

## ETHNICITY AND RELIGION IN BOSNIA AND HERZEGOVINA.

### Peace v Human Rights - A Never-ending Story?

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#### Abstract

It has been more than 15 years since the war in Bosnia and Herzegovina ended with the Dayton Agreement, which was signed by Bosnia, Croatia and Serbia, with the involvement of the US Government and European Union. In this article, I am focusing on the issue of discriminatory ethnic and therefore religious representation which was introduced by the Dayton Agreement. Recent developments in the Council of Europe connected with the decision of the European Court of Human Rights in *Sejdić and Finci vs. Bosnia and Herzegovina* forces Bosnia to change its Constitution and allow non-Croatian, non-Bosniak and non-Serbian to be elected for the governing bodies of the Republic.

**Key words:** Ethnicity, Religion, Peace, Human Rights, Law, Bosnia and Herzegovina, Lebanon

#### The Decision of the European Court for Human Rights in the case of *Sejdić and Finci v. Bosnia and Herzegovina* and its potential consequences<sup>1</sup>

Bosnia and Herzegovina is a much divided house. Saying that again I have in mind that even after more than 15 years from the horrendous war, this country is torn apart between entities. These entities again are themselves torn by fragmented federalized (not federative) territorial structures, which again are made up of pockets of territory with very inefficient local administration. For me, as a lawyer and legal theoretician who comes from the region and who understands the complexity of the country named Bosnia and as person who teaches elements of the State to students at the University of Zagreb, it is sometimes hard to grasp and understand how this country works and, even more importantly, how it can keep going, further into the future.

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<sup>1</sup> An earlier version of this chapter was used as preparatory material for the initiation of the blog Chicago Initiative for Bosnia, launched in February 2012.

Bosnia is so fragmented with entities, cantons, districts in which hundreds of local administrators work in an unstructured structure. Even if small pieces of the puzzle were productive, this massive system, with different layers of distribution of political power, could cause constant headaches for every political scientist and lawyer. This country does not work properly and the only fact which one can find satisfying is the “mere” fact that there has been peace there for some time now. I believe that Bosnian people find this very non-stimulating and to be honest, very depressive – that forces me to think that the Bosnians would like to see some changes and some light at the end of the tunnel, to hope that there are solutions which can make this diversified country work as a whole.

Bosnia is a home to Bosniaks, Croats and Serbs<sup>2</sup> and all feel that they belong to the land and that land belongs to them; the major problem is how to convince all of them that the land belongs to all of them at the same time. The number of Croats who cherish Bosnia and Herzegovina in their hearts is rapidly decreasing since many of them feel squeezed out of political power and believe that they are being marginalized as a smallest of all three constitutive groups of the country. Yet, problems can be found on all three sides. The major problem is how to convince all (even those who are the most radical) that Bosnia has to survive rather as a country “of many” but not as the country “with many”. I also want to believe that the ideas of the separation of Bosnia and Herzegovina only exist in some bars, where drunken men speak of destruction after they had too much to drink. Separation of Bosnia means war, but war with unpredictable consequences.

When I wrote that Bosnia is home to Bosniaks, Croats and Serbs, it is not what I fully believe; it is more of a political mainstream thought. Bosnia is and should be a country of many—including Jews, Gypsies (Roma), Czechs, Hungarians, Montenegrins, Austrians (as is the family of one my closest friend, whose grandfather came with Austrian railways to Central Bosnia during the Austro-Hungarian Empire). This comment is an appeal for a renewed and improved Bosnia, which would have a chance to live as a country. I am very well aware of the fact that everything around the Balkans goes slowly, as slow as the ice melts at the Poles, but even that is better than having a situation like this – a situation which causes depression.

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<sup>2</sup> The majority of Bosniaks are Muslims, the majority of Croats are Catholics and the majority of Serbs are Orthodox.

Bosnia is country Member of the Council of Europe and Signatory to the European Convention of Human Rights (Robin C.A. White and Clare Ovey 2010). What does this mean? It means that that Country signed one of the most beautiful and noble Convention which the contemporary world recognizes. That piece of paper, or, better said, bunch of papers, provides every citizen of the country who is signatory to the Convention with the same basic human rights, comparable to the amendments in the United States of America.

There isn't any judgment, domestic or foreign, that shook the swampy legal atmosphere in Bosnia more than the decision of the Grand Chamber of the European Court of Human Rights of Strasbourg, France.<sup>3</sup> In the Civil Law legal traditions,<sup>4</sup> legal theory sets Conventions above Laws but under Constitutions – we call it: the hierarchy of norms. These cases have shown that the results given with the Dayton Agreement, although many of them just and noble, as they constituted reasons for ending the most bloody war on the European soil since WWII, are at the same time unjust and unfair to the major national groups and to national minorities. What is all this about?

In its decision, dated the 22<sup>th</sup> of December 2009, the European Court of Human Rights ruled that the provisions of the Constitution of Bosnia and Herzegovina and the provisions of the Law on Elections are contrary to the provisions of the Convention which was signed by Bosnia and Herzegovina. A Jewish citizen of Bosnia, Jakob Finci, was denied competing for the position in the three-member presidency of the Republic and the House of Peoples, because those positions were reserved for members of major ethnic groups: Bosniaks, Croats and Serbs (The Jakob Finci Case/News on the Jakob Finci Case). The case of Dervo Sejdić, Roma citizen of Bosnia and Herzegovina merged with the previous case and

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<sup>3</sup> For those unfamiliar with the European Law and its out-of state controls which exist on the European Continent I will just mention that most of the countries on the European Continent are signatories to the European Convention on Human Rights and also members of the Council of Europe. The judicial body of the Council of Europe is the European Court of Human Rights which has its seat in Strasbourg France; all member countries appoint their judges there. It means that, technically, every case from any of member countries in which parties believe that any of the states violated any of the rights from the convention can approach that court and search for protection. That court is higher than supreme courts of member countries and all judicial and administrative organs of any of the member countries are subordinated to its power.

<sup>4</sup> Those based on Roman Law. All countries on the European continent are Civil law countries except United Kingdom of Great Britain and Northern Ireland and the Republic of Ireland.

therefore this case is known as *Sejdić & Finci v Bosnia* (The Jakob Finci Case/News on the Jakob Finci Case). Just before reaching the decision, Cardozo Holocaust Program noted that “The Grand Chamber’s decision to accept the case – the first to be heard under Protocol 12, which provides for a robust right to non-discrimination – gives Europe’s highest judicial body the opportunity to make clear that radical discrimination no longer has a place in the political agreements of any of the continent countries.” (The Jakob Finci Case/News on the Jakob Finci Case) The decision was translated to BCS<sup>5</sup> and became a platform on major legal and political debate that is ongoing.<sup>6</sup> However, that led to no change.

Without entering into complicated legal analysis, it is necessary to explain that the current Constitution of the Republic of Bosnia is a product of the Peace Agreement which was made in US Air Force Base Wright-Patterson near Dayton, on the 21<sup>st</sup> November 1995, and signed on the 14<sup>th</sup> December in Paris, France. To be completely correct, the Constitution was an Annex to the Dayton Peace Agreement and, as such, it was not brought to the Parliament or representatives or subjected to a popular referendum. It was a product of the political will of the parties. Although it brought the long wanted peace, consequences of its existence raise concerns about some serious human rights violations, not just to the parties involved but to others. The core issue at hand is that the Constitution prescribes that, on state level, all decisions are made by the mutual cooperation of the three constitutive nations: Bosniaks, Croats and Serbs—although this arrangement often does not work at all.<sup>7</sup> Members of other ethnic groups were excluded by this.

The applicants Sejdić and Finci argued that they are victims of ethnic discrimination and their appeal was grounded on article 1. of the Protocol 12 to the Convention which guarantees that all citizens will enjoy all rights prescribed by the Law regardless of gender, race, color of skin, language, religion, political or other opinion, ethnic or social inheritance, belonging to a national minority, assets, birth or other status; in addition to this, it was

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<sup>5</sup> Bosnian/Croatian/Serbian – although those three languages are three different languages with often different grammatical and semantic constructions and shapes, members of all three ethnic groups can communicate and understand each other on very high level of understanding.

<sup>6</sup> The original text of the decision can be found on: [www.gov.ba/ured\_zastupnika/novosti/?id=1008], last visited 1st February 2012.

<sup>7</sup> We have witnessed the situation that Bosnia did not have a government for almost a year since members of the three constitutive nations could not find a solution for establishing it.

stated that public bodies and institutions must not discriminate on any grounds.<sup>8</sup> This raised many different and to some extent complicated legal questions, but the most important one of all was the question of whether or not the State (Bosnia and Herzegovina) can be held responsible since its Constitution has different provisions for the possibility of including other ethnic groups into the political progress. Sejdić and Finci had to describe themselves as Bosniaks, Croats or Serbs to be able to be passively legitimated in the electoral process.<sup>9</sup> Obviously, that would be humiliating and unacceptable but, without this step, they would be forced to be out of the political system and thus devoid of the right to influence the life of the country they are living in, a country they love and inhabit.

As I noted before, in the continental legal circle the International Conventions are on a lower level than national Constitutions and, therefore, this became a very important legal issue with theoretical and practical implications. The Court ruled that Bosnia and Herzegovina can be held responsible for the mere fact that the provisions of the Constitution that helped end the horrendous war remained in force and that the fact that the local Constitution has provisions which are contrary to the convention is irrelevant. For Bosnia, this was a revolutionary opinion.<sup>10</sup> The Court decided with 16 votes for and 1 against that there is violation of the Article 1 of the Protocol 12 regarding the possibility of the applicants to be candidates for the elections for the presidency of Bosnia and Herzegovina.<sup>11</sup>

There is no doubt that this decision is human, moral and seems necessary. Yet, when I was almost persuaded that everything was clear and that this constituted a chance for Bosnia to reach a *clean slate* situation, I read the opinion of dissenting Maltese judge, Giovanni Bonello, who wrote that, despite the fact that, in principle, he shares the opinion of the other sixteen judges, he cannot “imagine any convention which would allow the applicants to be candidates at elections by all cost. Candidates at elections even by the price of Armageddon [...] I would be the first to that the most precious values are those of equality and non-discrimination - but as

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<sup>8</sup> Art.1 paragraph 1 and 2 of the Protocol, See supra note 2. Applicants were also argued that they are victims on the basis of violations of Art. 14 of the Convention and Art of the Protocol 1 (general prohibition of discrimination and electoral rule on elections and freedom of voting).

<sup>9</sup> A strong sense of belonging to Bosnia and Herzegovina and being member of Bosnian nation basically does not exist.

<sup>10</sup> Similar decision in: *Rekvenyi v Hungary* (No. 25390/94, ECHR 1999-III).

<sup>11</sup> See supra note 9 at 37.

equally valuable are peace and reconciliation in the State. With due respect to the court, this judgment looks to me like building the towers in the air not taking into account that those towers can collapse in the river of blood from which the Dayton Constitution arose. It prefers its sterile ignorance more than the open meeting with the pathetic world out there [...] the Court felt forced to throw the Dayton Agreement to the Abyss but did not felt morally obligated to replace it with something that can secure peace. In traumatic revolutionary happenings, it is not a task of the court to decide when some transitional period ends and if the tense situation ended and everything is normal again [...] I personally doubt that any state has to be driven into legal or ethical situation to sabotage the system which saved its political existence [...] I cannot support the Court which plants ideals into the soil and harvests bloodshed.”<sup>12</sup>

What I realized is that, in principle, I have to support the decision of the Court as a moral and ethical person. For me, the decision of the Court was only one which I would consider just – but the dramatic words of Judge Bonello made me think if that can be actually applied? Can we build a society which would like to have norms of the “modern and just World” without making anyone feel like he or she was “forced into equality”? I believe that, in one respect, judge Bonello has right: we have to meet “the pathetic world out there” and change it. I am not a prophet – I am not sure how this is to be done.

I read an article in “News de la Semaine” from the 24<sup>th</sup> January 2012 called “Bosnia and Herzegovina: PACE calls on the authorities and key political stakeholders to stop obstructionism” and criticism that the “perpetual cycle of deadlock and confrontation has hampered the completion of much needed reforms in key sectors.” The Parliamentary Assembly argued and warned that, if the rulings from Sejdić and Finci case were not “adopted in good time before the next elections in 2014, continued membership of Bosnia and Herzegovina in the Council of Europe could be at stake.”<sup>13</sup> At the same time, I recall the appeal of the same body of the Council of Europe for the “urgent need for a constitutional reform in Bosnia and Herzegovina”.<sup>14</sup>

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<sup>12</sup> Judge Bonello, translated by the author of this text, see supra note 9, at. 51-54.

<sup>13</sup> [<http://assembly.coe.int>], last visited 24<sup>th</sup> January 2012.

<sup>14</sup> [<http://assembly.coe.int>], report from 27<sup>th</sup> April 2010, last visited 24<sup>th</sup> January 2012.

Without a doubt, something has to be done. Excluding Bosnia from the Council of Europe would not be a good solution, regardless of the many violations of the European Convention on Human Rights perpetrated within and by that State. I still think that it is much better for Bosnia, the Balkans and Europe that Bosnia stays in the Council - by remaining, there would still be a tunnel of light entering the mists of the heart of Balkans. At the same time, new solutions have to be found - the New Constitution energized by the young people who seek the future - maybe an Idealistic idea? We should not exile Bosnia out of Europe; instead, we should seek ways to bring Europe to Bosnia. I am sure that Mr. Sejdić and Mr. Finci would like to live in the European Bosnia.

*Collective religions and identities - State without collectivity*

Consociation states are not so rare after all. There are many examples of such more or less functional states around the globe, Switzerland being a good example.<sup>15</sup> The problem of Bosnia is that elements which, though not entirely amalgamative in their nature, but at least neutral in other states like Switzerland (language and ethnicity) and, to some extent, Belgium (religion), are dissolutive in Bosnian case. Why is that? There is more than one reason. (Jakelić 2004)

We all know that laws are established in parliaments and that court decisions are decided by a certain majority. Who are those people who vote and decide in the name of all? Do they represent the majority's view in an ideological, cultural and religious sense? If so, does it mean that the majority would decide exactly the same way? What does majority really mean in respect to minority? To what extent the minority is obliged to follow the laws of the majority? Does the majority have not only the obligation, but also the right to protect the rights of the minority, even though that might mean protecting standpoints and ideas which are different than those of the majority? Sometimes it is so complex to deal with those issues even in homogenous societies and cultures and more than wisdom is necessary to resolve them and to balance between majority rule and minority rights. The minority should not be threatened by the majority but it should not happen the other way around either. Those basic

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<sup>15</sup> A recent edition of Foreign Policy Magazine states that Bosnia and Herzegovina's score in respect of state functionality was 83.5 in 2010. It is also stated that fully functional states receive scoring of 0-10 and the worst receive 90-100 as totally dysfunctional. Recent score (2012) was 77.9 which means that situation has slightly improved (data received from the Chicago initiative).

principles of democratic approach are to be met. The majority undoubtedly has some specific powers and rights. If it is so complex in homogenous societies, what happens in societies which have a long and lasting history of division, mistrust, different aspirations and inspirations which resulted in war and terror?

Bosnia and Herzegovina is probably the one of the most complex state on the European continent due to its unfortunate location both historically and geopolitically. It is valuable to examine (although I do not like using this word) the crossroad of cultures that made Bosnia such a unique and paradoxically tragic place. It seems that different cultures did not make Bosnia a better territory. The cultures which made Bosnia so tragic made a unique mentality and atmosphere that has no comparison anywhere in Europe. Sarajevo, as a Bosnian capital, was an example of cohabitation of Muslims, Christians (both Catholics and Orthodox) and Jews. Even in the worst War days, members from all communities involved in War helped each other. So what makes multinational, multicultural and multiethnic societies work? What makes them so fragile? Why, in some parts of the world, multi ethnicity works and in others it does not? Questions are numerous and not always easy to answer.

I must say that this is connected with the sense of belonging which at one point at the time became a formative element of the birth of the State and of the identity of its people. History shows that almost each state had a point where an atmosphere was created which enabled the birth of mutual feeling of belonging. There is no doubt that there are prerequisites to be fulfilled for a "nation" in order to reach that psychological point. I am not saying that there is a great deal of metaphysical elements in all of that, but I am not excluding it completely. Those prerequisites could be folkloric, religious, linguistic etc., but should be spread out as elements of particular groups which will interact with same or similar elements of others in order to achieve a greater communal wealth<sup>16</sup>. Some elements (identifications) of a particular group are more compatible to other elements than others. In Bosnia and Herzegovina, those elements, like religion, represent the core of the identity which was historically protected as the only distinctive element. In specific ways, religion was a sign of not being conquered. Due to many historical reasons, the people in Bosnia did not manage to build their own collective identity and connect themselves to a land as members of one nation (apart to some extent by Bosniaks, who do not have a strong

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<sup>16</sup> The creation of the Italian and German nations/states in Europe is a good example.



national state behind them). Instead, collective religions were building, supporting and keeping their own national identity; in some areas it was more connected with ethnical element in some less.<sup>17</sup>

Maurice Obeid was right when he wrote that “a nation depends on the development of overarching economic, social, and cultural structures of cooperation that transcend intranational factionalism” and also that “confessionalism, however, promotes the primacy of religious identity.” (Maurice Obeid, 2010) He clearly saw that, by having a strong religious identity, which acts as national and political identity, through which one can obtain the necessary *quid pro quo*<sup>18</sup>, “encourages close vertical assimilation within confessional communities and obstructs horizontal integration across them, incubating religious-based ‘states’ within the state. As a result, the country suffers from a weak national identity and anemic levels of integration across its cultures.”

Although Obeid talks about Lebanon<sup>19</sup> and the lacks of its political system, this approach should be attached to Bosnia as well. Obeid does not emphasize enough the fact that religion is more closely connected to a (feeling of) national identity. In a way, it is a manifestation of ethnicity itself (Jakelić, spring 2004). Obeid presumes that ethnicity (in his case, Lebanese) exists but it is weak; yet strong religious elements cause harm by making it stronger. In the case of Bosnia, that would be wrong. Here, the reasoning can go two ways: first, being a member of a religious group in those societies means that one belongs to a particular national (ethnic) group and not to the artificial one, which consists of people who are not “mine” or “ours”. This is the case in Lebanon, where Christians, for example, feel that they are the ‘real’, genuine Lebanese people. Second, the argument is even

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<sup>17</sup>This is also a very complex question. It is correct to state that in borderland areas, ethnic groups felt more connected to a motherland across the border (Croats and Serbs) and the members of the same ethnic group felt more connected to a religion as a 'staple of identification'. For instance, Croats in central Bosnia will identify themselves first as Catholics (as that is national identification) and then as Croats while Croats in Herzegovina which borders Croatia (Republic of) will be more attached to a national (ethnic) identity of the motherland nation just across the border. Regardless of that religious affiliation through Bosnia and Herzegovina means ethnic belonging.

<sup>18</sup> “You give me your vote, I'll give you protection.”

<sup>19</sup> Legal texts which describe division (separation) of power can be found on: [www.loc.gov/law/help/lebanon-constitutional-law.php](http://www.loc.gov/law/help/lebanon-constitutional-law.php), Lebanon: Constitutional Law and the Political Rights of Religious Communities, last visited: 18<sup>th</sup> July 2012.

more complex and it is connected with the fact that in Bosnia there are three nations (ethnicities).

Bosnia is still just a topographic term, linguistically closest to Bosniaks who do not have “their own state”, which they consider as the “source”. Therefore, geographically and historically, each of the groups feel that Bosnia is their own place – Croats will say that, historically, it is Croatian land; Serbs will claim more or less the same, or claim that they were here as Hajduks, fighting against the Turks and Bosniaks will insist that it is their land, culturally diverse and mixed but as it should be.<sup>20</sup> Even they do not insist on building a “Bosnian supra nation” and which will consist of three entities. Decisions of the Court such as the one already mentioned, although potentially dangerous, may speed up the transition from a fragmented society to Bosnia as a more modern European state.

Belonging to a community and territory is probably as old as man himself. There are some obstacles which prevent the transition between a fragmented, tribal-like society to a modern one. We should see what are some possible obstacles for having peace and prosperity. Some of them are:

- Political control is in the hands of groups not individuals (there is no such thing as a political nation);
- The right to identity is predestined;
- The Rule of the Law concept does not exist since groups are beneficiaries, not the individuals;
- Human rights are violated by the standards and norms of positive law;
- The lack of the predictability of the State’s reaction;
- There is no equality for all in equal situations.

What are the parameters which make one society different from others? It is important to know which factors are relevant, in order to be able to make

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<sup>20</sup> It is always a question if a conflict is essentially religious. Regarding conflicts on the European soil I was always convinced that all wars were based on the wish for territorial acquisition not on the belief itself. The religious element was often, too often, pushed ahead as major reason for conflict but the fact was that the religious element was used as a political tool or maybe the religious and political interest overlapped. I am not talking about contemporary problems which exist in Huntington's way of thinking, but about concrete problems and conflicts in recent European history. The war in Croatia was neither religious nor civil! It was a war where the Serbs wanted to keep control over the country and specially the sea. The conflict in Ireland is not religious in its essence but it is territorial - religion is simply used as a way of identification and building of national pride etc. My notion is that wars are rarely religious at the core.

an impact. This is important to know not just for local people, but also for people who would like to help from abroad:

- Historical issues: Why the “melting pot” in Bosnia is not functioning as it does in Australia, Canada, New Zealand or the United States?
- Cultural issues: Ties in the tribal sense, as well as family ties, are different, perhaps stronger, than in those of western civilization?
- Language differences: Language can be major differential element; learning a language can make things work well and make communication work. In Bosnia, people spoke almost the same language.
- Religious differences: Religion and its role are very important as a part of the national psyche and cultural and national (ethnic) identity. Putting religious issues aside would be a major mistake. In Bosnia and Herzegovina, each nation belongs to different religious groups.

### **A short insight into recent Bosnian history and the Dayton Agreement**

Bosnia and Herzegovina is a European country, which for centuries was part of different Kingdoms and Federal States. Its borders constituted the line between the Eastern and the Western Roman Empire.<sup>21</sup> The country was part of the Roman Empire, inhabited by Slavic tribes in the Old Era. The Kingdom of Bosnia fell under the Ottoman rule, followed by that of the Austro-Hungarian Empire. From 1918 onwards, it was in the Kingdom of Serbs, Croats and Slovenes. Finally, before the last war, which started in 1992, it was part of Tito’s Socialist Federative Republic of Yugoslavia as a federal republic within the state. Bosnia was often regarded as a small Yugoslavia, since it was the most ethnically diverse republic, surrounded by Croatia, Serbia and Montenegro. War started in 1992 as Bosnia was attacked by the Yugoslav National Army (YNA) led by Serbs and also by local Serbs who mostly disagreed on the dissolution of former Yugoslavia.<sup>22</sup> They were against federal republics proclaiming their independence. War in Croatia had started a year before. Regardless of the fact that all ethnic groups were later involved in some activities which could be described as war crimes, Serbia was the one that started the war. With the dissolution of former Yugoslavia, Serbia lost most of the power it had held as a federal

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<sup>21</sup> For those interested in Bosnian history, I suggest great book written by Noel Malcolm (1996).

<sup>22</sup> To be completely honest, there were Serbs, both in Croatia and Bosnia which fought for countries (states) they felt they belong to: Croatia and Bosnia respectively. This makes the picture a “little bit” messier too.

republic within Yugoslavia, which had been dominant in all areas of political life.

War was ended by the Dayton Agreement, after painful negotiations which took place in the Wright-Paterson Military Base in Dayton, Ohio, in the United States of America. The Agreement was signed on 14<sup>th</sup> December 1995 in Paris, France.

As a result of that Agreement, Bosnia secured peace, though it now has the most complex system of state functions on the entire Continent. The country is divided into two territorial units: a) The Federation of Bosnia and Herzegovina – a union of Bosniaks (Muslims) and Croats (Catholics) – amounting to 51% of the state and b) the Republic of Srpska – a Serbian entity (Orthodox) – amounting to 49% of Bosnia and Herzegovina. Federal Court, Finances, Border Control and Foreign Service are the only real classical elements of existence of that country. All other branches of power are local and fragmented. There are many objections to the Dayton Agreement since, in practice, many political and legal issues are not functional. Many people object that Bosnia and Herzegovina is in fact a country which exists only on paper as an artificial union of two separate entities. However, the agreement ended the war and that is a fact. There are so many other problematic issues that this country faces.

What was achieved by the Dayton Agreement in terms of positive effects:

- War was ended;
- All three parties were put on the track of negotiations;
- The country saved its existence; Bosnian Muslims saved their state, their home;
- Preconditions for economic growth were established;
- Sarajevo and some parts of Bosnia became tourist destinations once more and, therefore, sources of income for the Government.

What the Dayton Agreement brought about in terms of negative effects:

- By territorial division 49% versus 51% war pretensions of Serbs were granted – however, they had possessed less territory before;
- No one was happy with the mapping: since all three groups had their own ethnic territory on different sides, people felt that they had to move to other entities (which created pressure);
- Croats did not get their own entity;
- The country was run by an EU Commissioner – Is it a lack of sovereignty?;

- What about minorities which are not represented (e.g. Jews, Hungarians or Slovaks)?

When we compare the situation now and to the one ten years ago, much was done to improve the life in this wounded state. Bosnia and Herzegovina has European aspirations and it is a member of the Council of Europe. Many laws, although promulgated under semi-protectoral politics, made Bosnia a more organized state. Here I also wish to stress a few issues which can be discussed during the panel and/or workshops, namely what would be the minimal requirements from all ethnic groups, so that all can feel comfortable in their own state?

I see a number of major issues which can make all ethnic and religious groups more at ease:

- All groups have to feel that it is not “the victor’s policy and justice” in entities/local governments other than their own. In that way, no one would feel a stranger in its own country. This should be based on the grounds of reciprocity;
  - The rehabilitation of victims should be done by all;
  - The application of international standards and human rights should be adopted by all, which means that all human beings should be treated with equal dignity;
  - Religious leaders should play their own part to build peace on the spiritual level. There are good examples where Muftis and Imams worked together with Catholic and Orthodox Priests. When people see that their leaders can communicate and agree, it is also a great sign for them. Peace is in the hands of those people, they bear the real power, and they represent identification;
  - Introducing the rights of other ethnic groups in Laws wherever it is possible. That will soften the feeling that Bosnia and Herzegovina is just a three-part-state with a strict and unchangeable structure;
  - Focusing more on similarities than on differences;
  - Working on the process of integration that is sensitive to differences;
  - Finding creative ways in which other ethnic groups can feel involved; by doing this, Bosnia will be closer to the human rights standards set up by the European Convention of Human Rights.

Also, it is important to stress that the judicial system is very important, as people must have the feeling that justice is being made and that the court

system fits the needs of a community as a whole. This would be done by many means and some of them are:

- To insure sufficient places for members of all group representatives and not just for the three major ones;
- To insure that each member of a minority group will have a chance to speak;
- To insure that members of minority group preside in the court (as a judge) when a case from his local community is being debated and trialed;
- To protect victims and witnesses;
- To attempt to make processes fast and transparent;
- To consistently publish the decisions of the courts.

I would like to draw attention to one of the most important issues, namely to the principle which is above all theoretical, political, cultural or ethnical values. We live in a world that is fragmented by interests and different group and individual goals. But we must never forget that without the real will to find peace, it would be impossible to grasp or achieve it. A human-oriented approach should be a basis for all what we want to achieve. This message is also to the people from outside, who intervene to help. Very many times they try really hard. One of the most important issues at hand is to protect the weak, the disadvantaged and the vulnerable. If each group, if each individual tried to protect another who is weaker than himself, everything would be easier. Helping the weak, the poor and the defenseless is the supreme quality of men and this moral dimension is more important than any political act. It is act of honor and charity. Croats can protect Bosniaks and Serbs where they are in minority, Bosniaks can protect Serbs and Croats, and Serbs have to do the same. Christians can protect the Muslims. Muslims can protect the Christians.

### **The “Lebanonization” of Bosnia and peace as a supreme human right**

The major problem in Bosnia is that the political system is set up in such a way that there is a feeling that nothing can be changed easily. Both the Taif Accord of 1989<sup>23</sup> and the Dayton Agreements of 1995 put an end to the devastating wars in Lebanon and Bosnia, respectively, and brought the long awaited peace to people who were tired of the conflict. Without a doubt, those agreements saved thousand of lives on all sides. Ethically and religiously, those agreements were in the moral sense just: it is the noblest activity to bring peace and save lives.

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<sup>23</sup> Also known as National Reconciliation Accord signed in Taif, Saudi Arabia on 22<sup>nd</sup> October 1989, and ratified on 4<sup>th</sup> November 1989.

Christians believed that the peacemakers are blessed for doing peacemaking (Matthew 5:9) and Muslims believe that saving the innocent is praised highly (Qur'an: 5:32) – in fact, both Christians and Muslims share same basic concepts of the just State with respect to God and Natural Law.<sup>24</sup> But even when peace is achieved, there is a need to improve society according to the Spirit of the Law.<sup>25</sup> Perhaps peace is the greatest of all achievements that mankind should strive for, but 1) it is not the only blessing and 2) peace has to be consisted of at least a minimal requirement of humanity<sup>26</sup>.

I am grateful to professor Stephen Hunt<sup>27</sup> and his comments on the topic; he suggested that peace is a human right and maybe the greatest of all; but this is just conditionally true and it depends on how you define peace, because it is possible to imagine States where there is absence of war, hostilities or fight but where there is an abundance of fear. I believe that his remark is correct. When we examine Bosnia and Lebanon, we should strive to examine if the peace which was achieved was fair enough to guarantee a “prevailing amount of human rights”. If that is so, we should consider what kind of peace is a prerequisite for building something bigger. I am quite sure almost everyone recognizes the value and importance of peace as a fundament for achieving a greater good. It is not just a matter of stability; it is a matter of allowing the supreme human right to rule in order to improve. This is of course conditional to the Radbruch's principles which have to be implemented in the Laws of the Land by *argumentum ad minori ad maius* to the basic Laws of the state Constitutions, which are, in fact, products of International Agreements, both in Lebanon and in Bosnia. In that respect, the Maltese judge was right when he argued against uncompromised pressure imposed on that State.<sup>28</sup>

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<sup>24</sup> “For what the Law could not do, weak as it was through the flesh, God did: sending His own Son in the likeness of sinful flesh and as an offering for sin, He condemned sin in the flesh, so that the requirement of the Law might be fulfilled in us, who do not walk according to the flesh but according to the Spirit.” Romans 8:3-4

<sup>25</sup> By that we mean the Natural Law.

<sup>26</sup> I always think on Gustav Radbruch's formulas where he insisted that law without minimal human element is not a law at all and we do not have to follow it but oppose it (Radbruch, 1932).

<sup>27</sup> Stephen Hunt, Associate Professor at University of the West of England, Bristol, UK.

<sup>28</sup> See, *infra*.

If peace is made by a noble idea and constructed or spelled out by a Law in the form of a Legal Document (e.g. Accord or Agreement) and consists of the creed that all men are essentially equal and therefore should be protected – that kind of document should be protected but changed with direct and/or indirect mechanisms and influences. The problem is if vertical integrations of societies become so strong that they influence negatively the possibilities of having a horizontal integration of all groups of the society. I do not see a problem if each of the religious groups in Lebanon and ethnic and religious groups in Bosnia and Herzegovina protect their own interests and take care on their people; the problem arises if those groups seek exclusivities which go much further than their own proposed boundaries. Without interactions between these groups, vertical stratification will build tall skyscrapers which will eventually collapse without the solid bonds with other edifices which share the same geopolitical arena and territory.

**Conclusion - two countries, two solutions and one goal**

Without a doubt, there are differences between Lebanon and Bosnia. Lebanese religious groups feel their Lebanese identity very strongly and there is some form of national cohesion between the majorities in the groups. In Bosnia, the situation is even more complex, as the country lacks any feeling of shared national identity. There are many reasons for that, most of them of a historical nature. Even if those two countries share many similar characteristics, any approach to them should be different. In Lebanon, the effort should be done concerning connecting religious groups and in Bosnia, it is the ethnic groups, where the religious element plays an important role, that should be better connected. Peace is a major human right and as such, it should be protected by all means; therefore, improvements should be made by allowing nationals to influence religious cohabitation (Lebanon) and by enabling the unity of differences to work as a comparative advantage (Bosnia and Herzegovina).

By allowing minority groups to be involved, both systems can become closer to civil state which is the realm of the “small and ordinary” man. Special attention should be given to economic elements which confer a much brighter dimension to the discussion, but that is the topic for another article. This article’s aim was to set two “old” and yet contemporary problems into a comparative perspective where politics, religion and law cast their own light or shadow on this issue and to show how historical and cultural questions should be examined due to the need of promoting and



protecting global human rights in today's globalized World. Maybe one day this story will be finally come to an end.

### **Bibliography**

- Jakelić, S. 2004. Religion, Collective Identity, and Violence in Bosnia and Herzegovina. *The Hedgehog Review*, 6(1).
- Malcolm, N. 1996. *Bosnia: A Short History*. New York: New York University Press.
- Obeid, Maurice. 2010. A Lebanese Confession: Why Religious Politics is Bad for Lebanon, Harvard Kennedy School. Retrieved from [<http://isites.harvard.edu/icb/icb.do?keyword=k74756&pageid=icb.page399911>], last visited: 15th July 2012.
- Radbruch, G. 1932. *Rechtphilosophie*. Leipzig: Verlag Von Quelle und Mayer.
- The Jakob Finci Case/News on the Jakob Finci Case. (n.d.). Retrieved from Program in Holocaust and Human Rights Studies: [www.cardozo.yu.edu](http://www.cardozo.yu.edu), accessed on 1st February 2012
- White, Robin C.A. and Clare Ovey. 2010. *Jacobs, White and Ovey: The European Convention on Human Rights*. Oxford : Oxford University Press.