

REPORT ON THE STATE OF HUMAN RIGHTS IN BOSNIA & HERZEGOVINA IN THE YEAR 2003

IZVJEŠĆE O STANJU LJUDSKIH PRAVA U BOSNI I HERCEGOVINI ZA 2003. GODINU

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

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and

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Justice

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Predloženo od Komisije Justitia et Pax Biskupske
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Preface

The recent incidents in Kosovo for a short period focussed international attention again on the Balkan. However pleasing it may be that the question of peace on the Balkan is again discussed in public, it is all the same worrying that this attention is violence-focussed. Just as quickly as this kind of attention emerges, it vanishes without having a deeper impact on the political discussion. The attentiveness to peace matters of our European societies still follows the rhythmic occurs of violence. Instead of talks on strategies to strengthen and to promote peace potentials in the long run we are confronted with images of a deceiving sensationalist topicality.

The latent threats to peace such as the increasing poverty in Bosnia and Herzegovina, which in the long run destroy the necessary basis for the peace process, are not sufficiently taken note of in the public. The violent clashes in Kosovo and Serbia reveal to what great extent peace is threatened at present. A peace without justice, a peace without truth and finally a peace without reconciliation will remain a dubious peace behind which the ugly face of violence is lying in wait. Given this situation it is all the more regrettable that the future of this country which is of great importance to Europe is not a priority item on the agenda of European political discussion.

The international community and particularly the EU is not expected to find a solution for all problems in Bosnia and Herzegovina. It is the local population that will decide on the future of Bosnia and Herzegovina. Nevertheless, apart from its historical obligation and its still specific responsibility with regard to Bosnia and Herzegovina, the international community will have to play an important role in supporting the peace process. Bosnia and Herzegovina is an European challenge which will prove the EU's ability to act as a real political actor. Europe's basically republican attitude prevents an imperial and paternalistic approach to this challenge which has to be mastered together with the people in Bosnia and Herzegovina. In this context, the active and constructive dialogue with the societal forces in Bosnia and Herzegovina is of indispensable importance.

With this document the Justice and Peace Commission of Bosnia and Herzegovina submits its fourth annual report on the state of human rights in Bosnia and Herzegovina. The German Commission for Justice and Peace publishes this report with the aim to strengthen the highly necessary dialogue. Given the fact that the European Union is about to take even more responsibility in Bosnia and Herzegovina, we hope that this publication will help to master this challenge.

Bishop Dr. Reinhard Marx
President of the German Commission for Justice and Peace

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INTRODUCTION

Going through the transition from political, legal and economical socialist system to the criteria of life in a modern democratic society, Bosnia and Herzegovina has moved into the proverbial “blind alley” of transition in this post-war period.

Trapped between disorientation and inconsistency of domestic political and other forces and failure to adapt and inconsistency of the international community, this country became one the least developed countries of the European continent.

By the Dayton Agreement¹ of 1995 the International Community created conditions and realised termination of war turmoil running wild in this area. Bearing in mind that the results of genocide and aggressive politics were tacitly accepted as the basis for the Dayton negotiations, it becomes clear that the Dayton Agreement did not represent a fair solution from the very beginning. In the sense of issues mentioned above the General Framework Agreement for Peace signed in Dayton represents particular purchase of peace because it was initiated only after the moment in which the war threatened to generally escalate in the area of south-east Europe and wider. Realised political solutions have not been giving the smallest chance to the economic recovery of Bosnia and Herzegovina or to the prosperity of nations and citizens living in it from the very beginning. On the contrary, injustice of the political solution from the Dayton turned into an unbridgeable obstacle of the economic or any other progress (i.e. growth).

As the country which declaratorily strives to join the European Community and which is still under the close surveillance of the ever-present International Community, Bosnia and Herzegovina is trying to get on the last coach in a pretty long train that carries candidates to join the large European family of nations.

Even in 1995, the International Community installed in this country a special “supervising” body led by the Office of the High Representative (OHR)² – which has been given complete authority *de facto*, although it has not been given *de iure*, of the real protectorate in the enforcement of power (legislative, executive and judicial).

The following international organisations, amongst others, have been actively included in almost all spheres of the social life in Bosnia and Herzegovina: the Organisation for Security and Cooperation in Europe (OSCE)³, the United Nations Mission in Bosnia and Herzegovina (UNMIBH)⁴, the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC)⁵, the United Nations High

¹ General Framework Agreement for Peace was signed on 14th December 1995 in Dayton, the American city.

² Office of the High Representative.

³ OSCE Mission in Bosnia & Herzegovina.

⁴ United Nations Mission in Bosnia & Herzegovina.

⁵ Commission for Real Property Claims of Displaced Persons and Refugees. The CRPC closed its operations officially on 31st December 2003, since the International Community planned that by

Commissariat for Refugees (UNHCR)⁶, the United Nations International Police Task Force (UN IPTF)⁷, the United Nations Stabilisation Forces (SFOR)⁸ etc.

Having in mind a fact that more than eight years have passed since the end of the war and that a large number of international institutions are actively present in these areas, it would be prudent to expect fast and successful development of Bosnia and Herzegovina as a democratic and prosperous state. Unfortunately, the state of protectorate and complex internal political and national relations, based upon the Dayton Agreement and burdened by long-lasting tragic experiences, has not fulfilled expectations with regard to the realisation of fundamental human rights in any case. Although the current High Representative in Bosnia and Herzegovina states that he does not know a country which would, as Bosnia and Herzegovina does, advance so fast, qualified and independent international institutions are claiming that in the year 2020 only 1 percent of young people that currently live in Bosnia and Herzegovina will remain here. All others – 99 percent of young population – will, because of their conviction that there is no future in Bosnia and Herzegovina for them, leave to foreign countries.

Notwithstanding the critical position towards past misapprehensions and current injustices, we are strongly convinced that going back to the state as it was in 1991 should not and cannot occur. Rectification and improvement of the Dayton concept that we consider necessary, as many other Europeans do, should be performed in such a manner that its positive sides should be preserved. We should also add to it what is necessary for reinforcement of a just peace. Bosnia and Herzegovina necessarily needs European perspective of social and state organization that would guaranty human and civil rights to all its citizens but also legal equality to its nations. The success of peace process in Bosnia and Herzegovina extends over the borders of this State by its meaning and message. Namely, it is a model of peaceful coexistence of nations that is burdened with the mutual painful history. Bosnia and Herzegovina is the country where the Islamic and west world with their beliefs and convictions meet. The idea of Europe, as the mutual home of different nations and cultures joined by the values of tolerance and peace, will be credible if Bosnia and Herzegovina would be transformed from the place of imposition of dangerous and unjust solutions on the detriment of weaker ones to the place of justice, peace and cooperation between nations. A serious political and financial situation, the citizens of Bosnia and Herzegovina are suffering of and confronting with, calls for urgent and clear analyses and brave

this date it realised in whole the project of return of refugees and displaced persons in B&H (at least with regard to the issue of return of property).

⁶ United Nations High Commissariat for Refugees.

⁷ United Nations International Task Police Forces.

⁸ Stabilisation Force – Multinational military forces of the IFOR (Implementation Force) in 1995, at the time of arrival to B&H, had approximately 60,000 soldiers. The mandate of IFOR ended on 20th December 1996, when this military organisation transformed into the SFOR with the stabilisation mandate in B&H. At the end of 2003, the transformed international military forces of the SFOR numbered approximately 20,000 soldiers from some thirty countries.

and truthful confrontation with it. Our journey to the fair peace in cooperation and fellowship is arduous but also possible and necessary because any other solution is worse than that. The people of this country are ready to use that path if those that may do that clearly state and partly show that the mentioned thorny path will lead us to the peace and justice for all. Our Report of this year strives to be our contribution to the process of just peace and the sign of our responsibility for the future of our homeland. We dedicate it to the noble-minded and brave people who are not giving up exposing injustices and believing and working hard for Bosnia and Herzegovina to become and remain the place of meeting and mutual enriching of differences.

I. COMPARISON WITH REGARD TO THE REALISATION OF HUMAN RIGHTS IN RELATION TO THE YEAR 2002

I.1. General Impressions

Aggravated economic and social state has fictitiously blocked out problems of realisation of human rights to the second plan in other areas as well. Except a few smaller steps to better, we can state with regret that the general state of realisation of human rights in Bosnia and Herzegovina in 2003 remained on an unsatisfactory level. Complexity of unsolved internal relations, or unfairly solved ones between nations, and the lack of appropriate political and legal framework of the State does not guarantee prosperous future to its citizens at any near time.

I.2. Right to Strike Used in Ampleness

The previous year 2003 in Bosnia and Herzegovina was marked by numerous strikes and social disturbances. The whole territory of the State has been shaken by the social protests directed against private employers and local (Cantonal and Municipal), Entity and State authorities.

Because of unbearable economic state and insufficient important signs that would indicate that things could become better, amongst others, pensioners, doctors, teachers and professors, miners, industrial and agricultural workers, invalids of war and families of fallen fighters, state officials (for example, the Tax Administration and Inspection...), railroad workers, taxi drivers, drivers of liquid goods on the roads, food industry workers, chemical industry and heavy industry workers, and employees in other areas of economy on the whole territory of Bosnia and Herzegovina were striking and protesting. The most common reasons for strikes were small or even unpaid salaries. These protests were always followed by requests for the replacement of managements or resignation of political officials.

There are a lot of cases where the employers are in debt towards their employees due to the fact that they did not pay them tens of their monthly salaries. Often, the reason for protests laid in the embezzlement in the privatisation process that led some companies to the total collapse and their employees to losing their jobs and any prospect to find another. The unsuccessful model of privatisation enabled a small group of privileged class – freshly instated tycoons – to get ownership over a whole line of once successful companies in an cheap and suspicious manner and in the direct coupling with the international and national centres of political power. A scenario happening after the privatisation process was finished was always the same one. After gaining the majority shares under the symbolic price, these “private entrepreneurs” would suck out all of the remaining capital of the exhausted and poor companies, and in that way they would obtain easy and

large money. Since they did not intend to revive production when “purchasing” a major part of the capital in the privatisation process – i.e. they did not intend to revive previous production of a company – from the very beginning employees were destined to the status of “employees on the waiting list” and finally to the termination of their labour relation.

Taking into account, besides all stated above, widely spread discrimination against citizens in the matters of employment on basis of origin, political beliefs, nepotism and corruption, it may be stated with grounds that the right to work is one of most endangered human rights in Bosnia and Herzegovina.

At the end of this part we can ironically state that right to strike is the only right that has not been “endangered” at all in Bosnia and Herzegovina and that human right is being used in abundance by already small number of employed people (that are scarce).

I.3. State of Social Insecurity

The assessment of the World Bank states that over 62 percent of the national income of Bosnia and Herzegovina is swallowed by the State apparatus. The very fact shows that the Dayton International Experimental Project stands on shaky legs.

We often used to state that the impossibility to rehabilitate from the serious consequences of war is the main cause for inefficiency of economy of Bosnia and Herzegovina. We would add to that that the economy of Bosnia and Herzegovina does not get enough space for growth because of the huge, inefficient and expensive State Administration that suffocates it like the most dangerous weed.

The trend of expansion of social poverty and existential uncertainty is disturbing. According to the generally accepted criteria in the World, 20 percent of the population of Bosnia and Herzegovina lives in the state of total poverty. In fact, according to the United Nations' standards a person that has daily expenditure of approximately 8 KM (1,00 KM = 0,51 EUR) lives in the state of poverty, and a person with the expenditure of approximately 2 KM is considered to be extremely poor, i.e. to be a person living on the very edge of physical existence. The application of these criteria shows that around 70 percent of the population of Bosnia and Herzegovina is in the state of social need.

Opposite to the scarce class of fledgling rich, the deeper social and institutional crisis in Bosnia and Herzegovina all the time leads to the substantial increase in the number of poor. As we already pointed out, all relevant indicators tell us that a lot of fledgling rich got rich on the basis of shady businesses; corruption and crime – most often in the direct coupling with local and higher level of power in Bosnia and Herzegovina. The disturbing tendency of impoverishment of population of

Bosnia and Herzegovina almost led to the total disappearance of middle class which is the driving force of development of the modern society.

I.4. General Indicators of Life Standards of Population of Bosnia and Herzegovina in Comparison to the Year 2002

The survey made under the lead of the United Nations Development Program for Bosnia and Herzegovina (UNDP)⁹ indicates that the largest number of households in Bosnia and Herzegovina live on the minimum income that is less than 200.00 KM or 102.00 EUR. In this category 31 percent are rural households, while 17 percent are urban households. According to the surveys approximately 75 percent of the households in the Republika Srpska do not realise income that would enable them to obtain basic consumer's basket (survival minimum) for their members, while in the Federation of Bosnia and Herzegovina the percentage of population in the same situation is 46. The consumer's basket represents the statistic standard assessed by the nutritionists, determining minimum of groceries that are, by content and quantity, the survival minimum necessary for the restoration of energy lost by work. Monthly expenditure of an average four-member family in the Federation of Bosnia and Herzegovina for the consumer's basket (most necessary food and drinks) in October 2003 amounted to 455.72 KM or 233.00 EUR¹⁰, which, in comparison to November 2002 (455,08 KM), is an insubstantial increase of costs. The consumer's basket for September 2003 in the Republika Srpska amounted to 451.62 KM or 230.93 EUR¹¹, and for the month of November 2002 it amounted to 430.00 KM or 219.86 EUR¹². The average net (monthly) salary in the Federation of Bosnia and Herzegovina in July 2003 amounted to 530.79 KM or 271.39 EUR, which, in comparison with the same month of 2002, is the increase of 9,9 percent¹³. The average net salary in August 2003 in the Republika Srpska amounted to 381.00 KM or 194.81 EUR, which, in comparison to the average salary in July 2002, represents increase of 10,1 percent. Under the OHR assessment the average salary in Bosnia and Herzegovina for July 2003 amounted to 480.70 KM or 245.78 EUR, which is a nominal increase of 10,0 percent.¹⁴

Under the same statistic source the index of retail prices for the period from August 2002 to August 2003, in the Federation of Bosnia and Herzegovina, dropped by 0,2 percent while in the Republika Srpska, for the same period, it increased by 1,7 percent. In August 2003, the index of retail prices, in comparison with the whole

⁹ United Nations Development Program

¹⁰ Data according to the Federal Statistic Bureau

¹¹ Official information of the "Republic Bureau of Statistic of the Republika Srpska".

¹² Official information of the "Republic Bureau of Statistic of the Republika Srpska" for the last quarter of 2003 in the time of preparation of this Report were not published yet!

¹³ According to the official data of the Federal Statistic Bureau the average salary for September 2003 amounted to 526.85 KM, which indicates the trend of decrease of salaries for the second half of 2003 (Source: "Financial Regulations and Practice", no. 10/03, December 2003).

¹⁴ Source: Economic OHR bulletin, tome 6, no. 4 – October 2003. Information is not fully compatible since the totally same critical moment was not taken as the time measurement.

2002, in the Federation of Bosnia and Herzegovina, decreased by 0,8 percent, while in the same period in the Republika Srpska it increased by 0,8 percent¹⁵.

Taking as a measurement of standard the above given UN parameters, the conclusion might be reached that the citizens' standard (purchasing power of basic groceries) increased insubstantially. But having in mind the price increase of some basic groceries (for example, bread by 20 percent), some energy products, and some utility services, the general impression is that the standard of Bosnia and Herzegovina citizens remained on the same level as in 2002 or even insubstantially decreased. Since the expeditious tendency of social disintegration in the society of Bosnia and Herzegovina exists, the price increase of basic groceries hits hardest the lower classes of society, such as unemployed and workers on waiting lists, pensioners, etc., while a small number of members of the rich class did not feel this price increase at all.

Available information shows that the standard of life in the Federation of Bosnia and Herzegovina is substantially better than in the Republika Srpska.

1.5. State of (un)Employment

Certainly, unemployment is the main cause of poverty in Bosnia and Herzegovina. As a problem it should not be seen outside of context of whole social and economic relations, because the close and unbreakable interaction exists between non-functioning and bankrupted economy, huge and ineffective state and legal system and problem of unemployment.

At the end of 2003, the official employment rate was only 17 percent¹⁶ of the whole population of Bosnia and Herzegovina, which definitely puts our country to the last place in Europe.

The last census of 1991, registered 4.364.574 citizens of Bosnia and Herzegovina. The assessment of the OHR and the Statistics Agency of Bosnia and Herzegovina is that in this country currently lives approximately 3.800.000 citizens. According to the official statistics¹⁷ around 641.000 of them have permanent job in Bosnia and Herzegovina.¹⁸ At the same time, some 456.000 persons have been looking for jobs through the Entity Employment Bureaus (303.000 in the Federation of Bosnia and Herzegovina and 153.000 in the Republika Srpska). The rate of registered unemployment in Bosnia and Herzegovina is around 41,8 percent (43,5 in the Federation of Bosnia and Herzegovina and 39,2 percent in the Republika Srpska).

¹⁵ The OHR Economic Task Force Secretariat still has not performed analyses to get comparable data for the whole State.

¹⁶ Official information of the Statistics Agency of B&H

¹⁷ The same.

¹⁸ According to the official information, in July 2003, in the FB&H there were 387.832 employed persons, while in the same month in the RS there were 249.186 employed persons. This information tells us that the number of employed persons in B&H, without the District of Brčko, was 637.018.

Both Entity Retirement Funds in Bosnia and Herzegovina are in principle based upon the principle of intergeneration solidarity. Each employed person must, besides his/her own income, secure means for payment of one pension.

The estimates tell us that, on average, some 300 registered unemployed persons apply for one job vacancy. These parameters should be taken as relative ones because a large number of really unemployed persons and "unregistered" employees do not apply to the Employment Bureau at all. The reason for such state lies in the lack of possibility to realise any social right that arise from the status of unemployed person.

The fact that the most of such small number of employed do not receive regular salaries, and the level thereof does not, on average, satisfy basic human and civilised needs, also influences the general state of poverty in Bosnia and Herzegovina. Irrespective of irregularity and low level of salaries, we may claim with certainty that unemployed and so-called "employees on the waiting list" are in the serious state of social poverty. Families with all labour capable members employed have three to five times better life standard than families with one or more unemployed members. To the category of the lowest level of poverty we can, most certainly, include workers with no social benefits and unregistered workers, the number of which definitely cannot be disregarded.

1.6. Population of Pensioners

It may be stated, with certainty and with no dilemma or statistic analyses, that pensioners are the most endangered category of population.

In August 2003, in both Bosnia and Herzegovina entities there were 470.200 persons with the status of pensioners. In April 2003, in registers of the Pension Insurance Institute of the Federation of Bosnia and Herzegovina 286.576 persons were registered, while in August of the same year, in Republika Srpska there were 183.640 persons registered.

Relation between number of employees and the number of pensioners has approximate rate of 1: 0,8.

The average pension for August 2003 in the Federation of Bosnia and Herzegovina was 190.00 KM, while in the Republika Srpska for the same month it was 135,00 KM. According to that, the average pension in Bosnia and Herzegovina amounted to 168,30 KM. If we take criteria of United Nations as the measure of poverty the average pensioner in Bosnia and Herzegovina is an extremely poor person.

The low level of health protection especially influences low standard of life of pensioners in Bosnia and Herzegovina. Because of their age and general low level of health situation very small number of pensioners has any possibility to secure for themselves any additional income.

In the context of social rights of pensioners we should mention that the issuance of the new *Law on Pension Insurance of the Federation of Bosnia and Herzegovina* of 1998 reduced and seriously endangered rights of woman – widows. Under this new Law, a widow that in the moment of death of her husband was not 45 years old has lost permanently her right to pension on the basis of the length of service for retirement of her late husband, except if permanently disabled or with underage children – i.e. children with the social right to remuneration on the basis of the length of service for retirement of the late father.

It has to be taken into account that the numerous population of pensioners was totally reduced to poverty during the war – as was the most of citizens of Bosnia and Herzegovina. If there were any reserves, such as savings gathered when labour capable, these were mainly spent or lost due to the lack of possibility to realise return of “old foreign currency savings”¹⁹. Such circumstances reduced the population of pensioners to poverty.

¹⁹ These are foreign currency savings deposited in the banks before the war that later on bankrupted.

II. UNSATISFYING INDEX OF STATE OF ECONOMY IN BOSNIA AND HERZEGOVINA

II.1. Gross National Income²⁰ (GNI)

The annual financial statements of the gross national income in Bosnia and Herzegovina have been prepared since 1996 through the Statistics Agency of Bosnia and Herzegovina on the basis of available official data of three public institutions²¹.

According to this source of information the gross national income in Bosnia and Herzegovina in 2002 amounted to 5.610.000 USD²².

Currently, the Gross National Income Per Capita in Bosnia and Herzegovina cannot be precisely accounted because the census was not made since 1991. According to the assessment of the Statistics Agency of Bosnia and Herzegovina, at the end of 2002, in our country there were 3.828.397 citizens. Therefore, the gross national income per capita for 2002 amounted to 1.466 USD (cca. 1.556 EUR), which puts Bosnia and Herzegovina within the ranks of clearly undeveloped states.

II.2. High Trade Deficit

Under the assessment of the OHR, based upon the official information of the Entity Statistics Institutes, the trade deficit of Bosnia and Herzegovina for the period January to August 2003 amounted to 3.561.300.000 KM²³.

At the same time the coverage of imports by exports was only 29,7 percent (32,5 percent in the Federation of Bosnia and Herzegovina and 23,652 percent in the Republika Srpska). Namely, in that period in Bosnia and Herzegovina the imports of goods amounted to 5.067,7 million KM, while the exports amounted to only 1.506,4 million KM²⁴.

In the future, it is to be expected that the trade deficit of Bosnia and Herzegovina will increase because, as of 1st January 2004, the ratified Agreements on Free Trade signed with neighbouring Republic of Croatia²⁵ and Serbia and Monte

²⁰ Gross National Income - GNI

²¹ The Statistics Bureau of the Federation of B&H, the Republic Statistics Bureau of the Republika Srpska and the Statistics Bureau of the District of Brčko.

²² The Statistic Bulletin of the Statistics Agency of B&H no. 6, December 2003. Account of GNI for 2003 has not been started yet at the time of preparation of this Report.

²³ Central rate of one Convertible Mark was cca. 0,511 EUR

²⁴ Source: The OHR Economic Task Force Secretariat – data is not completely compatible because the Entity Statistics Bureaus have different dates of accounts.

²⁵ The application of the Agreement on Free Trade with the Republic of Croatia was partly postponed at the end of 2003 for period of three months because of unsatisfying competition of B&H producers. This postponement was presided by a number of protests all over B&H – mainly of

Negro will enter into force. All of it represents threat to the discomposure of the economic system of Bosnia and Herzegovina.

II.3. Mild Growth of the Industrial Production

The Industrial potential of Bosnia and Herzegovina was almost totally destroyed during the 1992-1995 war.²⁶ Consequences of the war destruction are seriously affecting present time. The industrial production in Bosnia and Herzegovina in some segments, nevertheless, slowly improves. The lack of political will of authority structures to stimulate such projects represents a serious obstacle to the faster progress of small number of promising production capacities. Usually, in all of that, the prevailing interest is not the interest in production but national interest²⁷.

Regardless of the incompetence of structures of power on every level of authority, the information on the mild growth of industrial production in 2003 is encouraging.

The index of industrial production in August 2003, in comparison with the one in 2002, increased by 14,6 percent in the Federation of Bosnia and Herzegovina and 6 percent in the Republika Srpska²⁸. Nevertheless, having in mind the low initial level of the industrial production in Bosnia and Herzegovina, the achieved level cannot be considered satisfying in any sense.

II.4. Final Comments: Relation between Economy and Human Rights in Bosnia and Herzegovina

The State budget of Bosnia and Herzegovina for 2004 was not adopted by the end of 2003, which, under the Constitution of Bosnia and Herzegovina, is a reason to dissolve the Parliamentary Assembly of Bosnia and Herzegovina – after which the new parliamentary elections should be announced. No one reacts to that. The Parliamentary Assembly of Bosnia and Herzegovina has not been dissolved. Nevertheless its members voted for the law that substantially increased their own salaries. They also put into the parliamentary procedure the draft law that would enable them when retiring to get pretty high pensions (ten times higher than the average pension in Bosnia and Herzegovina) in comparison with the conditions of others in Bosnia and Herzegovina. These facts show enough of the attitude of

domestic agricultural producers that get almost none of the State's stimulating measures for production for the difference with their colleagues in Croatia.

²⁶ See the Report on the state of human rights in B&H of the Justitia et pax Commission for 2002.

²⁷ As an example we may take the "Aluminij" Mostar, largest exporter in B&H (they realise the part of almost 27 percent of the total export of B&H) that has always been attacked under the mentioned national criteria because its employees, as in any other larger company in B&H, are almost all from one constitutive nation. However, no questions have been asked on other companies that have employees of one nation, again for national and political reasons.

²⁸ Sources: The Statistics Bureau of the FB&H and the Republic Statistics Bureau of the Republika Srpska – B&H Economic Update OHR

politicians towards the problem of economy, from which they want to take for themselves the biggest part.

The International Community invested huge means to the reconstruction of the State devastated by the war. The structure of this aid did not go for the reconstruction of economy at all, as it would enable self sustained institutions of the State of Bosnia and Herzegovina. The biggest part of international aid was spent to enable survival of Bosnia and Herzegovina as organised in Dayton.

The Dayton Agreement converted complex national relations into the complex and inefficient state legal system that became its own purpose²⁹. Domestic politicians and their numerous international supervisors appeared incompetent for the problems suffocating this State. However, that is something that neither of them, for their personal reasons, want to admit. On the contrary, before every state administration and in public they launch a picture of their success in order to continue using their limitless powers. They attribute their failures, which they cannot hide, primarily to national parties. At the end, already agonising citizens of Bosnia and Herzegovina suffer. Serious economic situation and general state of poverty in Bosnia and Herzegovina multiply themselves on all levels of social life, and also on the state of human rights. The lack of proper measurements of values put an ordinary citizen of this country into the unenviable position with no visible solution. The nightmare of near and not so near past slowly merge into one with the present time. The structures in power skilfully use a vicious political circle that contributes and strengthens tension of relations between national groups, and all of that for the sake of remaining in power. In such situation, healthy forces, that started to solve important problems of citizens and nations in this country, cannot move into the open. It is obvious that radical changes are necessary but these are impossible to realise within the existing Dayton system. Therefore, the time has come for the radical change of the Dayton organisation of Bosnia and Herzegovina!

²⁹ As previously said, the state apparatus swallows more than 62 percent of B&H national income!

III. DAYTON AGREEMENT AND ITS REVIEW – CONSTITUTIONALITY OF NATIONS AND THE RIGHT TO PROTECTION OF NATIONAL IDENTITY

Although the International Community frantically stuck to the unchangeable quality of the Dayton agreement in last years, it can be said with certainty that it is substantially amended under the direction of the international representatives. Having indefinite power on all levels, the Office of the High Representative put its efforts to the task of changing the structure of Bosnia and Herzegovina in accordance with standards that are, in their opinion, appropriate for achievements of modern pluralism. Constructing their own standards, the international representatives, it seems, lost reasons for which this country was thrown into the abyss of war and (self)destruction. First of all, the main wrong postulate of actions of the International Community in Bosnia and Herzegovina up to this moment has been: whatever is national is in advance assumed to be negative. A lack of feeling for equal and fair interests of all three constitutive nations in the acts of the OHR in Bosnia and Herzegovina is a potential threat for the renewal of national intolerance.

Article V of Annex 10 to the General Framework Agreement for Peace prescribes the High Representative as the supreme authority in the country with regard to the interpretation of the Agreement on Implementation of Civil Part of the Peace Agreement³⁰. Through liberal use of these and additionally given powers of the High Representative, the OHR performed thorough change of the constitutional order of Bosnia and Herzegovina with no respect of and even against the will of its citizens. In all of that he did not have any sensitivity for preservation of balance between the three constitutive nations. By looking for "pragmatic" solutions in the complex state, upon the opinion of this Commission, the OHR endangered the very spirit of the Dayton Agreement – in particular infringing constitutive rights of the smallest of three constitutive nations in Bosnia and Herzegovina.

We already stated that the Dayton Agreement recognised and put the results of genocide and ethnical cleansing achieved by the rule of force during the war into the fundamentals of political solution for Bosnia and Herzegovina. We should not forget the fact that the largest compromise with regard to giving up the territory to the Serb entity was done by the Croat side³¹. The Dayton Peace agreement was in

³⁰ Para. XI. 2. of the Conclusion of the Conference of the Peace Implementation Council, held in Bonn on 9 and 10 December 1997, the consent was given to the High Rep. "*by issuance of binding decisions, when he considers it necessary*" he may use his final authority in the interpretation of the Dayton Agreement – so that he would help finding concrete solutions, including also "*measures with purpose of securing implementation of the Peace Agreement on the whole territory of B&H and its entities*".

³¹ Croats are the smallest constitutive nation in B&H. For the pre-war demographic picture of B&H see the Report *Justitie et Pax BC B&H* on state of human rights in B&H for the year 2002! By the Dayton Agreement the Republika Srpska got the biggest part of Posavina that was mostly inhabited by Croat population until the war. Besides some traditionally Serb parts (example, Grahovo, Šipovo, Glamoč and Mrkonjić Grad...) the Serb side was given some key economic

essence a compromise that has never been signed by the representatives of Croat nation in Bosnia and Herzegovina. Unfortunately, the Dayton Agreement is a continuation of the Washington Agreement signed in February 1994 by the late President of the Republic of Croatia, Franjo Tuđman. This Agreement achieved the “status of special relation between the Federation of Bosnia and Herzegovina and the Republic of Croatia”. Unfortunately, the Washington Agreement drowned the Croats of Bosnia and Herzegovina into the Federation of Bosnia and Herzegovina and these special relations have never been taken seriously. The Washington Agreement is partly responsible that Croats in Bosnia and Herzegovina did not get their identity in Dayton. The Dayton Agreement even ignored some provisions of the Washington Agreement with regard to organisation of the Federation of Bosnia and Herzegovina. What is the factual position of the smallest nation and what state of constitutionality of the Croat nation was finally achieved reflects, for example, in disregard of results of elections of the Croat electoral corps in 2000³² or in an unsolved issue of having dual citizenship³³ for Croats in Bosnia and Herzegovina, and the newest imposed organisation of the city of Mostar.

In 2002, the former High Representative in Bosnia and Herzegovina, in absence of biggest national political parties of Croats and Bosniacs, realised the *Agreement on Constitutional Amendments*³⁴. Since this Agreement was not adopted through the regular procedure of the parliamentary bodies of both Entities – thus not having the support of the electoral body, the High Representative imposed his constitutional amendments by use of previously mentioned powers. In that way, *de facto* ethnically clean Republika Srpska was cemented as the Entity of Serb people while on the other hand de-constitution of Croats and Bosniacs was achieved in the Federation of Bosnia and Herzegovina. The lack of standing of one of constitutive nations when amending the Constitution, as a framework legislative source, brings into question legitimacy of all further legal solutions arising from the principle of harmonisation of law with the Constitution. Such practice of the International Community imposes an important question; does the constitutive nation have the right to decide on its own position in the state in which it is nation-builder or is a third person (entity) with unlimited powers to decide on that? It is obvious that we have classical protectorate acting in Bosnia and Herzegovina

facilities in the Central Bosnia which by their geo-strategic position would belong to the FB&H (example, Hydro-electric power plant Bočac on Pliva and a part of Pliva lake).

³² Provisional election rules imposed by the OHR gave a solution by which the representatives of the Croat nation can be appointed by the representatives of two other nations, which is elaborated in detail in the Report *Justitie et pax BC B&H* for 2002.

³³ Under the Law on Citizenship of B&H the double citizenship is not possible in principle, except solved differently by an international agreement.

³⁴ *The Agreement on the Constitutional Amendments* was signed on 27 March 2002. Previous negotiations by the political parties were organised for the agreement on the parliamentary implementation of the decision of the Constitutional Court of B&H on the constitutionality of all three nations on the whole territory of B&H – explained in the Report *Justitia et Pax BC B&H* for 2002.

under the mask of international influence for the purpose of solving national relations on the basis of modern democracy. And the protectors use methods that cannot be called democratic at all! It is clear why the OHR does not overtake the direct role of protector in the formal way. Under the conditions of declared protectorate, the OHR would have a responsibility for all actions taken and could not attribute its failures to the domestic authorities. If we would have formal protectorate in Bosnia and Herzegovina the protector (the OHR) would have the sovereign power and not three constitutive nations. But it would be clear who is to be considered responsible. The state into which the role of the international Representative degenerated has gone out of the framework of the Dayton Constitution and has become the obstacle for the rule of law and the realisation of democracy.

Besides these most important changes of the Dayton Agreement, it was amended before and after that on several occasions. For example, the organisation of the Ministry of Defence as it is known is determined by the Dayton Agreement in such manner that Entities have competence over their Armies. In practice the Dayton Agreement enabled existence of two Armies, two Generalstuffs, two Commands in one State. Now in the process of getting closer to the international integration, in particular when Bosnia and Herzegovina wants to join the Partnership for Peace with NATO, the condition is put forward to establish only one Ministry of Defence. By the consensus of political parties it has been established. Thus, the NATO contributed to the amendments of the Dayton Agreement. We would also like to remind you that according to the Dayton solutions Sarajevo as the capital of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina – the administrative centre of the State and the Entity should have been declared the district. But it did not happen. Regardless of realised constitutional solutions, Sarajevo has remained divided to the Serb and “Federal” part. After the ethnical structure was drastically changed in both parts by the war and politics, the “Federal” part is organised as Canton with the explicit Bosniac – Muslim majority. Similar or maybe even more drastic fate befell to many other towns in Bosnia and Herzegovina. And that was accepted as the price of peace. The exception is the town of Mostar. Only there the imposed decision of the High Representative has been applied, according to which the Croat people as the majority (they were the majority even before the war because some parts were not considered as administrative part of town), cannot equally with others by way of democratic elections decide on the composition of the town authorities. If the High Representative’s decision on Mostar is so fair why should we not apply it to all other towns in Bosnia and Herzegovina?

As it was previously pointed out on several occasions, the Agreement reached in Dayton did not give an adequate frame to the realisation of human rights in Bosnia

and Herzegovina, or to its financial prosperity either. The nationally and administratively divided State, with fresh scars of war, is fertile ground for the supremacy of majority over minority. Since the institutionalisation of divisions realised in the war was performed in Dayton, there is no reason to be surprised by frequent human rights violations on the whole territory of Bosnia and Herzegovina.

By complete implementation of the decision of the Constitutional Court of Bosnia and Herzegovina on the constitutionality of all three nations on the whole territory of the State, we would certainly gain proper basis for the construction of democratic society, and generally, for the construction of atmosphere of tolerance in the State of all three nations and of all its citizens. By the further construction of institutions of the rule of law the necessary preconditions would be obtained for total disappearance of the human rights violations, and the feeling of contempt and security would be developed for all of its citizens.

Some representatives of the International Community and ever growing part of political and intellectual forces of this country agree that the existing situation in Bosnia and Herzegovina should be fundamentally changed. As an example we can mention the declaration under the title "Secure the Peace in Bosnia and Herzegovina by the Further Development of the Dayton Agreement", that was signed by 24 respectable European politicians from different states on the occasion of the 8th anniversary of the signing of this Peace Agreement. The Declaration was published on 16th December 2003 in Brussels, Warsaw and Berlin, and it was presented by Doris Pack – President of the delegation of the European Parliament for south-east Europe, Tadeusz Mazowiecky – UN delegate for human rights in Bosnia and Herzegovina and Detlef Dzembitzki – member of the German Parliament that is entrusted with situation in Bosnia and Herzegovina. This Declaration emphasises the necessity of development of the Dayton Agreement since the "*Dayton construction reached its limitations and the peace in Bosnia and Herzegovina has not been secured in whole*". It also points out that the Dayton "*constitutional structure prevents efficient functioning of the unique state... which repeatedly burdens the economic prospective of country*". It also states that the "*great legal uncertainty is practical consequence of such (Dayton constitution³⁵) structure*" and that in the years after the Dayton a lot of positive things had been achieved but should not be forgotten that this Agreement was a painful and necessary compromise that contains in itself the "*deep ambiguity*". On one hand the peace and "*necessary peaceful framework perspective for Bosnia and Herzegovina*" were achieved, and on the other hand it suctioned division of the State to two Entities "*as well as the concrete remodelling according to the results of genocide*". Emphasizing the necessity of urgent political action the signers of the Declaration warned at the end that the threatening "*...medium-term*

³⁵ Added by the author

failure of the European politics in Bosnia and Herzegovina would endanger the stability of the whole region and the perspective of joining of neighbouring states to the EU, and not to mention destinies of many people. The eventual medium-term failure would be the failure of the EU and would give a serious blow to the external and defence politics, and thus to the European interests and the European vision." Unfortunately, the majority of the Serb representatives think that nothing should be changed. Such a reaction was expected of them. Among them are the President of the Republika Srpska Dragan Čavić and the President of Parliament of the Republika Srpska Dragan Kalinić.

This Commission is of the opinion that a permanent and fair solution for the Bosnia and Herzegovina crisis cannot be found without the respect of right to national identity of all three constitutive nations and of their right to their own culture and tradition. That may be achieved by well-established democratic solutions already achieved in Europe, i.e. organisation of the country as a unique State on the basis of principles of regional and local self-management. By such affirmation, and not by negation, of national and cultural rights of all citizens of Bosnia and Herzegovina the basis would be realised for a higher civilised and operational level of this State. It cannot be denied that a large number of individual human rights arises from the possibility of achievement of the identity of the community, and especially so when rights to cultural and national particularity is concerned. That is certainly a very sensitive and important issue in the nationally divided Bosnia and Herzegovina.

IV. REFORM OF EDUCATION IN BOSNIA AND HERZEGOVINA

IV.1. Unsustainable existing situation and necessity of radical reforms

In accordance with the general Dayton decentralisation of power, the education “system” in Bosnia and Herzegovina is characterised by a wide variety. On the state level we currently have four different systems of education: two in the Federation of Bosnia and Herzegovina³⁶ and one for each; the Republika Srpska and the District of Brčko. Each of these systems was made on the basis of an old socialist education system, and they function on different programming and organisational grounds. The curriculum of schools is harmonised with the national, cultural and school politic of each of three constitutive nations, and, with no exception, each curriculum is burdened with numerous deficiencies. The first general problem level of these systems is lack of financial means, necessary infrastructure and appropriate education cadre (i.e. teachers). Second level follows from the fact that each of four systems is based upon the strict and ideologically coloured socialist education system, which implies out-of-date quality of teaching methods and incompatibility of curriculum with the labour market in Bosnia and Herzegovina. For everything stated above, it may be claimed that not a single one of these education systems corresponds needs of modern market economy. A special level of problems in the education of Bosnia and Herzegovina represents narrow-mindedness of national curriculum and lack of normative support to the right to affirm cultural and religious identity of others through regular education of every individual. Each of the four education systems prevents the right of members of other (regionally minor) nation to realise its own national and religious identity guaranteed by the Constitution of Bosnia and Herzegovina and International Conventions ratified by Bosnia and Herzegovina.

For all reasons stated above, almost everyone agrees that the reform of education on all of its levels is necessary. Thus, the issue arises on how to perform it and in the same time not to infringe rights of three nations to their cultural identity regardless of the part of territory of Bosnia and Herzegovina where these rights should be realised.

IV.2. Procedures and legal grounds for the education reform

Using broad powers of the High Representative, the International Community (OSCE) initiated radical reform in the education area as well, with the aim of creating a unique system on the whole territory of Bosnia and Herzegovina. In doing so, they did not choose the usual politics of imposing legal and cadre solutions but initiated a number of initiatives and meetings of the most influential

³⁶ School systems educating in accordance with Croat and Bosniac curriculum.

persons from numerous ministries of education in Bosnia and Herzegovina ³⁷, in order to achieve creation of an agreement for the purpose of harmonisation of legislation on the State level. Since the High Representative, with his powers previously explained, can decide on the position of any public official³⁸, the International Community often used this trump card as means of pressure and blackmail when the education reform was concerned. Although the realisation of this project of life importance has been performed for quite some time, it was intensified at the end of 2000, and it resulted in the key (and disputable) document "Message to the Citizens of Bosnia and Herzegovina– Education Reform", signed in Brussels on 21st November 2002. This document was signed under pressure. In the Report of the Commission for 2001 we elaborated in detail how the International Community installed into the authorities of the Federation of Bosnia and Herzegovina illegitimate representatives of the Croat nation with no respect for their own solutions³⁹ imposed for electoral engineering on their own choice.

Chapter III, Article 4 paragraphs (b) and (c) of the Constitution of the Federation of Bosnia and Herzegovina determines exclusive competencies of Cantons⁴⁰ in creation of the education and cultural politics. Exclusive legislative competencies of Cantons in this area follow from the same provision. However, the key document, as we already mentioned, was issued with no consent or participation of organs exclusively competent for this area under the Constitution of the Federation of Bosnia and Herzegovina, since it was signed on behalf of the representatives of the Federation of Bosnia and Herzegovina by the Minister and the Deputy Minister of the Federal Ministry of Science, Education, Culture and Sports, which has no other competencies in this area except coordination.

Since the reform of education depends on the international document signed by unauthorised and illegitimate persons, the issue of legitimacy of procedure and legal grounds of reform arises. Aims and principles of this reform, after the Brussels document, were defined in Green and then in the extended White paper – "Strategy and Politics for Reform of Vocational Education and Training in Bosnia and Herzegovina". The White paper is an addition to the Green paper and it is the result of compromises realised under the pressure of the International Commission with the aim of harmonisation of education legislation on the territory of the whole Bosnia and Herzegovina. If we look into them as separate documents, the largest amount of principles defined in the White paper can be considered correct.

³⁷ In B&H, 12 separate ministries exist with competence over education and also the Directorate for education of the District of Brčko. (10 Cantonal Ministries in the FB&H, the Federal Ministry of Education and Science and the Ministry of Education and Culture of the RS).

³⁸ The High Representative removed from office numerous state officials and even prohibited their participation in political and public life by a number of his decisions.

³⁹ Elections of 2000 were held according to the Provisional Electoral Regulations that were imposed by the decision of the High Representative Wolfgang Petritsch, but in the end the elections did not achieve results aimed at by the OHR.

⁴⁰ The FB&H as one of two existing entities in B&H consists of ten Cantons.

However, irregularities in the implementation process of reform create doubts that for the purpose of implementation some compromise solutions will be reached that would violate constitutional rights of the smallest constitutive nation.

On the basis of the document from Brussels of 2002 and the White paper, under the pressure of the OSCE and OHR, the Framework Law on Primary and Secondary Education in Bosnia and Herzegovina was adopted through the regular parliamentary procedure of the Parliamentary Assembly of Bosnia and Herzegovina. According to this Law the Entities and Cantons in the Federation of Bosnia and Herzegovina are obliged to harmonise their laws with this Framework Law. We consider that this provision has failures because it represents the breach of Dayton regulations on division of competencies. The Constitution leaves the possibility of transfer of competencies from Cantons to the Federation of Bosnia and Herzegovina, which in this case did not occur. Therefore, in formal-legal sense the Framework Law on Primary and Secondary Education in Bosnia and Herzegovina has only declaratory character but it should represent general guidelines for future integration of Education in Bosnia and Herzegovina to the system of Education of the European Economic Community.

The reform of University Education has not really started yet. By the use of the Green and White papers they mean to direct it in accordance with the instructions of the Bologna declaration on the European space for University education of 1999. Twenty-nine (29) European countries, amongst which Bosnia and Herzegovina, signed the declaration. The Commission would like to see the education reform in Bosnia and Herzegovina harmonised with the Bologna declaration.

IV.3. Contents and Aim of Reform

Looking into the existing state in Bosnia and Herzegovina, everyone agrees that the Educational Reform is necessary in this county. The manner in which it could and may be performed is questionable. The task is not an easy one but it is necessary for its performance for all three nations to keep their constitutive rights without endangering rights of members of the two other nations. So, the main goal of this reform should be contained in the possibility of all three nations realising their constitutive rights guaranteed by the Constitution on the whole territory of Bosnia and Herzegovina. If the reform of the school system would enable affirmation of cultural, religious and national particularity of all three nations without pressure of majority over minority, the education reform would solve many problems that are expanding over boundaries of education in Bosnia and Herzegovina.

Unclear aims and disrespect of procedures in the introduction of this reform are the main reasons for confusion and resistance in its implementation.⁴¹ Methods of pressure, non-application of the principle of legality and disrespect of the democratic procedure cannot be the token of future of this county. The practice of the International Community with regard to implementation of educational reform shows that such reform (as it was planned) has as its aim the centralisation of power with the price of negating cultural particularities, and that is indicated by the following unsolved problems:

- 1) Creation of a unique curriculum core that would represent 70 percent of the whole curriculum.
- 2) Insisting on joined schools under the excuse of avoiding segregation and discrimination, which does not give parents of children any possibility of choice for cultivation of cultural particularities in divided schools.
- 3) Vagueness with regard to mandatory application of printing books for a unique core on all three official languages and the right of parents to choose language standards for the education of their children.

The Commission considers that the reform must be based on principles that would prevent segregation and discrimination but under the mask of non-discrimination the parents must not be deprived of the right to educate their children in the spirit of their language, culture and religion, because that would be in violation of fundamental human rights and would prevent the democratic development of the society in Bosnia and Herzegovina.

We think that the educational reform has to enable in its programme affirmation and respect of particularities and to give precedence to the tolerance as a basic principle of permanent coexistence of all three nations. Particularities of coexistence of cultures and religions in Bosnia and Herzegovina are its wealth and not its handicap, as obviously presumed by some.

IV.4. Conclusion

It is unclear what is the final aim of the initiated reform. We are of the opinion that the initiators of this project should clearly express their ideas. Citizens of this country have the right to know what is the basis for the future of their children.

The issue arises of whether the segregation of children in schools "under the same roof" for education under national curriculum even more obvious segregation would be achieved. Such approach from the very beginning supports segregation

⁴¹ See: Release of the BC B&H on cultural and religious identity of Croat Catholics in B&H, 9th September 2003;
Joined position of the Episcopate of the Serb Orthodox Church and the Bishop of the Roman-Catholic Church on the religious instruction and culture of religions, Mostar, 4th November 2003.

between pupils, which potentially threatens with confrontations even in the period of early childhood and adolescence.

Nursing and recognition of right to differences of every individual is the fundament of modern democratic society. Integration of society of Bosnia and Herzegovina cannot be achieved by imposed centralisation as well as by such unfair division of the country as it was performed by the Peace agreement in Dayton. Any thinking and action with the aim of creation of one nation on this territory, most certainly, represents illusion and utopia. The integration of people and potentials in this country may only be achieved by the creation of culture of tolerance between nations. The education reform must respect the constitutive right of all nations to their national identity, right of each individual to freedom and right of parent to choose future for his/her children.

A serious obstacle to the return of displaced persons and refugees to their homeland is inexistence of possibility of education of his/her children in accordance with the spirit of language and culture of nation they belong to. This problem does not only have negative effect to the process of return in the sense of rights guaranteed by Annex VII to the Dayton Agreement but also substantially influences increasing tendency of migration because of impossibility of returnees to stay – finally reinforcing the effect of ethnical cleansing.

V. RIGHT TO RETURN OF DISPLACED PERSONS AND REFUGEES - Implementation of Annex VII to the Dayton Agreement

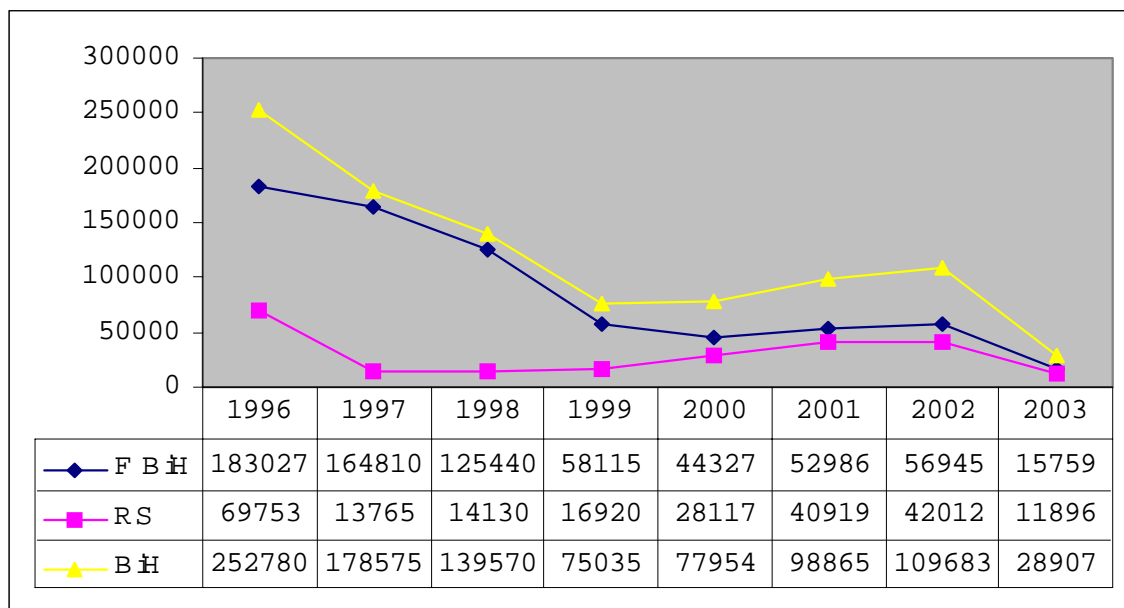
Annex VII to the General Framework Peace Agreement, signed at the end of 1995, in the American city of Dayton, defines, as a constitutional right, the right to return of displaced persons and refugees in Bosnia and Herzegovina.

Article 1 of Annex VII, in relevant part, states:

1. All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them. The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina. The Parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries.
2. The Parties shall ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion.
3. The Parties shall take all necessary steps to prevent activities within their territories which would hinder or impede the safe and voluntary return of refugees and displaced persons. To demonstrate their commitment to securing full respect for the human rights and fundamental freedoms of all persons within their jurisdiction and creating without delay conditions suitable for return of refugees and displaced persons, the Parties shall take immediately the following confidence building measures:
 - a. the repeal of domestic legislation and administrative practices with discriminatory intent or effect;
 - b. the prevention and prompt suppression of any written or verbal incitement, through media or otherwise, of ethnic or religious hostility or hatred;
 - c. the dissemination, through the media, of warnings against, and the prompt suppression of, acts of retribution by military, paramilitary, and police services, and by other public officials or private individuals;
 - d. the protection of ethnic and/or minority populations wherever they are found and the provision of immediate access to these populations by international humanitarian organizations and monitors;

- e. the prosecution, dismissal or transfer, as appropriate, of persons in military, paramilitary, and police forces, and other public servants, responsible for serious violations of the basic rights of persons belonging to ethnic or minority groups.

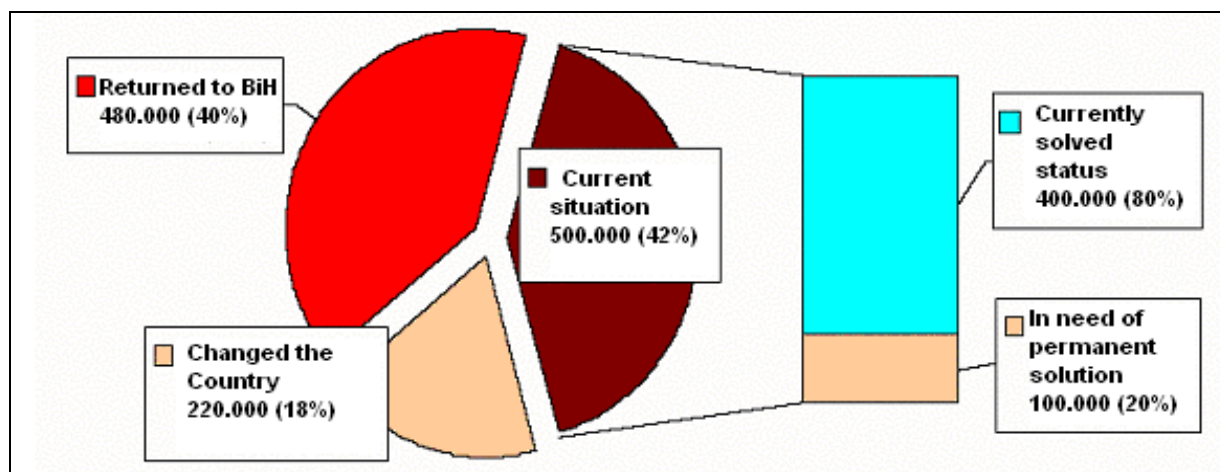
Since the beginning of war until the signing of the Dayton Agreement, 1.250.000 persons were exiled from Bosnia and Herzegovina, and that is 28,4 percent of the whole population. In Bosnia and Herzegovina 1.370.000 persons were displaced, or 31,2 percent of the population. That makes 2.680.000 persons or 59,6 percent of citizens of Bosnia and Herzegovina. The process of return started immediately after signing of the Dayton Agreement. According to the official and, probably, increased statistics of the Ministry for Human Rights and Refugees of Bosnia and Herzegovina, until 30th June 2003, on the territory of whole Bosnia and Herzegovina the total number of realised returns was 959.561, on the territory of the Federation of Bosnia and Herzegovina a total of 701.409 persons returned, or 73,1 percent, on the territory of the Republika Srpska 237.512 persons, i.e. 24,75 percent, and in the District of Brčko 20.640 persons or 2,15 percent.



Graphic layout of total yearly return to Bosnia and Herzegovina entities⁴²

These statistics show that still more than half of refugees and displaced persons have not returned to their pre-war homes. It is also obvious that the return to the Republika Srpska evidently increased from 2000 to 2003 under the stronger international pressure.

⁴² Official information of the Ministry for Human Rights and Refugees of B&H



Graphic layout of indicators relating to refugees from Bosnia and Herzegovina⁴³

Thus, eight years after the signing of the Dayton Peace Agreement we get the impression that there was no clear political will on all sides for strict application of above-listed Dayton (Constitutional) obligations. Constant obstructions, especially in the RS, substantially slowed down and even prevented, and still do, the process of return – that helped the permanent cementing of the existing situation, which was already pointed out by the Commission Justitia et Pax BC Bosnia and Herzegovina in its previous reports⁴⁴.

The obstruction of return is mostly performed on the level of local authorities, by politically directed, nationally coloured, strict and inefficient administration. With no dilemma we may state that competent organs of authority (local, entity and state) did not, while implementing property legislation, give adequate and efficient help to this important project.

By the plan for implementation of property legislation, which represents the will of the International Community⁴⁵, realisation of Annex VII to the General Framework Agreement for Peace, signed in Dayton, is speculated for the end of 2003. The aim of this strategic direction of the International Community was to finish the process of complete return of property to displaced persons and refugees. After the implementation of the process of property repossession, refugees and displaced persons should, in largest possible number, decide and realise return to their pre-war homes.

According to the PLIP statistics, the percentage of returned property of 21 percent on 31st December 2000 increased to 84 percent in 2003 (situation on 30th June 2003).

⁴³ The same

⁴⁴ Report on State of Human Rights in B&H for 2000, 2001 and 2002 of the Commission Justitia et Pax BC B&H.

⁴⁵ Property Legislation Implementation Plan (PLIP) was signed by international organisations such as: OSCE, UN, OHR, UNHCR and CRPC.

Bosnia and Herzegovina	No. of submitted requests	%	No. of issued decisions	%	Repossessed property	%	Feasibility Rate
FEDERATION B&H	121.912	54	116.570	56	105.385	55	86,44%
REPUBLIKA SRPSKA	97.392	43	85.375	41	78.381	41	80,48%
BRČKO DISTRICT	6.753	3	6.502	3	6.228	3	92,23%
TOTAL	226.057	100	208.447	100	189.994	100	84,05%

General review of implementation of property legislation in Bosnia and Herzegovina⁴⁶

Certainly, the increase in percentage of returned property can be assessed as positive. However, that the process of repossession is at its end does not mean that the process of return is finalised. Unfortunately, because of division of Bosnia and Herzegovina to entities and because of people who banished them remaining in power, in most of cases owners sell or exchange their repossessed property. The Ombudsmen of the Federation of Bosnia and Herzegovina in their reports state that refugees and displaced persons allege, as deciding reason, the lack of appeal of parts where they are returning because of a number of perfidious messages "that they are not welcome" all the way to the messages of hatred and exclusiveness. Attacks on religious facilities, in particular during religious holidays, extreme pronunciations of ethnic and religious ambience conveying message of which is dominant nation and religion in that area, give to members of other constitutive nations and national minorities the impression that they are undesirable. Such behaviour creates growing conviction that other two nations and other national minorities are undesirable and superfluous in these ethnically clean areas.

Although more than eight years passed since the end of the war some opinions are that approximately 65 percent of refugees and displaced persons have not returned to their pre-war homes.

Relative success of property legislation implementation i.e. in formal return of property to their pre-war owners and occupancy right holders did not result in its final goal – return of people to their homes and homeland.

By the end of 2003 all legal claims for repossession of property should have been solved and that was mostly done. Regardless of this success, we have to state, regretfully, that the process of return of refugees and displaced persons in Bosnia and Herzegovina, and especially in the Republika Srpska, succeeded only in part. Formally recognised right to "return to previous places" is not achievable because of insufficient existence of environment for sustainable return. The other side of the medal is that the largest number of refugees and displaced persons did not return to their homes for the simple reason that the authorities in Bosnia and Herzegovina have not secured even the minimum of conditions that should follow such a

⁴⁶ Official info of the Ministry for Human Rights and Refugees of B&H, situation on 30th June 2003.

process. Reasons to permanently give up the intention to return to one's homeland are: feeling of insecurity in returnees, impossibility to realise right to pension and health insurance, problems and discrimination in employment, impossibility of education in one's own language, interference with the right to freely express one's religion, and finally, often lack of roof over one's head⁴⁷. Also, the important fact is that most of refugees and displaced persons already found their way in new places. Among other complex reasons for not returning we should also mention personal ones, i.e. that people see their permanent prospect and prospects of their children in the new environment. Some political actions of concerned countries that use different benefits to persuade refugees to stay there often influence their decision to stay.

For all mentioned reasons it may be concluded that the political struggle against the implementation of Annex VII finally had success. To substantiate this claim we may state that each of three national parts of Bosnia and Herzegovina are cleaned of other nations (90 percent). The positive exceptions are some areas of Central Bosnia and city of Mostar. Mostar was transformed to "case" by the decision of the High Representative. The main responsibility may be put upon the "mediators" in Dayton and representatives of the International Community to whom the first and main goal, in this area, was to stop and permanently eliminate the crises spot in the south-east Europe. It is a tragedy that no attention was paid to the stable peace and the future of citizens and nations in Bosnia and Herzegovina. It is also obvious that appropriate social ambience was not created in which a returnee would feel safe and welcome. Political representatives of all three nations in Bosnia and Herzegovina should also take part of the burden of responsibility because they did not show any courage or skill for a democratic step forward.

Although, until the end of 2003, almost all requests for repossession of property were solved formally and legally, the entity and state authorities did not do almost anything with the aim of realisation of return, and by the return, so far, the pre-war picture of multiethnic and multiconfessional variety of Bosnia and Herzegovina has not been achieved.

The lacks of social security and obstruction of permanent return are achieving final goals of ethnic cleansing and reflect the state of national homogenisation – cementing goals achieved by the war.

In the end, the assessment may be given that the refugees and displaced persons (that timely engaged themselves into the process of return) will repossess their property but also may be claimed with certainty that the project of return of people failed in the largest part.

In the turbulent demographic process the ethnical picture of Bosnia and Herzegovina has been dynamically changing all the time. Disturbing information

⁴⁷ Regardless of tremendous efforts of the official representatives of the International Community and numerous NGOs the large part of formally repossessed property (devastated in the war) remained in disrepair.

points out that approximately 110.000 of its citizens, mostly young, left Bosnia and Herzegovina after the end of war. The largest number of these persons left Bosnia and Herzegovina with the intention to permanently reside abroad. In the recipient countries substantial movements of refugees from Bosnia and Herzegovina have been registered, so, as of January 1996 until the end of 2003, with the assistance of the International Migration Organisation⁴⁸ more than 100.000 citizens of Bosnia and Herzegovina changed their residences within third countries. Such departures have usually been treated as economic migrations. Besides the economy factor, certainly, the exodus of citizens of Bosnia and Herzegovina after the war is partly attributable to the failure of the Dayton political project.

⁴⁸ International Organisation for Migrations - IOM.

VI. CONCLUDING REMARKS

Speaking generally, the realisation of human rights in Bosnia and Herzegovina in the year 2003 remained on the approximately same, unsatisfactory level as it was during previous years. It is disturbing that the general situation in Bosnia and Herzegovina adopts characteristics of acute sickness that blocks all segments of life in this State.

It becomes completely obvious that radical changes are necessary and urgent. Only through creation of an efficient legal and democratic State the conditions will be met for the systematic protection of human rights. The path towards this aim is long but even the longest journey begins with the first step.