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Osam godina daytonske BiH: nove vizije za Bosnu i Hercegovinu?

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Alternativna konferencija

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Amela Sejmenovi} (Fondacija Heinrich Böll, Regionalni ured Sarajevo) i
Ivan Barbali} (ACIPS)

■ Rad u posebnim radnim grupama

Radionica I

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Referent: Emir Had`ikaduni} (Direkcija za evropske integracije)

Moderator: Haris Abaspahi} (Sarajevo Economic Regional Development Agency)

Radionica II

Politi-ka prava i daytonski Ustav u BiH/izborni sistem

Referentica: Jasna Bak{i} Mufti} (Pravni fakultet)

Moderatorica: Valida Repovac (Direkcija za evropske integracije)

Radionica III

Javna slu`ba u BiH: mogu}nosti reforme javne slu`be u BiH prema standardima EU

Referent: Senad Hromi} (Direkcija za evropske integracije)

Moderator: Miroslav @ivanovi} (Centar za ljudska prava Univerziteta u Sarajevu)

Radionica IV

Stanja, perspektive i mogu}nosti inicijative za promjenu daytonskog Ustava

Referenti/ce: Midhat Izmirlija i Lejla Bali} (Pravni fakultet)

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■ Zavr{na sesija

Prezentacija zaklju-aka radnih grupa, otvorena diskusija, preporuke.

Moderator: Ivan Barbali} (ACIPS)

UVOD

Poštovane dame i gospodo, drage prijateljice i prijatelji,
pozdravaljam vas u ime Fondacije Heinrich Böll, Regionalnog ureda Sarajevo i zahvaljujem vam se na interesu koji ste pokazali za u-e{}e na konferenciji. Na(e dana{nje okupljanje, koje smo nazvali alternativna konferencija "8 godina daytonske BiH: nove vizije za Bosnu i Hercegovinu?" jeste rezultat uspje{ne saradnje na(e Fondacije i Alumni Centra za interdisciplinarnu post-diplomsku studiju (ACIPS) na -ijem -elu se nalazi Ivan Barbali}, a koju realiziramo zahvaljuju}i podr{ci Ministarstva vanjskih poslova Savezne Republike Njema-ke i sredstvima Pakta za stabilnost u jugoisto~noj Evropi.

Prije nego {to u nekoliko re-enica predstavim Fondaciju Heinrich Böll, `eljela bih vam predstaviti na(e dana{nje uvodni-are, mlade magistre Centra i ~lanove ACIPSA, ujedno i autore tekstova koje ste imali priliku pro-itati ili ih sada imate pred sobom, a to su:

gospo|a **Lejla Bali**}, asistentica na Pravnom fakultetu Univerziteta u Sarajevu, gospodin **Midhat Izmirlija**, asistent na Pravnom fakultetu Univerziteta u Sarajevu, mr. Ljudskih prava i demokracije, gospodin **Emir Had`ikaduni**}, mr. Evropskih studija, gospodin **Senad Hromi**}, mr. Evropskih studija.

Zahvaljujemo se i doc. dr. **Jasni Bak{i}-Mufti**}, koja je tako|er priredila uvodni referat za konferenciju, ali zbog ranije preuzetih obaveza, na`alost, ne prisustvuje radu same konferencije.

Fondacija Heinrich Böll ubraja se u politi-ke fondacije u SR Njema-koj. Fondacija je po svojoj orijentaciji bliska stranci Savez 90/Zeleni. Njezin rad se orijentira prema osnovnim politi-kim vrijednostima kao {to su demokracija, solidarnost, nenasilje, za{tita okoli{a i odr`iv razvoj. Glavni joj je cilj unapre|enje i podr{ka demokratskim procesima, dru{tveno-politi-kom anga`manu gra|ana/grajanki i razumijevanju me|u narodima i kulturama. Fondacija nosi ime jednog od najzna-ajnijih njema-kih pisaca u poslijeratnom periodu. U djelu Heinricha Bölla (1917-1985), jednog od najva`nijih i najpoznatijih pisaca Savezne Republike Njema-ke, oslikava se ~etrdeset godina njema-ke demokracije poslije nacisti-ke diktature. Godine 1972., kao prvi njema-ki pisac poslije Drugog svjetskog rata, dobija Nobelovu nagradu za knji`evnost.

Te`i{ta rada Fondacije u zemlji i inozemstvu su:

- razvoj demokracije, naro-ito razvoj ravnopravnosti me|u spolovima,
- izgradnja civilnog dru{tva,
- unapre|enje interkulturalnog razumijevanja i tolerancije,
- unapre|enje novih formi politi-kog i kulturno-politi-kog dijaloga,
- za{tita `ivotne okoline i ekolo{ki odr`iv razvoj

Fondacija ima osamnaest ureda {irom svijeta. Svojim prisustvom Fondacija Heinrich Böll, Regionalni ured u Sarajevu, zajedno sa podru`nicama u Zagrebu i Beogradu, `eli poja-ati svoj miroljubivi politi-ki anga`man u Bosni i Hercegovini, Hrvatskoj, Srbiji i Crnoj Gori i na Kosovu.

Te`i{ta regionalnih programa su unaprije|enje i razvoj aktivnosti i stavova na dru{tveno-politi-koj izgradnji mira u ovoj regiji.

Razmi{ljavu}i o novim formama politi-kog i kulturnog dijaloga odlu-ili smo organizirati ovu konferenciju i ponuditi mogu}nost za susret i dijalog mladih stru-njaka, intelektualki/intelektualaca, aktivistica/aktivista nevladinih organizacija.

Naime, svjesni smo -injenice da je Daytonski mirovni sporazum okon-ao rat u BiH i da se implementacija sporazuma odvija sporo i te{ko, a proces pridru`ivanja Evropskoj uniji (EU), neovisno od BiH, se nasuprot tome odvija mnogo br`e. Pred BiH, a u procesu pridru`ivanja EU, stoje mnogobrojni zadaci i uvjeti, koje mora ispuniti ako `eli biti kandidat za ulazak u EU. Osam godina nakon potpisivanja Daytonskog mirovnog sporazuma Bosna i Hercegovina jo{ uvijek prolazi kroz proces izgradnje dr`ave, suo-avaju}i se sa brojnim i neprekidnim pote{ko}ama. Jednim od razloga za ovakvu situaciju mo`e se smatrati i nedostatak jasne i jedinstvene politi-ke vizije Bosne i Hercegovine u poslijeratnom periodu. Te`nja uklju-ivanja BiH u Evropsku uniju predstavlja trenutno jedinu jasnu viziju za budu}nost Bosne i Hercegovine.

Prema nekim statisti-kim podacima, u na{ojoj zemlji oko 60% mladih ljudi `eli napustiti BiH, a relativno veliki broj mladih gra|anki/gr|ana ne smatra BiH svojom domovinom. Tim povodom `eljeli smo se okupiti i omogu}iti mladim ljudima da kroz zajedni-ki dijalog, kroz razmjenu stavova i mi{ljenja iznesu svoje vizije o BiH.

S obzirom da se ne mo`e ustvrditi da je napredak BiH kao poslijeratnog dru{tva definiran proces, postavlja se pitanje same strukture dr`ave, kao osnovnog temelja promi{ljanja o daljnjem razvoju dru{tva.

Koje su mogu}nosti sveprisutnijih inicijativa za promjenu tzv. daytonskog Ustava? Kakav izborni sistem nudi postoje}i Ustav? Kako stvoriti jedinstven ekonomski prostor? Kada mo`emo o-ekivati efikasnu i nepristrasnu javnu

slu`bu u BiH? Cilj nam je na ova pitanja potra`iti odgovore od mladih intelektualki/intelektualaca i aktivistica/aktivista nevladinih organizacija u Bosni i Hercegovini.

Vjerujemo da }e rad ove konferencije ponuditi odgovore na neka pitanja i alternativu sadašnjem stanju.

Za Fondaciju Heinrich Böll
Amela Sejmenovi}

EKONOMSKI RAZVOJ I DAYTONSKA BiH

Jedinstveni ekonomski prostor BiH usklađen sa unutarnjim tržištem Evropske unije

Uvodni referat: Emir Hadžićakaduni}

Svaka država koja želi postati članicom Evropske unije mora prihvatiti kriterije¹ za članstvo i uskladiti svoje zakonodavstvo s *acquis communautaire*², pravnim naslijeđem Evropske unije. Iskustva novih članica Evropske unije, kao i zemalja kandidata za članstvo u Uniji, pokazuju da je u osnovi procesa tranzicije tih zemalja proces usvajanja *acquis*-a Evropske unije. Riječ je o sada već preko 100 000 stranica gusto kucanog teksta raznih pravnih regula, koje je Evropska komisija da bi olakšala pregovore o pristupanju podijelila u 31 pregovaračko poglavlje. Onog trenutka kada zemlja ispuni zahtjeve iz svakog poglavlja, ona sigurno ima uspostavljenu tržišnu ekonomiju, parlamentarnu demokratiju i vladavinu prava po modelu Evropske unije.

Bosna i Hercegovina neće biti izuzetak u ovom procesu. Na kraju svog puta ka punopravnom članstvu, nakon zatvaranja poglavlja *acquis*-a EU-a, BiH će, također, okončati proces tranzicije i krenuti na svaku drugu demokratsku zemlju sa uspjehom tržišnom ekonomijom. Državni organi su kroz odluku Vijeća ministara BiH od marta 1999. pokrenuli inicijativu za pristupanje Evropskoj uniji³. U avgustu iste godine i Parlamentarna skupština BiH iskazala je svoju opredjeljenost za evropske integracije donoseći Rezoluciju o evropskim integracijama i Paktu stabilnosti⁴. Ove dvije odluke, pored toga što predstavljaju političku podršku procesu, obavezuju vlasti u BiH da harmoniziraju domaću legislativu sa evropskom.

¹ **Kriteriji iz Kopenhagena**, stabilnost institucija koje osiguravaju demokratiju, pravnu državu, poštovanje ljudskih prava, postojanje djelotvorne tržišne ekonomije i sposobnost privrede da izdrži konkurenciju na tržištu Unije i sposobnost preuzimanja obaveza koje proizilaze iz članstva, uključujući provedbu ciljeva političke, ekonomske i monetarne unije.

² **Acquis communautaire** - skraćeno *acquis*, naziva se još i naslijeđem Zajednice, skup je prava i obaveza koji sve zemlje članice obavezuje i povezuje unutar Evropske unije. On ne predstavlja samo pravo u užem smislu, jer obuhvata: sadržaj, načela i političke ciljeve osnivačkih ugovora, zakonodavstvo usvojeno primjenom osnivačkih ugovora te presuda Evropskog suda pravde, deklaracije i rezolucije koje je Unija usvojila, mjere koje se odnose na zajedničku vanjsku i sigurnosnu politiku, mjere koje se odnose na pravosuđe i unutarnje poslove te međunarodne ugovore, koje je Zajednica sklopila kao i ugovore izmeđ zemalja članica u području djelovanja Unije.

³ **Službeni glasnik BiH** 3/1999, 20. mart 1999.

⁴ **Službeni glasnik BiH** 12/1999, 8. avgust 1999.

U ovom tekstu bit će govora samo o jednom segmentu približavanja Evropskoj uniji, to jest o izgradnji jedinstvenog ekonomskog prostora u BiH, koji će biti usklađen sa evropskim standardima. Ispunjavanje ovih zahtjeva omogućava zemljama kandidatima uključivanje u unutarne tržište Evropske unije i prije punopravnog članstva. Takav status jednoj državi omogućava nesmetano poslovanje njenih privrednih subjekata u zajedničkom tržištu Unije. Da bi došla u situaciju da nesmetano izvozi, a pogotovo da koristi preferencijalne trgovinske povlastice⁵ EU-a, Bosna i Hercegovina, također, mora prilagoditi svoje zakonodavstvo poglavljima Bijele knjige⁶. Kao što je poznato zemlje, regiona napreduju na putu ka evropskim integracijama ispunjavaju i sve više obaveza, kako po *acquis-u*, tako i iz Bijele knjige. To praktično znači da i u tim zemljama počinju da važe evropska pravila i standardi, pa izvoz u te zemlje postaje zahtjevan kao i izvoz u Uniju.

Donošenje zakona koji su u skladu sa evropskim standardima neće biti dovoljno. Poseban izazov, kako sada a tako i u budućnosti, jeste njegova implementacija, uspostavljanje odgovarajućih institucija, obučavanje ljudi resursa itd. čak i ako perspektiva ulaska u EU nije tako bliska za Bosnu i Hercegovinu, harmonizacija domaće legislative sa evropskim standardima preduslov je za smanjenje vanjskotrgovinskog deficita, povećanje stranih investicija a time i bržeg privrednog oporavka BiH. U riječavanju ovih pitanja Bosna i Hercegovina nije bez podrške. Njoj je na raspolaganju CARDS⁷ program Evropske unije kao i bilateralni programi pomoći zemalja članica EU.

Prioritetni zadaci za izgradnju jedinstvenog ekonomskog prostora u BiH

Zemlje kandidati ne moraju čekati da se ispune svi zahtjevi Bijele knjige, one mogu postepeno ispunjavati uslove za pojedine grupe proizvoda kroz preuzimanje odgovarajućih tehničkih propisa i izgradnju sistema ocjenjivanja usklađenosti proizvoda sa tim propisima. To znači da te zemlje mogu postepeno

⁵ **Uvedeni Uredbom Vijeća** 2007/2000 od 18. septembra 2000. i amandirane Uredbom Vijeća 2563/2000 od 20. novembra 2000., tako da vrijede do 31. decembra 2005., sa jako malim brojem izuzetaka, koji na različite načine obuhvataju određene tekstilne proizvode, godišnje kvote na teletinu, vino i ribu, dok je ostalim robama omogućen neograničen pristup tržištu Unije, uz uslov da zadovoljavaju evropske standarde.

⁶ **Bijela knjiga** - dokument kojeg je sačinila Evropska komisija kao dio strategije za pripremu zemalja kandidata srednje i istočne Evrope za integraciju na unutarne tržište. To je, zapravo, vodič pridruženim zemljama srednje i istočne Evrope u procesu usklađivanja zakonodavstva u području uređenja unutarnjeg tržišta. Taj dokument obrađuje 23 za razliku od 31 poglavlja propisa sadržanih u *acquis communautaire*.

⁷ **CARDS** - Community Assistance for Reconstruction, Development and Stabilization - Pomoć zajednice za rekonstrukciju, razvoj i stabilizaciju. Uredbom Vijeća EC-a broj 2666 - 2000 od 15. 12. 2000. godine BiH je zajedno sa Hrvatskom, Srbijom i C. Gorom, Makedonijom i Albanijom postala korisnik programa pomoći CARDS.

potpisivati takozvane PECA⁸ protokole za pojedine grupe proizvoda⁹. Tada se unutarnje tržište Unije proširuje na teritoriju zemlje kandidata, samo za te grupe proizvoda. Na ovaj način uklanjaju se sve tehničke barijere trgovini tim proizvodima. Na kraju, potpisivanje PECA protokola privlači dodatne strane investicije. Bosna i Hercegovina još nije započela pregovore o potpisivanju PECA protokola sa Evropskom unijom.

Svaka firma koja želi uspostaviti proizvodnju za izvoz na unutarnje tržište Evropske unije traži pogodno okruženje:

1. Legislativa za proizvode ista kao u EU
2. Sistem ocjenjivanja usklađenosti priznat od Evropske unije (akreditiranje, standardizacija, mjeriteljstvo, ispitne i kalibracione laboratorije, inspeksijska i certifikaciona tijela)
3. Mogućnost korištenja trgovinskih preferencijala EU-a koje imaju zemlje kandidati
4. Kvalifikovani ljudski resursi, koji posjeduju znanja neophodna za rad na unutarnjem tržištu Unije

Da bi neka zemlja mogla krenuti u ove procese ona mora imati jedinstveni ekonomski prostor na svojoj teritoriji. Taj ekonomski prostor, odnosno unutarnje tržište zemlje, podrazumijeva:

1. Koherentan sistem legislative¹⁰
2. Jedinstveni administrativni prostor
3. Punu slobodu kretanja kapitala, roba, usluga i ljudi

Najbolja ilustracija da Bosna i Hercegovina nema koherentan sistem legislative jeste nemogućnost precizne analize privrednog stanja na nivou BiH. Bez obzira što je Visoki predstavnik nametnuo Zakon o statistici u BiH u oktobru 2002. godine, još uvijek nemamo pouzdanih statističkih podataka o nezaposlenosti, bruto društvenom proizvodu i drugim makroekonomskim podacima sa državnog nivoa. Razlog je jednostavan, metodologija statističke obrade po entitetima nije harmonizirana i usaglašena. Radi se o dva entitetska seta legislative koji su doneseni nezavisno jedan od drugoga. Problemi koji se javljaju u implementaciji zakona¹¹ koji su doneseni na državnom nivou najbolji su pokazatelj nepostojanja jedinstvenog administrativnog prostora. Zakon o konkurenciji BiH, Zakon o zaštiti potrošača BiH ili, recimo, Zakon o statistici

⁸ **Protokoli** (prilozi) Evropskom sporazumu o ocjenjivanju usklađenosti i prihvatanju industrijskih proizvoda.

⁹ **Niskonaponska oprema**, medicinska sredstva, lična zaštitna oprema...

¹⁰ **Svaki zakonski akt mora biti dio sistema zemlje**. Danas praktično postoje dva entitetska seta legislative koji su doneseni nezavisno jedan od drugoga.

¹¹ **Zakon o zaštiti potrošača**, Zakon o konkurenciji i intelektualnom vlasništvu, Zakon o statistici itd.

u BiH, jesu izglasani u oba doma Parlamentarne skupštine BiH u skladu sa evropskim standardima¹², ali njihova implementacija, zbog nepostojanja jedinstvenog administrativnog prostora ide jako teško. Nadalje, i pored preporuka prologodišnjeg Izvještaja o procesu stabilizacije i pridruivanja, država BiH i dalje nema pouzdanih sopstvenih izvora finansiranja pa nastavlja funkcionirati u zavisnosti od godišnje dogovorenih transfera iz entiteta. Da bi se ovaj problem riješio, promovisano je uvođenje PDV-a na državnom nivou te ujedinjenje carinskih uprava. Osim što bi ove dvije reforme promovisale uspostavu jedinstvenog bh. tržišta, PDV bi povećao efikasnost prikupljanja prihoda, spriječio korupciju, krijumčarenje i izbjegavanje plaćanja poreza. Ostaje da se vidi, kada i kako će se implementirati ove dvije važne reforme koje su, također, dio već pomenute Bijele knjige, poglavlja 10. 22. i 21.

Jedinstveni ekonomski prostor jedne države funkcionira po principima i zahtjevima EU i Svjetske trgovinske organizacije. Pri tome su najvažniji sistemi legislative za proizvode, sistemi ocjenjivanja usklađenosti i sistemi nadzora nad tržištem. Evropska unija, iako nije suverena država, ima svoj jedinstveni ekonomski prostor pod nazivom "unutarnje tržište Unije". Sve zemlje kandidati za članstvo u Uniji, također, su stvorile jedinstveni ekonomski prostor na svojim teritorijama. Načelom, Bosna i Hercegovina još uvijek ima najmanje dva ekonomska prostora umjesto jednog, kako je to uobičajeno u članicama EU-a. To je jedan od razloga zašto BiH ima poteškoće u izgradnji svojih kapaciteta za izvoz i što je priliv stranih investicija manji nego kod zemalja koje nemaju takvih problema. Mađarska je, naprimjer, izvezla u 2000. godini 10.4 milijarde eura industrijskih proizvoda sa CE¹³ znakom u Evropsku uniju. Mađarski uvoz iz Unije je bio svakako manji te je ostvaren značajan trgovinski suficit za ovu grupu proizvoda. U isto vrijeme BiH je izvezla samo dva miliona eura proizvoda sa CE znakom, što je bio izvoz jedne firme iz BiH.

Trenutno u BiH svega četiri firme imaju pravo isticanja CE znaka na svojim proizvodima. Do sada u Bosni i Hercegovini nije bilo odgovarajućih aktivnosti u cilju olakšavanja izvoza na unutarnje tržište Evropske unije, a pogotovo onih koje bi omogućile korištenje trgovinskih povlastica koje je EU već odobrila BiH. Industrijske proizvode za koje je obavezno ocjenjivanje usklađenosti mogu izvoziti samo one firme koje same proučavaju odgovarajuću legislativu Evropske unije i same prođu proceduru ocjenjivanja usklađenosti u inostranstvu. Na taj način BiH firme plaćaju visoke troškove ocjenjivanja, usluge ispitnih laboratorija, certifikacijskih i inspeksijskih tijela itd.

¹² **Konkurencija** - poglavlje 3. Bijele knjige, Politika zaštite potrošača - poglavlje 23. Bijele knjige.

¹³ **CE** oznaka znači da je proizvod siguran za ljude, domaću životinju, okolinu i da neće imati negativan uticaj na interese potrošača. To znači da je proizvod usklađen sa odgovarajućim propisima za tu vrstu proizvoda koji su na snazi u Evropskoj uniji.

U oblasti mesnih prera|evina, mlijeka i mlije-nih proizvoda, BiH, tako |er, ne zadovoljava evropske standarde. Naime, pomenuti proizvo|a-i ne testiraju, ne certificiraju svoje proizvode u inostranstvu, kako je to slu-aj sa industrijskim proizvodima koji trebaju da doka`u svoju sigurnost i uskla|enost sa evropskim standardima, nego dr`ava mora urediti tu problematiku kod ku|e kroz zakone¹⁴ i institucije¹⁵. Bez obzira {to je u funkciji Ured za veterinarstvo na nivou BiH, ostaje mnogo posla na usvajanju svih evropskih standarda iz ove problematike. Dok se to ne dogodi, nema izvoza mlije-nih i mesnih proizvoda na tr`i{te Unije. Kako bude napredovao proces pribli`avanja Evropskoj uniji zemalja iz okru`enja, tako |e i one postepeno zatvarati svoja tr`i{ta za sve bh. proizvode koji ne zadovoljavaju evropske standarde. U tome je izazov za vanjsku trgovinu BiH, s jedne strane i va`nost harmonizacije postoje|e legislative sa evropskom te izgradnja i ja-anje novih institucija, sa druge strane.

Ovi navodi potvr|eni su i u posljednjem Izvje{taju Evropske komisije o Procesu stabilizacije i pridru`ivanja BiH za 2003. godinu. U izvje{taju stoji da su: "zabrinjavaju|e pote{ko|e koje su se javile u sprovo|enju regionalnih sporazuma o slobodnoj trgovini. Ovi sporazumi sadr`e specifi-ne tehni-ke standarde Svjetske trgovinske organizacije, ali BiH ne posjeduje uvijek tehni-ku i / ili institucionalnu mogu}nost zadovoljavanja ovih standarda na nivou dr`ave. Kao i prije, BiH nije bila u mogu}nosti iskoristiti prednosti pogodnih uslova pristupa tr`i{tu EU po Mjerama za autonomnu trgovinu zbog toga {to institucije na dr`avnom nivou jo{ nisu u stanju da omogu|e isticanje CE oznake ili da potvrde uskla|enost sa zakonodavstvom EU o sigurnosti"¹⁶

Proces stabilizacije i pridru`ivanja * politi-ki i pravni okvir tranzicije dru{tva i ekonomskog razvoja

Proces stabilizacije i pridru`ivanja¹⁷ BiH sa Evropskom unijom poseban je izazov za njene vlasti. Prije uvo|enja ovog koncepta, cijeli region je posmatran kao cjelina, u okviru tzv. regionalnog pristupa svim zemljama zapadnog Balkana. Kratkim uvidom u dosada{nje aktivnosti da se zaklju-iti da je ekonomski aspekt pribli`avanja Evropskoj uniji od klju-nog zna-aja. Podsjetimo, od osamnaest

¹⁴ **Zakon o veterinarstvu** koji bi obuhvatio svih osam poglavlja evropske legislative koji tretiraju ova pitanja, Zakon o fitosanitarnoj za{titi, itd.

¹⁵ **Ured za veterinarstvo**, Savjet za veterinarska pitanja, Fitosanitarna komisija.

¹⁶ **Izvje{taj EC-a** o stabilizaciji i pridru`ivanju BiH sa EU, strana 20.

¹⁷ Ovaj koncept je prvi put predstavljen u dokumentu **Commission Communication** to the Council and European Parliament COM (99) 235 od 26. maja 1999. Pored BiH Proces obuhvata Hrvatsku, Srbiju i Crnu Goru, Makedoniju i Albaniju.

smjernica BiH Mape puta, {est¹⁸ ih se odnosilo na ekonomska pitanja. Nakon {to je Mapa puta su{tinski ispunjena u septembru pro{le godine, pristupilo se izradi Studije izvodljivosti kako bi otpo-eli pregovori za potpisivanje Sporazuma o stabilizaciji i pridru`ivanju sa EU¹⁹. Izrada Studije je u toku a njen zavr{etak se o-ekuje do kraja ove godine. Od 346 pitanja, koje je BiH dobila iz Brisela, 106 ih je upu}eno Ministarstvu vanjske trgovine i ekonomskih odnosa. U zav-
isnosti od kvaliteta ponu|enih odgovora te brzine provo|enja reformi u BiH zavisit }e i odgovor EC-a. Sve budu}e aktivnosti²⁰ na putu BiH ka Evropskoj uniji podrazumijevat }e izgradnju jedinstvenog ekonomskog prostora, uspostavljanja procedure za sertifikaciju, uklanjanje tehni-ke barijere trgovini, itd.

U ovom dugoro-nom procesu nema kratica, zemlja mora usvojiti sve evropske standarde kako bi se integrirala u njeno unutarnje tr`i{te, a kasnije postala punopravnim -lanom. Proces stabilizacije i pridru`ivanja, sa svim svojim koracima, nudi mogu}nost postepene harmonizacije bh. legislative sa evropskom. U ovom procesu pored deklarativne politi-ke podr{kice iz po-etka ovog teksta, neophodan je sna`an anga`man svih subjekata u dru{tvu, a prije svega dr`avnih organa u BiH, koji dono{enjem odgovaraju}e legislative i stvaranjem novih institucija na nivou dr`ave, stvaraju ambijent privrednim subjektima da ravnopravno konkuri}u na evropskom i drugim tr`i{tima.

¹⁸ **Ukidanje Zavoda za platni promet**, uspostavljanje dr`avnog trezora, uklanjanje svih trgovinskih prepreka izme|u entiteta, osnivanje jedinstvenog dr`avnog Instituta za standarde, usvajanje Zakona o za{titi potro{a-a, Zakona o konkurenciji, implementacija Zakona o direktnim stranim ulaganjima i usvajanje Zakona o restituciji.

¹⁹ **Ugovorni odnosi sa Unijom**, nakon potpisivanja zemlja postaje "potencijalni kandidat" za -lanstvo, Sporazum o stabilizaciji i pridru`ivanju, pored trgovinskih preferencijala EU-a i CARDS programa pomo}i, jedan od tri nose}a stuba Procesu stabilizacije i pridru`ivanja.

²⁰ **Pregovori o Sporazumu** o stabilizaciji i pridru`ivanju, parafiranje i potpisivanje Sporazuma, stupanje na snagu Privremenog sporazuma, njegova ratifikacija u Evropskom parlamentu, Parlamentarnoj skup{tini BiH i parlamentima zemalja -lanica EU-a te stupanje na snagu Sporazuma, implementacija obaveza, podno{enje zahtjeva za punopravno -lanstvo i na kraju pregovori po 31 poglavlju Acquis-a.

ZAKLJUČCI RADNE GRUPE I

Pripremio: Haris Abaspahić

Osam godina nakon potpisivanja Daytonskog sporazuma, bh. ekonomija se nalazi u nezavidnom položaju. Visoke stope ekonomskog rasta u poslijeratnim godinama, prvenstveno uzrokovane enormnim prilivom stranih donacija, u posljednjih par godina su ispod očekivanih i potrebnih da bi bh. ekonomiju doveli u stanje samoodrživosti u srednjem roku. Visoke stope nezaposlenosti, enorman spoljnotrgovinski deficit, nizak nivo stranih investicija samo su neki od indikatora stanja u bh. ekonomiji.

Razvoj srednjih i malih preduzeća, kao i privlačenje stranih investicija, dva su općeprihvaćena prioriteta u sferi bh. ekonomskog razvoja. Značajne prepreke koje stoje na putu razvoja srednjih i malih preduzeća te stvaranja pozitivne klime za privlačenje stranih investicija, upravo proizlaze iz daytonskog uređenja BiH.

Washingtonski sporazum, daytonski Ustav i regulative koje proizlaze iz ova dva dokumenta su umnogome onemogućili kreiranje i implementaciju ekonomskih politika u BiH. Skupo, komplikovano i neefikasno administrativno uređenje, ograničenost vođenja monetarne politike kroz funkcioniranje Centralne banke po principima monetarnog odbora (Currency Board-a), postojanje dva neusklađena fiskalna sistema, dva neharmonizirana pravna sistema, nedovoljan protok ljudi, proizvoda, kapitala i ideja, nepostojanje jedinstvenog ekonomskog sistema samo su neki od faktora koji ograničavaju brzinu ekonomskog razvoja u BiH.

Učesnici u radionici dijele mišljenje da ispunjavanje zahtjeva Evropske komisije u oblasti tržišne ekonomije, ujedno predstavlja i otklanjanje postojećih prepreka ekonomskom razvoju u BiH. Hipotetički smo poistovjetili proces ekonomskog razvoja sa pojmom ekonomskih integracija.

Integracija BiH u Evropsku Uniju predstavlja jedino pitanje oko kojeg postoji politički konsenzus u BiH. Zahtjevi koje treba ispuniti u procesu priključenja EU u velikoj mjeri tiču se uređenja ekonomskog prostora i neometanog funkcionisanja bh. ekonomije po tržišnim principima. Upravo nefunkcionisanje ekonomije na uređenim tržišnim osnovama (nepostojanje adekvatne zakonske regulative, te neimplementiranje postojećih zakona, kao i neharmoniziranost postojećih zakonskih regulativa međutim) predstavlja značajnu prepreku ostvarenju željenog nivoa ekonomskog razvoja u BiH.

Ekonomski razvoj i evropske integracije: primjer nejedinstvenog ekonomskog prostora u BiH

Podijeljen ekonomski prostor je direktna posljedica daytonskog uređenja BiH. Malo, nesređeno i podijeljeno tržište rezultira veoma lošim ambijentom za poslovanje te je kao takvo značajna prepreka privlačenju stranih investicija. Podijeljeno tržište dalje je veoma teško regulisati i uskladiti sa evropskim standardima te kao takvo predstavlja značajnu prepreku procesu evropskih integracija. Izgradnja jedinstvenog ekonomskog prostora i njegovo usklađivanje sa evropskim standardima omogućava zemljama kandidatima uključivanje u unutarnje tržište EU i prije punopravnog članstva.

Uređivanje ekonomskog prostora podrazumijeva i razvoj sistema legislative za proizvode, sisteme ocjenjivanja usklađenosti, kontrole, kvaliteta i sl. Bez postojanja spomenute legislative, nemoguće je plasirati domaće proizvode na EU tržište pa i tržišta zemalja kandidata. Nedostatak legislative za proizvode je direktna prepreka smanjenju bh. vanjskotrgovinskog deficita, a indirektno utječe na visoku stopu nezaposlenosti, nizak nivo stranih investicija te na ekonomski rast uopće.

Nepostojanje jedinstvenog i interno uređenog ekonomskog prostora u BiH je samo jedan od primjera koji dokazuju da daytonsko uređenje BiH ograničava ekonomski razvoj i usporava proces evropskih integracija. Sam proces evropskih integracija zahtjeva promjene Daytonskog sporazuma u sferi centralizacije određenih državnih funkcija²¹. Promjena daytonskog uređenja "na mala vrata" kroz proces evropskih integracija -ini veoma spor, komplikovan, ali siguran put ka kreiranju efikasnijeg administrativnog uređenja kao pretpostavke ekonomskom razvoju. Pitanje je da li je brzina kojom se mijenja daytonsko uređenje kroz proces evropskih integracija dovoljna da se preduhitri ekonomski i socijalni kolaps, koji je izvjestan ako se zadrže postojeći negativni trendovi u bh. ekonomiji.

Jasno definisana strategija ekonomskog razvoja, kao i strategija evropskih integracija, usvojena i implementirana od strane države i entitetskih vlada, ubrzala bi spomenute procese te tako indirektno utjecala na evoluciju daytonskog uređenja BiH.

Nedostatak domaće inicijative, te nemogućnost postizanja konsenzusa po pitanjima promjene daytonskog uređenja onemogućuju radikalne promjene

²¹ Evropska komisija pregovara samo sa državom BiH, a ne sa entitetima.

dr`avnog ure|enja demokratskim metodama te stvaranje efikasnog administrativnog ure|enja, koje ne}e predstavljati prepreku ekonomskom razvoju u BiH.

Zaklju~ak

- Zna-ajne prepreke postizanja `eljenog ekonomskog nivoa proizlaze iz daytonskog ure|enja BiH (nejedninstveno tr`i{te, dva pravna sistema, nemogu}nost vo|enja ekonomskih politika na dr`avnom nivou, skupo, komplikovano i neefikasno administrativno ure|enje i sl.)
- Ispunjavanje zahtjeva Evropske komisije u oblasti tr`i{ne ekonomije, ujedno predstavlja i otklanjanje postoje}ih prepreka ekonomskom razvoju u BiH. Integracija BiH u Evropsku uniju predstavlja jedino pitanje oko kojeg postoji politiki konsenzus u BiH. Upravo nefunkcionisanje ekonomije na ure|enim tr`i{nim osnovama (nepostojanje adekvatne zakonske regulative, neimplementacija postoje}ih zakona, kao i neharmoniziranost postoje}ih zakonskih regulativa me|u entitetima) predstavlja zna-ajnu prepreku ostvarenju `eljenog nivoa ekonomskog razvoja u BiH.
- Sam proces evropskih integracija podrazumijeva postepenu promjenu daytonskog ure|enja BiH. To je dosta spor, ali i najsigurniji proces promjene daytonskog ure|enja BiH. Pitanje je da li je brzina kojom se mijenja daytonsko ure|enje kroz proces evropskih integracija dovoljna da se preduhitri ekonomski i socijalni kolaps, koji je izvjestan, ako se zadr`e postoje}i negativni trendovi u bh. ekonomiji.
- Nedostatak doma}e inicijative te nemogu}nost postizanja konsenzusa po pitanjima promjene daytonskog ure|enja onemogu}uju radikalne promjene dr`avnog ure|enja demokratskim metodama te stvaranje efikasnog administrativnog ure|enja, koje ne}e predstavljati prepreku ekonomskom razvoju u BiH.

POLITI^KA PRAVA I DAYTONSKI USTAV U BiH / IZBORNI SISTEM

Ljudska/politi-ka prava u Ustavu Bosne i Hercegovine

Uvodni referat: doc. dr. Jasna Bak{i}-Mufti}

Ustav Bosne i Hercegovine je sastavni dio Op}eg okvirnog sporazuma za mir u Bosni i Hercegovini, (u daljem tekstu Daytonski mirovni sporazum) dogovoren u Dayton-u 21. novembra 1995. a potpisan u Parizu 14. decembra 1995. godine. Op}i okvirni sporazum za mir sadr` 11 aneksa²² od kojih se Aneks 4 direktno odnosi na Ustav, a Aneks 3 (izbori) Aneks 6 (ljudska prava) i Aneks 7 (izbjegla i raseljena lica) reguliraju ustavnu materiju.

Namjerno je izbjegnuto razmatranje pitanja koja su otvorena na~inom dono{enja Ustava²³, jer prevazilaze okvire ovog teksta. Ostaje konstatacija da Op}i okvirni sporazum kao i Ustav, predstavljaju izraz politi-kog komprisa postignutog sa ciljem zaustavljanja rata, {to je vidljivo u nizu ustavnih rje{enja.

²² **Annex 1A:** Military Aspects of Peace Settlement and Appandices to Annex 1A

- Vojni aspekt mirovnog sporazuma

Annex 1B: Regional Stabilization - Regionalna stabilnost

Annex 2: Inter-Entity Boundary Line and Related Issues - Me|uentitetske linije razgrani-enja

Annex 3: Elections - Izbori

Annex 4: Constitution - Ustav

Annex 5: Arbitration - Arbitra'a

Annex 6: Human Rights - Ljudska prava

Annex 7: Refugees and Displaced Persons - Izbjegllice i raseljena lica

Annex 8: Commission To Preserve National Monument - Komisiju za za{titu nacionalnih spomenika

Annex 9: Establishment of Bosnia and Herzegovina Public Corporations - Ustanovljavanje javnih institucija Bosne i Hercegovine

Annex 10: Civilian Implementation of Peace Settlement - Civilna implementacija mirovnog sporazuma

Annex 11. International Police Task Force - Me|unarodne policijske snage

²³ "Ustav koji je presedan u teoriji i praksi ustavnog prava, imaju}i u vidu da je Ustav ekskluzivno unutarnji pravni akt u materijalnom, formalnom i proceduralnom pogledu. Ustav Bosne i Hercegovine je sastavni dio Op}eg okvirnog sporazuma za mir u Bosni i Hercegovini (u daljem tekstu Daytonski sporazum) i to Aneks 4 ovog sporazuma. Kao takav Ustav Bosne i Hercegovine nije unutarnji ve} me|unarodnopravni akt, jer je sastavni dio vi{estranog me|unarodnog ugovora. U kontekstu detekcije izvora ustavnog prava u Bosni i Hercegovini, -ini se va' nim ista}i jedno vrlo interesantno i prili-no uvjerljivo mi{ljenje, koje sa pozicija me|unarodnog javnog prava za Daytonski sporazum ka'e da je vrlo neobi-an dokument te da ga kao takvog sud ili arbitra'a, ukoliko bi poku{ali da ga ocjenjuju, tuma-e, utvr|uju njegovu pravnu prirodu ili da ga klasificiraju gledano iz ugla Be-ke konvencije o pravu ugovora, uop}e ne bi mogli svrstati u me|unarodne ugovore. Ovo zbog na-ina potpisivanja i obavezivanja. Potpisali su ga predstavnici tri dr'ave - Republike Bosne i Hercegovine, Savezne Republike Jugoslavije i Republike Hrvatske, i to ne ad referendum, odnosno pod uvjetom da ga naknadno prihvate i ratificiraju zakonodavna tijela dr'ava potpisnica, kona-no i neopozivo. Taj sporazum, odnosno neke njegove anekse, potpisali su zajedno predstavnici pomenutih dr'ava i predstavnici entiteta Bosne i Hercegovine. Entiteti nisu subjekt me|unarodnog prava, a prihvatili su obaveze me|unarodnog karaktera , kao da su dr'ave, a nisu. Dalje se tvrdi, da je nominalno suverenoj dr'avi -lanici Ujedinjenih nacija "nametnut" Ustav, te da su potpisnici Daytonskog sporazuma taj sporazum potpisali pod prinudom". - Dr. Nurko Pobri): "Ustavno pravo" str. 19. Izdanje "Slovo", Mostar 2000 godine.

Me|utim, kao {to je jedan od ciljeva rata protiv Bosne i Hercegovine bio razgradnja dr`ave Bosne i Hercegovine i nasilno kidanje njenog dru{tvenog, politi-kog, kulturnog i etni-kog tkiva zlo-inom, genocidom, masovnim kr{enjima ljudskih prava, tako je i Op}i okvirni sporazum pro`et idejom da su upravo demokracija i ljudska prava faktori izgradnje bosanske dr`ave, pretpostavka obnove tog pokidanog tkiva i mehanizam koji vodi dr`avu Bosnu i Hercegovinu u evropske integracije.

Preambula Ustava Bosne i Hercegovine i mogu}nosti njenog ~itanja

Ta tendencija vidljiva je u samoj preambuli Ustava²⁴, koja po-inje slijedom filozofske potke ljudskih prava o po{tovanju ljudskog dostojanstva, slobode i jednakosti. S obzirom da se u preambuli Ustava poziva na ciljeve i na-ela Povelje Ujedinjenih naroda i na Univerzalnu Deklaraciju mogu}e je povla-enje odre|enih paralela.

- "Ustavna slika Bosne i Hercegovine izgleda vrlo neobi-no. Nije potrebna neka dublja analiza da se uo-i da se ta slika ne mo`e podvesti pod kriterije onog {to se u pravnoj dr`avi naziva "Ustav" i "ustavnost". Nesumnjivo je da to ima vrlo zna-ajne i dalekose`ne posljedice u odnosu na bi}e dr`ave, cjelokupni pravni poredak, slobode i prava gra|ana, njihovu pravnu za{titu i ukupne dru{tvne i dr`avnopravne tokove koji slijede u Bosni i Hercegovini. Ustav Bosne i Hercegovine donesen je od tri organa - {efa dr`ave Bosne i Hercegovine, Srbije i Hrvatske, a nijedan od njih nije ustavotvorni organ u svojoj zemlji. Donesen je saglasnom izjavom volja ovih triju organa, tj. predstavlja ugovor (odnosno sporazum) a nije vr{ena ratifikacija tog ugovora u parlamentima odnosnih dr`ava. Stoga, po{to su ovi organi predstavljali dr`ave (predsjednik Srbije predstavljao je SR Jugoslaviju) i zaklju-ivali sporazume u ime ovih dra`ava, o-igledno je da njihova volja (ugovor) nema osnov u pravnim porecima tih dr`ava, kao {to se ta zajedni-ka volja, posmatrana sa aspekta me|unarodnog pravnog poretka, ne mo`e smatrati legalnom, jer je vi{e nego o-igledno da ovaj poredak ne mo`e stati iza neke volje izme|u dr`ava koje je imati za predmet Ustav jedne od tih zemalja. Tako su povrije|ena najmanje dva osnovna prava koje me|unarodni poredak garantuje svakoj dr`avi u svijetu - suverenitet i (suverenu) jednakost izme|u dr`ava" - Dr. Ibrahim Festi): "Neka pitanja dr`avnosti "Bosne i Hercegovine", referat podnesen na nau-nom skupu "Dr`avnost Bosne i Hercegovine i Daytonski mirovni sporazum" odr`anom 10. aprila 1998. godine u organizaciji Pravnog fakulteta Univerziteta u Sarajevu, Ameri-kog udru`enja pravnika / Pravna inicijativa za Centralnu i Isto-nu Evropu - Ured u Sarajevu i Pravnog Centra Fonda otvoreno dru{tvo BiH, a objavljen u istoimenoj publikaciji na str. 138. - "Daytonski Ustav je kabinetski proizvod tri politi-ke partije, zapadnoevropske i ameri-ke diplomacije. Njegovo se dono(enje zbog toga ne mo`e dovesti u vezu sa idejom o dr`avnom ure|enju "odozdo". Odmah na po-etku treba, dakle, odbaciti mogu}nost da se Aneks 4 kao konstitutivni pravni akt "narodnog samoodre|enja" smatra Ustavom" - Edin [ar-evi]; "Ustav i politika" str. 122., Sarajevo 1997.

²⁴ "Oslanjaju}i se na po{tovanje ljudskog dostojanstva, slobode i jednakosti, **Posve}eni** miru, pravdi toleranciji i pomirenju, **Ubijeni** da demokratski organi vlasti i prvi-ne procedure najbolje stvaraju miroljubive odnose unutar pluralisti-kog dru{tva. **U`elji** da podstaknu op}e blagostanje i ekonomski razvoj kroz za{titu privatnog vlasni{tva i unaprije|enja tr`i{ne privrede, **Vo}eni ciljevima** i na-elima Povelje Ujedinjenih naroda, **Opredjeljeni** za suverenitet, teritorijalni integritet i politi-ku nezavisnost Bosne i Hercegovine u skladu sa me|unarodnim pravom, **Odlu-ni da** osiguraju puno po{tovanje me|unarodnog humanitarnog prava, **Inspirisani** Univerzalnom Deklaracijom o ljudskim pravima, Me|unarodnim paktovima o gra|anskim i politi-kim pravima, odnosno o ekonomskim, socijalnim i kulturnim pravima, i Deklaracijom o pravima lica koja pripadaju nacionalnim ili etni-kim, vjerskim i jezi-kim manjinama, kao i drugim instrumentima ljudskih prava, **Podsje}aju}i se** na Osnovna na-ela usagla}ena u @enevi 8.9.1995. godine i u Njujorku 26.9.1995. godine,

Bo(njaci, Hrvati i Srbi, kao konstitutivni narodi (u zajednici s ostalim) i gra|ani Bosne i Hercegovine ovim utvr|uju Ustav Bosne i Hercegovine: - izdanje; Ustav Bosne i Hercegovine - prijevod na bosanski jezik, Federalno ministarstvo pravde, Sarajevo 1977.

Povelja Ujedinjenih naroda, koja je ustanovila odnose među državama na globalnoj razini, Univerzalna Deklaracija, koja je označila izlazak ljudskih prava na međunarodnu scenu, odražavaju iskustva fašizma i Drugog svjetskog rata. Fašizam je odrednica sredine dvadesetog stoljeća, direktno povezan sa Drugim svjetskim ratom, uništavanjem ljudi na osnovu etničke pripadnosti, masovnim egzodusom izbjeglica, progonima na osnovu idejnog, političkog, vjerskog ubježenja. Svi ovi fenomeni izvedeni su iz ideologije totalitarizma, militarizma i rasističkih teorija razvijanih u drugoj polovini devetnaestog i prvoj polovini dvadesetog stoljeća²⁵. Ako se zanemare individualne razlike kod zastupnika rasnih teorija, kao zajedničke karakteristike mogu se navesti izrazita netrpeljivost prema građanskoj demokraciji sa jedne, i liberalnoj političkoj filozofiji sa druge strane. Politički liberalizam je osporavan najviše u domenu u kojem priznaje slobodu i jednakost građana. Rasne teorije su promovirale vjerovanje u postojanje viših i nižih tipova rase. Bijela rasa je određena kao superiorna u odnosu na bijelu i crnu rasu. Slijedom te logike i kultura koju je stvorila bijela rasa je superiorna kultura (evropska kultura) u odnosu na kulturu i civilizaciju koju su stvarale crna i bijela rasa. Rasne teorije predviđaju kraj povijesti u kojoj je iznevjerenjena kulturna i civilizacijska misija arijevske rase, koja je i sama ugrožena rasnim mijenjanjem. Ispunjenje povijesne misije arijevske rase podrazumijeva nastanak novog, čistog, arijevskog tipa kroz selekciju, čišćenje inferiorne balasti u društvu svim raspoloživim sredstvima; od političkih sredstava do rata, od korištenja građanskog i krivičnog zakona do upotrebe religije.

Historijsko iskustvo svjedoči da je od ovih teorija bio kratak put do ratnog pohoda arijevske rase u ostvarenju povijesne misije, da su ideje čišćenja i uklanjanja inferiornih otvorile put koncentracionim logorima, da su ideje o superiornosti postavile zahtjev za gospodarenjem, da je služba naciji završena sa poricanjem individualizma a trijumf pobjedonosne sile bio povezan sa milionima mrtvih, prognanih i unesrećenih.

Zato Katalog ljudskih prava koji je ustanovljen dokumentima Ujedinjenih naroda uzima pojam čovjeka u generičkom značenju, oslobođenom od službenog svojstva koja se odnose na rasu, pol, etničku pripadnost, religiju, političko opredjeljenje, jezik, imovno, socijalno stanje, status i na toj razini priznaje urođeno dostojanstvo svakog čovjeka i jednakost među ljudima. Fašizam je u temelju, ideološkim postavkama na kojima se temeljio i posljedicama fašističke prakse, poništio i osporio ljudsko dostojanstvo. Kod pristalica fašizma dostojanstvo je osporeno njihovim svođenjem na mašine za slijepo izvršavanje volje u cilju realiziranja misije arijevske rase, a kod čestitih dostojanstvo je poništeno svođenjem na bezvrijednu balast, koje se treba fizički osloboditi.

Filozofski koncept Kataloga ljudskih prava promovira dostojanstvo ljudskosti kao urođeno svojstva, koje treba biti priznato i zaštićeno u svim uslovima

²⁵ Misli se na rasne teorije Artura de Gobina, Njustona Chamberlena, V.de Lapu' a, Ota Ramona i Karla Persona.

i pod svim okolnostima. Tako -ovjeku pripada ne samo pravo na život, već i pravo na dostojanstven život u kojem je moći, u slobodi od straha, bijede, egzistencijalne nesigurnosti, u miru, realizirati punoju svoje egzistencije. Dostojanstvo treba biti o-uvano u svim odnosima organa vlasti i jedinke.

Ljudsko dostojanstvo se (titi zabranom diskriminacije po bilo kojem od navedenih osnova, zabranom torture, nehumanog i ponižavajućeg postupanja i kažnjavanja, zabranom ropstva i odnosa sli-nih ropstvu, trgovine robljem, pravima u krivi-nom postupku, minimalnim standardom o ponajanj sa zatvorenici-ma, skupom pravila o ljekarskoj etici, odnosno, -itav koncept Kataloga ljudskih prava protkan je idejom o za(titi dostojanstva li-nosti. Priznavanje dostojanstva svakoj ljudskoj jedinki je filozofski izraz humaniziranja odnosa među ljudima sa jedne, i odnosa jedinka-drava sa druge strane.

Ako se zadržimo na zna-enju slobode, onda se može reći da je cijela historija filozofije pro`eta idejom o slobodi, kao najvi{oj ljudskoj vrijednosti. Ideja slobode je mjera svih stvari. Od gr-ke filozofije pa do filozofije savremenog doba, gotovo nijedna filozofska i politi-ka teorija nije bila bez odre|enja poimanja slobode.

Ideja slobode našla je svoj filozofski izraz u konceptu Kataloga ljudskih prava, kao pojam koji obuhvata -ovjeka, narod i dr`ave. Katalog ljudskih prava i temeljnih sloboda, (iroko zahvata ovo veoma suptilno i osjetljivo mjesto ljudske egzistencije. Ideja slobodne jedinke, pa potom slobodnog naroda, na direktan ili indirektan na-in dotaknuta je gotovo svim međunarodnim dokumentima, koji tretiraju materiju ljudskih prava, ponekad kao upu}ivanje na direktnu za(titu a ponekad kao preduslov za realiziranje drugih prava.

Slobodna jedinka u Katalogu ljudskih prava posjeduje: li-nu slobodu (koja može biti ograni-ena samo u izuzetnim slu-ajevima na osnovu zakona), slobodu kretanja i izbora mjesta stanovanja, slobodu napu{tanja svake zemlje uklju-uju}i i vlastitu zemlju, slobodu govora, misli, opredjeljenja, vjeroispovjести, slobodu zaklju-ivanja braka, slobodnu intimu, odnosno slobodu od neovla{tenog uplitanja u privatni život, slobodu udru}ivanja i mirnog okupljanja, politi-ke slobode (slobodu politi-kog opredjeljenja, slobodu biranja politi-kih zastupnika i slobodu da bude izabran u politi-ka izborna tijela), slobodu od ropstva, nehumanog i ne-ovje-nog postupanja, slobodu od socijalne i ekonomske bijede, intelektualne i umjetni-ke slobode, slobodu u-estvovanja u kulturnom životu, slobodu da sam odlu-uje o svom životu.

Sloboda naroda izra`ena je u slobodi da samostalno i bez strane dominacije odlu-uje o obliku politi-kog i ekonomskog ure|enja, slobodnog kori{tenja prirodnih i ekonomskih resursa, slobodu vlastitog kulturnog izraza, slobodnog i ravnopravnog u-e}a u međunarodnoj razmjeni i u`ivanju nau-nih, umjetni-kih i kulturnih dobara -ovje-anstva.

Neke od ovih sloboda nadilaze pravni okvir ljudskih prava, ali u filozofskoj dimenziji ukupnog koncepta Kataloga ljudskih prava pripada im zna-ajno

mjesto. Ako ne posjeduju pravnu mogućnost realizacije i zaštite pripada im snažan humanistički i etički naboje. Moralnom snagom, pojačanim autoritetom međunarodne zajednice mogu vršiti pritisak sa ciljem pozitivne promjene određenog stanja.

Ustav Bosne i Hercegovine donesen je u sklopu napora za zaustavljanje rata koji po elementima genocida, zločina, masovnih kršenja ljudskih prava, egzodusa izbjeglica ima sličnosti sa Drugim svjetskim ratom. U preambuli Ustava Bosne i Hercegovine pominju se pojmovi ljudskog dostojanstva, slobode, jednakosti, mira, pravde, tolerancije, pomirenja. Za državu se veću demokratski organi vlasti, pravi načina procedura, miroljubivi odnosi unutar pluralističkog društva, opće blagostanje, ekonomski razvoj, suverenitet, teritorijalni integritet i politička nezavisnost. A od međunarodnih dokumenata poziva se na Povelju UN, Univerzalnu Deklaraciju, Međunarodne paktove o građanskim i političkim, odnosno ekonomskim, socijalnim i kulturnim pravima i na Deklaraciju o pravima lica koja pripadaju nacionalnim ili etničkim, vjerskim i jezičkim manjinama, kao i drugim instrumentima ljudskih prava.

Iz preambule Ustava, iz instrumenata o ljudskim pravima na koje se poziva, iz pojmova koje treba razumijevati u punoći njihovog značenja, može se pročitati namjera stvaranja pravnog okvira za državu koja ima suverenitet, teritorijalni integritet i političku nezavisnost, koja počinje na demokratskim principima i u kojoj se ljudska prava - građanska, politička, ekonomska, kulturna i socijalna - trebaju poštovati.

Politička prava

U Katalogu ljudskih prava koja nabroja Ustav Bosne i Hercegovine nije data potpuna lista političkih prava. Međutim, s obzirom na međunarodni instrumentarij, koji je ugrađen u Ustav BiH, lista bi izgledala:

- prava koja uključuju slobodu mišljenja, savjesti i vjere²⁶

²⁶ **Univerzalna Deklaracija:** -I. 18 "Svako ima pravo na slobodu misli, savjesti i vjere; ovo pravo uključuje slobodu promjene vjere ili uvjerenja i slobodu da -ovjek bilo sam, bilo u zajednici sa drugima, javno ili privatno, manifestuje svoju vjeru ili uvjerenje putem nastave, ispovjedanjem vjere ili obavljanjem obreda" MPGPP; -I. 18 "Svako ima pravo na slobodu misli, savjesti i vjere. To pravo uključuje slobodu da se ima ili prihvati neka vjera ili uvjerenje po vlastitom izboru, kao i slobodu da pojedinačno ili u zajednici sa drugima, javno ili privatno, očituje svoju vjeru ili uvjerenje bogoslužnjem, obredima, praktičnim vršenjem ili učenjem. 2. Niko se ne smije podvrći prinudi koja bi mogla umanjiti njegovu slobodu da ima ili prihvati vjeru ili vjerovanje po svom izboru"

Evropska konvencija: -I.9. st. 1. "Svako ima pravo na slobodu misli, savjesti vjere; to pravo uključuje slobodu da se promijeni vjera ili uvjerenje i slobodu da se pojedinačno ili u zajednici sa drugima, javno ili privatno, ispoljava svoja vjera ili uvjerenje bogoslužnjem, naučavanjem, praktičnim vršenjem i svetkovanjem".

- slobodu izražavanja i {tampe²⁷
- aktivno i pasivno biračko pravo²⁸
- pravo na demokratske izbore i političke predstavnike
- sva navedena prava imaju se razumijevati u skladu s načelom jednakosti, odnosno, zabrane diskriminacije kako je, u skladu sa međunarodnim instrumentarijom iz oblasti ljudskih prava²⁹, definirano članom II, 4. Ustava BiH. "Učivanje prava i sloboda predviđenih u ovom članu ili u međunarodnim sporazumima navedenim u Aneksu i ovog Ustava, osigurano je svim licima u Bosni i Hercegovini bez diskriminacije po bilo kojem osnovu, kao što su: pol, rasa, boja, jezik, vjera, političko i drugo mišljenje, nacionalno ili socijalno porijeklo,

²⁷ **Univerzalna Deklaracija**; -I. 19 "Svako ima pravo na slobodu mišljenja i izražavanja, a to obuhvata i pravo da ne bude uznemiravan zbog svog mišljenja kao i pravo da traži, prima ili širi informacije bilo kojim sredstvom i bez obzira na granice."

MPGPP; -I. 19 "Niko ne može biti uznemiravan zbog svog vlastitog mišljenja. Svako ima pravo na slobodu izražavanja: to pravo obuhvata slobodu da traži, dobija i širi informacije i misli svake vrste, bez obzira na granice, usmeno ili pismeno, {tampom ili u umjetni-kom obliku ili bilo kojim drugim sredstvom po vlastitom izboru."

Evropska konvencija; -I.10. "Svako ima pravo na slobodu izražavanja. To pravo obuhvata i slobodu na mišljenje, te na dobijanje i širenje informacija i širenje ideja bez mijenjanja javne vlasti i bez obzira na granice. Ovaj član ne sprječava države u podvrgavanju preduzeća za radiodifuziju, televiziju i kinematografiju režimu izdavanja dozvola."

²⁸ **Aktivno i pasivno biračko pravo povezani su sa pravom na slobodno ispoljavanje svoje političke volje na povremenim, demokratskim, općtim, jednakim i tajnim izborima.**

Univerzalna Deklaracija; -I. 21. st. 1. "Svako ima pravo sudjelovati u javnim poslovima svoje zemlje, neposredno ili preko slobodno izabраниh predstavnika. Svako ima pravo da na ravnopravnoj osnovi stupa u javnu službu u svojoj zemlji. Volja naroda je osnova državne vlasti; ova volja se treba izražavati na povremenim i slobodnim izborima, koji se provode pod općim i jednakim pravom glasa, tajnim glasanjem ili adekvatnim postupkom, kojim se osigurava sloboda glasanja."

MPGPP; -I.25. "Svaki građanin treba da ima pravo i mogućnost da bez ikakvih razlika navedenih u -I.2. i bez nerazumnih ograničenja:

a) sudjeluje u vođenju javnih poslova, direktno ili preko slobodno izabраниh predstavnika

b) bira i bude biran na fer, pravednim, povremenim izborima sa općim i jednakim pravom glasa i tajnim glasanjem, koji osigurava slobodno izražavanje volje birača

c) ima pristup javnim službama svoje zemlje uz uslove opće jednakosti

Evropska konvencija, Protokol 1. -I.3. "Visoke stranke ugovornice se obavezuju održati slobodne izbore, tajnim glasanjem, u razumnim intervalima, po izboru zakonodavca, pod uslovima koji će osigurati slobodno izražavanje mišljenja ljudi."

²⁹ **Univerzalna Deklaracija** -I.1. "Sva ljudska bića ravnopravno su slobodna i jednaka u dostojanstvu i pravima. Ona su obdarena razumom i svijesću i treba da jedni prema drugima postupaju u duhu bratstva."

^I. 2. "Svakome pripadaju sva prava i slobode proglašene u ovoj Deklaraciji bez ikakvih razlika u pogledu rase, boje, pola, jezika, vjere, političkog ili drugog mišljenja, nacionalnog ili drugog porijekla, imovine, rođenja ili drugih okolnosti.

Dalje, neje se praviti nikakva razlika na osnovu političkog, pravnog ili međunarodnog statusa zemlje ili teritorija kojoj neko lice pripada, bilo da je ona nerazvijena, pod starateljstvom, nesamoupravna ili da joj je suverenost na ma koji način ograničena."

MPGPP; Uvod "Priznaju se da, u skladu sa Univerzalnom Deklaracijom o pravima čovjeka, ideal slobodnih ljudi, koji uključuju građansku i političku slobodu i oslobođeni su straha i nestašice, može postojati samo ako su stvoreni uslovi prema kojima svako može uživati svoja građanska i politička prava jednako kao i svoja ekonomska, socijalna i kulturna prava."

^I. 26. "Sva su lica jednaka pred zakonom i imaju pravo bez ikakve diskriminacije na jednaku zaštitu zakona. Zakon treba da zabrani svaku diskriminaciju i da garantuje svim licima jednaku i djelotvornu zaštitu protiv diskriminacije na osnovu bilo kojeg razloga kao što su: rasa, boja kože, pol, jezik, vjera, političko ili drugo mišljenje, nacionalno ili socijalno porijeklo, imovina, rod ili bilo koja druga okolnost."

Evropska konvencija -I. 14. "Učivanje prava i sloboda priznatih u ovoj Deklaraciji mora se osigurati bez diskriminacije po bilo kojoj osnovi kao što su: pol, rasa, boja kože, jezik, vjera, političko ili drugo mišljenje, nacionalno ili socijalno porijeklo, pripadnost nacionalnoj manjini, bogatstvo, rod ili bilo koja druga okolnost."

povezanost sa nacionalnom manjinom, imovina, ro|enje ili drugi status".³⁰

Na ovaj na-in je u Ustavu Bosne i Hercegovine potvr|en stav o me|usobnoj uslovljenosti demokratije i ljudskih prava; odnos u kojem se demokratija pojavljuje kao jedno od ljudskih prava a istovremeno samo demokratska dr`ava mo`e osigurati po{tovanje ljudskih prava. Narodu, kojeg -ine svi dr`avljeni bez obzira na navedne razlike, kao nosiocu suvereniteta pripada pravo na politi-ko samoopredjeljenje, na slobodni izraz politi-ke volje. Sa idejom suvereniteta i idejom slobodno izra`ene politi-ke volje direktno se povezuje pojam demokracije kao oblika politi-ke vlasti u kojem narod posjeduje stvarnu mogu}nost za nesmetan izraz svoje slobodne politi-ke volje, koja je neizostavan dio ljudskih prava. Politi-ka volja ve}ine gra|ana ostvaruje se u parlamentu kojem pripada zakonodavna vlast, zato se kao klasi-na gra|anska politi-ka prava javljaju aktivno i pasivno bira-ko, odnosno pravo na slobodno izra`avanje svoje politi-ke volje na povremenim, demokratskim, op{tim, jednakim i tajnim izborima. To zna-i da gra|ani pod uslovima op}e jednakosti, odnosno, bez obzira na etni-ku, religijsku, polnu pripadnost, na politi-ko ili drugo opredjeljenje, odre|enje ili status, imaju pravo da biraju i budu birani u izborna politi-ka tijela. Politi-ka prava gra|anima garantiraju mogu}nost da bez ikakve diskriminacije u-estvuju u upravljanju javnim poslovima, bilo neposredno ili posredno preko slobodno izabраниh predstavnika i da budu primljeni pod op{tim i jednakim uslovima u javne slu`be.

Aneks 3 Op}eg okvirnog sporazuma za mir u Bosni i Hercegovini isti-e namjeru da slobodni, fer i demokratski izbori budu osnova koja }e obezbijediti osiguranje demokratskih ciljeva u saglasnosti sa relevantnim dokumentima Organizacije za sigurnost i saradnju u Evropi (OSCE) u Bosni i Hercegovini, Federaciji Bosne i Hercegovine i Republici Srpskoj. U tom smislu pred stranama (BiH, FBiH, RS) stoji obaveza osiguravanja da se slobodni, fer i demokratski izbori odr`avaju u politi-ki neutralnom okru`enju, da za{tite pravo glasa u tajnosti bez straha ili pritisaka, da osiguraju slobodu {tampe, da dozvole i osna`e slobodu udru`ivanja (uklju-uju}i politi-ke partije) i osiguraju slobodu kretanja. Strane se tako|e obavezuju da primjene dokument Drugog sastanka Konferencije o sigurnosti i saradnji u Evropi odr`anog u Kopenhagenu 1990., i to paragrafe 7. i 8. ovog dokumenta koji utvr|uju slijede}e:³¹

(7) Da bi obezbijedile da volja naroda bude osnova autoriteta vlasti, dr`ave u-esnice }e:

(7.1) odr`avati slobodne izbore u razumnim intervalima, kako je to odre|eno zakonom,

³⁰ Ustav BiH, -I. II, st.4 Nediskriminacija, Federalno ministarstvo pravde, Sarajevo 1997.

³¹ Annex 3 Agreement on Elections, Uvod i -I. 1. St.1. I st.3., prema engleskoj verziji koju je objavio OHR: The General Framework Agreement: Annex 3, strana na Internetu <http://www.ohr.int/gfa/gfa-an3.htm>-15.4.01 Zavr{ni dokument sa sastanka Konferencije o ljudskoj dimenziji KEBSA u Kopenhagenu, paragraf 7 i 8, Prava -oveka, zbornik dokumenata, Prometaj, Beograd 1991.

- (7.2) dozvoliti da sva mjesta u najmanje jednom domu nacionalnog zakonodavnog tijela podlije`u slobodnom izboru glasanjem naroda
- (7.3) garantovati op`e i jednako pravo glasa svim punoljetnim gra|anima
- (7.4) obezbijediti tajno glasanje, odnosno glasanje na osnovu odgovaraju}eg postupka slobodnog glasanja, kao i da se glasovi prebrojavaju i po{teno saop{tavaju a zvani-ni rezultati objavljuju,
- (7.5) po{tovati pravo gra|ana da budu birani na politi-ke, odnosno javne funkcije, pojedina-no ili kao predstavnici politi-kih stranaka ili organizacija, bez diskriminacije,
- (7.6) po{tovati pravo pojedinca i grupa da potpuno slobodno osnivaju svoje politi-ke stranke odnosno druge politi-ke organizacije kao i da takvim politi-kim strankama ili organizacijama obezbe|uje neophodne pravne garancije kako bi se one mogle me|usobno nadmetati na bazi ravnopravnog tretmana pred zakonom i vlastima,
- (7.7) obezbijediti da zakon i javna politika funkcioniu tako da omogu}avaju da se politi-ke kampanje vode u korektnoj i slobodnoj atmosferi u kojoj nikakve administrativne mjere, nasilje ili zastra{ivanje ne sprije-avaju stranke i kandidate da slobodno iznose svoje stavove i kvalifikacije, odnosno ne omogu}avaju bira-ima da se upoznaju sa njihovim stavovima i raspravljaju o njima, da slobodno glasaju bez straha od odmazde,
- (7.8) obezbijediti da nikakve pravne, odnosno, administrativne prepreke ne stoje na putu nesmetanog pristupa sredstvima javnog informisanja na nediskriminatorskoj osnovi u odnosu na sve politi-ke grupacije i pojedince koji `ele da u-estvuju u izbornom procesu,
- (7.9) obezbijediti da se kandidati koji osiguraju neophodan broj glasova propisan zakonom propisno uvedu u du`nost i obavljaju je do isteka mandata odnosno njenog okon-anja na na-in koji je regulisan zakonom a u skladu sa demokratskom parlamentarnom ustavnom procedurom.
- (8) Dr`ave u-esnice smataju da prisustvo posmatra-a, kako stranih tako i doma}ih, mo`e unaprijediti izborni proces u dr`avama u kojima se sprovode izbori. One, stoga, pozivaju iz svih drugih dr`ava, -lanica KEBS-a kao i odgovaraju}e privatne institucije i organizacije, koje to eventualno `ele, da prate tok nacionalnih izbora u mjeri u kojoj to zakon dozvoljava. One }e, tako |er, nastojati da olak{aju sli-an pristup izbornom postupku koji se vodi na ni`em nivou od nacionalnog. Takvi posmatra-i bi se obavezali da se ne mije}aju u izborni postupak.**

Iz svega navedenog proizlazi da politi-ka prava i slobode pripadaju gra|aninu, dr`avljaninu Bosne i Hercegovine, bez obzira u kojem njenom entitu `ivi pod jednakim uslovima i bez diskriminacije po bilo kojem osnovu. Dr`ava i oba njena entiteta imaju obavezu da omogu}e u`ivanje i za{titu ovih prava.

Ove odredbe su u koliziji sa ustavnim odredbama koje se odnose na -lan IV

Stav 1 (odnosi se na izbor poslanika u Dom naroda) i na -lan V stav 1 (odnose se na izbor -lanova Predsjedni{tva). Na osnovu ustavne odredbe "Dom naroda se sastoji od 15 delegata od kojih su dvije tre}ine iz Federacije (uklju-uju}i 5 Hrvata i 5 Bo{njaka) i jedna tre}ina iz Republike Srpske (5 Srba)". Odre|uju}i na ovaj na-in strukturu Doma naroda jasno je da su Hrvati, Bo{njaci i Srbi favorizirane etni-ke skupine a da pripadnici ostalih etni-kih grupa nemaju {ansu da budu politi-ki predstavljeni i da su na taj na-in diskriminirani po osnovu etni-ke pripadnosti. Opisuju}i proceduru rada oba doma parlamenta,³² Predstavni-kog doma i Doma naroda, Ustav priznaje jedino bo{nja-ke, hrvatske i srpske etni-ke interese kao legitimne politi-ke interese, dok su svi drugi isklju-eni.

Slijede}a diskriminacija, sada -lanova unutar iste etni-ke grupe, je teritorijalna pripadnost. Ako je u pitanju za{tita etni-kih interesa, a u skladu sa me|unarodnim dokumentima, ona se odnosi na za{titu jezika, pisma, kulture i religije, onda je pretpostavka da je taj interes isti bez obzira na entitet u kojem `ivi pripadnik etni-ke grupe. Postavlja se pitanje za{to su privilegovani etni-ki Srbi iz Republike Srpske u odnosu na Srbe iz Federacije i obratno, za{to su Bo{njaci i Hrvati iz Federacije privilegovani u odnosu na iste u Republici Srpskoj. Pretpostavka je da im je isti vitalni interes bez obzira na kojem dijelu Bosne i Hercegovine `ive.

Isklju-ivo etni-ko politi-ko predstavljanje dovelo je do nestanka politi-kog gra|anina u pluralizmu njegovih identiteta i politi-kih interesa. Identitet se ne iscrpljuje u etni-koj pripadnosti, njega odre|uje i polna pripadnost, socijalno porijeklo i status, u`a regionalna pripadost, politi-ko uvjerenje, obrazovanje, profesija, odnosno svi oni elementi koju odre|uju specifi-`nu individualnu gra|ansku fizionomiju. Kao {to se vidi iz karaktera me|unarodnog instrumentarija za ljudska prava koji je unesen u Ustav Bosne i Hercegovine uglavnom se {tite individualna prava koja ima "svako", odnosno pripadaju svim gra|anima

³² ^lan IV stav 3 ta-ka (b): "Svaki dom `e ve}inom glasova usvojiti svoj poslovnik o radu i izabrati me|u svojim -lanovima jednog Srbina, jednog Bo{njaka i jednog Hrvata za predsjedavaju}eg i zamjenike predsjedavaju}eg, s tim da `e mjesto predsjedavaju}eg rotirati izme|u ova tri lica".

e) Predlo`ena odluka Parlamentarne skup{tine mo`e biti progla`ena destruktivnom po vitalni interes bo{nja-kog, hrvatskog ili srpskog naroda ve}inom glasova iz redova bo{nja-kih, hrvatskih ili srpskih delegata izabranih u skladu sa stavom 1. ta-ka (a). Za dono{enje takve odluke bi}e potrebna saglasnost Doma naroda, izglasana od strane ve}ine bo{nja-kih, ve}ine hrvatskih i ve}ine srpskih delegata, koji su prisutni i glasaju.

f) Kada ve}ina bo{nja-kih, hrvatskih ili srpskih delegata stavi primjedbu na pozivanje na ta-ku (e), predsjedavaju}i Doma naroda `e odmah sazvati Zajedni-ku komisiju koja se sastoji od tri delegata, od kojih je svaki izabran iz redova bo{nja-kih, hrvatskih i srpskih delegata, s ciljem razrje{enja tog pitanja. Ukoliko to Komisija ne uspije u roku od pet dana, predmet se upu}uje Ustavnom sudu koji `e u hitnom postupku preispitati proceduralnu ispravnost slu-aja.

g) Dom naroda se mo`e raspustiti odlukom Predsjedni{tva ili samog Doma, pod uslovom da je odluka o raspu{tanju Doma donijeta ve}inom koja uklju-uje ve}inu delegata iz najmanje dva naroda, bo{nja-kog, hrvatskog ili srpskog.

koji se nalaze pod jurisdikcijom BiH.³³ Iako se u preambuli Ustava navodi da su "Bošnjaci, Hrvati i Srbi, kao konstitutivni narodi, (u zajednici sa ostalim) i građani Bosne i Hercegovine, ostale ustavne odredbe obaraju se samo Bošnjacima, Srbima i Hrvatima uzimajući u obzir kolektivna prava i kolektivne identitete".

Predsjedništvo Bosne i Hercegovine po svojim ustavnim ovlaštenjima vrši izvršno-političku funkciju (čfa dr`ave³⁴. član V je odredio: "Predsjedništvo Bosne i Hercegovine se sastoji od tri člana: jednog Bošnjaka i jednog Hrvata, koji se biraju neposredno sa teritorije Federacije, i jednog Srbina, koji se bira neposredno sa teritorije Republike Srpske." Fiksirajući etničku pripadnost članova Predsjedništva Ustav se direktno diskriminatorski odnosi prema građanima, pripadnicima drugih etničkih grupa, ograničavajući tako njihovo pasivno biračko pravo, odnosno, pravo građana da im bez ikakve diskriminacije budu dostupne sve političke izborne funkcije u državi.

S druge strane stav 1. Tačka a) koja kaže "članovi Predsjedništva biraju se neposredno u svakom entitetu (tako da svaki glasač glasa za popunjavanje jednog mjesta u Predsjedništvu) u skladu sa Izbornim zakonom kojeg donosi Parlamentarna skupština..." ukazuje da se indirektno ustanovljavaju etnički izbori. Sadržajna je pretpostavka da će predstavnici etničkih grupa glasati za svog člana Predsjedništva. Etنيčki izbori stoje u suprotnosti sa zahtjevom za općim, jednakim, pravom glasa građana, tim prije što je Bosna i Hercegovina multietnička država u kojoj pored Bošnjaka, Hrvata i Srba žive i druge etničke grupe. S obzirom da je Predsjedništvo organ koji djeluje na cijeloj teritoriji Bosne i Hercegovine a nije izabran od svih građana koji čine biračko tijelo u Bosni i Hercegovini, postavlja se pitanje njegovog punog legitimiteta sa jedne, i ograničavanja aktivnog i pasivnog biračkog prava, sa druge strane.

³³ Izuzev Evropske povelje za regionalne jezike i jezike manjina iz 1992. i Okvirne Konvencije za zaštitu nacionalnih manjina iz 1994. godine koje su sastavni dio Ustava.

³⁴ Ustav Bosne i Hercegovine, član V stav 3. Federalno ministarstvo pravde, Sarajevo 1977. "Predsjedništvo je nadležno za:

- a) Vođenje vanjske politike,
- b) Imenovanje ambasadora i drugih međunarodnih predstavnika Bosne i Hercegovine, od kojih najviše dvije trećine mogu biti odabrani sa teritorije Federacije.
- c) Predstavljanje Bosne i Hercegovine u međunarodnim i evropskim organizacijama i institucijama i traženje članstva u onim međunarodnim organizacijama i institucijama u kojima Bosna i Hercegovina nije član.
- d) Vođenje pregovora za zaključivanje međunarodnih ugovora Bosne i Hercegovine, otkazivanje i, uz saglasnost Parlamentarne skupštine, ratifikovanje takvih ugovora.
- e) Izvršavanje odluka parlamentarne skupštine.
- f) Predlaganje godišnjeg budžeta Parlamentarnoj skupštini, uz preporuku Vijeća ministara.
- g) Podnoženje izvještaja o rashodima predsjedništva Parlamentarnoj skupštini na njen zahtjev, ali najmanje jedanput godišnje.
- h) Koordinaciju, prema potrebi, sa međunarodnim nevladinim organizacijama u Bosni i Hercegovini.
- i) Vršanje drugih djelatnosti, koje mogu biti potrebne za obavljanje dužnosti koje mu prenese Parlamentarna skupština, ili na koje pristanu entiteti."

Umjesto zaključaka

Prezentirani Katalog ljudskih prava u Ustavu Bosne i Hercegovine sa posebnim osvrtom na politička prava, mogao bi dalja razmatranja i analize usmjeriti u nekoliko pravaca;

- u istraživanje i analizu normativnih dijelova Ustava koji su u direktnoj suprotnosti sa načelima jednakosti i nediskriminacije građana po bilo kojoj osnovi,
- prema mogućnostima efikasnosti zakonske zaštite navedenih prava,
- prema analizi stvarnog stanja ljudskih prava, obima njihovog kršenja na nivou države i na nivou entiteta, načina uvažavanja ljudskih prava u odnosu na predviđene standarde,
- prema analizi stvarnog političkog, ekonomskog i društvenog konteksta u kojem navedena prava treba da se uvažavaju i zaštite, i na iskustva sa kojima je njihova realizacija suočena,
- prema analizi djelovanja institucija, domaćih i međunarodnih, koje se u okvirima svojih djelatnosti bave ljudskim pravima, ili njihovo djelovanje zadire u oblast ljudskih prava.

Međutim to podrazumijeva i otvaranje novih tema, koje prevazilaze okvire ovog kratkog prikaza. Zato se može zadovoljiti konstatacijom, koja nas vraća na početak teksta, da je Ustav Bosne i Hercegovine, kao i Ustavi njenih entiteta, rezultat političkog kompromisa koji je u njih ugrađen, ali je to istovremeno i početak jednog procesa koji su moguće poluge upravo instrumenti ljudskih prava. Pomoću ideologije ljudskih prava, koja afirmira ljudsko dostojanstvo, koja priznaje pravo na različitost * etničku, religijsku, polnu, kulturnu, političku, jezičku, i svaku drugu razliku među ljudima * uz istovremeno priznanje jednakosti građana pred zakonom i zabranu njihove diskriminacije otvara se prostor za demokratsku izgradnju Bosne i Hercegovine. Efikasna zaštita ljudskih prava zahtjeva efikasnu državu, koja djeluje na cijeloj teritoriji unutar međunarodno priznatih granica, sa svim neophodnim instrumentima vlasti potrebnim da ostvari zaštitu svojih građana.

Pošto je proces uvijek dinamičan i prolazi kroz različite faze od momenta svog pokretanja, instrumentarij ljudskih prava ugrađen u Ustav daje mogućnost lokalnim političkim snagama, kao i međunarodnoj zajednici, koja djeluje u Bosni i Hercegovini, da legalnim instrumentima, u skladu sa Ustavom, djeluje u pravcu izgradnje demokratske države sa vladavinom prava i ljudskim pravima i slobodama svih građana na njenom teritoriju. Stabilna, demokratska država u stanju je kreirati uslove za realiziranje ekonomskih, socijalnih i kulturnih prava i unaprijediti životni standard svojih građana. Zato ekstenzivan Katalog ljudskih prava u sadašnjem trenutku može izazivati kritičke primjedbe i pokazivati udaljenost od cilja koje stvara standard ljudskih prava, ali posmatrano u dinamičnom procesu to može biti mehanizam koji vodi njegovom približavanju.

ZAKLJUČCI RADNE GRUPE II

Pripremila: Valida Repovac (Direkcija za evropske integracije)

U uvodnom dijelu radionice, nakon izloženog referata "Ljudska prava * Politi-ka prava u Ustavu Bosne i Hercegovine" razmatrana je pravna priroda Ustava Bosne i Hercegovine kao sastavnog dijela Općeg okvirnog sporazuma za mir u Bosni i Hercegovini. Analizirani su Aneks 4 Daytonskog mirovnog sporazuma, koji se direktno odnosi na Ustav, Aneks 3 koji se odnosi na političke izbore, te Aneks 6 koji tretira poštivanje i implementaciju ljudskih prava u Bosni i Hercegovini. Ustav Bosne i Hercegovine je dio višestranog međunarodnog ugovora i ne predstavlja, kao što je to u teoriji i praksi ustavnog prava, unutarnji pravni akt. Iz prethodno navedenog može se osporiti legitimitet takvog Ustava. Osim osporenog legitimiteta, definisana je i problematika samog donošenja Ustava. Naime, u potpisivanju Međunarodnog mirovnog sporazuma, a samim tim i Ustava Bosne i Hercegovine, učestvovali su entiteti koji ne predstavljaju međunarodne subjekte. Uz to Ustav Bosne i Hercegovine kao takav nije naknadno ratifikovan u Parlamentarnoj skupštini BiH.

Diskusija se potom prenijela na tumačenje Preambule Ustava BiH i mogućnosti njegova izmjena. Zaključeno je da se Ustav BiH temelji na osnovnim filozofskim postavkama zaštite ljudskog dostojanstva, slobode i jednakosti, te na promociji i poštivanju ljudskih kao i političkih prava građana Bosna i Hercegovine. Ustav se poziva na Povelju Ujedinjenih Naroda koja je ustanovila odnose među državama na globalnoj razini i Univerzalnu Deklaraciju koja je označila izlazak ljudskih prava na međunarodnu scenu. Prema tome, Ustav BiH je utemeljen na dva dokumenta koja su se javila kao odgovor na ideologije fašizma, ideologije kolektiviteta koje su osporavale građansku liberalnu demokratiju i liberalnu političku filozofiju.

Jedan od zaključaka radionice je bio da se u Ustavu BiH insistira na individualnom pristupu i da se politička prava proširuju sa ljudskim pravima. Jasno je istaknuta međusobna povezanost demokracije i ljudskih prava. Bosanskohercegovačko društvo ustrojeno kao demokratsko društvo jedini je okvir za potpuno poštivanje i implementaciju ljudskih prava. Ljudska prava ne mogu biti zaštićena bez demokratskog poretka.

Analizirajući Aneks 3 mirovnog sporazuma, koji tretira političke izbore kao i sam Izborni zakon Bosne i Hercegovine, zaključeno je da su Aneksom 3 zagarantovana prava građana da biraju ili da budu birani na političke odnosno javne funkcije. No, gledajući Izborni zakon uočeno je niz kontradiktornosti. Naveden je primjer Doma naroda Parlamentarne skupštine Bosne i Hercegovine koji čine 15 članova (5 članova iz reda bošnjačkog naroda, 5 članova iz reda srpskog naroda i 5 iz reda hrvatskog naroda). U Domu naroda Parlamentarne skupštine Bosne i Hercegovine Izbornim zakonom nije ostavljeno niti jedno

mjesto za predstavnike ostalih naroda. Isti problem postoji i u Predsjedni{tvu Bosne i Hercegovine koje -ine tri -lana (bo{nja-ki, srpski i hrvatski -lan). Izbornim zakonom nije predvi}eno da predstavnik iz reda ostalih ima mogu}nost da bude biran u ovo najvi}e tijelo. Iz Izbornog zakona BiH vidljivo je da je u Bosni i Hercegovini zastupljen kolektivni pristup po{tovanja ljudskih prava. Diskriminacija postoji prema ostalim narodima u BiH, ali i unutar konstitutivnih naroda. Na primjer: Srbi iz FBiH mogu glasati samo za bo{nja-kog ili hrvatskog -lana u Predsjedni{tvu, isto tako Hrvati i Bo{njac koji `ive na teritoriji Republike Srpske mogu glasati samo za srpskog -lana predsjedni{tva iz RS-a. Tako|er, Srbi sa podru-ja FBiH ne mogu se kandidirati da budu birani u Predsjedni{tvo BiH. Tako|er je naveden primjer Republike Srpske gdje je po popisu iz 1991. godine `ivjelo 40% ostalih naroda. Danas se u tom entitetu zastupljenost tretira samo prema teritorijalnoj i etni-koj pripadnosti. Diskusija se dotakla i za{tite vitalnih nacionalnih interesa. Postavljeno je pitanje {ta je to nacionalni interes i kako bi se on mogao za{titi. U-esnici radionice su zaklju-ili da postoji problem nedefiniranosti tih interesa. Potom se raspravljalo o izborima u entitetima i u Bosni i Hercegovini. Postavljeno je pitanje da li su narodi konstitutivni ili nisu i kakva je institucionalna za{tita tih interesa. Ustavni amandmani, koji su doneseni na Ustave entiteta a koji su uslijedili nakon odluke Ustavnog suda o konstitutivnosti naroda, imali su za cilj da sprije-e diskriminaciju na nivou entiteta. Taj se problem nakon usvajanja navedenih amandmana na nivou entiteta rije{io, no, on jo{ uvijek egzistira na dr`avnom nivou. Na kraju je zaklju-eno da se Izborni zakon oslanja na etni-ku i teritorijalnu pripadnost, {to je suprotno sa Preambulom Ustava BiH, gdje se insistira na individualnom pristupu. Politi-ka prava u BiH tako ne predstavljaju individualna prava svakog gra|anina BiH nego su samo prava kolektiviteta. Implementaciji ljudskih prava na cijelom teritoriju Bosne i Hercegovine kao prepreka stoji Izborni zakon kao osnova diskriminacije, {to povla-i da je Izborni Zakon kao takav u suprotnosti sa samim Ustavom.

U okviru radionice III definisana je potreba stvaranja mehanizama za za{titu ljudskih prava. Zaklju-eno je da je neophodna reforma Ustava koja bi jasno definirala mehanizme za za{titu ljudskih prava. Tako|er, zaklju-eno je da je Izborni zakon neophodno izmijeniti kako bi se u cjelosti po{tivala individualna i politi-ka prava svakog gra|anina Bosne i Hercegovine.

Postoji formalno*pravna zabrana diskriminacije koja je zagarantovana Ustavom. Stvarna diskriminacija je ta da se ljudi svrstavaju prema nacionalnoj i teritorijalnoj pripadnosti i to je ono {to kreira politi-ki identitet u na{ojoj zemlji. Sama za{tita ljudskih prava se mo`e koristiti kao poluga za tra`enje reforme Ustava. Na `alost, ni u jednom od entiteta ne postoje efikasni mehanizmi koji bi omogu}ili primjenu tih odluka. U Bosni i Hercegovini nailazimo na paradoks da imamo za{titu prava u teoriji, ali nemamo mehanizme za provedbu

istih. Neki od učesnika radionice bili su mišljenja da postoje ustavni mehanizmi koji bi zagarantovali određene odluke, ali se oni ne implementiraju zbog nedostatka političke volje. Postoji opstrukcija na svim nivoima, pogotovo na onim najnižim (neki od Kantona imaju još uvijek neustavna obilježja, pr. Kanton 10). To je rezultat nepostojanja jake centralne vlasti.

Problem Bosne i Hercegovine je u tome što su predstavnici u vlasti izabrani od pojedinih kolektiviteta i ne predstavljaju građansku BiH. I u strukturi zemlje kao i u Ustavu, i u Izbornom sistemu etnička linija je isuviše zastupljena. činjenica je da u BiH postoje različite nacije i to se ne može tek tako zaobići. No, ta je etnička linija previše dominantna. Sama mogućnost postojanja nacionalnih stranaka i sistem kakav imamo doprinijeli su činjenici da nacionalno predstavlja najveću vrijednost. Nacionalne stranke postoje zahvaljujući Ustavu i diskriminaciji prava. BiH danas ima problem nacionalnih stranaka i nejasnu političku scenu. U BiH ne postoji opcija koja bi bila građanski orijentisana. Zaključak je da se treba raditi na stvaranju građanske osnove koja će biti pre-dispozicija za pomirenje.

Bosni i Hercegovini potrebne su alternativne snage koje će osloboditi ljude u njihovom individualnom identitetu, te im pokazati da, osim isključivo etničkog predstavljanja postoje i druge vrijednosti, kao što su na primjer socijalna pravda, jednakost, slobode. Ove vrijednosti su poniknute našim sistemom. Bosna i Hercegovina na osnovu ovakvog Ustava i izbornog sistema ne može zakoračiti u "nation-building" proces. Prvi i najvažniji korak takvog procesa bio bi da svi ljudi kažu: "Mi smo građani tj. državljanji ove zemlje. Ova zemlja pripada svim ljudima". Da bi se nešto takvo ostvarilo neophodno je ponuditi socijalne i političke pomake. Ponuda * alternativa je u iskrenom građanstvu BiH. Nažalost, danas niko ne misli o zajedničkoj državi. Rješenje je u edukacijskom, medijskom i kulturološkom uticaju, koji će promijeniti takvu svijest građana. Osim toga, neophodan je direktan politički angažman ljudi koji misle drugačije ili individualni javni angažman (kroz pisane medije).

Zaključci radionice:

1. U Bosni i Hercegovini postoji Ustavna zaštita ljudskih prava tj. Ustavom BiH su zagarantovana individualna prava svakom čovjeku.
2. Iako su Ustavom BiH zagarantovana prava svakom čovjeku na sceni imamo poštivanje kolektivnih političkih prava, koja pripadaju samo konstitutivnim narodima u BiH.
3. Prava su raspoređena po nacionalnoj i teritorijalnoj pripadnosti.
4. Imamo diskriminatoran Izborni zakon napravljen na kontradiktornim ustavnim odredbama.
5. Sa postojećim sistemom ne može se pristupiti nation-building procesu.

JAVNA SLU@BA U BIH: MOGU}OSTI REFORME JAVNE SLU@BE BIH PREMA STANDARDIMA EU

Javne slu`be u Bosni i Hercegovini * mogu}nosti reforme
Uvodni referat: Senad Hromi}

Globalizacija, telekomunikacije (internet, e-commerce) i transfer tehnologija su faktori koji uti-u na dramati-ne promjene koje se de{avaju posljednjih decenija i koje svi osje}amo. Realnost savremenog tr`i{ta i poslovnog okru`enja su promjenljivi zahtjevi kupaca/korisnika usluga, promjene konkurentskih snaga, organizacionih struktura, procesa, sistema, pona{anja i stavova. Javila se potreba da se ovim promjenama prilagodi, pored proizvodnih, odnosno, uslu`nih organizacija i javna administracija, jer su o-ekivanja korisnika usluga narasla do te mjere da je kreiranje savremenih javnih slu`bi postalo imperativ. Govoriti o javnoj slu`bi u Bosni i Hercegovini, odnosno, mogu}nosti reforme iste u skladu sa EU standardima, nije lahak zadatak, jer to zahtijeva sagledavanje cjelovitih i sveobuhvatnih rje{enja za razliku od vrlo -esto nu|enih parcijalnih rje{enja, koja samo stvaraju privid da se ne{to uradilo, a su{tinski se ni{ta ne mijenja. Prije bilo kakve analize u vezi sa ovom temom potrebno je zapitati se da li javna administracija u BiH radi u skladu sa EU standardima? Odgovor je vrlo jasan i glasi: "Ne, organizacije iz javnog sektora u BiH ne rade u skladu sa EU standardima". Postavlja se pitanje {ta su razlozi i, kona-no, kako to promijeniti, odnosno, kako uvesti EU standarde u javne slu`be u BiH. Na posljednja dva pitanja }e se poku{ati dati {to cjelovitiji i sveobuhvatniji odgovor, po{tuju}i odre|ena ograni-enja, koja je potrebno ispo{tovati prilikom pisanja ovog rada.

Javne slu`be u Bosni i Hercegovini

Da bi sagledali kakva je zapravo javna administracija u Bosni i Hercegovini potrebno je imati u vidu dva elementa kako bi se stvorila cjelovita slika o javnim slu`bama u BiH. Prvi element se ti-e izuzetno slo`ene i komplikovane dr`avne strukture kakvu ne poznaje praksa EU. Mo`e se re}i da BiH posjeduje neku vrstu "neobi-ne" dr`avne strukture, koja je preglomazna te optere}uje gra|ane, umjesto da im slu`i. "Neobi-na" dr`avna struktura zna-i:

- postojanje dr`avnih organa vlasti (Vije}e ministara BiH, Parlamentarna skup{tina BiH, resorna BiH ministarstva itd.),

- postojanje entitetskih organa vlasti (FBiH i RS * vlade, ministarstva itd.),
- postojanje kantonalnih organa vlasti (samo FBiH * vlada, ministarstva itd.),
- postojanje općinskih organa vlasti, i
- postojanje gradskih vlasti.

O-igledno je da svi ovi nivoi administracije nisu potrebni da bi Bosna i Hercegovina normalno funkcionirala. Ovako slo`ena struktura uzrokuje preklapanje nadle`nosti, nesporazume i te{ko}e u komunikaciji izme|u javnih slu`bi te kona-no i u komunikaciji prema gra|anima. Potpuno je nelogi-no i neprihvatljivo postojanje ve}eg broja entitetskih ministarstava nego dr`avnih jer niti EU ni druge me|unarodne instance vrlo -esto nemaju jedinstvenu adresu na dr`avnom nivou na koju se mogu obratiti da bi se rije{ili odre|eni problemi, a da ne govorimo o procesu evropskih integracija koji postavlja kao imperativ samoodr`ivu i funkcionalnu dr`avu Bosnu i Hercegovinu. Na dr`avnom nivou se ve} javila potreba osnivanja novih ministarstava pored postoje}ih osam (npr. Ministarstvo industrije, poljoprivrede, odbrane i sl.). Nadalje, postojanje kantonalnih struktura u FBiH sa svim resornim ministarstvima, tako|er predstavlja veliki teret i postavlja se pitanje svrhe njihovog postojanja. O-igledno je da je ovako slo`ena dr`avna struktura odraz politi-ke volje datog trenutka, a nikako plod ekonomske ra-unice ili slu{anja glasa gra|ana. Postavlja se pitanje mo`e li se ovakva struktura pojednostaviti, odnosno, da li postoji politi-ka volja da se to u-ini? U ovom trenutku odgovor je ne, barem ne uskoro. Dakle, previ{e je javnih slu`bi, odnosno, organizacija koje rade u javnom sektoru u BiH, a da li se one pona{aju i rade u skladu sa EU standardima? Odgovor je opet "ne". Evropske javne slu`be ne poznaju ovakav na-in rada javnih slu`bi koji je uglavnom posljedica:

- stanja svijesti zaposlenih,
- naobrazbe,
- starosne strukture i
- politi-ke podobnosti.

Stanje svijesti zaposlenih jo{ uvijek po-iva na pretpostavkama iz prethodnog sistema kao {to su princip "ne mo`e{ me tako malo platiti koliko ja mogu malo raditi", princip "prika`i da je ura|eno {to vi{e", princip poslu{nog direktora, koji je u potpunoj suprotnosti sa pojmom menad`era i princip duhovne lijenosti tako da smo se navikli na nered, ne-isto}u, ka{njenje {to rezultira u povr{nosti po principu "lahko }emo" ili "nema problema". Nadalje, ve}ina zaposlenih u javnim slu`bama se obrazovala i radila u pro{lom sistemu te je usvojila makar neki od gore pomenutih principa koji su sve osim u skladu sa EU standardima. Problem obrazovanja je problem na{eg obrazovnog sistema, koji nije u skladu sa evropskim te ni kadrovi koji zavr{avaju na{e {kole i univerzitete ne mogu imati sva potrebna znanja prije svega o Evropskoj uniji, jer se u {kolama i fakultetima ne

u-i o Bijeloj knjizi EU, ne u-i se o Acquis communautaire Evropskih zajednica, o direktivama i uredbama EU, o potpunom upravljanju kvalitetom (TQM³⁵) i sl. Stoga, zaposleni u javnim službama moraju usavršavati svoja znanja i vještine kako bi došli na evropski nivo. Pored toga što imamo relativno staru javnu službu i dalje se ne otvara dovoljno prostora za zapošljavanje mladih, talentovanih i obrazovanih kadrova. Princip politike podobnosti umjesto principa stručnosti je unio još više sivila u javne službe u BiH, jer se na taj način izgubio profesionalizam te je pripadnost političkoj partiji postala jedan od glavnih kriterija za zapošljavanje u javnoj administraciji. U ovom smislu, stvari su se poele mijenjati u pozitivnom pravcu osnivanjem Agencije za državnu službu Bosne i Hercegovine koja ima zadatak da uspostavi profesionalnu državnu službu nezavisnu od političkih uticaja kao i bilo kojih drugih negativnih uticaja. Na taj način je u državnoj službi raditi državni službenici-profesionalci, a ne partijski namještenici. Ovo nas definitivno približava kreiranju državnih službi po uzoru na one u EU. Na nivou entiteta su također uspostavljene Agencije za državnu službu tako da se može očekivati da i na tom nivou vlasti dobijemo profesionalce u javnoj službi.

Nakon svega re-enog potrebno je odgovoriti na pitanje kako uspostaviti radne odnose u javnim službama, kako promijeniti svijest o promjenama kod zaposlenih koji uvijek osjećaju strah od promjena, kako usavršavati i obrazovati zaposlene, kako im davati zaduženja, kako kreirati viziju, politiku i jasan strateški pravac, a sve u cilju dobijanja savremenih javnih službi u skladu sa EU standardima.

Odgovor je jednostavan: u potpunosti primijeniti principe (potpunog) upravljanja kvalitetom (TQM), odnosno, kvalitetnog upravljanja, kako to prevode neki autori.

Kvalitet u javnom sektoru

Kvalitet je riječ sa kojom se srećemo svakodnevno. Govorimo o kvalitetu proizvoda i usluga, kvalitetu administracije, kvalitetu življenja i sl. Kvalitet se često definira kao ono što daje potpuno zadovoljstvo kupca, odnosno, korisnika usluga. Ovo je istina bilo da je u pitanju lokalna vlast, vladin odjel ili da smo mi lično u pitanju u vezi sa uslugama i proizvodima koje svakodnevno kupujemo. Svi procjenjuju kvalitet onoga što dobiju na način koliko dobro su njihove potrebe i očekivanja zadovoljeni, kako kratkoročno tako i dugoročno. Mnoge organizacije iz javnog sektora nastoje da odučeve korisnike usluga dajući im više nego što oni očekuju.

³⁵ Total Quality Management

Javne organizacije iz EU kao i one iz zemalja isto-ne i centralne Evrope koje uskoro postaju članice EU su shvatile da kvalitet doprinosi poboljšanju efikasnosti poslovanja, odnosno, da je ključni koncept kvaliteta zadovoljavanje zahtjeva korisnika usluga na vrijeme, svaki put i 100% vremena. Poslovati 99% dobro znači³⁶:

- 20 000 izgubljenih pisama po satu,
- dva kratka ili duga slijetanja dnevno na Heathrow aerodromu,
- 5 000 pogrešnih hirurških zahvata sedmično, i
- 200 000 pogrešnih recepata (apotekarskih) godišnje.

Dakle, u današnjem okruženju se mora poslovati 100% dobro.

Principi potpunog upravljanja kvalitetom (TQM) se primjenjuju u svim savremenim organizacijama bilo da su one iz proizvodnog, uslužnog ili javnog sektora. TQM podrazumijeva primjenu principa upravljanja kvalitetom na sve aspekte poslovanja na svim nivoima organizacije. TQM zahtijeva akciju i može ga samo inicirati najviše rukovodstvo u obliku strateške odluke.

Ključne karakteristike TQM-a su:

- svaka osoba na svakom nivou organizacije je spremna da prihvati potpuno vlasništvo i odgovornost za poboljšanje kvaliteta u okviru svoje vlastite sfere uticaja,
- različite metode se koriste da uključe, motiviraju i daju ideje ljudima na svim organizacionim nivoima na način da se promovira filozofija da je poboljšanje način života,
- aktivnosti poboljšanja kvaliteta se proširuju van granica organizacije da bi se ostvarilo partnerstvo sa dobavljačima i korisnicima usluga,
- široko rasprostranjena primjena koncepta da svako u organizaciji ima korisnike i dobavljače,
- organizacija koristi seriju mjera da bi nadgledala poboljšanje, ocijenila nivo zadovoljstva korisnika usluga i pratila ključne indikatore uspjeha putem benchmarking-a,
- uključenost i uloge zaposlenih u poslovanju kao i njihov razvoj je bitni prave stvari i sposobnosti svake osobe biti u potpunosti korišćene,
- različite aktivnosti timskog rada se koriste da pomognu kontinuirano poboljšanje što uključuje rad timova sa drugim timovima kako bi se riješili duboko ukorijenjeni problemi,
- eliminiranje barijera između odjela i funkcija, i
- pojednostavljenje i standardizacija radnih praksi.

³⁶ primjer iz Ujedinjenog Kraljevstva

TQM predstavlja neku vrstu integralnog okvira za upravljanje organizacijom da bi se postigao cilj potpunog zadovoljstva korisnika usluga te uredilo poslovanje organizacije po najvišim standardima. To je, također, filozofija koja zahtijeva radikalne promjene u razmišljanju i djelovanju rukovodstva. Ono što se mora shvatiti je da je TQM putovanje, a ne destinacija i da ne postoji idealno stanje, **tj. trenutno stanje u bilo kojem procesu uvijek može biti poboljšano.**

Jedna od ključnih riječi u smislu zadržavanja poboljšanja je "standardizacija". Kada se poboljšanje ostvari ono treba biti uključeno u odgovarajući standard organizacije ili radnu praksu, u protivnom ono bi moglo biti izgubljeno i moglo bi doći do vraćanja na početno stanje. Važno je da se učinjena poboljšanja prenese u druge procese, lokacije, ogranke itd. da bi odrazili dobre rezultate poslovanja na nivou cijele organizacije.

Sve ovo je neophodnim razvoj sistema kvaliteta na nivou cijele organizacije u kojem su ljudski, administrativni i tehnički faktori koji utiču na kvalitet definirani, jasno shvaćeni i upravljani. Cilj je da se osigura da se iste informacije, metode, vještine i kontrole koriste na isti način svaki put kada je proces u toku, u namjeri da se postigne konzistentan "output".

Implementiranje sistema kvaliteta, koji zadovoljava zahtjeve međunarodno priznatih standarda ISO 9000 serije, koristan je put za uspostavljanje referentnog okvira u kojem će se graditi daljnje aktivnosti poboljšanja. Jednostavno rečeno, **sistem kvaliteta je dobra rukovodna praksa.** Da bi bio efikasan, sistem kvaliteta se razvija na osnovu standarda sistema kvaliteta ISO 9000 serije standarda kako bi se njegova adekvatnost mogla procijeniti i poboljšanja napraviti. Postoje dva jaka razloga zašto organizacije trebaju uvoditi sistem kvaliteta u svoje poslovanje, a to su:

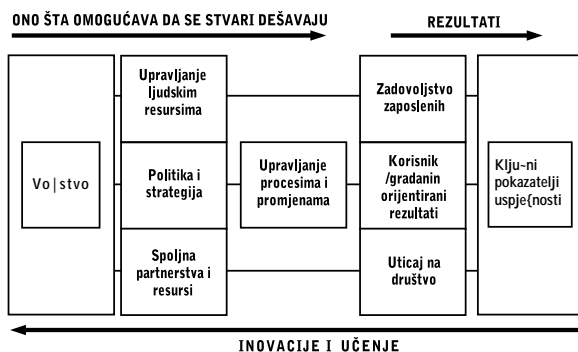
- korisnicima usluga obezbijediti usluge koje konzistentno zadovoljavaju dogovoreni standard u okviru ograničenja postojeće mogućnosti procesa (znači da je organizacija u stanju da kontinuirano isporučuje usluge određenog nivoa kvaliteta), i
- obezbijediti referentni okvir u kojem će se graditi sistematske aktivnosti procesa poboljšanja;

Ne postoji uniforman i jedinstven recept za postizanje i razvijanje procesa potpunog poboljšanja kvaliteta. Ovaj proces se uvijek u određenoj mjeri razlikuje od organizacije do organizacije uzimajući u obzir da svaka organizacija posjeduje određene specifičnosti koje je razlikuju od ostalih.

Zajedni-ki okvir za ocjenjivanje (CAF)

Da bi se stvorila savremena administracija Evropskoj uniji (EU) je trebalo dosta vremena da pomiri različite koncepte, tako da danas postoji tzv. Zajedni-ki okvir za ocjenjivanje (CAF³⁷), koji je zapravo alat za ocjenjivanje organizacije u javnom sektoru. Ovaj alat je razvio Generalni direktorat za javnu administraciju država članica Evropske unije u namjeri da podrži uvođenje ideje i principa potpunog upravljanja kvalitetom (TQM³⁸) u javni sektor EU pa i (ire. Evropski institut za javnu administraciju (EIPA³⁹) je djelovao kao centar za CAF na evropskom nivou u namjeri da podrži korištenje CAF-a na evropskom nivou. CAF je alat za upravljanje kvalitetom u javnom sektoru koji omogućava javnim organizacijama da identificiraju svoje snage i područja za poboljšanje te otvara put primjeni osnovnih koncepata kvaliteta. Korištenje zajedni-kog okvira za ocjenjivanje je besplatno, dobrovoljno i otvoreno za sve tipove organizacija iz javnog sektora iz bilo koje zemlje.

Zajedni-ki okvir za ocjenjivanje se razvio na konceptima, modelima i iskustvima Evropskog modela (poslovne) izvrsnosti⁴⁰ koji promovira Evropska fondacija za upravljanje kvalitetom (EFQM⁴¹). CAF je namjenski razvijen kao instrument za upravljanje kvalitetom za javni sektor uzimajući u obzir specifičnosti radnog okruženja ili specifičnosti organizacija u javnom sektoru. CAF se sastoji od devet kriterija za ocjenjivanje koji su veoma slični osnovnoj strukturi Evropskog



Slika 1 * CAF model

³⁷ Common Assessment Framework

³⁸ Total Quality Management

³⁹ The European Institute of Public Administration

⁴⁰ European Excellence Model

⁴¹ European Foundation of Quality Management

modela izvrsnosti, koji zajedno formiraju logičan i cjelovit okvir i omogućavaju ocjenjivanje svih relevantnih aktivnosti i akcija i rada organizacije iz javnog sektora (slika 1). Pet kriterija se koristi da se ocijeni rad onih elemenata koji omogućavaju da se promjene de{avaju ("enablers"), odnosno, ocjenjuje se ono {ta organizacija -ini u namjeri da postigne izvrsne rezultate. ^etiri kriterija se koriste da se ocijene rezultati ("results") koje organizacija posti`e.

Elementi koji omogućavaju da se promjene de{avaju su:

Kriterij 1: Vo|stvo

Kako vo|e i lideri razvijaju i podsti-u ostvarenje misije i vizije javne organizacije. Objasnjeno EFQM-a po pitanju vo|stva, odnosno, rukovo|enja ka`e da rukovo|enje zna-i raditi stvari ispravno, dok vo|stvo zna-i raditi prave stvari.

Kriterij 2: Politika i strategija

Kako organizacija implementira svoju misiju i viziju putem jasne strategije fokusirane na zainteresirane strane.

Kriterij 3: Upravljanje ljudskim resursima

Kako organizacija rukovodi, razvija i osloba|a znanje i puni potencijal zaposlenih na individualnom, timskom i na nivou cijele organizacije.

Kriterij 4: Spoljna partnerstva i resursi

Kako organizacija planira i upravlja svojim spoljnim partnerstvima i internim resursima u namjeri da podr`i svoju politiku i strategiju kao i efikasno funkcioniranje procesa.

Kriterij 5: Upravljanje procesima i promjenama

Kako organizacija dizajnira, upravlja i pobolj{ava svoje procese u namjeri da podr`i svoju politiku i strategiju i u potpunosti zadovolji korisnike usluga i druge zainteresirane strane.

Kriteriji za rezultate su:

Kriterij 6: Rezultati orijentirani ka korisniku usluga/graljaninu

Koje rezultate organizacija posti`e u vezi sa zadovoljstvom spoljnih korisnika.

Kriterij 7: Rezultati u vezi sa zaposlenima

Rezultati koje organizacija posti`e u vezi sa zadovoljstvom zaposlenih.

Kriterij 8: Uticaj na dru{tvo

[ta organizacija posti`e u zadovoljavanju potreba i o-ekivanja lokalne, nacionalne i me|unarodne zajednice u cjelini.

Kriterij 9: Ključni rezultati poslovanja

[ta organizacija postiže u vezi sa svojim mandatom i ciljevima te u smislu zadovoljavanja potreba i o-ekivanja svakog pojedinca sa finansijskim interesom ili drugim interesom u organizaciji.

Svaki od kriterija je podijeljen u određeni broj podkriterija te je potrebno razmotriti ukupno 43 podkriterija. Svaki od podkriterija se boduje od 1 (nije poduzeta nikakva akcija/nisu postignuti rezultati ili rezultati su u opadanju) do 5 (najvi{i mogu}i broj poena).

Zajedni-ki okvir za ocjenjivanje je alat za samoocjenjivanje i stoga ga implementira imenovana grupa za samoocjenjivanje koja se sastoji, ukoliko je to mogu}e, od predstavnika svih relevantnih sektora i nivoa u organizaciji. Preciznost kori{tenja CAF-a zavisi u velikoj mjeri od sastava grupe za samoocjenjivanje i od dobre pripreme procesa samoocjenjivanja. Samoocjenjivanje putem CAF-a treba rezultirati u konkretnom planu akcije, koji treba da identifikira podru-ja za pobolj{anje. Kao alat za upravljanje kvalitetom, CAF se treba koristiti kao stalan element u procesu pobolj{anja organizacije. Kori{tenje CAF-a kontinuirano ohrabruje razvoj "kulture izvrsnosti" i vodi ka ciklusu kontinuiranog pobolj{anja.

CAF, tako|er, slu`i kao osnova za razmjenu iskustava izme|u organizacija iz javnog sektora i za "benchmarking" aktivnosti. Postoji sna`no uvjerenje da organizacije iz javnog sektora {irom Evrope mogu mnogo nau-iti iz iskustava drugih organizacija i da imaju mogu}nosti da izvuku korist iz pore|enja sa praksama drugih javnih organizacija

Stanje u Bosni i Hercegovini u svjetlu reforme javne slu`be prema standardima

Institucije Bosne i Hercegovine, odnosno Vije}e ministara, trebale bi u-initi mnogo vi{e na podru-ju promoviranja kvaliteta u svim segmentima dru{tva. U ovom vrlo zna-ajnom poduhvatu dr`ava mora na}i na-in da stvori klimu povoljnu za razvoj i implementaciju sistema kvaliteta u cijelom dru{tvu i da u-ini kvalitet prioritetom broj jedan, odnosno, nacionalnim prioritetom. Na-in da se to ostvari je kreiranje nacionalne politike kvaliteta. Nacionalna politika kvaliteta podrazumijeva dono{enje seta mjera na najvi{em nivou kojima bi se principi upravljanja kvalitetom kontinuirano promovirali i motivirala njihova

primjena u svim segmentima društva pa tako i javnim službama. Za kreiranje i provođenje jedne sveobuhvatne nacionalne politike kvaliteta potrebno je podsticati ostvarivanje poslovne izvrsnosti kako u kompanijama tako i u administraciji te u oblastima obrazovanja, zdravstva, kulture i sl. primjenom koncepta TQM, promovirati pristup kreativne i kompetentne saradnje umjesto pristupa konfrontacije, podsticati evropsku i međunarodnu orijentaciju i uključivanje u međunarodne institucije s ciljem ostvarivanja državnih interesa i uspješne tranzicije, uvesti vrijednovanje performansi na svim nivoima rada, koje su zasnovane na međunarodnim standardima i porijeklu sa svjetskim performansama, stvoriti obavezu da svi nivoi vlasti u BiH putem svoje javne odgovornosti i putem širenja informacija daju jasne i iskrene političke signale za stvaranje klime i svijesti za kvalitet. Naravno, jedna ozbiljna nacionalna politika kvaliteta, imajući u vidu javni sektor kao i bilo koji drugi, suočila bi se sa preprekama o kojima sam govorio u poglavlju 2, te koje se u najkraćem mogu svesti na nedostatak odgovaranja i svijesti i znanja koji su međusobno povezani.

Svoju opredjeljenost ka promociji ideje kvaliteta na ovim prostorima, Vijeće ministara Bosne i Hercegovine je potvrdilo usvajanjem dokumenta pod nazivom Deklaracija o kvalitetu 06.11.2001. godine, te se na taj način obavezalo da će se zalagati za ...dosljednu primjenu evropskih ideja, načela, principa i standarda, datih u slijedećim dokumentima: Evropska Povelja o kvalitetu ..., Evropski model odličnosti ..., Evropska vizija kvaliteta..., standardi ISO 9000:2000 iz područja upravljanja kvalitetom..., ostali ranije usvojeni evropski dokumenti koji se odnose na oblast kvaliteta kao i neposredno angažovani na stvaranju ambijenta za stvaralačku primjenu navedenih dokumenata, kroz: promoviranje ideje kvaliteta u svim sektorima društva ..., povećanje nivoa znanja iz oblasti kvaliteta ..., uvođenje savremenih pristupa, metoda, alata i standarda u radu javnog sektora i državne uprave, uključivanje u odgovarajuće evropske organizacije i institucije..., građenje pozitivnog odnosa ka evropskim vrijednostima kvaliteta. Na ovaj način Vijeće ministara se obavezalo da će promovirati ideju kvaliteta u svim sektorima društva, podizati nivo znanja iz oblasti kvaliteta na svim nivoima društva, izgrađivati institucije neophodne za podršku realizaciji politike kvaliteta na nivou Bosne i Hercegovine itd.

Nažalost, "Deklaracija o kvalitetu" još uvijek nije implementirana što je negativno uticati na daljnji razvoj javnih službi u BiH, imajući u vidu da Deklaracija predstavlja na određeni način i političku i ekspertnu platformu za reformu cijelog društva uključujući i javne službe kao jedan od najvažnijih segmenata. Da se ipak krećemo ka modernim javnim službama svjedoci i primjer sarajevskih općina Stari grad i Centar koje su uvele sistem kvaliteta u skladu sa ISO 9000 serijom standarda te se golim okom može primijetiti kada se uđe u prostorije ovih općina da se razlikuju od drugih po redu, disciplini i profesionalnosti

slu`benika⁴².

Tranzicijska zemlja koja je shvatila značaj kvaliteta za sve segmente društva, posebno za reformu javnih službi u svjetlu procesa integracije u evropsko društvo je Slovenija. **Ura|eno je sljede}e:**

- Osnovano je Slovensko udru`enje za kvalitet 1991. godine * -lan je Evropske organizacije za kvalitet (EOQ),
- Napravljen je Nacionalni program kvaliteta Republike Slovenije 1993. godine,
- Vlada Republike Slovenije donijela je dokument pod nazivom "Politika kvaliteta dr`avne uprave" 1996. godine,
- Dr`avni zbor (Parlament) Republike Slovenije donio je zakon o Priznanju Republike Slovenije za poslovnu odli-nost 1998. godine i
- Formirana je Nacionalna fondacija za poslovnu odli-nost Slovenije 2000. godine.

Koliki se značaj pridaje kvalitetu u Evropi svjedo-i -injenica da se u Evropi dodjeljuje Evropska nagrada za kvalitet svake godine izme|u ostalog i organizacijama iz javnog sektora⁴³.

Zaklju~ak

Bosna i Hercegovina posjeduje vrlo slo`enu dr`avnu strukturu, -iji teret jedva da mo`e da nosi sa jedne strane, te neure|ene i neefikasne javne slu`be sa druge strane. Politi-ka volja je odigrala klju~nu ulogu u kreiranju ovako slo`ene strukture, {to se prije nekoliko godina i moglo opravdati, ali u sada{njem trenutku je neprihvatljivo. Reforma ovako kompleksne strukture javnih slu`bi u skladu sa EU standardima }e opet zavisiti od politi-ke volje, {to }e zna-iti zadr`avanje ovako slo`ene strukture jo{ odre|eno vrijeme. S druge strane, na-in rada javnih slu`bi se mora promijeniti da bi se uskladio sa EU standardima, odnosno, potrebno je dobiti profesionalnu dr`avnu slu`bu, bez ikakvih strana-kih uticaja, te slu`bu koja }e biti u stanju da svoje poslove obavlja racionalno, predano, da koristi savremene informacione tehnologije, da se konstantno

⁴² Npr. za dobijanje nekog dokumenta koji treba da vam izda nadle`na op}inska slu`ba ne}ete morati da se gurate satima na {alterima, da se ubje|ujete sa nekim da li ste na redu ili ne, te }e Vam se vrlo profesionalno i ljubazno koliko je to mogu}e obratiti slu`benici op}ine, {to, moramo priznati, jo{ uvijek predstavlja rijetkost na ovim prostorima.

⁴³ **Prvi put je dodjeljena** nagrada za kvalitet organizaciji iz javnog sektora (Inland Revenue iz Ujedinjenog kraljevstva) 2000. godine

usavr{ava i obrazuje, da konstantno tra`i na-ine pobolj{anja i pobolj{ava svoje poslovanje, unaprije|uje odnose sa drugim organizacijama iz javnog sektora itd.

Da bismo dobili savremenu evropsku javnu slu`bu u BiH bez obzira na njenu kompleksnost, potrebno je usvojiti principe potpunog upravljanja kvalitetom (TQM) i primijeniti ih u organizaciji sistemati-no i u potpunosti. Agencije za dr`avnu slu`bu (dr`avna i entitetske) bi trebale kroz svoje programe obuke zaposlene upoznati sa principima upravljanja kvalitetom i napraviti sveobuhvatne programe za njihovu primjenu u javnom sektoru u BiH, jer je to jedini pravi put do kreiranja javnih slu`bi u skladu sa EU standardima, a dr`avni organi (Vije}e ministara) stvoriti povoljnu klimu putem izrade i primjene odgovaraju}e nacionalne politike kvaliteta. U ovom smislu, primjena principa ISO 9000 serije standarda predstavlja referentni okvir, na kome se grade aktivnosti pobolj{anja, te se pored toga mo`e koristiti Zajedni-ki okvir za ocjenjivanje (CAF) koji je sveobuhvatniji i predstavlja alat za samoocjenjivanje organizacije. Zajedni-ki okvir za ocjenjivanje (CAF) javnih slu`bi u potpunosti po-iva na principima potpunog upravljanja kvalitetom (TQM) i predstavlja savremeni menad`erski pristup poslovanju koji se uspje{no primjenjuje u zemljama EU kao i tranzicijskim zemljama. Kao kona-an rezultat primjena ovog savremenog menad`erskog koncepta dobit }emo savremene, pouzdane i ekonomi-ne javne slu`be za razliku od onih u Bosni i Hercegovini koje su prili-no udaljene od svega {to se mo`e nazvati savremenim, pouzdanim i ekonomi-nim.

Za unapre|enje javnih slu`bi prema ovom EU modelu, koji predstavlja jedini pravi put za sveobuhvatnu reformu javnih slu`bi u BiH, potrebno je kreirati jasan strate{ki pravac, primijeniti ga sistemati-no u javnoj organizaciji, dr`ati se toga, stalno pobolj{avati, konstantno analizirati podatke i informacije, obrazovati ljude i davati im zadu`enja. Potrebno je shvatiti da se promjene ne de{avaju preko no}i, te da bez efikasnog rukovodstva inicijative za potpuno pobolj{anje kvaliteta u javnom sektoru nemaju {ansi za uspjeh.

Potpuno pobolj{anje kvaliteta u javnim slu`bama je dugoro-na obaveza i mo`e biti potrebno i do deset godina da bi se postigla zna-ajna kulturna promjena u koju su principi potpunog upravljanja kvalitetom -vrsto ugra|eni.

ZAKLJUČCI RADNE GRUPE III

Pripremio: Miroslav @ivanovi}

Daytonski Ustav je zapravo temelj glomazne strukture javne službe u BiH koja se ponajbolje može ilustrirati činjenicom da je struktura izvršne vlasti organizirana u 124 ministarstva (država, entiteti i kantoni). Takva struktura prajena je nizom funkcionalnih problema od kojih su najizraženiji problemi nadležnosti i komunikacija između brojnih organizacionih jedinica. U ovom trenutku rješavanje tih problema je jedan od prioriteta nadležnih institucija u BiH. Njihov značaj je i veći ukoliko se razmišlja u kontekstu priključivanja bh. procesu Evropskih integracija.

BiH je odgovorila na 346 pitanja u okviru Studije izvodljivosti, te se do kraja godine očekuje odgovor iz Bruxellesa. Pozitivan odgovor je značiti i nove ugovorne obaveze za BiH. Jedna od njih je biti i usklađivanje javne službe u BiH prema standardima Evropske unije (EU).

Dakle, složena i glomazna aparatūra javne službe daytonske BiH i problemi koji iz nje proizlaze, kao i naponi na čelje zemlje ka uključivanju u proces evropskih integracija, osnovni su uzrok za reformu na čelje javne službe. U reformu su uključene domaće institucije iz vladinog i nevladinog sektora, kao i nadležne međunarodne institucije u BiH. Jedan od zaključaka radionice III jeste da je potrebno podići na veći nivo kvalitet u estvovanju nevladinog sektora.

Jedan od osnovnih zaključaka radionice jeste da se reforma javne službe u BiH ne mora nužno dovoditi u vezu sa trenutno aktuelnim pitanjem promjene daytonskog Ustava. Promjena daytonskog Ustava je prvenstveno političko pitanje, a na čelja trenutna politička realnost je prilično udaljena od takvih inicijativa. S druge strane, reforma javne službe ne trpi odlaganje i ona se mora sprovesti budući da je to u skladu sa općeprihvaćenim procesom pristupanju evropskim integracijama. Neke inicijalne aktivnosti, poput smanjenja broja zamjenika ministara na svim nivoima izvršne vlasti su već preduzete. Međutim, istinska reforma, što je slijedeći zaključak radionice, mora se usmjeriti na oblasti usklađivanja postojećih zakona, uvođenja novih zakonskih okvira kao i rješavanja postojećeg problema nadležnosti kojeg ne prate odgovarajuće strukture finansiranja.

Nadalje, kao zaključak radionice navodi se i potreba da proces reforme javne službe u BiH bude podržan nizom pratećih aktivnosti:

- Predstavljanje i implementacija principa potpunog upravljanja kvalitetom ili "kvalitetnog upravljanja" (TQM),
- Uvođenje principa po kojem će javni službenici na vodećim pozicijama biti menadžeri, a ne isključivo politički kadrovi,
- Uvođenje profesionalnog obučavanja javnih službenika u okviru sistema visokog obrazovanja,
- Uvođenje većeg broja domaćih eksperata u proces reforme,
- Uključivanje građana u proces reforme,
- Veća finansijska ulaganja u javnu službu.

Princip potpunog upravljanja kvalitetom definiran je nizom međunarodnih dokumenata (npr. ISO standardi), u kojima je detaljno opisan proces unapređenja rada organizacija različitih profila, između ostalih i institucija javne službe.

Implementacija reforme i njen eventualni uspjeh suštinski ovisi o javnim službenicima na rukovodećim pozicijama. Imenovanje službenika isključivo na osnovu političke pripadnosti ostavlja dosta prostora za košenje reformi. Stav je radionice da samo službenici sa izraženim menadžerskim sposobnostima mogu shvatiti značaj reforme i biti istinski predani njenom provođenju.

U mnogim zemljama sa posebnom se pozornošću pristupa pitanju profesionalnog obučavanja javnih službenika. Zaključak radionice je da u BiH taj problem nije adekvatno riješen te da se njegovom rješavanju mora pristupiti na temelju postojećeg međunarodnog iskustva. Kao jedno od rješenja istaknuta je i mogućnost osnivanja Odjela za javnu službu pri Fakultetu političkih nauka Univerziteta u Sarajevu. Uz moderan nastavni plan i program ovaj Odjel bi mogao predstavljati suštinski doprinos ka stvaranju nove generacije javnih službenika spremnih za izazove koje pred njih postavlja reforma i proces uključivanja u proces evropskih integracija.

Primjer Slovenije i njene reforme javne službe gdje su najviše teret iznijeli domaći eksperti i studenti mora se ozbiljno razmotriti i u slučaju BiH. Mnogi strani eksperti prisutni u našoj zemlji i pored značajnog iskustva moraju se suočiti i sa nepoznavanjem političkog, socijalnog i kulturnog konteksta Bosne i Hercegovine. S druge strane imamo problem neiskorištenih i nepravedno podređenih domaćih eksperata, koji su više nego odlično upoznati s prioritetima naše zemlje. Zaključak je da je potrebno omjer domaćih i stranih eksperata dovesti na realni nivo, koji će biti u korist domaćeg stručnog i profesionalnog potencijala.

Naravno, presudnu ulogu u reformi imaju građani BiH. Reforme imaju smisla samo ukoliko ih građani prihvate i podrže. Stoga je neophodno podići nivo

kvaliteta informacija predstavljenih kroz medije. Građani se moraju redovno informirati i biti upoznati sa posljedicama i pozitivnim pomacima koje je reforma predstavljati za njihove svakodnevne aktivnosti. Veća uključenost građana u pomenute procese u-icit je i javne institucije vi{e odgovornim i transparentnim u njihovim aktivnostima.

Finansijska podr{ka je, tako{er, jedan od presudnih faktora za uspjeh reforme i uspje{no funkcioniranje javne slu`be u BiH. Pri tome finansijska podr{ka ne mora nu`no zna-iti i nova bud`etska izdavanja. Ovi izdaci se u zna-ajnoj mjeri mogu pokriti i pravilnim iskori{tavanjem dostupnih me|unarodnih fondova. Javni slu`benici na rukovode}im pozicijama moraju biti upoznati sa postoje}im fondovima i sa svim procedurama potrebnim za prijavljivanje projekata i njihovim upravljanjem. Ovdje se opet isti-e zna-aj kvalitetnog educiranja kadrova u ovoj oblasti. Javni slu`benici moraju imati znanja i alate koji je im omogu}iti da prepoznaju i formuliraju zna-ajne projekte, koje je me|unarodna zajednica voljna podr`ati, ali koji je u svakom slu-aju biti prioriteti BiH, a ne me|unarodne zajednice.

Problemi javne slu`be u BiH su o-igledni, a o-igledna su i rje{enja koja su nam prijeko potrebna. Jedini stvarni problem s kojim se moramo suo-iti je zapravo problem implementacije pomenutih rije{enja. Osnivanje agencija za dr`avnu slu`bu na nivou dr`ave i entiteta bit je i prvi test u ovom smislu (ove agencije su ve} osnovane, a na dr`avnom nivou su i potpuno operative). Pravilno i odgovorno funkcioniranje ovih agencija bi moglo uspje{no odgovoriti na zahtjeve za profesionalnim, javnim, odnosno, dr`avnim slu`benicima sposobnim da se nose sa izazovom implementacije reforme.

U kontekstu aktuelne debate o promjeni daytonskog Ustava radionica je do{la do zaklju-ka da unutarnja organizacija BiH najprihvatljivije rje{enje mo-e imati u vidu ekonomsko-geografske regionalizacije, koja je biti prvenstveno zasnovana na ekonomskoj odr`ivosti identificiranih regiona unutar zemlje.

STANJA, PERSPEKTIVE I MOGU}NOSTI ZA PROMJENU DAYTONSKOG USTAVA

REFERAT

Stanja, perspektive i mogu}nosti
za promjenu Daytonskog Ustava

Autori: Lejla Bali} i Midhat Izmirlija (Pravni fakultet)

UVOD

Usporena integracija bosanskohercegova~kog dru{tva i dr`ave, mogu}nosti blokada institucija na svim nivoima i stalna opstrukcija nametnula je i pitanje koliko su dokumenti kojima su uspostavljeni posli-
jeratni ustavni aran`mani uzrok takvog stanja. U posljednjih nekoliko godina svjedoci smo niza zahtjeva za promjenu Daytonskog sporazuma ili Daytonске Bosne i Hercegovine, ~esto sinonima kojima se ozna-avaju Ustav i ustavni poredak u Bosni i Hercegovini.

Naslov ovog teksta sugerira da se radi o prikazu stanja, mogu}nosti i perspek-
tivama promjene Ustava Bosne i Hercegovine. Na{a ideja bila je pru`iti prikaz
dosada{njih zahtjeva za promjenu Ustava Bosne i Hercegovine, njihovih sli-
nosti i razlika koje bi mogle predstavljati osnov za usmjeravanje daljnjih
diskusija i otkrivanje modela vezanih za promjenu ustavno - pravnog poretka.

Namjeravaju}i odgovoriti na ovo pitanje dali smo u prvom dijelu teksta op}e
informacije o Ustavu Bosne i Hercegovine, kao i njegovom uticaju na ustavni
poredak u entitetima kao sastavnim dijelovima dr`ave. Obaveza usagla{avanja
entitetskih Ustava sa Ustavom Bosne i Hercegovine bila je do ovog trenutka
uzrokom najzna-ajnijeg procesa ustavnih reformi unutar entiteta i jedini uspjeti
formalno-pravni poku{aj promjene stanja nastalog kao posljedica agresije na
Bosnu i Hercegovinu.

Upravo te promjene su dovele i do pojava razli-itih zahtjeva grupa, udru`enja
i politi-kih partija za promjenu Daytonskog sporazuma, odnosno Ustava Bosne

i Hercegovine. U drugom dijelu teksta dat je hronološki prikaz inicijativa. Primjetno je da neke od inicijativa, osim ideje njihovih autora kako Bosna i Hercegovina treba biti uređena, nemaju prijedlog na-ina promjene Ustava, odnosno kako taj zahtjev prakti-no realizirati. Uporednim prikazom inicijativa u trećem dijelu nastojali smo prikazati njihove sli-nosti i razlike.

Na kraju prikazuju}i perspektive i sasvim razli-ite percepcije do sada uved-
denih promjena uvidjeli smo da se radi i o samom zaklju-ku teksta. Te prom-
jene, zavisno od ugla gledanja, mogu se javiti kao polazi{te za nastavak izgradnje
i ja-anje dr`avnih institucija, ili kao nametnute odluke i obaveze koje se moraju
po{tovati sve dok prijete sankcija.

@elimo napomeniti da je pisanje ovog teksta bilo ote`ano sa prakti-nom
nemogu}no{u pronalaska svih potrebnih dokumenata i podataka, naro-ito kada
se radi o Republici Srpskoj i limitiranim vremenom tako da je mogu}e da sve
inicijative za revizijom ili ukidanjem Ustava Bosne i Hercegovine nisu
obuhva}ene.

FORMALNO PRAVNE MOGU]NOSTI PROMJENE USTAVA BOSNE I HERCEGOVINE I DOSADA[NJE AMANDMANSKE IZMJENE ENTITETSKIH USTAVA

Ustav Bosne i Hercegovine je sastavni dio Op}eg okvirnog sporazuma za mir
u Bosni i Hercegovini⁴⁴. Op}i okvirni sporazum za mir u Bosni i Hercegovini je
me|unarodni sporazum dogovoren na mirovnoj konferenciji u Daytonu izme|u
Republike Bosne i Hercegovine, Republike Hrvatske, tada{nje Savezne
Republike Jugoslavije⁴⁵ i -lanova Kontakt grupe koju su -inile Sjedinjene
Ameri-ke Dr`ave, Ujedinjeno Kraljevstvo Velike Britanije i Sjeverne Irske,
Republika Francuska, Ruska Federacija, Savezna Republika Njema-ka i
Evropska Unija.⁴⁶ Bosna i Hercegovina i susjedne zemlje su ugovorne strane, a
-lanice Kontakt grupe su svjedoci Mirovnog sporazuma koji je parafiran u
Daytonu, 21.11.1995. godine, a potpisan u Parizu 14.12.1995. godine.

Op}i okvirni sporazum za mir u Bosni i Hercegovini ima jedanaest sastavnih

⁴⁴ Op}i okvirni sporazum za mir u Bosni i Hercegovini i Ustav Bosne i Hercegovine -esto se ozna-ava kao
Daytonski (mirovni) sporazum.

⁴⁵ Savezna Republika Jugoslavije je u me|uvremenu usvojila novi Ustav kojim je promijenjeno i ime dr`ave u
Dr`avnu zajednicu Srbije i Crne Gore.

⁴⁶ Evropska Unija je imenovala predstavnik za podru-je biv(e) Jugoslavije.

dijelova (aneksa) od kojih Aneks IV Sporazuma predstavlja Ustav Bosne i Hercegovine. Ustav Bosne i Hercegovine ima dvanaest članova kojima se uređuju pitanja dr`avno * pravnog kontinuiteta, dr`avnog ustrojstva, dr`avljanstva, ljudskih prava, pitanja podjele nadle`nosti između i entiteta, organizacije i postupaka djelovanja Parlamentarne skupštine, Predsjedništva, Ustavnog suda, Centralne banke, amandmanska procedura, te opće i prelazne odredbe. Ustav ima i dva vlastita aneksa. Prvi aneks određuje ukupno petnaest dodatnih međunarodnih dokumenta za zaštitu ljudskih prava, koji će se primjenjivati u Bosni i Hercegovini. Drugi aneks regulira prijelazni period i praktična pitanja implementacije mirovnog sporazuma. Mirovni sporazum, a time i Ustav kao njegov sastavni dio, sačinjen je na engleskom, bosanskom, srpskom i hrvatskom jeziku, gdje je svaka varijanta jednako autentična⁴⁷. Treba naglasiti da Visoki predstavnik ima konačnu nadležnost interpretacije sporazuma, što uključuje i Aneks IV Sporazuma.⁴⁸ Ustav je stupio na snagu danom potpisivanja mirovnog sporazuma.

Član 1.(3) Ustava Bosne i Hercegovine određuje da će se Bosna i Hercegovina sastojati od dva entiteta Federacije Bosne i Hercegovine i Republike Srpske.

Entiteti i njihove sastavne jedinice su dužni pokoravati se Ustavu Bosne i Hercegovine "koji zamjenjuje međusobno nespojive odredbe zakonodavstva Bosne i Hercegovine te Ustava i zakona entiteta, kao i odlukama ustanova Bosne i Hercegovine".⁴⁹ S ciljem sprovođenja ove odredbe određeno je da će entiteti u roku od tri mjeseca, od dana stupanja na snagu Ustava Bosne i Hercegovine, uskladiti i izmijeniti svoje Ustave.⁵⁰

Entiteti nisu u predviđenom roku izvršili izmjene i usklađivanje Ustava sa Ustavom Bosne i Hercegovine. Ustavotvorna skupština Federacije Bosne i Hercegovine je usvojila amandmane⁵¹ na Ustav 05.06.1996. godine kojima je izvršila svoju obavezu usklađivanja Ustava sa Ustavom Bosne i Hercegovine.

Smatrajući da se radi o nepotpunim i djelomičnim postupcima izmjene i usklađivanja Ustava entiteta sa Ustavom Bosne i Hercegovine Alija Izetbegović, tadašnji predsjedavajući Predsjedništva Bosne i Hercegovine,⁵² je 12.02.1998. godine podnio zahtjev Ustavnom sudu Bosne i Hercegovine za ocjenu ustavnosti

⁴⁷ Član 11. Općeg okvirnog sporazuma za mir u Bosni i Hercegovini.

⁴⁸ Član 5. Aneksa X Općeg okvirnog sporazuma za mir u Bosni i Hercegovini.

⁴⁹ Član 3. (3) (b) Ustava Bosne i Hercegovine.

⁵⁰ Član 12. (2) Ustava Bosne i Hercegovine.

⁵¹ Amandmani II - XXIV na Ustav Federacije Bosne i Hercegovine. Službene novine Federacije Bosne i Hercegovine br.13/97.

⁵² Član 6. (3) Nadležnost (a) Ustava Bosne i Hercegovine određuje pravo člana Predsjedništva za pokretanje postupka pred Ustavnim sudom.

određenih odredbi Ustava Republike Srpske i Ustava Federacije BiH. Zahtjev je dopunjen 30.03.1998. godine sa nabranjem odredaba entitetskih Ustava koje su smatrane neustavnim, {to se izmeju ostalog odnosilo i na pitanje konstitutivnosti naroda na cijeloj teritoriji Bosne i Hercegovine.

Ustavni sud je ocjenio zahtjev dopustivim te je donio -etiri djelimi-ne odluke u spomenutom predmetu⁵³ kojima je proglasio odredbe entitetskih Ustava u suprotnosti sa Ustavom Bosne i Hercegovine.⁵⁴ Od izuzetne je va`nosti tre}a djelimi-na odluka kojom je Ustavni sud proglasio neustavnim stavove 1, 2, 3 i 5 Preambule kako je odre}eno amandmanom XXVI i LIV i rije-i "dr`ava srpskog naroda i" iz -lana 1. kako je odre}eno amandmanom XLIV na Ustav Republike Srpske, te rije-i "Bo{n}jaci i Hrvati kao konstitutivni narodi zajedno sa ostalima" i "ostvaruju}i svoja suverena prava" iz -lana I 1.(1) kako je odre}eno amandmanom III na Ustav Federacije Bosne i Hercegovine.

Odluka Ustavnog suda je potvrdila konstitutivnost tri naroda na cijeloj teritoriji Bosne i Hercegovine. Me}utim, da bi se postojea diskriminacija unutar entiteta ograni-ila, bilo je potrebno implementirati odluku Ustavnog suda, {to je podrazumijevalo daljnje promjene entitetskih Ustava i postizanje politi-kog konsenzusa. U cilju implementacije Odluke Visoki predstavnik je imenovao komisije⁵⁵ za izradu ustavnih amandmana, koje su podnijele izvje{taje 21.12.2001. godine za Republiku Srpsku, odnosno 02.02.2002. godine za Federaciju Bosne i Hercegovine.

Predstavnici politi-kih partija su na poziv Visokog predstavnika odr`ali niz pregovora tokom mjeseca marta 2002. godine {to je u kona-nici rezultiralo usvajanjem Sporazuma od 27.03.2002. godine o na-inu provo}enja tre}e djelimi-ne odluke Ustavnog suda. Sporazumom je dogovorena uspostava Doma naroda u Federaciji i Vije}e naroda u Republici Srpskoj sa jednakom zastupljeno}u sva tri konstitutivna naroda, minimalna zastupljenost u vladama Federacije i Republike Srpske, kao i proporcionalna zastupljenost u javnim tijelima uklju-uju}i i sudove.⁵⁶

Sporazum je bio na meti kritike pojedinih politi-kih partija i medija zbog propu{tanja prilike uspostave "apsolutne simetrije ustavnog ure}enja oba entiteta" na u{trb "simetrije u su{tini".

⁵³ **Predmet U5/98** - Ustavni sud Bosne i Hercegovine

⁵⁴ **Slu`beni glsnik Bosne i Hercegovine** br. 11/00, 17/00, 23/00 i 36/00.

⁵⁵ **Odluka Visokog predstavnika br. 81/01**, Slu`beni glasnik Bosne i Hercegovine br. 2/01, Slu`bene novine Federacije Bosne i Hercegovine br. 3/01, Slu`beni glasnik RS--;

⁵⁶ **^lanom IV st.2** Sporazuma proporcionalna zastupljenost se uvodi kao ustavni princip i slijedi popis stanovni{tva iz 1991. godine do potpune implementacije Aneksa VII Op}eg okvirnog sporazuma za mir u Bosni i Hercegovini.

Skupština Republike Srpske usvojila je ustavne amandmane 04.04.2002. godine, koji su odobreni od strane Visokog predstavnika uz promjenu amandmana LXXI, LXXXII i LXXXV i dodatnog amandmana XCII.⁵⁷

Zbog odbijanja Predstavni-kog doma Parlamenta Federacije da usvoji predlo`ene amandmane Visoki predstavnik ih je nametnuo svojom odlukom 19.04.2002. godine.⁵⁸

Zahtjev za ispitivanje ustavnosti pojedinih odredbi entitetskih Ustava i odluka Ustavnog suda Bosne i Hercegovine za sada su najsa`nije uticali na pojavu ideja za reformom dr`avnog ustrojstva.

Ustav Bosne i Hercegovine u -lanu 10.(1) propisuje amandmansku proceduru. Za promjenu ustavnih odredbi potrebna je dvotre}inska ve}ina prisutnih u Predstavni-kom domu Parlamentarne skup{tine Bosne i Hercegovine. Me|utim, da bi se usvojila odluka u Predstavni-kom domu potrebno je "potruditi se" da u ve}ini bude zastupljena najmanje jedna tre}ina glasova sa podru-ja svakog entiteta. Ukoliko se u tome ne uspije odluka se donosi ve}inom glasova prisutnih, pod uslovom da glasovi protiv ne uklju-uju dvije tre}ine ili vi{e poslanika iz jednog ili drugog entiteta. Naravno, poslanici mogu proglasiti prijedlog odluke Parlamentarne skup{tine {tetnim po vitalni interes bo{nja-kog, hrvatskog ili srpskog naroda od strane ve}ine bo{nja-kih, hrvatskih ili srpskih poslanika. U tom slu-aju potrebno je osigurati ve}inu glasova prisutnih bo{nja-kih, srpskih i hrvatskih poslanika u Domu naroda koji pristupe glasanju. Va`no je napomenuti da devet -lanova Doma naroda tvore kvorum uz uslov da su prisutna najmanje tri bo{nja-ka, tri hrvatska i tri srpska poslanika.⁵⁹

Ustav onemogu}ava izmjenu, umanjenje ili ukidanje za{ti}enih ljudskih prava i sloboda te daje primat Evropskoj konvenciji o ljudskim pravima i temeljnim slobodama, primat u odnosu na sve pravne akte i odre|uje da }e se direktno primjenjivati.

Ustav pru`a mogu}nost osnivanja dodatnih institucija koje nisu precizirane samim Sporazumom, radi o-uvanja suvereniteta, teritorijalne cjelovitosti, politike nezavisnosti i me|unarodnog subjektiviteta Bosne i Hercegovine, u skladu s diobom odgovornosti me|u institucijama Bosne i Hercegovine, odnosno kada

⁵⁷ **Amandmani LXXVI - XCII** na Ustav Republike Srpske su na zahtjev Visokog predstavnika redigovani u potrebnim tehni-kim i formalno-pravnim aspektima i kao takvi objavljeni u Slu`benom glasniku Republike Srpske br.---; Vidjeti Odluku Visokog predstavnika od 19.04.2002. godine.

⁵⁸ **Odluka Visokog predstavnika br. 149/02** (Amandmani XXVII - LIV na Ustav Federacije), Slu`bene novine Federacije Bosne i Hercegovine br. 16/02.

⁵⁹ **^lan 4. (1) (b), (d) i (e)** Ustava Bosne i Hercegovine.

se entiteti o tome dogovore.⁶⁰

S obzirom na kompliciranu proceduru dono{enja odluka unutar Parlamentarne skup{tine Bosne i Hercegovine i nedostatak politike volje za ja-anje dr`avnih institucija Visoki predstavnik je donio niz odluka kojima je uspostavio dr`avne javne agencije i slu`be. Dono{enje odluka od strane Visokog predstavnika kojima se osnivaju ili ja-aju dr`avne institucije nazvane su i tihom revizijom Daytonskog sporazuma.⁶¹

PREGLED INICIJATIVA ZA PROMJENU USTAVA BOSNE I HERCEGOVINE

Potpisivanjem Daytonskog sporazuma i odre|ivanjem Anexa IV kao Ustava Bosne i Hercegovine po-ela je rasprava o ustavnom ure|enju Bosne i Hercegovine. [to se ti-e samog Ustava u javnosti postoje opre-na mi{ljenja, od negiranja legaliteta i legitimiteta Daytonskog sporazuma, poziva na revizije, isticanja da se sam Ustav ne primijenjuje kako je Sporazumom predvi|eno i da je Daytonski sporazum bio kompromis da bi se prekinuo rat, da je potrebno izvr{iti ve}e ili manje promjene Ustava da bi za`ivjela dr`ava Bosna i Hercegovina u skladu sa me|unarodnim standardima, a posebno sa standardima evropskih integracija kojima `eli pristupiti, do zahtjeva da se sporazum ne smije izmijeniti, a posebno ne ugroziti postojanje entiteta i ve}ste-enih pozicija. Naslov ovog teksta implicira da se radi o hronolo{kom pregledu najva`nijih i u javnosti najeksponiranijih inicijativa, koje su vezane za reviziju Daytonskog sporazuma.

U toku 2000. godine u javnosti je izneseno nekoliko inicijativa koje su u svojim zahtjevima bile kontradiktorne.

U magazinu "BH Dani" broj 139, od 28.01.2000. godine objavljeno je pismo grupe novinara i intelektualaca upu}eno Visokom predstavniku, -iju je funkciju tada obavljao Wolfgang Petritch. Potpisnici inicijative Senad Pe}anin, Ivan Lovrenovi}, Nerzuk]urak i Mile Stoji}, u formi deset teza za BiH zahtjevali su od Viskokog predstavnika da suspenduje sve organe zakonodavne vlasti na svim nivoima u Bosni i Hercegovini (dr`avnom, entitetskom, kantonalnom i op}inskom), te da me|unarodna zajednica u Bosni i Hercegovini preuzme sve ingerencije suspendovanih organa.

⁶⁰ ^lan 3. (5)(a) Ustava Bosne i Hercegovine.

⁶¹ Vidjeti Izjavu Biskupske konferencije Bosne i Hercegovine o kulturnom i vjerskom identitetu hrvatskog naroda u Bosni i Hercegovini, Ve-ernji list - izdanje za Bosnu i Hercegovinu, 12.09.2003. godine.

Drugi dio zahtjeva odnosio se na suspenziju Predsjedništva BiH kao vrhovnog izvršnog organa, te preuzimanja njegovih ingerencija, a izvršni organi na nižim nivoima vlasti postali bi dio administracije Visokog predstavnika. Sve ovlasti koje su imala njihova zakonodavna tijela prema njima preuzeo bi Ured Visokog predstavnika.

Zamisao je bila da se tada zakazani općinski i općini izbori odgode za godinu dana, a da uspostavljeni protektorat ima privremeni jednogodišnji rok trajanja, tokom kojega bi međunarodna zajednica "ispravila" ranije greške koje onemogućuju dalji razvoj Bosne i Hercegovine kao pravne države. Za legalitet i legitimitet narednih izbora nužno je donošenje Izbornog zakona, koji bi se bazirao na odlukama Ustavnog suda o konstitutivnosti naroda, a time bi se ujedno osigurala visoka zaštita građanskih prava, što se posebno odnosilo na ukidanje diskriminacije aktivnog i pasivnog biračkog prava. Pored Izbornog zakona, u periodu protektorata, od Visokog predstavnika se tražilo uređenje ustroja oružanih snaga u skladu sa standardima NATO saveza, što znači jedinstvenu vojsku, kao i efikasan i ekonomičan ustroj državnih organa u skladu sa zahtjevima evropskih integracija. Potpisnici inicijative smatrali su da bi se tek u ovakvim uslovima mogli održati izbori, te da bi tako izabrani nosioci političkih vlasti imali puni legalitet i legitimitet, a da bi bili ponijeni rezultati agresija na BiH.

Tokom 2000. godine ispred Hrvatske demokratske zajednice (HDZ) podnesena je inicijativa kantonizacije Bosne i Hercegovine, odnosno ukidanje entiteta, te uvođenje kantona na tadašnjem teritoriju Republike Srpske, kao i promjena granica kantona na području Federacije Bosne i Hercegovine. Inicijativom je predloženo da se ukinu mješoviti kantoni, (Srednjobosanski i Hercegovačko-neretvanski) te da novi kantoni budu jednonacionalni i da se organiziraju na principu administrativne, a ne teritorijalne cjeline. Krajnji naum ovog prijedloga postao je jasan kada je 11. oktobra 2000. godine, samo jedan mjesec prije općih izbora, OSCE promijenio Pravila i propise. Glavna odredba se nalazi u članu 1212. poglavlje B - "Dom naroda Parlamenta FBiH." Izmijenjena odredba glasi: "Svaki izaslanik u kantonalnoj skupštini je dati jedan glas za listu." Ovo znači da Bošnjaci mogu glasati za hrvatske kandidate i obratno dok je ranije svaki konstitutivni narod glasao samo za svoje predstavnike. Hrvati, pod vođstvom HDZ-a, su ovo nazvali "dekonstitucionalizacijom Hrvata u BiH."

Sazvan je "Hrvatski narodni sabor" na kojem su pored HDZ-a učestvovali i Hrvatski demokrati, Hrvatska stranka prava, Ujedinjena Hrvatska Stranka Prava i Demokratski centar za slobodu i jednaka prava u Bosni i Hercegovini u Novom Travniku 28.10.2000. godine. Usvojena je Deklaracija koja je proglasila suverenost hrvatskog naroda u Bosni i

Hercegovini, a kao jedini način za stvaranje suverenosti proglašen je ustavno administrativno-teritorijalni preustroj cijele Bosne i Hercegovine, ta nije formiranje trećeg entiteta u kojem bi većinu činili Hrvati i koji bi se sastojao od kantona sa većinskim hrvatskim stanovništvom. Suverenitet naroda i građana bi bio ostvarivan na nivou entiteta, a dio suverenosti bi bio prenesen na državne organe koji bi funkcionisali na načelu pariteta i rotacije. Zakazan je referendum za 11.11.2000. godine, isti dan kada su zakazani i općinski izbori, a na kojem bi se hrvatski narod izjasnio o usvajanju Deklaracije. Međunarodna zajednica nije prihvatila rezultate referenduma, već je ovaj potez proglašen napadom na državnost Bosne i Hercegovine i kršenjem Daytonskog sporazuma, te je Visoki predstavnik iskoristio svoje ovlasti i smijenio rukovodstvo Hrvatske demokratske zajednice.

Stranka za Bosnu i Hercegovinu je kroz svoje političke kampanje nastupala sa sloganom "Za BiH bez entiteta" kojeg, budući da se radi o političkom subjektu koji je nakon svakih izbora ostao na vlasti, možemo smatrati kontinuiranom tendencijom u djelovanju ove partije. Također, u javnost je iznesen i projekat regionalizacije Bosne i Hercegovine, sa četiri ekonomske regije, koje se ne podudaraju sa postojećim entitetima. [to se tiče jačanja institucija države Bosne i Hercegovine, svakako je važno spomenuti inicijativu za uspostavu Državne granice.

Udruga građana "Majke Srebrenice i Podrinja" i Nacionalna asocijacija intelektualca BiH * Bosanaca 16.01.2003. godine uputile su zahtjev Ustavnom sudu Bosne i Hercegovine za preispitivanje legaliteta i legitimiteta Aneksa IV Općeg okvirnog sporazuma za mir u BiH. Ovom zahtjevu su se 03.03.2003. godine pridružile Zajednica prognanih, izbjeglih i iseljenih Bosnanske Posavine i Zajednica prognanih i izbjeglih Banjalana.

Svoj zahtjev argumentovali su činjenicom da je Bosna i Hercegovina pravni sljedbenik Republike Bosne i Hercegovine, a da su promjene koje je nametnuo Daytonski sporazum neustavne, i da Aneks IV nema legalitet i legitimitet Ustava. Ovakve tvrdnje temelje se na činjenici da su prekršeni članovi Ustava Republike Bosne i Hercegovine kojima je određena demokratska procedura kojom se mijenja ustrojstvo države, povrijeđeni su rezultati referenduma iz 1992. godine kojim su se građani opredijelili za jedinstvenu, cjelovitu i nedjeljivu Bosnu i Hercegovinu.

Također, u svom zahtjevu su istakli da je Predsjedništvo i Skupština, koji su legalizirali Daytonski sporazum, istekao mandat te da nisu imali ustavnih ovlaštenja za mijenjanje državnog ustrojstva i verifikaciju Daytonskog sporazuma.

Prijedlog koji su iznijela ova udruženja je da se nakon {to se utvrdi da ne postoji legalitet i legitimitet Daytonskog sporazuma, isti stavi van snage i da se ponovo osnaži Ustav Republike Bosne i Hercegovine na temelju kojeg je država i međunarodno priznata, a koji garantuje jednakopravnost sva tri naroda na kompletnoj teritoriji Bosne i Hercegovine.

Grupa intelektualaca koji su sebe predstavili kao Inicijativni odbor u sastavu: Esad Bajtal, Ljubomir Berberovi}, Vlatko Dolo-ek, Sead Fetahagi}, Muhamed Filipovi}, Salih Fo-oo, Franjo Ko`ul, Slavo Kuki}, Adil Kulenovi}, Mirko Pejanovi}, Vaso Radi} i Mirko [agolj u februaru 2003. godine uputili su Generalnoj skupštini i Savjetu bezbjednosti Ujedinjenih nacija, Evropskom parlamentu i Vijeću Evrope zahtjev za uspostavu Bosne i Hercegovine * Treće Republike.

Treća Republika se ne bi sastojala od entiteta, ali bila bi uređena na principu "racionalne regionalizacije". Dalje se zagovara proces istinske denacifikacije, pomirenja i uspostava humanijeg ekonomsko-socijalnog sistema. Od Međunarodne zajednice traže se garancije o nepovredivosti granica i neutralnost Bosne i Hercegovine u slučaju ratnih sukoba. Treća Republika Bosna i Hercegovina bi ispunjavala sve uslove za uključivanje u evropske integracije, a profesionalna vojska ustrojena po međunarodnim standardima omogućila bi uvođenje zemlje u međunarodnim mirovnim misijama. Inicijativa smatra da se nacionalno organiziranje treba odvojiti od političkog predstavljanja te da se nacionalni identiteti trebaju realizirati kroz nacionalna društva.

Socijaldemokratska partija Bosne i Hercegovine (SDP BiH) je u maju 2003. godine putem klubova poslanika SDP BiH u Parlamentarnoj skupštini Bosne i Hercegovine uputila u parlamentarnu proceduru Inicijativu za promjenu Ustava Bosne i Hercegovine. Za razliku od ranije navedenih inicijativa ovom su definirane izmjene članova putem kojih bi se izvršila promjena ustavnog uređenja Bosne i Hercegovine. Država bi Ustavom bila definirana kao: republika, suverena, demokratska, pravna, socijalna i decentralizovana u postojećim granicama koje su nepovredive. Suverenitet bi pripadao građanima * državljanima Bosne i Hercegovine, a narodi Bošnjaci, Hrvati i Srbi bili bi jednakopravni i konstitutivni na cijeloj teritoriji Bosne i Hercegovine.

Entiteti koji su nastali kao rezultat vjeka podjele jedinstvenog državnog i socijalnog područja Bosne i Hercegovine bili bi ukinuti, a država bi se sastojala od regija utemeljenih na funkcionalnim, ekonomskim, prostornim, geografskim i komunikacijskim kriterijima. Svim regionalnim i lokalnim zajednicama Ustav bi garantirao lokalnu autonomiju. Budući da bi Bosna i Hercegovina dobila epitet i socijalne države, predloženo je uspostavljanje socijalnih i ekonomskih prava koja bi bila uvrštena u zagarantovana prava.

Predložena je izmjena kompletnog izbornog sistema te bi se aktivno i pasivno biračko pravo za zakonodavne organe Bosne i Hercegovine omogućilo na cijelom teritoriju, poslanici Predstavničkog doma Parlamentarne skupštine bili bi birani po proporcionalnom sistemu u izbornoj jedinici koju predstavlja cijela Bosna i Hercegovina. Dom naroda birao bi se po proporcionalnom sistemu sa lista sačinjenih po konstitutivnim narodima i ostalih od strane općinskih vijećnika, koje kandidiraju sve političke partije. Sadašnja forma neke vrste polupredsjedničkog sistema (članovi Predsjedništva se biraju direktnim putem) zamijenio bio se parlamentarnim, te bi Predsjednika/Predsjedništvo birali Predstavnički dom i Dom naroda. [ef dr`ave imao bi reprezentativnu ulogu te ne bi mogao biti iz istog naroda kao premijer Vlade. Mandat svih državnih funkcionera bio bi četiri godine. Definisani su vitalni nacionalni interesi konstitutivnih naroda, čime bi se obezbijedila ravnopravnost i omogućilo proglašavanje svakog interesa vitalnim.

Proširilo bi se pravo pokretanja postupka pred Ustavnim sudom, a pravo pokretanja bi imala jedna petina poslanika u Predstavničkom domu, općinske i gradske skupštine, kao i pravna lica i građanske inicijative. Oružane snage bile bi profesionalne i organizirane na nivou Bosne i Hercegovine. Također, po prvi put se predložila legalizacija odnosno konstitucionalizacija političkih partija, što bio omogućilo zabranu djelovanja partija čiji je program usmjeren na propagiranje nacionalne, vjerske, ideološke netrpeljivosti ili djelovanja protiv Ustava i države Bosne i Hercegovine.

Deklaraciju o nužnosti izmjena Ustava Bosne i Hercegovine i o ustrojstvu "Federalne Republike Bosne i Hercegovine" u javnost iznijela je Grupa za pripremu, a okviru realizacije Naučno-istraživačkog projekta "Bosna i Hercegovina * Mogućnosti i perspektive razvoja". Tekst Deklaracije objavljen je u Oslobođenju 12.07.2003.godine, a potpisnici Deklaracije su prof.dr. Mesud Sabitović, prof.dr. Arif Tanović, Akademik Ljubomir Berberović, fra Luka Markešić, Jakob Finci, prof.dr.Sadudin Musabegović i prof.Petar Jović. Povodom inicijative 10.09.2003. godine održan je Okrugli sto na kojem je iznesen nacrt prijedloga.

Sam naziv Deklaracije sadrži riječ "nužnost", a razlozi za to su prema potpisnicima: činjenica da je upravo Aneks IV, tj. Ustav Bosne i Hercegovine, glavni uzrok nestabilnosti, produžavanja krize te neostvarivanja, sporog ili parcijalnog ostvarivanja odredbi Mirovnog sporazuma. Podjela Bosne i Hercegovine na entitete bila je neophodna u momentu kada je Ustav donesen jer je spriječen nastavak rata i razaranja, ali osam godina nakon prestanka rata upravo odredbe o podjeli države spriječavaju ostvarivanje najviših ciljeva * garancije ljudskih prava, odsustvo diskriminacije, prava izbjeglica da se vrate domovima.

Sada{nje odredbe Ustava Bosne i Hercegovine koje tretiraju rad Parlamenta, Predsjedni{tva, Vije}a ministara nisu potpune jer njima nije reguliran mehanizam kojim se mo`e sprije-iti blokada tih institucija, {to bi bio jedan od prioriteta Nacrta. Sada{nji Ustav govori i o oru`anim snagama entiteta, {to predstavlja direktnu prepreku za prijem Bosne i Hercegovine u Evropsku uniju i NATO.

Principi na osnovu kojih bi se promijenio Ustav su slijede}i:

- Novi Ustav bi morao osigurati i potvrditi sve atribute suverenosti dr`ave Bosne i Hercegovine, a prije svega: spoljna politika, vojska, policija, jedinstvena grani-na slu`ba, carine, monetarna politika, poreska politika.
- U skladu sa predlo`enim nazivom Federalna Republika Bosna i Hercegovina novo federalno ure|enje bilo bi ustrojeno na teritorijalnoj reorganizaciji, odnosno na kriterijima regionalnih specifi-nosti. Regionalne cjeline imale bi visok stepen samouprave, ali bi Ustavom bio ta-no ure|en polo`aj unutar Bosne i Hercegovine kao cjeline. Predlaga-i su u svojim stavovima naglasili da se danas federalno ure|enje od strane stru-njaka cijeni kao pozitivna forma politi-kog organizovanja te da 40 % svjetskog stanovni{tva `ivi u federalno ustojenim dr`avama.⁶² Jakob Finci, tako|er smatra da je Bosna i Hercegovina stolje}ima godina unazad imala neke forme federalnog ure|enja (Otomanska imperija, Austro-Ugarska monarhija). Me|utim stvarni argumenti vezani su za trenutnu situaciju u Bosni i Hercegovini, koja se zvani-no mo`e smatrati vrstom federalne dr`ave sa tri entiteta (Federacija Bosna i Hercegovina, Republika Srpska i Distrikt Br-ko), te se jasno negira mogu}nost da sada{nji entiteti ostanu poput federalnih jedinica, jer kao takvi nisu prethodili Bosni Hercegovini. Ta-nija je tvrdnja da je Daytonskim sporazumom Bosna i Hercegovina rastavljena. Budu}i da se Predsjedni{tvo i Parlament biraju direktnim putem, mo`e se smatrati da je oblik dr`avnog ure|enja republikanskog tipa. Ovim, smatraju predlaga-i, bi se stvorile pretpostavke za ve}u identifikaciju gra|ana sa dr`avom, te za stvaranje politi-kog "dr`avnog" naroda Bosanaca.
- Sudstvo, vojska i policija bili bi ure|eni na principima federalnog ustrojstva, a ne etni-kih grupa, te bi se otklonila tendencija njihovog zatvaranja, izolacije i cijepanja.

⁶² Deklaracija o nu`nosti izmjena Ustava Bosne i Hercegovine i o ustrojstvu "Federalne Republike Bosne i Hercegovine" (nacrt) sa priloziima i Jakob Finci na Okruglom stolu povodom inicijative Federalna Republika Bosna i Hercegovina odr`anog 10.09.2003. godine.

- Sva ljudska prava, a posebno prava koja se tiču zaštite vitalnih interesa, ravnopravnosti jezika, kulture, vjere bila bi zaštićena ustavnim mehanizmima.
- Federalno ustavno uređenje daje mogućnost organizacije jedinstvenog ekonomskog tržišta, što bi olakšalo prelazak u sistem tržišne ekonomije i ekonomske liberalizacije, a izbjegla bi se usitnjenost i autarkičnost tržišta, korupcija i privredni kriminal.
- Deklaracija kao veoma važan segment društvenog sistema tretira i kulturno-obrazovnu sferu, koja bi se također regulisala na ustavnom nivou. U skladu sa najvišim evropskim standardima predviđeni su zajednički obrazovni programi, utemeljeni na principima zajedništva i različitosti, a time bi se doprinijelo deprovincijalizaciji kulturnog i obrazovnog prostora Bosne i Hercegovine. Naravno je važno iskorijeniti segregaciju u školama, koja nužno doprinosi negativnom sazrijevanju novih generacija. Također, ovim ujedinjenjem na nacionalnom nivou bi se doprinijelo i eliminaciji rezultata etničkog čišćenja.
- Po prvi put unutar jedne inicijative u Deklaraciji za Federalnu Republiku Bosnu i Hercegovinu ukazano je na nužnost donošenja Zakona o glavnom gradu Bosne i Hercegovine, čime bi se obezbijedio njegov status te bi i na taj način Bosna i Hercegovina postala normalna evropska država.

UPOREDNI PRIKAZ SLIČNOSTI I RAZLIKA INICIJATIVA ZA PROMJENU USTAVA BOSNE I HERCEGOVINE

Površna analiza izloženih inicijativa jasno pokazuje da su sve potekle iz jednog entiteta, a to može biti ujedno i prva i najobuhvatnija zajednička karakteristika. Naime, sve inicijative potječu iz Federacije Bosne i Hercegovine. Uočljivo je da one potječu od strane multietničkih partija ili udruženja (-ija su sjedišta u tzv. dijelu Federacije sa bošnjačkom većinom) i da te temeljnoj izmjeni Ustava Bosne i Hercegovine, (to podrazumijeva ukidanje entiteta (Stranka za BiH, SDP, Inicijativa za BiH * Treću Republiku, Inicijativa za Federalnu Republiku BiH), zalažu se za decentralizaciju državne vlast, racionalnu regionalizaciju, stvaranje zajedničkih oružanih snaga, jednakopravnost i konstitutivnost svih naroda na cijelom području Bosne i Hercegovine, ispunjenje zahtjeva i obaveza iz Aneksa VII, povrat svih izbjeglih i raseljenih lica u prijeratne domove, povrat imovine, privatizaciju na državnom nivou.

Inicijativa za Bosnu i Hercegovnu * Treću Republiku upućena je najvišim organima međunarodne zajednice te se mimoilazi redovna procedura propisana Aneksom IV Daytonskog sporazuma, koja ne predviđa postojanje Ustavotvorne skupštine, a sve eventualne izmjene i dopune vrše se amandmanskom procedurom. Ovom metodu pristupili su uvjereni da je Bosna i Hercegovina u opasnosti i kao država i kao društvo te da samo radikalne promjene podržane od strane međunarodne zajednice mogu pomoći oživanju Bosne i Hercegovine.

Inicijativa Socijaldemokratske partije i Inicijativa za Federalnu Republiku Bosnu i Hercegovinu svoju implementaciju vide kroz redovne amandmanske procedure, mada se za njihovu realizaciju traži podrška Međunarodne zajednice, bez koje, smatraju, nikakve promjene nisu moguće. Inicijativa Socijaldemokratske partije je da Bosna i Hercegovina osim pravne i demokratske države bude i socijalna država, dok se u Zahtjevu za Treću Republiku traži uspostava humanijeg ekonomsko-socijalnog sistema.

Zahtjev da se Bosna i Hercegovina ustroji kao Republika skoro da je jednoglasan, a opravdan je historijskim činjenicama. Bosna i Hercegovina je dva puta bila Republika, prvi put kao Socijalistička Republika BiH u sastavu SFRJ i drugi put kao postjugoslovenska Republika Bosna i Hercegovina priznata od međunarodne zajednice kao suverena država. Izneseno je i stanovište da eventualno složno unutarnje ustrojstvo Bosne i Hercegovine ne bi trebalo posebno isticati u nazivu države jer bi se time dodatno ugrozio kontinuitet Bosne i Hercegovine.⁶³

⁶³ Prof.dr. Jazim Sadiković na Okruglom stolu povodom Deklaracije o nužnosti izmjena Ustava Bosne i Hercegovine i o ustrojstvu "Federalne Republike Bosne i Hercegovine."

Moramo uo-iti da su prema predlo`enim rje{enjima tri me|usobno najsl-nije inicijative za reviziju Daytonu svakako Zahtjev za Bosnu i Hercegovinu * Tre}u Republiku, SDP-ova Inicijativa za promjene Ustava Bosne i Hercegovine i Deklaracija o nu`nosti izmjena Ustava Bosne i Hercegovine i o ustrojstvu "Federalne Republike Bosne i Hercegovine," koje su iznesene u javnost u samo par mjeseci, a nakon Op}ih izbora 2002. godine. Sli-nosti su svakako vezane za vi{enacionalni sastav potpisnika inicijativa i viziju Bosne i Hercegovine -ija se budu}nost ne vidi u zatvaranju u nacionalne kolektivitete, a {to je postalo izvjesno nakon pobjede nacionalnih partija na oktobarskim izborima 2002.godine.

Tako|er, jasno je da su potpisnici bili inicirani te{kim dru{tvnim, ekonomskim i politi-kim stanjem u Bosni i Hercegovini, a koje se svakako o-ituje kroz -injenicu da nije ostvaren povratak protjeranih svojim domovima, postojanje diskriminacije u svim segmentima dru{tva, ratni zlo-inci koji su na slobodi, ravnopravnost naroda je samo formalna, posebno u Republici Srpskoj, privreda je u kolapsu, proces privatizacije uglavnom je lo{e proveden, prisutan strah kod povratnika. Me|utim, bitno je napomenuti da su Inicijativa SDP-a i Inicijativa za Federalnu Republiku Bosnu i Hercegovinu ozbiljnije pripremljene i predlo`ena su neka konkretna rje{enja za razliku od Inicijative za Bosnu i Hercegovinu * Tre}u Republiku koja nije i pored zapa`ene medijske promocije odgovorila na pitanje politi-kog organiziranja i predstavljanja na principu nacionalne pripadnosti.

S druge strane postavlja se pitanje izvjesnosti promjene Ustava putem amandmana kako je predlo`eno u inicijativama SDP-a i o ustrojstvu Federalne Republike Bosne i Hercegovine, s obzirom na komplikovanu skup{tinsku proceduru, a koja tra`i i {iroki politi-ki i dru{tveni konsenzus unutar Bosne i Hercegovine.

Inicijativa novinara i intelektualaca okupljenih oko politi-kog magazina "BH Dani", direktno ne insistira na ukidanju entiteta, ali u devetoj tezi implicira da se konstrukcija Bosne i Hercegovine prilagodi zahtjevima evropskih integracija i principima efikasnog i ekonomi-nog ustroja dr`avnih organa. Ako uzmemo u obzir da je Inicijativa nastala u januaru 2000. godine kada su pored predsjedavaju}eg i dopredsjedavaju}eg postojala samo tri dr`avna ministarstva (Ministarstvo vanjskih poslova, Ministarstvo vanjske trgovine i ekonomskih odnosa i Ministarstvo civilnih poslova i komunikacija) mo`e se pretpostaviti da se implicira smanjenje ovlasti entiteta u korist dr`avnih organa, a posebno ako se uzme u obzir da se tra`i prilago|avanje ustroja oru`anih snaga standardima NATO saveza * ta-nije formiranje jedne, zajedni-ke vojske.

Zahtjev Udru`enje gra|ana "Majke Srebrenice i Podrinja," Nacionalna asocijacija intelektualca BiH * Bosanaca, Zajednica prognanih, izbjeglih i iseljenih Bosanske Posavine i Zajednica prognanih i izbjeglih Banjalu-ana razlikuje se

od ostalih po subjektu kojem je upućen, ali i u odnosu prema samom Daytonskom sporazumu. Naime, ova udruženja jedina su uputila svoj zahtjev Ustavnom sudu Bosne i Hercegovine, a ujedno su jedini koji Daytonskom sporazumu osporavaju legalitet i legitimitet.

Kao što je izloženo, jedina inicijativa, a za koju se može reći da je imala veću podršku hrvatskog naroda, predstavljena kroz Hrvatski narodni sabor insistira na formiranju još jednog entiteta, ta nije teško i konačno podjeli države Bosne i Hercegovine i to isključivo na etničkoj osnovi. Tome svakako ide u prilog teza da entiteti ne moraju biti teritorijalno jedinstveni, već se mogu sastojati od više zasebnih cjelina koje su administrativno povezane.

Unutar Republike Srpske nije bilo inicijativa ili zahtjeva za reviziju Daytonskog sporazuma, naprotiv, svaka inicijativa iz Federacije Bosne i Hercegovine apriori je odbačena, a prijedlozi za ukidanje entiteta su najviše osuđeni. Svi argumenti koji podržavaju tezu da se Bosna i Hercegovina sa ovakvim ustavnim uređenjem ne može stabilizirati i da ne može biti primljena u Evroatlanske integracije i NATO odbacuju se sa tvrdnjom da se Bosna i Hercegovina može stabilizirati primjenom predviđenih ustavnih rješenja. Međutim, spremnost vlasti Republike Srpske za primjenu Daytonskog sporazuma najbolje može uočiti i po broju ostvarenih povrataka u Republiku Srpsku, provedbi Odluke Ustavnog suda o konstitutivnosti naroda, spremnosti za hapšenje ratnih zločinaca i ukupnoj zaštiti ljudskih prava i sloboda. Jasno je da je najveći problem nedostatak političke volje za normalizaciju stanja u državi, te odlučnost da se ratom uzurpirane pozicije ni po koju cijenu ne smiju izgubiti.⁶⁴

PERSPEKTIVE

Iz izloženih teza jasno je da se Daytonski sporazum polako mijenja, da postoje zakoni koji su sa razine entiteta prešli na državni nivo. Taj proces prijenosa ovlasti sa entiteta na državni nivo može sagledati sa dva potpuno različita aspekta. Jedan aspekt može nazvati optimističnim. On podrazumijeva izgradnju institucija Bosne i Hercegovine kao na primjer Vijeća ministara⁶⁵, Suda Bosne i Hercegovine, Regulatorne agencije za komunikacije, Državne granice služba Visokih sudskih i tužilačkih vijeća Bosne i Hercegovine, te implementaciju Odluke Ustavnog suda o konstitutivnosti naroda koja formalno onemogućuje diskriminaciju unutar entiteta. Pored političkog aspekta primjetni

⁶⁴ Vidjeti stavove političkih stranaka iz Republike Srpske u Veernjem listu, strana 3. od 11.09.2003. godine.

⁶⁵ Povećanje broja ministarstava i ukidanje rotirajućeg mjesta predsjedavajućeg Vijeća.

su pomaci u kulturnoj, sportskoj i medijskoj⁶⁶ sferi (pokretanje zajedničkih sportskih liga i određenih kulturnih projekata koji se održavaju na državnom nivou). Sve ovo na prvi pogled ukazuje na postepenu integraciju bosanskohercegovačkog društva i u perspektivi izgradnju civilnog društva.

Ipak, sve navedeno može se sagledati i iz druge perspektive koju uslovno možemo nazvati pesimističnom. Zakoni koji su doprinijeli izgradnji i osnivanju državnih institucija su nametnuti odlukom Visokog predstavnika. Odluka Ustavnog suda o konstitutivnosti naroda ni tri godine od donošenja nije u potpunosti provedena,⁶⁷ a prisustvo i organizacija zajedničkih kulturnim i sportskih manifestacija nije rezultat identifikacije sa državom nego pragmatična odluka koja omogućava izlazak na međunarodnu scenu. Iako neke od navedenih inicijativa vide integraciju društva između ostalog i putem obrazovnog sistema (ne)možnost implementacije je vidljiva iz posljednjeg primjera administrativnog ujedinjavanja (kola i obrazovne reforme na koje je Biskupska konferencija Bosne i Hercegovine odgovorila zahtjevom za raspisivanjem referenduma hrvatskog naroda. Članovi Biskupske konferencije traže spriječenje asimilacije naroda,⁶⁸ a interesantno je da slušanje nastave iz prirodnih nauka zajedno sa drugima vide kao ugrožavanje vitalnih prava hrvatskog naroda.

Konkretno osnovni problem ustroja Bosne i Hercegovine kao normalne evropske države nije komplikovanost amandmanske procedure propisane Ustavom, nego činjenica da mnogi državljani Bosne i Hercegovine istu ne prihvataju kao svoju domovinu.⁶⁹ Zanimljivo je da nijedna od inicijativa nije uzela u obzir Evropsku konvenciju o ljudskim pravima i temeljnim slobodama koja bi ispravna i potpuna implementacija poništila neka od rješenja koja su posljedica agresije na Bosnu i Hercegovinu, odnosno omogućila iskorištavanje instrumenata Vijeća Evrope u provedbi vlastitih principa kojima se štite osnovna ljudska prava i slobode. Možnost mobiliziranja javnog mnijenja uz aktivnu podršku međunarodne zajednice, naročito u Republici Srpskoj, javlja se kao imperativ za sve buduće inicijative vezane za promjenu ustavnog poretka, a koji bi u konačnici mogao pridonijeti integraciji države i društva. Pluralizam ideja i vizija o ustrojstvu države nikako ne može biti prepreka već poticaj za iznalaženje pravog modela, odnosno, postizanje socijalnog konsenzusa svih građana Bosne i Hercegovine u kakvoj zemlji žele da žive.

⁶⁶ Primjer TV Mreže pokazuje dobrovoljno i uspješno povezivanje medijskih kuća iz različitih entiteta.

⁶⁷ Neuspostavljanje Doma naroda u Federaciji i pitanje implementacije na kantonalnom nivou.

⁶⁸ Izjava Biskupske konferencije Bosne i Hercegovine o kulturnom i vjerskom identitetu hrvatskog naroda u Bosni i Hercegovini, Veernji list - izdanje za Bosnu i Hercegovinu, 12.09.2003. godine.

⁶⁹ Interesantno je da je anketa sprovedena između u-enicima osnovnih (kola u Sarajevu, Banjoj Luci i @ep-u sa pitanjem "Koja je vaša država" dala tri potpuno različita odgovora. U Sarajevu odgovor je glasilo Bosna i Hercegovina, u Banjoj Luci Srbija i Crna Gora, a u @ep-u Hrvatska; FTV, Politički magazin "60 minuta", 15.09.2003. godine.

ZAKLJUČCI RADNE GRUPE IV

Pripremila: Ned`ma D`ananovi}

Radna grupa zapo-ela je svoju sesiju ekspozoom "Stanje mogu}nosti i perspektive promjene Ustava Bosne i Hercegovine" koji su priredili Midhat Izmirlija i Lejla Bali}. Autorica i uvodni-arka Lejla Bali} ponudila je hronolo{ki prikaz dosada{njih, medijski najeksponiranijih, inicijativa za promjenu Ustava Bosne i Hercegovine, te analizu njihovog sadr`aja, i usporedbu sli-nosti i razlika. Naravno, autorski par obradio je i formalno-pravne mogu}nosti za izmjenu ustavnih odredbi, kao i pregled dosada{njih amandmanskih izmjena. Shodno o-ekivanom, prezentacija je isprovocirala niz pitanja u-esnika. Uvodni-arka ja pru`ila niz dodatnih poja{njenja, a u-esnicima je podjelila i primjerke intervjuua s dvojicom -lanova Predsjedni{tva Bosne i Hercegovine, Sulejmanom Tihi}em i Borislavom Paravcem, koji ilustriraju suprotstavljenost politi-kih stavova u vezi sa ustavnim promjenama.

Nakon neophodnih poja{njenja, u-esnici su zamoljeni da se predstave. Ispostavilo se da se radi o kombinaciji studenata dodiplomskih i postdiplomskih studija, univerzitetskih i vladinih djelatnika, kao i poznatih li-nosti javnog `ivota u BiH i to iz oba entiteta. Kako je za nastavak sesije bilo predvi`eno kombiniranje individualnog i grupnog rada, Grupa I usaglasila se da svaki od u-esnika individualno identificira tri (zbog mogu}nosti preklapanja) "zamjerke" Daytonskom ustroju i predlo`i na-in njihovog prevazila`enja.

Vrlo brzo ispostavilo se da je `iva diskusija u prvom dijelu bila samo povjetarac pred pravu buru koja se na Grupu sru-ila u drugom dijelu sesije. Daytonске odredbe predstavljaju odraz onoga {to se u BiH doga|alo u periodu 1992-1996 god., pa je zbog toga jo{ uvijek nemogu}e o ovim pitanjima razgovarati posve racionalno, isklju-iv{i osje}anja i ratne traume. ^injenica da je rat neposredno kreirao sadr`aj Daytonskog sporazuma predstavlja i njegov najve}i nedostatak u savremenom trenutku. Rje{enja iznu`ena nasilnim putem predstavljaju prepreku reintegraciji dr`ave, vladavini prava, ja-anju institucija i priklju-ivanju Euro-atlantskim integracijama. Na-in na koji gledamo na Sporazum i potrebu za izmjenama ovakvog ustroja uslovljen je na{im ratnim iskustvom i bave}i se njime mi se bavimo svojom pro{lo}u, a nastojanje da odr`imo status quo, ili ga reformiramo, odraz je na{eg odnosa spram "-etiri najte`e godine". Dvije su mogu}e opcije * prihvatiti njihovu zaostav{tinu i prakti-no nastaviti `ivjeti u pro{losti ili prevazi}i sve strahote iz pro{losti i priklju-iti se ostatku civilizaciarnog svijeta u XXI vijeku.

Evo kako su u-esnici identificirali osnovne zamjerke daytonskom Ustavu i {ta su predlo` ili kao na-ine prevazila`enja problema:

1. Sporna pravna priroda i legitimitet daytonskog Ustava

(Mogu}a rje{enja:

- dezintegracija dr`ave;
- centralizacija dr`ave;
- izmjene ustavnim amandmanima;)

2. Komplikovana procedura dono{enja ustavnih amandmana

(Predlaga- nije ponudio alternativu.)

3. Slo`enost dr`avnog aparata i masovna birokratizacija

(Pojednostavljenje dr`avnog aparata i ukidanje pojedinih nivoa vlasti).

4. Nefunkcionalna teritorijalna podjela BiH

(Uvo|enje geografskih i ekonomskih kriterija za administrativnu podjelu zemlje).

5. Nepostojanje mehanizama za uklju-ivanje mladih u politi-ko odlu-ivanje.

(Uvo|enje mehanizama za uklju-ivanje mladih u politi-ke procese, u Izborni zakon).

6. Podjela na entitete

(Ukidanje podjele na entitete i centralizacija dr`ave).

7. Legalizacija etni-kog -i{)enja.

(Zamjerka na predlaga-a odnosi se na autore i potpisnike Sporazuma u datom obliku).

8. Podjeljenost pravnih sistema, tj. postojanje najmanje dva pravna sistema u BiH.

(Postepena revizija i stvaranje jedinstvenog pravnog sistema).

9. Nedefiniranost vitalnog nacionalnog interesa BiH.

(Definiranje vitalnog nacionalnog interesa BiH u Ustavu).

10. Kategorija konstitutivnosti naroda umjesto konstitutivnosti gra|ana.

(Uvo|enje konstitutivnosti gra|ana, tj. pojedinaca umjesto naroda).

11. Ekonomski neproduktivan sistem i nepostojanje "welfare state".

(Ekonomska regionalizacija zemlje i stvaranje i institucionalizacija regionalnih ekonomskih razvojnih agencija).

12. Nepostojanje demosa kao preduvjeta postojanja demokracije, pro-duciranje vladavine etnokracije.

(Stvaranje bh. demosa uvo|enjem gra|anina kao konstitutivne kategorije).

Ovom prilikom posebno bih izdvojila komentare dva u-esnika. Dok je jedan naglasio kako nema zamjerki na ra-un daytonskih odredbi jer one {tite i zadovoljavaju interese svih i sprje-avaju povratak u ratno stanje, drugi je kao najve}i problem identificirao nesprovo|enje odredbi Daytonskog sporazuma, a pogotovo Anexa VII koji se odnosi na povratak protjeranih. Mi{ljenje tog u-esnika jeste da je upravo povratak protjeranih klju- prevazila`enja posljedica ratnog stanja. Izdvojila bih jo{ i opservaciju jednog od u-esnika koja se odnosila na kori{tenje ispravne terminologije u imenovanju stvari i pojava. Bo{njaci, Srbi i Hrvati, tako, prema njegovom mi{ljenju, ne predstavljaju nikakve teritorijalno razgrani-ene nacije ve} etno-konfesionalne grupe.

Nakon burne diskusije jedini op}eprihva}eni zaklju-ak je taj, da je osnovna va`nost ovog skupa mogu}nost raspravljanja o razli-itim pitanjima. Kao posebnu vrijednost Grupa je istakla -injenicu da to ovog puta nije bio "dijalog istomi{ljenika", kao {to se to -esto zna dogoditi, ve} `estoka diskusija koja je maksimalno involvirala sve u-esnike. ^ak je i u -injenici da se grupa prakti-no podijelila, mogu}e naslutiti pozitivno raspolo`enje kada je rije- o nekim dru{tvenim odrednicama * ovog puta to nije bilo na etni-koj osnovi, ve} na osnovi koncepta * gra|anskog nasuprot etni-kog.

UMJESTO ZAKLJUČKA

Autor: Ivan Barbali} (ACIPS)

Kada smo po-eli sa planiranjem Alternativne konferencije "Osam godina Daytonске BiH" cilj nam je bio da okupimo {to ve}i broj ljudi nove generacije, ljudi koji do sada i nisu -esto imali mogu}nost da izraze svoje poglede u vezi sa klju-nim pitanjima dru{tva u Bosni i Hercegovini, kako bi iz razli-utih uglova poku{ali analizirati samu osnovu i po-etnu ta-ku svih dru{tvenih pitanja * dakle daytonski Ustav. Postojala je skepsa da bez u-e{a ve}eg broja etabli-ranih intelektualaca javne scene diskusija ne}e mo}i poprimiti kvalitetan tok te ponuditi ozbiljnije analize i kritike. Na svu sre}u, razloga za skepsu nije bilo.

Ko su ljudi nove generacije? Ve} godinama, kroz razli-ite institucije prolazi veliki broj ljudi mla|ih od 35 godina, koji su vrlo rano popunili prazan prostor ogromnog broja administrativnih pozicija (kako me|unarodne zajednice tako i dr`avnih institucija) otvorenih neposredno nakon potpisivanja Daytonskog sporazuma, gdje je jedan od osnovnih preduslova postalo poznavanje engleskog jezika. Dakle, vrlo rano u svojoj karijeri, mnogo mladih ljudi imalo je mogu}nost da se na|e blizu faktora koji su donosili odluke, da se upozna sa me|unarodnim standardima poslovnog ambijenta, da kroz rad nau-i i prihvati moderne vrijednosti savremenog dru{tva, da upozna tehnike pregovaranja i politi-kog manevarisanja, da elokventno iznosi zaklju-ke i analizira stanje.

Istovremeno, blizina faktorima koji su donosili odluke, nije zna-ila i mogu}nost dono{enja samih odluka ili bar mogu}nost doprinosa tom procesu. Organizacijske strukture ve}inom su nefleksibilne i onemogu}avaju napre-dovanje prema zaslugama. Jasno je da postoje dvostruki standardi, koji odva-jaju strane od doma}ih slu`benika, strana-ke aktiviste od nestrana-kih, starije od mla|ih, itd.

Kona-no, ljudi nove generacije imaju jednu zajedni-ku liniju, a to je shvatanje potrebe za daljim obrazovanjem i usavr{avanjem. Netipi-no za na}u sredinu, veliki broj mladih ljudi istovremeno je radio slo`ene poslove i studirao. Kada je Centar za interdisciplinane postdiplomske studije Univerziteta u Sarajevu po-eo sa radom, bili smo i te kako prijatno iznena|eni velikim interesovanjem i visokim kvalitetom prijavljenih. Ve} tre}u godinu taj nivo ne samo da ne opada, nego konstantno raste, {to je Centru omogu}ilo da postavi prijemne kriterije prema visokim evropskim standardima. S obzirom da se broj diplomiranih magi-stara Centra iz Bosne i Hercegovine pribli`ava broju 100, {to je samo jedan

segment ove populacije, jasno je da se stvara jedna potpuno nova i druga-ija generacija. Daleko kvalitetnija od prethodne.

Upravo taj generacijski nesklad, -ak rascjep, frustrira. Embrion se razvija i suvi{e brzo da bi prihvatio sistem kakav jeste, a sam sistem nema potrebu da regrutuje nove ljude. Samim tim postalo je jasno da je potrebno ljudima nove generacije pru`iti mogu}nost da iznesu ka javnosti ono {to se ve} du`e vrijeme u njima akumulira. Krajnje je vrijeme i ovo je tek po-etak.

Kada smo planirali Alternativnu konferenciju znali smo da potencijal postoji, ali nismo mogli jasno da pretpostavimo da li }e upravo ova konferencija mo}i pokrenuti tu energiju. Izabrana tema bila je vi{e nego logi-na - daytonski Ustav kao osnovna vrijednost koja definira dru{tvo. Da li kompromisna rje{enja uspostavljena s ciljem da se zaustavi rat mogu da dugoro-no predstavljaju osnovu napretka dru{tva ili ne? Definiranje i analiza osnove predstavlja samo po-etni korak daljih diskusija i razmatranja velikog broja nelogi-nosti i problema koje ova dr`ava ima.

Rasprava o Daytonu otvorila je nova pitanja i ponudila mogu}e odgovore:

Da li je mogu}e dugoro-no o-ekivati odr`ivost nametnutog? Dayton se u prvoj fazi postavljao kao neupitno rje{enje, ali to je bila faza uspostavljanja dijaloga i prepreke su bile druga-ije od onih koje postoje u ovom trenutku. Lejla Bali} i Midhat Izmirlija u zaklju-ku svog referata isti-u da osnovni problem ustroja Bosne i Hercegovine kao normalne evropske dr`ave nije komplikovanost amandmanske procedure propisane Ustavom nego -injenica da mnogi dr`avljeni Bosne i Hercegovine istu ne prihvataju kao svoju domovinu. To dalje implicira postojanje opstruktivnog elementa u odnosu na stvaranje odr`ive dr`ave, {to ve} godina-ma rezultira usporavanjem procesa normalizacije. To se logi-no reflektira na kvalitet `ivota pojedinca, odnosno gra|anina. Pitanje prava gra|anina nasuprot vladavine etnokracije, sadr`ano je u ve}ini zaklju-aka rada Panela IV. I pored neslaganja sudionika u radu panela, moderator Ned`ma D`ananovi} povla-i da je pozitivan pomak to {to podjela u radu nije bila na etni-koj osnovi, ve} na osnovi koncepta * gra|anskog nasuprot etni-kog.

S obzirom na sukob koncepata, ostavljena su otvorena pitanja o tome da li je mogu}e razgovarati o alternativni i koje bi snage predstavljale alternativu. Ako zajedni-ka alternativa ne mo`e da bude iznjedrena da li je potreban jo{ sna`niji element utjecaja me|unarodne zajednice ili je mogu}e o-ekivati da se reformiraju postoje}e politi-ke snage. Generacijski gledaju}i, da li su donosioci odluka ljudi starije ili nove generacije. Postoji li nova generacija?

Ova pitanja u jednom obliku bila su analizirana i u radu Panela II, koji se bavio

pitanjem političkih prava. Samim tim kritika je bila upućena prema izbornom sistemu koji svojim odredbama stimulira nacionalno političko izjašnjavanje kao primarno. Moderator Valida Repovac navodi zaključak da implementaciji ljudskih prava na cijelom teritoriju Bosne i Hercegovine u vidu prepreke stoji Izborni zakon kao osnova diskriminacije. Samim tim, nije logično očekivati stvaranje snažne nove političke opcije, pa ni demokratske kulture s obzirom na postojeći sistem.

Spomenuti opstruktivni element te njegova implikacija na standard života građanina, usko je povezan sa ekonomskim sistemom BiH, odnosno nepostojanjem istog. Dodatno, bez susretanja definiranih standarda, BiH ne može ozbiljnije pristupiti procesu Euro-integracija. Kao primjer nekoherentnosti (konkretno legislative), Emir Hadžić u svome referatu "Jedinstveni ekonomski sistem" (Panel I), navodi nemogućnost precizne analize privrednog stanja na nivou BiH. U svom tekstu on naglašava da samo deklarativna politička podrška nije dovoljna i da bez donošenja odgovarajuće legislative i stvaranja novih institucija na nivou države BiH nema šanse da ravnopravno konkuriše evropskom i drugim tržištima.

U sklopu rasprave ovog panela kao jedan od ključnih razloga nemogućnosti stvaranja dostatnih ekonomskih politika BiH navodi se komplikovano i neefikasno administrativno uređenje zemlje.

Sa spomenutim administrativnim komplikacijama, koje usporavaju razvoj i proces integracija na skoro svakom nivou, BiH bi morala da ima skoro pa savršenu i funkcionalnu javnu službu. S obzirom da je stvarnost daleko od toga, tema ovog panela je bila uvođenje novih standarda u rad javne službe bez kojih je bh. administracija, odnosno administracija na svim nivoima, ostati instrument za kojeg nije bilo kakvih promjena u BiH.

Dakle, konferencija je razmatrala različita pitanja direktno implicirana daytonskom strukturom društva. činjenica je da teme nisu pokrile sve neophodne aspekte, kao što su pitanja sigurnosti, civilnog društva, vladavine zakona itd., bez kojih normalizacije BiH neće biti, a koje su također uslovljene daytonskom realnošću. Također, teme su analizirale društveno stanje sa različitim nivoa, gdje je prvi panel razmatrao daleko generalniju temu od teme Panela III (Standardi javne službe). No upravo mogućnost izvlačenja jedne cjeline iz rada svih panela dokazuje da je pitanje opstojnosti daytonskog sistema realno i goruše.

Dugo vremena svaka diskusija o Daytonu predstavljala je određenu vrstu taboo teme. Ipak, vremena se mijenjaju i društvo se neminovno i nepovratno demokratizira. Tu su i ljudi koji svoje argumente baziraju prema sasvim drugom sistemu vrijednosti od onog sa kojim smo ušli u (našim službama katastrofalnu

tranziciju dru{tva. Unutar ove publikacije imali ste mogu}nost da pro-itate -etiri referata te zaklju-ke diskusija pojedinih panela. Po mom mi{ljenju oni donose vrijedna nova razmi{ljanja i poglede. Zajedni-ki sadr`ilac svih analiza je taj da je BiH daleko od prihvatljivog sistema dru{tva, te da je potrebno nastaviti diskusiju ulaze}i u {to specifi-nija pitanja i probleme.

Na kraju, potrebno je je jo{ jednom naglasiti `elja za sudjelovan-jem i da je tu `elju potrebno artikulirati. Konferencija kao ova samo je jedan oblik te artikulacije. Rekrutovanje ljudi nove generacije u javnu diskusiju u vezi sa razvojem dru{tva predstavlja obavezu, jer to su ljudi kojima te reforme i nor-malno dru{tvo najvi{e i trebaju. To je njihova budu}nost.

**8 years of Dayton BIH:
New visions for
Bosnia and Herzegovina?**

Alternative Conference

October 2, 2003.

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Conference program

■ **Introductory session**

Presentation of the Conference program:

Amela Sejmenovi} (Heinrich Böll Foundation, Regional Office Sarajevo)
and Ivan Barbali} (ACIPS)

■ **Workshops in separate working groups**

Workshop I

Economic development and Dayton BiH

Speaker: Emir Had` ikaduni} (Directorate for European Integrations)

Facilitator: Haris Abaspahi} (Sarajevo Economic Regional Development Agency)

Workshop II

Political rights and Dayton's Constitution in BiH/ Electoral system

Speaker: Jasna Bak{i} Mufti} (Law Faculty)

Facilitator: Valida Repovac (Directorate for European Integrations)

Workshop III

Public Service in BiH: reform possibilities for Public Services in BiH in accordance with EU standards.

Speaker: Senad Hromi} (Directorate for European Integrations)

Facilitator: Miroslav @ivanovi} (Center for Human Rights, University in Sarajevo)

Workshop IV

Situations, perspectives and possibilities of the initiative for amendment of the Dayton Constitution

Speakers: Midhat Izmirlija and Lejla Bali} (Law faculty)

Facilitator: Ned` ma D` ananovi} (Ministry of Foreign Affairs)

■ **Concluding session**

Presentation of the working groups, conclusions, open discussion, suggestions

Facilitator: Ivan Barbali} (ACIPS)

INTRODUCTION

Ladies and gentleman, dear friends,

On behalf of the Heirich Böll Foundation, Regional Office Sarajevo, I have the honor to welcome and thank you for your interest and participation in this Conference. Our today's gathering, which we named Alternative Conference "8 years of Dayton BiH: new visions for Bosnia and Herzegovina?", is a result of successful cooperation of our Foundation and the Alumni Center for Interdisciplinary Post-graduate Studies (ACIPS), headed by Mr. Ivan Barbali}. This conference is taking place with the generous support of the Ministry of Foreign Affairs of the Federal Republic of Germany and the Stability Pact for South-East Europe.

Before introducing the Heirich Böll Foundation in a few sentences, I would like to present our today's speakers and authors of the conference papers, which you had the opportunity to read or have in front of yourself right now. They are young experts of the Center and members of ACIPS:

Mrs. **Lejla Bali}**, Assistant Professor at the Law Faculty of the University in Sarajevo, **Midhat Izmirlija**, Assistant Professor at the Law Faculty of the University in Sarajevo, M.A. in Human Rights, Mr. **Emir Had' ikaduni}**, M.A. in European Studies, **Mr. Senad Hromi}**, M.A. in European Studies

We would like to thank to Ms. Jasna Bak{i}-Mufti}, Assistant Professor, Ph.D, who also prepared an introductory conference paper, but due to other, previously arranged, obligations, she was unfortunately not able to participate in the work of the conference.

The Heinrich Böll Foundation is a political foundation in FR Germany. By its orientation, the Foundation is affiliated to the Alliance 90/The Greens. Its work is oriented toward fundamental political values, like democracy, solidarity, non-violence, environmental protection and sustainable development. Its main goal is promotion and support of democratic processes, socio * political engagement of citizens and understanding among nations and cultures. The Foundation was named after one of the most significant and well known German writers in the post-war period. The work of Heinrich Böll (1917-1985) illustrates 40 years of

German democracy after Nazi dictatorship. In 1972 he was the first German writer to be awarded the Nobel Prize for literature after World War II.

The main goals of the Foundation in Germany and abroad are:

- development of democracy, particularly gender democracy,
- building of civil society,
- promotion of inter-cultural understanding and tolerance,
- promotion of new forms of political and cultural dialogue,
- environmental protection and sustainable development.

The Foundation has 18 offices around the World. By its presence, the Foundation Heinrich Böll - Regional Office Sarajevo, together with its branch offices in Zagreb and Belgrade, aspires to reinforce its peaceful political engagement in Bosnia and Herzegovina, Croatia, Serbia and Montenegro, and Kosovo.

The main goals of the regional programs are promotion and development of activities and attitudes towards socio * political building of peace in this region.

Considering the new forms of political and cultural dialogue, we decided to organize this conference and offer an opportunity for young experts, intellectuals and NGO activists to meet and discuss.

However, we are aware of the fact that the Dayton Peace Agreement ended war in BiH and that the implementation of the agreement is running slowly and with difficulties, while on the other hand, the process of EU enlargement goes much faster. In the process of accession to the EU, BiH is facing a number of tasks and conditions to be met in order to become an EU candidate. Eight years after the ratification of the Dayton Peace Agreement, Bosnia and Herzegovina is still in the state building process, dealing with numerous and consistent difficulties. One of the reasons for this situation might be the lack of a clear and common political vision for Bosnia and Herzegovina in the post-war period. The aspiration of Bosnia and Herzegovina for association with the EU is the only clear vision for the future of Bosnia and Herzegovina at this moment.

According to some statistic information in our country, 60% of young people want to leave BiH, while a relatively high number of young citizens do not consider BiH as their homeland. Therefore we decided to bring young people together in order to give them an opportunity to present their vision of BiH through mutual dialogue, exchange of positions and opinions.

Taking into account that the progress of BiH as a post-war society is not a clearly defined concept, the issue of the very structure of the Bosnian state as

a fundamental basis for viable future development is challenged. What are the possibilities of the current initiatives for amendment of the so-called Dayton Constitution? What kind of Electoral System offers the existing Constitution? How to create a unified economic space? When can we expect an efficient and independent public service in BiH? Our objective is to seek answers to those questions with young scholars and NGO activists of Bosnia and Herzegovina.

We believe that the work of this conference will offer answers to some questions and an alternative to the present situation.

On behalf of the Foundation Heirich Böll
Amela Sejmenovi}

ECONOMIC DEVELOPMENT AND DAYTON BIH

Unified economic space of Bosnia and Herzegovina in compliance with the internal market of the European Union

Introductory conference paper: Emir Had`ikaduni}

Any state that aspires to become a member of the European Union must accept certain membership criteria¹ and consolidate its legislation with the *acquis communautaire*², the legal inheritance of the European Union. Experiences of new EU member states, as well as candidate states show that the basis of the transition process for those countries represents the adoption of the *acquis* of the European Union. By now it covers over 100 000 pages of densely printed texts of different legal regulations, which the European Commission divided into 31 negotiation chapters, in order to simplify negotiations. The moment a state meets the requirements from each chapter, it has already established a market economy, parliamentary democracy and the rule of law in accordance with the model of the European Union.

Bosnia and Herzegovina will not be an exemption in this process. By the end of its way to full membership, after completing the chapter "acquis of the EU", BiH will also have completed the transition process and will have looked like any other democratic state with a successful market economy. Based on the decision of the Council of Ministers of BiH from March 1999, the state authorities have started the initiative for accession to the European Union³. In August 1999 the Parliamentary Assembly of BiH demonstrated its determination toward European Integrations by adopting the Resolution on European

¹ **Criteria from Copenhagen**, stability of institutions that ensure democracy, rule of law, respect of human rights; existence of an efficient market economy and the ability of the economy to survive competition within the Union market and the ability to assume obligations arising from membership, including the implementation of objectives of a political, economic and monetary union.

² **The *acquis communautaire*** - shortly *acquis*, also called inheritance of the Community, is a set of rights and duties which oblige and connect all member states within the European Union. It does not merely represent a body of laws in the narrow sense, since it covers: contents, principles and political goals of institutional contracts, legislation adopted by application of institutional contracts and verdicts of the European Court of Justice, declarations and resolutions adopted by the Union, measures relating to common foreign and safety policy, measures relating to justice and internal affairs as well as international contracts signed by the Community and those signed between member states within the Union.

³ **Official Gazette of BiH** 3/1999, March 20, 1999.

Integrations and on the Stability Pact⁴. Those two decisions, apart from representing political support to the process, are obliging the authorities in BiH to harmonize the domestic legislation with that of the EU.

This text will consider only one segment of approaching the European Union, i.e. the building of an integrated economic space in BiH that will be harmonized with European standards. Meeting these requirements provides to candidate states the opportunity to be included into the internal market of the European Union even before full membership. Such a status facilitates a state to have undisturbed business practice of its economic entities at the common market of the Union. In order to achieve undisturbed export, especially to use preferential trade privileges⁵ of the EU, Bosnia and Herzegovina must also adjust its legislation to the chapters of the White Book⁶. As it is well known, states from the region are advancing on their way toward European Integrations by fulfilling more and more obligations from both the *acquis* and the White Book. In practice, it means that European rules and standards are implemented in those states, so that export in those states becomes as demanding as export to the Union.

Adoption of laws that are in accordance with European standards will not be sufficient. A special challenge now, but also in the future, is their implementation, the establishment of adequate institutions, qualification of human resources, etc. Even if the perspective for joining the EU is still afar, the harmonization of domestic legislation with European standards is a prerequisite for decrease of the foreign trade deficit, increase of foreign investments and thereby faster economic recovery of BiH. Bosnia and Herzegovina is not left without support in resolving these issues. It has the CARDS⁷ program of the European Union as well as bilateral assistance programs of EU member states at its disposal.

⁴ **Official Gazette of BiH** 12/1999, August 8, 1999.

⁵ **Introduced by the Council Regulation** 2007/2000 from September 18, 2000 and amended by The Council Regulation from November 20, 2000, in force until December 31, 2005, with only a few exemptions, covering certain textile products in different ways, annual quotas for veal, wine and fish, while for other goods unlimited approach to the Union market is provided, provided they meet European standards.

⁶ **White Book** - document produced by the European Commission as part of the strategy for preparation of candidate states of Central and Eastern Europe for integration into the internal market. Precisely, it is a guide to CEE states in the harmonization process of legislation relating to the organization of the internal market. That document treats 23 chapters of regulations, compared to 31 chapters included in the *acquis communautaire*.

⁷ **CARDS**- Community Assistance for Reconstruction, Development and Stabilization. By The Council Regulation EC number 2666 - 2000 from December 15, 2000, BiH together with Croatia, Serbia and Montenegro, Macedonia and Albania became beneficiaries of the CARDS assistance program.

Priority tasks in building a unified economic space in BiH

Candidate states do not have to wait for meeting all the requirements from the White Book; they can, step by step, fulfill conditions for single groups of products by taking over suitable technical regulations and establishing a system for assessment of compliance of products with those regulations.

This means that those states can gradually start signing the so-called PECA⁸ products protocols for single groups of products⁹. Then the internal market of the Union expands to the territory of candidate states, just for certain groups of products. In this way all technical barriers to trade of these products are removed. Finally, the signing of the PECA protocols attracts additional foreign investments. Bosnia and Herzegovina has not yet started negotiations for signing the PECA protocols with the European Union.

Each company that aspires to establish production for export to the internal market of the European Union seeks an appropriate environment:

1. The same legislation for products as in the EU
2. The compliance assessment system approved by the European Union (accreditation, standardization, measurement, test and calibration laboratories, inspection and certification bodies)
3. The possibility to use EU trade preferentials, which candidate states have
4. Qualified human resources, possessing the necessary knowledge for work within the internal Union market

In order to start such processes, a state must have a single economic space on its territory. That economic space, respectively internal market of a state, implies the following:

1. Coherent legislative system¹⁰
2. Common administrative space
3. Full freedom of transport for capital, goods, services and people

⁸ **Protocols** (annexes) of the European agreement on harmonization, evaluation and acceptance of industrial

⁹ **Low-tension equipment**, medical resources, personal protection equipment...

¹⁰ **Each legal document must be part of state's system.** Today, in practice there are two entity sets of legislation, adopted separately from each other.

The best illustration showing that Bosnia and Herzegovina does not have a coherent legislative system is the impossibility to produce a precise analysis of the economic situation at the overall state level. Despite the fact that the High Representative enforced the Law on Statistics in BiH in October 2002, we still have no reliable statistic data on the level of unemployment, gross domestic product and other macroeconomic data on the state level. The reason is very simple; the methodology of data processing in the entities is not harmonized and consolidated. Here we have two sets of legislation on the entity level, which have been adopted independently from each other.

The problems appearing in the implementation of laws¹¹ adopted at state level are the best indicators of the non-existence of a common administrative space. The Law on Competition of BiH, the Law on Consumer Protection of BiH or e.g. the Law on Statistics in BiH have been adopted in both Houses of the Parliamentary Assembly of BiH in accordance with European standards¹², but their implementation, due to the non-existence of a common administrative space, is very difficult. Furthermore, beside suggestions from last year's report on the Stabilization and Association Process, the state of BiH still has no reliable own financing resources and continues to function depending on annually arranged transfers from the entities. In order to solve this problem, the introduction of VAT at state level was promoted, as well as the unification of customs administrations. Beside the establishment of a single bh market by these two reforms, the VAT would increase the efficiency of revenue collection, prevent corruption, smuggling and tax evasion. It remains to be seen when and how those two important reforms that are also part of the mentioned White Book (chapters 10, 20 and 21) will be implemented.

The single economic space of a state functions in accordance with regulations and requirements of the EU and the World Trade Organization. Most important thereby are the legislative systems for products, systems for assessment of harmonization and market monitoring systems. The European Union, though not being a sovereign state, has its single economic space called "Internal Union Market". All candidate states for membership in the Union have also created a common economic space on their territories. Unfortunately, Bosnia and Herzegovina still has at least two economic spaces, instead of one, unlike other EU member states. That is one of the reasons why BiH faces difficulties in building its export capacities and why foreign investments are less present than in states without such problems. Hungary, for example, exported 10.4 billion

¹¹ **Law on Consumer Protection**, Law on Competition and Intellectual Property, Law on Statistics, etc.

¹² **Competition** - chapter 3, White Book, Consumer Protection Policy - chapter 23, White Book

Euro of industrial products marked CE¹³ to the European Union in 2000. Hungary's import from the Union was smaller, so it achieved a significant trade surplus for this group of products. At the same time, BiH exported only two billion Euro of products marked with CE-label, which was the export of one company from BiH.

Currently, only four companies in BiH have the license to mark their products with CE-label. Up to now there have not been undertaken any adequate activities in BiH aiming at facilitation of the export to the internal market of the EU, particularly not those which would enable the use of trade privileges already approved to BiH by the EU. Industrial products, for which the compliance assessment is obligatory, can be exported only by those companies which study the appropriate EU legislation and pass the compliance assessment procedure abroad by themselves. This way BiH companies pay high costs for assessment and services of test laboratories, certification and inspection bodies, etc.

In the field of meat products, milk and dairy products, BiH does not satisfy European standards either. The mentioned producers do not test or certify their products internationally, as it is the case with industrial products that must prove their safety and compliance with European standards, yet it is the state which has to regulate this issue internally, by means of laws¹⁴ and institutions¹⁵. Despite the functioning of the Veterinary Office at BiH level, there is still much to be done in terms of adoption of all European standards in this field. Until then, there will be no export of dairy and meat products to the Union market. With the progress of EU accession of the neighboring states, their markets will gradually close for BiH products that are not in accordance with European standards. There lies the challenge for BiH foreign trade on one side, and the huge importance of harmonization of existing legislation with European legislation, and the building and strengthening of new institutions on the other side.

Those assertions were official in the last report of the European Commission on the Stabilization and Association Process of BiH for the year 2003. In this report it is stated that "difficulties appeared in the implementation of regional agreements on free trade were of a high concern". Those agreements contain specific technical standards of the World Trade Organization, but BiH does not always have the technical and /or institutional capacity to meet these standards

¹³ **CE label** certifies that a product is safe for humans, domestic animals, environment and will not have any negative impact on the consumer interest. It means that the product is harmonized with appropriate regulations for that kind of product, which are in force in the EU

¹⁴ **Law on Veterinary** that would cover all of the eight chapters of the European legislation governing those issues, Law on Phyto-sanitary Protection, etc.

¹⁵ **Office for Veterinary**, Council for Veterinary Issues, Phyto-sanitary Commission.

at the state level. As before, BiH was not able to make good use of advantageous conditions for approach to the EU market under the Measures for Autonomous Trade, since institutions at the state level have not yet the capacity to enable the use CE label or to confirm the compliance with EU legislation on safety".¹⁶

The process of stabilization and association * political and legal framework of society transition and economic development

The Stabilization and Association Process¹⁷ of BiH with the European Union is a special challenge for its governance. Prior to introduction of this concept, the entire region was considered as one unit, in the framework of the so-called regional approach to all states of the West Balkan. A short overview of all completed activities, up to now, brings us to the conclusion that the economic aspect of the approach to the European Union is of crucial importance. Just to remind you, out of 18 guidelines of the BiH Road map, six¹⁸ are related to economic issues. After the Road map was substantially fulfilled in September last year, the development of a feasibility study was launched in order to start negotiations for the ratification of the Stabilization and Association Agreement with the EU¹⁹. The feasibility study is currently being developed and its finalization is expected by the end of this year. Out of 346 questions that BiH received from Brussels, 106 were addressed to the Ministry of Foreign Trade and Economic Relations. The EC will form its answer depending on the quality of the answers given and on the implementation dynamics of reforms in BiH. All future activities²⁰ of BiH on its way to the European Union require the creation of a single economic space, establishment of a certification procedure, elimination of technical barriers to trade, etc.

¹⁶ EC Report on stabilization and association of BiH with EU, page 20

¹⁷ This concept has been presented for the first time in the document called Commission Communication to the Council and European Parliament COM (99) 235 from May 26, 1999. Besides BiH, the Process includes Croatia, Serbia and Montenegro, Macedonia and Albania.

¹⁸ Abolition of ZPP (state office for internal financial circulation), establishment of a Treasury at the state level, removal of all trade barriers between entities, founding of single state institute for standards, adoption of the Law on Consumer Protection, Law on Competition, implementation of the Law on Direct Foreign Investments and adoption of the Law on Restitution.

¹⁹ Agreed relation with Union, after signing the state becomes a "potential candidate" for membership, Stabilization and Association Agreement, besides trade privileges of EU and CARDS assistance program, it is one of the three pillars of The Stabilization and Association Process.

²⁰ Negotiations on the Stabilization and Association Agreement, pre-signing and signing of the Agreement, entering into force of the Temporary Agreement, its ratification in the European Parliament, the Parliamentary Assembly of BiH and the parliaments of EU member states, then entering into force of the Agreement, implementation of obligations, submission of the request for full membership and finally negotiations according to the 31 chapters of the Aquis.

There are no shortcuts in this long term process, the state must adopt all European standards in order to be integrated in its internal market, and later on, to become a full member. The Stabilization and Association Process with all its steps offers the possibility of progressive harmonization of BiH legislation with the European one. In this Process, beside the aforementioned declarative political support, it is necessary to have a strong engagement of all stakeholders within the society, primarily state authorities of BiH, which should adopt suitable legislation and form new institutions at the state level, thus creating a good environment for economic entities to equally compete at the European and other markets.

CONCLUSION OF WORKING GROUP I

Prepared by: Haris Abaspahi}
(Sarajevo Economic Regional Development Agency)

Eight years after signing of the Dayton Peace Agreement, BiH economy is in an undesirable position. High rates of economic growth in post-war years, primarily caused by huge capital inflow of foreign donations during the last few years, are lower than the expected and needed to bring BiH economy in the state of sustainability in the medium-term. High unemployment rates, huge foreign trade deficit and a low level of foreign investments are only a few indicators of the situation of BiH economy.

The development of small and medium enterprises, and attracting of foreign investments, are two generally accepted priorities in the sphere of BiH economic development. However, significant obstacles for development of small and medium enterprises and creation of a positive environment for foreign investments, directly derive from the Dayton arrangement of BiH.

The Washington Agreement, the Dayton Constitution and regulations deriving from those two documents, blocked creation and implementation of economy policies in BiH in many ways. An expensive, complicated and inefficient administration structure, limitations to the conducting of monetary policy by the functioning of the Central Bank according to principles of the Currency Board, existence of two incompatible fiscal systems, two legal systems, insufficient flux of people, goods, capital and ideas, non-existence of a single economic system, are only some of the factors limiting fast economic development in BiH.

The workshop participants agree that the fulfillment of EC requirements in the

field of market economy means at the same time the elimination of existing barriers for economic development in BiH. We have hypothetically equated the economic development process with the idea of economic integrations. Integration of BiH into the European Union is the only issue enjoying political consensus in BiH. Requirements that must be met in the EU association process mainly address the arrangement of economic space and undisturbed functioning of BiH economy in accordance with the market principles. In fact, the nonfunctioning of the economy based on market principles (inexistence of adequate legal regulations, non-implementation of existing laws, disharmony of existing laws between the entities) represents a significant obstacle for achievement of a desired level of economic development in BiH.

Economic development and European Integrations: example of divided economic space in BiH

The divided economic space is a direct result of the Dayton arrangement of BiH. The small, unstructured and divided market results in very poor business environment, and as such it is significant obstacle for attracting foreign investments. Furthermore, a divided market is very difficult to regulate and consolidate with European standards, making it a significant obstacle to the European Integration Process. Building a single economic space and its harmonization with the European standards provide possibility to candidate states to be included in the internal market of the EU, even before they reach full membership.

The arrangement of an economic space involves development of a legislative system for products, systems for harmonization assessment, control, quality etc. Without the existence of the mentioned legislation, it is impossible to promote domestic products to the EU market, or markets of candidate states. The lack of legislation for products is a direct obstacle to the reduction of BiH foreign trade deficit, and has an indirect influence on the high unemployment rate, the low level of foreign investments, and economic growth in general.

The non-existence of a single and internally arranged economic space in BiH is only one example proving how the Dayton arrangement of BiH is limiting the economic development and slowing down the process of European integrations. The very process of European integrations requires an amendment of the Dayton Peace Agreement in the sphere of centralization of certain state functions²¹. The amendment of the Dayton arrangement with small steps, through

²¹ Law on Consumer Protection, Law on Competition and Intellectual Property, Law on Statistics, etc.

the process of European integrations, would create a very slow, complicated, but safe way towards the creation of an efficient administrative system, as a precondition for economic development. The question is whether the speed of amendment of the Dayton arrangement through the process of European integrations is sufficient to prevent an economic and social collapse * which is certain if the current negative trends in the BiH economy are maintained.

A clearly defined economic development strategy, as well as a strategy of European Integrations, adopted and implemented by the state and the entity governments, would accelerate the mentioned process and thus indirectly influence the evolution of the Dayton arrangement of BiH.

The lack of domestic initiative, and the impossibility to reach a consensus on issues concerning the change of the Dayton arrangement, block radical changes of the organization of the state by way of democratic methods and the creation of an efficient administrative system that will not be an obstacle to the economic development of BiH.

Conclusion

- Significant obstacles for the achievement of a desirable economic level result from the Dayton arrangement of BiH (divided market, two legal systems, impossibility to conduct economic policy at state level, expensive, complicated and inefficient administration, etc.)
- Meeting of EC requirements in the field of market economy means simultaneously the elimination of existing barriers for economic development in BiH. Integration of BiH into the European Union is the only issue with political consensus in BiH. It is the absence of functioning of the economy according to regulated market principles (non-existence of adequate legislation, non-implementation of existing laws, incompatibility of existing laws among entities) is a significant obstacle for achievement of a desirable level of economic development in BiH.
- The very process of European integrations implies a gradual change of the Dayton arrangement of BiH. It is a relatively slow, but the safest way to change the Dayton arrangement of BiH. The question is whether the speed of amendment of the Dayton arrangement through the process of European

integrations is sufficient to prevent an economic and social collapse * which is certain if the current negative trends in the BiH economy are maintained.

- The lack of domestic initiative and the impossibility to reach a consensus on issues concerning the change of the Dayton arrangement, block radical changes of the organization of the state by means of democratic methods and creation of an efficient administrative system that will not be an obstacle to the economic development of BiH.

POLITICAL RIGHTS AND THE DAYTON CONSTITUTION IN BIH/ ELECTORIAL SYSTEM

Political human rights in the Constitution of BiH

Introductory conference paper:

Ms. Jasna Bak{i} * Mufti}, Assistant Prof. Ph.D

The Constitution of Bosnia and Herzegovina is an integral part of the General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter: Dayton Peace Agreement) which was agreed in Dayton on November 21, 1995 and signed in Paris on December 14, 1995. The General Framework Agreement for Peace contains 11 annexes²², of which Annex 4 is directly related to the Constitution, Annex 3 (elections), Annex 6 (human rights) and Annex 7 (refugees and displaced persons) that regulates constitutive matters.

This text will intentionally avoid tackling issues that arise from circumstances under which the Constitution²³ was enacted, because it goes beyond its scope. What remains is the assertion that the General Framework Agreement,

²² **Annex 1A:** Military Aspects of the Peace Agreement and Appendices to Annex 1A

Annex 1B: Regional Stabilization

Annex 2: Inter-Entity Boundary Line and Related Issues

Annex 3: Elections

Annex 4: Constitution

Annex 5: Arbitration

Annex 6: Human Rights

Annex 7: Refugees and Displaced Persons

Annex 8: Commission for Protection of National Monuments

Annex 9: Establishment of Bosnia and Herzegovina Public Corporations

Annex 10: Civilian Implementation of the Peace Agreement

Annex 11: International Police Task Force

²³ "Constitution as precedent in theory and practice of constitutional law, having in mind that Constitution is exclusively internal legal document in material, formal and procedural meaning. Constitution of Bosnia and Herzegovina is a component part of the General Framework Settlement for Peace in Bosnia and Herzegovina (Dayton Agreement) and Annex 4 of this Agreement. As such, the Constitution of Bosnia and Herzegovina is not an internal, but an international document, because it is component part of a multilateral international agreement. In the context of detection of the origin of constitutional law in Bosnia and Herzegovina, it is important to point out a very interesting and convincing opinion, which from the aspect of international public law considers the Dayton agreement as a very unusual document, and as such, if a Court or Arbitration should try to evaluate, interpret, or define its legal background or classify it from the aspect of the Vienna Convention on Contract Law, it would not be possible to classify it as an international contract. This because of the manner of signing and the obligatory aspects. It was signed by representatives of three states - the Republic of Bosnia and Herzegovina, the Federal Republic of Yugoslavia and the Republic of Croatia, not ad referendum, respectively under condition that it be approved and ratified subsequently by the bodies of the states signatories, finally and irrevocably. This agreement, or some of its annexes, are signed together by representatives of the mentioned states and representatives of the entities of BiH. The entities are not subjects of international law, but they accepted duties of international character, as if they were states, yet they are not. Further on, it is stated that a nominally sovereign state, member of United nations had been "imposed" the Constitution, and that the signatories of the Dayton Agreement signed the agreement under coercion". - Dr. Nurko Pobri}: "Constitutional Law" pg. 19, Issued by "Slovo", Mostar 2000.

as well as the Constitution, are a demonstration of political compromise with the aim to stop the war, which is obvious in many Constitutional solutions. However, as one of the targets in the war against Bosnia and Herzegovina was the destruction of the state of Bosnia and Herzegovina, and violent destruction of its social, political, cultural and ethnical tissue by crime, genocide, major violation of human rights, in the same way the General Framework Agreement is interwoven with the idea that democracy and human rights are factors of rebuilding of the Bosnian state, a prerequisite for reconstruction of the torn tissue and a mechanism that leads the state of Bosnia and Herzegovina into European Integrations.

²³ - "The constitutional image of Bosnia and Herzegovina looks very unusual. It is not necessary to make a deeper analysis to realize that it is impossible to classify this picture under criteria of what is called "Constitution" and "constitutive" in a legal state. Undoubtedly, it has a very significant and long term impact to body of the state, the whole legal order, rights and freedoms of citizens, their legal protection and overall social and state-legal flows to come in Bosnia and Herzegovina. Three authorities - chiefs of the states Bosnia and Herzegovina, Serbia and Croatia, adopted the Constitution of Bosnia and Herzegovina, none of them being a constitutive body in their respective states. It was adopted by agreed statement of will from the side of those bodies, in other words, it represents a contract (or agreement) without ratification in the Parliaments of those states. Thus, those bodies represented states (President of Serbia represented FR Yugoslavia) and made agreements on behalf of these states, it is clear that their will (contract) is not based in the legal system of these states, the same is the case of their common will, analyzed from the aspect of the international legal system, can not be considered legal, because it is more than obvious that this legal system can not support some will among states whose object is the Constitution of one of them. In this way, at least two basic rights, guaranteed internationally to each state in the World, have been violated - sovereignty and (sovereign) equality among states" - Ibrahim Festi), Ph.D: "Some Constitutional Issues of Bosnia and Herzegovina", conference paper submitted at the conference with the subject " State of Bosnia and Herzegovina and the Dayton Peace Agreement" held on 10th April, 1998 in the organization of the Law Faculty of the University in Sarajevo, American Association of Legal Experts/ Legal Initiative for Central and Eastern Europe - Office in Sarajevo and Legal Center Open Society Foundation BiH, and published in a conference documentation on p. 138.

- "the Dayton Constitution is a cabinet product of three political parties, the West European and the American diplomacies. Its adoption can therefore not be linked to the idea of a state arrangement from "the bottom". Right from the beginning, we must reject the possibility that Annex 4, as a constitutive legal document of "national self-determination" is considered the "Constitution" - Edin [ar-evi]: "Constitution and Policy" pg. 122, Sarajevo 1997.

²⁴ **Relying on respect of human dignity, freedom and equality, Devoted to** peace, justice, tolerance and conciliation, Convinced that democratic government bodies and judicial procedures are the best for peaceful relations in a pluralistic society, **Aspiring** to reach general wealth and economic development by protection of private property and improvement of market economy, **Lead** by the objectives and principles of the United Nation's Charter, **Assigned** for sovereignty, territorial integrity and political independency of Bosnia and Herzegovina in accordance with international law, **Resolute** to insure full respect of international humanitarian law, **Inspired** by the Universal Declaration on Human Rights, International Pacts on Citizens and Political Rights, economic, social and cultural rights, and the Declaration on Rights of Individuals that belong to National or Ethnic, Religious and Language Minorities, as well as other instruments of Human Rights, **Reminding** of the Basic Principles consolidated in Geneva on 8th September 1995, and in New York of 26th September 1995.

Bosniaks, Croats and Serbs, as constitutive peoples (in community with others) and citizens of Bosnia and Herzegovina, are hereby setting the Constitution of Bosnia and Herzegovina: - edition; Constitution of Bosnia and Herzegovina - translation into Bosnian language, Federal Ministry of Justice, Sarajevo 1977.

Preamble of the Constitution of Bosnia and Herzegovina and possible interpretations

This tendency is obvious even in the very Preamble of The Constitution²⁴, which begins with a philosophical base of human rights, respect of human dignity, freedom and equality. Taking into account that the preamble of The Constitution refers to the goals and principles of the United Nations Charter and the Universal Declaration, it is possible to draw certain parallels.

The United Nations Charter, which established relations between states at the global level, the Universal Declaration made human rights to step out on the international scene, have been reflecting experiences of fascism and World War II. Fascism was a characteristic of the mid 20th century, directly associated to World War II, destruction of people on ethnic grounds, massive exodus of refugees, persecution on ideological, political, racial grounds. All of the mentioned phenomena are results of totalitarianism, military and racist theories developed in the second half of the 19th and the first half of the 20th century²⁵.

If we neglect individual differences of supporters of racist theories, we can list extreme intolerance to civil democracy as common characteristics on one, and liberal political philosophy, on the other side. Political liberalism is mostly questioned in the aspect where it acknowledges freedom and equality of citizens. Racial theories promoted the conviction of existence of superior and inferior types of races. The White race was determined as superior in relation to Yellow and Black races. Following that logic, the culture created by the White race is a superior culture (European culture) comparing to the culture and civilization created by the Black and Yellow races. Racial theories foresee the end of history, which betrayed the cultural and civilizational mission of the Aryan race, which is endangered itself due to mixing of different races. The fulfillment of the historical Aryan mission foresees the birth of a new, pure, Aryan type by selection, cleansing of inferior ballast in the society with all available resources; from political resources to war, from the use of civil and criminal laws to the use of religion.

Historical experience bears witness that there was a short way between those theories and warfare of the Aryan race in order to fulfill the historical mission, that ideas of cleansing and elimination of the inferior people opened the door to concentration camps, that ideas of superiority required dominance, that service to the nation was finalized by denial of individualism, while the triumph of victorious power was connected with millions of dead, persecuted and injured.

²⁵ Refers to racial theories of Arthur de Gobin, Newstona Chamberlain, V. de Lupus, Otto Ramon and Karl Person.

That is why the Catalog of Human Rights, established by documents of the United Nations, understands man in its generic meaning, free of accidental characteristics concerning race, gender, ethnic group, religion, political affiliation, language, property, social situation, status and on that level recognizes dignity received by birth of each human being, and equality among people. Fascism in its roots, its basic ideological hypotheses and consequences of fascist practice, annulled and disputed human dignity. The dignity of fascism supporters themselves is disputed by their reduction to blind machines for execution of will in order to realize the mission of the Aryan race, while the dignity of victims is destroyed by their reduction to worthless ballast that must be physically removed.

The philosophical concept of the Catalog of Human Rights promotes dignity of human personality as an inborn feature, which must be recognized and protected in all conditions and under all circumstances. Thus the human being is not only entitled to the right to live, but also the right to a dignified life, where he/she can - free of fear, poverty, existential insecurity, and in peace * realize fulfillment of his/her existence. Human dignity must stay unharmed in all relations between the government bodies and an individual.

Human dignity is protected by prohibition of any kind of discrimination, torture, inhuman and humiliating treatment and punishment, prohibition of slavery and relations similar to slavery, trade of slaves, by rights in criminal procedures, minimum standards for treatment of prisoners, by a group of rules of medical ethics, in other words, the entire concept of the Catalog of Human Rights is interwoven with ideas about protection of personal dignity. Recognition of dignity to every human individual is a philosophical expression of humanization of relations among people on one, and the relation individual * state, on the other side.

If we stop at the meaning of freedom for a moment, we could say that the entire history of philosophy is interwoven with the idea of freedom, as the highest human value. The idea of freedom is the measure of everything. From the time of Greek philosophy until contemporary philosophy, philosophical and political theory almost does not exist without the determination of the concept of freedom.

The idea of freedom found its philosophical expression in the concept of the Catalog of Human Rights, as a term encompassing the human being, nation and states. The Catalog of Human Rights and Fundamental Freedoms, consider broadly this very sensitive point of human existence. The idea of the free individual, and then freedom of people, is directly or indirectly touched by all international documents treating the matter of human rights, sometimes as a reference to direct protection, and sometimes as a prerequisite for realization of other rights.

A free individual in the Catalog of Human Rights is entitled to: personal freedom (that can be limited only in specific cases in accordance to the law), freedom of movement and free choice of residence, freedom to leave any state

including the homeland, freedom of speech, opinion, determination, religion, freedom to marry, freedom of privacy, or in other words freedom from unauthorized interfere with private life, freedom of associating and peaceful assembly, political freedom (freedom of political determination, freedom to choose political representative and freedom to be elected in electoral political bodies), freedom from slavery, inhuman and uncivilized treatment, freedom from social and economic poverty, intellectual and artistic freedom, freedom of participation in cultural life, freedom to personal decision about his/her own life.

Freedom of people is expressed in the freedom of independent decision-making procedure in the field of political and economic arrangement, free of external domination, free use of natural and economic resources, freedom of own cultural expression, free and equal participation in international exchange and participation in scientific, artistic and cultural goods of mankind.

Some of these freedoms surpass the legal frame of human rights, but in the philosophical dimension of the overall concept of the Catalog of Human Rights, they enjoy a very important position. If they have no legal possibility of realization and protection, they still have a strong humanistic and ethical charge. With their moral strength, reinforced by the authority of international community, they can exercise pressure with the view to positive change of certain conditions.

The Constitution of Bosnia and Herzegovina was adopted in the framework of strong efforts directed toward the ending of the war, which by its elements of genocide, crime, massive violation of human rights, exodus of refugees, is very similar to World War II. In the Preamble of the Constitution of Bosnia and Herzegovina, the notions of human dignity are mentioned, as well as freedom, equality, peace, justice, tolerance, conciliation. The state is directly attributed with democratic bodies of governance, juridical procedure, peaceful relations in a pluralistic society, general welfare, economic development, sovereignty, territorial integrity and political independence. Among international documents, it refers to the Charter of the UN, the Universal Declaration, international pacts on civil and political, i.e. economic, social and cultural rights and the Declaration on individual rights that belong to national or ethnical, religious and language minorities, as well as to other instruments of human rights.

From the Preamble of The Constitution, from the instruments on human rights it refers to, and from the notions that ought to be understood in their entire meaning, it is possible to read the intention for creation of a legal framework for state with sovereignty, territorial integrity and political independence, based on democratic principles and a state respecting human rights * civil, political, economic, cultural and social.

Political rights

In the Catalog of Human Rights, listed in the Constitution of Bosnia and Herzegovina, there is no entire list of political rights. However, taking into account international instruments that are built into the Constitution of BiH, the list would look as follows:

- rights including freedom of opinion, conscience, and religion²⁶
- freedom of speech and media²⁷
- active and passive right to vote²⁸

²⁶ **Universal Declaration;** Article 18 " Each person has the right to freedom of thoughts, conscience and religion; this right includes freedom to change religion or opinion and freedom to, either alone or in community with others, publicly or privately, manifest his/her religion or belief by teaching, expressing religion or by religious rituals". MPGPP, article 18 "Each person has the right to freedom of thoughts, conscience and religion. This right includes freedom to have or accept religion or belief by his/her own choice, and freedom to individually or in community with others, publicly or privately, express one's religion or belief by religious service, rituals, practice or celebrating.

2. Nobody shall be exposed to pressure that might reduce his/her freedom to have or accept a religion or belief, in accordance with his/her own choice"

European Convention; Article 9, p. 1. "Each person has the right to freedom of thoughts, conscience and religion; this right includes the freedom to change religion or opinion and freedom to individually or in community with others, publicly or privately, expresses his/her religion or belief by religious service, practicing and teaching."

²⁷ **Universal Declaration;** Article 19 "Each person has the right to freedom of thought and expression, and it covers additionally the right not to be harassed because of their opinion, and the right to seek, obtain and distribute information by any means and regardless of borders."

MPGPP; Article 19 "No one shall be disturbed because his/her own opinion. Each person has the right to freedom of expression; that right covers the freedom to seek, obtain and distribute information and thoughts of any kind, borderless, orally or verbally, by printed media or in artistic form, or by any other means according to his/her own choice."

The European Convention; Article 10. "Each person has the right to freedom of expression. That right covers freedom of opinion, and to obtain and distribute information and ideas without interference of public governance and regardless of borders. This article doesn't interfere with the states' right to subject radio diffusion companies, television and cinematography to a license regime."

²⁸ **Active and passive right to vote is linked to the right to free expression of political will on occasional democratic, general, equal and secret elections.**

Universal Declaration; Article 21. pg.1. "Each person has the right to participate in public affairs of his/her state, indirectly or by freely elected representatives. Each person has the right to enter into public service in his/her state on equal bases. The will of people is the basis for state government; this will should be expressed at occasional and free elections that should take place in accordance with the general and equal voting right, by secret voting or other adequate process ensuring the freedom to vote."

MPGPP, article 25 "Each citizen shall have the right and possibility, without any differences listed in Article 2. and without unreasonable limitations, to the following:

- a) participate in the conduct of public affairs, directly or by the agency of freely elected representatives
- b) elect and be elected in fair, equitable, occasional elections with general and equal right to vote and secret voting, that ensures free expression of the voters' will;
- c) have access to public services of his/her state under conditions of general equality.

European Convention, Protocol 1. Article 3. " The high contracting parties are obligated to conduct free elections, by secret vote, in reasonable intervals, in accordance with legislation, under conditions that provide free expression of peoples' opinion."

- right to democratic elections and political representatives
- all the listed rights must be understood in accordance with the equality principle, in other words, of prohibition of discrimination, as it is, in accordance with international instruments from the field of human rights²⁹, defined in Article II, 4. of the Constitution of BiH. "Enjoyment of rights and freedoms foreseen in this Article or in international agreements, mentioned in the Annex of this Constitution, is guaranteed to all persons in Bosnia and Herzegovina without discrimination on any ground as sex, race, color, religion, political or other opinion, national or social background, connection with a national minority, property, birth or other status".³⁰

In this way the Constitution of Bosnia and Herzegovina confirms the position on interconnection of democracy and human rights; the relation where democracy appears as one of the human rights and, at the same time, only a democratic state can provide the respect of human rights. It is the people, composed of all citizens, regardless of the mentioned differences, as the holder of sovereignty to whom the right to political self-determination, to free expression of political will belongs. The idea of sovereignty and freely expressed political will is directly linked to the concept of democracy as a form of political governance, where the people owns the real possibility of undisturbed expression of its free political will, which is an unavoidable part of human rights. The political will of the citizens' majority is realized in the parliament as the holder of legislative power, therefore, the right to active or passive vote, respectively, the right to free expression of political will in occasional democratic, general, equal and secret elections, appear as classical political civil rights. It means that citizens, under conditions of general equality, i.e. regardless of their ethnic, religious, sexual, political or other determination, opinion or status, have the right to elect and

²⁹ **Universal Declaration article 1.** "All human beings are born free and equal in dignity and enjoying rights. They are gifted by intellect and conscience and the need to interact with each other in the spirit of brotherhood."

Article 2. "Each person enjoys all rights and freedoms stated in this Declaration regardless of race, color, sex, language, political and other opinion, national or other origin, property, birth or other circumstances.

Further, no difference is allowed based on political, legal or international status of the state or territory a person belongs to, whether the state is undeveloped, under protection, dependent, or its sovereignty is limited in any way." MPGGPP; Introduction "Admitting that, in accordance with the Universal Declaration on Human Rights, the ideal of free people enjoying civil and political freedom and are free of fear and poverty, can be accomplished only in creating conditions where each individual can enjoy civil and political rights, as well as their economic, social and cultural rights."

Article 26. "All persons are equal in front of the law and have the right, without any discrimination, to equal legal protection. The law must prohibit any discrimination and guarantee to all persons equal and effective legal protection against discrimination based on any ground as race, skin color, sex, language, religion, political or other opinion, national or social background, gender or any other circumstance."

The European Convention, Article 14 "The enjoyment of rights and freedoms stated in this Convention must be ensured without discrimination based on ground as sex, race, skin color, language, religion, political or other opinion, national or social background, belonging to national minority, wealth, gender or any other circumstance."

³⁰ **The Constitution of BiH, Article II, pg. 4,** Non-discrimination, Federal Ministry of Justice, Sarajevo 1997.

be elected in electoral political bodies. Political rights of citizens guarantee the possibility to participate, without any discrimination, in the administration of public affairs, either directly or indirectly by agency of freely elected representatives, and to be employed in public services in accordance with general and equal conditions.

Annex 3 of The General Framework Agreement for Peace in Bosnia and Herzegovina underlines the intention that free, fair and democratic elections should be the basis that will provide safeguard to democratic goals in accordance with relevant documents of the Organization for Security and Cooperation in Europe (OSCE) in Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republic Srpska. In this context, parties (BiH, FBiH, RS) are facing the duty to insure free, fair and democratic elections held in a politically neutral environment, to protect the right to secret vote without fear or pressure, to insure freedom of media, to allow and improve freedom of association (including political parties) and insure freedom of movement. The parties are also obligated to implement the documents of the 2nd meeting of the Conference on Security and Cooperation in Europe held in Copenhagen 1990, precisely paragraphs 7 and 8 of this document stating the following:³¹

(7) To provide for and ensure that the people's will is the basis for governmental authority, the Participant States shall:

- (7.1) organize free elections in reasonable intervals, in accordance with law,
- (7.2) allow that all seats in at least one house of the national legislative body, are subject to free election by peoples' voting
- (7.3) guarantee general and equal voting right to all major citizens
- (7.4) provide secret voting, or voting based on a suitable procedure of free voting and regular counting of votes and regular announcement of official results,
- (7.5) respect the right of citizens to be elected to political i.e. public functions, individually or as representatives of political parties or organizations, without discrimination.
- (7.6) respect the right of individuals and groups to establish, absolutely freely, their political parties or other political organizations, and to provide to those political parties or organizations necessary legal guarantees so as to enable them to compete based on equal treatment before the law and the authorities.

³¹ Annex 3 Agreement on Election, Introduction and Article 1. and pg. 3, in accordance with the English version published by the OHR: The General Framework Agreement: Annex 3, Final document produced at the Conference on Human Dimension of the CSCE in Copenhagen, paragraph 7 and 8, Human rights, code document, Prometej, Belgrade 1991.

- (7.7) ensure that the law and public policy function in a manner allowing political campaigns to be conducted in an appropriate and free atmosphere without any administrative measures, violence or intimidation preventing free expression of political parties and candidates, their positions and qualifications, or in other words, to allow voters to be informed about their positions and to be able to discuss them, and vote freely without fear of revenge.
- (7.8) insure that no legal or administrative obstacles hinder undisturbed approach to sources of public information, in a non-discriminatory manner in relation to all political groups and individuals aspiring to participate in the election process.
- (7.9) insure that candidates, who receive the necessary quota of votes determined by the law, are appropriately introduced to their duty and perform it until the end of the mandate, the termination of which is also regulated by the law and in accordance with the democratic parliamentary constitutional procedure.
- (8) The Participant States consider that the presence of observers, either foreign or domestic, can improve the electoral process in states conducting elections. Because of that, they invite, from all other states, CSCE members and suitable private institutions and organizations that might want to monitor the national elections in a legally permitted extent. They will also make an effort to facilitate a similar approach to electoral procedure at lower level than the national. Those observers would be obligated not to interfere with the election procedure.**

From all the mentioned it derives that political rights and freedoms belong to the citizen, citizen of Bosnia and Herzegovina, regardless of which entity he/she lives, under the same conditions and without any discrimination on any ground. The State and its two entities are liable to provide the enjoyment of these rights as well as the protection thereof.

The following provisions are in conflict with the constitutional provisions from article IV

Paragraph 1 (refers to election of delegates in the House of Peoples) and from article V paragraph 1 (refers to election of Presidency members). Based on a constitutional provision, "The House of Peoples is composed out of 15 delegates, two thirds of them from the Federation (including 5 Croats and 5 Bosniaks) and one third from the Republic Srpska (5 Serbs)". Determining thereby the structure of the House of Peoples, it is clear that Croats, Bosniaks and Serbs are favored ethnical groups, and that other ethnic groups do not have the opportunity to be politically represented and are therefore discriminated on the ground of their ethnic origin. Describing the rules of procedure of both

Houses of the Parliament³², the House of Representatives and the House of Peoples, the Constitution equally recognizes Bosniak, Croat and Serb ethnic interests as legitimate political interests, whereas all others are excluded.

The next discrimination, this time among members of the same ethnic group, is territorial belonging. If protection of ethnic interests is at issue, in accordance with international documents, it refers to protection of language, language script, culture and religion, then it can be assumed that the interest is the same regardless of the entity, in which a member of an ethnic group lives. The question is, what is the reason for privileged position of ethnical Serbs in Republic Srpska, comparing to ethnical Serbs in the Federation, and vice versa, why Bosniaks and Croats from the Federation are privileged comparing to their situation in Republic Srpska. The presumption is that their vital interest is the same, regardless of place of residence in Bosnia and Herzegovina.

An exclusive ethnic political representation lead to disappearance of political citizens in the pluralism of their identities and political interests. An identity is not fully realized only in one's ethnic affiliation, yet it is also being defined by sex, social background and status, local-regional belonging, political opinion, education, profession, in other words, all those elements that determine the specific individual physiognomy of a citizen. As it is obvious from the character of international instruments for human rights included in the Constitution of Bosnia and Herzegovina, there is a predominant protection of individual rights pertaining to "everybody", belonging to all citizens that are under jurisdiction of BiH.³³ Even in the Preamble of the Constitution it is stated that Bosniaks, Croats and Serbs, as constitutive people (in community with others) and citizens of Bosnia and Herzegovina, while the other constitutive provisions address

³² **Article IV paragraph 3 line(b)**: "Each House, by majority of votes, adopts its Rules of Procedure and elects among its members one Serb, one Bosniak and one Croat for chairman, and chairman deputies, with rotation of chairman among those three persons"

e) Proposed Decision of Parliamentary assembly can be proclaimed as destructive for vital interest of Bosniak, Croat or Serb peoples by majority of votes of Bosniak, Croat or Serb delegates elected in accordance with paragraph 1. line (a). For adoption of that decision, House of Peoples confirmation is needed, with majority of Bosniaks delegates' votes, majority of Croats delegates' votes and majority of Serbs delegates' votes, that are present and vote.

f) When majority of Bosniaks, Croats or Serbs delegates puts remark on recalling on line (e), chairman of the House of Peoples will immediately call for Common Committee composed of three delegates, where each is elected from Bosniak, Croat and Serb delegates, with goal to resolve that issue. If Committee fails in period of five days, subject is being submitted to Constitutional Court on urgent procedure of reviewing procedural correctness of the case.

g) House of Peoples can dismiss by decision of Presidency or House itself, under condition that decision on dismissing of House is adopted by majority that includes majority of delegates from at least two peoples, Bosniaks, Croats or Serbs.

³³ **Except for the European Charter** for Regional Languages and Languages of Minorities from 1992 and the Framework Convention for Protection of National Minorities from 1994, that are component parts of the Constitution

only Bosniaks, Serbs and Croats, taking into account collective rights and collective identities.

The Presidency of Bosnia and Herzegovina, in accordance with its constitutional authority, performs the executive political function of chief of state.³⁴ Article V determines that: "The Presidency of Bosnia and Herzegovina is composed of three members: one Bosniak and one Croat, directly elected from territory of the Federation and one Serb, directly elected from the territory of Republic Srpska." By fixing the ethnical belonging of members of the Presidency, the Constitution acts directly discriminatory in relation to citizens, other ethnic groups, limiting thereby their passive voting right, right of citizen to access without any discrimination to all political electoral functions in the state.

On the other side, paragraph 1 line a) says "Members of the Presidency are elected directly in each entity (so each voter votes for the filling of one place in the Presidency) in accordance with the Electoral Law adopted in the Parliamentary Assembly" proving the indirect establishment of ethnical elections. There is an immanent presumption that members of ethnical groups will vote for their respective member of Presidency. Ethnical elections are in contradiction with the request for a general, equal right to vote for each citizen, because Bosnia and Herzegovina is a multiethnic state with citizens of other ethnical groups beside Bosniaks, Croats and Serbs. Taking into account that the Presidency is a body that acts throughout the entire territory of Bosnia and Herzegovina, but is not elected by all citizens that are constituting the electoral body in Bosnia and Herzegovina, the question arising is the issue of its full legitimacy on one hand, and limited active and passive voting right, on the other side.

³⁴ **The Constitution of Bosnia and Herzegovina, Article V paragraph 3. Federal Ministry of Justice, Sarajevo 1977. "The Presidency has the authority and the duty to:**

- a) Conduct foreign policy,
- b) Appoint ambassadors and other international representatives of Bosnia and Herzegovina, with limit of two thirds from Federation territory.
- c) Represent Bosnia and Herzegovina in international and European organizations and institutions, and seek membership in those international organizations and institutions where Bosnia and Herzegovina is not a member.
- d) Negotiate for international contracts of Bosnia and Herzegovina, cancel and, with approval of the Parliamentary Assembly, ratify the mentioned contracts.
- e) Execute decisions of the Parliamentary Assembly
- f) Propose the annual budget to the Parliamentary Assembly, with recommendations of the Council of Ministers.
- g) Report on expenditures of the Presidency to the Parliamentary Assembly on its request, but at least once a year.
- h) Coordination, based on necessity, with international NGOs in Bosnia and Herzegovina
- i) Perform other activities necessary for execution of duties delegated by the Parliamentary Assembly, or agreed upon by the entities."

Instead of a conclusion

The presented Catalog of Human Rights within The Constitution of Bosnia and Herzegovina, with special review to political rights, might steer further considerations and analyses in several different directions;

- to the research and analysis of normative parts of the Constitution that are in direct contradiction with the principles of equality and non-discrimination of citizens on any ground,
- toward possibilities of efficient legal protection of the mentioned rights,
- toward analysis of the actual situation in the field of human rights, scope of their violation at the state level and at the entity level, enjoyment of human rights comparing to anticipated standards,
- toward analysis of the actual political, economic and social context, in which the mentioned rights are to be enjoyed and protected, and challenges that their realization,
- toward analysis of operation of institutions, domestic and international, dealing with human rights in the framework of their activities, or whose activities affects the field of human rights.

However, this implies a discussion and opening of new topics, which go beyond the framework of this short presentation. Therefore we can be satisfied with the statement that brings us back to the beginning of this text, that the Constitution of Bosnia and Herzegovina, as well as the Constitutions of the entities, is a result of political compromise incorporated in them, but at the same time it is also the beginning of a process whose powerful levers are the very instruments of human rights. Assisted by the human rights ideology that affirms human dignity, recognizes right to differences * ethnical, religious, sexual, cultural, political, language and all other differences among people * recognizing at the same time the equality of citizens before the law and prohibition of discrimination, a space for a democratic building of Bosnia and Herzegovina is opening. Efficient protection of human rights requires an efficient state which acts on the entire territory within internationally recognized borders, with all necessary instruments of governance necessary to protect its citizens.

Since a process is always dynamic and passes through different phases from the moment of its enforcement, the instruments of human rights incorporated in the Constitutions offers a possibility to local political forces, as well as the international community, to act in Bosnia and Herzegovina, by means of legal instruments, in accordance with the Constitution, in the direction of building a democratic state with rule of law and human rights and freedoms for all citi-

zens at its territory. A stable, democratic state is capable to create conditions for the realization of economic, social and cultural rights and improvement of its citizens' living standard. Therefore, an extensive Catalog of Human Rights could in this moment provoke critical comments and reveal the distance from the goal created by standards of human rights, but as a dynamic process it could be a mechanism leading to the approach thereof.

CONCLUSION OF WORKING GROUP II

Prepared by Valida Repovac (Directorate for European Integrations)

In the introductory part of workshop, after the presented conference paper with the subject "Human/Political Rights in the Constitution of Bosnia and Herzegovina" we considered the legal character of the Constitution of Bosnia and Herzegovina as an integral part of the General Framework Agreement for Peace in Bosnia and Herzegovina. An analysis was conducted of Annex 4 of Dayton Peace Agreement that directly deals with the Constitution; Annex 3 treats political elections, while Annex 6 treats the respect and implementation of human rights in Bosnia and Herzegovina. The Constitution of Bosnia and Herzegovina is part of a multilateral international contract and does not present, as it is in theory and practice of constitutive law, an internal legal document. In view of the previously mentioned, the legitimacy of this Constitution can be questioned. Besides legitimacy, the problem of the issue of the very adoption of the Constitution is defined as well. To be precise, entities, which do not represent international subjects, participated in the signing of the International Peace Agreement, and the Constitution as a part of it. Besides, the Constitution of Bosnia and Herzegovina was not additionally ratified in the Parliamentary Assembly of BiH.

Further on, the discussion lead to the interpretation of the Preamble of the Constitution of BiH and possibilities for its understanding. It has been concluded that the Constitution of BiH is based on fundamental philosophical postulates protecting human dignity, freedom and equality, and promotion and respect of human and political rights of citizens of Bosnia and Herzegovina. The Constitution refers to Charter of the United Nations that established relations between states on the global level and to the Universal Declaration that marked the appearance of human rights on the international scene. According to that, the Constitution of BiH was based on two documents, which appeared as a response to fascist ideology, ideology of collectivity that rejected civil liberal democracy and liberal political philosophy.

One conclusion of the workshop was to insist in the Constitution of BiH on the individual approach and to have interaction of political and human rights. A link between democracy and human rights is clearly recognized. Society of Bosnia and Herzegovina, as a democratic society, is the only framework for full respect and implementation of human rights. Human rights cannot be protected without a democratic order.

In analyzing Annex 3 of Peace Agreement, which treats political elections and the Electoral Law of Bosnia and Herzegovina, it has been concluded that Annex 3 guarantees rights of citizens to elect and be elected to political or public functions. However, discussing the Electoral Law, many contradictions appeared. For example, the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, composed of 15 members (5 members among Bosniak people, 5 members among Serbian people and 5 among Croat people). In the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, the Electoral Law does not offer the possibility for a representative of others to be elected in this highest body. From Electoral Law BiH, it is obvious that in Bosnia and Herzegovina we have a collective approach to protection of human rights. Discrimination toward other peoples in BiH, and within the constitutive peoples, exists. For example, Serbs from FBiH can vote just for Bosniak or Croat member of Presidency, the same applies to Croats and Bosniaks who live on the territory of Republic Srpska, and who can vote only for a Serb member of the Presidency from RS. Also, Serbs from the territory of FBiH can not run for Presidency of BiH. Besides, the mentioned example of Republic Srpska was mentioned, where there used to live 40% of other peoples, according to the census from 1991. Today in this entity representation is treated only on the basis of territorial and ethnical belonging. The discussion touched as well the issue of protection of vital national interests. The question is what represents a national interest and how to protect it? The workshop participants concluded that there is a problem of undefined interests. Then we discussed the elections in entities and in Bosnia and Herzegovina. The question is, are the peoples constitutive, and what is actually constitutional protection of interests? The adopted Constitutional amendments regarding the Constitutions of entities, which followed the decision of the Constitutional Court on constitutive peoples, had the aim to prevent discrimination at entity level. After adoption of the mentioned amendments, this problem was resolved at entity level, but still exists at state level. At the end, it was concluded that the Electoral Law is based on ethnical and territorial groups, which is directly in conflict with the Preamble of the Constitution of BiH, which insists on individual approach. Political rights in BiH, this way, do not present individual rights of each citizen, but only collective rights. The Electoral Law blocks the implementation of human rights on the entire territory of BiH, it is a basis for discrimination, which brings us to the conclusion that the Electoral Law is in conflict with the Constitution.

Workshop II defined the need to create a mechanism for protection of human rights. It was concluded that reform of the Constitution is necessary, a reform that will clearly define mechanisms for protection of human rights. Moreover, it was concluded that the Electoral Law must be amended in order to achieve full respect of individual and political rights of each citizen of Bosnia and Herzegovina.

There is a formal * legal prohibition of discrimination guaranteed by the Constitution. The actual discrimination is that people are categorized according to national and territorial belonging and that creates political identity in our state. The very protection of human rights could be used as a lever for an initiative for amendment of the Constitution. Unfortunately, effective mechanisms for implementation of those decisions do not exist in entities. We are confronted with a paradox in Bosnia and Herzegovina, in theory protection of human rights exists, but in practice we do not have mechanisms to implement it. Some workshop participants claimed that constitutional mechanisms that could guarantee certain decisions exist, but there is a lack of political will to implement it. There is obstruction at all levels, especially at the lowest (some Cantons still have unconstitutional characteristics, eg. Canton 10). This is a result of inexistence of a strong central government.

The problem of Bosnia and Herzegovina is the following: government representatives are elected by some collectivities and do not represent a civil BiH. The ethnical feature is too strong in structure of state, in the Constitution and in the electoral system. Fact is that different nations exist in BiH and it can not be just ignored. But ethnical line is too dominant. The possibility of existence of national parties and the current system that we have contributed to the fact that the national prefix is of supreme value. The national parties exist owing to the Constitution and discrimination of rights. BiH has at present the problem called national parties and vague political scene. There is no civil-oriented option in BiH. The conclusion is that we must build civil principles as a prerequisite for conciliation.

Bosnia and Herzegovina needs alternative powers to liberate people within their individual identity, and to show them that beside purely ethnical representation there also exist other values, eg. social justice, equality, freedoms. Those values have been canceled by our system. Bosnia and Herzegovina, based on this kind of constitution and electoral system, can not step forward into the nation-building process. For a start, the first and most important step in that process would be to have all people say: "We are Citizens of this state. This state belongs to all people." To achieve something like that, it is necessary to offer social and political improvements. The offer * an alternative lies in the truthful citizenship of BiH. Unfortunately, today nobody thinks about a common state. The solution is in educational, media and cultural influence that will change such a consciousness of citizens. Beside that, it is necessary to have direct political engagement of people who think differently or individual public engagement (through printed media).

Workshop conclusions:

1. In Bosnia and Herzegovina we have constitutional protection of human rights, or in other words, the Constitution of BiH guarantees individual rights to each person.
2. Although the Constitution of BiH guarantees rights to each person, on reality we have respect of collective political rights that belong just to the constitutive peoples of BiH.
3. Rights are distributed according to national and regional affiliation.
4. We have a discriminatory Electoral Law based on contradictive constitutional provisions.
5. There is no nation-building process with existing system.

PUBLIC SERVICE IN BIH: REFORM POSSIBILITIES FOR PUBLIC SERVICES IN BIH IN ACCORDANCE WITH EU STANDARDS

**Public services in Bosnia and Herzegovina * reform possibilities
Conference paper: Senad Hromi}**

Globalization, telecommunications (internet, "e-commerce") and transfer of technologies are the factors that influence dramatic changes during the last decades and we all feel it. The reality of the contemporary market and business environment are unstable requests of buyers/users of services, change of competitive powers, organizational structures, processes, systems, behavior and positions. There is a need to adjustment to those changes, not only the production or service organizations, but also the public administration, since expectations of service users have increased to such an extent that the creation of modern public services became an imperative. To talk about public services in Bosnia and Herzegovina and its possible reform in accordance with EU standards is not an easy task because it requires the consideration of overall and comprehensive solutions as a difference to often offered partial solutions that create only an impression that something is being done, but basically nothing is being changed. Prior to any kind of analysis of this subject, it is necessary to ask whether the public administration in BiH functions in accordance with EU standards? The answer is very clear: "No, organizations within the public sector do not operate in accordance with EU standards". The question arising is what are the causes thereof and, finally, how to change it or how to introduce EU standards in public services in BiH. We will try to give complete and comprehensive answers to the last two questions, as far as possible, respecting certain limitations necessary to respect at the occasion of writing this paper.

Public services in Bosnia and Herzegovina

In order to understand the real situation of the public administration in Bosnia and Herzegovina, it is necessary to bear in mind two elements, in order to obtain a true picture of public services in BiH. The first element concerns the very complicated and complex state structure, unknown in EU practice. We can say that BiH has some kind of an "unusual" state structure which is huge and is a

burden to citizens, instead of serving them. "Unusual" state structure means:

- existence of authorities on state level (The Council of Ministers BiH, The Parliamentary Assembly BiH, Ministries BiH, etc.),
- existence of authorities on the level of entities (FBiH and RS * government, ministries etc.)
- existence of cantonal authorities (only FBiH * government, ministries etc.)
- existence of municipal authorities and
- existence of city authorities.

Obviously, all those levels of administration are not necessary to have Bosnia and Herzegovina function normally. This complex structure causes overlapping of competences, misunderstandings and difficulties in communication between public services and finally toward citizens. It is completely illogical and unacceptable to have a larger number of entity ministries than at the state level, since very often there is no common address at the state level for the EU or other international instances to address in order to solve a certain problem, not to mention the process of European Integrations that places the sustainable and functional state of Bosnia and Herzegovina as an imperative. The need to establish new ministries along the eight existing appeared at the state level (for example Ministry for Economy, Agriculture, Defense, etc.). Further, the existence of cantonal structures in FBiH with all line Ministries also represents a huge burden and brings up the question of purpose of their existence. Obviously, this complex state structure is a reflection of political will in a specific moment, and not at all a result of economic calculation or citizens' will. Another question is, can this structure be simplified, or, is there any political will to do so? In this moment the answer is "no", at least for a while. Anyway, there are definitely too many public services or organizations operating in the public sector in BiH, but do they behave and work in accordance with EU standards? The answer is "no", again. European public services do not know of such a way of work for public services, which is mainly the consequence of:

- the state of conscience of employees,
- education,
- age structure, and
- political eligibility.

The state of conscience of employees is still reposing on the presumptions of the previous system, for example "you can not pay me as little as I can perform", the principle of "make it seem more than it was done", the principle of obedient director, which is the extreme opposite of the term manager and the principle of spiritual laziness, so that we are used to disorder, mess, being late, which results in superficiality and "easy" and "no problem" principles. Further, the majority of employees in public services were educated and gained working experience in the previous system, and adopted at least some of the above-mentioned principles

which are anything but in accordance with EU standards. The problem of education is the problem of our educational system that is not in accordance with the European system, thus educated people in our state, who graduate at our schools and universities do not have all the necessary knowledge about the European Union, because our schools and faculties do not teach about the White Book of the EU, about the *acquis communautaire* of European Communities, about directives and provisions of the EU, about the Total Quality Management (TQM) etc. Thus, employees in public services must improve their knowledge and skills to reach the European level. Besides, we have a relatively old public service, yet there is no new possibility for employment of young, talented and educated professionals. The principle of political eligibility instead of the principle of professionalism brought even more grayness into our public services in BiH, since professionalism lost its credibility and political party membership became basic criteria for employment in public administration. In this context, things started to change in a positive direction by establishment of the Civil Service Agency of Bosnia and Herzegovina, which has the task to create a professional civil service, independent from political and all other negative influences. This way, we will have civil servants * professionals in civil service, instead of politically eligible ones. This will surely bring us closer to creation of a civil service similar to that in the EU. Agencies for civil service are also established at the level of entities, so we can expect to get public service professionals at that level, too.

After all that was said, it is necessary to give an answer on how to make relations in public services work, how to change the conscience of employees, always in the fear of change, how to specialize and educate employees, how to assign tasks to them, how to create vision, policy and clear strategic direction, and all that in order to achieve a modern public service in accordance with EU standards.

The answer is very simple: total change of the Total Quality Management (TQM) principles.

Quality in the public sector

Quality is our everyday word. We talk about quality of products and services, quality of administration, quality of life and etc. Quality is often defined as something that gives complete satisfaction to a customer or user of a service. This is true, whether relating to the concept of local government, state authority or it considers us as everyday buyers of products and services. Everyone judges the quality of what they get, considering how far their needs and expectations are

satisfied, in the short and the long term. Many organizations from public sector try to excite service users by giving them more than they expect.

Public organizations in the EU, as well as those in the CEE that are becoming members of the EU realized that quality improves efficiency of business, or that the key concept of quality is satisfaction of service users on time, every time and 100% of time. To operate 99% good, means the following³⁵:

- 20 000 letters lost per hour,
- two short or long landings daily, on Heathrow airport,
- 5000 wrong surgeries per week, and
- 20 000 wrong medical prescriptions per year.

So, in today's environment, business must function 100% good.

Principles of TQM are applied in all modern organizations, whether they are in the production, service or public sector. TQM implies the application of obligatory principles of quality management to all aspects of business at all levels of organizations. TQM requires action and can be initiated only by the highest management in form of a strategic decision.

Key characteristics of TQM are:

- each person at each level of organization is ready to accept full "ownership" and responsibility for quality improvement in the framework of his/her own sphere of competences,
- different methods are used for inclusion, motivation and to give ideas to people at all organizational levels in a way promoting the philosophy that improvement is a way of life,
- quality improvement activities expanding beyond the boundaries of an organization, to establish partnership with suppliers and service users,
- the widely applied concept that everyone in an organization has users and suppliers,
- an organization uses a set of measures to monitor improvement, evaluate the level of service users' satisfaction and follow the key indicators of success by benchmarking,
- participation of each employee in a business and their development will be followed and characteristics and skills of each person will be fully used,
- different activities of team work will be used to assist the continuation of improvement, which includes interactive team work to solve deep roots of problems,

³⁵ United Kingdom example.

- barrier removal between departments and functions, and
- simplification and standardization of working practices.

TQM represents some kind of integral framework for the management of an organization to achieve the goal of service users' full satisfaction and to arrange the operation of an organization in accordance with the highest standards. It is as well a philosophy that requires radical changes in thoughts and activities of management. What must be understood is that TQM is a process, and not a destination and that the ideal situation does not exist, in other words, **the present situation can still be improved in any phase of the process.**

One of the key words in terms of maintenance of improvement is "standardization". When improvement is achieved, it should be included in the adequate standard of the organization or working practice, otherwise it can be lost and the entire process can be returned to the beginning. It is important that achieved improvement be transferred to other processes, locations, departments etc. to reflect good business results at the level of the whole organization.

All of it creates the need to develop a quality system at the level of organization where human, administrative and technical facts, influential to the defined quality, are clearly understood and managed. The goal is to ensure that the same kind of information, methods, skills and controls are used, the same way, each time during the process, in order to achieve a consistent output.

The implementation of a quality system that satisfies the requirements of internationally recognized standards ISO 9000 set is a useful way for establishment of a referent framework to building of further improvement activities. Simply, a **quality system is a good management practice.** To be efficient, the quality system is being developed based on the standard quality system ISO 9000 set of standards, in order to evaluate its adequateness and possible improvements. There are two strong reasons why organizations need to apply a quality system in their business, and those are:

- to provide services to clients, which are consistent with the agreed standard within the framework of the existing process capacity (**meaning: the organization is in the position to continuously deliver services at a certain level of quality**), and
- to provide a referent framework as a base for building of system activities for the improvement process.

There is no uniform and unique instruction for beginning and development of a full quality improvement process. This process always differs to a certain extent from organization to organization, taking into account that each organization has certain specifics that make a difference.

Common Assessment Framework (CAF)

To create a modern administration, the European Union (EU) needed a lot of time to balance different concepts, so today there is the so-called Common Assessment Framework (CAF) which is a tool to evaluate organization in the public sector. This tool was developed by the General Directorate for Public Administration of EU member states with the intention to support the implementation of the concept and principles of total quality management (TQM) in the public sector of EU and wider. The European Institute of Public Administration (EIPA) functioned as a center for CAF at European level in order to support the use of CAF at European level. CAF is a tool for quality management in public sector that enables public organizations to identify their powers and fields for improvement, and opens the door to application of the basic quality concept. The use of a common framework for evaluation is free of charge, voluntary, and available to all types of organizations from the public sector of any state.

The Common Assessment Framework was developed on the basis of concepts, models and experiences of the European (business) Excellence Model promoted by the European Foundation of Quality Management (EFQM). CAF was specially developed as an instrument for quality management for public sector taking into account specific working environments or specific characteristics of organizations in the public sector. CAF is composed of nine different criteria for evaluation that are very similar to the basic structure of European Excellence Model, which form together the logical and total framework and enable evaluation of all relevant activities and actions and organization functioning in the public sector (figure 1). Five criteria are used to evaluate the work of those elements which enable changes (“enablers”), in other words, it is an evaluation of what an organization does in order to achieve excellent results. Four criteria are used to evaluate results achieved by an organization.

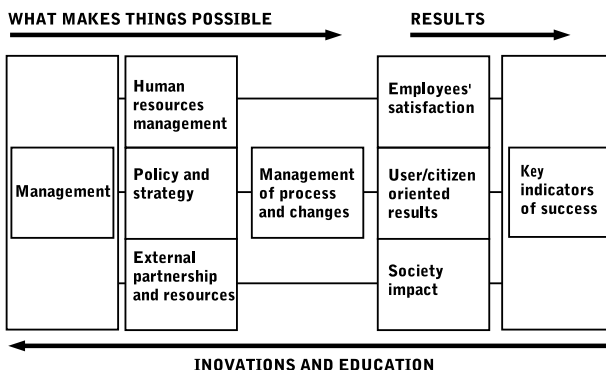


Figure 1 * CAF model

Elements that enable changes to happen are:

Criterion 1: Management

What do leaders and managers do to inspire thoughts and visions of public organization? Explanation of EFQM concerning leadership and management says: management means "to do things correctly", but leadership means, "to do correct things".

Criterion 2: Policy and Strategy

How does an organization implement its mission and vision by clear strategy focused on interested parties?

Criterion 3: Human resources management

How does an organization manage, develop and release knowledge and fill the potential of employees individually or by teamwork, at the level of the overall organization?

Criterion 4: External partnerships and resources

How does an organization plan and manage external partnerships and internal resources in the intention to support its policy and strategy as well as efficient functioning of a process?

Criterion 5: Management of process and changes

How does an organization design, manage and improve its processes in the intention to support policy and strategy and fully satisfy service users and other interested parties?

Result criteria are:

Criterion 6: User/citizen oriented results

Which results does an organization achieve concerning satisfaction of external users?

Criterion 7: Results concerning employees

Results that an organization achieves concerning satisfaction of employees.

Criterion 8: Society impact

What does an organization achieve by satisfying the needs and expectations of the local, national and international community as a whole?

Criterion 9: Key business results

What does an organization achieve concerning its mandate and goals, as well as satisfaction of needs and expectations of each individual with financial and other interest in the organization?

Each criterion is divided in a certain number of sub-criteria. So, there are 43

sub-criteria for consideration. The meeting of each sub-criterion is 1 (no action/no results or results are decreasing) to 5 (the highest possible number of points) points worth.

The Common Assessment Framework is a tool for self-evaluation and thus it is implemented by the appointed group for self-evaluation that is composed of, if possible, representatives of all relevant sectors and levels of an organization. The precise use of CAF depends mainly on the group for self-evaluation and good preparation of the self-evaluation process. Self-evaluation by CAF should result with concrete action plans identifying fields for improvement. As tool for quality management, CAF should be used as a permanent element in organizing the improvement process. The using of CAF continuously encourages development of an "excellence culture" and leads to cycles of continuous improvement.

CAF also serves as a base for exchange of experiences between organizations from public sector and for "benchmarking" activities. There is a strong belief that organizations from public sector all over the Europe can learn a lot from experiences of other organizations and comparing with practices in other public organizations.

Situation of Bosnia and Herzegovina concerning reform of public service according to EU standards

Institutions of Bosnia and Herzegovina, or the Council of Ministers should do much more to promote quality in all segments of the society. In this very significant act, the state must find a way to create a favorable environment for development and implementation of a quality system in all society domains and to make it priority number one, in other words, national priority. A way to this is the creation of a National Quality Policy. National Quality Policy requires the adoption of a set of measures at the highest level, in order to have continuous promotion of quality management principles and motivation for its implementation in all segments of society, including public services. For creation and implementation of one all-covering national policy, it is necessary to support the achievement of business excellence in companies and administrations, and in the field of education, health protection, culture and etc. by applying the concept of TQM, to promote the approach of creative and competitive cooperation instead of the approach of confrontation, to support European and international orientation and membership in international institutions with the goal to achieve state interests and successful transitions, to introduce evaluation of performance at all levels of work that are based on international standards, and

comparison with international performance, to introduce the duty to all levels of government in BiH to use their public responsibility and to spread information in order to give clear and honest political signals for creation of favorable conditions and quality conscience. Of course, a serious national quality policy, having in mind the public sector as any other, would face obstacles that I spoke about in chapter 2, which can briefly be defined as a lack of appropriate conscience and knowledge, mutually linked to each other.

The determination to promote the concept of quality in this region was confirmed by the **Council of Ministers of Bosnia and Herzegovina** by the adoption of a document with the title **"Declaration of quality"** on 6th of November 2001, and that way obligated itself to support "... consistent application of European ideas, principles and standards, given in the following documents: **European Charter of Quality...**, **European Model of Preeminence...**, **European Vision of Quality...**, **Standards ISO 9000:2000** concerning quality management..., other previously adopted European documents regarding the field of quality" the same as "direct engagement for creation of an ambience for creative application of the mentioned documents, by" promotion of quality ideas in of sectors of society..., enlargement of knowledge from field of quality..., introduction of modern approaches, methods, tools and standards in the work of the public sector and state management, joining suitable European organizations and institutions..., building of a positive relation toward European values of quality". This way The Council of Ministers obligated itself to promote the idea of quality in all sectors of the society, to improve the level of knowledge in the field of quality at all levels of the society, to build necessary institutions to support the realization of quality policy at the level of Bosnia and Herzegovina etc.

Unfortunately, the "Declaration of Quality" has not been implemented yet, which will have a negative impact on the further development of public services in BiH, bearing in mind that the Declaration represents in a certain way a political and expert platform for reform of the overall society, including public services as one of the most important segments. Anyway, the proof that we are moving toward modern public services is the example of Sarajevo's municipalities Stari grad and Centar, which applied the quality system in accordance with ISO 9000 set of standards, which is obvious when you walk into the premises of those municipalities, the differences makes the order, discipline and professionalism of the employees.³⁶

³⁶ For example, to get some document, that should be issued by an authorized municipality service, you will not need to wait in lines in front of windows and argue whether you were or not in the line, and professional and kind employees will serve you, what is a very rare situation in this region.

A transition country that realized the importance of quality for all segments of society, especially for reform of public services regarding the integration process to the European society, is Slovenia. The following has been done:

- the Slovenian Association for Quality was founded in 1991 * member of European Organization of Quality (EOQ),
- National Program of Quality, Republic Slovenia, produced in 1993.
- Government of Republic Slovenia adopted a document with the title "The Quality Policy of State Management" in 1996,
- The Parliament of the Republic Slovenia adopted the Law on "Acknowledgement of Republic Slovenia for Business Preeminence" in 1998. and
- National Foundation for Business Preeminence of Slovenia formed in 2000.

How significant is the importance of quality in Europe, is illustrated by the existence of European Award for Quality in Europe, that is assigned every year, including to organizations from the public sector³⁷.

Conclusion

Bosnia and Herzegovina has a very complex state structure, whose weight is almost too heavy on the one side, with disordered and inefficient services on another side. Political will played a key role in the creation of this complicated structure, what would be understandable a few years ago, but at the present it is unacceptable. Reform of this complex structure of public services according to EU standards, again will depend on the political will, which means keeping of this complicated structure for a while. On the other side, the functioning of public services must be changed and harmonized with EU standards, it is necessary to get a professional civil service without any party influences, services capable to fulfill their duties, rationally, devotedly, using modern informational technologies, to specialize and educate constantly, to constantly develop other ways for improvements and improve its business performance, to improve relations with other organizations from public sector etc.

To achieve a modern "European" public service in BiH regardless of its complexity, it is necessary to adopt principles of the Total Quality Management (TQM) and apply them in the organization systematically and wholly. The Civil Service Agencies (state and entities) should, through their training programs,

³⁷ The first time the award for quality was given to an organization from the public sector ("Inland Revenue" form United Kingdom) in 2000.

introduce principles of quality management to employees and make comprehensive programs for their implementation in the public sector in BiH, because it is the only right way to create public services in accordance with EU standards, and state authorities (The Council of Ministers) should create a positive environment by elaboration and implementation of an appropriate national quality policy. In this context, application of principles of ISO 9000 set of standards represents a referent framework, essential for building of improvement activities, and besides, the Common Assessment Framework (CAF) can be used, which is all-covering and represents a tool for self-evaluation of organization. Common Assessment Framework (CAF) for public services is entirely based on principles of Total Quality Management (TQM) and represents modern management approach to business that is successfully applied EU and transition states. As a final result of implementation of this modern management concept we will get modern, accountable and economic public services, different from those in Bosnia and Herzegovina that are very far away from anything that can be called modern, accountable and economic.

For improvement of public services according to this EU model that represents the only right way for a comprehensive reform of public services in BiH, it is necessary to create a clear strategic direction, to apply it systematically in public organizations, to stick with it, constantly improve it, constantly analyze information and data, educate people and assign them duties. It is necessary to understand that changes in the society do not happen over night, and without efficient management initiatives for full improvement of quality in public sector, they do not have a chance to succeed.

The full quality improvement of public services is a long-term duty, and even a 10-year period might be necessary for achievement of a significant cultural change with full and strong involvement of quality management principles.

THE CONCLUSION OF WORKING GROUP III

Prepared by Miroslav @ivanovi} (Center for Human Rights)

The Dayton Agreement is fundamental for this huge structure of public service in BiH, illustrated at best by the fact that executive power is organized in 124 ministries (state, entities and cantons). That kind of structure is followed by a number of functional problems, with the most significant one: problem of competences and communications among numerous organizational units. In

this moment the resolving of those problems is a priority task for the relevant institutions in BiH. The importance of it is even bigger if we consider it in the context of BiH association in the European integration process.

BiH answered to 346 questions in the framework of the Feasibility Study and the response from Brussels is expected by the end of this year. A positive answer will mark new contracting obligations for BiH. One of them will be the harmonization of the public service in BiH with standards of the European Union (EU)

Because of that, the complex and huge mechanism of the Dayton BiH public service, and problems arising, as well as the results and efforts of our state directed toward association in EU Integration process, are the main reasons for reform of our public services. This actors of this reform are domestic institutions from the governmental and non-governmental sector and relevant international institutions in BiH. One of the working group's conclusions is recognized need to increase quality of participation of non-governmental sector.

One of the main conclusions of the working group is that reform of the public service in BiH doesn't necessarily have to be in relation with the current actual issue of amendment of the Dayton Constitution. Amendment of the Dayton Constitution is primarily a political issue, but our current political reality is pretty far from similar initiatives. On the other side, reform of public service can't be delayed, and must be implemented, because it is in accordance with the generally adopted process of association with European Integrations. Some initiatives for activities, like reduction of deputy ministers at all levels of executive power, are already in process. But, true reform, which is the next conclusion of the workshop, must be directed toward the field of consolidation of existing laws, introduction of new legal frameworks and resolving of the existing problem of competences which is not followed by appropriate financing structures.

Furthermore, as a workshop conclusion, there is a need to support the public service reform process in BiH by numerous accompanying activities:

- Presentation and implementation of total quality management principles of "quality management" (TQM)
- Introduction of principles, in accordance with which, public employees at leading positions will be managers instead of politically eligible cadre.
- Introduction of professional training for public employees within the system of universities
- Inclusion of many domestic experts in the reform process
- Inclusion of the citizens in the reform process
- Higher financial investment in public service

The principle of total quality management is defined by numerous international documents (ISO standard) extensively describing the improvement process for organizations with different profiles, including public service institutions.

The implementation of reform and its possible success basically depend on its employees at managing positions. Appointment of employees, completely based on political affiliation offers a lot of space for blocking of this reform. The workshop's position is that employees with clear managing skills can understand the importance of reform and can be truly dedicated to its implementation.

In many states, a particularly careful approach is applied in the issue of professional training for public employees. The workshop's conclusion is that in BiH this problem is not adequately solved, and the approach to the solution must be based on existing international experience. As a possible solution, there is the possibility for establishment of a Department for Public Service at the Faculty for Political Sciences, University of Sarajevo. With a modern curriculum, this Department could be an essential contribution to creation of a new generation of public employees ready for challenges of reform and association process into European Integrations.

The Slovenian example and its reform of public service, headed mainly by domestic experts and students, must be seriously considered in the case of BiH. Many foreign experts in our state, despite significant experience, are facing insufficient knowledge of the political, social and cultural context of Bosnia and Herzegovina. On the other side, we have the problem of unjustifiably degraded domestic experts, who are more than perfectly informed about the priorities of our state. The conclusion is that it is necessary to consolidate the ratio of domestic and foreign experts in favor of domestic, skilled and professional potential.

Of course, the final decision concerning reform is up to the citizens of BiH. Reforms are meaningful, only if citizens accept and support them. So, it is necessary to increase the quality of information presented by media. Citizens must be regularly informed and must know the consequences and positive results for their everyday activities that will be introduced by reform. Bigger participation of citizens in the mentioned process will put higher responsibility and transparency standards to public institutions during their activities.

Financial support is also one of the eliminatory facts for success of reform and successful functioning of public service in BiH. But, financial support doesn't have to mean additional, new budget allocations. Those expenses can be mainly paid by correct use of accessible international funds. Public employees at

managing positions must be informed about existing funds and with all procedures needed for project application and management. Here, again, the most important quality is educated personnel in this field. Public employees must have the knowledge and tools, helpful in the process of recognizing and formulating of important projects supportable by international community, but, in any case, always be priority of Bosnia and Herzegovina, and not of the international community.

The problems of public service in BiH are obvious, but the solutions as well. The only real problem that we must face is actually the implementation of the mentioned solutions. Establishing of Agencies for Civil Service at the state and entity level will be the first test in this context (those Agencies are already established, the one at state level is fully operational). Correct and responsible functioning of these Agencies could successfully respond to the need for professional public or state employees capable to handle the challenge of reform implementation.

In the context of the actual debate on the amendment of the Dayton Constitution, the workshop came up with the conclusion that the most acceptable solution to the internal organization of BiH could be in a possible economic * geographic rationalization, primarily based on economic sustainability of identified regions within the state.

SITUATIONS, PERSPECTIVES AND POSSIBILITIES FOR AMENDMENT OF THE DAYTON CONSTITUTION

CONFERENCE PAPER

Situations, perspectives and possibilities of initiative for amendment of the Dayton Constitution

Authors: Midhat Izmirlija and Lejla Bali} (Law faculty)

INTRODUCTION

The tardy integration of Bosnia and Herzegovina's society and state, the possibility of blocking of institutions at all levels and permanent obstruction imposed the question of the possible cause thereof in documents that established the post * war constitutional arrangement. In the last few years, we have been witnesses of numerous requests for amendment of the Dayton Agreement or of the Dayton Bosnia and Herzegovina, often synonyms for the Constitution or constitutional order of Bosnia and Herzegovina.

The title of this text suggests that it deals with an overview of the situation, possibilities and perspectives for amending the Constitution of Bosnia and Herzegovina. Our idea is to offer an overview of requested amendments of the Constitution of Bosnia and Herzegovina, their similarities and differences, which might be basis for further discussion and discovering of models relating to the amendment of the constitutional * legal order.

Having intended to answer this question, in the first part of text we gave general information about the Constitution of Bosnia and Herzegovina and its impact on the constitutional order in the entities as constituent parts of our state. The obligatory consolidation of the entities' Constitutions with the Constitution of Bosnia and Herzegovina, was up to this moment the cause of the most important process of constitutive reforms inside the entities and the only successful formal and legal initiative of change of a situation that resulted from the aggression to Bosnia and Herzegovina.

Exactly those reforms brought up different requests from groups, associations and political parties for amendment of the Dayton Agreement or the Constitution of Bosnia and Herzegovina. In the second part of text we gave a

chronological overview of initiatives. It is obvious that some initiatives, beside the idea of their authors regarding the arrangement of Bosnia and Herzegovina, do not have any proposal on how to amend the Constitution, i.e. how to realize that request in practice. By comparative overview of initiatives, in the third part of this text, we tried to present their similarities and differences.

At the end, by presentation of perspectives and different perception of already introduced amendments, we realized that we arrived at the conclusion of this text. Those changes, depending on the point of view, can appear as starting point for continuation of building and strengthening of state institutions, or as imposed decisions and obligations that must be respected as long as sanctions are threatened.

We would like to remind that our work was limited by practical impossibility of finding all necessary documents and information, especially about Republic Srpska and also limited by time, so it is possible that not all initiatives for revision or abolition of the Constitution of Bosnia and Herzegovina are considered.

FORMAL AND LEGAL POSSIBILITIES FOR AMENDMENT OF THE CONSTITUTION OF BOSNIA AND HERZEGOVINA AND AMENDMENTS OF THE ENTITIES' CONSTITUTIONS

The Constitution of Bosnia and Herzegovina is a component part of The General Framework Agreement for Peace in Bosnia and Herzegovina.³⁸ The General Framework Agreement for Peace in Bosnia and Herzegovina is an international agreement agreed at the Peace Conference in Dayton between the Republic of Bosnia and Herzegovina, Republic of Croatia, then the Federal Republic of Yugoslavia³⁹ and members of the Contact group composed of the United States of America, United Kingdom of Great Britain and Northern Ireland, Republic of France, Russian Federation, Federal Republic of Germany and the European Union.⁴⁰

Bosnia and Herzegovina and the neighbor states are the contracting parties, and the members of Contact group are witnesses to the Peace Agreement, pre-signed in Dayton, on 21st November, 1995, and signed in Paris on 14th December, 1995.

³⁸ **The General Framework Agreement** for Peace in Bosnia and Herzegovina and the Constitution of Bosnia and Herzegovina is often designated as the Dayton (peace) Agreement.

³⁹ **Federal Republic of Yugoslavia** adopted in the meantime a new Constitution and changed the name of the state in State Community of Serbia and Monte Negro.

⁴⁰ **European Union** appointed a representative for the territory of former Yugoslavia.

The General Framework Agreement for Peace in Bosnia and Herzegovina has eleven components (annexes) and Annex IV of the Agreement represents the Constitution of Bosnia and Herzegovina. The Constitution of Bosnia and Herzegovina has twelve articles that regulate issues of state * legal continuity, state organization, citizenships, human rights, allocation of competences between the state and the entities, organization and functioning of the Parliamentary Assembly, Presidency, the Constitutional Court, Central Bank, amendment procedure, and general and transitional provisions. The Constitution has two own annexes. The first annex determines in total 15 additional international documents for protection of human rights that will be used in Bosnia and Herzegovina. The second one regulates the transitional period and practical issues of implementation of the Peace Agreement. The Peace Agreement, and logically the Constitution as its component, composed in English, Bosnian, Serbian and Croatian language, each version equally authentic.⁴¹ It is important to highlight that the High Representative has the final authority to interpret the agreement, which includes as well Annex IV of Agreement.⁴² The Constitution entered into force as of the date of signature of the Peace Agreement.

Article 1.(3) The Constitution of Bosnia and Herzegovina determines that Bosnia and Herzegovina will be composed of two entities, the Federation of Bosnia and Herzegovina and the Republic Srpska.

The entities and their component units are obligated to adhere to the Constitution of Bosnia and Herzegovina "which replaces the mutually irreconcilable provisions of legislation of Bosnia and Herzegovina, and the constitutions and laws of the entities, as well as the decisions of institutions of Bosnia and Herzegovina".⁴³ In order to implement this provision, it was decided that in the period of three months as of the date of enforcement of the Constitution of Bosnia and Herzegovina, the entities were to consolidate and amend their Constitutions.⁴⁴

The entities did not implement changes and consolidation of The Constitutions with The Constitution of Bosnia and Herzegovina within the given deadline. The Constitutive Assembly of the Federation of Bosnia and Herzegovina adopted amendments⁴⁵ on the Constitution on 05.06.1996 and fulfilled therewith its obligation to consolidate its Constitution with the Constitution of Bosnia and Herzegovina.

⁴¹ **Article 11.** General Framework Settlement for Peace in Bosnia and Herzegovina.

⁴² **Article 5.** Annex X of General Framework Settlement for Peace in Bosnia and Herzegovina

⁴³ **Article 3.** (3) (b) Constitution of Bosnia and Herzegovina

⁴⁴ **Article 12.** (2) Constitution of Bosnia and Herzegovina.

⁴⁵ **Amendments II - XXIV** on Constitution of the Federation of Bosnia and Herzegovina. Official Gazette of the Federation of Bosnia and Herzegovina number: 13/97.

Believing it was a matter of incomplete and partial steps of amending and consolidation of the entity Constitution with the Constitution of Bosnia and Herzegovina, Alija Izetbegovic, then Chairman of the Presidency of Bosnia and Herzegovina,⁴⁶ on 12th February 1998, submitted the request to the Constitutional Court of Bosnia and Herzegovina for evaluation of constitutionality of certain regulations of the Constitution of Republic Srpska and the Constitution of the Federation BiH. Request is complemented on 30.03.1998 with a list of regulations from the entities' Constitutions that were considered as unconstitutional, which, among others, referred to the issue of constitutionality of peoples on the entire territory of Bosnia and Herzegovina.

The Constitutional Court assessed the request as permissible, and adopted four partial decisions in the said matter⁴⁷ by which it declared the regulations of the entities' Constitutions contradictory with the Constitution of Bosnia and Herzegovina.⁴⁸ The third partial decision was of significant importance, the Constitutional Court declared unconstitutional the positions 1, 2, 3 and 5 of the Preamble as it was determined by the amendment XXVI and LIV and the wording "state of Serbian people" from Article 1, as it was determined by amendment XLIV on the Constitution of Republic Srpska, and the words "Bosniaks and Croats as constitutive peoples, together with others" and "fulfilling its sovereign rights" from article I 1 (1) as it was determined by amendment III on the Constitution of the Federation of Bosnia and Herzegovina.

The decision of the Constitutional Court confirmed the constitutionality of the three peoples on the whole territory of Bosnia and Herzegovina. But to limit the existing discrimination inside of entities it was necessary to implement the decision of the Constitutional Court, which involved further amendments on the entities' Constitutions and achievement of a political consensus. In order to implement the decision, High Representative appointed committees⁴⁹ for production of constitutional amendments that submitted reports on 21.12.2001 for Republic Srpska, and 02.02.2002 for the Federation of Bosnia and Herzegovina.

Representatives of political parties, upon invitation by the High Representative, conducted numerous negotiations during March 2002, which finally resulted with the adoption of the Agreement from 27.03.2002 on the

⁴⁶ **Article 6. (3)** Competences (a) of Constitution of Bosnia and Herzegovina determines right, to Presidency member, of initiating procedure at Constitutive Court.

⁴⁷ **Subject U5/98** - Constitutional Court of Bosnia and Herzegovina

⁴⁸ **Official Gazette of Bosnia and Herzegovina** number: 11/00, 17/00, 23/00 and 36/00.

⁴⁹ **Decision of High Representative number 81/01**, Official Gazette of Bosnia and Herzegovina number 2/01, Official Gazette of Federation of Bosnia and Herzegovina number 3/01, Official Gazette of RS;

implementation of the third partial decision of the Constitutional Court. The Agreement yielded the establishment of the House of Peoples in the Federation and the Council of Peoples in Republic Srpska with equal representation of all three constitutive peoples, minimal representation in Governments of the Federation and Republic Srpska, and proportionate representation in public bodies including courts.⁵⁰ Some political parties and media criticized the Agreement, because of the missed chance for establishment of “absolute symmetry of constitutional arrangement in both entities” to the disadvantage of “quintessential symmetry”.

The Assembly of Republic Srpska adopted constitutional amendments on 04.04.2002, which were approved from the side of the High Representative along with the change of amendments LXXI, LXXXII and LXXXV and additional amendment XCII.⁵¹ Because of refusal of the House of Representatives of the Parliament of the Federation to adopt the proposed amendments, the High Representative imposed them by his decision on 19.04.2002.⁵²

The request for evaluation of constitutionality of certain regulations of the entities' Constitutions and decisions of the Constitutional Court of Bosnia and Herzegovina, up to now, had the strongest influence on the appearance of the idea for state arrangement reform.

The Constitution of Bosnia and Herzegovina, in Article 10 (1) regulates the amendment procedure. For amendment of Constitutive regulations, two-third majority is necessary, two thirds of present delegates in the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina. But, to adopt a decision in the House of Representatives, it is necessary to “try” to have at least one third of votes from each entity, out of simple majority. If this is not achievable, the decision is adopted by majority votes of the present, provided that votes “against” do not include two thirds or more representatives from one or another entity. Of course, representatives can declare the proposal decision of the Parliamentary Assembly being against the vital interest of Bosniak, Croatian or Serbian people, with majority of Bosniak, Croatian or Serbian representatives. In that case it is necessary to have majority of votes from present Bosniak, Serbian and Croatian delegates in the House of Peoples,

⁵⁰ **Article IV, 2** Agreement - proportion of representation introduced as constitutive principle and follows census from 1991 until full implementation of Annex VII of General Framework Agreement for Peace in Bosnia and Herzegovina.

⁵¹ **Amendments LXVI - XCI** on Constitution of Republic Srpska, upon request of the High Representative revised in the necessary technical and formal - legal aspects and as such issued in the Official Gazette of Republic Srpska number - ; See Decision of the High Representative from 19.04.2002.

⁵² **Decision of the High Representative**, No. 149/02 (Amendments XXVII - LIV on the Constitution of the Federation), Official Gazette of the Federation of Bosnia and Herzegovina No. 16/02.

who vote. An important remark is that nine members of the House of Peoples create a quorum provided the presence of at least three Bosniak, three Croatian and three Serbian representatives.⁵³

The Constitution prevents change, reduction or abolition of protected human rights and freedoms and gives supremacy to the European Convention on Human Rights and Fundamental Freedoms in relation to all other legal documents, and determines its direct implementation.

The Constitution offers the possibility for establishment of additional institutions that are not precisely defined by the Agreement in order to protect sovereignty, territorial integrity, political independence, and international subjectivity of Bosnia and Herzegovina, in accordance with distribution of responsibility among institutions of Bosnia and Herzegovina, or according to entities' agreement.⁵⁴ Bearing in mind the complicated decision-making procedure in the Parliamentary Assembly of Bosnia and Herzegovina and the lack of political will for strengthening of state institutions, the High Representative adopted numerous decisions, establishing state public agencies and services. Decisions of the High Representative for establishment or strengthening of state institutions are known as gentle revision of the Dayton Agreement.⁵⁵

OVERVIEW OF INITIATIVES FOR AMENDMENT OF THE CONSTITUTION OF BOSNIA AND HERZEGOVINA

The ratification of the Dayton Agreement and determination of Annex IV as the Constitution of Bosnia and Herzegovina opened the discussion on the constitutional arrangement of Bosnia and Herzegovina. Concerning the Constitution, the public has different opinions, from rejecting of legitimacy and legality of the Dayton Agreement, calls for revision, highlighting that the Constitution is not being applied as it is foreseen by the Agreement, or that the Dayton Agreement was a compromise to stop the war, minor or major amendment of the Constitution is needed to have Bosnia and Herzegovina functioning as a state in accordance with international standards, especially standards of

⁵³ **Article 4.** (1) (b), (d) and (e) of the Constitution of Bosnia and Herzegovina.

⁵⁴ **Article 3.** (5) (a) of the Constitution of Bosnia and Herzegovina

⁵⁵ See **statement of the Bishop Conference** of Bosnia and Herzegovina on cultural and religious identity of Croatian people in Bosnia and Herzegovina, Ve-ernji list - issue for Bosnia and Herzegovian, 12.09.2003.

European Integrations, up to requests that the Agreement must not be changed, especially not in direction against existence of entities and already achieved positions. The title of this text implies that it deals with a chronological overview of the most important and exposed initiatives for revision of the Dayton Agreement.

During 2000, a few initiatives with contradictory requests were presented in public.

The BH Dani, political magazine, number 139, from 28.01.2000 published a letter signed by a group of journalists and intellectuals addressed to the High Representative, Mr. Wolfgang Petritsch, then in charge. Signatories of this initiative were Senad Pe}anin, Ivan Lovrenovi}, Nerzuk ^urak and Mile Stoji}, in form of ten different theses for BiH, they requested from the High Representative to suspend all bodies of legislative power at all levels of Bosnia and Herzegovina (state, entities, cantonal and municipal), and to have international community overtaking all authorities of the suspended bodies.

The second part of the request referred to the suspension of the Presidency of BiH as supreme executive body, and overtaking of its authorities, the executive bodies at lower level would become a part of the High Representative's administration. All authorities that their legislative bodies had toward them would also be taken over by the Office of the High Representative.

The idea was, to delay the already announced municipal and general elections for a year, and the established protectorate to have a one year mandate during which the international community could "correct" previously made mistakes that are blocking further development of Bosnia and Herzegovina as a legal state. For legality and legitimacy of next elections it is necessary to adopt an Electoral Law based on decisions of the Constitutional Court on constitutive peoples, insuring, at the same time, the protection of citizens' rights, which especially referred to the abolition of discrimination of the active and passive voting right. Beside Electoral Law, in the protectorate mandate, it was requested from the High Representative to consolidate the organization of armed forces in accordance with NATO standards, which means, one Army, as an efficient and economic arrangement of state bodies in accordance with requirements of European Integrations. Signatories of this initiative thought that only in those conditions elections could take place, and only thus elected political powers would have full legitimacy and legality, and aggression results would be cancelled.

During 2000, the Croatian Democratic Community (HDZ) submitted the initiative for cantonal arranging of Bosnia and Herzegovina, abolition of entities, and introduction of cantons on the territory of Republic Srpska, and implementation

of cantonal borders on the territory of the Federation of Bosnia and Herzegovina. The initiative proposed cancellation of mixed cantons, (Srednjobosanski and Hercegovina-ko-neretvanski) and introduction of new, one-nation cantons and to organize them according to the principle of administrative and not territorial unit. The idea behind this proposal became clear on 11th October, 2000, just one month before municipal elections, when OSCE applied Rules and Regulations. The main regulation states: "Each representative in the Cantonal Assembly will give one vote for a list. "This means that Bosniacs can vote for Croatian candidates and reverse, but previously each constitutive people voted just for own representatives. Croats, headed by HDZ, called this "de-constitution of Croats in BiH."

The "Croatian national assembly" was convened, with participation, beside HDZ, of Croatian Democrat * Christians, Croatian Party of Rights, United Croatian Party of Rights and Democratic Center for Freedom and Equal Rights in Bosnia and Herzegovina in Novi Travnik, and on 28.10.2000 adopted the Declaration proclaiming sovereignty of Croatian people in Bosnia and Herzegovina, and as the only way for creation of sovereignty proclaimed constitutional administrative-territorial rearrangement of all Bosnia and Herzegovina, precisely forming a third entity with Croatian majority, composed of cantons with Croat majority. Sovereignty of peoples and citizens would be fulfilled at the level of entity, and part of sovereignty would be transferred to state bodies functioning on the basis of parity and rotation. A referendum was scheduled for 11.11.2000, the general elections day, where Croats would accept or reject the Declaration. The International Community did not accept results of the Referendum, and proclaimed this as an attack on the state of Bosnia and Herzegovina and violation of the Dayton Agreement, and the High Representative used his authority and dismissed the management of the Croatian Democratic Community.

The Party for Bosnia and Herzegovina based its political campaign on the slogan "For BiH without entities" which, since it is a political entity that stayed in government after all elections, we can consider it as a continuous tendency in this party's activities. Also, the project of rationalization of Bosnia and Herzegovina was presented in public, with four economic regions, that are inharmonic with the existing entities. Concerning the strengthening of state institutions of Bosnia and Herzegovina, it is very important to mention the initiative for establishment of a State Border Administration.

The citizens' association "Mothers of Srebrenica and Podrinje" and the National Association of Intellectuals of BiH * Bosnians, submitted on 16.01.2003 a request to the Constitutional Court of Bosnia and Herzegovina for revision of legality and legitimacy of Annex IV of General Framework Settlement for Peace in BiH. On 03.03.2003 this request was joined by the Community of Exiled, Displaced

Persons and Refugees from Bosanska Posavina and the Community of Displaced Persons and Refugees of Banja Luka.

They justified their request with the fact that Bosnia and Herzegovina is the legal successor of the Republic of Bosnia and Herzegovina, and changes imposed by the Dayton Agreement are not constitutional, and Annex IV does not have legality and legitimacy of the Constitution. Those statements were based on the fact of violation of the Constitution of Bosnia and Herzegovina that determined a democratic procedure of amendment of the state arrangement, and violation of 1992 * Referendum results, where citizens clearly declared in favor of a united, integral and indivisible Bosnia and Herzegovina.

Also in its request they highlighted that the Presidency and Assembly which legalized the Dayton Agreement were out of mandate, so they did not have the constitutional authority to amend the state arrangement and verify the Dayton Agreement. The proposal presented by those associations is that after determination of inexistence of legality and legitimacy of the Dayton Agreement, the same be put out of legal force and replaced with the Constitution of Bosnia and Herzegovina, that was in force when the state was internationally recognized, and which guarantees equal rights to all three peoples on the whole territory of Bosnia and Herzegovina.

A group of intellectuals that presented itself as an initiative board, composed of: Esad Bajtal, Ljubomir Berberovi}, Vlatko Kolo-ek, Sead Fetahagi}, Muhamed Filipovi}, Salih Fo-o, Franjo Kozul, Slavo Kuki}, Adil Kulenovi}, Mirko Pejanovi}, Vaso Radi} and Mirko [agolj, in February 2003, submitted to the General Assembly and the Safety Council of the United Nations, European Parliament, and the Council of Europe, the request for Bosnia and Herzegovina * The Third Republic.

The Third Republic would not have entities, but would be arranged based on the principle of "rational reorganization". Further, they speak in favor of denationalization, conciliation and establishment of a more human economic * social system. From the International community they requested guarantees for borders and neutrality of Bosnia and Herzegovina in the case of a war conflict. The Third Republic of Bosnia and Herzegovina would fulfill all conditions for inclusion in European Integrations; professional army arranged in accordance with international standards would provide participation of the state in international peace missions. Initiative believes that national organization must be separated from political representation, and national identities should be realized through national associations.

In May 2003, the Social Democratic Party of Bosnia and Herzegovina (SDP BiH), by the agency of clubs of representatives of SDP BiH in the Parliamentary Assembly of Bosnia and Herzegovina submitted in parliamentary procedure Initiative for amendment of the Constitution of Bosnia and Herzegovina. As a difference to previous initiatives, those are defining amendments by articles, in order to implement the change of constitutive arrangement of Bosnia and Herzegovina. The state would be defined by the Constitution as: a republic, sovereign, democratic, legal, social and decentralized in existing borders that are untouchable. Sovereignty would belong to citizens * citizens of Bosnia and Herzegovina, and people Bosniaks, Croats and Serbs would be equal and constitutive at all territory of Bosnia and Herzegovina.

Entities as a result of unnatural division of a single state and social area of Bosnia and Herzegovina would be cancelled, and the state would be composed of regions based on functional, economic, regional, geographical and communicational criteria. To all regions and local communities the Constitution would guarantee local autonomy. Since according to this concept Bosnia and Herzegovina would receive the attribute of a social state, a number of social and democratic rights would be introduced among the guaranteed rights.

They proposed total change of the electoral system, so active and passive voting right for legislative bodies of Bosnia and Herzegovina would be provided on all territory of Bosnia and Herzegovina, representatives of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina would be elected according to the proportional system in electoral unit presenting all Bosnia and Herzegovina. The House of Peoples would be elected by proportional system from the lists composed of constitutive peoples and others from the side of municipal councilors, political parties' candidates. The current reform of some kind of semi-presidential system (members of the Presidency are directly elected) would be replaced with parliamentary, so President/Presidency would be appointed from the side of the House of Representatives and the House of Peoples. Chief of state would have a representative role, and could not be from the same people as the Prime Minister. The mandate of all state functions would be four years. Vital national interests of all constitutive peoples were defined to provide equality and prevent the possibility to proclaim any interest as vital.

The right for initiation of a procedure at the Constitutional Court would be extended, and the right would belong to one fifth of representatives of the House of Representatives, Municipal and City Assembly, and legal persons and citizen initiatives. Armed forces would become professional and organized at the level of Bosnia and Herzegovina. Also, for the first time, there is a proposal for

legalization or constitutional approach toward political parties, which would enable the prohibition of some political parties' acting against the Constitution and state of Bosnia and Herzegovina.

Declaration on necessity to amend the Constitution of Bosnia and Herzegovina and on the arrangement of the "Federal Republic of Bosnia and Herzegovina" was presented in public by the Group for Preparation, in the framework of realization of Scientific Research Project "Bosnia and Herzegovina * Possibilities and perspectives of development". Text of Declaration has been published in "Oslobo|enje" on 12.07.2003, and signatories of the Declaration were: Prof. Ph.D. Mesud Sabitovi}, Prof. Ph.D. Arif Tanovi}, Academic Ljubomir Berberovi}, fra Luka Marke{i}, Jakob Finci, Prof. Ph.D. Sadudin Musabegovi} and Prof. Petar Jovi}. This initiative yielded a round table on 10.09.2003, where the draft proposal was presented.

The title of the Declaration contains word "necessity", and the reasons therefore, according to signatories, are: the fact that Annex IV of the Constitution of Bosnia and Herzegovina is the main reason for instability, existence of crises and unreachable, slow or partial fulfillment of the Peace Agreement provisions. The division of Bosnia and Herzegovina into entities was necessary at the moment of the Constitution adoption in order to prevent continuation of the war and destructions, but eight years after the end of war provisions of dividing into entities block the achievement of our goals * guarantees for human rights, abolition of discrimination, right to return home for refugees. Current regulations of the Constitution of Bosnia and Herzegovina treating the functioning of the Parliament, the Presidency, and the Council of Ministers are not complete since they do not regulate the mechanisms that could prevent the obstruction of those institutions, which would be one of the priorities of the Draft. The current Constitution regulates armed forces of entities, which is a direct obstacle for association of Bosnia and Herzegovina with the European Union and NATO.

Principles for amendment of the Constitution are the following:

- The new Constitution must insure and confirm all characteristics of sovereignty of Bosnia and Herzegovina, particularly: foreign policy, army, police, single border administration, customs, monetary policy, tax policy.

- In accordance with the proposed name Federal Republic of Bosnia and Herzegovina, the new federal arrangement would be based on territorial reorganization, respectively criteria of regional specifics. Regional units would have a high level of self-government, but the Constitution would precisely arrange the positions within Bosnia and Herzegovina as a complete

unit. The proponents, in their opinions, highlighted that the federal arrangement is very respected today from the side of experts, as a positive form of political organization, and 40% of the World population lives in states with federal organization.⁵⁶ Jakob Finci believes that Bosnia and Herzegovina had some forms of federal arrangements in the past centuries (Ottoman Empire, Austro-Hungarian monarchy). But, the real supporting arguments are linked to the current situation in Bosnia and Herzegovina that officially can be considered as some kind of federal state with three entities (Federation of Bosnia and Herzegovina, Republic Srpska and District Br-ko), and there is a clear rejection of possibility to have current entities as federal units, because they did not exist before Bosnia and Herzegovina. An even more correct statement is that the Dayton Agreement divided Bosnia and Herzegovina. Bearing in mind that the Presidency and the Parliament are elected directly, we can consider this as some kind of republican type of state arrangement. According to the proponents this would create possibilities for a higher degree of identification of citizens with the state, and for creation of a political, "state" people of Bosnians.

- Judiciary, Army and Police would be arranged according to Federal principles, not ethnic groups, so tendency of isolation, closing and splitting would be eliminated.
- All human rights, especially rights relating to vital interests, equality of languages, culture, religion would be protected by constitutional mechanisms.
- The Federal constitutive arrangement offers the possibility for organization of a single economic market which would ease the transition into the system of market economy and economic liberalization, preventing a divided and autarchic market, corruption, and economic crime.
- The declaration, as a very important segment of the social system, considers as well the cultural * educational sphere, which would also be regulated at constitutional level. Common educational programs in accordance with the highest European standards are anticipated, based on principles of community and differences, in favor of deprovincialization of the cultural and educational space of Bosnia and Herzegovina. Especially important is to eradicate segregation in schools that negatively influences new generations. In addition, this unification would, in some way, contribute to elimination of ethnical cleansing results.

⁵⁶ Declaration on necessariness for amendment of the Constitution of Bosnia and Herzegovina and establishment of the "Federal Republic of Bosnia and Herzegovina" (draft) with attachments; and Jakob Finci at a round table concerning the initiative of the Federal Republic of Bosnia and Herzegovina, held on 10.09.2003

- The first time for an initiative, the Declaration for Federal Republic of Bosnia and Herzegovina, points out the necessity of adoption of the Law on Capital City of Bosnia and Herzegovina, which would ensure its status and Bosnia and Herzegovina, would, again, become a normal European state.

A COMPARATIVE OVERVIEW OF SIMILARITIES AND DIFFERENCES OF THE INITIATIVES FOR AMENDMENT OF THE CONSTITUTION OF BOSNIA AND HERZEGOVINA

Superficial analysis of presented initiatives clearly shows that all of them came from one entity, and that can be the first and the most comprehensive common characteristic. However, all initiatives come from the Federation of Bosnia and Herzegovina. Obviously, they are produced by multiethnic parties or associations (whose heads are in the so-called part of Federation with Bosniak majority) and gravitate toward fundamental amendment of the Constitution of Bosnia and Herzegovina, which includes abolition of entities (Party for BiH, SDP, Initiative for BiH * The Third Republic, Initiative for Federal Republic of BiH), they are in favor of decentralization of state government, rational organization, creation of common army forces, equal rights and constitutive position of all peoples on the whole territory of Bosnia and Herzegovina, fulfillment of requirements and obligations from Annex VII, returning of all refugees and displaced persons to their, pre war, homes, restitution of property, privatization at the state level.

The initiative for Bosnia and Herzegovina * Third Republic was submitted to the highest bodies of the International community, and bypassed the regular procedure determined by Annex IV of the Dayton Agreement that does not recognize the existence of Constitutive assembly, and any eventual amendments are carried out through the amendment procedure. This method has been used in the belief that Bosnia and Herzegovina was in danger as a state and as a society, and that only radical changes supported by the International community could maintain the existence of Bosnia and Herzegovina.

The initiative of the Social Democratic Party and Initiative for Federal Republic of Bosnia and Herzegovina see their implementation through regular amendment procedures, but they seek support from the International community,

because without it, according to them, changes are not possible. The initiative of the Social Democratic Party is that Bosnia and Herzegovina, beside a legal and democratic, should be social state, while the Request for the Third Republic calls as well for the establishment of a more humane economic-social system.

The request to have Bosnia and Herzegovina arranged as a Republic is universal, and justified by historical facts. Bosnia and Herzegovina has twice been Republic, the first time being the Socialist Republic of BiH in SFRY and the second time as ex-Yugoslav Republic of Bosnia and Herzegovina recognized by the International community as sovereign state. The position that eventual compound internal arrangement of Bosnia and Herzegovina should not be especially underlined in the name of the state, because of additional threats to the continuity of Bosnia and Herzegovina was also expressed.⁵⁷

We must realize that according to the proposed solutions, three mutually alike initiatives for revision of Dayton are the Request for Bosnia and Herzegovina * The Third Republic, SDP Initiative for amendment of the Constitution of Bosnia and Herzegovina and Declaration on the necessity of amendment of the Constitution of Bosnia and Herzegovina and on the arrangement of the "Federal Republic of Bosnia and Herzegovina", that were presented in public in only three months, after General Elections of 2002. Similarities are referring multinational groups' of initiatives' signatories and vision of Bosnia and Herzegovina and its future without closing within national collectives, what became undoubted after election of national parties at October elections of 2002.

It is very clear that the signatories were initiated by the complex social, economic and political situation in Bosnia and Herzegovina, which is illustrated by the fact of unsuccessful return of refugees to their homes, existence of discrimination in all segments of society, war criminals enjoying freedom, equality of people is just a formal issue, especially in Republic Srpska, economy is in collapse, process of privatization wrongly implemented, fear of returnees. But, it is important to mention that the Initiative of SDP and the Initiative for Federal Republic of Bosnia and Herzegovina were seriously prepared and some concrete solutions were offered, as a difference to the Initiative for Bosnia and Herzegovina * Third Republic, which despite good media coverage did not offer an answer to the question of political organization and representation based on the principle of national belonging.

On the other side, the question of certainty for amending of the Constitution

⁵⁷ Prof. Ph.D [azim Sadikovi] at the Round Table on the declaration on necessity of amendment of the Constitution of Bosnia and Herzegovina and on the arrangement of the "Federal Republic of Bosnia and Herzegovina".

by amendments arises, as it was proposed in the initiatives of SDP and the one on arrangement of the Federal Republic of Bosnia and Herzegovina considering the complicated Assembly procedure that requires a broader political and social consensus within Bosnia and Herzegovina.

The initiative of journalists and intellectuals gathered around BH Dani magazine, does not directly insist on the abolition of entities, but in its ninth thesis it implies that construction of Bosnia and Herzegovina should consolidate to the requirements of European Integrations and to the principles of efficient and cost-efficient arrangement of state authorities. If we take into account that the initiative was produced in January 2000, when beside the chairman and co-chairman, there existed only three state ministries (Ministry of Foreign Affairs, Ministry of Foreign Trade and Economic Relations and Ministry of Civil Affairs and Communications) it is understandable to assume that this refers to reduction of entities' authorities in favor of state bodies, especially if we take into account the request for consolidation of armed forces in accordance with NATO * precisely the forming of one Army.

The request of Citizens' Associations "Mothers of Srebrenica and Podrinje" and National Association of Intellectuals BiH * Bosnians, Community of Exiled, Displaced and Refugees from Bosanska Posavina and Community of Displaced and Refugees of Banja Luka is different from other Initiatives, differs by the addressed subject, and in relation to the Dayton Agreement. However, those associations are the only ones to submit their requests to the Constitutional Court of Bosnia and Herzegovina, and are the only ones that don't recognize the Dayton Agreement as legal and legitimate.

As it was elaborated, the only initiative that had a major support of the Croatian people, presented through the Croatian National Assembly insists on forming of an additional entity, in other words, the initiative is aimed at the final separation of Bosnia and Herzegovina territory, exclusively ethnically based. Of course, supported by the thesis that entities don't have to be territorially united, but composed of many separated units administratively connected.

Within Republic Srpska, there were no initiatives or requests for revision of the Dayton Agreement, and each initiative that came from the Federation of Bosnia and Herzegovina was a priori rejected, as were the proposals for abolition of entities that were rigorously judged. All arguments supporting the thesis that Bosnia and Herzegovina with this constitutional arrangement can not be stabilized and can not be accepted by the Euro-Atlantic Integrations and NATO, were rejected with the allegation that Bosnia and Herzegovina can be stabilized by implementation of the Constitution. But, the readiness of the authorities of

Republic Srpska for amendment of the Dayton Agreement is obvious, considering the number of realized returns of refugees to Republic Srpska, implementation of the Decision of the Constitutional Court on Constitutive Peoples, readiness to arrest war criminals and overall protection of human rights and freedoms. It is clear that the biggest problem is lack of political will for normalization of the situation in the state, and strong energy and determination never to give up positions achieved during the war⁵⁸.

PERSPECTIVES

From the presented theses it is clear that the Dayton Agreement is slowly being amended, some laws are transferred from the entity level to the state. This process of authority transfer from the entity to the state level can be considered from two completely different aspects. One of them can be called "optimistic" and considers building of Bosnia and Herzegovina institutions, such as the Council of Ministers⁵⁹, the Court of Bosnia and Herzegovina, the Regulatory Agency for Communications, the State Borders Administration, the High Juridical and Prosecutors Councils of Bosnia and Herzegovina, and implementation of the Decision of the Constitutional Court on Constitutive Peoples that formally prevents discrimination within the entities. Beside political aspects, improvements are noticeable in the cultural, sport and media⁶⁰ spheres (initiating of common sports leagues and certain cultural projects at the state level). All this, at the first sight directs toward gradually integration of Bosnia and Herzegovina society and perspective of civil society building.

However, all the mentioned could be considered from another perspective that can be called "pessimistic". Laws that contributed to building and strengthening of state institutions were imposed by decision of the High Representative. The Decision of the Constitutional Court on Constitutive Peoples, is not fully implemented, three years after adoption,⁶¹ and presence and organization of common cultural and sport happenings is not the result of identification with the state but a pragmatic decision that offers the opening of the international

⁵⁸ See positions of political parties from Republic Srpska in Vecernji list, pg. 3, from 11.09.2003

⁵⁹ Increase of number of ministries and abolition of rotating place of the Council Chairman

⁶⁰ Example of TV Network shows voluntary and successful connection of media houses from different entities.

⁶¹ Not establishing of The House of Peoples in the Federation and issue of implementation at the cantonal level.

scene. However, some mentioned initiatives see the integration of society also through the educational system. The (im)possibility of implementation is obvious from the last example of administrative unification of schools and educational reform that resulted with the answer received from The Bishop Conference of Bosnia and Herzegovina requesting a referendum for Croatian people. The members of the Bishop Conferences request the prevention of assimilation of students,⁶² and a very interesting point is that they see common natural science classes as a violation of vital rights of the Croatian people.

To be concrete, the basic problem of the structure of Bosnia and Herzegovina as a normal European state are not complicated amendment procedure regulated by the Constitution, but the fact that many citizens of Bosnia and Herzegovina do not consider it their homeland.⁶³ It is very interesting that none of the initiatives took into account the European Convention on Human Rights and Basic Freedoms, whose correct and full implementation would abolish some existing solutions that are the results of aggression to Bosnia and Herzegovina, or in other words, would enable the usage of the Council of Europe instruments for the protection of human rights and freedoms. The possibility to mobilize the public with active support of the International Community, especially in Republic Srpska, appears as an imperative for all future initiatives regarding amendment of the constitutional order that can finally contribute to the integration of the state and the society. Pluralism of ideas and visions on the state arrangement can never be an obstacle, but inspiration for the search of the right model, or achievement of a social consensus of all citizens of Bosnia and Herzegovina on the idea of their own home state.

⁶² **Statement of The Bishop Conferences** of Bosnia and Herzegovina on cultural and religious identity of Croatian People in Bosnia and Herzegovina, *Vecernji list* - issue for Bosnia and Herzegovina, 12.09.2003.

⁶³ **Results of an interesting** survey implemented among elementary school student in Sarajevo, Banja Luka and @ep-e, gave three completely different answers to the question: What is your state? In Sarajevo the answer was Bosnia and Herzegovina, in Banja Luka, Serbia and Montenegro, and in @ep-e, Croatia; *FTV Political magazine "60 minutes"*, 15.09.2003

THE CONCLUSION OF WORKING GROUP IV

Prepared by: Ned`ma D`ananovi}

The working group started its session with the expose "Situations, possibilities and perspectives for amendment of the Constitution of Bosnia and Herzegovina" prepared by Midhat Izmirlija and Lejla Bali}. The author and introduction person Lejla Bali} offered a chronological overview of previous, most exposed by media, initiatives for amending of the Constitution of Bosnia and Herzegovina, and an analysis of their content, and compartment of similarities and differences. Of course, authors choose formal * legal possibilities for amending of constitutive regulations, and overview of introduced amendments up to now. In accordance with expectations, presentation provoked questions of participants. Within the introduction, Lejla Bali} offered numerous additional explanations and handout copies of interviews with two members of the Presidency of Bosnia and Herzegovina, Sulejman Tihi} and Borislav Paravac, illustrating the contradiction of their political positions relating to constitutive changes.

After necessary clarifications, the participants were asked to introduce themselves. However, the working group was a combination of undergraduate and graduate students, university and government employees, and respected persons from public life of BiH and from both entities. For continuation of the session we needed a combination of group and individual work, Group IV agreed that each participant individually identify three (because of possible overlapping) "objections" to Dayton and proposes solutions.

Very soon, it was obvious that discussion at the beginning was just light wind before the real storm that covered the Group in the second part of session. Dayton regulations represent a reflection of what happened in BiH during the period of 1992*1996, and for that reason it is still impossible to talk about those issues completely rationally, without emotions and war trauma. The fact that war directly created the content of the Dayton Agreement represents the biggest deficiency at this moment. Solutions achieved by force and violations are an obstacle for reintegration of the state, rule of law, institutions building and association with Euro-Atlantic Integrations. The way we look at the Agreement and the need to change this arrangement, is conditioned by our war experience and by dealing with that we deal with our past, and our effort to keep the status quo or to reform it, presents our relation to "the hardest four years". Two options are possible - to accept their inheritance and to continue to live in the past or to overcome all fears from the past and to associate the rest of the civilized world in the XXI century.

This is how participants identified basic objections to the Dayton Agreement and what they proposed as a solution to overcome the problem:

1. Debatable legal nature and legitimacy of D. Agreement

(Possible solutions:

- disintegration of the state;
- centralization of the state;
- amending of The Constitution)

2. Complicated procedure of The Constitution amendment

(Alternative not proposed.)

3. Complexities of the state mechanism and massive administration

(Simplification of the state mechanism and abolition of certain levels of government.)

4. Non-functional territorial separation of BiH

(Introduction of geographical and economic criteria for administrative division of the state.)

5. Inexistence of mechanisms for recruitment of young people in the political decision-making process.

(Introduction of mechanisms for recruitment of young people into political processes within Electoral Law.)

6. Separate entities.

(Abolition of entities and centralization of the state.)

7. Legalization of ethnical cleansing.

(Objection refers to authors and signatories of the Agreement as it is.)

8. Separation of legal systems, or existence of at least two legal systems in BiH.

(Gradual revision and creation of a single legal system.)

9. Undefined vital national interest of BiH.

(Definition of vital national interest of BiH within The Constitution.)

10. The category of constitutive peoples instead of constitutive citizens.

(Introduction of the term constitutive citizen, single person instead of people.)

11. Economically unproductive system and inexistence of a “welfare state”.

(Economic regionalism of the state and creation and institutionalization of regional economic developing agencies.)

12. Inexistence of demos, as prerequisites for existence of a democracy; establishment of ethnocratic rule.

(Creation of BH demos by introduction of the citizen as a constitutive category.)

Using this occasion, I would like to point out the comments of two participants. One of them does not have any objections and radically supports the Dayton arrangements because they protect and satisfy the interests of all and prevent the return to war, another one identified as the biggest problem the non-implementation of regulations from the Dayton Agreement, especially Annex VII referring to the return of refugees. The opinion of this participant is that return of refugees is the key to overcome the effects of the war. I would also like to mention the observation of another participant concerning correct usage of terminology. According to him, Bosniaks, Serbs and Croats do not represent territorially separated nations, but ethno-confessional groups.

CONCLUSION

After a dynamic and emotional discussion, the general conclusion is that the main value of a gathering is the possibility to discuss different issues. As a special value the group highlighted the fact that it was not a “dialogue to share the same opinion” this time, as it often happens, but a dynamic discussion which had involved all participants at their maximum. Even the fact that the group was practically divided, it was possible to identify positive improvements * this time the split was not ethnically based, but caused due to two different concepts * a civic vis a vis the ethnic one.

INSTEAD OF A CONCLUSION

Author: Ivan Barbali} (ACIPS)

When we started planning the procedure for the Alternative Conference "Eight Years of Dayton BiH", our goal was to gather people of the new generation, as much as possible, people that up to this moment, did not have much chance to express their views and positions concerning key issues of the society of Bosnia and Herzegovina, so they can, from different points of view, try to analyze the very basis and starting point of all social issues * the Dayton Constitution. First of all, skepticism existed; we thought that without attendance of numerous respected intellectuals of the public scene, discussion would not assume a good quality course and offer serious analyses and criticism. Fortunately, the reason for skepticism was unjustified.

Who are the people of the new generation? For years, a relatively high number of people younger than 35 circulates through different institutions, who very early filled the empty space of numerous administrative positions (of the International Community and state institutions) opened right after the ratification of The Dayton Agreement, with the knowledge of English language as one of the main requirements. So, very early in their carrier, a lot of young people had the possibility to be close to decision-making bodies, to be informed with international standards of business ambience, to learn and accept through work modern values of contemporary society, to learn negotiation techniques and political maneuvers, to eloquently present their conclusions and analyze situations.

At the same time, the closeness to the decision-making factors did not mean as well the possibility to participate in decision-making processes or at least the possibility to contribute to that process. Organizational structures are mainly inflexible and do not offer the possibility of promotion according to merits; existence of double standards is obvious and separates international and local employees, political party members and non-members, older and younger people etc.

Finally, people of the new generations have one feature in common, a recognized need for further, additional education and specialization. Untypical for our environment, but numerous young people were engaged with complex employment and studies at the same time. When the Center for Interdisciplinary Post-graduate Studies of the University in Sarajevo started to work, we were positively surprised by the interest and high quality of candidates. For three years in a row, that quality hasn't decreased, yet on the contrary, it is constantly increasing, which made it possible for the Center to set high application criteria

in accordance with European standards. Bearing in mind that the number of graduated M.A.s of our Center from Bosnia and Herzegovina is getting close to 100, what is just a part of this population, it is clear that a completely new and different generation is being created. The generation of much better quality than the previous.

Exactly this generational disharmony, or split, is frustrating. The embryo is developing too fast to accept the system as it is, and on the other side, the system does not have the need to recruit new people. Because of this, it became clear that possibility to express what was for a while articulated inside of them is necessary to be offered to people of the new generation. It's about time, and this is the beginning.

When planning the Alternative Conference, we knew that potential exists, but we could not clearly assume that this Conference would be able to set in motion such an amount of energy. The selected subject was more than logical * The Dayton Constitution, as the basic value that defines society. Can compromise solutions established with the goal to stop the war present, in the long-term, be a base for progress of the society? The definition and analysis of the basis presents just the initial step toward further discussions and consideration of numerous illogicalities and problems of this state.

The Dayton discussion opened new questions and offered possible answers:

Is it possible, in the long term, to expect sustainability of something that was imposed? In the first phase Dayton was an undoubted solution, but that was a phase of dialogue initiation and obstacles were different then from the current ones. Lejla Bali} and Midhat Izmirlija, in conclusion of their conference paper, underlined that the fundamental problem of arrangement of Bosnia and Herzegovina as a normal European state, does not lie in the complicated amendment procedure regulated by the Constitution, but in the fact that many citizens of Bosnia and Herzegovina, do not recognize it as their homeland. Furthermore, this implicates the existence of an obstructing element in relation to the creation of a sustainable state, which for years results with slowing down the normalization process. That logically reflects to individual quality of life, citizens' quality of life. The issue of citizens' rights vis a vis the rule of ethnocracy, is a component of the major part of Panel IV conclusion. In spite of different opinions during the work of Panel IV, moderator Ned`ma D`ananovi} underlined that a positive shift forward was that the division of work hasn't been based on the ethnical concept, but on the concept * a civic vis a vis the ethnical one.

Taking in account the conflict of concepts, questions referring to a possible alternative and which concept would represent this alternative remained open. If

a common alternative can not be found, do we need a stronger impact of the International Community or is it possible to expect of the existing political powers to undergo reform. Considering it from the generational point of view, who are the decision-makers, are they representatives of the older or the new generation? Is there a new generation?

Those questions were analyzed in part in the work of Panel II, which treated the issue of political rights. So, criticism was directed toward the electoral system which, by its regulations, encourages national political determination as the primary one. Moderator Valida Repovac cited the conclusion that the implementation of human rights on the whole territory of Bosnia and Herzegovina has an obstacle in form of the Electoral Law as a basis for discrimination. In this respect it is not logical to expect the creation of new powerful political option, nor democratic culture, with regard to the existing system.

The mentioned obstructive elements, and their implications on the citizens' living standard, are closely linked with the economic system of BiH, respectively its inexistence. Additionally, without meeting the defined standards, BiH can not seriously approach the process of Euro * Integrations. As an example of non-coherent legislation, Emir Had`ikaduni} lists in his conference paper with the topic 'The single economic system' (Panel I) barriers for precise analysis of the economic situation at the level of BiH. In his text he underlines that merely declarative political support is not enough, and that without adoption of appropriate legislation and creation of new institutions at the state level, BiH does not have a chance for equal competition at the European and other markets.

Within the framework of this Panel's discussion, the complicated and inefficient administrative structure of the state has been singled out as one of the key reasons for impossibility of creation of appropriate economic policies of BiH .

With these administrative complications, which are slowing down the development and integration process at every level, BiH should have an almost perfect and functional public service. Considering the fact that reality is far from this, the subject of the fourth Panel was the implementation of necessary new standards into the work of public service, without which BiH administration, i.e. the administration at all levels will remain an instrument for obstruction of any changes in BiH.

Thus, the Conference considered different issues, directly implied in the Dayton structure of the society. The fact is that the topics did not cover all necessary aspects, as e.g. issues of security, civil society, rule of law etc., which are crucial to normalization of BiH, but also conditioned by Dayton reality. Furthermore,

subjects analyzed the situation of our society on different levels, where the first Panel considered a more generalized subject than the subject of Panel III (Public Service Standards). However, the possibility to draw one common unit from the work of all four Panels proves that the issue of existence of the Dayton system is realistic and urgent.

For a long period of time, any discussion on Dayton has been considered a certain kind of taboo topic. However, times are changing and the society is surely and irrecoverably being democratized. Also, there are people who base their arguments in accordance with absolutely different system of values from the one that we entered (in our case catastrophic) social transition with. This publication offers you four conference papers to read, as well as conclusions from each Panel. According to my opinion, it brought valuable new thoughts and views. The common point of all analyses is that BiH is far away from an acceptable social system and it is necessary to continue discussion, dealing with specific problems and issues.

At the end it is necessary to emphasize the existing wish for participation, and that wish must be articulated. The Conference as such is just one way of articulation. Recruitment of a new generation people in public discussion concerning society development represents a duty, because those people are people who need reform and a normal society at the most. It is their future.

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Amela Sejmenovij}, Ivan Barbalij}

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Una Bejtovij}

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Tatjana Rukavina, Indira Vujovij}

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