dayton Peace Agreement was initiated on 22 November 1995 in Dayton - USA, and signed on 14 December 1995 in Paris.

high representative in 2002. After the OHR's constitutional reform the Institute of Protection of the Vital National Interest remains the only instrument of protection of the constitutive position of Croats<sup>23</sup>. Systematic discrimination of Croats as the least in numbers amongst the constituent groups in Bosnia and Herzegovina primarily follows from Article IV(3) of Annex IV to the Dayton Agreement in the sense of which the Croats as a constituent people in Bosnia and Herzegovina cannot block issuance of decisions in the Parliamentary Assembly of BiH through parliamentary procedures, as it was previously described. In accordance with the previous elaborate on the constitutional solutions in this case the Croats have been over-voted in the Constitutional Court of BiH as well.

The decision of the Constitutional Court on the PBS of BiH of 2005 clearly shows that the protection of the vital national interest, as the only remaining instrument of the protection of the constitutive position of the Croats, cannot be realized through the Constitutional Court of BiH because in this highest body of the judicial authority decisions are passed by the majority of votes of the members of the Court where two of the judges that are elected from the Croat people are not in the position to block the assessment of destructiveness of any piece of legislation or decision for the vital interest to the people they belong to and well known practice is that in all bodies and at all levels of the authorities, ministers, representatives and even members of courts mainly vote in accordance with the interests of the people they belong to or the party that appointed them.

It is clear that existing constitutional solutions from Dayton and the solutions imposed after that, in themselves negate the constitutive position of the Croat people. This is because even the assessment of all Croat parliamentary representatives on the destructiveness of the proposed draft law on the PBS of BiH and the assessment of both judges of the Constitutional Court of BiH of Croat origin show that the law is detrimental for the

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<sup>23</sup> This is to say, amendments of the entities' Constitutions imposed by the OHR in 2002 defined that the protection of vital national interests in the FBiH be realized in the House of Peoples and in the RS in the Council of Peoples (bicameral entity legislative bodies). The House of Peoples of the FBiH has all the competences possessed also by the House of Representatives of the FBiH while the Council of Peoples in the RS has insignificant competencies in relation to the National Assembly of the RS. As well as in the legislative deprivation of the constitutive status of Croats has been performed in the executive authorities of the FBiH. Since 2002 the government of the FBiH has been composed of the president of the government, 8 ministers of Bosnian origin, 5 ministers of Croat origin and 3 ministers of Serb origin. Besides the six ministers mentioned here, the president of the government of the FBiH may appoint from the Bosnian people one minister from the "others". Such appointment may not be made, according to the OHR's amendments, by the representatives of the executive authorities of Croat or Serb origin. The OHR's decision suggests that the president of the government must be Bosnian. With the additional vote of "others" (exclusively appointed by Bosnians) Bosnians in the FBiH are enabled to realize majorisation in relation to other two groups in the executive authority and the Serbs are in the same position in the RS.

vital national interests of Croats and were not enough to block the issuance of the law that negates the constitutive rights of Croats.<sup>24</sup>

This example clearly shows that the state legal organization from Dayton, amended by unilateral decisions of the OHR does not contain mechanisms for protection of constitutive position of the people that are smallest in number in Bosnia and Herzegovina. On the contrary, this example clearly indicates that the Croats in Bosnia and Herzegovina are subjected to the minorisation by the majority and that de facto they no longer possess instruments to preserve relevant political subjectivity of their constituent people. The right to media in the national language (mother tongue) is guaranteed in the democratic world to all national minorities. To the Croats, that are said to be a constituent people in Bosnia and Herzegovina, are systematically denied such rights even through the institution of the Constitutional Court of BiH. All of this is the consequence of unjust social organization that was tailored by the international community in and after Dayton.

## 2.7. General Elections

On 1 October 2006, fourth post war elections were held at all levels of authorities except at the level of municipalities as the smallest territorial units of local self-government.

The following were elected:

- Members of the Presidency of Bosnia and Herzegovina (one member from each of three constituent groups),
- Delegates in the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina (42 delegates),
- Delegates in the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina (140 delegates),
- President and Vice-presidents of the Republika Srpska,
- Delegates in the National Assembly of the Republika Srpska (83 delegates) and
- Delegates in the Cantonal Assemblies of the Federation of Bosnia and Herzegovina (ten Cantonal Assemblies).

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<sup>24</sup> By the separate dissenting opinion, both judges of the Constitutional Court of B&H appointed from the Croat caucus expressed their position that the said law is detrimental to the vital national interests of the Croat peoples. Their separate dissenting opinions stating their disagreement with the decision of the majority of judges were published in the OGBiH no. 64/05 of 19 September 2005 (pgs. 5118 - 5119), immediately after the disputed decision of the Constitutional Court of BiH no.U-10/05.

Of the 2.755.207 registered voters in BiH, in the territory of the whole country approximately 55%<sup>25</sup> voted, which is a substantial increased number in relation to the last general elections held in 2002.

The results of the election indicated that the traditionally most represented nationalistic parties in Bosnia and Herzegovina had the worst results ever. In the Federation of BiH, this was primarily the result of disgracing of the Bosnian SDA and Croat HDZ of BiH, in which they participated during the previously described negotiations on the constitutional amendments. Also, the results of recent elections have been indicating that a new political scene is appearing in Bosnia and Herzegovina with larger number of parties that have achieved the status of parliamentary politic parties.

A number of interesting analyses could be made with regard to the results of the general elections of 2006 but we will only concentrate on two segments in more detail.

In the Republika Srpska, the party with traditionally the best results, the SDS, lost its first position to the SNSD with, for Serbs, the charismatic political leader Milorad Dodik. He succeeded in the election campaign as being shown as the best protector of the Dayton Republika Srpska. In addition, in the elections for delegates in the Parliamentary Assembly of BiH from the RS (which is one third of all members) the SNSD got 46,93 percent of the votes (7 mandates) while the traditionally most strongest SDS party obtained only 19,44 percent of the votes. On the catastrophic results of the implementation of Annex VII to the Dayton Agreement<sup>26</sup> relating to the return of refugees and war displaced people best evidence is given in the information that the best result from the nationalistic parties from two other non-Serb constituent groups was realized by the Bosnian Party for BiH (the SBiH) that obtained 4,16 percent of the votes (1 compensation mandate), while the best result of the Croat parties was realized by the HSP Đapić – Jurišić and the NHI – coalition for equality with 0,88 percent of the votes (no mandate). Information that Bosnians, i.e. all non-Serb candidates in the elections succeeded in obtaining two compensating mandates from the total number of 14 for delegates from the RS and that the Croats have no political representative from the Serb Entity that consists of 49 percent of the territory of BiH. This indicates that Croats as a constituent group in BiH have almost disappeared from that entity after the war while the Bosnians returned in a really insignificant ratio in relation to the pre-war demographic situation<sup>27</sup>.

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<sup>25</sup> According to the incomplete information 53,93 percent of voters voted in the FBiH, 56,11 percent of voters voted in the RS, and 45,76 percent of voters voted in the District Brčko.

<sup>26</sup> At the beginning of 2004, the international community announced that the implementation of Annex VII "is successfully finalized with 31 December 2003".

<sup>27</sup> After the war a census has not been conducted to obtain exact data. According to information by the Catholic Church, before the war, approximately 220 000 Croats (Catholics) lived in the RS and cur-

It is interesting to draw conclusions from the results of the elections for the members of Presidency of BiH to obtain clear conclusions on the position of the Croat people in Bosnia and Herzegovina. In accordance with the BiH Constitution, the highest executive body at the state level consists of three members, one from each of the three constituent groups. Leaders of nationalistic parties won the elections among Bosnian and Serb people. Haris Silajdžić, candidate of the SBiH with the programme of unitarist citizens' BiH, and Nebojša Radmanović, candidate of the SNSD with the programme of strengthening the RS position with the election campaign programme that used the threat of a referendum and propagation of the right of secession of the RS from Bosnia and Herzegovina.

The candidate of the SDP party, Željko Komšić<sup>28</sup> was elected as the Croat member of the presidency mostly by the votes of non-Croats of citizens' option. This candidate did not get more than 10 percent of the votes in any of the electoral units where the Croats are the majority<sup>29</sup>. In the election campaign this member of the presidency of BiH had especially emphasized that in his mandate as the Croat member of residency he would not explicitly represent the Croats but all the citizens (allegedly, also the Croats). During the election campaign Mr. Komšić also pointed out on several occasions that he does not have strong feelings about his Croat national identity and also the Croat language or culture. That, nevertheless, represented no obstacle for him to appear as a candidate for the position of the Croat member of the presidency of BiH.

In the election campaign, Mr. Komšić was rightfully sending message to his counter-candidates that even if united, he could win the elections solely with votes from one of electoral units in Sarajevo<sup>30</sup>. Without underestimating personal qualities and not prejudging future work of this elected high state official, we cannot avoid the statement that the position of Croats as *de iure* "constituent people" in BiH feels cynical, because

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rently a little bit less than 12 000 remain. The Muslim – Bosnians were the absolute majority in the areas of Eastern Bosnia (currently the RS territory) and keeping in mind the colourful pre-war demographic structure of population they had the majority in other parts of the RS as well. Also, for example, the Croats were the majority in Posavina (mostly a part of RS) and now more than 90 percent of the population in the RS is of Serb origin after the war. On the demographic movements in BiH see Chapters I.2. and I.3. of our Report on the Human Rights State for the Year 2003 ([www.ktabkbih.net/justitiaetpax](http://www.ktabkbih.net/justitiaetpax));

<sup>28</sup> Željko Komšić (the SDP) realized the victory at the elections with 39,56 percent of the votes while his direct opponents obtained the result of 26,14 percent of the votes for Ivo Miro Jović (the HDZ of BiH) and 18,18 percent of the votes for Božo Ljubić (the HDZ 1990- Croat unity). Such election results for the Croat member of the presidency was enabled by the total and unbridgeable division in the Croat political body that is motivated, in our opinion, exclusively by personal interests.

<sup>29</sup> We will take as an example the election results in two municipalities that have the largest number of Croats in percentage (over 95 percent), one from Herzegovina, and the other from Bosnia. Namely, the current member of presidency of BiH, elected by the Croat people, in the Municipality Grude obtained 119 votes, 2,93 percent of voters, while in the Municipality Dobratići he obtained 4 votes, i.e. he achieved the result of 1,72 percent of the votes. It is clear from this example that Željko Komšić does not have the support from the Croat electoral body.

<sup>30</sup> According to the last census of 1991, 6.6 percent of the population was Croats and during and after the war their numbers have halved.

the existing constitutional solutions and the electoral law of BiH does not even allow them to elect their own representatives in the authorities any longer.

The 2006 elections clearly point out that the state needs a new constitution and a new electoral Law that would, regardless of numbers, guarantee the constitutive position, equality and political sovereignty of all people in the whole territory of the state. Existing state legal organization of Bosnia and Herzegovina is totally unacceptable and as such generates instability in the whole region.

### 3. SOCIAL INDICATORS OF THE STATE OF SOCIETY

Economy – the social picture of BiH in comparison to previous years has not substantially changed. It may be roughly assessed that because of the comparative lagging behind of BiH's economy but also because of the introduction of the VAT, the position of the most threatened categories of the population even worsened in a certain measure during 2006.

The pensioners has remained the most threatened as their average pension in 2006 in the Federation of BiH amounted to KM 248.61 (cca. EUR 127.30), while in the RS it amounted to KM 210 (ca. EUR 107.70)<sup>31</sup>.

According to the official statistic information the average salary in the Federation of BiH in 2006 amounted to KM 618.96 and in the Republika Srpska it amounted to KM 537. The consumer basket for a family of four in the FBiH amounted to KM 488.22 and in the RS it was a little less and amounted to KM 461.88<sup>32</sup>. Small increases in salaries and pensions have not followed the increase of living costs and thus the position of the impoverished population in Bosnia and Herzegovina worsens day by day.

The state of employment indicates that Bosnia and Herzegovina has not improved. The total number of employed in the Federation of Bosnia and Herzegovina in November 2006 was 392,839 and the registered number of unemployed people was 360,469.<sup>33</sup> Official data on the state of employment in the RS for the year 2006 have not yet been published; therefore, we are not in the position to present it here. Since the unemployed generate almost no social benefits, a large number of them are not registered in the official registers of the employment bureaus of the entities and a large number of them work in the field of "black labour". All of the above mentioned makes previously given data incomplete and inadequate.

The total external debt of Bosnia and Herzegovina has increased and according to information of the Central Bank of Bosnia and Herzegovina, given on 30 September 2006, it amounted to KM 4.132.692.000<sup>34</sup>.

Disorganization and poverty of the state directly influences the position of the majority of BH population, and in such a disorganized state no serious strategy of economic development or guidelines for appropriate long-term social politics exist.

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<sup>31</sup> Statistic data of the Federal Bureau of Statistic and the Republika Bureau of Statistic of the RS for November 2006.

<sup>32</sup> The same.

<sup>33</sup> Official data of the Federal Bureau of Statistic.

<sup>34</sup> For comparison, according to the official data of the Central Bank of BiH the total external debt of B&H amounted to KM 4,074,116.00 on 30 September 2004.



#### 4. GORDIAN KNOT OF THE NATIONAL ISSUE - INTERNATIONAL COMMUNITY'S FAILURE TO ADAPT

A greater-Serbian striving for domination over the other sovereign people of the former Yugoslavia initiated the dissolution of that communist state. Relations between the three constituent groups living in the territory of Bosnia and Herzegovina are severely tensioned in the new historical context. During the disintegration of Yugoslavia the unsolved ethnic (national) issue that the most of European nations solved in XIX century surfaced. The unsolved ethnic issue culminated after the referendum on the independence of Bosnia and Herzegovina. The Bosnian Serbs, leaning on the war machinery of the former state, boycotted the referendum and with the aid of the Yugoslav National Army (the JNA) started the war and persecution of the non-Serb population with the consent and under the leadership of Belgrade's political and intellectual circle<sup>35</sup>. Because of the war pressure, restrictions on living space, different national interests and different visions of the state organization and the active participation of some of the international factors, not long after the beginning of the aggression the unsteady alliance between Croats and Muslims<sup>36</sup>, victims of the aggression, broke down and the war continued between all three groups in Bosnia and Herzegovina.

The assessments are that during the bloodiest conflict in Europe after the World War Two approximately 200 000 people were killed or went missing, the largest number being the civilian population. It is assessed that there were around 2 680 000 refugees and displaced people, which is approximately 59,6 percent of the total pre-war number of BH citizens. Displacement and movement of citizens have continued after the war and it may be said that the agony of all citizens of this country that began in the autumn of 1991 have continued since.

Unfortunately, the "democratic" world, divided by its narrow geographic and economic interests, watched for four years as this serious human tragedy continued in the heart of Europe. Moreover, to the obvious genocide that was performed by the aid of well armed JNA for realization of the aim of Greater Serbia, the international community,

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<sup>35</sup> On the causes for dissolution of Yugoslavia and genesis of creation of the current constitutional organization of BiH we gave more detailed description in the Report on the State of Human Rights in BiH for the year 2004 ([www.ktabkbih.net/justitiaetpax](http://www.ktabkbih.net/justitiaetpax)).

<sup>36</sup> The constitutional solutions of 1974 gave the Muslims in BiH the status of nation (people) and all the time until 1993 they declared themselves as Muslims. The political will regarding the title (name) of the national title (name) of this constituent group was finally defined at the Bosnian Congress of Intellectuals on 27 September 1993, and since then they have been declared as Bosnians and no longer as Muslims.

hypocritically answered with an embargo on arms import, in this way additionally aggravating the position of victims. It is obvious that from the very beginning the pragmatic “democratic world” favoured unjust peace (that should have been imposed to the attacked, unarmed people of Bosnia and Herzegovina by the military force of the JNA) to the prosperity of pluralism and democracy in these parts.

UN forces (UNPROFOR<sup>37</sup>) that were sent to BiH with their mostly passive presence offered almost no protection to the civilian population. As the most drastic example we would like to mention the genocide that was performed by the Serb military and police forces in the UN protected zone of Srebrenica in July 1995. On that occasion more than 7,000<sup>38</sup> of captured, mostly Bosnians<sup>39</sup>, were liquidated right in front of Dutch Battalion of UNPROFOR, and the remaining population was forced out of their homes.

Only threatened by the escalation of general conflict in the wider region and when the Serb forces started losing with zooming speed the territories occupied by the war<sup>40</sup>, did the international community terminate the conflicts with swift military intervention in 1995. Then the international community, in its short-sighted pragmatism, tailored in Dayton the unsustainable organization of the state union which was doomed from the very beginning.

The course and manner of the Dayton negotiations indicate that the solution on which Bosnia and Herzegovina is based upon was the result of pressure made by major forces (primarily the USA) and definitely not that of an agreement made among the three constituent groups<sup>41</sup>.

Instead of democratic achievements following from the legitimate will of all three groups, the Dayton Agreement incorporated the results of genocide and so-called “ethnic cleansing” in the very fundamentals of the state organization which remains the

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<sup>37</sup> UNPROFOR - United Nations Protection Forces

<sup>38</sup> The exact number of citizens killed and went missing is not known yet because the bodies of liquidated soldiers and civilians were firstly thrown to the mass graves and then moved to the secondary graves that are situated on the number of places.

<sup>39</sup> The Dutch Battalion of the UNPROFOR turned over around 5 000 Bosnians that were situated in on base in Srebrenica to the Serb Military or paramilitary forces. After that the majority of men from that group were brutally liquidated. According to the record on missing persons published by the International Committee of Red Cross (the ICRC) at least 1 889 people went missing in the village of Potočari, where the military base of the Dutch Battalion of UNPROFOR was located (source: [www.srebrenica.ba](http://www.srebrenica.ba))

<sup>40</sup> This was done during the military operation the Oluja, performed by the joined forces of the Croat Army, HVO and the Army of BiH. On the basis of the Split Agreement on military cooperation of 22 July 1995, signed between the Republic of BiH and the Republic of Croatia, the Croat Army directly participated in the military operations in the territory of Bosnia and Herzegovina.

<sup>41</sup> The Dayton Agreement has never been ratified in the Parliamentary Assembly of BiH or published in the Official Gazettes of BiH or Entities. Until 2006 there was no official translation of the Annex IV, i.e. the Constitution of BiH from English language to the languages of Bosnia and Herzegovina. The manner of negotiations and the aspects of illegitimacy of this constitutional and legal act are described in more detailed manner in our Report on the State of Human Rights in BiH for the year 2004 ([www.ktabkbih.net/justitiaetpax](http://www.ktabkbih.net/justitiaetpax)).

stumbling block to any progress of this state. Therefore, any review of the constitutional solutions cannot obtain the attributes of legitimacy, at least not before the fundamentals are accepted by the ratification of the will of all three groups through the Parliamentary Assembly of Bosnia and Herzegovina.

The Dayton Constitution divided the nationally entwined Bosnia and Herzegovina as a state of three constituent groups into two entities; the ethnically cleansed RS, as the entity of Serb people and the Federation of Bosnia and Herzegovina, as the entity to which the two remaining constituent groups (Croats and Bosnians) are driven together. On 5 March 1999, BiH obtained by the additional decision of the Arbitration Tribunal, in the dispute over the inter-entity borderline, the separate unit of the District of Brčko which has all the competences of the entity. The most complex relations are established in the FBiH which is divided into ten Cantons with substantial constitutional competencies. All in all, through the Dayton Agreement, the people of Bosnia and Herzegovina gained an ethnically divided, non-functional state with huge, expensive and inefficient state apparatus.

The international community has remained actively present in the political life of Bosnia and Herzegovina, mainly through the OHR but also through other international institutions. Notwithstanding the fact that through the so-called Bonn powers the international community had unrestricted power in Bosnia and Herzegovina (legislative, executive and judicial) in the proclaimed projects that were supposed to normalize life in this state, it has not realized acquirements of a civilized democratic state in Bosnia and Herzegovina in which its people and citizens could realize equality and high standards of human rights in a safe environment. Moreover, the acts of the international community cemented divisions in Bosnia and Herzegovina and it may be concluded with certainty that the causes of war in this state have not been removed and that a clear vision of the just constitutional and legal organization of BiH that would enable at least legislative equality of citizens and equality of the constituent groups. However, wrong and inconsistent politics of the international community does not liberate the representatives of any of the three constituent groups of their responsibility for the existing situation in this state.

#### 4.1. Necessity of the New Constitution

Eleven years after the end of war activities, Bosnia and Herzegovina, together with its international protectors, have made no progress. It has no possibility to get rid of the war consequences and to start its voyage towards a better life for all its people and citi-

zens. The international community was unsuccessful in the realization of projects in BiH, especially the project of return<sup>42</sup>, and at this extremely sensitive moment it announced its withdrawal from Bosnia and Herzegovina in 2007 in a loser's manner.

In the existing international relations in BiH we have to state that nothing has changed in the quality of the state from what it was previous to the escalation of war conflicts. Moreover, the situation, in some sensitive segments, may be assessed as more complex and dangerous than it was at the end of 1991. Therefore, the fear of the intensification of ethnic tensions is not without any grounds.

Currently, eleven years after the end of war, it is totally clear that the political and administrative organization of Bosnia and Herzegovina made in Dayton prevents democratic and economic prosperity in Bosnia and Herzegovina. The unfair solutions imposed in Dayton on the people and citizens of BiH appeared expensive and non-functional. The Dayton framework cemented the results of war and thus disabled the democratic reform of society. The majority of BiH citizens agree that it is necessary to modify the existing legal state organization but that is the only thing that politically opposing forces in BiH could agree upon. Some of the European parliamentarians issued a declaration<sup>43</sup> on this. The determining issue remains which political and just solution

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<sup>42</sup> On the implementation of Annex VII to the Dayton Agreement we wrote in detail in our Reports on the state of human rights in BiH for 2002, 2003 and 2004, and the situation has not changed since (see [www.ktabkbih.net/justitiaetpax](http://www.ktabkbih.net/justitiaetpax)).

<sup>43</sup> The text of declaration states as follows:

“DECLARATION on the occasion of the eighth anniversary of the signing of the Dayton Agreement  
Secure peace in Bosnia and Herzegovina by the further development of the Dayton Agreement  
Soon, it will be ten years since the war in BiH ended by the Dayton Agreement. Within this time a lot of positive things were done for the reconstruction of BiH. But, within this time it became clear that the Dayton construction reached its limits, and the peace in BiH has not been secured yet. Illusive peaceful situation and unhealthy peace in the country must not deceive us. In this regard the dangerously worrying fact is that the interest of the international community for the future development of BiH is losing its strength. The international caravan left a long time ago. More and more people in the western countries ask themselves for how long the international actions in BiH will continue.

Peaceful coexistence of different groups remains threatened. It may easily be seen that BiH is in a serious situation if you look closely. BiH is a state divided in accordance with an ethnic key and that is the reality. The Dayton Agreement guarantees the return of refugees and displaced people but only 50 percent of them returned. The return was mostly possible where the refugees supposed to be safe of discrimination or persecution on the basis of their ethnic origin. Distrust among them is deep set and it determines their everyday life in different manners. Ethnic discrimination happens every day.

Necessary unity of the state is too weak for economic and political development. The state is too weak in relation to the entities. The constitutional structure prevents effective functioning of a united state and thus also of the politics that should develop regardless of ethnic interests. The expenses of the state are too big because of double or triple functions in the state apparatus, and therefore the economic perspective of the country is highly burdened. The serious legal uncertainty is the practical consequence of such a structure. This situation, regarding the economy and politics, cannot continue for long.

Role of the International Community is more and more ambivalent. BiH is half-protectorate subordinated to the international community, living on the drops of international subventions, with no perspective of sustainable economic development. Although the work of the High Representative is really valuable, as of late, the critical statements that indicate to the problematic consequences of such protectorate to the democratic development of BiH are heard. Current structures regarding the economy

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and politics are helping the dangerous mentality. If BiH needs to secure its future it is necessary to create conditions for its people to continue their democratic perspective development on their own.

Resignation, stagnation and increasing problem of poverty undermine foundation of peace that is still weak. The current situation is characterized by resignation and stagnation. Keeping in mind the official data on unemployment of 42 percent, an ever-increasing poverty and dark economic prognosis it is of no surprise that the majority of the population, especially the young (65 percent) do not see their future in such a country. Corruption and crime are the evils that are flourishing under the dangerous circumstances and strengthening the feeling of insecurity in the population. The fact that numerous war criminals are still at large, says it all. Unfortunately, the social situation of the majority of the population in BiH cannot give a secure foundation to peace. Thus, the obvious dangers are following from it.

Dayton construction reached its limits. It may not be denied that only on the basis of the Dayton Agreement the necessary peaceful framework perspective could be created for BiH. The Dayton Agreement was a painful compromise within the frame of circumstances of that time. Whoever wanted BiH had to accept the Dayton willingly or not. The deep ambiguousness of this agreement is in the fact that it did a lot of good but its ambiguousness has never been overpowered, because it allowed the division of two entities and practical division according to the results of genocide. It enabled the creation of two legal systems in one state. While enabling the end of a bloody war and first steps towards a new beginning and reconstruction, today it prevents future development of BiH towards the rule of law and real European society. Whoever wants BiH today has to wish for the solution of the *Dayton's ambiguity*. This consists of the clear definition of the international community's role and the development of a long but realistic perspective of joining the European Union.

Peace process needs new and strong incentive. The time has come to give a new incentive to the peace process in BiH. The time has come to build good fundament for peace in BiH. The time has matured to reconsider and reconstruct the Dayton construction. BiH will only have a future as a state and society if it succeeds in building state structures that will offer security to all its people and help the economic and social development of the whole country. The reconciliation process between the peoples will only prosper under the condition that the political framework and economic and social structures of the whole country can be successfully developed.

Further reconstruction of Dayton is necessary at this point. Therefore we request that the international community, especially the signing parties to the Dayton Agreement, European Union governments, neighbouring states and competent individuals in BiH to take the nearing of the tenth anniversary of the Dayton Agreement in 2005 as the cause for preparation of critical balance of the development up to that moment within the frame of the international states conference. In doing this it will be necessary to support what has been positive and at the same time to find ways to overcome the obstacles for future development of BiH. We request that the competent and responsible prepare a peace agreement for BiH that will offer long-lasting security and sustainable unity from now on.

Responsibility for BiH is the responsibility for Europe. BiH needs the help of the international community and the international community, especially Europe, needs BiH as the concrete example of the successful peace politics that accepts abundance of differences. The partial success or failure would endanger the stability of the whole region and the perspectives of joining the EU of the neighbouring states and not to mention the destinies of many individuals. The eventual partial failure would be the failure of the EU and it would strike a serious blow to the joined external and security politics and thus to the European interests and European vision.

Preventive politics is the expression of the increasing responsibility. If the competent people at the general political level would lack the political bravery and the political will to do now what is necessary and prudent, the politics could soon be confronted with a new crisis in BiH. The politicians, unfortunately, are inclined to postpone what is current and sensitive, i.e. they are giving priority to the problems that are not that crucial over the ones that are. Contrary to such a scenario we are putting our hope into the capability of learning as the characteristic of democratic societies.

SIGNATORY: Elmar Brok – member of the European Parliament (EP), Chairman of the Board for Foreign Politics; Daniel Cohn-Bendit – member of the European Parliament, co-Chairman of the Green Fraction in the EP; Detlef Dzembitzki – member of the German Parliament, responsible for BiH; Prof. Dr. Bronislaw Geremek – former Minister of Foreign Affairs of Poland; Jose Maria Gil Robles Gil Delgado – member of the EP, former President of the EP, President of the International European Movement; Gret Haller – former Ombudsperson for Human Rights in BiH; Thilo Hoppe – member of the German Parliament; Hans Koschnick – former Administrator of the EU for Mostar; Sergej Kovaljov – formerly responsible for human rights at the Russian President's Office; Jacek Kuron – former Polish Minister for Work and Social Politics; Joost Lagendijk – member of the EP, rapporteur of the EP on the

could and should satisfy justify strivings of all three constituent groups and can enable the democratization of a society that is of such importance. Although this issue is of a severely complex nature it remains to be solved by all who care for peace and a clear conscious, because a just and democratic Bosnia and Herzegovina is the only alternative to the continued tensions and dissolution of this paradigm of coexistence in differences.

## 4.2. Review of the Dayton Agreement

Immediately after the Dayton Agreement, Annex IV<sup>44</sup> to the Dayton Agreement turned out to be non-functional and for that reason the unbridgeable obstacle for the democratization of BiH society. In accordance with the facts stated above, in the new arising administrative and normative chaos it was necessary to modify the legal system in the whole territory of the state. Through the OHR interventions performed systematically since the end of war the constitutional and legal system of Bosnia and Herzegovina has been substantively modified. Unfortunately, by its interventions in the constitutional solutions the international community has not obtained any positive results. We already wrote about the situation, in which, regarding the implementation of the decision of the Constitutional Court of 2000 on the constitutive nature of all three people of Bosnia and Herzegovina, the High Representative imposed in 2002 the amendments on the entity constitutions that instead of affirming constitutive nature additionally deconstituted Croats and Bosnians in the RS and Croats in the FBiH<sup>45</sup>. Through such amendments the Croats were brought into the position that while adopting any decision in both of the entities or at the state level they could be over-voted, which de facto means that they lost their constitutive nature. These imposed constitutional amend-

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project of stability in the South-East Europe; Prof. Dr. Vyntas Landsbergis – former President of the Republic of Latvia; Tadeusz Mazowiecki –former Prime minister of Poland and formerly responsible for the OUN for human rights in BiH – presented the Declaration in Warsaw; Phillipe Morillon – member of the EP, commanding general of the UNPROFOR in BiH 1992-1993.;Martin Müller – member of the EP, deputy chairman of the SPE fraction; Christa Nickels – member of the German Parliament, Chairman of the Human Rights and Humanitarian Aid Board; Dietmar Nietan – member of the German Parliament; Arie Oostlander – member of the EP, Head of the Board for Foreign Politics, European National Party; Doris Pack – member of the EP, President of the delegation of the EP for South-East Europe – presented the Declaration in Bruxeles; Prof. Dr. Hans Gert Pöttering – member of the EP, President of the EVP-ED fraction – presented the Declaration in Berlin; Dr. Rainer Stinner – member of the German Parliament.; Johannes Swoboda – member of the EP, President of the EP delegation for the SE Europe; Dr. Antje Vollmer- member of the German Parliament, Vice-president of the German Parliament; Dr. Ludger Volmer – member of the German Parliament, portparol of the fraction of the *Union 90 and green for the foreign politics.*”

<sup>44</sup> Annex IV is the Constitution of Bosnia and Herzegovina

<sup>45</sup> On the imposed constitutional amendments and their particular solutions we wrote in more detailed manner in the Chapter V.4. of the Report on the State of Human Rights in BiH for the year 2004 and in the previous Reports ([www.ktabkbih.net/justitiaetpax](http://www.ktabkbih.net/justitiaetpax))

ments deepened divisions in an already divided Bosnia and Herzegovina as already done by Dayton.

With the intention to remedy the problem originating from Dayton, the international community brought the "democratization" of BH society to the level of absurd and blocked the development of BiH even more. By the Dayton Agreement, the international community extinguished the fire but it did not succeed in extinguishing the focus of the inflammation. It is time to extinguish all the fires in Bosnia and Herzegovina by a permanent solution! Numerous initiatives by the international community for the reorganization of BH clearly indicate that the international community is aware of these problems as well.

The Dayton Agreement in BiH is a structural source of tension as well as being structurally destructive. Therefore it is necessary to make it enforceable. It has been established by the dictation of the international community and its improvement is not possible without the political will of the international community that is lacking and, so, the Dayton Agreement has remained the source of all tensions in Bosnia and Herzegovina.

## 5. OFFERED MODELS OF THE STATE ORGANIZATION

People thinking about the possible solutions for Bosnia and Herzegovina ask if a constitutional solution exists for establishment of a fair state that would guarantee equal legal position for all people and equality, prosperity and security for all citizens. The existing solutions of the octroyed Dayton constitution, “strengthened” by the amendments imposed by the OHR do not satisfy even the fundamental civilized criteria for a democratic pluralist society as a legal framework for the realization of human rights. It is totally clear that the fundamental modifications are necessary. Although the future model of a complex state is not visible at the moment, we give and briefly analyze some of the offered solutions.

### 5.1. Civil State

The insisting of the model of the unitaristic citizens’ state under the principle of “one citizen, one vote” seems unsustainable to us because, in the context of the results of war and unsolved national issues in BiH, it brings the people that are smaller in numbers to the position of minorization by the people who are in the majority. Naturally, such a model is the most diligently supported by some political and intellectual circles of Bosnians – Muslims, as numerically the largest in Bosnia and Herzegovina. In all of the national movement forgets that the aggression of Greater Serbia to this territory started with the aim of maintaining the Serb majority in the former state.

### 5.2. The Federation of National Entities

This model is supported by some of the Croat politicians and as of late it is supported by the Serb politicians as well; obviously aiming to maintain the RS in an easier way but not expressing any will to review unfair division of the country from Dayton.

The democratic model of the union of a few state-building people is possible only with the consensus of all three groups in BiH regarding the future organization of the state. For that, the position and consent of each of the groups is equally important regardless of the numbers of its people. Since the Dayton Agreement established the state consisting of two entities and three constituent groups, the model of tripartite state seems fair in the grater extent than the current solution. However, this model hides the danger of



possible deeper division of the state than the current one and additional permanent exodus of the population of Bosnia and Herzegovina (especially from the territory of the FBiH).

### 5.3. The Federation of Cantons

A state organization of this kind implies dissolution of the entities and transfer of the entities' competencies to a number of smaller territorial units. The competencies of the state would be performed in the bodies of the state authority where the cantons would delegate their representatives. The form of this federation would depend on the broadness of competencies performed at the cantonal level. The condition for survival of such a state union is non-existence of the cantonal competencies to self-determination with the right to separation. Advantages of this model are primarily in the fact that it would enable more equal realization of constitutive rights for all three groups while its disadvantages are hidden in the organizational complexity and the large administrative expenses of such a state. This model also hides the danger of additional permanent exodus of the population within the state that would only worsen the existing situation.

This solution could have been the option of the state organization previous to the exodus of population started by the war and after the largest part of the territory had been ethically cleansed we are of the opinion that it is no longer possible to perform the fair canonization of Bosnia and Herzegovina by the national key that would reflect demographic situation of the pre-war times.

### 5.4. The Federation of Non- National Regions (Districts)

According to this model of the state reorganization, the existing entities and federal cantons would dissolve and the state would be divided into several federal units (regions or districts) as administrative units. The municipalities would exist within the regions as units of local self-management. The regions or districts would represent functional units joined by the nature, history and communications, the borders of which would not be established by the ethnic key. In each of the federal units all three groups would have equal part in the legislative, executive and judicial authority, thus, no possibility of monopolisation of the majority over the minority could exist.

Each of the three constituent nations would appoint their representatives in the state government that would be established on the basis of a party. The key functions in the

executive and legislative authorities of the federal units and on the state level would be performed by a rotation system.

## 5.5. The Status of Existing Entities

The proposal of such a model appeared in the Preliminary Opinion on the Draft Amendments to the Constitution of Bosnia and Herzegovina<sup>46</sup> that was expressed by the Venice Commission on 7 April 2006. Since the OHR passed the previously described reforms of the constitutional order of Bosnia and Herzegovina exactly on the basis of the opinion given by the Venice Commission we are not surprised by this simplified and discriminatory approach to the reorganization of Bosnia and Herzegovina. This is to say, all previous constitutional solutions imposed by the OHR were going in the direction of centralization of state authorities with the direction towards the civil model of authorities, under the principle “one man, one vote”. The OHR attached itself to the principle of the “politics as realization of possibilities” where all the solutions went mainly to the detriment of Croats as the group smallest in number but at the same time the most cooperative of all constituent groups in BiH<sup>47</sup>.

This solution would annul already diminished constitutive rights that Croats may realize through decreased competencies of cantons. That way they would lose the characteristic of constitutive nature in whole and the state would factually remain divided into two ethnically homogeneous entities; Bosnian and Serb. Such a solution does not lead to the stabilization of Bosnia and Herzegovina because it fully negates the rights of one of the constituent groups.

## 5.6 *Proposal by the Bishop’s Conference*

With the wish to offer their contribution to the striving for a just and sustainable solution for the organization of Bosnia and Herzegovina, at the end of 2005, the Catholic Bishops announced their proposal. It, amongst other things, states:

The principle of multi-states is defended in Bosnia and Herzegovina and either it survives or definitely crumbles. Many of expelled citizens of Bosnia and Herzegovina who

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<sup>46</sup> Opinion 375/2006, European Commission for Democracy Through (Venice Commission) – Strasbourg, 7 April 2006

<sup>47</sup> When signing the Dayton Agreement, the Croats gave the biggest territorial cessions, and as the cession to the peace they accepted organization of the state of three constituent peoples in two entities. That way they definitely renounced their right to participate in the authorities of the RS and accepted the participation in sharing the authorities of the other entity with the more numerous Bosnians.

are forced to live in other countries are showing by their own example that they are capable of living in well organized democratic states. Such is also the opinion of the majority of the population that currently resides in the country, and it is certainly ready and willing to live together and to build this country as a multinational, multicultural and multi-religious one. Citizens and people of BiH have the right to a fair legal framework and unambiguous support in the realization of equality of all three groups and strengthening of civil rights and freedoms.

It is certain that the constitutional and legal position of Croat people and thus of the other two groups in BiH as well, would be of better quality and fairly organized in a united, whole and decentralized state without the current entity partition. Such strong decentralization of Bosnia and Herzegovina should go in two directions; towards the municipal and towards the regional level of authority. The authorities at the municipal level should be organized *proportionally under the principle "one man, one vote"* and that would be the level on which the competencies of the civil society would be realized. The power on the regional and federal level should be limited in such a way that the minimum of representation should be determined by all three groups in the legislative and executive authorities.

The municipalities, as administrative units already exist and they could continue their functioning in the present form while that is not the case with the regions. Instead of keeping the current disproportional and unjust forms with two entities and ten cantons in one of these, it would be wise to start reorganization on the regional level of authority. One of the possible models could be the following: Bosnia and Herzegovina organized in four cantons (or regions, provinces, districts, federal units...) Sarajevo, Banja Luka, Mostar and Tuzla, with the borders formed under the economic, communicational, natural, historical, geographic and (multi)national criteria. With the eventual corrections, the regions could be organized in a manner they organize for their own needs, for example, by the OSCE in BiH. It, however, would be very important that in each of the four cantons (or regions, provinces, districts, federal units, etc.) that all three constituent groups have at least 30 percent participation in the legislative and executive authorities in order to prevent members of one group from over-voting the other two, ever.

It seems to us that in the line with this proposal it would be possible to solve some fundamental issues and remove the focus of ethnic tensions such as; the level of cultural autonomy of the constituent groups and their equal participation in the management of the state and its regions that seems to be the condition for preservation of the integrity of Bosnia and Herzegovina.

## 6. CONCLUSION

The complexity of national relations among the three groups in Bosnia and Herzegovina necessarily implies its transformation into a complex state model. Such a union may be realized in the BH environment only if all three groups have the legitimate determination and will to live in the unity of legally equal people and citizens.

We are convinced that the fundamental issue for the possible state reorganization of Bosnia and Herzegovina into a democratic state union is not in the territorial modes of state organization but in the general acceptance of the positive discrimination of minority principle both at local and state level, which should be transparently incorporated in the future constitutional solutions. In all of this it would be necessary to enable the realization of the constitutive rights of all three groups regardless of their numbers in each of the territorial units of the complex state, i.e. regardless of whether any of the constitutive groups is in the minority of any of the territorial units of the complex state.

The impossibility to realize human rights at almost all levels of Bosnia and Herzegovina is a direct consequence of a disorganized constitutional legal system in Bosnia and Herzegovina indicated by previously given examples actual in 2006. Regardless of the part of the state, suffering citizens of Bosnia and Herzegovina had hard times to survive through in this post war period and the deprivation of rights of simple individuals is felt at all levels of society in Bosnia and Herzegovina. The condition for affirmation of human rights is, primarily, the creation of organized and fair state union that would respect the dignity of each and every human being, regardless of his/her ethnic belonging. For the state union of three constituent groups, i.e. complex, multicultural and multireligious society such as Bosnia and Herzegovina is, it is primarily necessary to have the consent and will of the three constituent groups to live in such union with or at least beside others who are different. This *conditio sine qua non* of a fair and democratic BH society organization has not been fulfilled yet and it does not seem possible unless the culture of dialogue and the respect of the right of others to be different are established. Nevertheless, the current situation does not give us a reason to give up trying to find a solution acceptable for all of three groups in Bosnia and Herzegovina. Although it looks like Don Quixote's fight with the windmills, we feel that it is possible to find an organizational solution for this multinational, multicultural and multireligious country that would help it to become the meeting point of differences instead of the place of conflicts. This will not be possible, however, without the determined positive and democratic participation of the international community. The position of the inter-

national community representatives that they do not want to force anything upon anyone is not fair or acceptable in our opinion. This is to say, if it was ready to impose an unfair solution in Dayton in 1995, preventing this country from developing democracy. In the name of democracy why should they now be reluctant to help, if necessary even force the fair organization of the state. The majority of citizens of this country are convinced that it is a moral obligation of all that were present in Dayton to take an active role in it, especially the USA. We are aware that this report does not look like many others that are dealing with the quantitative and qualitative analyses of the lack of human rights and possible patterns for the change of situation in societies all over the world. Any further analyses remains meaningless until the fundamental issues of the state and social organization are not solved positively with the aim of protection and legal equality of all citizens. Bosnia and Herzegovina remains the problem for both its citizens and the international community that undertook the task of solving the key issues and consolidation of the state in this country and some circles are lobbying for the withdrawal of the serious engagement of the international community representatives and the transmittal of problems to the national politicians. In this way the international community would admit its defeat, leaving behind the huge amount of invested funds and years of substantial used energy that could remain fruitless. Therefore, the Commission invites the international community representatives to aid with much more determination to the political forces and intellectuals of Bosnia and Herzegovina to give their effective contribution for the realization of the sought goal in the name of more humane and a better future for people and citizens of our common homeland!

**BISKUPSKA KONFERENCIJA BOSNE I HERCEGOVINE**

**KOMISIJA "JUSTITIA ET PAX"**

# **IZVJEŠĆE O STANJU LJUDSKIH PRAVA U BIH ZA 2006. GODINU**



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## UVOD

Bez obzira na kojem dijelu teritorija Bosne i Hercegovine se nalazili, građani ove države i dalje vrlo teško ostvaruju Ustavom zajamčena ljudska prava. Iako se već jedanaest godina nalazi pod svojevrsnim protektoratom međunarodne zajednice, podijeljeno bosanskohercegovačko društvo ne samo da nije izišlo iz krize prouzročene ratom nego se ta kriza još više zaoštrila, a podjele između tri konstitutivna naroda još i produžile.

Općim okvirnim daytonskim sporazumom za mir<sup>48</sup>, kao ustupak miru, ozakonjen je zakon jačega i legalizirano stanje «etnički očišćenih» prostora, koje je uspostavljeno ratom, agresijom i neprikrivanim genocidom. Iako su iz Daytonskog sporazuma proizašle neke blagodatni prestanka sukoba, Bosna i Hercegovina je novim kompliciranim i nefunkcionalnim državnim uređenjem ostala potpuno paralizirana, a posebice u svom gospodarskom i demokratskom napretku.

Neodrživo državno uređenje kočnica je demokratskom, gospodarskom, socijalnom i svakom drugom napretku ove države. Zbog navedenoga razloga BiH stoji zadnja u redu europskih država koje čekaju poželjno priključenje europskim integracijama. Uz nepravredno ustavno-pravno uređenje i nefunkcioniranje pravne države i u 2006. godini većinu građana ove države i dalje pogađa stanje krajnje bijede i socijalne nesigurnosti. Očito da je projekt međunarodne zajednice u BiH zapao u slijepu ulicu, koja od početka nije vodila afirmaciji visokih standarda ljudskih prava, koja su proklamirana prije svega u Aneksu IV., ali i drugim Aneksima Daytonskog sporazuma kao npr. Aneksu VI. i VII. Iako je međunarodna zajednica cijelo vrijeme od svršetka rata do današnjih dana aktivno prisutna u našoj državi, još uvijek nije postigla neophodan minimum standarda civilizirane građanske demokratske države.

Nepravrednim rješenjima iz Daytona država je podijeljena na dva etnička entiteta, tj. onako kako su planirali gospodari rata, pa nisu ni mogli biti osigurani preduvjeti za održivi povratak izbjeglih i raseljenih državljana BiH. Isti razlog je onemogućio rješavanje vrlo složenog i važnog pitanja međunacionalnih odnosa između tri konstitutivna naroda. Zbog svega građani BiH još uvijek trpe sveopću neimaštinu i obespravljenost. Daytonskim sporazumom, pa ni djelovanjem međunarodne zajednice poslije njega, nisu uklonjeni ni uzroci ni posljedice rata u BiH. Tome svoj izdašan doprinos daju i domaći političari koji se, umjesto za dobro naroda i građana, gotovo isključivo brinu za vlastite probitke i interese vlastitih stranaka.

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<sup>48</sup> Opći okvirni sporazum za mir u Bosni i Hercegovini (u daljem tekstu: Daytonski sporazum) parafiran je u Daytonu (SAD) 21. studenog 1995. godine, a službeno potpisan u Parizu 14. prosinca 1995. godine.



## 1. SUSTAVNO NIJEKANJE LJUDSKIH PRAVA U BIH<sup>49</sup>

U diplomatskim kuloarima se kao anegdota o stanju u BiH prepričava teza kako u Europi postoji tri vrste država: članice Europske unije, kandidati za članstvo u EU i Bosna i Hercegovina.

Iako je riječ samo o anegdoti, nažalost se ne može pobjeći od dojma kako je navedena konstatacija bliže istini nego šali. No, što je istina u Bosni i Hercegovini? Izgleda da ovdje svatko ima neku svoju istinu. Beskrajne su manipulacije domaćih i stranih političara «istinama» o BiH, a još uvijek nemamo ni osnovnih podataka koji bi egzaktno ukazivali na posljedice ratnih zbivanja. Primjerice, još se ne zna ni točan broj poginulih

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<sup>49</sup> Komisija Pravda i mir je 14. prosinca 2006. organizirala Okrugli stol s temom: BiH – strukturalna negacija ljudskih prava? U svome je uvodu predsjednik Komisije dr. Pero Sudar ustvrdio: Za temu kako je naslovljena Komisija se odlučila zbog uvjerenja da uređenje Bosne i Hercegovine ne samo omogućava nego potiče sustavno nijekanje temeljnih prava svojih građana. Nakon što su, zbog suprotstavljenih vizija uređenja ove zemlje, terorom rata stotine tisuća ljudi iz života, a milijuni iz vlastitih domova i svjetova brutalno prognani, tragedija preživjelih i ostalih se nastavlja, evo već više od jednoga desetljeća. Stanje temeljnih ljudskih prava, u svim sferama, od dječjeg vrtića do vrhovnoga suda, danas u ovoj zemlji ovisi, prije svega, od mjesta stanovanja i naroda kojemu pojedinac pripada. Projekt tako strukturalno uspostavljene uvjetovanosti temeljnih prava čovjeka ovjeren je i pečatom svijeta koji se u pravdu kune, a nepravdu na životu održava. Ne vjerujem da ima čestita čovjeka kojemu stanje u kojemu ova zemlja živi nije postalo noćnom morom. To potvrđuje i sve veća lavina, neki govore o sapunici, simpozija, okruglih stolova, rasprava, polemika od kojih se ima pravo biti umoran. I dok karavana prolazi, bezizgledno stanje velikog dijela građana prerasta u neku vrstu opipljive apatije. Svaki pokušaj iskoraka kao da pojačava osjećaj nemoći. Unatoč ili upravo zbog toga, čini nam se potrebnim ne odustati od traženja mogućega prihvatljivoga rješenja. Bez obzira na uspjeh ili njegov izostanak, nije i ne može biti svejedno je li se o nekim pojavama u društvu šutjelo ili govorilo. To napose vrijedi za stanje nepravde!

Sve je očitiije da ovoj zemlji i njezinim građanima i narodima odlučujuće neće i ne može nitko pomoći ako bi promišljanja i nastojanja domaćih snaga izostala. Stoga je vrlo važno pitanje: "Je li nam, nakon svega, preostalo snage da bi se vjerovalo da rješenja ima i mudrosti da bi ga se tražilo?" Kažu da nema čovjeka, a onda ni naroda i društva, koji ne bi imali svoju, vrlo često skrivenu, prihvatljivu stranu. Upoznaju je samo, i na opće dobro upotrijebe, rijetki koji imaju strpljenja i motiva razumjeti a onda u nekoj mjeri tolerirati onu ružnu i neprihvatljivu. Bojim se da bi u toj škrinji mogao biti sakriven ključ mogućega ozdravljenja bosanskohercegovačkoga društva. Čvrsto vjerujem da ljudi u Bosni i Hercegovini imaju pameti i snage pomoći sebi. Komisija Pravda i mir bi se željela uključiti i dati svoj doprinos u otkrivanju pozitivnog i prihvatljivoga u nama i među nama kako bi ova zemlja sve više postajala mjestom susreta različitih i poštivanja za sve jednako važećih ljudskih prava.

Uvodničar u raspravu prof. dr. Asim Mujkić, između ostaloga, naglasio je: *Nikakva država ne može pretendirati na legitimitet ako sistematski gazi dostojanstvo slobodnog građanina, ako svojim ustavnim temeljem ne samo da živi od permanentne krize izazvane nacionalizmom, već ona samom svojom konstitucijom generira krizu koja sprečava bilo kakvu racionalnu državnu organizaciju pokazujući kontinuirano odsustvo potrebe za djelovanjem u pravcu 'općeg dobra'. Na djelu je u Bosni i Hercegovini ponižavajuće etničko zlostavljanje građanina koje združeno provode etnopolitike sabrane oko tzv. "nacionalnih stranaka" i predstavnici međunarodne zajednice, a koje je ozakonjeno Ustavom uz poražavajuću spoznaju da dejtonska Bosna počiva na najgrubljoj vrsti diskriminacije utemeljenoj na kolektivističkim karakteristikama etničke pripadnosti konstruiranim kao biološkim, pri čemu je famozno kolektivističko pravo naroda na samoodređenje u potpunosti zatrla jedno civilizacijski starije pravo, pravo građanina na samoodređenje. Priča o Dejtonskoj Bosni priča je o tome što se dešava ako pravo na samoodređenje individuuma podčinimo pravu na samoodređenje naroda, ako se samo iz konteksta kolektivnih prava čitaju i provode individualna prava i slobode.*

u proteklom ratu, broj ranjenih, novonastala struktura stanovništva, visina materijalne štete i sl. Iako je rat davno završio, još uvijek nije obavljen ni najosnovniji popis stanovništva.

Napokon bi bio red da se zbroje mrtvi, ranjeni i štete te da se vidi što je ovoj državi ostalo na raspolaganju. Srbima takav popis vjerojatno ne odgovara jer bi ukazao na porazne rezultate etničkog čišćenja i genocida u njihovom entitetu. K tome, popis bi očitovao neprihvatljivo neznatnu zastupljenost Bošnjaka i Hrvata u Republici Srpskoj. Politički predstavnici Hrvata se pribojavaju da bi porazan rezultat u pogledu ratom prepolovljenog broja njihovog nacionalnog korpusa u BiH nepovoljno utjecao na buduća rješenja o participaciji u vlasti. Kod političara koji predstavljaju Bošnjake prevladava bojazan da bi temeljit popis i analiza učinaka rata poljuljao političku percepciju Bošnjaka – muslimana kao isključive žrtve agresije, koju nastoje kao tezu o svom narodu plasirati na međunarodnom planu. U isto vrijeme Uredu visokog predstavnika (OHR)<sup>50</sup> koji već jedanaest godina obnaša vrhovnu vlast u BiH najmanje odgovara temeljit popis stanovništva i dobara jer bi tek on ukazao na propale projekte povratka i obnove. Nedvojbeno je da je OHR u smislu Bonskih ovlaštenja<sup>51</sup> ovakav popis mogao jednostavnim aktom propisati, što ipak nije učinjeno. Možda bi to moglo biti povodom da se postavi pitanje gdje su završila ogromna materijalna sredstva koja je međunarodna zajednica uložila u ovu državu.

Bilo kako bilo, očito je da ni OHR-u, kao ni prevladavajućim nacionalnim politikama nijednog od tri naroda ne odgovara utvrđivanje istine, što je preduvjet transformacije BiH u civiliziranu demokratsku državu.

U pogledu vjerodostojnosti povijesnih, socioloških i politoloških prezentacija istine može se reći kako je Bosna i Hercegovina poprilično invalidna i moralno osakaćena. Bosanskohercegovački mediji su svakodnevno prepuni paušalnih interpretacija ratnih događanja te licitacija o broju poginulih i brojnih laži ili poluistina o događajima koji su odredili sudbinu naroda BiH. Interesne političke i kvaziintelektualne elite ovakve «informacije» najčešće šire radi nacionalne homogenizacije vlastitog naroda, kako bi se osjećao ugroženim od onog drugog ili drugačijeg. Iza svega najčešće stoji uski interes tih elita za održanjem postojećeg stanja podijeljenosti i nesuglasja. Očito da političkoj eliti sva tri naroda u Bosni i Hercegovini, pa ni međunarodnoj zajednici, ni nakon jedanaest godina od svršetka rata nije stalo do dobrobiti naroda, odnosno da se napokon

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<sup>50</sup> OHR - Office of the High Representative;

<sup>51</sup> Odlukom Venecijanske komisije, donesenom na Konferenciji za implementaciju mira – koja je održana u Bonnu 9. i 10. prosinca 1997. godine, OHR-u su dane široke ovlasti interveniranja u svim porama bh. društva (zakonodavna, izvršna i sudska vlast) koju su prethodnici sadašnjeg visokog predstavnika Christiana Schwarz - Shillinga obilato koristili. Njemački diplomat Schwarz - Shilling je dužnost visokog predstavnika u BiH preuzeo od britanskog lorda Paddyja Eshdowna 31. siječnja 2006. godine i jedini je od dosadašnjih obnašatelja te funkcije koji je vrlo rijetko posezao za širokim bonskim ovlaštenjima za uplitanje u rad domaćih institucija.

prevlada atmosfera sukoba i nesigurnosti te da se krene u izgradnju bolje budućnosti za sve narode i građane.

Opisano društveno ozračje drži sve građane BiH pod dojmom da se rat nije ni završio. Jedno je sigurno, pri licitaciji žrtvama i navodnim interpretacijama ratnih događanja u dnevno-političke svrhe i pri sveprisutnom medijskom manipuliranju ljudskom tragedijom zaboravljen je čovjek i njegova patnja. U ovom izvješću nije nam cilj prezentirati neku našu «istinu», nego u fokus ponovo staviti prava pomalo zaboravljenog čovjeka, koji svoju neponovljivost u cjelini ostvaruje afirmacijom osobnih, vjerskih i nacionalnih određenja. Takvu, cjelovitu afirmaciju čovjeka kao jedinice u slojevitom društvu kao što je BiH moguće je postići samo pod okriljem pluralističkog demokratski ustrojenog društvenog uređenja, a pluralno (multietničko, multikonfesionalno i multikulturalno) društvo je nezaobilazna sudbina složenih država kao što je Bosna i Hercegovina.

## 2. DOGAĐAJI KOJI SU OBILJEŽILI 2006. GODINU

Gotovo svako zahvaćanje, a napose nedemokratsko zadiranje u politički i socijalni sustav države, neizbježno utječe na stanje ljudskih prava i građanskih sloboda. U Bosni i Hercegovini se to dodatno odražava i na jednakopravnost njezinih naroda. Stoga nam se čini neophodnim barem spomenuti događaje koji su izravno utjecali na razinu i kakvoću ljudskih prava, ali i na položaj konstitutivnih naroda.

### 2.1. *Pokušaj provedbe ustavnih promjena*

Tijekom 2005. godine sve do posljednjih dana ožujka 2006. godine aktualni su bili pokušaji preuređenja ustavno-pravnog uređenja BiH. Pregovori su započeli pod pokroviteljstvom Američkog instituta za mir, a glavni voditelj tog projekta pregovora političkih stranaka je bio bivši zamjenik visokog predstavnika u BiH, američki diplomat Donald Hays. U pregovorima su pod određenim pritiskom sudjelovale sve važnije političke stranke iz oba entiteta<sup>52</sup>.

Pregovori su se odvijali u tajnosti i bez prisutnosti medija. Budući da Daytonski ustav nije nikad ratificiran u Parlamentarnoj skupštini BiH, cilj političkog pritiska međunarodne zajednice (poglavitito SAD) je bio ovom međunarodnom ustavnopravnom dokumentu dati legitimitet pod krinkom kozmetičkih ustavnih promjena, koje bi bile usuglašene i usvojene putem parlamentarne procedure. Time bi legitimitet i formu ustavno-pravne volje sva tri konstitutivna naroda pored Aneksa IV. dobile i ustavne promjene koje je, preko izravnih intervencija u entitetskim ustavima<sup>53</sup> i niza zakona na razini države, u međuvremenu nametnula međunarodna zajednica. I Biskupska konferencija je na svome zasjedanju u Mostaru 22. ožujka 2006. očitovala negativan stav prema predloženim promjenama<sup>54</sup>.

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<sup>52</sup> U završnim pregovorima su sudjelovale Stranka demokratske akcije (SDA), Stranka za BiH (SBiH), Socijaldemokratska partija (SDP), Srpska demokratska stranka (SDS), Savez nezavisnih socijaldemokrata (SNSD), Partija demokratskog progresa (PDP), Hrvatska demokratska zajednica BiH (HDZ BiH) i Hrvatska narodna zajednica (HNZ). Od pregovora je na kraju odustala samo Stranka za BiH a predstavnik HNZ nije potpisao finalni Sporazum.

<sup>53</sup> Odluke visokog predstavnika Wolfganga Petritscha o amandmanima na Ustav F BiH i Ustav RS, br. 161/02 i broj 162/02 od 23. svibnja 2002. godine, objavljene su u «*Službenom glasniku BiH*», br. 13/02.

<sup>54</sup> Izjava BK BiH glasi: Prateći višemjesečni tijek pregovora o izmjeni Ustava BiH mi, katolički biskupi u Bosni i Hercegovini, sa žaljenjem konstatiramo da se promjena ovoga temeljnoga dokumenta državnosti i demokratičnosti naše zemlje izvodi na nedemokratičan i gotovo konspirativan način. Pitali smo se, a sada pitamo organizatore i sudionike pregovora o promjeni Ustava, kako i čijim ovlaštenjem mijenjaju Međunarodni mirovni sporazum iz Daytona bez sudjelovanja i suglasnosti svih država pot-

Pritisci međunarodne zajednice nisu urodili plodom, iako je postignut konačan sporazum između šest političkih stranaka, jer na sjednici Zastupničkog doma Parlamenta BiH od 26. travnja 2006. godine ponuđeni paket ustavnih promjena nije dobio potrebnu većinu.

Navedena epizoda iz političkog života BiH je početkom 2006. godine bila glavnom temom u bh. medijima oko koje se podizala velika prašina, a u konačnici je ukazala na nezrelost demokracije i neprofiliranost političke scene u BiH. Dok su Srbi pokazali da imaju usuglašena stajališta oko uske zaštite svojih interesa, nevjerodostojnost, nedosljednost i neodgovoran odnos političara iz Federacije BiH, koji bi trebali predstavljati interese svojih nacionalnih korpusa, očitava se u činjenici da je pod političkim pritiskom Sporazum o ustavnim promjenama potpisan od strane predsjednika najvećih nacionalnih stranaka Hrvata i Bošnjaka<sup>55</sup>, iako bi takvim sporazumom u potpunosti bio zacementiran i još više pogoršan ionako diskriminirajući položaj oba naroda u RS, a Hrvata na cijelom teritoriju BiH. Naime, potpisivanjem ovog sporazuma politički pred-

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pisnica i da se ne pitaju za mišljenje građani i narodi ove zemlje? Od kada se to međunarodni ugovori ne mijenjaju barem načinom na koji su i nastali?

Imajući u vidu Sporazum, koji je rezultat ovako provedenih pregovora, s pravom se bojimo da je riječ o izravnoj prijetnji boljoj budućnosti građana i ravnopravnosti naroda jer bi se ovom ustavnom kategorijom potvrdilo ratom provedeno i Daytonom ozakonjeno etničko čišćenje i nepravedna podjela Bosne i Hercegovine. Naime, kako se u ovako presudnome trenutku za našu zemlju ne pitati, u ime koje se demokracije i kakve pravde, te kakve budućnosti Bosne i Hercegovine, uvodi entitetsko načelo odlučivanja u Zastupničkom domu (čl. IV, toč. 10 f), i ustavnom kategorijom sudbina ove zemlje predaje u ruke zastupnicima dvaju naroda koji jedini mogu osigurati "1/3 poslanika ili članova s teritorija svakog entiteta"?

Duboko žalimo da su ostali bez odjeka brojni naši apeli tijekom desetogodišnje "tihe revizije" Daytonškoga sporazuma, kojom je utvrđivana nepravedna podjela Bosne i Hercegovine a hrvatski narod sustavno svoden na manjinu. Unatoč tomu, i ovom prigodom ne možemo ne upitati, kojim demokratskim načelom se hrvatskom narodu, koji je u ovoj zemlji konstitutivan, oduzima temeljno pravo da zajedno s druga dva naroda ravnopravno sudjeluje u političkome životu i donošenju zakona? Komu je u interesu da se ovakvim iznuđenim kompromisima dovodi u pitanje mogućnost suživota u ovoj zemlji i daje do znanja kako u njoj nema mjesta za sve njezine građane i narode?

Upravo zbog toga, mi u ovome presudnome trenutku za budućnost hrvatskoga naroda, a s njime i Bosne i Hercegovine, pozivamo zastupnike hrvatskoga naroda, ali i sve odgovorne političare i druge ljude kojima je multietničnost i demokratičnost ove zemlje na srcu da, vodeći se općim dobrom i demokratskim načelima, učine sve kako ovako zamišljene ustavne promjene ne bi poprimile formu parlamentarne potvrde.

Podsjećamo da desetogodišnje iskustvo i kakvoća "prve faze" ustavnih promjena ne daje nikakva jamstva da bi se u nekoj "drugoj fazi" bilo što moglo i htjelo učiniti na bolje. Utemeljen je strah da bi prihvaćanje predloženih promjena otvorilo put dokidanja i preostalim washingtonsko-daytonskih mehanizama zaštite interesa hrvatskoga naroda, kao što su županije i vitalni nacionalni interes. Ako, unatoč jamstvima Daytonškoga ustava, Hrvati u Bosni i Hercegovini ne mogu imati ni tv kanal, ni škole na hrvatskome jeziku, onda su to najjasniji pokazatelji za koje se standarde na početku trećega tisućljeća valja zalagati!

Kao biskupi Katoličke crkve i pripadnici hrvatskoga naroda, i ovaj put potičemo svoje vjernike da se još odlučnije zauzimaju za svoja neotuđiva prava i zajedno s drugima izgrađuju pravedni mir u ovoj zemlji.

<sup>55</sup> Za HDZ BiH predsjednik stranke Dragan Čović, a za SDA predsjednik stranke Sulejman Tihić – obojica bivši članovi Predsjedništva BiH. HDZ BiH je na prethodnim Općim izborima 2002. godine dobio skoro plebiscitarnu podršku hrvatskog naroda, dok je SDA tada držala poziciju najutjecajnije i parlamentarno najzastupljenije bošnjačke političke stranke.

stavnicima Hrvata i Bošnjaka dali su suglasnost da se konačno zacementiraju rješenja iz Daytonu koja im ne omogućavaju konstitutivnost na teritoriju Republike Srpske. K tome, nametnutim ustavnim promjenama iz 2002. godine, diskriminacija Bošnjaka i Hrvata u RS je potvrđena, a Hrvati su izgubili konstitutivnost i u FBiH.

Pored navedenog, Sporazum o amandmanima na Ustav BiH, koji je bio usuglašen od strane šest političkih stranaka, sadržavao je i izmjene kojima se položaj Hrvata još više pogoršava u odnosu na katastrofalna ustavna rješenja iz 2002. godine.

Naime, prema političkom sporazumu o ustavnim promjenama iz 2006. godine bile bi reducirane nadležnosti Doma naroda kao gornjeg doma Parlamentarne skupštine BiH, a veću bi važnost dobio Zastupnički dom – u kojemu Hrvati ne mogu nikako ostvariti većinu i tako štititi svoje interese, odnosno blokirati donošenje za njih štetnih zakona. Nasuprot tomu, ovakva rješenja Srbima i Bošnjacima omogućavaju zaštitu interesa putem entitetskog glasovanja, jer sve odluke mogu zaustaviti predviđenom entitetskom većinom u Zastupničkom domu.

Navedena izmjena u biti i nije od temeljnoga značenja jer i prema postojećim ustavnim rješenjima pri odlučivanju Parlamentarne skupštine BiH postoji entitetsko glasovanje koje se privremeno transferira u Dom naroda BiH, u kojemu Hrvati većinom glasova svojih delegata mogu pokrenuti zaštitu vitalnih nacionalnih interesa.<sup>56</sup> Naime, pokretanje instituta zaštite vitalnog nacionalnog interesa preko Doma naroda BiH u smislu važećeg članka IV.3.e) Ustava BiH ima ograničen karakter, jer u slučaju da se jedan od preostala dva naroda usprotivi zahtjevu za zaštitu vitalnog nacionalnog interesa, sporna se odluka transferira na odlučivanje Ustavnom sudu BiH. Budući da kvorum Ustavnog suda BiH čini najmanje pet sudaca<sup>57</sup>, dva suca iz reda naroda čiji je vitalni interes ugrožen uvijek mogu biti preglasani, što se već događalo u 2006. godini, tako da efektivne zaštite vitalnoga interesa ustvari nema.

Činjenica je da bi se smanjenjem ovlasti Doma naroda, sukladno potpisanom političkom sporazumu, suzilo pravo veta najmalobrojnijeg naroda pri odlučivanju u Parlamentu. Međutim, budući da Hrvati ionako ne mogu blokirati odluke putem entitetskog glasovanja niti putem instituta za zaštitu vitalnog nacionalnog interesa, ove promjene možemo ocijeniti kao kozmetičke i pokrenute s ciljem davanja legitimiteta postojećim

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<sup>56</sup> Dom naroda se sastoji od pet Hrvata, pet Srba i pet Bošnjaka, a procedura zaštite vitalnog nacionalnog interesa može se pokrenuti na zahtjev većine delegata iz reda bilo kojeg naroda.

<sup>57</sup> Sukladno članku VI.1.a) i VI.1.b) Aneksa IV. Daytonskog sporazuma (Ustav BiH) Ustavni sud BiH ima devet članova od čega su po dva iz reda konstitutivnih naroda, dok su preostala trojica stranci koje izabire predsjednik Europskog suda za ljudska prava. Kvorum za odlučivanje čini većina svih članova Suda, dakle najmanje pet članova (sudaca) pa dva hrvatska suca ni u kom slučaju ne mogu ostvariti potrebnu većinu.

rješenjima putem procedure Parlamentarne skupštine BiH. Time bi, naime, Bosna i Hercegovina i definitivno bila podijeljena, ne samo na dva entiteta nego između dva naroda.

Pregovori o ustavnim promjenama do kosti su ogoljeli licemjernost hrvatskih a, u određenoj mjeri, i bošnjačkih političara na vlasti u BiH, koji su potpisivanjem ovakvog sporazuma svoje sitne interese stavili ispred krucijalnih interesa naroda koje predstavljaju. U pokušaju ustavnih promjena valja konstatirati pozitivnu činjenicu da su se bosanskohercegovački političari iz oba entiteta, makar i pod moćnim pritiskom, oko nečega dogovorili. To je još jedna potvrda da predstavnici međunarodne zajednice mogu efikasno utjecati na domaće političare. Budući da je promjena Ustava uvjet za normalizaciju stanja u Bosni i Hercegovini i njezinoga članstva u Europskoj uniji, ostaje nada i preporuka da svi međunarodni i domaći politički čimbenici ustraju u traženju pravednoga političkoga rješenja za ovu zemlju.

## 2.2. Zakon o obrani BiH

Nakon što je u 2003. godini usvojen Zakon o obrani BiH, njegovo postupno provođenje se završilo 1. siječnja 2006. godine, kada su ukinuta entitetska ministarstva obrane te dotadašnji sustav obveznog služenja vojnog roka.

Nove oružane snage se sastoje od 10.000 ljudi koji su isključivo profesionalno osoblje. Aktivna vojna pričuva je ograničena na polovicu veličine aktivnih snaga. Od 1. siječnja 2006. godine počela je primjena jedinstvenog državnog proračuna za obranu. Predviđeno je da do 31. prosinca 2007. godine bude u potpunosti okončana reforma obrane u BiH.

Ovom je reformom uspostavljen jedinstveni vojni obrambeni sustav na razini države, iako Aneks IV. Daytonskog sporazuma propisuje da je obrana u ingerenciji entiteta<sup>58</sup>. Stoga se mora primijetiti da ovaj zakon, kao i mnogi drugi zakoni koje je nametnuo OHR, nije usklađen s Ustavom BiH niti s entitetskim ustavima F BiH i RS. Međutim, reformu obrane možemo ocijeniti posve racionalnom i potrebnom jer smanjuje nepotrebne i visoke proračunske troškove koje su pravila entitetska ministarstva obrane. Ujedno, jedinstvena vojska na razini države preduvjet je i ulasku u NATO pakt.

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<sup>58</sup> Ingerencije Federacije BiH iz oblasti obrane proizlaze iz članka III.1.b) Ustava FBiH. Člankom III.1. Ustava BiH su propisane nadležnosti institucija države BiH, među kojima nisu navedene ingerencije države u oblasti obrane, dok je člankom III.3.a) propisano: "Sve vladine funkcije i ovlasti koje se u ovome Ustavu nisu izričito dodijeljene institucijama BiH, pripadaju entitetima".

### 2.3. Zakon o PDV-u

U BiH je od 01. siječnja 2006. godine počela primjena Zakona o porezu na dodanu vrijednost. Ovim je zakonom predviđen sustav oporezivanja za sve proizvode po jedinstvenoj stopi PDV-a od 17%. Mnogi su predviđali da će uvođenje PDV-a po jedinstvenoj stopi izazvati velika poskupljenja, a samim tim i socijalne nemire. Činjenica je da je do poskupljenja došlo i da je socijalni status većine stanovništva BiH pogoršan, no ipak se može zaključiti da nije došlo do većih socijalnih potresa.

Svakako ne treba zaobići pozitivne efekte uvođenja PDV-a. Prema podacima Uprave za neizravno oporezivanje, u 2006. godini je prikupljeno 4,109 milijardi KM<sup>59</sup> neizravnih poreza, što je mnogo više u odnosu na prošle godine. Po prvi put u posljednjih jedanaest godina došlo je do smanjenja vanjskotrgovinskog deficita BiH sa 7,5 milijardi KM na 5,9 milijardi KM. Nažalost, ostaje činjenica da se uvođenjem PDV nije uspjelo u iskorjenjivanju općeraširene "sive ekonomije" u Bosni i Hercegovini.

Ipak, sustav oporezivanja po jedinstvenoj stopi PDV-a ne možemo ocijeniti kao socijalno pravedan jer kao takav najviše pogađa socijalno najugroženije kategorije stanovništva. Nelogično je i nepravedno oporezivati luksuz i osnovne životne namirnice po istoj stopi poreza. Procjene govore da strukturi potrošnje socijalno najugroženijeg stanovništva BiH hrana predstavlja od 50 % do 70 % mjesečnih troškova. Poskupljenjem osnovnih životnih namirnica<sup>60</sup> još više je otežan položaj većine osiromašenog stanovništva u državi, dok su bogatiji slojevi društva u ovakvoj poreznoj reformi bolje prošli jer je uvođenjem jedinstvene stope poreza stopa oporezivanja na luksuz smanjena. Cijenimo da je radi socijalne pravednosti u dogledno vrijeme potrebno uvesti sustav oporezivanja s više stopa poreza, s time da bi bilo poželjno na osnovne životne namirnice, knjige, dječju kozmetiku i sl. uvesti i nultu stopu poreza na dodanu vrijednost.

Budući da se PDV od 01.01.2006. godine više ne slijeva u entitetske<sup>61</sup> nego u državnu kasu, kao veliki se problem u procesu uvođenja jedinstvenog sustava PDV-a na razini države u 2006. godini pokazalo nepostojanje dogovora o kriterijima raspodjele prikupljenih sredstava između Federacije BiH, Republike Srpske i Brčko Distrikta - što je

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<sup>59</sup> Fiksni tečaj 1,00 KM cca. 0,51 EUR;

<sup>60</sup> Većina osnovnih životnih namirnica je prema ranijem poreznom sustavu bila oporezivana po stopi od 10 % (Tb-1 poreza na promet proizvoda);

<sup>61</sup> Porez na promet proizvoda i usluga je do uvođenja PDV-a bio prihod entiteta i Brčko Distrikta, a u smislu Aneksa IV. Daytonskog sporazuma ingerencije u oblasti prikupljanja poreznih prihoda također pripadaju entitetima.



rezultiralo blokiranjem jedinstvenog računa u više navrata tijekom 2006. godine. Ukoliko se sustavno ne riješi pitanje raspodjele sredstava od prikupljenog PDV-a, to bi u budućnosti moglo biti uzrokom konstantne fiskalne krize na cijelom području države.

Na kraju također treba istaknuti da ni porezna reforma u BiH nije usklađena s ustavnim rješenjima, što ukazuje na neuređenost državno-pravnog sustava u BiH. Posve je jasno da je poreznu reformu bilo neophodno provesti. Ovaj primjer, kao i mnogi drugi, ukazuje na nužnost preustroja ustavno-pravnog uređenja BiH.

#### 2.4. **Pregovori o pridruživanju BiH Europskoj uniji** i primanju u Partnerstvo za mir

Bosna i Hercegovina je 25. siječnja 2006. godine otpočela pregovore o pridruživanju Europskoj uniji, kada je otvoren tehnički dio pregovora, a početkom prosinca 2006. godine završen je tehnički dio pregovora o potpisivanju Sporazuma o stabilizaciji i pridruživanju EU. Međutim, za nastavak pregovora EU inzistira na provedbi reforme policije<sup>62</sup> i radiotelevizijskog sustava koji trenutno predstavljaju najveću prepreku na europskom putu BiH.

Nakon što prvotno nije primljena u NATO program "Partnerstvo za mir"<sup>63</sup>, zeleno svjetlo za BiH stiglo je s NATO samita održanog 28. studenog 2006. godine u Rigi. Nakon obavljene reforme obrane BiH je potpisala okvirni dokument za Partnerstvo za mir, no to još uvijek Bosni i Hercegovini ne jamči i prijam u trajno punopravno članstvo.

#### 2.5. **Odluka o neustavnosti entitetskih obilježja**

Odlučujući po zahtjevu bošnjačkog člana Predsjedništva BiH, Ustavni sud BiH je na sjednici održanoj 31. ožujka 2006. godine donio odluku o neustavnosti entitetskih obilježja oba entiteta i odredaba entitetskih zakona o grbu i zastavi<sup>64</sup>. Odluka je done-

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<sup>62</sup> Reforma policije, koja bi prema smjernicama OHR-a trebala biti uređena regionalno (a ne entitetski, kao do sada), započeta je 2005. godine, ali je njezina provedba u 2006. godini ostala u cijelosti blokirana od strane vlasti u Republici Srpskoj.

<sup>63</sup> Na NATO samitu održanom 28. lipnja 2004. godine u Istanbulu BiH nije bila primljena u «Partnerstvo za mir» prvenstveno radi neispunjavanja obveza prema Međunarodnom sudu za ratne zločine u Haagu. Tom prilikom lideri NATO-a su kao razlog neprimanja posebno istaknuli opstrukciju suradnje Republike Srpske pri uhićenju osumnjičenih za ratne zločine. Radovan Karadžić i Ratko Mladić do današnjeg dana nisu privedeni licu pravde.

<sup>64</sup> Pokrenutom procedurom zaštite vitalnog nacionalnog interesa ujedno je osporen i Zakon o praznicima Republike Srpske;

seni u smislu ranije Odluke Ustavnog suda BiH o konstitutivnosti sva tri naroda na cijelom teritoriju BiH<sup>65</sup>.

Iako je Ustavni sud BiH entitetima ostavio rok od šest mjeseci da usklade zakone s navedenom odlukom, do kraja 2006. godine niti jedan od entiteta nije postupio po toj odluci u ostavljenom roku, što jasno ukazuje na nepostojanje i nefunkcioniranje pravne države u BiH.

## 2.6. Zakon o Javnom RTV servisu BiH i ocjena ustavnosti Zakona o JRTVS FBiH

Početak 2006. godine, točnije 05. siječnja, stupio je na snagu Zakon o Javnom RTV servisu BiH kojim se uređuje Javni radiotelevizijski servis Bosne i Hercegovine.

Na 43. sjednici Doma naroda Parlamentarne skupštine BiH, koja je održana 29. lipnja 2005. godine, na prvom je čitanju usvojen prijedlog Zakona o JRTVS BiH, bez glasova delegata iz reda hrvatskog naroda, te je na taj način pokrenuta inicijativa za donošenje ovog zakona. Zakon je donesen putem legalne procedure Parlamentarne skupštine BiH, a nakon Odluke Ustavnog suda BiH, br. U 10/05 od 22. srpnja 2005. godine, kojom je odbijen zahtjev hrvatskih parlamentarnih zastupnika za zaštitu vitalnog nacionalnog interesa u svezi s novim zakonskim rješenjima u oblasti javnog informiranja. Shodno navedenoj Odluci Ustavnog suda BiH, Parlament Federacije BiH bio je dužan uskladiti entitetski zakon o JRTVS Federacije BiH te je u tom smislu sačinjen novi prijedlog entitetskog zakona, koji je ušao u parlamentarnu proceduru usvajanja.

I Prijedlog Zakona o Javnom servisu Radio–televizije Federacije Bosne i Hercegovine (JRTVS FBiH) je na inicijativu Kluba poslanika iz reda hrvatskog naroda ušao u proceduru ocjene ustavnosti – koja se ovaj put odvijala pred Vijećem za zaštitu vitalnih interesa Ustavnog suda Federacije BiH. Kao u postupku koji se vodio pred Ustavnim sudom BiH, inicijativa je pokrenuta zato što Hrvati kao konstitutivni narod nemaju javne medije na hrvatskom jeziku niti imaju dovoljnu programsku zastupljenost u medijima Federacije BiH (kao ni na razini države)<sup>66</sup>. Procedura zaštite vitalnog nacionalnog interesa je pokrenuta jer se navedenim prijedlogom omogućava i potpuna dominacija Bošnjaka u medijskoj zastupljenosti federalnih javnih RTV servisa.

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<sup>65</sup> Do donošenja navedene Odluke Ustavnog suda BiH o konstitutivnosti sva tri naroda na cijelom teritoriju BiH, broj: 5/98 od 30. lipnja i 01. srpnja 2000. godine, provodila se politika na način da su u Republici Srpskoj bili konstitutivni isključivo Srbi, a u Federaciji BiH samo Bošnjaci i Hrvati.

<sup>66</sup> Hrvati nemaju u FBiH javnu televiziju na hrvatskom jeziku, a iz proračuna FBiH se ne izdvajaju sredstva za financiranje ni jedne radio stanice na materinskom jeziku ovog konstitutivnog naroda. U RS funkcioniraju isključivo mediji na srpskom jeziku.

Bez obzira na to što je Ustavni sud BiH 22. srpnja 2005. godine donio Odluku u kojoj je utvrdio da Prijedlog Zakona o JRTVS BiH nije destruktivan po vitalni interes hrvatskog naroda,<sup>67</sup> Ustavni sud Federacije BiH je naknadnom Odlukom Vijeća Ustavnog suda Federacije BiH, broj U-11/06 od 19. srpnja 2006. godine utvrdio da u navedenom zakonu postoji povreda vitalnog nacionalnog interesa, tj. da je on štetan za interese Hrvata u BiH<sup>68</sup>. Paradoksalna situacija da Ustavni sud Federacije BiH donosi odluku koja je oprečna ranijoj odluci Ustavnog suda BiH, proizlazi iz neusklađenosti Ustava entiteta s Ustavom BiH (Aneksom IV. Daytonskog sporazuma)<sup>69</sup>, ali i iz činjenice da sukladno odredbama Ustava Federacije BiH ne postoji mogućnost preglasavanja sudaca iz reda jednog naroda u proceduri ocjene destruktivnosti određenog zakona po vitalni nacionalni interes.

Nedvojbeno je da je Odlukom Ustavnog suda BiH iz 2005. godine zaobiden interes Hrvata kao konstitutivnog naroda, iako su se njegovi legitimni parlamentarni zastupnici o tom pitanju jasno odredili.

Sve je ovo posljedica nepravednog ustavno-pravnog uređenja koje je nametnuto od strane međunarodne zajednice u Daytonu, a u još drastičnijoj formi potvrđeno 2002. godine. U ovakvoj konstelaciji odnosa Republika Srpska je uspostavljena kao jednonacionalni entitet u kojemu su Srbi isključivi nositelji vlasti, dok je dekonstitucija Hrvata i u Federaciji BiH dovršena ustavnim promjenama koje je nametnuo Visoki predstavnik

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<sup>67</sup> Odluka Ustavnog suda BiH od 22. srpnja 2005. godine (s kojom je trebalo uskladiti entitetske zakone u ovoj oblasti) je objavljena u «*Službenom glasniku BiH*», br. 64/05 od 19.09.2005. godine (str. 5110 - 5117).

<sup>68</sup> Citiramo dio obrazloženja Odluke Ustavnog suda Federacije BiH kojim se utvrđuje povreda vitalnog nacionalnog interesa hrvatskog naroda: *Ovo zbog toga, što su programska načela suštinska načela na kojima se zasniva vršenje funkcije Javnog Radio-televizijskog servisa Federacije Bosne i Hercegovine i u tom dijelu trebaju se jasno utvrditi zakonski instrumenti zaštite za sva tri konstitutivna naroda i građane, na način, da bi se eliminirala svaka mogućnost favoriziranja bilo kog naroda, a time i diskriminacija na jednakopravnu uporabu jezika i pisma, uvažavanja nacionalnih, regionalnih, tradicijskih, vjerskih, kulturnih i drugih posebnosti konstitutivnih naroda i svih građana Bosne i Hercegovine. U prilog ovoj tvrdnji su standardi Europskog suda za ljudska prava i načela vladavine prava, da predloženi zakoni moraju sadržavati jasne i precizne formulacije, a zakonske posljedice moraju biti izvjesne i primjerene očekivanjima za one na koje će se primjenjivati, što ne proizlazi iz Prijedloga zakona... Isto tako, nije osigurana zaštita od preglasavanja jednog konstitutivnog naroda pri donošenju odluka..., jer prema članku 24. Prijedloga zakona, svaka odluka može da se donese od strane dva člana Upravnog odbora Javnog servisa Radio-televizije Federacije Bosne i Hercegovine (u daljem tekstu: Upravni odbor), pri čemu je glas predsjedavajućeg odlučujući. Kod ovakvog stanja stvari, odlukama Upravnog odbora ne garantira se potpuna jednakopravnost utvrđena u spomenutom članku Prijedloga zakona, a koja je zagarantirana Amandmanom XXVII na Ustav Federacije Bosne i Hercegovine. Naime, prema Prijedlogu zakona odluku mogu donijeti dva člana Upravnog odbora, što znači predstavnik jednog naroda i predstavnik iz reda ostalih, što u nejednakopravnu-diskriminirajuću poziciju stavlja druga dva naroda, a u tom pogledu ne postoji nikakva efektivna pravna zaštita...*

<sup>69</sup> Ustav Federacije BiH je usvojen 30.03.1994. godine, a prvotno je usuglašen na temelju Washingtonskog sporazuma, potpisanog 18.03.1994. godine. Dakle, Ustav F BiH je stariji od Ustava BiH (Aneksa IV. Daytonskog sporazuma) jer je Daytonski mirovni sporazum parafiran 22. studenoga 1995. godine u Daytonu - SAD, a potpisan 14. prosinca 1995. godine u Parizu.

2002. godine. Nakon OHR-ove ustavne reforme, institut zaštite vitalnog nacionalnog interesa za Hrvate ostaje jedini instrument zaštite konstitutivnosti toga naroda<sup>70</sup>. Sustavna diskriminacija Hrvata kao najmalobrojnijeg konstitutivnog naroda u BiH prvenstveno proizlazi iz članka IV.3. Aneksa IV. Daytonskog sporazuma u smislu kojega Hrvati kao konstitutivni narod u BiH ne mogu parlamentarnim putem blokirati donošenje odluka u Parlamentarnoj skupštini BiH, što smo već ranije opisali. Shodno ranijoj elaboraciji ustavnih rješenja, u ovom su slučaju Hrvati preglasani i u Ustavnom sudu BiH.

Odluka Ustavnog suda o JRTVS BiH iz 2005. godine jasno pokazuje da se zaštita vitalnog nacionalnog interesa, kao jedinog preostalog instrumenta zaštite konstitutivnosti Hrvata, ne može ostvariti ni putem Ustavnog suda BiH jer se u ovom najvišem organu sudbene vlasti odluke donose većinom glasova članova tog suda, pri čemu dva suca Ustavnog suda BiH koji su izabrani iz reda hrvatskog naroda nisu u mogućnosti blokirati ocjenu štetnosti bilo kojeg zakona ili odluke po vitalni interes naroda kojemu pripadaju. A poznata je praksa da u svim tijelima vlasti svih razina ministri, zastupnici, pa čak i članovi sudova, uglavnom glasuju u skladu s interesima naroda kojemu pripadaju i stranke koja ih je postavila.

Očito da postojeća ustavna rješenja iz Daytona i rješenja nametnuta nakon njega, sama po sebi negiraju konstitutivnost hrvatskog naroda jer ni ocjena svih hrvatskih parlamentarnih zastupnika o štetnosti predloženog Zakona o JRTVS BiH, ni ocjena oba suca Ustavnog suda BiH iz reda hrvatskog naroda da je Zakon štetan po vitalne nacionalne interese Hrvata, nije bila dovoljna da se blokira donošenje Zakona koji negira konstitutivna prava tog naroda.<sup>71</sup>

Ovaj primjer jasno ukazuje da daytonsko državno-pravno uređenje, izmijenjeno jednostranim odlukama Ureda visokog predstavnika (OHR), ne sadrži mehanizme koji bi

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<sup>70</sup> Naime, od OHR-a nametnutim izmjenama entitetskih ustava iz 2002. godine definirano je da se zaštita vitalnih nacionalnih interesa u Federaciji BiH ostvaruje u Domu naroda, a u Republici Srpskoj u Vijeću naroda (dvodomna entitetska zakonodavna tijela). Dom naroda u F BiH ima svu nadležnost koju ima i Zastupnički Dom Federacije BiH, dok Vijeće naroda u RS ima neznatne nadležnosti u odnosu na Narodnu skupštinu RS.

Kao i u zakonodavnoj, dekonstitucija Hrvata je izvršena i izvršnoj vlasti F BiH. Od 2002. godine Vlada F BiH sastoji se od predsjednika Vlade, 8 ministara iz reda bošnjačkog, 5 ministara iz reda hrvatskog i 3 ministra iz reda srpskog naroda. Pored navedenih 16 ministara, predsjednik Vlade FBiH iz reda najbrojnijeg konstitutivnog naroda (Bošnjaci) može imenovati i jednog ministra iz reda "ostalih". Takvo imenovanje prema ustavnim promjenama OHR-a, ne mogu izvršiti predstavnici izvršne vlasti iz reda hrvatskog ili srpskog naroda. Odluka OHR-a sugerira da predsjednik Vlade mora biti Bošnjak. S dodatnim glasom "ostalih" (koje mogu imenovati isključivo Bošnjaci) Bošnjacima je u F BiH omogućeno ostvarivanje majorizacije u odnosu na druga dva naroda u izvršnoj vlasti, a Srbima je isto majoriziranje omogućeno u Republici Srpskoj.

<sup>71</sup> Oba su suca Ustavnog suda BiH, koji su izabrani iz reda hrvatskog naroda, svojim izuzetim mišljenjem iskazali stav o štetnosti navedenog zakona po vitalne interese hrvatskog naroda. Njihova izdvojena mišljenja, po kojima se ne slažu s odlukom većine sudaca, objavljena su u «Službenom glasniku BiH», br. 64/05 od 19.09.2005. godine (str. 5118 - 5119), odmah iza sporne Odluke Ustavnog suda BiH br. U – 10 / 05.

štitili konstitutivnost i ravnopravnost najmalobrojnijeg naroda u BiH. Dapače, primjer razvidno ukazuje da su Hrvati u BiH predmetom majorizacije većine te da de facto više ne posjeduju instrumente kojima bi mogli sačuvati relevantan politički subjektivitet konstitutivnog naroda. Pravo na medije na materinskom jeziku u demokratskom svijetu zagantirano je svim nacionalnim manjinama. Hrvatima, koji u BiH slove kao konstitutivan narod, sustavno se niječu takva prava, čak i putem institucije Ustavnog suda BiH. Sve je posljedica nepravednog društvenog uređenja koje je međunarodna zajednica skrojila u Daytonu i poslije Daytonu.

## 2.7. Opći izbori

Dana 01. listopada 2006. godine, održani su četvrti poslijeratni izbori za sve razine vlasti, izuzev izbora na razini općina – najmanjih teritorijalnih jedinica lokalne samouprave.

Na izborima su birani:

- Članovi Predsjedništva Bosne i Hercegovine (po jedan član iz svakog od tri konstitutivna naroda),
- Zastupnici u Predstavničkom domu Parlamentarne skupštine Bosne i Hercegovine (42 zastupnika),
- Zastupnici u Predstavničkom domu Parlamenta Federacije Bosne i Hercegovine (140) zastupnika),
- Predsjednik i potpredsjednici Republike Srpske,
- Zastupnici u Narodnoj skupštini Republike Srpske (83 poslanika) i
- Zastupnici u županijskim skupštinama Federacije Bosne i Hercegovine (deset županijskih / kantonalnih skupština).

Od 2.755.207 registriranih birača u BiH, na izbore je na razini cijele države izišlo oko 55%<sup>72</sup>, što je znatno više nego što je bilo na posljednjim općim izborima, održanim 2002. godine.

Rezultati izbora su ukazali da su tradicionalno najzastupljenije nacionalne stranke u BiH prošle lošije nego ikad do sad. To je u Federaciji BiH najvećim dijelom rezultat osramoćenja bošnjačke SDA i hrvatskog HDZ-a BiH prilikom prethodno opisanih pregovora o ustavnim promjenama. Bilo kako bilo, rezultati netom proteklih izbora ukazu-

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<sup>72</sup> Prema nepotpunim podacima, u Federaciji BiH glasovalo je 53,93%, u Republici Srpskoj 56,11% birača, dok je u Distriktu Brčko na glasovanje izišlo 45,76% birača.

ju da se u BiH definitivno profilira nova politička scena s više stranaka koje su dobile status parlamentarnih političkih stranaka.

Na temelju rezultata održanih općih izbora 2006. godine mogao bi se napraviti čitav niz interesantnih analiza, ali mi ćemo se ovdje detaljnije koncentrirati na samo dva segmenta.

U Republici Srpskoj je tradicionalno najzastupljenija stranka SDS izgubila taj primat, a preuzela ga je SNSD sa, za Srbe, karizmatičnim političkim vođom Miloradom Dodikom, koji se u predizbornoj kampanji uspio prikazati kao najvjerodostojniji zaštitnik daytonske Republike Srpske. Naime, Savez neovisnih socijaldemokrata (SNSD) je primjerice u izborima za delegate Parlamentarne skupštine BiH iz Republike Srpske (1/3 od ukupnog saziva) osvojio 46,93% glasova (7 mandata), dok je tradicionalno najzastupljenija Srpska demokratska stranka (SDS) osvojila samo 19,44% glasova. O katastrofalnim rezultatima implementacije Aneksa VII. Daytonskog sporazuma<sup>73</sup>, koji se odnosi/o na povratak izbjeglih i ratom raseljenih osoba, govori podatak da je najbolji rezultat od nacionalnih stranaka iz reda druga dva nesrpska konstitutivna naroda polučila bošnjačka Stranka za BiH (SBiH) s 4,16% osvojenih glasova (1 kompenzacijski mandat), dok je najbolji rezultat od hrvatskih nacionalnih stranaka polučila Hrvatska stranka prava Đapić – Jurišić i NHI – koalicija za jednakopravnost s osvojenih 0,88% glasova (bez mandata). Podatak da su Bošnjaci, odnosno svi nesrpski kandidati, na izborima uspjeli postići dva kompenzacijska mandata od ukupno 14 za zastupnike iz RS, a da Hrvati nemaju niti jednog političkog predstavnika iz srpskog entiteta koji obuhvaća 49% teritorije BiH, ukazuje da su Hrvati kao konstitutivan narod u BiH nakon rata gotovo iščezli iz tog entiteta, dok su se Bošnjaci vratili u vrlo malom omjeru u odnosu na predratno demografsko stanje<sup>74</sup>.

Na jasne zaključke o položaju hrvatskog naroda u BiH interesantno je povući poveznicu s rezultatima izbora za članove Predsjedništva BiH. Ovo se najviše izvršno tijelo vlasti na razini države, prema Ustavu BiH, sastoji od tri člana, po jedan iz reda svakog od tri konstitutivna naroda. Kod Bošnjaka i Srba izborne pobjede su ostvarili lideri nacionalnih stranaka Haris Silajdžić, koji je kandidiran ispred S BiH, s programom unitar-

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<sup>73</sup> Međunarodna zajednica je početkom 2004. godine obznanila kako je implementacija Aneksa VII. «uspješno dovršena s 31.12.2003. godine».

<sup>74</sup> Nakon rata nije obavljen popis stanovništva koji bi davao egzaktno podatke. Prema podacima Katoličke crkve u Republici Srpskoj je prije rata živjelo oko 220.000 Hrvata (katolika), a sada je preostalo nešto manje od 12.000. Muslimani – Bošnjaci su prije rata bili apsolutna većina u područjima istočne Bosne (sada u RS), a s obzirom na šaroliku predratnu demografsku strukturu stanovništva, ostvarivali su većinu i u drugim područjima RS, kao i Hrvati – primjerice u Posavini (najvećim dijelom sada u RS). U Republici Srpskoj nakon rata živi preko 90 % pučanstva srpske nacionalnosti. O demografskim kretanjima u BiH vidi poglavlja I.2. i I.3. našeg *Izvešća o stanju ljudskih prava za 2003. godinu* ([www.ktabkbih.net/justitiaetpax](http://www.ktabkbih.net/justitiaetpax));

ne građanske BiH, i Nebojša Radmanović, kandidiran ispred SNSD, s programom jačanja položaja Republike Srpske uz predizborni program u kojemu je, prijeteci referendumom, propagirano pravo Republike Srpske za odcjepljenje od Bosne i Hercegovine.

Za hrvatskog člana Predsjedništva BiH, glasovima velike većine nehrvata građanske opcije, izabran je kandidat Socijaldemokratske partije (SDP) Željko Komšić<sup>75</sup>. Navedeni kandidat ni u jednoj od izbornih jedinica u kojima Hrvati predstavljaju većinu nije osvojio više od 10% glasova<sup>76</sup>. Ovaj izabrani član Predsjedništva BiH je u predizbornoj kampanji posebno isticao da u svom mandatu obnašanja dužnosti hrvatskog člana Predsjedništva neće zastupati isključivo Hrvate nego sve građane (pa tako navodno i Hrvate). Komšić je tijekom predizborne kampanje također u više navrata isticao kako ne drži previše do svog hrvatskog nacionalnog identiteta pa tako ni do hrvatskog jezika ni kulture. To mu ipak nije bilo zaprekom da se kandidira za poziciju hrvatskog člana Predsjedništva BiH.

U predizbornoj kampanji Komšić je svojim protukandidatima s pravom poručivao da ih ujedinjene može pobijediti samo glasovima iz jedne od sarajevskih izbornih jedinica<sup>77</sup>. Ne podcjenjujući osobne kvalitete i ne prejudicirajući budući rad ovog izabranog visokog državnog dužnosnika, ne možemo zaobići konstataciju da se ciničnim doima pozicija Hrvata kao de iure «konstitutivnog naroda» u BiH, jer zahvaljujući postojećim ustavnim rješenjima i Izbornom zakonu BiH više nisu u mogućnosti birati ni vlastite predstavnike u vlasti.

Izbori 2006. godine jasno ukazuju da Državi trebaju novi ustav i novi izborni zakon koji bi bez obzira na brojnost jamčio konstitutivnost, jednakopravnost i političku suverenost svih naroda na cijelom teritoriju države. Postojeće državno-pravno ustrojstvo BiH je potpuno neprihvatljivo i kao takvo predstavlja generator nestabilnosti u čitavoj regiji.

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<sup>75</sup> Željko Komšić (SDP) je na izborima ostvario pobjedu s 39,56% osvojenih glasova, dok su njegovi izravni konkurenti ostvarili rezultat od 26,14% Ivo Miro Jović (HDZ BiH) i 18,18% Božo Ljubić (HDZ 1990- hrvatsko zajedništvo). Ovakav ishod izbora za hrvatskog člana predsjedništva omogućila je potpuna i nepomirljiva podijeljenost u hrvatskom političkom korpusu koja je – po našem mišljenju – motivirana isključivo osobnim interesima.

<sup>76</sup> Za primjer ćemo uzeti izborne rezultate u dvije općine koje procentualno imaju najviše hrvatskog življa (preko 95%), jednu iz Hercegovine, drugu iz Bosne. Naime, sadašnji član Predsjedništva BiH, biran iz reda hrvatskog naroda, u općini Grude je s osvojenih 119 glasova ostvario podršku birača od 2,93 %, dok je u općini Dobradići s četiri osvojena glasa ostvario izborni rezultat od 1,72% glasova. Iz navedenog se primjera jasno vidi da Željko Komšić nije dobio podršku iz hrvatskog biračkog korpusa.

<sup>77</sup> U Sarajevu je prema posljednjem popisu stanovništva iz 1991. godine živjelo 6,6% Hrvata, a njihov je broj tijekom i poslije rata prepolovljen.

### 3. SOCIJALNI POKAZATELJI STANJA U DRUŠTVU

Gospodarsko-socijalna slika BiH se, u usporedbi s prošlim godinama, nije bitno promijenila. Može se ugrubo ocijeniti da se zbog komparativnog zaostajanja bh. gospodarstva, ali i zbog uvođenja Poreza na dodanu vrijednost (PDV) iznimno loš položaj najugroženijih kategorija stanovništva u 2006. godini u stanovitoj mjeri i pogoršao.

I dalje su socijalno najugroženiji umirovljenici čija je prosječna mjesečna mirovina 2006. godine u FBiH iznosila 248,61 KM (cca. 127,30 EUR), dok je u RS iznosila 210,00 KM (cca. 107,70 EUR)<sup>78</sup>.

Prema službenim statističkim podacima prosječna plaća u Federaciji BiH u 2006. godini iznosila je 618,96 KM, a u Republici Srpskoj 537,00 KM. Potrošačka korpa za četveročlanu obitelj u FBiH je iznosila 488,22 KM, dok je u RS nešto manja i iznosi 461,88 KM.<sup>79</sup> Blag porast plaća i mirovina ne prati porast troškova života te se položaj osiromašenog stanovništva u BiH iz dana u dan pogoršava.

Stanje zaposlenosti i dalje ukazuje da BiH ne ide naprijed. Ukupan broj zaposlenih u FBiH je u studenom 2006. godine iznosio 392.839 osoba, a evidentiranih nezaposlenih 360.469 osoba.<sup>80</sup> Službeni podaci o stanju zaposlenosti u RS za 2006. godinu nisu objavljeni te ih stoga nismo u mogućnosti prezentirati. Budući da nezaposlene osobe ne ostvaruju skoro nikakve socijalne beneficije, mnoštvo nezaposlenih se ne nalazi u službenim evidencijama entitetskih zavoda za zapošljavanje dok je znatan broj osoba koje rade na «crno» - što sve prethodne podatke čini nepotpunim.

Ukupan vanjski dug BiH je povećan te je, prema podacima Centralne banke BiH, na dan 30. rujna 2006. godine iznosio je 4.132.692.000 KM<sup>81</sup>.

Neuređenost i siromaštvo države izravno se odražava na položaj većine pučanstva BiH, a u ovako nesređenoj državi ne postoji ozbiljna strategija gospodarskog razvitka niti smjernice za odgovarajuću dugoročnu socijalnu politiku.

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<sup>78</sup> Statistički podaci Federalnog zavoda za statistiku i Republičkog zavoda za statistiku RS za studeni 2006. godine.

<sup>79</sup> Isto

<sup>80</sup> Službeni podaci Federalnog zavoda za statistiku.

<sup>81</sup> Usporedbe radi prema službenim podacima CB BiH na dan 30. rujna 2004. godine ukupan vanjski dug BiH iznosio je 4.074.116,00 KM;



#### 4. GORDIJSKI ČVOR NACIONALNOG PITANJA – NESNALAŽANJE MEĐUNARODNE ZAJEDNICE

Velikosrpske težnje za dominacijom nad drugim suverenim narodima u bivšoj Jugoslaviji doveli su do raspada te komunističke države. Odnosi između tri konstitutivna naroda koji žive na teritoriju Bosne i Hercegovine su se u novonastalom povijesnom kontekstu znatno zaoštrili. Pri raspadu Jugoslavije izbilo je na površinu neriješeno nacionalno pitanje koje je većina europskih naroda riješila još u XIX. stoljeću. Neriješeni međunacionalni odnosi su kulminirali nakon referenduma o osamostaljenju BiH. Naime, bosanskohercegovački Srbi su, oslanjajući se na ratni stroj bivše države, bojkotirali referendum te uz pomoć Jugoslavenske narodne armije (JNA) započeli rat i progon nesrpskoga stanovništva, a sve u suglasnosti i pod vodstvom beogradskog političkog i intelektualnog kruga<sup>82</sup>. Zbog ratnog pritiska, skučenosti životnog prostora, različitih nacionalnih interesa i različitih vizija državnog uređenja, aktivnoga sudjelovanja nekih međunarodnih čimbenika, ubrzo se nakon početka agresije raspalo labavo savezništvo između Hrvata i Muslimana<sup>83</sup>, žrtava agresije, te se rat rasplamsao između sva tri naroda u BiH.

Procjene govore da je u najkrvavijem sukobu u Europi nakon Drugog svjetskog rata poginulo i nestalo oko 200.000 ljudi, od čega veći dio predstavlja civilno stanovništvo. Procjenjuje se da je raseljeno i izbjeglo oko 2.680.000 osoba, što predstavlja oko 59,6% od ukupnog predratnog broja građana BiH. Raseljavanje i preseljavanje stanovništva je nastavljeno i nakon rata te se može reći da agonija svih stanovnika ove zemlje, koja je započela u jesen 1991. godine, traje sve do današnjih dana.

Nažalost, «demokratski» svijet, podijeljen svojim uskim geopolitičkim i gospodarskim interesima, četiri je ratne godine promatrao svu ovu tešku ljudsku tragediju koja se dešavala u srcu Europe. Štoviše, na očit genocid koji je, pomoću dobro naoružane JNA, vršen radi ostvarenja velikosrpskih ciljeva, međunarodna zajednica je licemjerno odgovorila embargom na uvoz oružja – čime je položaj žrtava napada dodatno otežan. Očito da je od samog početka pragmatični "demokratski svijet" favorizirao nepravedan mir (koji je napadnutim nenaoružanim narodima BiH trebao nametnuti vojnom prisilom JNA), u odnosu na razvitak pluralizma i demokracije na ovim prostorima.

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<sup>82</sup> O uzrocima raspada Jugoslavije i genezi nastanka postojećeg ustavnog uređenja u BiH opširnije smo pisali u Izvješću o stanju ljudskih prava u BiH za 2004. godinu ([www.ktabkbih.net/justitiaetpax](http://www.ktabkbih.net/justitiaetpax));

<sup>83</sup> Ustavnim rješenjima iz 1974. godine muslimani su u BiH dobili status nacije (naroda) i sve do 1993. godine se nacionalno deklariraju kao Muslimani. Politička volja u pogledu nacionalnog imena ovog konstitutivnog naroda je konačno definirana na Bošnjačkom kongresu intelektualaca 27. rujna 1993. godine, od kada se nacionalno više ne izjašnjavaju kao Muslimani nego kao Bošnjaci.

UN postrojbe (UNPROFOR<sup>84</sup>) koje su poslone u BiH svojom pretežno pasivnom nazočnošću nisu predstavljale skoro nikakvu zaštitu civilnom stanovništvu. Kao najdrastičniji primjer možemo navesti genocid koji su u srpnju 1995. godine izvršile srpske vojne i policijske postrojbe u *Zaštićenoj UN zoni Srebrenica*. Tom je prilikom na očigled Nizozemskog bataljuna UNPROFOR-a likvidirano preko 7.000<sup>85</sup>, mahom zarobljenih Bošnjaka<sup>86</sup>, a preostali živalj protjeran iz svojih domova.

Tek kad je zaprijetila opća eskalacija rata u široj regiji i kad su srpske postrojbe vrtoglavo brzinom gubile ratom osvojena područja<sup>87</sup>, međunarodna zajednica je brzom vojnom intervencijom 1995. godine prekinula ratni sukob. U svom kratkovidnom pragmatizmu međunarodna zajednica je potom u Daytonu skrojila neodrživo ustrojstvo državne zajednice, koje je od početka osuđeno na propast.

Tijek i način pregovora u Daytonu ukazuju da je rješenje na kojem je utemeljena BiH rezultat pritiska velikih sila (prvenstveno SAD), a nikako plod dogovora tri konstitutivna naroda<sup>88</sup>.

Umjesto utemeljenja na demokratskim tekovinama koje bi proizlazile iz legitimne volje sva tri naroda, Daytonskim sporazumom su u same temelje državnog ustrojstva ugrađeni rezultati genocida i tzv. «etničkog čišćenja», što ostaje kamen spoticanja bilo kakvom napretku ove države. Stoga bilo kakva revizija ustavnih rješenja na temelju Daytonskog sporazuma ne može dobiti atribut legitimnosti sve dok takva osnovica ne bude prihvaćena ratifikacijom volje sva tri naroda putem Parlamentarne skupštine BiH. Bilo kako bilo, Daytonskim ustavom je nacionalno isprepletena Bosna i Hercegovina, kao država tri konstitutivna naroda, podijeljena na dva entiteta: etnički očišćenu Republiku Srpsku - kao entitet srpskog naroda i Federaciju BiH – entitet u koji su stjerana dva preostala konstitutivna naroda (Hrvati i Bošnjaci). BiH je 5. ožujka 1999. godine naknadnom Odlukom Arbitražnog tribunala, u sporu oko međuentitetske granice, dobi-

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<sup>84</sup> UNPROFOR - United Nations Protection Forces

<sup>85</sup> Točan broj poginulih i nestalih se još uvijek ne zna jer su tijela likvidiranih vojnika i civila prvotno bacana u masovne grobnice, da bi nakon toga bila prebacivana u sekundarne grobnice koje se nalaze na više lokaliteta.

<sup>86</sup> Nizozemski bataljun UNPROFORA je oko 5000 izbjeglih Bošnjaka, koji su se nalazili u njihovoj vojnoj bazi u Srebrenici, predao u ruke srpskih vojnih i paravojnih postrojbi, nakon čega je većina muškaraca iz te skupine likvidirana na svirep način. Prema Knjizi nestalih osoba, koju je izdao Međunarodni crveni križ (ICRC), najmanje 1889 osoba je nestalo u selu Potočari, gdje se nalazila vojna baza Nizozemskog bataljuna UNPROFOR-a (izvor: [www.srebrenica.ba](http://www.srebrenica.ba))

<sup>87</sup> To je učinjeno u tijeku vojne operacije Oluja, izvedene združenim snagama Hrvatske vojske, HVO i Armije BiH. Temeljem Splitskog sporazuma o vojnoj suradnji od 22.srpnja 1995. godine, potpisanog između Republike BiH i Republike Hrvatske, Hrvatska vojska se izravno uključila u vojne operacije na području Bosne i Hercegovine.

<sup>88</sup> Daytonski sporazum nije nikad ratificiran u Parlamentarnoj skupštini BiH niti je objavljen u službenim glasilima BiH ili entiteta. Do 2006. godine nije ni postojao službeni prijevod Aneksa IV., tj. Ustava BiH, s engleskog jezika na jezike naroda BiH. Način pregovora i aspekti nelegitimnosti ovog ustavnopravnog akta pobliže su opisani u našem *Izvešću o stanju ljudskih prava u BiH za 2004. godinu* ([www.ktabkbih.net/justitiaetpax](http://www.ktabkbih.net/justitiaetpax)).

la zasebnu administrativnu jedinicu Distrikt Brčko – koji ima sve ingerencije entiteta. Najsloženiji odnosi su uspostavljeni u Federaciji BiH, koja je podijeljena na deset županija (kantona) s velikim ustavnim ovlastima. Sve u svemu, narodi BiH su Daytonskim sporazumom dobili etnički podijeljenu, nefunkcionalnu državu, s ogromnim, skupim i neefikasnim državnim aparatom.

Međunarodna zajednica je do današnjih dana aktivno sveprisutna u političkom životu BiH, poglavito putem Ureda visokog predstavnika (OHR), ali i drugih međunarodnih institucija. Usprkos činjenici da je tzv. Borskim ovlastima imala neograničenu vlast u BiH (zakonodavnu, izvršnu i sudsku), međunarodna zajednica u objavljenim projektima koji su trebali normalizirati život u ovoj državi nije u BiH postigla tečevine civilizirane demokratske države u kojoj bi narodi i građani u sigurnom okruženju mogli ostvarivati ravnopravnost i visoke standarde ljudskih prava. Dapače, djelovanjem međunarodne zajednice su zacementirane podjele Bosne i Hercegovine te se sa sigurnošću može ustanoviti činjenica da uzroci rata na prostoru ove države nisu uklonjeni i da ne postoji jasna vizija pravednog ustavnopravnog ustroja BiH, koji bi omogućio, barem zakonodavnu, jednakost građana i ravnopravnost konstitutivnih naroda. Međutim, pogrešna i nedosljedna politika međunarodne zajednice ne oslobađa političke predstavnike ni jednoga od tri konstitutivna naroda dijela krivnje koju snose za postojeće stanje u državi.

#### 4.1. ***Nužnost novoga Ustava***

Jedanaest godina od prestanka ratnih djelovanja Bosna i Hercegovina, zajedno sa svojim međunarodnim protektorima, tapka u mjestu, u nemogućnosti da se otrese ratnih posljedica i da krene putem boljitka za sve njezine narode i građane. Međunarodna zajednica je pri realizaciji projekata u BiH, posebice projekta povratka<sup>89</sup>, doživjela neuspjeh i gubitnički, u vrlo osjetljivom trenutku, najavila svoj odlazak iz Bosne i Hercegovine u 2007. godini.

U postojećoj konstelaciji međunacionalnih odnosa u BiH, moramo konstatirati da se ništa kvalitativno nije promijenilo u odnosu na stanje koje je prethodilo izbijanju rata. Dapače, stanje se u nekim osjetljivim segmentima može ocijeniti složenijim i opasnijim od onoga sa kraja 1991. godine. Zbog svega nije neutemeljena bojazan intenziviranja međunacionalnih tenzija.

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<sup>89</sup> O implementaciji Aneksa VII. Daytonskog sporazuma detaljno smo pisali u svojim Izvješćima o stanju ljudskih prava u BiH za 2002; 2003. i 2004. godinu, a stanje se do današnjih dana nije popravilo (vidi [www.ktabkbih.net/justitiaetpax](http://www.ktabkbih.net/justitiaetpax)).

Sada, jedanaest godina nakon svršetka rata, posve je jasno da daytonsko političko-administrativno uređenje BiH onemogućuje demokratski i gospodarski razvitak BiH. Nepravедna rješenja, koja su narodima i građanima BiH nametnuta u Daytonu, pokazala su se kao skupa i nefunkcionalna. Daytonski okvir je zacementirao rezultate rata i time onemogućio demokratsku reformu društva. Većina je građana u Bosni i Hercegovini suglasna da je nužno korjenito mijenjati postojeće državno-pravno uređenje. No, to je jedina stvar oko koje se politički sukobljene strane u BiH mogu složiti. Uostalom, i dio europskih parlamentaraca prije dvije godine je o tome donio deklaraciju.<sup>90</sup> Ostaje

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<sup>90</sup> Tekst deklaracije glasi:

DEKLARACIJA povodom 8. obljetnice potpisivanja Daytona

Osigurati mir u Bosni i Hercegovini daljnjom nadogradnjom Daytonskog sporazuma

*Uskoro će 10 godina otkako je Daytonskim sporazumom završio rat u Bosni i Hercegovini. U tih desetak godina učinjeno je dosta pozitivnoga u obnovi BiH. Ali u tih desetak godina se jasno pokazalo da je Daytonska konstrukcija dosegla svoje granice, a mir u BiH još nije potpuno osiguran. Varljivo mirno stanje i nezdravi mir u zemlji ne smiju zavaravati. S tim u svezi opasno zabrinjava činjenica da slabi interes Međunarodne zajednice za daljnji razvoj BiH. Međunarodna karavana je već odavno otišla dalje. Sve više ljudi u zapadnim zemljama se pita koliko će još trajati međunarodno djelovanje u BiH. Mirni suživot različitih grupacija je i dalje ugrožen. Tko precizno pogleda, lako može otkriti da se BiH nalazi u vrlo teškom stanju. BiH je realno podijeljena zemlja po nacionalnom ključu. Povratak prognanih garantira Dayton a vratilo se samo 50%. Povratak je bio moguć najčešće samo u ona područja u kojima su prognani temeljem svoje nacionalne pripadnosti mogli biti sigurni od diskriminacije i progona. Nepovjerenje među narodima je duboko i ono na različite načine određuje svakodnevni život. Etničke diskriminacije se događaju svakodnevno.*

**Neophodno jedinstvo države je preslabo za gospodarski i politički razvoj.** Država je preslaba u odnosu na entitete. Ustavna struktura sprječava djelotvorno funkcioniranje jedinstvene države a time i one politike koja bi se iznad nacionalnih interesa trebala razvijati. Državni troškovi su preveliki zbog udvostručavanja i utrostručavanja funkcija državnog aparata te tako višestruko opterećuju gospodarske perspektive zemlje. Velika pravna nesigurnost je praktična posljedica ovakve strukture. Ovakvo se stanje ne može dugo snositi ni gospodarstveno ni politički.

**Uloga Međunarodne zajednice je sve više ambivalentna.** BiH je poluprotektorat koji je podređen Međunarodnoj zajednici, koji živi od kapljice međunarodnih subvencija, bez perspektive nosivog gospodarskog razvoja. Koliko god je bez sumnje vrijedan rad Visokog predstavnika, ipak se u posljednje vrijeme povećavaju kritički stavovi, koji ukazuju na problematične posljedice takvog protektorata na demokratski razvoj BiH. Sadašnje strukture potpomažu ekonomski i politički opasni konsumski mentalitet. Ako BiH treba osigurati budućnost, onda valja stvoriti preduvjete da njeni narodi sami dalje razvijaju svoje demokratske perspektive.

Rezignacija, stagnacija **kao i narastajući problem siromaštva potkopavaju još uvijek slabe temelje** mira. Sadašnje stanje karakteriziraju rezignacija i stagnacija. S obzirom na službenu nezaposlenost od 42%, te brzo narastajuće siromaštvo i tmurne ekonomske prognoze nije čudo da velika većina stanovništva, posebice mladi ljudi (65%), ne vide svoju budućnost u toj zemlji. Korupcija i kriminalitet pripadaju onim zlima koja cvjetaju u opisanim okolnostima, te osnažuju osjećaj nesigurnosti kod stanovništva. Činjenica da su mnogobrojni ratni zločinci još uvijek na slobodi kazuje sve. Socijalno stanje većine stanovništva BiH nažalost ne može ponuditi miru siguran temelj. Iz toga slijede očite opasnosti.

Daytonska konstrukcija je dosegla svoje granice. Ne može se zanijekati da je tek na temelju Daytonskog sporazuma mogla biti stvorena potrebna mirna okvirna perspektiva za BiH. Daytonski sporazum je bio bolan kompromis u sklopu okolnosti svoga vremena. Tko je tada želio BiH, morao je htio ne htio željeti i Dayton. Duboka dvosmislenost ovog sporazuma leži u tome da je on učinio mnogo dobra, ali dvoznačnost sama nije nikada nadvladana, jer on je sankcionirao podjelu na dva entiteta kao i konkretno prekrajanje prema rezultatima genocida. On je omogućio nastanak dva pravna sustava u jednoj zemlji. Dok je tada omogućio kraj krvavog rata, te prve korake prema novom početku kao i u obnovi, on danas sprječava daljnji razvoj BiH na putu ka pravnoj državi i stvarnom europskom društvu. Tko danas želi BiH, taj mora željeti i prevladavanje dvosmislenosti Daytona. Ovo uključuje

presudno pitanje koje političko i pravedno rješenje bi moglo i trebalo zadovoljiti opravdane težnje sva tri konstitutivna naroda te omogućiti tako potrebnu sustavnu demokratizaciju društva. Iako je pitanje izuzetno složeno, valja se s njime uhvatiti u koštac svima kojima je stalo do mira i čiste savjesti, jer je pravedna i demokratska Bosna i Hercegovina jedina alternativa nastavku tenzija i rastakanju ove paradigme suživota u različitosti.

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*kako jasnu definiciju uloge Međunarodne zajednice tako i razvoj duge ali realne perspektive pristupa Europskoj uniji.*

*Mirovni proces treba novi jaki poticaj. Došlo je vrijeme dati novi poticaj mirovnom procesu u BiH. Došlo je vrijeme postaviti čvrsti nosivi temelj miru u BiH. Vrijeme je zrelo da se Daytonaska konstrukcija iznova promisli i dalje nadograđuje. BiH će samo onda imati budućnost kao država i društvo ako se uspiju stvoriti državne strukture koje će nuditi sigurnost svim narodima i koje će potpomagati gospodarstveni i društveni razvoj cijele zemlje. Proces pomirenja među narodima samo će onda supstancijalno napredovati ako se uspiju razviti kako političko-pravni okviri tako i gospodarstveno- socijalne strukture cijele zemlje.*

*Daljnje nadogradnja Dayton je neophodna sada. Stoga zahtijevamo od Međunarodne zajednice, posebno od potpisnica Daytonskog sporazuma, od vlada Europske unije i susjednih država, te od odgovornih u BiH da se nadolazeća obljetnica 10-godišnjice Daytonskog sporazuma 2005. god. uzme kao povod da se napravi kritička bilanca dosadašnjeg razvoja u okviru konferencije međunarodnih država. Kod toga bi trebalo ono pozitivno zadržati a istovremeno prevladavati prepreke za daljnji razvoj BiH. Zahtijevamo od odgovornih da izrade mirovni sporazum za BiH koji bi odsada nudio dugotrajnu sigurnost za održivo zajedništvo.*

*Odgovornost za BiH je odgovornost za Europu. BiH treba pomoć Međunarodne zajednice. Ali Međunarodna zajednica, a posebno Europa, treba BiH kao konkretni primjer uspjele mirovne politike koja prihvaća mnoštvo u različitosti. Srednjoročni neuspjeh ugrozio bi stabilnost cijele regije kao i perspektive pristupa u EU susjednih država, a da se i ne govori o životnim sudbinama mnogih ljudi. Eventualni srednjoročni neuspjeh bio bi neuspjeh EU i zadao bi težak udarac zajedničkoj vanjskoj i sigurnosnoj politici, a time i europskim interesima i europskoj viziji.*

***Preventivna politika je izraz sve veće odgovornosti.*** *Ako bi odgovornima na općoj političkoj razini nedostajala politička hrabrost i politička volja sada učiniti ono nužno i razborito, mogla bi politika uskoro biti konfrontirana s novom krizom u BiH. Političari nažalost naginju ono sada aktualno i šakljivo odlagati za kasnije, tj. oni sada daju prednost onom srednjoročno problematičnom nad onim sada aktualnim i neugodnim krizama. Nasuprot ovakvom scenariju mi polažemo svoju nadu u sposobnost učenja demokratskih društava.*

Potpisnici Deklaracije:

Elmar Brok - član Europskog parlamenta, predsjedatelj odbora za vanjsku politiku; Daniel Cohn-Bendit - član Eur.parl., supredsjedatelj frakcije zelenih u EP; Detlef Dzembitzki - član Njem. parlamenta, zadužen za BiH; prof. Dr. Bronislaw Geremek - nekadašnji ministar vanjskih poslova Poljske; Jose Maria Gil Robles Gil Delgado - član Eur. parl., bivši predsjednik Europ. parl., predsjednik Internacionalnog europskog pokreta; Gret Haller - bivša ombudsman za ljudska prava u BiH; Thilo Hoppe - član Njem. parlamenta; Hans Koschnick - bivši administrator Europ. zajednice za Mostar; Sergej Kovaljov - nekadašnji zaduženi za ljudska prava ruskog predsjednika; Jacek Kuron - bivši poljski ministar za rad i socijalu; Joost Lagendijk - član Europ.parl., izvjestitelj EP o paktu stabilnosti za jugoistočnu Europu; prof. dr. Vytantas Landsbergis - bivši predsjednik republike Litve; Tadeusz Mazowiecki - bivši poljski premijer i nekadašnji zaduženi u ime OUN-a za ljudska prava u BiH – predstavio Deklaraciju u Varšavi; Phillipe Morillon - član Europ. parl., zapovijedajući general UNPROFOR-a u BiH 1992-1993.; Martin Müller - član Europ.parl., zamjenik predsjedavajućeg frakcije SPE; Christa Nickels - član Njem.parl., predsjedatelj odbora za ljudska prava i humanitarnu pomoć; Dietmar Nietan - član Njem.parl.; Arie Oostlander - član Europ.parl., pročelnik odbora za vanjsku politiku Europ. narodnih stranaka; Doris Pack - član Europ.parl., predsjednica delegacije Europ.parl. za jugoistočnu Europu – predstavila Deklaraciju u Briselu; prof. dr. Hans Gert Pötering - član Europ.parl., predsjednik frakcije EVP-ED – predstavio Deklaraciju u Berlinu; dr. Rainer Stinner - član Njem.parl.; Johannes Swoboda - član Europ.parl., vicepredsjednik SPE, potpredsjednica delegacije Europ.parl. za jugoistočnu Europu; dr. Antje Vollmer - član Njemačkog parlamenta, potpredsjednica Njem. parlamenta; dr. Ludger Volmer - član Njem. parl., glasnogovornica frakcije Saveza 90 i zelenih za vanjsku politiku.

## 4.2. Revizija Daytonskog sporazuma

Odmah nakon Daytona Aneks IV.<sup>91</sup> Daytonskog sporazuma pokazao se nefunkcionalnim pa zato i nepremostivom preprekom za demokratizaciju bh. društva. Shodno navedenom, u novonastalom normativno-administrativnom kaosu bilo je potrebno mijenjati pravni sustav na cijelom teritoriju države. Intervencijama OHR-a koje su sustavno vršene od svršetka rata do današnjih dana značajno je izmijenjeno ustavnopravno uređenje BiH. Nažalost, međunarodna zajednica svojim intervencijama u ustavnopravno uređenje nije postigla pozitivne učinke. Već smo pisali o tome kako je, povodom implementacije Odluke Ustavnog suda o konstitutivnosti sva tri naroda na cijelom teritoriju BiH iz 2000. godine, Visoki predstavnik 2002. godine nametnuo promjene entitetskih ustava, kojima je umjesto afirmacije konstitutivnosti dodatno dekonstituirao Hrvate i Bošnjake u Republici Srpskoj, a Hrvate dekonstituirao i u Federaciji BiH<sup>92</sup>. Ovim su ustavnim promjenama Hrvati, kao najmalobrojniji konstitutivni narod u BiH, dovedeni u poziciju da ih se prilikom donošenja svake odluke u oba entiteta i na razini države može nadglasati – čime su de facto izgubili konstitutivnost. Ove su nametnute ustavne promjene produbile podjele u ionako Daytonom podijeljenu BiH.

U namjeri da ispravi „krivu Drinu“ iz Dayton, međunarodna zajednica je "demokratizaciju" bh. društva dovela do apsurdna i BiH još više blokirala u svakom njenom daljem razvitku. Daytonskim sporazumom međunarodna zajednica je ugasila požar, ali joj nije pošlo za rukom da daljim djelovanjem ugasi žarište. Krajnje je vrijeme da se trajnim rješenjem napokon ugase požarišta u Bosni i Hercegovini! Brojne inicijative međunarodne zajednice za preuređenje BH države jasno ukazuju da je i sama međunarodna zajednica toga svjesna.

Daytonski je sporazum u BiH strukturalni izvor nemira te strukturalna destruktivnost ili destruktivna struktura. Zato ga treba učiniti pravednijim. On je uspostavljen diktatom međunarodne zajednice, zato ni njegovo poboljšanje nije moguće bez političke volje međunarodne zajednice, koja do sada nedostaje, pa je Dayton i dalje izvor nemira u BiH.

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<sup>91</sup> Aneks IV. predstavlja Ustav BiH

<sup>92</sup> O ustavnim nametnutim promjenama i njenim konkretnim rješenjima detaljno smo pisali u poglavlju V.4. *Izvešća o stanju ljudskih prava u BiH za 2004. godinu*, a i u ranijim izvješćima ([www.ktabkbih.net/justitiaetpax](http://www.ktabkbih.net/justitiaetpax))

## 5. PONUĐENI MODELI DRŽAVNOG USTROJSTVA

Čovjek koji razmišlja o rješenjima za Bosnu i Hercegovinu postavlja si pitanje ima li ustavno-pravnog rješenja za uspostavu pravedne države, koja bi jamčila jednakopravnost naroda te ravnopravnost, prosperitet i sigurnost građanima. Postojeća rješenja oktroiranog Daytonskog ustava, «obogaćena» izmjenama i dopunama, koje je nametnuo OHR, zasigurno ne zadovoljavaju ni osnovne civilizacijske kriterije demokratskog pluralnog društva, kao pravnog okvira za ostvarivanje ljudskih prava. Posve je jasno da su nužne korjenite promjene. Iako za sada još ni približno nije vidljiv budući model složene države, ovdje donosimo i ukratko analiziramo neka ponuđena rješenja.

### 5.1. *Građanska država*

Inzistiranje na modelu unitarne građanske države po načelu «*jedan građanin, jedan glas*» čini nam se neodrživim jer u kontekstu rezultata rata i neriješenih nacionalnih pitanja u BiH malobrojnije narode dovodi u poziciju majorizacije sa strane većinskoga naroda. Naravno da za ovakav model najrevnosnije plediraju neki politički i intelektualni krugovi Bošnjaka – muslimana, kao najbrojnijeg naroda u BiH. Pri tomu ova nacionalna struja kao da zaboravlja da je velikosrpska agresija na ovim područjima započela upravo s ciljem održanja velikosrpske majorizacije u bivšoj državi.

### 5.2. Federacija nacionalnih entiteta

Ovaj model zagovara jedan dio hrvatskih političara, a u posljednje vrijeme sve zauzeti je ga podržava i srpska politika, očito s ciljem lakšega održanja Republike Srpske, ali ne očitujući spremnost revizije nepravedne daytonske podjele zemlje.

Demokratski model zajednice više državotvornih naroda je moguć samo ukoliko postoji konsenzus sva tri naroda u BiH oko budućeg državnog uređenja. Pri tomu je stav i pristanak svakoga naroda jednako važan, bez obzira na brojnost. S obzirom da je Daytonskim sporazumom uspostavljena država sa dva entiteta i tri konstitutivna naroda, model tripartitne države čini se pravedniji od postojećeg rješenja. Ovaj model, međutim, skriva opasnost produbljenja podjele države i dodatnoga trajnog raseljavanja stanovništva BiH (napose u okviru područja Federacije).

### 5.3. Federacija kantona

Ovakvo državno ustrojstvo podrazumijevalo bi ukidanje entiteta i prenošenje entitetskih ovlasti na više manjih teritorijalnih jedinica. Ovlasti države bi se obnašale u tijelima državne vlasti u koja bi kantoni delegirali svoje predstavnike. Od širine ovlasti koje bi kantoni imali ovisila bi forma federacije. Preduvjet za opstanak takve državne zajednice je nepostojanje ovlasti kantona na samoodređenje s pravom odcjepljenja. Prednosti ovog modela se prvenstveno nalaze u činjenici da bi se njime omogućilo jednakopravnije ostvarivanje konstitutivnih prava za sva tri naroda, dok se nedostaci ovakvog modela skrivaju u organizacijskoj složenosti i velikim administrativnim troškovima takve države. I ovaj model skriva opasnosti dodatnog raseljavanja stanovništva unutar BiH, što bi samo pogoršalo postojeće stanje.

Ovakvo rješenje je moglo biti opcijom državno-pravnog uređenja prije ratom započetog raseljavanja stanovništva, a nakon što je većina prostora etnički očišćena, mišljenja smo da više nije moguće izvršiti pravednu kantonalizaciju BiH po nacionalnom ključu koji bi odgovarao demografskom stanju prije rata.

### 5.4. Federacija anacionalnih regija

Prema ovom bi modelu preustroja države bili ukinuti postojeći entiteti i federalni kantoni, a država bi bila podijeljena na više federalnih jedinica (regija ili distrikta) kao administrativno-pravnih jedinica. U okviru regija postojale bi općine kao jedinice lokalne samouprave. Regije odnosno distrikti bi predstavljali prirodne, povijesne i prometno povezane funkcionalne cjeline, čije se granice ne bi uspostavljale po nacionalnom ključu. U svakoj od federalnih jedinica bi sva tri naroda imala jednak udio u zakonodavnoj, izvršnoj i sudskoj vlasti tako da ne bi postojala mogućnost majorizacije većine nad manjinom.

Svaki od tri konstitutivna naroda birao bi svoje predstavnike u državnoj vlasti koja bi također bila uspostavljena na paritetnoj osnovi. Ključne funkcije u izvršnoj i zakonodavnoj vlasti federalnih jedinica i na državnoj razini obnašale bi se po rotacijskom sustavu.



## 5.5. *Države postojećih entiteta*

Prijedlog ovakvog modela pojavio se u Preliminarnom mišljenju o nacrtu amandmana na Ustav BiH<sup>93</sup>, koje je dala Venecijanska komisija 07. travnja 2006. godine. S obzirom da je OHR prethodno opisane reforme ustavno-pravnog poretka BiH donosio upravo na temelju mišljenja koje je dala Venecijanska komisija, ne čudi ovakav pojednostavljen i diskriminacijski pristup preuređenju Bosne i Hercegovine. Naime, sva dosadašnja ustavna rješenja koja je nametao OHR išla su u smjeru centralizacije državnih vlasti, s kursom prema građanskom modelu vlasti, po načelu «*jedan čovjek, jedan glas*». Pri tome se OHR držao načela «*politike kao ostvarivanja mogućeg*», pri čemu su sva rješenja išla najviše na uštrb Hrvata kao najmalobrojnijeg i ujedno najkooperativnijeg konstitutivnog naroda u BiH<sup>94</sup>.

Ovakvim rješenjem dokinulo bi se i ono malo konstitutivnih prava koja Hrvati mogu ostvarivati preko smanjenih ovlasti kantona (županija), čime bi u svim segmentima izgubili značajke konstitutivnosti, a država bi faktički (p)ostala podijeljena na dva jednacionalna entiteta: bošnjački i srpski. Ovakvo rješenje nikako ne vodi stabilizaciji BiH, jer u potpunosti negira prava jednog konstitutivnog naroda.

## 5.6. Prijedlog Biskupske konferencije

U želji da ponude svoj doprinos traženju pravednoga i održivoga uređenja Bosne i Hercegovine, katolički biskupi su krajem 2005. objelodanili svoj prijedlog. U njemu se, uz ostalo, kaže:

*U BiH se brani i opstaje, ili pak definitivno pada, načelo multidržava. Mnogi prognani stanovnici Bosne i Hercegovine, koji su prisiljeni živjeti u drugim zemljama, pokazuju svojim primjerom da su kadri živjeti u dobro uređenim demokratskim državama. Takvo je razmišljanje i većine populacije koja je trenutačno u zemlji koja je sigurno voljna i sposobna živjeti zajedno i graditi ovu zemlju kao višenacionalnu, višekulturalnu i višekonfesionalnu državu. Građani i narodi u BiH imaju pravo na pravedan pravni okvir i nedvosmisleni potporu u ostvarivanju jednakopravnosti sva tri naroda i jamčenju svih osobnih ljudskih i građanskih prava i sloboda.*

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<sup>93</sup> Opinion 375/2006, European Commission for Democracy Through (Venice Commission) – Strasbourg, 7. travnja 2006.

<sup>94</sup> Prilikom potpisivanja Daytonskog sporazuma Hrvati su dali najveće teritorijalne ustupke, pri čemu su kao ustupak miru pristali i na organizaciju države tri konstitutivna naroda sa dva entiteta. Time su se definitivno odrekli participacije u vlasti Republike Srpske, a pristali su da vlast u drugom entitetu dijele s puno brojnijim Bošnjacima.

*Sigurno je da će ustavno-pravni položaj hrvatskoga naroda, a samim time i ostala dva naroda u BiH, biti pravednije i kvalitetnije uređen u jedinstvenoj, cjelovitoj i decentraliziranoj državi bez dosadašnje entitetske podjele. Ta snažna decentralizacija Bosne i Hercegovine bi morala ići u dva pravca: prema općinskoj i prema regionalnoj razini vlasti. Vlast na općinskoj razini morala bi biti postavljena proporcionalno po načelu «jedan čovjek, jedan glas» i to je razina na kojoj bi se ostvarivala vlast građanskoga društva. Vlast na regionalnoj ili federalnoj razini bi morala biti limitirana, i to na način da se odredi minimalna zastupljenost svakoga od tri konstitutivna naroda u zakonodavnoj i izvršnoj vlasti.*

*Općine kao administrativno-upravne jedinice već postoje i one bi mogle uglavnom nastaviti funkcionirati u sadašnjem obliku dok s regijama to nije slučaj. Umjesto zadržavanja dosadašnje nezgrapne i nepravedne disproportcije s dva entiteta i deset kantona u jednome od njih, trebalo bi pristupiti preustroju regionalne razine vlasti. Jedan od mogućih modela mogao bi biti sljedeći: Bosna i Hercegovina ustrojena u 4 kantona (odnosno regije, provincije, distrikta, federalne jedinice...): Sarajevski, Banjalučki, Mostarski i Tuzlanski s granicama formiranim po kriterijima ekonomske, prometno-komunikacijske, prirodne, povijesne, geografske i (više) nacionalne naravi. Uz eventualne korekcije, mogle bi biti preuzete regije kako ih je, za potrebe svoga djelovanja, već formirala, primjerice, misija OSCE-a u BiH. Bilo bi, međutim, vrlo bitno odrediti da u svakom od četiri kantona (regije, federalne jedinice itd.) svaki konstitutivni narod mora imati najmanje 30 % udjela u zakonodavnoj i izvršnoj vlasti, kako nikada pripadnici jednoga naroda ne bi mogli nadglasati pripadnike druga dva naroda.*

Čini nam se da bi na tragu ovoga prijedloga bilo moguće riješiti neka temeljna pitanja i otkloniti žarišta nacionalnih napetosti, kao što su: razina kulturne autonomije konstitutivnih naroda i njihovo ravnopravno sudjelovanje u upravljanju državom i regijama, što se čini preduvjetom očuvanja cjelovitosti Bosne i Hercegovine. Iako je ovaj prijedlog nastao prije nego je počela rasprava o asocijacijskome modelu uređenja složenih društava, čini se da se mnogi njegovi elementi poklapaju s ovim modelom, kako ga prikazuje profesor dr. Ugo Vaisavljević.<sup>95</sup>

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<sup>95</sup> Dvije su mogućnosti političkog uređenja BiH. Prva, da se ona može urediti samo kao građanska zajednica jednakopravnih pojedinaca. To je ono što smo dobili iz Francuske revolucije i što je podrazumijevalo, ali samo dijelom, pola stoljeća vladavine titoizma na ovom tlu. To znači da je to model koji kaže da svako mora, kao pojedinac, biti jednak pred zakonom, u javnim institucijama itd. Drugi oblik uređenja polazi od toga da ima nekoliko različitih naroda u BiH i zauzima se za njihovu ravnopravnost. Građanski politički model koji se svodi na princip "jedan građanin, jedan glas" sam po sebi ne može da osigura ovu ravnopravnost. Povlašteno mjesto njegovog funkcioniranja je prilično homogena nacija-država u kojoj ne prijete opasnost diktature većine. Konsocijacijski model može predstavljati alternativu ili barem korektiv ovom prvom modelu. Ostvarene su i moguće su njegove brojne varijante, a sve se svode na to da u jednoj državi ima više kolektivnih aktera koji moraju biti ravnopravni i jednako zastupljeni, a to znači da ni na koji način ne smiju ispasti iz političke igre, recimo izaći iz političkih foruma tako što su preglasani na izborima. Konsocijacijska rješenja teže da održe državne

## 6. ZAKLJUČAK

Složenost nacionalnih odnosa tri naroda u BiH nužno podrazumijeva transformaciju Bosne i Hercegovine u složeni model države. Takva zajednica se u bh. okruženju može ostvariti samo ako kod sva tri naroda postoji legitimno utvrđena volja za življenje u zajednici jednakopravnih naroda i ravnopravnih građana.

Uvjereni smo da temeljno pitanje za moguć državni preustroj BiH u demokratsku državnu zajednicu nije u teritorijalnim modusima državnog uređenja nego u sveopćem prihvaćanju načela pozitivne diskriminacije manjine i na lokalnoj i na državnoj razini, koje je potrebno transparentno inkorporirati u buduća ustavna rješenja. U svakoj od teritorijalnih jedinica složene države pri tom bi se trebalo omogućiti ostvarivanje konstitutivnih prava sva tri naroda, bez obzira na njihovu brojnost tj. bez obzira je li koji od konstitutivnih naroda manjina u teritorijalnoj jedinici složene države.

Nemogućnost ostvarivanja ljudskih prava na skoro svim razinama bh. društva izravna je posljedica neuređenog ustavno-pravnog poretka u BiH, na koje ukazuju prethodno istaknuti primjeri aktualni u 2006. godini. Bez obzira na kojem dijelu države, napaćeni građani Bosne i Hercegovine teško preživljavaju vrijeme poraća te se obespravljenost običnog čovjeka osjeća u svim porama društva i na cijelom teritoriju BiH. Preduvjet afirmaciji ljudskih prava je, prije svega, stvaranje uređene i pravedne državne zajednice koja bi poštivala dostojanstvo svake ljudske osobe, bez obzira na njeno nacionalno ili vjersko opredjeljenje. Za državnu zajednicu tri konstitutivna naroda, odnosno složeno multikulturalno, multinacionalno i multikonfesionalno društvo kao što je to u BiH, prije svega je potrebno suglasje i volja triju konstitutivnih naroda da se u takvoj zajednici

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*zajednice koje ne ispunjavaju osnovni kriterij nacije-države i pojavljuju se kao duboko podijeljena društva. To po definiciji nije većinski model: ili u jednoj državi imaju dvije većine ili ima manjinâ koje treba držati "većinama". Politički princip brojčanosti tu ne bi smio da naruši ili ošteti politički značaj kolektivnih personalnosti. Naša zemlja vapi za konsocijacijskim modelom, jer u sebi ima dvije rivalske većine, Bošnjake i Srbe, i objektivnu manjinu, Hrvate, koji to nipošto ne bi smjeli biti. Kakav god da je brojčani odnos glavnih aktera, 2-2-1 ili 3-2-1, njegov politički rezultat, iznos participacije i zastupljenosti, bar na najvišim državnim funkcijama, morao bi biti ujednačen - 1-1-1.*

Ukratko, konsocijacija kaže da treba više aktera da dijeli državnu vlast da se država ne bi podijelila, jer podjela višenacionalne države završava u monolitnom obliku nacije-države. Zato je odbacuju nacionalisti, jer ona znači ostati zajedno, iako smo malobrojniji, iako nemamo istu ideologiju i nemamo isti kulturni identitet. Odbacuju je danas svi: i nacionalisti i oni koji su za čisto građanstvo, a koje zovem jakobincima. U onom času kad imate tri naroda, tri kulture i tri identiteta i to odbacujete, onda odbacujete, ustvari, pluralizam, što je osnovna tekovina moderne politike, odbacujete mogućnost da sa strancima vijećate i odlučujete, da im pravite ustupke... Onda je to prizivanje ili narodnog ustanka ili državnog terora, na jakobinski način. Treba strana sila, treba centralna vlast, treba vojska ili treba revolucija da bi uveli državu koju mi hoćemo. I jedan i drugi otpor konsocijaciji je formula nasilja, formula cijepanja BiH ili formula diktature većine.

živi, sa ili barem pored drugog i drugačijeg. Taj *conditio sine qua non* uređenja pravednog i demokratskog bh. društva još uvijek nije ispunjen, niti se čini izglednim sve dok se na ovim prostorima ne uspostavi kultura dijaloga i uvažavanja prava drugoga na različitost. Ipak, postojeće stanje nam ne daje alibi da dignemo ruke od iznalaženja rješenja prihvatljivog za sva tri bosanskohercegovačka naroda. Iako sve već izgleda poput donkihotovske borbe s vjetrenjačama, držimo da je za ovu višenacionalnu, višekulturnu i viševjersku zemlju moguće naći društveno uređenje koje će pomoći da, umjesto sukobišta, postane susretište različitosti. To, međutim, neće biti moguće bez odlučnoga pozitivnog i demokratskog sudjelovanja međunarodne zajednice. Smatramo da nije ni pošten ni prihvatljiv stav predstavnika međunarodne zajednice prema kojemu ona u Bosni i Hercegovini više ništa i nikome ne želi silom nametati. Naime, ako je bila spremna 1995. u Daytonu nametnuti nepravedno rješenje, kojim je ovoj zemlji onemogućen demokratski razvoj, u ime kakve demokracije ne bi trebala pomoći, pa ako je to potrebno i nametanjem, da se dođe do pravednoga ustroja? Većina građana ove zemlje je uvjeren da je to moralna obveza svih koji su u Daytonu aktivno sudjelovali, prije svih Vlade Sjedinjenih Američkih Država. Svjesni smo da ovo izvješće ne nalikuje mnogim drugim izvješćima koja se bave kvantitativnom i kvalitativnom analizom nedostatka ljudskih prava i mogućim obrascima promjene stanja u društvima diljem svijeta, ali dok god se pozitivno ne riješe temeljna pitanja ustroja države i društva, prema kojima će svi narodi i građani biti jednakopravni i zaštićeni, svaka daljnja analiza postaje gotovo besmislena. Bosna i Hercegovina je i dalje problem sebi, ali i međunarodnoj zajednici koja je preuzela zadatak rješavanja ključnih problema i konsolidiranja stanja u ovoj zemlji, a neki krugovi lobiraju za povlačenje jačega angažmana međunarodnih predstavnika i prepuštanje problema domaćim političarima. Time bi međunarodna zajednica priznala poraz, ostavivši za sobom gomile utrošenoga novca i godine silne energije koje bi mogle ostati bez ploda. Stoga Komisija poziva predstavnike međunarodne zajednice da odlučnije pomognu političkim snagama i mislećim ljudima u Bosni i Hercegovini kako bi, u ime ljudskije i bolje budućnosti naroda i građana ove zajedničke nam domovine, dali svoj efektivni doprinos ostvarenju spomenutoga cilja !