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Slobodanka Milikić:

European Integration and its Effects on Minority Protection in Bosnia and Herzegovina

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I. Introduction

Bosnia and Herzegovina (BiH) became an independent state on 6 April 1992. The war in BiH was ended through the Dayton Peace Agreement (DPA), establishing a framework for the reconstitution of the BiH state.¹ The BiH state consists of two entities, the Federation of Bosnia and Herzegovina (FBiH), Republika Srpska (RS) and the Brčko District. Due to the FBiH Constitution the FBiH is further divided into ten cantons.² The Brčko District has been established as a single administrative unit of local self-government existing under the sovereignty of BiH, in accordance with the Final Award of the Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brčko Area of 5 March 1999. The DPA established the legal framework for the development of a peaceful national community under the direct supervision of the International Community (IC).³ A highly decentralized state was established by the DPA.

BiH has suffered a lot from the war between 1992 and 1995, or better said a tragic conflict led to direct consequences for the demographic situation in BiH. Approximately two million people moved from their pre-war homes, half sought refuge in different countries around the world and the other half were displaced within BiH. A huge number of refugees upon returning have not really returned to their pre-war homes but rather have changed their refugee status to that of internally displaced persons (IDPs).⁴

The protection of national minorities in BiH had and has different social-demographic and structural preconditions. In addition to the numerically dominant, the

¹ The Report of the International Commission for the Balkans (Unfinished Peace, 1996) says of the DPA that it marked the end of the war. The Commission's view is that the DPA is not Versailles, where the victors imposed their terms on the vanquished. The DPA is simply the outcome of extended negotiations and the compromises necessary to reach consensus.

² For an analysis of the constitutional process including the establishment of the Republic of Srpska and the Federation of BiH until 1995 see Joseph Marko, "The ethno-national effects of territorial delimitation in Bosnia and Herzegovina", in Institut Suisse de droit comparé/European Commission for Democracy through Law of the Council of Europe (ed.), *Autonomies locales, intégrité territoriale et protection des minorités* (Zurich, 2000), 121-143. In Dayton the territory of the former Yugoslav constituent republic BiH was finally—after long negotiations concerning the division ratio based on the border regulations of Annex II of the peace agreement—divided into two entities, the FBiH (approx. 51%) and the RS (approx. 49%). However, the status of the district of Brčko was at first left aside and the decision was reserved for a court of arbitration, which was established just for this case. This court decided on 5 March 1999 about the final status of Brčko, integrating a new institution into the system of BiH, namely the "District of Brčko" as a multiethnic entity which is only subject to the sovereignty of the state, taking away the control of the two entities over the territory, although a condominium of both entities was declared in the relevant decisions. (On this see also, for example, Nurko Pobrić, *Ustavno pravo* (Slovo Mostar, 2000), 324 ff.)

³ The role of the IC comes clearly to light in the role of the High Representative (HR). The HR mandate contains executive as well as legislative functions. Therefore, in several cases he has removed democratically elected holders of an office of the entities, has often passed laws instead of the local legislative authorities (among these laws are even some on a constitutional level and, furthermore, a law passed by the federal parliament was declared unconstitutional and was amended afterwards. Here the HR actually took over the role of a constitutional court.) These decisions can be found at <<http://www.ohr.int>>. See also David Chandler, *Bosnia: Faking Democracy After Dayton* (Stylus, 1999).

⁴ "Report submitted by Bosnia and Herzegovina pursuant to Art. 25, para. 1 of the Framework Convention for the Protection of National Minorities", Council of Europe ACFC/SR (2004)001, 45, at <http://www.coe.int/T/E/human_rights/minorities/>. See also the UNDP, "Early Warning System Report on Bosnia and Herzegovina (First and Second Quarterly Report)", 2006, as well as the Publication of the Helsinki Committee of BiH, "Ten years of the struggle for Human Rights", February 2005.

so-called “constituent peoples”—Bosniaks, Croats and Serbs, a lot of small minorities live in BiH. None of the constituent peoples represent a majority on the national level and, depending on the particular part of BiH, can also represent a minority. This paper will not only deal with the “real” national minorities, but the situation of the three constituent peoples will also be described.

In the Constitution of BiH, which is part of the DPA, namely in its Annex IV Bosniaks, Croats and Serbs, as already indicated, are called constituent peoples. They are considered the majority population and national minorities come under the constitutional category of “Others”. The BiH Constitution installs a complex of ethnic power-sharing between the three constituent peoples, whereas the group of Others is left outside of the constitutional focus. So the principle of ethnic democracy goes hand-in-hand with the territorial division of BiH.⁵ Constituency in BiH, where each of the peoples would be divided into two categories and each would be considered as constituent only on approximately half of the territory, was cancelled in a landmark decision by the BiH Constitutional Court (U-5/98-III, decision of 1 July 2000).⁶ The court declared all three peoples on the whole state territory as constituent, referring, above all, to the comprehensive Human Right Guarantees of the Dayton Constitution.⁷ Due to the lack of enforcement by the local authorities, in compliance with the above-mentioned decision of the BiH Constitutional Court, the High Representative (HR) finally passed constitutional amendments to the Constitutions of the entities. The model of ethnic power-sharing on the BiH state level was also applied to the entities and cantons.

Approximately every third amendment dealt with the constitutional position of the Others. Now on both the BiH state level and on all other levels (that is to say on the whole territory of the BiH), Bosniaks, Croats, and Serbs as constituent peoples are to be considered as the majority population, whereas the term “national minority” according to BiH law does not comprise one of these three peoples, but only refers to national minorities as defined in the BiH Minority Law. The national minorities come under the constitutional category of “Others”.

Large-scale return took place in Bosnia and Herzegovina by both refugees and IDPs, mostly to areas where their own kind constituted a majority. The DPA put much emphasis on the return of refugees and IDPs to the places where they were living before

⁵ Carsten Stahn, “Die verfassungsrechtliche Pflicht zur Gleichstellung der drei ethnischen Volksgruppen in den bosnischen Teilrepubliken: Neue Hoffnungen für das Friedensmodell von Dayton?” [The constitutional duty concerning the equality of the three ethnic groups in the Bosnian constituent republics: New hopes for the peace model of Dayton?], 60(3-4) *ZaöRV* (2000), 663-701, at 676f. See also Jasna Bakšić-Muftić, “Bosnia and Herzegovina 10 years after Dayton: the Possible Way of Change-Individual vs. Collective rights”, review meeting of the International Council on Human Rights Policy (Role of Human Rights in Peace Agreements), Belfast, 2005.

⁶ U-5/98-III, decision of 1 July 2000, can be recalled at <<http://www.ccbh.ba>>. A detailed description of this decision can be found in, for example, Stahn, *op. cit.* note 5, 679 ff. and Ingo Winkelmann, “Der Bundesstaat Bosnien-Herzegowina” [The Federal State of Bosnia-Herzegowina], in: Wolfgang Vitzthum and Ingo Winkelmann (eds.), *Bosnien-Herzegowina im Horizont Europas* [Bosnia-Herzegowina on the horizon of Europe] (Berlin, 2003), 59-86. An analysis of the functions of the constitutional jurisdiction in Bosnia on the basis of this decision can be found in Joseph Marko, “Integration durch Recht” [Integration through Law], in: Mokre *et al.* (eds.), *Europas Identitäten* [Europe’s Identities] (Frankfurt, New York, 2004), 160-179.

⁷ It was achieved against the votes of four judges of constituent peoples. The two Bosniac and the three international judges voted against their Croatian and Serbian colleagues (about this see the dissenting opinions of the judges Miljko, Popović, Savić and Zovko at <<http://www.ccbh.ba>>).

the war. Annex 7 of the DPA provides the legal framework on the right of return; it also states that the Bosnian authorities must also create the “political, economic, and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group. The Parties shall provide all possible assistance to refugees and displaced persons and work to facilitate their voluntary return in a peaceful, orderly and phased manner.”⁸ In contrast to this ambitious plan, the nationalist agenda of various BiH parties failed to create a climate for reintegration and instead prevented the return of minorities especially. Ethnicity still remains an essential feature of the BiH state.⁹ Even though it is often said that the return is complete, integration there still remains unresolved despite the government's (on all levels) promotion of sustainable return, assurance of equal treatment and access to all BiH citizens.

This report draws on a study done by the Competence Centre South-East Europe¹⁰ and research conducted in September-October 2005.¹¹

1. From Dayton towards Brussels¹²

The EU is focused on advancing political and economic reforms.¹³ By the end of 2004 all Common Foreign and Security Policy (CFSP) and European Security and Defence Policy (ESDP) instruments had been deployed on the ground.¹⁴

In 2005, BiH started to speed up negotiation on a Stabilisation and Association Agreement (SAA), but the transition was stopped by its failure to meet two criteria from the EC's November 2003 Feasibility Study¹⁵: police reform and the passing of public broadcasting legislation in line with European standards.¹⁶ The first round of SAA negotiations between the EU and BiH began in Sarajevo on 25 January 2006. The next round of talks, which focused on the issue of free trade, took place on 17 March 2006.¹⁷

⁸ “The General Framework Agreement for Peace in Bosnia and Herzegovina”, Annex 7, Art. 11, para. 1.

⁹ The EU has funded a comprehensive housing reconstruction programme, funding also substantially the Commission for Real Property Claims (CRPC). To make return more sustainable, the EU was also involved in the reconstruction of health centres, schools and small-medium businesses. Macro and micro projects that promote the rule of law, respect for human rights, protection of minorities and political pluralism are funded through the European Initiative for Democracy and Human Rights (EIDHR) and implemented by international and local partners.

¹⁰ Joseph Marko and Danica Raičić, “Protection of Minorities in Eastern Europe-Case Study Bosnia and Herzegovina”, 2006, at <<http://www.uni-graz.at/suedosteuropa>>.

¹¹ Interviews conducted in Banja Luka, Mostar and Sarajevo.

¹² European Parliament, Directorate-General for External Policies, “Note on the main elements of the Dayton Peace Agreement for Bosnia and Herzegovina”, 28 September 2005.

¹³ Thessalonica Summit, June 2003.

¹⁴ EUSR (since 2002 the HR has been “double hatted”, acting also as the EUSR Representative), EUMM, EUPM and EUFOR. The European Stability Initiative (ESI) opposed a strong continuing role of the OHR and stated that the enlargement instead of empire ruling shall be applied, see at <<http://www.esiweb.org>>. See also <<http://www.balkan-commission.org>>.

¹⁵ “Report from the Commission to the Council on the preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association Agreement with the European Union”, COM(2003)0692, 2003.

¹⁶ Due to demands from Croats for a Croatian language channel. See “Report to the European Parliament by the OHR and the EUSR for BiH”, June-December 2005, at <<http://www.eusrbih.org/>>.

¹⁷ “EU Launches SAA talks with BiH”, *Southeast European Times*, 26 January 2006. See also BiH Council of Ministers, “Strategy of BiH Integration in European Union”, Directorate of European Integrations BiH, Sarajevo, May 2006, 13.

BiH is the last former Yugoslav republic to begin establishing an official relationship with the EU.

According to the July 2005 Public Opinion Poll in Bosnia and Herzegovina about the European Union¹⁸ conducted by the European Commission Delegation to Bosnia and Herzegovina, 85.2% of citizens, with the greatest support from Bosniacs, would vote for BiH membership in the EU if there were to be a referendum on the subject. A majority of BiH citizens are not satisfied with the slow pace of EU integration, with roughly 40% describing the process as being idle.

To encourage the launch of SAA negotiations, the HR has taken measures to gradually transfer responsibilities for governance to the national authorities, so as to turn BiH into a “normal” pre-accession state. This will be finalized with the transformation of the HR into an EU Special Representative without the Bonn powers.

Although constitutional reform¹⁹ has not been a precondition for the SAA, more centralized state institutions are considered essential in order for BiH to bring about much needed reforms and make progress along the road towards Europe.²⁰ The EU membership "carrot" may serve as an incentive for reform, and help maintain internal political resolve. EU candidate status would be a means to consolidate peace implementation and state-building over the next few years. This would be the best EU-IC tool to overcome the passivity of the BiH institutions.

EU assistance has been reduced since 2000. BiH remains on a black list of countries where a visa is required to travel to the EU.²¹ The only important European organization that BiH has joined is the Council of Europe.²²

In order to join the EU, dictatorial temptations should be overcome and BiH should embrace the democratic political process. The EU-IC must be ready to resist intervening directly in BiH state affairs.²³ Only then will BiH be able to set out on the first robust steps towards the EU. BiH is a country that faces two transitions, from war to peace and from market socialism to capitalism. For BiH to join the EU, the current way of

¹⁸ Delegation of the European Commission to BiH, “Public Opinion Poll in Bosnia and Herzegovina about the European Union”, July 2005, at <<http://www.delbih.cec.eu.int/>>.

¹⁹ Venice Commission, “Preliminary Opinion on the Draft Amendments to the Constitution of Bosnia and Herzegovina”, CDL(2006)027, 7 April 2006.

²⁰ Following the failure of the final round of constitutional reform talks conducted by the eight main political parties on 17 January 2006, it was no longer possible to meet the November 2005 objective for adopting the constitutional reforms by March 2006, ahead of the BiH general elections in October 2006. In addition, although in late March a number of critical amendments were finally agreed upon, they were subsequently rejected by a narrow margin in the House of Representatives on 27 April. During the talks Bosnian Croat and Serb politicians were unable to agree on measures for replacing the current tripartite presidency. Bosnian Serb politicians stalled by insisting on the introduction of entity voting in the BiH House of Representatives and the Bosniac politicians pushed for the removal of the minimal threshold for parliamentary votes from the two entities for the passing of legislation. See “Constitutional Reform Talks end without agreement on key issues”, OHR Morning Media Brief, 18 January 2006.

²¹ EWI Policy Brief, “Visa Policies in South Eastern Europe: A Hindrance or a Stepping Stone to European Integration”, November 2006.

²² 24 April 2002. Still no membership in NATO’s Partnership for Peace Programme or to the WTO. If minority protection is not improved the BiH could also lose its standing in the OSCE as well as in the CoE.

²³ See Parliamentary Assembly of the Council of Europe, Resolution 1384, 26 June 2004. See also Cox and Knaus, “Bosnia and Herzegovina: Europeanization by decree?”, in Chaillot Paper No. 70, October 2004 (also available at <<http://www.iss-eu.org/>>). Also the Commission of the European Communities, “Bosnia and Herzegovina Progress Report 2006”, SEC(2006)1384, Brussels, 18 November 2006.

thinking must also be changed, a wake-up call is needed for the people of BiH making them responsible for their own future and not constantly dependent on the EU-IC.²⁴

The EC in its draft for a future Instrument of Pre-Accession Assistance (IPA) states that BiH will achieve candidate status around 2010 and membership around 2020.²⁵

Besides the key political Copenhagen criteria for BiH to accede to the EU, the attitude towards minorities must be improved with permanent advancement of the European standards of minority protection. BiH must enter a path of diversity and eliminate any kind of direct or indirect discrimination. The EU wants to build up an intercultural and interethnic society without suppressing national identities. In this society the national minorities are those who carry a crucial role in providing stability and development in BiH.²⁶ Acceptance of European human rights protection and cross-border cooperation could be a means of educating not only BiH but rather all West Balkan countries.

2. Demographic Structure

In the constitution of BiH “minorities” are defined as being an integral part of the population of the country, next to the three “constituent nations” of Bosnia and Herzegovina, the Serbs, Bosniacs and Croats. But they are not specifically named. This is done in the Law on Protection of Rights of National Minorities, adopted on 1 April 2003, being the only law published in the three official languages and Romanes. The minorities listed there are (by size according to the census from 1991) the Montenegrins, Albanians, Roma, Ukrainians, Slovenians, Macedonians, Italians, Czechs, Poles, Hungarians, Slovaks, Jews, Turks, Russians, Romanians, Ruthenians, Germans and “Others”.²⁷ The members of all three constituent peoples were more or

²⁴ UNDP BiH, National Human Development Report, “Social Inclusion in Bosnia and Herzegovina”, 2007.

²⁵ Commission of the European Communities, “Proposal for a Council Regulation Establishing an Instrument of Pre-Accession Assistance”, COM(2004)627 final, Brussels, 29 September 2004. See also Berlin-based Stiftung Wissenschaft und Politik (SWP, Altmann), January 2005 at <http://www.swp-berlin.org/common/get_document.php?id=1138>. Since 1991, the EC has set aside more than EUR 2.5 billion to support Bosnia and Herzegovina. Between 1991 and 2000 more than EUR 2 billion of EC assistance (mainly through the ECHO, PHARE and OBNOVA programmes) focused on refugee programmes and reconstruction. From 2001 to 2006, the main source of EU assistance for BiH was the CARDS programme, with the focus shifting from post-war assistance to institutional capacity-building and economic development. In the period 2001-2006, the Community supported BiH with over EUR 500 million. Key target areas have been public administration reform (including customs and taxation), justice and home affairs-related issues (including police reform, integrated border management, judicial reform) and improvement of the investment climate (including trade, education, environment and infrastructure).

²⁶ The Law on the Protection of Minority Rights enacted in 2003. This law was taken for the level of BiH as a whole.

²⁷ There is still no official consensus. Some data are available at the Bureaus of Statistics of the Entities. Data can also be found in BiH Ministerium für Menschenrechte und Flüchtlinge [BiH Ministry for Human Rights and Refugees], “Uporedni Pokazatelji o izbjeglicama, raseljenim osobama i povratnicima, provedbi imovinskih zakoni rekonstrukciji u BiH od 1991 do 30.06.2003”, October 2003, 7, at <<http://www.mhrr.gov.ba>>. Also UNHCR statistics at <<http://www.unhcr.ba>>. The results of the 1991 census in Bosnia and Herzegovina show that out of a total population of 4,377,033 people, Albanians numbered 4,922, Montenegrins 10,048, Czechs 590, Italians 732, Jews 426, Hungarians 893, Macedonians 1,596, Germans 470, Poles 526, Roma 8,864, Romanians 162, Russians 297, Ruthenians 133, Slovaks 297, Slovenians 2,190, Turks 267, Ukrainians 3,929, Yugoslavs 242,682, others 17,592. Did not declare their ethnicity 14,585, regional affiliation 224, unknown 35,670.

less distributed over the whole territory of BiH. After the war and the connected ethnic cleansings and migrations, the geographic distribution of the three peoples has dramatically changed: the Serbs now make up 90% of the population in the RS, whereas the same applies to the Bosniacs and Croats together in the FBiH. Constituent people are not regarded as minorities, although they see themselves sometimes as a minority.²⁸ As far as the demographic structure of the “real” national minorities is concerned, it should be stated that it is characterized by a lot of, however rather small, communities over the entire territory of BiH. In all municipalities/towns the percentage of minorities has remained below 10%.

a) The Impact of the War on the Demographic Structure of BiH²⁹

The war (1992-1995) resulted in dramatic demographic changes in the country: About 250,000 persons lost their lives (however recent estimates as of January 2006 calculate far less victims, namely more than 100,000) and another 17,000 persons are still officially categorized as missing. Apart from this, from 1992-1995 about 2.2 million left their pre-war homes, which was more than 50% of the pre-war domestic population. Of them, about 1.2 million left BiH and took refuge in foreign countries (refugees), most of them in Germany (28%), Serbia and Montenegro (25%), and Croatia (14%), while at the same time another 1 million were internally displaced within BiH (Internally Displaced Persons = IDPs).

The geographic distribution of the national groups changed dramatically (see tables below). As a consequence of the war and the ethnic cleansings and migrations, Serbs now make up 90% of the population in RS, whereas the same applies to Bosniacs and Croats together in the FBiH (see table 2). The estimates do not take into account minority returns.

²⁸ UNDP, “Izvještaj o humanom razvoju 2002–Bosna i Hercegovina”, June 2002, 111, at <<http://www.undp.ba/publications.asp>>.

²⁹If stated differently, the data for this Chapter are taken from: BiH Ministarstvo za ljudska prava i izbjeglice (BiH Ministry for Human Rights and Refugees), *Uporedna analiza pristupa pravima izbjeglica i raseljenih osoba [Comparative analysis of the acces to rights of returnees and displaced persons]*, Sarajevo, December 2005, at <<http://www.mhrr.gov.ba/>>.

Table 1: National structure of the BiH population according to the census of 1991 on the hypothetical territories of the current entities and the District Brčko in absolute numbers and in percentages.

	Bosniacs	Croats	Serbs	Total Population	Share in the population of BiH
FBiH	1,423,593 = 52.34%	594,362 = 21.85%	478,122 = 17.58%	2,720,074 = 100%	62.14%
RS	440,746 = 28.08%	144,238 = 9.19%	869,854 = 55.43%	1,569,332 = 100%	35.85%
Brčko	38,617 = 44.07%	22,252 25.39%	18,128 = 20.69%	87,627 = 100%	2%
BiH	1,902,956 = 43.48%	760,852 = 17.38%	1,366,104 = 31.21%	4,377,033 = 100%	100%

Table 2: Comparison of the national structure on the hypothetical territories of the entities in 1991 with estimates of the population figures of UNHCR from 1997 in %

	RS		FBiH	
	1991	1997	1991	1997
Bosniacs	28,77	2,19	52,09	72,61
Croats	9,39	1,02	22,13	22,27
Serbs	54,32	96,79	17,62	2,32
Others (Yugoslavs and national minorities)	7,53	0,00	8,16	2,38

Source: Constitutional Court Decision U5/98, 1 July 2000, cit. <<http://www.ustavnisud.ba>>

b) A Decade after the War

From 1996 to 31 October 2005 altogether 1,011,278 persons were registered as having returned to their pre-war homes. Out of these, 441,995 were refugees and 569,283 were IDPs. This comprises a return rate of about 50%, which may be regarded as a good result. However, it has to be stressed that the number of “real” returnees is much lower, as a huge number of returns are so-called paper returns, meaning that the returnee does not physically return to his pre-war home:

The number of returnees is unjustifiably identified with the number of returned property /houses and flats/. The fact is that the property returned, or more precisely, the number of approved requests, multiplied with the number of household members who applied for the return, is registered. The Helsinki Committee has the knowledge of the fact that a great number of owners, as soon as they enter into possession of the house or flat, sell the immovable property or exchange it. Some of them use their pre-war house that has

been rebuilt, as the weekend cottage, or simply rent it out. Quite a number of rebuilt houses have never been moved in.³⁰

The technical term “minority return” relates to returnees who have returned to the municipalities of their pre-war place of residence, where (an)other Constituent People(s) prevails today, meaning that the returnees find themselves in a *de facto* minority position in their pre-war municipality. The number of minority returns amounted to 453,731 in October 2005. Out of these 271,543 returned to the FBiH (150,902 Serbs and 6,534 Others). Another 160,806 returned to RS (149,021 Bosniacs, 10,673 Croats and 1,516 Others). As already stated above, it has to be borne in mind, that many of these returns are paper returns. However, municipalities of intensive “real” minority returns were: in RS the municipalities of Prijedor, Zvornik, Foča, Doboj (minority returns of the Bosniacs), Brod, Šamac, Doboj (minority returns of the Croats). In the FBiH these were Drvar, Grahovo, Glamoč, Petrovac (minority returns of the Serbs), Vareš, and the municipalities of the Central Bosnian Canton, e. g. Kreševo, Fojnica, Busovača (Croats).³¹

The figures of the census 1991 do not comply with the present demographic reality. This also applies to national minorities. According to NGO estimates, compared to the latest census figures, the number of national minorities has decreased proportionally to the number of refugees who have not returned to BiH after the end of the war.³² This does not apply to the Roma: Their current number is estimated to be much higher than in the latest census (8,864). Thereby the various estimates differ significantly. Roma-NGOs operate with numbers ranging from about 30,000 to 50,000 or even more³³, while the authorities assess their number to be at least 20,000.³⁴ However, the Roma represent the largest national minority in BiH, comprising at least 20,000 people as the lowest common denominator.

Concerning the geographic distribution of the national minorities, in RS they mainly live in the municipalities Prijedor, Banja Luka, Gradiška, Laktaši, Prnjavor, Srbac, Derventa and Čelinac; in the FBiH they live in bigger cities, e. g. in Tuzla, Zenica, Sarajevo, Tešanj, and Visoko. It has been estimated that there is no municipality in BiH where the national minorities constitute more than 5% of the local population. The highest percentage of national minorities has been estimated in Prnjavor, where they also do not reach more than 5%.³⁵

³⁰Helsinki Committee for Human Rights in Bosnia and Herzegovina, “Report on the status of Human Rights in Bosnia and Herzegovina” (Analysis for the period January - December 2004), at <<http://www.bh-hchr.org>>.

³¹Representative of the BiH Ministry for Human Rights and Refugees, Interview from 5 January 2006.

³²Council of Europe, “Report submitted by Bosnia and Herzegovina pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities”, Europe ACFC/SR (2004)001, submitted 20 February 2004, 35, at <<http://www.coe.int/T/E/human%5Frights/minorities/>>.

³³Advisory Committee on The Framework Convention for the Protection of National Minorities (FCNM), “Opinion on Bosnia and Herzegovina”, May 2004, point 44, at <<http://www.coe.int/T/E/human%5Frights/minorities/>>.

³⁴Council of Europe, *op. cit.* note 32.

³⁵Interview, *op. cit.* note 31.

3. The Minority Concept

National minorities come under the constitutional term of “Others”. This category of “Others” is mentioned in both the BiH Constitution as well as in the Constitution of both entities (FBiH and RS).³⁶ However, the constitutional system of BiH also contains the term “national minority”. It is used in the ban on discrimination standardized in Article II.4. BiH Constitution as well as in the Framework Convention for the Protection of National Minorities, which is incorporated into the BiH Constitution.

In the entities’ Constitutions, the Others is combined with special rights, especially concerning minimum representation and participation. In practice, the linking of these rights to this term turned out to be problematic since it (the term), as already mentioned, does not only include national minorities. Therefore, there is the possibility that also in the state instruments where a minimum representation of the Others (primarily national minorities) is provided, a filling of these offices at the expense of national minorities occurs only partly due to the subjective affiliation shift.³⁷

Since 2003 there has been a legal definition of the term “national minorities”, defined in Article 3 of the BiH State Law on the Protection of Minorities.³⁸ A national minority is: “a part of population-citizen of BiH who does not belong to any of the three constituent peoples and consists of persons of same similar origin, same or similar tradition, customs, faith, language, culture and mentality and close or related historical background and other characteristics.” The BiH state Law on the Protection of Minorities names 17 national minorities³⁹, namely Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenes, Turks and Ukrainians. Besides the national minorities, the religious minorities are *de facto* also seen as minorities in BiH.⁴⁰ Also in RS the Croats are basically brought from the position of constitutive people down to the position of national minority.⁴¹

At the top of the BiH constitutional system are the ECHR and the BiH Constitution.⁴² The BiH Constitution enumerates in its Annex I many of the “Additional Human Rights Agreements to be applied in Bosnia and Herzegovina”. Regarding minority rights, above all, the Convention against Racial Discrimination, the two UN pacts concerning civil and political rights as well as economic, social and cultural rights, the European Charter for Regional and Minority Languages, and the Framework Convention for the Protection of National Minorities are relevant. The FBiH and RS Constitutions are subordinated to the BiH state level due to the “supremacy clause” of Article III.3.b. of

³⁶ Neđo Miličević, “Pravni tretman nacionalnih manjina u BiH, s posebnim osvrtom na Zakon o zaštiti prava pripadnika nacionalnih manjina”, 6 *Pravni Savjetnik* (2003), 7-19, at 10.

³⁷ Critically about this practice: Council of Europe, *op. cit.* note 32, 45.

³⁸ In RS there exists a law for the protection of national minorities which is nearly identical to the state Law on the Protection of Minorities and also contains a nearly identical minority definition.

³⁹ In 1991 Census more than 5% declared themselves as Yugoslavs.

⁴⁰ Interview conducted with Nagradić, BiHs Ministry for Human Rights and Refugees, 26 September 2005. Nagradić also stated that there is still great difficulty to define where “Others” are. There is also a great discrepancy between *de iure* and *de facto* regarding the realistic numbers e.g. of Roma.

⁴¹ Interview conducted in the RS House of Peoples with Kadrić and Krnjić on 4 October 2005.

⁴² Službeni list BiH, Dejtonski Mirovni Sporazum, 3rd ed. 1999.

the BiH Constitution. On the lowest level there are the Constitutions of the Cantons of the FBiH, which are subordinated to the FBiH Constitution, whilst the RS is unitarily organized and such a level is absent.

The FBiH Constitution contains a catalogue of “Human Rights Instruments to be Incorporated into the State Constitution” in an annex. In this case, the 1990 Document on the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE, the 1990 Council of Europe Parliamentary Assembly Recommendation on the Rights of Minorities, parts 10-13, and the 1990 (UN) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities are also of relevance for minority rights in Bosnia and Herzegovina.

Due to the complex organization of Bosnia and Herzegovina, three different ministries are responsible for minority issues: the Ministry for Human Rights and Refugees on the state level, the Ministry for Employment and Social Politics in FBiH and the Ministry for Refugees and Displaced Persons in RS. They monitor the situation of minorities and the implementation of the law, and keep in touch with minority organizations. The municipalities have the duty to implement the programmes and to take care of the social situation. Coordination between the actors is far below average. The ministries (on all levels) are often not informed on which measures the municipalities are taking and vice versa.

A national council and a minority council began working at the beginning of 2005 on all state levels (state parliament and the parliaments of the entities). Minorities are a part of these councils which will have the right to block laws if they affect the rights or interests of the nations and minorities.⁴³

Normatively seen, the BiH has the highest level of human rights protection; formally there are not so many complaints regarding extreme grave breaches of human rights.⁴⁴ Nevertheless, there are many segments where human rights are endangered e.g. overall life quality. In some segments e.g. economy, we can speak of the non-existence of human rights.⁴⁵

Consequent to the BiH context, different categories of groups can be distinguished: constituent peoples⁴⁶ in a majority⁴⁷ or in a minority⁴⁸ position, and others subdivided again into the national minorities⁴⁹, and those persons⁵⁰ who do not declare themselves to be affiliated with a constituent people. This paper will focus on the situation of the following two groups of ethnic minorities: national minorities on the one hand, and constituent peoples in a minority position in a given area—“non-dominant Constituent Peoples”.

⁴³ In RS there is also the Alliance of National Minorities as well as the RS Alliance of Roma. The latter is as of yet not so consolidated.

⁴⁴ Classic slowness of the public administration when dealing with the complaints is also to be noted.

⁴⁵ Interview conducted with Hašić and Šubarić, RS Ombudsman, 4 October 2005.

⁴⁶ They represent the legally recognized population.

⁴⁷ I.e. Serbs in RS, Bosniacs in the predominantly Bosniac cantons of the FBiH and Croats in the predominantly Croat Cantons.

⁴⁸ I.e. Serbs in the FBiH, Bosniacs and Croats in RS, Bosniacs in the three cantons predominantly inhabited by Croats and finally Croats in the five predominantly Bosniac cantons.

⁴⁹ According to the legal definition of the Minority Law, e.g. Roma, Albanians, Montenegrins, Jews (they are, in fact, all national groups according to the census of 1991 with the exception of the “Yugoslavs” who are not recognized as a national minority by law.

⁵⁰ From an ethnic point of view they are Bosniacs, Croats or Serbs or come from mixed marriages.

4. Principle of Equality and Ban on Discrimination

The ban on discrimination standardized in Article II.4. is a central legal norm in the field of individual protection of human rights of the BiH Constitution. This norm also implies the state's duty to protect the corresponding rights and freedoms without discrimination and it is based on Article 14 ECHR.

The BiH entities also have a duty to protect, and in addition to that Article II.5. of the BiH Constitution contains an explicit obligation to help the return of refugees and displaced persons, which is linked to specific property guarantees according to Annex 7 of the General Framework Agreement. As far as the Constitutions of the entities are concerned, in the preambles as well as in the normative sections the protection of national equality is guaranteed (see Art. II.A.2. of the FBiH Constitution, Arts. 5 and 10 of the RS Constitution).

Some regulations are defined dubiously as e.g. Article II.A.1. FBiH Constitution which reads: all persons on the territory of the federation enjoy, among other things, the right to c) equality before the law; d) a ban on any kind of discrimination based on race, sex, language, religion or faith, political or other opinion, national or social origin and s) the protection of minorities and groups potentially at risk. Marko interprets this as follows: on the one hand, everyone is granted the right to avow oneself to an ethnic group or national minority and, on the other hand, it is a constitutional assignment standardizing the state's duty to protect minorities.⁵¹

The Criminal Code of BiH 2003⁵² contains provisions prohibiting discrimination by public officials (Art. 145). The criminal codes at the entity level contain similar provisions (Art. 162 RS Criminal Code and Art. 177 FBiH Criminal Code). However, ordinary offences committed for racist, including ethnic and religious, motives are often not prosecuted justly (the racist motivation is overlooked).

Despite the very complicated BiH state structure there is no real legal discrimination against minorities. They certainly have some special rights regarding the preservation of their culture and language granted through the BiH Law on Minorities, but conditions for some minorities are still far from being perfect. It seems that certain minorities are totally integrated and only face the same problems as the rest of the majority population, whilst some are confronted with larger difficulties. To judge the situation objectively we must keep in mind that BiH is still facing difficulties recovering from the war.

However, distance and intolerance towards constituent peoples as well as national minorities can be noticed by the various sport events.

The national minorities see themselves as the citizens of the BiH society. A lot of people in BiH are not really aware of the term national minority.⁵³

⁵¹ Joseph Marko and Danica Raičić, „Minderheitenschutz im östlichen Europa - Bosnien und Herzegowina, Institut für Ostrecht“, Universität zu Köln, 2005, at <<http://www.uni-koeln.de/jur-fak/ostrecht/minderheitenschutz/index.htm>>.

⁵² Enacted by a decision of the HR.

⁵³ The RS Alliance of National Minorities, interview conducted on 4 October 2005.

II. Political Representation ⁵⁴

As far as the political representation and participation of ethnic groups on the state level is concerned, constituent peoples and the Others have to be distinguished as constitutional categories.

According to the formula “one State, two Entities, three Peoples”, the BiH Constitution installs a complex system of ethnic power-sharing between the three constituent peoples, whereas the group of “Others” remains outside the constitutional focus. Thereby the BiH Constitution recognizes and institutionalizes ethnicity as an essential feature of the B-H state. Here the principle of “ethnic democracy” goes hand in hand with a territorial division between the two entities of BiH.

Thereby the most important public offices (State Presidency, House of Peoples = Second Parliamentary Chamber, Chairmen and the Vice-Chairmen of both parliamentary Houses) are composed of the same number of representatives of each of the constituent peoples and, rather generally spoken, on the state level the Bosniacs and Croats represent the FBiH, and the Serbs RS. Thereby part of the citizenry, i.e. national minorities, of BiH are excluded by the Constitution from holding these offices which results in insuperably strained relations with human rights guarantees concerning the rights of the individual.

Moreover, members of a constituent people from the “wrong” entity⁵⁵ are not eligible for these offices.

The only regulation in the BiH Constitution which contains a minimum compulsory representation also of the Others and which at least applies to the judicial and administrative apparatus is Article IX.3., according to which “officials appointed to positions in the institutions of Bosnia and Herzegovina shall be generally representative of the peoples of Bosnia and Herzegovina”. As far as the holding of a public office is concerned, the Others are, as already shown, explicitly excluded.

As regards the Council of Ministers (state-level Government), the respective law determines in Article 6 that at least one minister or the secretary general has to belong to the group of the Others.

Now, as far as the Constitutions of the entities are concerned, there are also regulations which explicitly exclude the group of the Others from holding specific offices. Here, however, in contrast to the BiH Constitution, minimum representation and minimum participation rights of Others are constitutionally guaranteed.⁵⁶

⁵⁴ This section is based on Joseph Marko and Danica Raičić, “Protection of Minorities in Eastern Europe-Case Study Bosnia and Herzegovina”, 2006, at <<http://www.uni-graz.at/suedosteuroopa>>.

⁵⁵ Due to the constituency regulations of the BiH Constitution, Serbs of the FBiH, for example, cannot run for membership of the State Presidency.

⁵⁶ See Art. 80 of the RS Constitution. Nevertheless, Art. 12.3. of the Election Law determines literally that a candidate from each constituent people be elected. Art. IV. B.1.1. of the FBiH Constitution determines that the president of FBiH have two vice-presidents from two different constituent peoples. Art. IV.B.2.4. determines similarly to Art. IV.B.1.1. that the government have a prime minister who has representatives from different constituent peoples. Related to this, Art. IV.D.1. regulates that the prime minister and his/her representatives are not to not belong to the same constituent people and that, at the most, two positions among the offices of the prime minister, the chairman of both parliamentary houses, the president of the constitutional court and of the supreme court as well as the federal public prosecutor, may be filled with representatives from the same constituent people or from the Others. In my opinion,

Article 12.3. of the Election Law determines literally that a candidate from each constituent people be elected. However, the ordinary law regulation of Article 9.14. Electoral Law determines clearly that the president and vice-president of FBiH have to be members of the three constituent peoples. Now, the Others are also excluded by law from the office of the Federal President.

As far as the prime minister of the FBiH is concerned, following the corresponding norms, as already stated, he/she can be an Other, since this does not apply to his/her representatives. Concerning this, the RS Constitution contains similar and/or partly identical regulations (Art. 69 of the RS Constitution, which, concerning the distribution of key positions, contains the same regulations as Art. IV.D.1. FBiH Constitution and Art. 92 RS Constitution), so that also in RS an Other can be prime minister, but not the prime minister's representative.⁵⁷

Furthermore, the representatives of the Others are excluded by the Constitution from holding the office of the ombudsman⁵⁸ in the FBiH (Art. II.B.1.1. FBiH Constitution) and, based on the regulations in Article V.2.7 FBiH Constitution, from the offices of the chairman and vice-chairman of the canton assemblies.⁵⁹

As far as the entities are concerned, their Constitutions also include regulations which explicitly exclude the group of the Others from holding specific offices (in both entities: president and vice-president, prime minister's representatives; in the FBiH: ombudsman⁶⁰, chairman and vice-chairman of the cantonal assemblies). However, in contrast to the state-level Constitution, a minimum of representation and a minimum of participation rights of the Others are explicitly constitutionally guaranteed.

Concerning the composition of the House of Peoples, the second parliamentary Chamber of the FBiH, Article IV.A.2.6. Constitution of FBiH determines that there have to be 17 delegates from each constituent people and also seven delegates from the group of the Others. However, currently, the seats reserved for Serbs are vacant.

The Council of Peoples in RS, which is not a parliamentary chamber but a special legislative body⁶¹ pursuant to Article 71 of the Constitution of the RS, has to consist of

thereby it is clear that a member of the Others can be prime minister, whereas this does not apply to the representatives of the prime minister. Therefore, basically the same formulation of Art. IV.B.1.1. and Art. IV.B.2.4.

⁵⁷ Miličević is of the opinion that the position of the federation's president is defined by the Constitution in such a way that it is to be filled by a member of a constituent people, whereas concerning the prime minister he thinks that this position can very well belong to the group of the Others, Miličević, *op. cit.* note 29, 12.

⁵⁸ Venice Commission Opinion of 8 July 2002 on certain issues related to the ombudsman institutions in Bosnia and Herzegovina and on certain commitments undertaken by Bosnia and Herzegovina upon accession to the Council of Europe, CDL-AD(2002)10; see also Agreed Conclusions of the Working Meeting on Restructuring Ombudsman Institutions in Bosnia and Herzegovina of 19 April 2004, Venice Commission, document CDL(2004)028, which calls in particular for a transitional period during which the three institutions will coexist.

⁵⁹ In RS the exclusion also occurs, but only on a legal level. However, a reform is pending through which a department for the protection of national minorities shall be established. There is no body of civil and administrative legislation against discrimination on grounds of race, colour, language, religion, nationality and national or ethnic origin at present in BiH. There are three offices of ombudsman in BiH, one at the state level and the other two at the level of the entities, each office is comprised of three ombudspersons, one representing each of the constituent peoples. In addition, each canton of the FBiH has its own ombudsman institution.

⁶⁰ In RS the Others are excluded from holding this post by ordinary law.

⁶¹ Pursuant to Art. 69 of the Constitution of RS, laws and other regulations concerning questions of vital national interest of a constituent people come into force only after they have been passed in the

eight delegates from each constituent people and four delegates from the group of the Others.⁶² The Others have the right to participate equally in the majority voting procedure (Art. IV.A.2.6. para. 3 Constitution of the FBiH and Art. 71 Constitution of the RS). The main function of the House of Peoples of the FBiH and the Council of Peoples in RS is the protection of the vital interests of the constituent peoples. The Others, however, do not have a constitutional claim to the protection of their vital interests, but they are represented in the bodies which decide on the vital interests of the constituent peoples.

The Others, however, do not have a constitutional claim to the protection of their vital interests, but are represented in the bodies which decide on the vital interests of the constituent peoples (the House of Peoples in FBiH and the Council of Peoples in RS).⁶³ The entity Constitutions contain, in contrast to the BiH Constitution, definitions of the vital interests of the constituent peoples (Art. IV.A.5. 17a FBiH Constitution and Art. 70 RS Constitution).⁶⁴ The membership of the Others is guaranteed, on the one hand, by the Councils for the Protection of Vital Interests (set up at the constitutional courts of the entities), deciding whether the particular cases are of vital interest or not, and, on the other hand, by the constitutional courts as a whole.⁶⁵

The various regulations in both entity Constitutions concerning constitutional amendments: In the FBiH constitutional amendments need, besides a two-thirds majority in the House of Representatives, also the majority of the Bosniac, Croatian and Serb representatives in the House of Peoples, but not of the Others; the RS Constitution, however, determines besides a two-thirds majority in the national assembly, also a majority vote in each club in the Council of Peoples, that is to say, also of the Others. Concerning this, the status of the Others in the RS is more powerful, because the passing of constitutional amendments requires their approval. In other words, their present rights cannot be repealed without their approval, whereas this is not the case in the FBiH.

Council of Peoples. The Narodna Skupština, RS's Parliament, only has one Chamber.

⁶² As far as the composition of the first parliamentary chamber of FBiH, the House of Representatives, and the National Assembly of RS are concerned, a minimum representation of the three constituent peoples, but not of the Others, is guaranteed. Therefore, in both bodies there have to be at least four members of each constituent people (Art. 71 RS C and Art. IV.A.1.1. FBiH C).

⁶³ Art. IV.A.2.6. FBiH Constitution determines that there have to be 17 delegates from each constituent people and also seven delegates from the group of the Others. Also Pursuant to Art. 69 of the RS Constitution, laws and other regulations concerning questions of vital national interest of a constituent people come into force only after their passing in the Council of Peoples. The Narodna Skupština, RS's parliament, only has one chamber.

⁶⁴ Namely the following: realization of the constituent peoples' right to be represented adequately in legislative, executive and judicial bodies of power; identity of a constituent people; constitutional amendments; organization of the public bodies of power; same rights of the constituent peoples in the decision-making process; education, faith, language, preservation of culture, tradition and cultural heritage; territorial organization; system of public information; and other questions, which are to be considered as questions of vital national interest if claimed by two thirds of one of the Delegate Clubs of the constituent peoples in the House of Peoples/Council of Peoples.

⁶⁵ For further details concerning the procedure for the protection of vital interests see: Arts. IV.A.6.17b, IV.A.6.18, IV. A.6.18a, IV.C.3.9 FBiH Constitution as well as Arts. 70 a) and b), 116 RS Constitution. Furthermore, amendment LII to the FBiH Constitution and Art. 97 of the RS Constitution determine that in public institutions (in the FBiH: ministries of the federal government and of the canton governments, municipal bodies as well as canton and municipal courts; in the RS: ministries of the republic government, municipal bodies, district and municipal courts) the constituent peoples and the group of the Others have to be represented proportionally.

As far as the cantonal and municipal levels in the FBiH are concerned, guarantees concerning the proportional representation stipulated in amendment LII can repeatedly be found in the CBiH: the proportional representation of the constituent peoples as well as of the Others is repeated in several regulations (based on the census of 1991) (Art. V. 1.1. concerning cantonal ministries; Art. V.3.8. concerning cantonal governments; Art. V.4.11. concerning cantonal and municipal courts as well as Art. VI.1. concerning municipal bodies of power). Furthermore, pursuant to Article V.2.5., the number of representatives in the legislative bodies of the cantons in proportion to the national population structure is determined.

There is also a critique that in the e.g. RS Council of Peoples no representatives of national minorities are elected by the national minorities, but rather they are delegated from the political parties in power. These representatives are a member of the respective national minority, but represent only the political party's interest.

Furthermore, amendment LII to the FBiH Constitution and Article 97 of the RS Constitution determine that in public institutions (in the FBiH: ministries of the federal government and the canton governments, municipal bodies as well as canton and municipal courts; in the RS: ministries of the republic government, municipal bodies, district and municipal courts) the constituent peoples and the group of the Others have to be represented proportionally. However, stipulated as a constitutional principle, until the complete realization of Annex VII, in line with the law concerning the civil service of Bosnia and Herzegovina, this proportional representation will be based on the census of 1991. Public institutions are to a large extent monoethnic and ethnic diversity is not being ensured. To ensure democratic representation, it is necessary to carry out a revision of the Constitution at the state level followed by the Constitutions at the entity level.⁶⁶ There is also a continuing lack of independence and impartiality of the judges based on ethnic origin or on affiliation with an ethnically based political party. The composition of courts in many municipalities is monoethnic.

As shown above, the entity constitutions confer special rights to the Others. In practice, the linking of these rights to the category of Others turned out to be problematic, since the Others, as already mentioned, do not only include national minorities, but also persons who are, in fact, from an ethnical point of view, Bosniacs, Croats or Serbs or come from mixed marriages, but do not declare themselves to be affiliated with a constituent people.

Therefore, there is the possibility that also in state instruments where a minimum representation of the Others (whereby this term should include primarily national minorities) is provided, a filling of these offices at the expense of national minorities can occur as a result of a shift in subjective affiliation. This can be demonstrated by the distribution of the mandates in the House of Peoples of the FBiH after the elections of 2002. Thus, no representative of a national minority recognized by the Minority law can be found among the seven seats reserved for the Others,⁶⁷ whereas in the RS three out of four members of the Council of Peoples are members of national minorities.

Both Minority Laws stipulate (Art. 19 BiH law and Art. 16 RS law), that the members of the national minorities have the right to proportional representation (according to the latest census) in all bodies of power and public offices.

Accordingly, the amendments to the state-level Electoral Law of 2004 introduced a new chapter 13.A, which regulates under the title "Participation of Members of National

⁶⁶ ECRI, "Report on Bosnia and Herzegovina", CRI(2005)2, 15 February 2005.

⁶⁷ Critically about this practice: Council of Europe, *op. cit.* note 32, 45.

Minorities on the Municipal Level” that the members of all national minorities have the right to vote for their representatives in the local assemblies/local councils, whereby in municipalities where the members of all minorities represent up to 3% of the population, one seat is guaranteed. In municipalities with a minority share of more than 3%, two seats are guaranteed. However, for the local elections in 2004, the amendments were passed too late, so that the national minorities did not enjoy this right in practice.

1. Minority Self-Government

The BiH Constitution contains the model of municipal self-government as ethnic autonomy. Article V.1.2. determines that each canton can delegate its competences in the fields of education, culture, tourism, local economy and humanitarian activity as well as radio and television to a municipality or a town on its territory. It must do this when the majority population of the municipality or town differs from the majority population of the whole canton. (In practice, this can only be a benefit to the constituent peoples, because, as already mentioned, there is no majority of a national minority in any municipality/town of BiH.)

2. Political Participation

As far as political participation is concerned, there are no specific regulations concerning the rights of minorities in the corresponding laws on associations and on political parties. In political practice, since the first free elections in 1991 for the republic’s parliament of the then Yugoslav constituent republic, a political party system has developed which is based on national parties that represent the respective ethnic groups.⁶⁸ Despite numerous elections after Dayton and deliberate election engineering by the OSCE, these ethnic cleavages have not changed essentially.

The parties are still mainly monoethnically structured (however, to a certain extent, the social democratic party, SDP-Socijaldemokratska Partija, is an exception). All of them, whether nationalistic or moderate, consider themselves primarily as representatives of their ethnic groups. SDA, SDS and HDZ are also after the previous elections ruling parties. Obviously, this shows that all efforts of the IC to establish a multiethnic political party system have failed. Most of national minorities are the members of the leading BiH parties.⁶⁹ Most national minorities are apolitical and mainly interested in the preservation of their culture and tradition.

As far as a national minority is concerned, both Minority Laws stipulate (Art. 19 BiH law and Art. 16 RS law) that the members of national minorities have the right to proportional representation (corresponding to the latest census) in all bodies of power

⁶⁸ At that time, more than 85% of BiH citizens voted for national parties; 36% of the mandates were allotted to the Stranka Demokratske Akcije (SDA) under the leadership of Alija Izetbegović, 30% to the Srpska Demokratska Stranka (SDS) under the leadership of Radovan Karadžić and 18% to the Hrvatska Demokratska Zajednica (HDZ), the BiH subsidiary of a Croatian party which was at that time dominated by Franjo Tuđman. This mandate distribution corresponded nearly exactly to the population share of Muslims, Serbs and Croats in the total population, as it would turn out later in the census of 1991. Detailed Suad Arnautović, *Izbori u Bosni i Hercegovini '90. Analiza izbornog procesa*, Sarajevo, 1996. In 2004, the Democratic Party of Roma was established but it does not exist anymore. Before the war there was also the Democratic Party of Albanians.

⁶⁹ E.g. Stranka Nezavisnih Socijal Demokrata (SNSD) in RS, Stranka za BiH in FBiH.

and public offices. However, the law of RS provides that minority candidates be proposed by the Alliance of National Minorities of RS. The detailed criteria concerning the implementation of these regulations should be regulated in the corresponding codified laws. In this connection the passed amendments to the State Electoral Law of 2004 play a great role.⁷⁰

Both Minority Laws (Art. 20 BiH law and Art. 16 RS law) stipulate that minority representatives act as representatives of national minorities in the national bodies of power and protect the interest of all minorities. In addition, the establishment of national minority councils of BiH and of both entities as a special advisory body of the federation parliament as well as of both entity parliaments is provided (Art. 21 ff. BiH law and Art. 17 f. RS law).⁷¹

The national minorities are not satisfied with the implementation of the minority laws; most are of the opinion that most of the things written in the laws have not been realized at all. The common opinion of the real national minorities is how can there be minorities when there are no constitutive peoples. They find that the issue of being constitutive represents a nonsense that should be solved as soon as possible. It seems that the laws are a farce and in this way the EU has been tranquilized. The problem is that by the non-implementation of these laws nobody will be held responsible.⁷² The role of national minorities in the state organs is seen as a buffer zone.⁷³

There is extensive use of a nationalist discourse by political parties. The political parties mostly advocate the rights and interests of one constituent people and hold persons belonging to other constituent peoples responsible for the non-realization of certain rights and interests. This nationalist discourse has led to unhindered use of violence that fosters ethnic division and animosity.

⁷⁰ A new chapter 13.A regulates the following under the title "Participation of Members of National Minorities on the Municipal Level": the members of all national minorities have the right to vote for their representatives in the local assemblies/local councils; in municipalities where the members of all minorities represent up to 3% of the population, a minimum mandate is guaranteed; in municipalities with a minority share of more than 3%, two minimum mandates are guaranteed to the minorities; the exact number of minimum mandates is determined by the municipal statute on the basis of the latest census; the right to propose a candidate is granted to political parties, coalitions, independent list of candidates and independent candidates, alliances of national minorities as well as to at least 40 eligible citizens; only a candidate of a separate minority list of candidates can be elected as a minority representative. See the Election Law of Bosnia and Herzegovina (Official Gazette of BiH, No. 23/01, 7/02, 9/02, 20/02, 25/02 and 4/04).

⁷¹ The Council of National Minorities of BiH of the Parliamentary Assembly of BiH put forward opinions, advice and suggestions to the parliament concerning all questions on minority rights. The council can appoint experts to the Constitutional Commissions and to the Commissions for Human Rights of both parliamentary houses (Art. 22 Law on Protection of Minorities BiH). Art. 22 of the law provides that both entity parliaments have to establish respective Minority Councils. Concerning this, the Law on Protection of Minorities of RS regulates in its Art. 17 f. that this council, consisting of candidates proposed by the Alliance of National Minorities, will be elected by the national assembly. The council is to advise the national assembly as well as other bodies of the republic concerning questions on minority rights and it can also appoint an expert to the Constitutional Committee of the National Assembly. See the Election Law of Bosnia and Herzegovina (Official Gazette of BiH, No. 23/01, 7/02, 9/02, 20/02, 25/02 and 4/04).

⁷² Only the Centre of Civil Initiative (NGO) has a project that deals with the implementation of minority rights in practice. They actually contacted national minorities to offer their opinion.

⁷³ Round table with the representatives of national minorities in BiH, 26 September 2005, Sarajevo.

3. Conduct of Law Enforcement Officials

The BiH Police Reform was initiated by the UN and it is continuing at present with the assistance of the European Union Police Mission. All police officers receive training in human rights including non-discrimination.

The conduct of law enforcement officials towards Roma in some cases has not met these standards. Police officers tend to harass Roma vendors in markets and carry out illegal police raids in Roma settlements. Alleged instances of misbehaviour could be addressed through control mechanisms internal to the police force and through the courts.

Ethnic diversity in the police is slowly being reached, but the presence of national minorities is minimal.

4. Right on an Official Language and Language of Instruction

The BiH Constitution itself does not contain any regulations concerning language usage.⁷⁴ The Constitutions of both entities determine that the languages and scripts of all three constituent peoples are official languages and scripts (see Art. I.6(1) FBiH Constitution amended by amendment XXIX and Art. 7(1) of the RS Constitution amended by amendment LXXI). The official scripts are the Cyrillic and the Latin alphabet. Both Constitutions also standardize the exceptions that allow the usage of minority languages. So, Article I. 6.(2) of the FBiH Constitution determines that other languages can be used as means of communication and instruction. The corresponding Article 7 of the RS Constitution even bindingly regulates that in territories where other language groups live, also their languages and scripts can be officially used in a legally regulated way.⁷⁵

The European Charter for Regional and Minority Languages as well as the corresponding standards of the Framework Convention concerning the language rights for the protection of national minorities and the “Additional Human Rights Agreements to be applied in Bosnia and Herzegovina”, standardized in Annex I of the BiH Constitution, should be regarded in this context.

According to the Article 3 of the law in Bosnia and Herzegovina’s official gazette, the gazette is published in Bosnian and Croatian in the Latin alphabet, and in Serbian in the Cyrillic alphabet. Most of the laws on court procedure contain corresponding regulations which determine the official languages’ use. In court in Bosnia and Herzegovina in the course of the criminal proceedings the languages of Bosnia and Herzegovina—Bosnian, Croatian and Serbian—and also both alphabets—Cyrillic and Latin—are in equal use.

Entity Constitutions, the three Civil Procedure Laws (state and entity laws) as well as the Administrative Procedure Laws of the federation and the RS contain similar regulations.

As far as the use of minority languages is concerned, exception clauses in the particular procedure laws in favour of these languages cannot be found. In this connection both laws on the protection of minorities guarantee each minority member “the right on free and undisturbed, private and public, oral and written use of his/her

⁷⁴ There is ambition to promote Bosnian (through dominance) as an official state language.

⁷⁵ However, up to now no minority language has been regulated as being in official use.

language; this right also includes the right to use and demand the first and the last name in the minority language, so that it is thereby publicly used” (Art. 11 BiH law and Art. 8 RS law). Article 12 of the BiH law (Art. 9 of the RS law) provides that in towns, municipalities and villages or in settled areas where members of national minorities represent an absolute or relative population majority, the bodies of power have to guarantee that the minority language is used between these members and the public authorities. Towns and municipalities can determine the use of the minority language in their statutes if a minority represents more than a third of the population in the town, municipality or settled area. (Concerning this, the RS law demands instead of a third, a considerable number of persons traditionally living there.)

National minorities are simply not asking for their languages to be used e.g. for educational purposes. In some municipalities there are some lectures conducted in minority languages.⁷⁶ One of the reasons for not asking is that they are well aware that it would be very difficult to find the teaching personnel. Also there are not enough pupils.⁷⁷ Mother tongue lecturers are mostly organized by the various national minority clubs.⁷⁸

We should not forget that in BiH the former peoples nowadays represent the national minorities.⁷⁹

a) Topographic Names

The official language law of RS (which is still effective) provides that road signs, town signs, street and square names as well as other geographic names along the streets have to be written using the Cyrillic alphabet. (The new bill on official languages, being dealt with in the governmental procedure, provides that topographic names have to be written in Cyrillic as well as in the Latin alphabet.) However, in the FBiH there is no comparable explicit regulation concerning the use of the Latin alphabet; nevertheless, this means that in practice only the Latin alphabet is used for topographic names.

In connection with minority languages, the two laws on protection of minorities regulate, as described above, that the bodies of power in towns, municipalities and villages or settled areas where the members of a national minority represent an absolute or relative population majority have to guarantee that writing on institutions, local names, street names and names of other topographic signs which are dedicated to the public are written in the language of the minority demanding this. Towns and municipalities can determine this use of the minority language in their statutes, provided that the minority represents more than a third of the population in the town, municipality or settled area (Art. 12 BiH law and Art. 9 RS law; the latter demands, instead of a third, a considerable number of persons traditionally living there).

Basically, during the war the replacement of town signs and renaming was one of the first acts carried out in certain occupied territories in order to manifest also symbolically a claim to power. For example, Bosanska Kostajnica was renamed Srpska Kostajnica. An important decision in connection with this issue was made by the BiH Constitutional

⁷⁶ According to the BiH Ministry for Human Rights and Refugees—in Prnjavor (RS) in Czech and Ukrainian language and in Tuzla (FBiH) in Romany.

⁷⁷ E.g. Italians.

⁷⁸ E.g. Ukrainians, Slovenes.

⁷⁹ Mainly young Slovenes are travelling to Slovenia to learn a language properly. The language seminars are organized during school holidays, at the end a certificate is awarded.

Court in February 2004⁸⁰: the court declared the renaming of 13 municipalities in RS during and after the war, where in each case the prefix “Serbian” was used (for example, Grad Srpsko Sarajevo), as being unconstitutional on grounds that the use of the prefix “Srpsko” would clearly be discriminatory towards the other constituent peoples and citizens, who according to the Constitution enjoy equality on the whole territory of BiH. “It is also clear that the emphasis of the ‘Serbian’ feature of particular towns and municipalities is a consequence of the disregard of the fact that today’s population structure is in many cases a consequence of the war and of the migrations caused by the war and does not represent the situation at the beginning of armed conflicts.” The naming of the municipalities as Serbian would not be in line with one of the basic purposes of the BiH Constitution and of Annex 7 (Art. II.5 of the BHV and Art. II of Annex 7), namely the facilitation and support of the return of refugees and displaced persons. Since the responsible legislative authorities of RS did not make the necessary legal changes within the period fixed by the constitutional court, in September 2004 the court itself changed the names through a provisional measure.

b) Media Rights

Electronic and print media are still divided along ethnic lines.⁸¹ The dissemination of ethnically inflammatory and insulting reporting improved in the broadcast media mainly due to the presence of the Communications Regulatory Agency (CRA). However it is still especially present in the print media targeting Roma and Albanians.⁸²

The laws on the protection of minorities guarantee to the members of national minorities the right to establish their own radio and television stations as well as to publish newspapers and other printed works in the minority language. Public radio and television stations are obliged to include special programmes for national minorities in their programme schemes, as well as to guarantee an informational programme for members of minorities in their respective language at least once a week.

The Law on Protection of Minorities of RS provides that administrative and editorial committees are obliged to guarantee the participation of members of minorities in the fixing of the programme scheme concerning national minorities (Art. 15 BiH law and Art. 13 RS law). Concerning this, the codified laws regulating this field (Law on the Basis of the Public Broadcasting System and on the Public Broadcasting Service of Bosnia-Herzegovina, Laws on Radio-Television of the FBiH as well as RS) determine in the regulations on programme principles only the duty of public stations to respect national, regional, traditional, religious, cultural, linguistic and other features of the constituent peoples and all citizens of BiH as well as to meet the cultural and other needs of national minorities (for example, Art. 20 Law on the Basis of the Public Broadcasting System and on the Public Broadcasting Service of Bosnia-Herzegovina). Furthermore, in the administrative committees of all three public stations (public RTV Service of BiH and RTV of both entities) the representation of the Others through at least one member is guaranteed (for example, Art. 59 Law on the Basis of the Public

⁸⁰ U-44/01, decision of 27 February 2004; can be recalled at <<http://www.ccbh.ba>>.

⁸¹ Venice Commission, Opinion on Freedom of Expression and Freedom of Access to Information as guaranteed in the Constitution of Bosnia and Herzegovina, CDL-INF (2000), 15 October 2000.

⁸² However, Arts. 3 and 4 of the Press Code contain provisions against incitement of racial, ethnic or religious hatred and provisions against the use of references to a person’s racial, ethnic or religious background. The Press Council monitors the implementation of these provisions.

Broadcasting System and on the Public Broadcasting Service of Bosnia and Herzegovina). In practice, national minorities are hardly represented in the media.⁸³

In RS (Banja Luka), the RS Alliance of National Minorities produces a newspaper that covers the issues of the national minorities.⁸⁴ The privatization associated with BiH's economic transition has not created a relatively unbiased media sector. Reform and development of public media in BiH is a key priority for the EU and reform of the Public Broadcasting System (PBS) remains an outstanding Feasibility Study priority. The EU is supporting the establishment of single, professional, efficient, qualitative self-sustainable PBS, and has invested over €2.5 million to this effect, including the procurement of technical equipment such as transmitters, IT hardware and software, and production equipment.⁸⁵

c) Protection and Preservation of Culture

Both Laws on Protection of Minorities (BiH law and RS law) guarantee the members of national minorities the right to establish their own libraries, video libraries, cultural centres, museums, archives, culture, art and folklore associations, the right to all other freedoms of cultural expression, as well as the right to look after the preservation of their cultural monuments and heritage. Furthermore, archives, museums and other institutions concerning the protection of cultural monuments and traditions in BiH and in the entities have to guarantee proportional representation of all national minorities in their programmes and materials as well as to protect the monuments and cultural assets of national minorities (Art. 17 BiH law and Art. 14 RS law). In this connection one has to refer to Annex 8 of the Dayton Agreement according to which a "Commission to Preserve National Monuments" was established. A particular problem in post-war BiH are the buildings of religious communities, especially Catholic and Orthodox churches as well as mosques, which were preferred targets of the artillery during the war.

This case's issue, among other things, is the destruction of 15 mosques during the war and the refusal of the authorities of the RS to permit the reconstruction of the Ferhadija-mosque with reference to the urban development plan. The Human Rights Chamber considered this as a clear violation of the right to freedom of worship and the corresponding duty of protection in connection with discrimination on an ethnic basis.⁸⁶

d) National Support

Article 6 BiH law enables and financially supports the preservation and development of relations between members of national minorities and members of the same national minorities abroad as well as with the peoples of the respective mother countries. Article 8 obliges the federation, the entities, the cantons, the towns and municipalities, within

⁸³ Even though on the Radio Television of RS there is a special programme made by national minorities broadcasted one time a week.

⁸⁴ They also have their own show on the Radio Television RS (RT RS) every Wednesday morning (15 minutes) and a show called "Bono-Homo" as well which is broadcasted on Saturday at 18h. These shows are prepared by national minorities themselves. The Radio RT RS is very supportive as well as the printed media e.g. Glas Srpske; Nezavisne Novine. Also on the private radio stations e.g. Radio Uno, the national minorities have their shows broadcasted in their own language. These private radio stations invite national minorities on their own initiative. There is also a bulletin produced jointly with the Helsinki Parliament called "Riječ Nacionalnih Manjina". It is produced six times per year. This is also supported by the EU funds. Slovenes have also their own bulletin.

⁸⁵ See <<http://www.europa.ba>>.

⁸⁶ See Case No. Ch/96/29 of 11 June 1999.

the realm of their financial budgets, to guarantee funds for the realization of the rights of national minorities. This means that each of these units has to define a separate item within its budget for the benefit of minorities. In the present situation this does not guarantee sufficient national support, but at least it carries a certain symbolical value.⁸⁷

Some minorities get assistance from “their” national state e.g. the Czech Republic funds cultural activities of the Czechs in Bosnia and Herzegovina. It seems that the so-called small minorities (e.g. Hungarians, Italians) receive assistance from their national states.⁸⁸ National minorities receive more respect from their national states than from the country in which they live.⁸⁹ During the war some national minorities immigrated to their national states.⁹⁰ Roma mostly left the country and few returned after the war. National support regarding the organization of language instructions is mostly in a way of moral support.⁹¹ Most of the support is given through the various cultural plans.⁹²

III. Education System

According to Dayton the field of education fell on the one hand into the purview of RS and on the other hand to that of the FBiH’s cantons, not forgetting the responsibility of the District Brčko as a separate unit.⁹³ BiH’s education system is highly fragmented, with education having been devolved to the entities. In RS, education is the responsibility of the entity, whereas in the FBiH, education has been further decentralized from the entity level to the ten cantons. At the state level, education is under the remit of the Ministry for Civil Affairs, yet the power is devolved. There are 13 additional Ministries of Education (MoEs) with varying remits. However, only the state can commit BiH to international undertakings, and has the responsibility to ensure the implementation of ratified international treaties.

The main problem of the war and post-war system was its politicization e.g. “Two-Schools-Under-One-Roof” in Stolac, FBiH.⁹⁴ The BiH education system is built on (and

⁸⁷ Art. 5 of the RS law also similarly regulates that RS has to enable and financially support the preservation and development of relations between members of national minorities in RS and members of national minorities in the FBiH as well as abroad and with the peoples of the respective mother countries. In RS, towns and municipalities are obliged to provide funds in the budget for citizen’s unions of national minorities in order to realize the guaranteed rights. Subject to a statement of the Council of National Minorities of RS, the government is to determine the distribution criteria for these funds.

⁸⁸ Round table with the Representatives of National Minorities, 28 September 2005, Sarajevo.

⁸⁹ The visa problem is still ongoing in BiH, the national minorities either receive a gratis visa from their national states, the application procedures are shorter or the visa is not necessary at all (not only just for minorities but for all BiH citizens e.g. Albania).

⁹⁰ Italians from the Prnjavor municipality (RS).

⁹¹ Slovenia is also helping financially. The ambassador of Slovenia comes monthly in the RS Alliance of National Minorities and discusses different topics.

⁹² Mostly musicians and theatres come and visit national minorities.

⁹³ Since 2003 a legislative competence of the BiH state also exists, which in July adopted the Framework Law on Primary and Secondary Education.

⁹⁴ This phenomenon could mainly be found in the mixed cantons of the FBiH: for example, in Stolac, Croatian children attended a new school which was established with World Bank funds, while Bosniac children were taught in sub-standard conditions. After the OHR had determined that the respective school also has to be open to the Bosniac children, the school was divided into two parts by barricades made of chairs and desks, namely into a Croatian and a Bosniac section with each group having its own entrance.

still today partly builds on) national segregation and three different, nationalistically characterized curricula. Further pressing problems concern access for pupils who are minority returnees. So, another BiH example, namely the “bussing” (bus transportation) of pupils covering long distances in order to attend monoethnic schools, shows the fears and worries of the returnees. According to estimations of 2002, each day between 5,000 and 10,000 pupils crossed the inter-entity line in order to reach the nationally “right” school.⁹⁵

Education is briefly mentioned in Annex 6, but, in contrast to other fields, no specific organization was entrusted with a reform mandate. Therefore, the reforms in this field up until 2002, when the IC started a comprehensive reform initiative, were rather fragmentary, since many of the protagonists participated in a great number of projects with different cooperation and coordination intensities. The Office of the High Representative (OHR) dealt rather early with this field: Right from the beginning the reform initiatives concentrated on the most contentious of all necessary changes – textbooks, especially history books and curriculum reform. These reform initiatives concerning the content, where so-called “national subjects” such as history, literature, geography, religion and language predominated in the discussion, overshadowed other crucial apolitical reforms such as teacher training and other technical reforms.

On the part of the responsible ministries, various agreements were signed in this connection, such as, for example, the Agreement Regarding Textbook Review and Removal of Objectionable Material in May 1998 and an Agreement on the Removal of Objectionable Material from Textbooks in July 1999. For this, a Standing Textbook Review Commission, responsible for the reviewing of textbooks and for revision proposals, was established. In addition to the “cleansing” of blatantly objectionable material from textbooks, one of the long-term goals was the replacing of textbooks produced in Zagreb and Beograd with new textbooks developed in BiH. 2002 was a significant turning point in the reform effort. Although, at first not being the obvious candidate, in June 2002 the OSCE formally received the mandate for facilitating and coordinating educational reform. Previously it had played an important role in the development and in the signing of the Interim Agreement on the Accommodation of Specific Needs and Rights of Returnee Children. The core elements of this agreement are not only to mainly support minority returnee children, but also to guarantee the same rights and access to adequate education to all children of BiH.⁹⁶

Further important steps in the OSCE’s activity are the development of a reform strategy paper entitled “Reforming Education to Give BiH a Better Future”, which was presented in November 2002 to the Peace Implementation Council (PIC). The paper contains the aims of the reform, five promises to the citizens of BiH and necessary measures as well as the time frame for fulfilling these promises. One of the promises concerns the development of new laws: in June 2003 the Framework Law on Primary and Secondary Education was passed at the state level. This law provides as principles, among other things, each child’s right to access to and participation in education processes without any kind of discrimination.

⁹⁵ Valery Perry, “Reading, Writing and Reconciliation: Educational Reform in Bosnia and Herzegovina”, ECMI Working Paper No. 18, September 2003, at <<http://www.ecmi.de>> and from the OSCE-Website at <<http://www.oscebih.org>>. See also Kenneth D. Bush and Diana Saltarelli, “The two faces of Education and Ethnic Conflict”, UNICEF, August 2003.

⁹⁶ Statistical Report on the Implementation of the Interim Agreement on the Accommodation of Special Needs and Rights of Returnee Children, at <<http://www.oscebih.org>>.

In order to integrate the needs of national minorities effectively into the education system which often, more or less, fall into oblivion during the debates concerning the problems of the three constituent peoples—in February 2004, on the OSCE's initiative, the education ministers signed the Action Plan on the Education Needs of Roma and Members of Other National Minorities in Bosnia and Herzegovina.⁹⁷ As far as Roma children are separately emphasized, it should be stated that they are hardly represented in higher primary school forms, to say nothing of higher grades. The measures provided in the action plan concerning this topic include financial support for textbooks and school transportation as well as the raising of people's awareness concerning the importance of education within the Roma community itself. The action plan proposed steps to ensure that BiH schools respect the language and culture of all national minorities.⁹⁸ It calls for the incorporation of aspects of national minorities' culture, history and literature into the curricula; systematic action to ensure equal access to education for all; and action to ensure that national minorities' educational needs are met. Some of the Ministries of Education (MoEs) have recently adopted regulations/by-laws on national minority children's education.⁹⁹ MoEs are obliged to inform members of national minorities on their rights regarding education. The implementation of the MoEs' policies resulted in the provision of free school books, supplies, and meals for Roma children (with transport also being provided in some instances). In terms of increasing the enrolment rate among Roma and the provision of support for accelerated learning, some improvements have been made in regions which were included in the comprehensive project 'Promoting Roma children's access to education'.¹⁰⁰

The framework legislation on primary and secondary education was adopted in June 2003 at the state level and then in the entities as well. These laws provide for one single common core curriculum and for teachers and pupils to use their own language. These laws are however not respected in practice. See the above-mentioned "two schools under one roof".¹⁰¹

As far as university education is concerned, the necessary state law has still not been passed since the corresponding suggestion was declared by Croatian delegates as being offensive to the vital interests of the Croatian people because it did not contain a clear guarantee for a Croatian-speaking university in Mostar. According to the already mentioned decision of the constitutional court, the passed law has to guarantee definitely that all official languages and scripts can be used equally at all BiH

⁹⁷ See <<http://www.oscebih.org>>.

⁹⁸ See OSCE, "Raising Debate: Is BiH Respecting its International Commitments in the Field of Education", 1, at <<http://www.oscebih.org/public/document>>. Also the European Commission against Racism and Intolerance (ECRI) report on BiH, at <http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-Country-bycountry_approach>; International Council of Voluntary Agencies (ICVA), NGO Monitoring Report on the Implementation of the Development Strategy BiH in Education, Social Protection and Environment Sector, March 2004-December 2004 (PRSP NGO Monitoring Report); the Complementary Report by Non-Governmental Organisations (NGOs) on the State Report on the Convention on the Rights of the Child, CRC, the EC Functional Review of the Education Sector in BIH, March 2005; and The Advisory Committee Opinion on Implementation of FCNM, May 2004. See also <<http://www.minorityright.org>>, <<http://indep.cjb.net>>.

⁹⁹ RS on 28 September 2004, Tuzla canton on 20 July 2005.

¹⁰⁰ Project implemented by Save the Children UK, in line with AP objectives for Roma. Project Report for period March 2004 – March 2005.

¹⁰¹ There is total administrative separation and children follow different curricula. Pupils, teachers and non-teaching staff of different ethnic origin go to the same school building but in different shifts.

universities.¹⁰² Tertiary education is organized in faculties, art and theology academies, faculties of theology and high schools¹⁰³ (e.g. Technical High School, Medical High School, High School for External Trade, Business High School, and High School for Tourism and Hotel-keeping). In 2004/2005 there were altogether 69 institutions of higher education in the FBiH, out of them 57 Faculties, five art academies, three faculties of theology and four high schools.¹⁰⁴ In RS there were altogether 43 institutions of higher education: five high schools, 34 faculties, and four academies, with one theology academy.¹⁰⁵ In the FBiH five public universities at cantonal level exist, four of them dominated by Bosniacs and one by Croats. In RS there are two (Serb dominated) public universities. Recently some private higher schools and faculties were also opened.

The respective educational laws also allow educational facilities at all levels to be established by private natural and legal persons from BiH or abroad, as well as religious communities.¹⁰⁶ In the FBiH there are more than 20 of such private educational facilities: Thus, in the canton Sarajevo there are seven private pre-school facilities (e. g. “Amel i Nur” founded by the World Commissariat Kuwait), six private primary schools (e. g. “The Catholic School Center” founded by the vrhbosanska nadbiskupija), and five private vocational schools (e. g. “The Turkish-Bosniac Sarajevo College” founded by Vakuf, Turkey, “The Catholic School Center” founded by the vrhbosanska nadbiskupija).¹⁰⁷ As regards RS, comprehensive data on private facilities seem not to be available. However, at least private faculties exist there (e. g. Slobomir University founded by Slobodan Pavlović).

BiH is trying to implement the Education Reform Strategy (ERS) with the great help of the IC.¹⁰⁸ The entire population shall benefit from its implementation.¹⁰⁹ Being numerically small and geographically dispersed, national minorities are facing various challenges to meet their community’s educational needs. In 2003 members of national minorities¹¹⁰ in RS met under the umbrella organization National Minorities Alliance of RS, and suggested concrete measures for minority children’s education. However, no progress has been made. There have been no such activities in the FBiH.¹¹¹ Two general

¹⁰² According to an interview conducted with *Žepić* (HDZ) from 29 September 2005 in Mostar, the Croats are in favour of Education matters being regulated on the state level and not on the entity level.

¹⁰³ These last two or three years.

¹⁰⁴ FBiH Federal Office of Statistics.

¹⁰⁵ RS Institute of Statistics.

¹⁰⁶ The Minority Laws additionally contain this right with regard to members of national minorities (Art. 13 State-level Law, Art. 10 RS Law).

¹⁰⁷ For a list of all private educational facilities as well as for their founders see: FBiH Federal Ministry of Education and Science, “Private educational facilities in the Federation of Bosnia and Herzegovina”, available at the respective website.

¹⁰⁸ It was presented by BiH authorities to the Peace Implementation Council (PIC) on 21 November 2002 and is an impetus for many of BiH’s education reforms.

¹⁰⁹ Increased cooperation and the development of joint initiatives between governmental bodies, educational institutions and NGOs is still missing. Women and men from minority communities should be fully involved in the planning/reviewing and implementation of the current educational reform in general.

¹¹⁰ Czechs, Italians, Jews, Macedonians, Roma, Slovenians and Ukrainians.

¹¹¹ Some national minorities were appointed by the Ministry of Civil Affairs to the history and geography commissions to write the textbook guidelines.

critical remarks on the action plan, besides the finances, are that it does not have a timetable for implementation and it lacks gender perspectives.¹¹²

In spite of existing legislation and of agreements signed by the BiH authorities and under the auspices of the IC, the pupils in BiH still access education in a segregated way. Schools are often monoethnic, with pupils and teachers often using only one language and one alphabet. Curricula are mostly imported from neighbouring countries depending on the national affiliation of local authorities. This only runs counter to efforts to establish a society where pupils are taught mutual respect and are encouraged to develop interest in other cultures. This only leads to a scenario where the young generations would be those who practice inter-entity prejudice and animosity towards others. These young generations have little or no experience of life in an ethnically diverse environment. They are only educated in a post-conflict manner that is purely the manipulation of non-experienced persons. This has only led to physical violence and bullying among pupils of different ethnic groups.¹¹³ In both entities the needs of teachers and pupils of minority ethnic background are not accommodated. They do not use their language in practice at all. In theory schools are also obliged to provide for children who choose to have religious instruction courses in their own religion. Practice shows that only courses for the majority ethnic group are provided.

Public schools in BiH should be organized as multicultural, multilingual, multireligious and open to all children. But practice shows that everything in BiH is politicized, such as the appointment of a school headmaster.¹¹⁴ Education in human rights and democracy is provided as a part of extra-curricular activities for primary and secondary schools. Notably, this is done with the support of the IC, and introduced through the CIVITAS programme.

The provisions of the Law on National Minorities concerning education shall be fully applied, but this is mostly not the case.¹¹⁵

In practice several associations of national minorities organize additional classes in their language. Such additional classes exist both in the FBiH and RS, whereby according to the Advisory Committee, the Czechs, the Poles, the Italians and the Ukrainians in particular have expressed their interest to consolidate and develop these further, complaining that these classes were often organized and operated by their own associations and not within the public education system.^{116 117}

¹¹² The BiH state also started with the Roma Strategy in July 2005.

¹¹³ There is a common core curriculum signed by the entities' MoEs. This enables children of different ethnic backgrounds to jointly attend classes which do not vary according to ethnic background e.g. mathematics and science.

¹¹⁴ Only various NGOs suggested so-called de-politicizing the appointment of a school headmaster in order to favour a more thorough application of laws.

¹¹⁵ Art. 14 obliges entities and cantons to provide education in a minority language at the pre-primary, primary and secondary school levels, provided that certain requirements concerning the size of the national minority are met, and to provide, on demand and irrespective of the size of the national minorities, teaching of their language, literature, history and culture in the minority language as additional training. It also obliges the competent authorities to ensure the financial resources, training materials for teachers and the printing of textbooks in minority languages.

¹¹⁶ Advisory Committee on the FCNM, "Opinion on Bosnia and Herzegovina", points 92 and 96. In the given context the Advisory Committee further stated: "Generally speaking and even when additional classes are organized by the associations of national minorities, there is a need to increase State support not least of all to pay for the teachers and their training, as well as to provide textbooks in minority languages" (point 96).

Apart from the above-mentioned classes organized by the national minorities themselves, there are cases where parts of the instruction are organized in minority languages within the regular education system. Namely, as concerns RS, in two or three primary schools in Prnjavor parts of the instruction are realized in Ukrainian. Furthermore, Italian students living in the village Štivor as well as the Czechs from the village Maćino brdo have the possibility to attend parts of instruction in their respective mother tongue. Additionally, in one school in Bijeljina small parts of the instruction have been taking place in Romani since the school year 2004/2005. In the FBiH at least in the village Kiseljak near Tuzla, a small part of instruction is realized in Romani in one school.¹¹⁸

Finally it should be mentioned that students of the majority population who are interested in learning a minority language also have the possibility to attend additional classes organized by national minorities associations (as well as the parts of instruction in the minority languages within the respective public schools). In practice, however, this is seldom the case, as students who wish to attend additional classes prefer to learn languages like English or French.¹¹⁹

Many school buildings are still destroyed. There are also problems with teachers' salaries.¹²⁰ In some cantons in the FBiH salaries are up to three times higher as in other cantons.

Since 1996, BiH has participated in the TEMPUS interuniversity cooperation programme and the EU and Council of Europe are assisting BiH universities in the implementation of the Bologna Process. In July 2006, the EC and the ministers of education signed a Memorandum of Understanding, committing to cooperate and further develop joint efforts, so as to establish an efficient and functional "architecture" of an education system with a clear definition of mechanisms for cooperation and a well-defined decision-making process.

IV. Economic Rights—Access to Employment

The overall economic situation in BiH is so poor that there is practically no difference between the majority population and national minorities.¹²¹ With the exception of Roma, there is no economic segregation of national minorities. In 2004, the unemployment rate dropped by 6% to 48%; however, taking into account the shadow economy, real unemployment rates are estimated at 21.4%.¹²² National

¹¹⁷ According to ECRI, "Report on Bosnia and Herzegovina", adopted in June 2004 and made public in February 2005, point 48, at <http://www.coe.int/t/E/human_rights/ecri/>, representatives of national minorities have expressed to ECRI their wish for the provisions of the Minority Law concerning education to be applied.

¹¹⁸ Representative of the BiH Ministry for Human Rights and Refugees.

¹¹⁹ *Ibid.*

¹²⁰ Interview conducted with the Mayor of Mostar, *Bešlić*, 29 September 2005.

¹²¹ Much has been achieved in the economy of Bosnia and Herzegovina in the post-war years. The entire period has seen growth, macroeconomic stability has been firmly established with low inflation and the revenue budget is in balance. The central monetary institutions (chiefly the Central Bank of BiH) are strong and the transition to the market is well advanced. The unemployment is higher in RS. Foreign Direct Investment is low.

¹²² European Commission, "Bosnia and Herzegovina 2005 Progress Report", Brussels, 9 November 2005, SEC(2005)1422.

minorities, such as Roma, are at a severe disadvantage, with only 1.5% employed and roughly 15% of children having completed primary education.¹²³

It seems that some national minorities live better as the majority population just because of good relations with the mother states. The Roma face difficulties because of their inconstant residence and different way of life.¹²⁴ There are also so many Roma NGOs which do not cooperate but rather represent non-loyal competition to each other.¹²⁵ Concrete projects should be conducted that would contribute to the employment of Roma.¹²⁶ There are no employment rates for national minorities available. This is in close connection with the demographic and educational rates, which are also not accurate.¹²⁷ The representatives of national minorities mostly work as ambassadors in their national states and after completing their missions are mostly without a job.¹²⁸ A difference between majority and minority employment is slightly noticeable in the public sector.¹²⁹ In the private sector there is no difference.¹³⁰ Here the appropriate qualifications are mostly asked for. However, the constituent peoples have preferential treatment e.g. regarding job openings in the RS Police Academy.¹³¹

In order to comply with the constituent peoples' decision, recruitment of persons from under-represented constituent peoples started in the public sector.¹³² Precise figures are still not available. Most public administrations and state-owned companies are monoethnic. Article 143 of the FBiH Labour Code and Article 152 of the RS Labour Code give a right to persons who were unlawfully dismissed during a war to file a claim before an *ad hoc* commission. In case of a positive decision, the employer is required to re-integrate the employee (only in the FBiH) or to pay compensation.¹³³ The cases solved never resulted in re-integration and the compensation is very low.¹³⁴ In most cases, compensation can not be paid out because of a lack of financial means. Employment opportunities are very limited partly as a result of the transition to a market-led economy and mass privatization. EU support to date includes a twinning project for the Department of Labour and Employment within the Ministry of Civil Affairs. In order to promote employment, both at the entity and sub-entity levels there Employment Services have been established. In RS, there is a single Employment Service, with six regional branch offices and 55 municipal offices, while the FBiH employment service network comprises the entity-level Federal Employment Service

¹²³ Helsinki Committee for Human Rights in BiH, "Report of the Status of Human Rights in Bosnia and Herzegovina", January-December 2005, at <<http://www.bh-hchr.org>>.

¹²⁴ The main prejudice against Roma is that they are often only seen as battlers and not as workers. Similar prejudice exist regarding the Albanian minorities who are often seen only as lumberjacks, buregdžije etc.

¹²⁵ There are also very rich Roma in BiH that represent certainly 10% of the overall BiH Roma population, which creates the great social differences among them.

¹²⁶ There is a company in Sarajevo canton where the Roma are properly employed.

¹²⁷ It is common knowledge that most of the Roma have only basic primary education.

¹²⁸ E.g. the President of the Albanian Community in BiH, Muharem Zejrullahu, the ex-ambassador of BiH in Albania (1993-1998).

¹²⁹ Where one group is dominant, the members of this group find a job easier than the members of other groups e.g. public administration.

¹³⁰ Because there are no jobs and the private sector is mostly connected with various manipulations e.g. most of the workers are not registered and do not receive health and social insurance.

¹³¹ The RS Alliance of National Minorities, interview conducted on 4 October 2005.

¹³² In RS some progress has been noted for Bosniaks but not for Croats (civil servants). But for national minorities there has been no progress at all.

¹³³ There are 80,000 claims in RS only but only few solved.

¹³⁴ Up to 1,700 KM (approx. 850 Euro).

and ten cantonal Employment Services with 79 municipal offices. Recently, also a state-level Employment Agency has been established. Its task is to compile country-wide employment statistics and represent BiH in international and bilateral labour affairs.¹³⁵

Despite legislation prohibiting discrimination, it is generally known that in BiH employment discrimination on ethnic/national basis exists. Due to the almost entire lack of micro level labour market data, which include information on ethnicity, it is not possible to make an in-depth analysis of this phenomenon.¹³⁶

The HCHR report from 2003 states: “The consequences of discrimination on ethnic grounds are most obvious in the area of employment. In the major part of the municipalities in Bosnia and Herzegovina, the majority peoples are represented in public institutions with 99% of the employees.”¹³⁷ While admitting that the difficult socio-economic conditions in the country undermine the rights of all citizens of BiH, ECRI points out that minority returnees are faced with even more serious difficulties, including access to employment. According to these sources, according to reports and in addition to the (generally) limited employment sources, “minority returnees are widely discriminated against both in private and in public sector employment. The only minority returnees reported to have found regular employment are those hired in public institutions in order to restore the ethnic balance in accordance with the Constituent Peoples decision.”¹³⁸ ECRI notes, however, that their number is still reported to be extremely limited in most municipalities throughout the country. Virtually no minority returnees are reported as being employed in the private sector”.¹³⁹ Another (if not the most) vulnerable group are the Roma.

The Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights, submitted by BiH (itself) from 21 July 2004 also refers to ethnic discrimination: “Even though the existing labour legislation is adjusted to the requirements of a market economy, in practice it includes discrimination on an ethnic, age and gender basis.” According to the same source, the worst kind of ethnic discrimination is present in the case of returnees, who can hardly find jobs in public administration or public companies.¹⁴⁰ In contrast to the OSCE report, which mainly dealt with discrimination in form of ending or hindering an existing employment contract for ethnic reasons (e. g. dismissal, notion), the more recent sources put the focus on the difficulties to get a job due to ethnic affiliation.

Finally, the ombudsmen in BiH also receive a great number of complaints regarding the right to work, including those which allege ethnic discrimination not only in cases related to the war.

¹³⁵Railić Silvija, “Access To Education, Training and Employment of Ethnic Minorities in the Western Balkans”, ETF-Country Report Bosnia and Herzegovina, EURAC 2005.

¹³⁶In the context of labour market discrimination, (“there is little doubt that workplace discrimination exists in Bosnia and Herzegovina“), in Postwar Bosnia and Herzegovina, the World Bank mentions that they estimated, based on a small sample of the federation formal sector, a wage regression according ethnicity as one of the explanatory variables. World Bank, “Bosnia and Herzegovina Labor Market in Postwar Bosnia and Herzegovina”, 48.

¹³⁷ Helsinki Committee for Human Rights in BiH, “Report on the State of Human Rights in Bosnia and Herzegovina” (Analysis for period from January to December 2003), at <<http://www.bh-hchr.org/>>.

¹³⁸ ECRI, “Report on Bosnia and Herzegovina”, adopted in June 2004 and made public in February 2005, points 40 and 43.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.* 24.

1. Access to Public Services

Access to healthcare is problematic for all BiH citizens.¹⁴¹ However, minority returnees encounter even more serious difficulties in accessing health services. There are three separate health insurance schemes at present in BiH.¹⁴² This only leads to an inability to transfer coverage from one location to another. There is no cooperation between entities, compounded by non-payment of contributions into the different health funds. Even though the inter-entity Agreement on Health Insurance was concluded with the aim to overcome these problems, implementation of this agreement has not been satisfactory at all. There are also numerous reports¹⁴³ according to which the monoethnic composition of the staff in the health provision facilities negatively affects the confidence of minority returnees in these institutions. There are also some allegations according to which health care services are not equally provided to members of all ethnic groups.¹⁴⁴ A unified pension system is not yet in place, but is rather still divided. It is common knowledge that the pensions paid in the FBiH are higher than in RS. This discrimination is highly noticeable towards the people who had to move from RS to the FBiH.¹⁴⁵

V. Minority Returnees and IDPs

In BiH the term minority returnees is generally used for the persons belonging to one of the three constitutive peoples.¹⁴⁶ The return of constituent peoples is complete.¹⁴⁷ The real issue is the real return. The reason for the non-return in 2001 was the security situation in BiH. Today, it is that there is no employment. It seems that the real return will never occur until the conditions for the substantial return are fulfilled.

There is a tendency to return where *de facto* minorities find themselves in the majority position. Mostly the older generation return and mostly to the rural areas. It is not possible to live in cities where there is no employment. Properties are mostly sold or

¹⁴¹ In BiH, there are 12 regionally-based, social health insurance funds respecting the administrative country borders, based on the entities and cantons. The special health insurance funds cover the whole territory of RS, including the Brčko District. The situation in the FBiH is somewhat complex. There are ten cantonal funds, each covering their own cantonal territory. The health insurance law in the FBiH offers the possibility of merging two or more cantonal funds into one single fund, if it would offer greater cohesion or reduce administrative costs. See Ministry of Health of the Federation of BiH, "Policy and Strategy of Health Financing Reform in the Federation of Bosnia and Herzegovina", Sarajevo, December 1998.

¹⁴² One in the FBiH delegated through 10 cantons, one in RS and one in the Brčko District.

¹⁴³ ECRI, "Report on Bosnia and Herzegovina", CRI(2005)2, 15 February 2005.

¹⁴⁴ EU-funded support includes technical assistance for health care reform, encompassing health financing, development and implementation of the family medicine concept in primary health care and quality assurance and accreditation in the health sector. Assistance has also been provided for the pharmaceutical sector.

¹⁴⁵ The Human Rights Chamber has found that this arrangement is discriminatory and stated that differential treatment based on displaced status cannot be justified where it carries a connotation of discrimination on ethnic grounds. Decision delivered on 10 January 2003 on Case Nos. CH/02/8923, CH/02/8924 and CH/02/9364.

¹⁴⁶ See the report of the ICG, "The Continuing Challenge of Refugee Return in Bosnia and Herzegovina", 13 December 2002.

¹⁴⁷ Annex 7 of the DPA; also the property restitution has reached 99%.

interchanged. The issue of property compensation has not yet been properly solved.¹⁴⁸ There are no exact number of persons who came back to live permanently in their pre-war homes. In Mostar, a city where Bosniacs and Croats have since the war lived in two separate neighbourhoods, returnees whose repossessed property is located in the neighbourhood inhabited by the other ethnic group mostly sell it or exchange it for property located in their own neighbourhood. BiH municipalities are mostly monoethnic. Minority returnees have more difficulties in accessing employment, health services, pensions and adequate education. They are particularly vulnerable to ethnic and religious discrimination.¹⁴⁹ There are still random cases of physical violence¹⁵⁰ towards minority returnees. This hostility is often prompted by statements and actions of the local political leadership. Minority returnees mostly feel unwelcome in their own environment. Most of the perpetrators of these incidents are never brought to justice.

The necessity of reconstruction assistance still continues. The funds available have decreased over recent years and the minority returnees are not able to access the reconstruction funds in the same manner as the majority population.¹⁵¹ The only minority returnees who found regular employment are those hired by public institutions, but only to restore ethnic balance. Public administrations and state-owned companies mostly employ members of majority ethnic group or persons affiliated with the ethnically based political party. Most minority returnees are forced into the grey economy. There are no effective civil and administrative antidiscrimination provisions.¹⁵²

There are still children of minority returnees who travel long distances in order to receive education that meets their needs. It seems that the local political leadership still contributes to creating a hostile climate. Not only in that sustainability is undermined, but in that people are discouraged to return.¹⁵³ There is major exploitation of nationalism in BiH politics.¹⁵⁴

According to the consumption-based poverty measurement in 2004, 37% of displaced persons, or every third displaced person, is poor.¹⁵⁵ Material poverty seems to be the main characteristic of the exclusion of displaced persons due to the fact that they

¹⁴⁸ Despite the obligations of the BiH according to the DPA.

¹⁴⁹ UNHCR, "Extremely Vulnerable Individuals: The Need for Continuing International Support in Light of the Difficulties to Reintegration Upon Return", 21 August 2002.

¹⁵⁰ 277 return-related incidents were recorded by UNHCR in 2003, 23 of which consisted of physical attacks, and the rest mainly of threats, insults and damage to personal property, memorials or religious objects. Some 40 return-related incidents have been recorded in 2004 regarding the explosion of violence in Kosovo in March 2004.

¹⁵¹ BiH provides assistance with limited funds. They are also pursuing international funding possibilities.

¹⁵² The FBiH and RS governments are not supporting minority return, but rather the RS government is supporting the return of Serbs to the FBiH and the FBiH government is financing the return of Bosniaks to RS. Efforts to reduce social exclusion in BiH have been tackled by UNDP's SUTRA programme.

¹⁵³ E.g. public condoning of war criminals, discriminatory allocation of financial resources to build or reconstruct religious objects as well as intolerant and stigmatizing statements.

¹⁵⁴ UNHCR, "After the war was over", Refugees Vol. 3, No. 140, 2005; and Helsinki Committee for Human Rights in BiH, "Report of the Status of Human Rights in Bosnia and Herzegovina", January-December 2005, at <<http://www.bh-hchr.org>>.

¹⁵⁵ EPPU-PIMO, "Preliminary Report on Poverty Situation in BiH", 2005.

have moved to a new environment and have lost their pre-war family and friend connections, which are important in terms of entering the BiH labour market.¹⁵⁶

The problem is also that the war criminals are still at large and seen by the majority ethnic groups as heroes.¹⁵⁷ Millions of mines and unexploded ordnances left over from the war hamper refugee return, freedom of movement and economic development.¹⁵⁸ With moderate political parties having lost power since the October 2002 elections, it seems pretty unlikely that the present political parties will facilitate return. However, returning home in BiH seems to have much more a symbolic meaning than a practical one. Most people do not want really to return but rather they have a strong desire for recognition of the trauma they have suffered as well as for property compensation.

VI. Roma¹⁵⁹

Health care in the Roma population is insufficient. The majority of Roma are not insured, which, according to the valid laws on health care, is the reason why the conditions are not fulfilled to have the costs of performed medical services covered (newly born children are not registered, the adults do not have valid personal documentation).¹⁶⁰ Also employers opt not to employ Roma.¹⁶¹

Roma children rarely attend school even at the primary level and they experience various types of discrimination in access to services and public places, one recent example being in a public swimming pool in Živinice (FBiH). The Ministry of

¹⁵⁶ According to the Amnesty International Report, “Europe and Central Asia: Summary of Amnesty International's Concerns in the Region”, July-December 2006, an agreement was reached by the Aluminij company in Mostar and the FBiH government dealing *inter alia* with the issue of former employees dismissed during or shortly after the war. As a result of these dismissals, Aluminij went from being a company with a significant number of Bosniak, Bosnian Serb and Bosnian Croat employees to a company with an overwhelmingly ethnic Croat workforce. The agreement provided for all former workers who were employed by Aluminij on 31 December 1991 to register with the company and to have their working years in Aluminij recognized.

¹⁵⁷ Progress was made in the domestic prosecution of war crimes, including in proceedings at the War Crimes Chamber (WCC) within the BiH State Court, although efforts to bring perpetrators to justice remained insufficient given the scale of the crimes committed and the potentially huge number of crimes to be investigated and prosecuted. In November, the UN Human Rights Committee (HRC) issued its concluding observations after considering BiH's initial report on the implementation of the International Covenant on Civil and Political Rights. The HRC *inter alia* expressed concern about the underfunding of entity courts dealing with war crimes cases and the unsatisfactory implementation of witness protection legislation at the entity level. The HRC called on BiH to allocate sufficient funds and human resources to the district and cantonal courts trying war crimes and to ensure the effective application of the state and entity Laws on Protection of Witnesses.

¹⁵⁸ The EU is currently financing the 8th phase of its de-mining programme with the Civil Protection Agencies (CPAs), with over 80% cofinancing from the entity governments.

¹⁵⁹ Silviija, *op. cit.* note 135.

¹⁶⁰ “Comments of the Government of Bosnia and Herzegovina on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in Bosnia and Herzegovina”, 25 October 2004.

¹⁶¹ See UNDP BiH, National Human Development Report, “Social Inclusion in Bosnia and Herzegovina”, 2007. In this report see especially “Social Inclusion of the Roma Population through Recycling”, 83. The Roma in BiH collect paper and metal, and transport these materials in inadequate vehicles to scrap yards, getting paid in cash. Also the Commission of the European Communities, “Bosnia and Herzegovina Progress Report 2006”, SEC(2006)1384, Brussels, 18 November 2006.

Education and Science of the FBiH has earmarked special funds to support the education of Roma. Illiteracy in Roma children is largely caused by non-attendance in the schools. They live in substandard housing conditions without basic sanitary facilities, electricity or a reliable source of heating and with a lack of waste disposal services as well as insufficient access to fresh water. One reason for this is the informal nature of many Roma settlements, whose residents are not legally registered at the local level and therefore blocked in practice from obtaining identity cards and refused access to social services such as health insurance or social benefits. Roma are also vulnerable to forced eviction without being provided alternative accommodation.

Following the election of a nine member Roma Council in November 2001 from among Roma NGOs, an Advisory Board for Roma was recognized by the Council of Ministers in 2003. This advisory board, which is made up of nine representatives of the Roma Council and nine representatives of different ministries involved, has adopted a Work Plan for 2002-2006 listing, among other priorities, the issues of lack of birth certificates and substandard housing conditions.¹⁶² Romany language, culture and traditions are not included in a systematic way in school curricula. Insufficient progress was made by the authorities at the state, entity and cantonal levels in the implementation of the 2004 Action Plan on the Educational Needs of Roma and Members of Other National Minorities.¹⁶³

VII. Anti-Semitism

The Jewish community of BiH numbers around 1,000 persons, less than 100 of whom live in RS.¹⁶⁴ There is reported presence of anti-Semitic newspapers articles in RS. Anti-Semitic undertones can be also noticed in public debate.¹⁶⁵ The building of a synagogue is planned in Mostar.¹⁶⁶

VIII. Conclusion

In BiH the constitutional system has been devised along ethnic lines, and contributes directly to social exclusion. The Constitution does not consider its peoples as citizens but rather as Bosniacs, Croats, Serbs or the Others. The issue of social, collective and individual freedom was constitutionally solved by incorporating all of the most relevant international conventions and declarations on human rights and fundamental freedoms into the Constitution. But those who do not declare themselves as constitutive people or Others have fewer political rights. They cannot stand as a political candidate nor participate in public life and they are socially excluded. Ethnic groups living in the wrong entity don't have it any better. It seems that ethnic separation is now greater than

¹⁶² Advisory Committee the Framework Convention for the Protections of National Minorities, "Opinion on Bosnia and Herzegovina", adopted on 27 May 2004, ACFC/INF/OP/I(2005)003.

¹⁶³ Amnesty International Report, "False starts: The exclusion of Romani children from primary education in Bosnia and Herzegovina, Croatia and Slovenia", 2006.

¹⁶⁴ ECRI, "Report on Bosnia and Herzegovina", CRI(2005)2, February 15 2005.

¹⁶⁵ ECRI is also concerned with availability of anti-Semitic books in bookstores e.g. *Mein Kampf* and *The Protocols of the Elders of Zion*.

¹⁶⁶ Interview conducted with the Mayor of Mostar, *Bešlić*, 29 September 2005.

during the war. The Constitution guarantees a wide range of human and individual rights, but it makes no mention of the contentious rights in BiH: the cultural and political rights of groups. As described, the protection of constituent peoples is in the centre of the BiH ethnic consensus democracy. However, “real” national minorities are often at a disadvantage. Most of the current programmes supporting the integration of minorities are designed for members of Roma population. Most important is the programme for schooling implemented by the municipalities (securing everything needed to attend school). Nevertheless, this programme was not especially made for minorities but rather for the poor in general.¹⁶⁷ Mostly the OSCE is monitoring implementation as well as the situation of minorities in general.¹⁶⁸

All interviewed minorities agreed that now there is no state controlled discrimination against any minority, but individuals have faced discrimination. After the war and due to the following resettlements, various ethnic groups find themselves in a minority situation in BiH today. Currently, no evidence can be found in the development of the country that a tolerant and a mutual coexistence of the various ethnic groups is one of the new social standards.

The cooperation between NGOs and the government has very much improved in the last few years. Their work is now (partly) funded by the authorities of the two entities. They also see an improvement in the situation of minorities but are still confronted with the poor economic situation of their main target group, the Roma. The main problem the (mostly local) NGOs are confronted with is a lack of funding. They don't have enough means to implement the needed measures (like organizing language courses and low-level qualification measures for adults, helping socially endangered families etc.). According to the BiH Ministry of Human Rights and Refugees discrimination against minorities has declined. The main problem is the social and health protection of minorities. Also some of the minorities do not have organizations that represent them.¹⁶⁹ There are also many minority NGOs¹⁷⁰ which organize various round tables, discussions and tribunes. The problem is that the minorities are small numerically but rather very different. A question that arises is how many minorities the next census will show.¹⁷¹

¹⁶⁷ Although the Roma are the main target group. The programme was widely published via the media (TV, newspapers and radio).

¹⁶⁸ Some international NGOs were working on issues like education, vocational training, health and capacity building (advice in managing projects, business start-up training etc.). Now this is done by national NGOs, although often in close cooperation with national institutions. One remarkable experience is the project “A chance for the youth”, implemented by Caritas Essen and AGEF was designed in a way to contribute to the reconciliation process especially in RS, where ethnic tensions were extremely severe. The main aim of the project was to establish youth offices with a programme linking spare time activities of the youth with vocational education and training as well as with discursive elements encouraging the participants to approach the past of BiH. Promoting reconciliation and dialogue was always at the forefront of this project, but also connecting it with a certain value for the vocational future of the youth. The project offered weekly courses in computer and internet, languages, music, sport and drama. Additionally, activities promoting reconciliation and interethnic dialogue were implemented, like a photo and essay competition, an awareness raising campaign, round table discussions, youth festivals and finally, a newspaper in different languages. The project activities were open to returnees as well as to local residents and to all population groups in order to promote interethnic dialogue and exchange. Also regional activities in the federation, like the establishment of minority advisors in municipalities in urban areas (Zenica, Živinice, realised by Caritas).

¹⁶⁹ Turks, Russians, Germans.

¹⁷⁰ E.g. 42 Roma NGOs

¹⁷¹ So-called “next census” was scheduled for 2006, but no data could be found regarding this subject.

Sometimes the protection of national minorities is seen as pure pressure, especially regarding the European standards. There is no fear that the national minorities would be a problem for the BiH territory or that they could politically offend anybody. In BiH the national minorities would be more noticed if they had religious beliefs different than the majority population. "Others" should not be misused in BiH.¹⁷² It should be kept in mind that the political conflict in BiH is still ongoing and it is institutionally led.

There is also the problem of referring to national minorities as "Others", which could be understood as being discriminatory in the sense of a second class of citizens. A great degree of violation of elementary human rights can be noticed in BiH, e.g. the right to health protection, a basic human right which does not function without corruption. There is also a psychological problem, a sort of isolation, since the people of BiH can only travel without visas to e.g. Croatia and Serbia. This is humiliating.

The question that arises is whether to be an individual and/or a member of a collective? How to achieve balance and protection?¹⁷³ It seems that the real minorities in BiH in some sense have a problem being a part of the BiH society. Maybe if they became just participants in the BiH society they could decide objectively on many necessary things. In BiH it is really important to talk about the meaning of national and civic. In this sense the BiH represents a great problem for its citizens as well as for the IC. As soon as the BiH as a state starts to understand the meaning of these two terms it will be on the same path as other civilized societies¹⁷⁴. The issue is how to show that a need for affiliation is not only national. European integration is a solution which would lead BiH to play according to systematic rules which are now more than missing. European integration will open more perspectives and prevent manipulation. The only problem is if Europe waits too long, many younger generations will lose their perspective totally and model themselves as young radicals. In BiH this is more than possible. BiH needs preferential treatment. Hopefully, it will not be too late for BiH. The EU should help BiH concretely. These concrete projects e.g. highway construction, will increase awareness of the BiH people. There is no communication with the civil society. Communication is done only with the political elites, which then manipulate the citizens.¹⁷⁵ Young generations mostly vote for national political parties because they do not see other perspectives.¹⁷⁶ Only NGOs are interested in the civic opinion. In cultural matters also the culture and education ministries.

Is a civic state a possible and real solution for BiH when there is no consensus among the constituent peoples? It seems that just after the war there was more tolerance and respect than now. BiH leads a devastated political life that consists of obedience. The BiH citizens will exhale when BiH joins the EU. They will not depend anymore on politicians that are incompetent. In BiH democracy is often mistaken for anarchy. The BiH political parties do not think about their citizens. Accession to the EU will bring

¹⁷² FBiH House of People (six Bosniaks and one Muslim).

¹⁷³ BiH bears the legacy of the former Yugoslavia, as the system is based on the protection and equality of groups whilst the international human rights system is based on individual rights protection. To make it even more complicated, both of these systems are enshrined in the DPA.

¹⁷⁴ Myths are mostly developed by not-knowing. In BiH the national often only means to be different from others, and in this sense the BiH citizens seem to be primitive and rather develop fear mixed with mystic knowledge about national dominance. This is closely connected to the political propaganda in which most of the BiH citizens believe. This strange combination is ongoing.

¹⁷⁵ Interview conducted with Hašić and Šubarić, RS Ombudsman, 4 October 2005.

¹⁷⁶ These parties do not lead towards economic prosperity; nevertheless for young people to get a job the best solution is to be a member of a national political party.

European legislation to BiH which would end all nationalistic tendencies. It is possible that BiH will then show its real potential.¹⁷⁷

Nevertheless, problems of racial discrimination including ethnic and religious, as well as segregation persist in BiH, mostly being a result of the nationalist policies of the ethnically based political parties. This only aggravates the situation of national minorities¹⁷⁸ living in very harsh socio-economic conditions. Direct and indirect discrimination is present in nearly all life segments.¹⁷⁹ Those who do not belong to locally or nationally dominant ethnic groups do not have access to rights in any segment. BiH needs to fine-tune its existing legislation aimed at racial discrimination and improve its just implementation. It is necessary to target the existing problems and to solve them properly. It is a high priority to move from a negative understanding of national affiliation towards the establishment of BiH citizenship. Punishment for war crimes is also very important for reconciliation in BiH. Domestic courts are also responsible for investigating and prosecuting war crimes¹⁸⁰. Nevertheless, the impunity is still ongoing because domestic courts have failed to actively prosecute and cooperation between the judiciary and the police forces of two entities is lacking. In this sense BiH still has not established a Truth and Reconciliation Commission which could promote the re-establishment of mutual trust between different communities.¹⁸¹ Those who do not belong to the constituent peoples face serious disadvantages. The Others, or non-constituent peoples, are those who do not identify with other ethnic groups, but also persons who are unwilling or unable to identify with any ethnic group e.g. persons from mixed marriages. Normative and implementation of normative are very different in BiH. There is constitutive equality of peoples, but *de facto* inequality prevails. In BiH politics towards law is of overriding importance and the rule of law practically does not exist.¹⁸² The BiH state is not acquainted with consensus but rather only with dominance. There is only a declarative equality of all BiH citizens. There are various projects for the strengthening of civil society, mostly through the various NGOs. These projects are mostly criticized for lack of serious quality and for only being seen as money sources. There are some *ad hoc* projects with the EU. The BiH citizens are not aware of what the war in BiH really brought. There has been extensive emigration of intellectuals.¹⁸³ To BiH citizens it is still only important to be a member of the political party (upon ethnic affiliation) and not what these political parties actually propose. These political parties also misuse religion. It seems that BiH citizens do not possess their free will at all because they do not decide in any matters. BiH needs a new national and international engagement strategy in order to ensure BiH future.¹⁸⁴ The Stabilisation and Association Agreement negotiated in November 2005 is the initial step toward accession, and must be used in a timely fashion by both the EU and BiH authorities in order to promote much-needed reforms¹⁸⁵. Nevertheless, EU membership for BiH will depend not only on domestic reform, but also on the political will of the EU and the level of support from

¹⁷⁷ E.g. economic, energetic, environmental and tourist potential.

¹⁷⁸ Especially the minority returnees, the Roma, and those who are unable or unwilling to identify with the terminus national minority.

¹⁷⁹ Education, employment, housing, social and health protection.

¹⁸⁰ They must receive clearance from the ICTY.

¹⁸¹ A June 2004 report by a RS Government Commission concerning the Srebrenica events of July 1995 recognizes that "several thousands Bosniacs (Muslims) were liquidated in a way which represents grave violations of international humanitarian law".

¹⁸² Sometimes it seems that jurisprudence is also politically impacted.

¹⁸³ There are also a lot of ethno-intellectuals.

EU citizens. The reform of BiH state structures is especially crucial for reducing the costs of an enormous bureaucracy. BiH must understand that the EU will not lower its standards for EU membership¹⁸⁶ and the EU must know that the problems of BiH are the problems of the EU as well, and should not allow a stigma to be the most powerful force in BiH. A strong civil society in BiH, which would build up democracy, eradicate discrimination, reconcile ethnic tensions and improve human and civil rights, is a must to fulfil the Copenhagen criteria necessary for EU membership. If these prerequisites are not rapidly reached, the BiH will remain a dysfunctional and ineffective state with constant discrimination against constituent peoples as well as national minorities. BiH must keep in mind that the improvement of minority protection is not only a pragmatic compromise. BiH authorities must understand that minority rights are indeed basic rights. Nevertheless, it is on the West to clear up what this protection really means. It seems that the BiH authorities still do not understand that all people have individual and collective identities, meaning that individuals with rights must respect the rights of others (majority and minority). Although an identity is a private matter, it certainly has a public dimension. In this day and age it should be normal to have multiple identities which are changeable. In BiH there is a great problem concerning this matter. Mechanisms need to be found to ensure that minorities can also participate effectively in political processes. These could be reached e.g. through the Lund Recommendations on the Effective Participation in Public Life. Because in BiH the Others are still ignored by politicians, being seen as not important. Collective identities in BiH are still subject to insecurity. In order to change these negative attitudes there must be a dialogue and rules cannot simply be imposed. This will not happen overnight, but it is possible.¹⁸⁷

In order to approach this possibility faster the political offices shall be open to all citizens¹⁸⁸, a population census shall be conducted, the rule of law shall be strengthened, and tolerance and sensibility for the problems of all citizens of BiH respectively for all ethnic groups of BiH at all levels of society shall be promoted through the regular education system, seminars for public office holders and employees, as well as tolerance campaigns.¹⁸⁹

¹⁸⁴ ICG Report, "Ensuring Bosnia's Future: A New International Engagement Strategy", Europe Report No. 180, 15 February 2007.

¹⁸⁵ On 9 March 2006, Javier Solana, EU High Representative for the CFSP, welcomed progress in the ongoing talks on BiH's constitutional reform, which he described as an important step towards a better functioning state and towards Europe.

¹⁸⁶ There is still no full cooperation with the ICTY.

¹⁸⁷ Equality of access to education, employment and social protection is crucial to restoring normal life. It seems that in BiH, more attention has been paid to civil and political rights even though all human rights are indivisible and interdependent.

¹⁸⁸ This would need constitutional changes, which should avoid the described exclusion of a part of the BiH citizenry from holding certain political offices.

¹⁸⁹ For other recommendations see Railić, *op. cit.* note 135.