Stato, Chiese
e pluralismo confessionale

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The Restitution of the Sacred: Faith, Property, and Legal Reconstruction in Bosnia and Herzegovina*

La restituzione del sacro:
*fede, proprietà e ricostruzione giuridica in Bosnia ed Erzegovina **

ABSTRACT: This article examines the restitution of ecclesiastical property in Bosnia and Herzegovina as a key test of post-socialist constitutionalism and religious freedom. It outlines the socialist legacy of nationalization and its lasting effects on the legal status of religious communities in the region. In Bosnia, the consociational system created by the Dayton Accords, together with fragmented competences and political resistance, has hindered the implementation of restitution and produced structural inequality. The European Court of Human Rights' judgment in Orlović and Others v. Bosnia and Herzegovina illustrates how non-enforcement of property rights undermines both minority protection and confessional pluralism. The article argues that effective ecclesiastical restitution is essential for rebuilding trust, ensuring legal certainty, and consolidating a genuinely pluralist democratic order.

ABSTRACT: Il presente articolo esamina la restituzione dei beni ecclesiastici in Bosnia ed Erzegovina quale banco di prova fondamentale per il costituzionalismo post-socialista e per la libertà religiosa. Viene anzitutto delineata l'eredità socialista delle nazionalizzazioni e i suoi effetti duraturi sullo status giuridico delle comunità religiose nella regione. In Bosnia, il sistema consociativo instaurato dagli Accordi di Dayton, unito alla frammentazione delle competenze e alle resistenze politiche, ha ostacolato l'attuazione della restituzione e prodotto forme di disuguaglianza strutturale. Le decisioni della Corte Europea dei Diritti dell'Uomo evidenziano come la mancata esecuzione delle pronunce interne in materia di proprietà religiosa comprometta sia la tutela delle minoranze sia il pluralismo confessionale. L'articolo sostiene che una restituzione ecclesiastica effettiva sia essenziale per ricostruire la fiducia,

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garantire certezza del diritto e consolidare un ordine democratico autenticamente pluralista.

KEY-WORDS: Religious property, Ecclesiastical restitution, Freedom of religion, Religious minorities, Confessional pluralism, Church-state relations. Proprietà religiosa, Restituzione ecclesiastica, Libertà religiosa, Minoranze religiose, Pluralismo confessionale, Rapporti tra Chiesa e Stato.

1 - Introduction: Property, Religion, and Post-Socialist Transitions

The question of ecclesiastical property restitution in Eastern Europe lies at the intersection of patrimonial law, religious freedom, and constitutional reconstruction. Following the dissolution of socialist regimes and the ethno-religious conflicts of the 1990s - particularly in the territories of the former Yugoslavia - the ownership of church property emerged as one of the most delicate legal challenges of the democratic transition. The issue was never merely one of redistributing material assets or resolving civil disputes. It concerned, rather, the reestablishment of the historical and juridical presence of religious communities that had been systematically expelled, often through violent and ideologically driven expropriations, nationalizations, or identity-based appropriations.

In this context, ecclesiastical property rights acquire a structural significance. They form the legal precondition for the free exercise of worship, the preservation of communal memory, and the transmission of religious traditions within the social fabric. Property also represents a form of public recognition - a tangible manifestation of the legal personality of religious denominations and their legitimate participation in collective life. Conversely, the absence of an effective restitution system amounts to an indirect denial of confessional pluralism and religious equality, undermining not only constitutional guarantees but

also the conventional standards elaborated in international human rights law.

Bosnia and Herzegovina offers a particularly emblematic case. The complex institutional framework established by the 1995 Dayton Accords, grounded in an ethno-confessional model of consociationalism, reinforced mechanisms of exclusion and indirect discrimination in matters of religious property. The difficulty in ensuring restitution - due at times to legal constraints but more often to political resistance or ethno-territorial logic - reveals the unfinished nature of Bosnia's transition to the rule of law, especially in its ecclesiastical dimension.

The 2019 judgment of the European Court of Human Rights in *Orlović and Others v. Bosnia and Herzegovina* marked a turning point in the jurisprudence on religious property rights. The case concerned the unlawful construction of a Serbian Orthodox church on private land belonging to a Muslim family in the village of Konjević Polje, within the Republika Srpska. Despite multiple domestic court rulings in favor of the applicants, the removal of the structure was delayed for over a decade in a climate of administrative impunity and institutional complicity.

The *Orlović* judgment was significant not only for its formal recognition of a violation of Article 1 of Protocol No. 1 to the European Convention on Human Rights (protection of property) but also for its symbolic weight. The Court emphasized the link between administrative inertia and religious discrimination, noting that the effective protection of property rights in post-conflict societies is an indispensable condition for the reconstruction of confessional pluralism.

This dimension is all the more striking given the political role played by the Serbian Orthodox Church in post-war Bosnia, where it has often acted not as a neutral religious body but as an identity-based actor involved in the territorial consolidation of the Republika Srpska. The unauthorized construction of the church was not an isolated episode but part of a broader dynamic of sacralization of space, in which religion was mobilized to legitimize demographic and legal transformations born of the conflict. The judicial defeat of the Serbian Orthodox Church in *Orlović* thus represented not only a reaffirmation of the primacy of law but also a rare instance of limiting the political instrumentalization of religious heritage in post-war contexts.

From this perspective, the restitution of ecclesiastical property cannot be reduced to a patrimonial issue. It constitutes a key indicator of the real protection afforded to minorities and of the State's capacity to

guarantee the effectiveness of fundamental rights, even for non-dominant religious actors. In doing so, it tests the resilience of legality against ethnic, ideological, and religious pressures - revealing the degree to which post-socialist societies have internalized constitutional pluralism.

2 - From Collectivization to Restitution: Socialist Legacies and Legal Reversals

The post-war transformation of Eastern Europe was shaped by the radical economic and legal reorientation imposed by socialist ideology. Imported from the Soviet model, this paradigm promoted large-scale nationalization and collectivization, abolishing private ownership as an absolute right and replacing it with a system based on state and social property administered through centralized planning and collective structures[1].

This shift affected not only the economic order but also the very architecture of socialist constitutionalism. The constitutions of the era rejected the notion of private property as an inviolable subjective right, assigning the State exclusive control over the means of production, urban construction, and agricultural land. In Poland (1952 Constitution, arts. 7-8), Czechoslovakia (1960 Constitution, art. 6), and Romania (1948 Constitution, art. 11), property was declared collective, thereby legitimizing widespread expropriations - often without compensation or with merely symbolic payments[2].

In this legal environment, ownership lost its absolute and exclusive character. Property was reduced to a temporary right of use, subordinated to collective interests and subject to pervasive restrictions

[1] **I. MULAJ**, *Redefining Property Rights with Specific Reference to Social Ownership in Successor States of Former Yugoslavia: Did It Matter for Economic Efficiency?* (paper presented at the "Second Graduate Conference in Social Sciences", CEU-Budapest, 5-7 May 2006), MPRA Paper n. 5692 (*https://mpra.ub.uni-muenchen.de/5692*), pp. 3-8; **W. PARTLETT**, *Socialist Law in Central and Eastern Europe*, in *The Cambridge Handbook of Comparative Constitutional Law in Eurasia*, Cambridge, Cambridge UP, 2019, pp. 111-114, 118-120; **G. S. DJURIĆ**, *Legal Nature of Social Ownership in Yugoslav Self-Management*, in *Annals of the Faculty of Law, University of Belgrade*, vol. 22, 1974, pp. 45-63; **S. PLANINIĆ**, *From Social Ownership to Private Property: The Property Transformation Process in Croatia*, in *Eastern European Economics*, 38, 2, 2000 (in JSTOR free-read), pp. 6-10.

[2] For constitutional texts, see licodu.cois.it (*https://licodu.cois.it*).

on transfer, inheritance, and management. Religious institutions were particularly affected, their patrimonial autonomy viewed as ideologically suspect and legally incompatible with the socialist order[3].

Between 1945 and 1955, nearly every Eastern-bloc state adopted specific legislation for the confiscation of church property. Poland's 1950 law transferred ecclesiastical assets - including seminaries, schools, hospitals, and farmland - to the State; Hungary's 1948 and 1950 decrees nationalized denominational schools and dissolved religious orders; Bulgaria's 1947 and 1949 laws brought monasteries and foundations under strict state control. These measures were both material and symbolic, designed to dismantle the social cohesion and identity-forming role of religious communities. Orthodox, Catholic, and Islamic bodies alike underwent systematic dispossession aimed at curtailing their influence in both the religious and socio-political spheres[4].

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[3] The constitutional architecture of socialist Eastern European states - such as the 1952 Polish Constitution or the 1960 Czechoslovak Constitution - emptied the right to property of legal certainty and protection, subordinating it to a collectivist purpose: individual dominium was replaced by a form of "ownership of the whole people", lacking any identifiable titleholder. See **A. SYLWESTRZAK**, *Prawo własności w konstytucjonalizmie polskim*, in *Czasopismo Prawno-Historyczne*, LVI, 2, 2004, pp. 335-338, in particular pp. 336-337.

Analogous dynamics emerged in Czechoslovakia (see **J. KUKLÍK, P. SKŘEJPKOVÁ**, *Frost Comes out of Kremlin: Changes in Property Law and the Adoption of the Civil Code in 1950*, in *Právněhistorické Studie*, vol. 49, no. 2, 2019, pp. 12-15, in part.) and in the Yugoslav experience (**D.L. FLAHERTY**, *Self-Management and the Requirements for Social Property: Lessons from Yugoslavia*, in *Comparative Economic Studies*, 45, 2, 2003, pp. 11-13), where this model was further radicalized and the društvena svojina became functional only to the community of producers, resulting in managerial irresponsibility and inefficiency.

[4] In the post-war period, Eastern European socialist regimes directly intervened in ecclesiastical assets. In Poland, the *Ustawa z dnia 20 marca 1950 r. o przejęciu przez Państwo dóbr martwej ręki i utworzeniu Funduszu Kościelnego* (Dziennik Ustaw n. 9/1950) transferred Church property to the State, leaving only limited resources to clergy and parishes and establishing the Fundusz Kościelny to support religious activities. In Hungary, the 1948. *évi XXXIII. törvény az iskolák államosításáról* (Magyar Közlöny) abolished denominational schools run by religious orders; subsequently, the *1950. évi 34. törvényerejű rendelet a szerzetesrendek működésének megszüntetéséről* (Magyar Közlöny) effectively dissolved monastic communities and confiscated their assets.

In Bulgaria, the *Закон за национализация на частните индустриални и минни предприятия* (Darzhaven vestnik, 27 June 1947) was applied to ecclesiastical and monastic property; it was followed by the *Закон за изповеданията* (Darzhaven vestnik, 1949), which placed religious denominations and their assets under strict state control. The 1947 nationalization law struck monasteries and ecclesiastical foundations: a

Even socialist Yugoslavia, though distancing itself from Stalinist orthodoxy after 1948, implemented comparable policies. The federal law of 5 August 1946 (*Zakon o agrarnoj reformi i kolonizaciji*)[5] mandated the nationalization of large ecclesiastical estates; in 1953 churches were prohibited from acquiring new property. Dioceses lost their residences, monasteries their lands, and denominational schools were closed[6]. Christian communities were reduced to minimal functionality, while Islamic *waqf* foundations in Bosnia-Herzegovina and Kosovo were dissolved and their property confiscated[7].

These expropriations carried clear political and ethno-religious undertones, foreshadowing later conflicts in the 1990s. Ecclesiastical property became a tool of ideological homogenization in which church-state relations were subordinated to mechanisms of political control[8]. Religious institutions were compelled to sign unequal agreements granting limited, revocable use of sacred buildings - devoid of genuine legal value and subject to administrative discretion.

The socialist regime thus embodied a system of radical denial of ecclesiastical patrimony. The absence of recognized legal personality for many denominations, their exclusion from land ownership, and their

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significant portion of monastic land was transferred to the State, and entire religious complexes were expropriated within a framework of ideological and cultural control. See **M. BAZYLER, S. GOSTYNSKI**, *Restitution of Private Property in Postwar Poland: The Unfinished Legacy of the Second World War and Communism*, in *Loyola of Los Angeles International and Comparative Law Review*, 41, 2019, pp. 273-329; **A. SKOREK**, *Public funding of churches and religious associations in Poland: Analysis of political debates on the liquidation of the Church Property Commission and the Church Fund / Finansowanie kościołów i związków wyznaniowych ze środków publicznych. Analiza debat politycznych nad likwidacją Komisji Majątkowej i Funduszu Kościelnego*, in *Politeja*, 46, December 2017, pp. 167-189; **I. SZÓRÓ**, *Nationalization of Church Schools in Hungary, paper presented at the NORDSCI International Conference* (Athens, Greece, 19 August 2019), pp. 1-8, available at (*https://eric.ed.gov/?id=ED603462*); **K. PETROVA**, *La Bulgaria e l'Islam. Il pluralismo imperfetto dell'ordinamento bulgaro*, Bologna, BUP, 2015.

[5] See: *https://licodu.cois.it*

[6] **F. BOTTI**, *Le proprietà delle comunità religiose tra restituzione o compensazione dei beni confiscati e acquisto di nuovi beni in Albania*, in F. BOTTI (ed.), *La convivenza possibile. Saggi sul pluralismo confessionale in Albania*, Bologna, Bononia University Press, 2015, pp. 195-215.

[7] **G. CIMBALO**, *L'esperienza dell'Islam dell'Est Europa come contributo a una regolamentazione condivisa della libertà religiosa in Italia*, (available at *https://www.giovanni cimbalo.it*).

[8] **G. CIMBALO**, *Le Chiese ortodosse e gli Stati in Europa: problemi e prospettive*, in *Laicidad y Libertades*, 22, 2023, pp. 47-97.

marginalization from public life produced what scholars have described as a "closure of the sacred," in which church property survived only as a precarious tolerance, stripped of legal protection[9].

At the same time, Eastern churches were excluded from international and ecumenical networks: deprived of property rights and financial legitimacy, they were cut off from relations with the Holy See, global Islamic authorities, and transnational Orthodox hierarchies. This patrimonial dispossession weakened both the internal organization of religious communities and their international representation[10].

Within Yugoslavia, the Serbian Orthodox Church occupied a particularly ambiguous position - marginalized institutionally yet symbolically resilient[11]. Although it lacked formal status as a state religion, it remained deeply intertwined with Serbian national identity, functioning as a guardian of collective memory and cultural heritage[12]. In a multi-ethnic and multi-religious federation where religious pluralism was tightly controlled, this role carried special weight[13].

Like other denominations, the Serbian Orthodox Church suffered expropriations, surveillance, and restrictions, yet retained broader territorial visibility - especially in Serbia, Montenegro, and Bosnia-Herzegovina[14] - and a stronger mobilizing capacity owing to its synodal structure and the historic fusion of faith and ethnicity[15]. Despite legal

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[9] **G. CIMBALO**, *Religione e diritti umani nelle società in transizione dell'Est Europa*, in V. POSSENTI (ed.), *Diritti umani e libertà religiosa*, Soveria Mannelli, Rubbettino, 2010, pp. 137-164.

[10] **G. CIMBALO**, *Religione e diritti umani*, cit., p. 140 ss.

[11] For a historical framework contextualizing the confessional role during the communist period, see **H.C. DARBY, R.W. SETON WATSON, P. AUTY, R.G.D. LAFFAN, S. CLISSOLD**, *Storia della Jugoslavia. Gli slavi del sud dalle origini ad oggi*, Torino, Einaudi, 1969; **E. HÖSCH**, *Storia dei Balcani, Bologna*, il Mulino, 2006; **J. PIRJEVEC**, *Serbi, croati, sloveni. Storia di tre nazioni*, Bologna, il Mulino, 1995.

[12] **G. CIMBALO**, *Autonomia confessionale e tutela della libertà religiosa nello spazio giuridico europeo*, 10 May 2020 (available at *https://www.giovannicimbalo.it*)

[13] **G. CIMBALO**, *Autocefalia vo' cercando ch'è si cara*, in *Stato, Chiese e pluralismo confessionale*, Rivista telematica *(https://riviste.unimi.it/index.php/statoechiese)*, fascicolo n. 19 del 2020.

[14] **R. HENKEL**, *Religions and Religious Institutions in the Post-Yugoslav Space*, in *Geographica,* XLIV, 2009, pp. 49-61; **F. VECCHI**, *Il pluralismo confessionale "neutralista": parametro legislativo nei Balcani occidentali*, in *Annuario di diritto canonico*, VIII, 2019, pp. 141-230.

[15] **G. CIMBALO**, *Confessioni e comunità religiose nell'Europa dell'Est, pluralismo religioso e politiche legislative degli Stati*, in *Stato, Chiese e pluralismo confessionale*, cit., n. 8 del 2019.

constraints, it continued to influence social life, preserving religious traditions, organizing communal rituals, and perpetuating a narrative of "Serbian suffering" and Orthodox mission in the Balkans. Ecclesiastical assets, though nationalized, were perceived as sacred inheritance and symbols of continuity, fueling claims that would resurface in the post-communist era[16].

After 1990, amid the resurgence of religious nationalism, the Serbian Orthodox Church re-emerged as a political actor, supporting territorial and identity claims in Serb-majority areas and advocating the restitution of church property as a precondition for the "spiritual rebirth of the Serbian nation." Yet this process blurred the boundary between spiritual and political authority, as the Church often legitimized secessionist movements, particularly within the Republika Srpska, thereby compromising its neutrality and fueling inter-confessional tensions[17].

3 - Post-1989 Restitution and the Fragmented Legal Landscape of the Balkans

[16] After 1990, the Serbian Orthodox Church gradually regained an active political role in the territories of the former Yugoslavia, supporting territorial and identity-based claims in Serb-majority areas and reaffirming the restitution of ecclesiastical property as an essential component of what has been described as the "spiritual rebirth of the Serbian people". The Church became part of a broader process of the nationalization of religion, assuming a public function of ideological legitimization of local authorities - particularly in the Republika Srpska and in Kosovo - often in synergy with secessionist or ethnonationalist leaders. This involvement progressively eroded its spiritual neutrality and fueled interconfessional tensions, especially in contested territories. See **P. RAMET**, *The Politics of the Serbian Orthodox Church*, in P. RAMET, S. PAVLAKOVIĆ (eds.), *Serbia since 1989. Politics and Society under Milošević and After*, Seattle, University of Washington Press, 2005, pp. 273-294. The restitution of ecclesiastical property, beyond its patrimonial dimension, was often interpreted as a symbolic reaffirmation of Serbian sovereignty vis-à-vis non-Orthodox communities. For controversies in Bosnia and Herzegovina and Montenegro, see **R. HENKEL**, *Religions and Religious Institution*, cit., pp. 52-60; **F. BOTTI**, *Libertà religiosa, patrimonio culturale e identità: il caso del Montenegro*, in *Stato, Chiese e pluralismo confessionale*, cit., 2022, 17, pp. 21 - 60; **F. VECCHI**, *Il pluralismo*, cit., pp. 145-168.

[17] The Serbian Orthodox Church played a central role in strengthening Serbian nationalism in Kosovo, constructing a narrative of identity-based self-defence against Muslim Albanian communities. See **L. PEREIRA**, *The Role of The Serbian Orthodox Church in The Kosovo Conflict: Reflections on The Role of Religion in Intra-State Conflicts*, in *Revista de Estudos Internacionais*, 2021, pp. 180-190.

The collapse of communist regimes in 1989 triggered across Eastern Europe a complex transition toward market economies and liberal democracies. Within this process, the restoration of private property rights became a central legal step, pursued through extensive privatization of state assets and the restitution of property confiscated under socialism[18].

This "post-socialist restitution" unfolded through two principal models: the *restitutio in integrum*, involving the return of assets to their former owners or heirs, and compensatory schemes providing financial redress where physical restitution was impossible. Both approaches generated difficult questions concerning legal certainty, reliance, and the balance between retrospective justice and the stability of new property arrangements.

Some countries - Poland, Hungary, and the Czech Republic - adopted coherent legislation ensuring transparency and legal predictability**.** Poland's 1989 Law on Freedom of Conscience and Religion created a clear framework for church restitution and established a dedicated commission; the Czech Republic's 2012 Act No. 428 introduced a long-term compensation plan for seventeen denominations[19].

In the former Yugoslav republics, however, the process was far more turbulent, shaped by ethnic wars and the fragmentation of the state[20]. In Bosnia and Herzegovina, restitution was hampered by disjointed laws and ethno-political dynamics, with strong local resistance to returning property to minorities. The post-Dayton legal order -

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[18] For an overview of restitution models in Central and Eastern Europe, see below § 3.

[19] Paradigmatic cases of radical restitutio in integrum associated with identity restoration can be observed in the Baltic states. See **Z. NORKUS**, *Property Restitution and Privatisation in the Baltic Restorations of Capitalism*, in *Post-Communist Transformations in Baltic Countries. A Restorations Approach in Comparative Historical Sociology*, Cham, Springer, 2023, pp. 99-116.

[20] For a broader overview of restitution and compensation policies in Central and Eastern Europe, see **D. FISCHER TAHIR**, *Property restitution and compensation: transitional justice and property reform in Central and Eastern Europe*, in *Review of Central and East European Law*, vol. 29, September 2004, pp. 325-363; **M. LUX, A. CIRMAN, P. SUNEGA**, *Housing restitution policies among post-socialist countries: explaining divergence*, in *International Journal of Housing Policy*, Taylor & Francis Journals, vol. 17, 1, January 2019, pp. 145-156.

divided between the Federation of Bosnia and Herzegovina and the Republika Srpska - produced overlapping jurisdictions that blocked the adoption of unified restitution legislation and allowed local discretion to prevail[21]. The absence of a state-level law on the restitution of property confiscated under communism created a normative vacuum, forcing religious communities into lengthy domestic and international litigation[22].

The legal status of religious groups in post-1989 Bosnia was deeply influenced by the politicization of confessional identity[23]. Ecclesiastical property became an arena of contest among ethno-religious actors rather than a neutral object of legal protection. The Law on Freedom of Religion (2004), while formally recognizing the legal personality and ownership rights of religious bodies, has remained

[21] In Hungary, the process of ecclesiastical restitution began with the 1991. *évi XXXII. törvény az egyházi ingatlanok tulajdoni viszonyainak rendezéséről és az állam által elvett ingatlanok visszaadásáról* (Magyar Közlöny), which regulated the partial settlement of patrimonial relations and the return of confiscated and nationalised ecclesiastical properties. The law was later amended by several acts, including the 1997. évi CXXIV. törvény a lelkiismereti és vallásszabadságról, valamint az egyházakról, which defined the financial relations between the State and religious denominations and introduced multi-year economic compensation mechanisms. For a comparison between Poland, Czechoslovakia and Hungary, highlighting the economic constraints and political implications of the different restitution approaches, see **M.L. NEFF**, *Eastern Europe's Policy of Restitution of Property in the 1990s*, in *Penn State International Law Review*, 1992, pp. 357-381.

[22] In Poland, the legal basis for the restitution process is the *Ustawa z dnia 17 maja 1989 r. o gwarancjach wolności sumienia i wyznania* (Dziennik Ustaw 1989, n. 29, pos. 155). In application of this law, ad hoc commissions were established, including the *Komisja Majątkowa* for Catholic Church property (created in 1989), followed by commissions for the Orthodox, Evangelical and Jewish communities, entrusted with examining restitution and compensation claims.

In the Czech Republic, the relevant framework is provided by the *Zákon č. 428/2012 Sb., o majetkovém vyrovnání s církvemi a náboženskými společnostmi* (Sbírka zákonů), which introduced both the restitution of ecclesiastical property confiscated between 1948 and 1989 and a multi-decade compensation mechanism benefiting seventeen religious denominations. For consultation of the legislative acts mentioned, see *licodu.cois.it* (*https://licodu.cois.it*).

[23] **R.C. WILLIAMS**, *Post-conflict land tenure issues in Bosnia: Privatization and the politics of reintegrating the displaced*, in J. UNRUH, R. C. WILLIAMS (eds.), *Land and Post-Conflict Peacebuilding*, London, Routledge, 2013, pp. 145-160.

largely unimplemented for lack of enforcement mechanisms and because of political resistance[24].

Religious communities seeking restitution of assets confiscated between 1945 and 1990 often had to prove continuity of title, historical use, and the absence of good-faith purchasers - requirements nearly impossible to satisfy after decades of missing cadastral records and material alteration[25]. Administrative proceedings were slow, opaque, and vulnerable to political pressure; many churches, mosques, and synagogues had meanwhile been repurposed for secular uses such as schools or military facilities[26].

The result was a persistent tension between the normative will - expressed even at the international level - to protect religious property rights and the structural incapacity of domestic systems to implement them[27]. The lack of a unified legal framework, combined with the State's failure to ensure religious equality, produced pervasive legal uncertainty that undermined both freedom of religion and trust in the rule of law.

Ecclesiastical law, in this setting, assumes a central analytical role. It mediates between civil and religious norms and exposes the fragility of constitutional principles in post-totalitarian transitions. Bosnia's difficulties reflected the socialist legacy that had emptied the concept of private property and turned religious assets into tools of ideological control[28]. This legacy continues to complicate the creation of a pluralist legal order capable of guaranteeing both legal certainty and effective protection of religious rights.

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[24] See **T.W. WATERS**, *The Naked Land: The Dayton Accords, Property Disputes, and Bosnia's Real Constitution*, in *Harvard International Law Journal*, vol. 40, no. 2, Spring 1999, pp. 1-81.

[25] For an emblematic case of Convention-based protection of property in a post-conflict setting, see *Orlović and Others v. Bosnia and Herzegovina* (see below § 5). See also **R.C. WILLIAMS**, *Post-conflict property restitution and the development of the rule of law in Bosnia and Herzegovina*, cit., pp. 121-143.

[26] On the politicisation of religion and the largely ineffective implementation of the 2004 Law on Freedom of Religion, see **F. ALICINO**, *Religions and Ethno-Religious Differences in Bosnia and Herzegovina. From Laboratories of Hate to Peaceful Reconciliation*, in *Stato, Chiese e pluralismo confessionale*, cit., n. 37 del 2016, pp. 2-6 and 14-17.

[27] See below § 4 on enforcement shortcomings..

[28] For the property rights of the Greek-Catholic Church between Albanian domestic law and the European Court's "pilot judgment," see **F. BOTTI**, *I diritti di proprietà della Chiesa greco-cattolica tra il diritto interno albanese e la "sentenza pilota" della Corte EDU*, in F. BOTTI (ed.), *L'Albania nell'Unione Europea. Tra tradizione e sviluppo della libertà religiosa*, Bologna, Bononia University Press, 2017, pp. 145-172.

While the post-Soviet states generally pursued privatization and restitution with relative institutional coherence, the former Yugoslavia - and Bosnia and Herzegovina in particular - faced additional obstacles arising from ethnic conflict and from the institutional complexity created by the Dayton Accords[29]. In this context, restitution took on a dual meaning: as restorative justice for dispossessed religious communities and as a reaffirmation of collective identity and territorial belonging[30].

The issue of religious property in Bosnia cannot therefore be treated merely as a question of private law. The continued failure to return ecclesiastical assets - often confiscated arbitrarily under socialism or during the war - represents both a violation of property rights and an impediment to inter-faith reconciliation, particularly for minority groups living in ethnically homogeneous regions[31]. The fragmentation of competences among local, entity, and state institutions has repeatedly rendered the restitution provisions of both Dayton and domestic law ineffective[32], forcing applicants to seek redress before the European Court of Human Rights[33].

It is within this landscape - marked by unresolved tensions and unhealed wartime memories - that *Orlović and Others v. Bosnia and Herzegovina* emerged, becoming a landmark not only in Strasbourg jurisprudence but also in the broader legal reflection on religious property, post-war reconstruction, and confessional pluralism[34].

The 1995 Dayton Accords, signed at Wright-Patterson Air Base in Ohio, provided the constitutional backbone for the Bosnian state. Although initially a peace-enforcement instrument, Dayton became a constitutional charter through the direct incorporation of the Agreement and its annexes into the Bosnian Constitution (Annex IV). The resulting consociational structure - dividing the country into two autonomous

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[29] For a case-study perspective, see **P. PRETTITORE**, *The Right to Housing and Property Restitution in Bosnia and Herzegovina. A Case Study*, Working Paper (OSCE), 2003, pp. 1-30.

[30] **R.C. WILLIAMS**, *Post-conflict property restitution*, cit.

[31] **H. HALILOVIĆ, M.H. KÜÇÜKAYTEKIN**, *Fulfillment of Property Rights in Bosnia and Herzegovina*, in *IUS Law Journal*, II (2023), pp. 74-90.

[32] **P. PRETTITORE**, *The Right to Housing*, cit., p. 6 ss.

[33] **F. BOTTI**, *Religious freedom in the Balkan area between the difficult legacy of the Iron Curtain and the new complex dynamics of integration in the EU landscape.*, in F. BALESTRIERI, B. DE BONIS, F. FUNARI (a cura di), *L'Europa in divenire. Cittadinanza, Immaginari, Lingua, Cultura*, Città di Castello, I libri di Emil di Odoya srl, 2020, pp. 231 - 264.

[34] **R.C. WILLIAMS**, *Post-conflict property restitution*, cit.

entities - stabilized the ceasefire but entrenched an ethno-territorial distribution of power and replaced the universality of rights with negotiated communalism[35].

Annex VII, the provision guaranteeing the right of refugees and displaced persons to return and recover their property, has played a decisive legal role[36]. It became the cornerstone of restorative-justice policies in post-war Bosnia, recognizing restitution as an essential condition for the exercise of religious freedom and community reconstruction[37]. Yet its implementation remained inconsistent, particularly where claimants belonged to minority faiths within a given territory[38].

Domestic restitution laws adopted between 1996 and 1998 sought to operationalize these obligations: the *Law on the Use of Abandoned Property* (1996), later replaced by the *Law on the Cessation of the Application of the Law on the Use of Abandoned Property* (1998), and the parallel statute on abandoned apartments[39]. Despite their formal clarity, implementation was obstructed by fragmented administrative systems and local resistance often driven by ethnic majorities[40]. The Office of the High Representative intervened repeatedly but achieved limited results because of entrenched political opposition[41].

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[35] **F. ALICINO**, *Religions*, cit., pp. 3-6, 9-12, 14-17.

[36] **P. GAETA**, *The Dayton Agreements: A Breakthrough for Peace and International Law*, in *European Journal of International Law*, I (1996), pp. 147-163; **T.W. WATERS**, *The Dayton Accords, Property Disputes, and Bosnia's Real Constitution*, in Z. PAJIĆ (ed.), *The Dayton Constitution of Bosnia and Herzegovina - A Critical Appraisal of its Human Rights Provisions*, Indianapolis, Indiana University Press, 2003, pp. 67-89.

[37] See **F. ALICINO**, *Religions*, cit., pp. 2-3, 9-12, where the author highlights how the Dayton Agreement, while ending the conflict, institutionalised a rigid ethno-territorial division of power, reinforcing the consociational character of the State and limiting full democratic development.

[38] **C.B. PHILPOTT**, *From the Right to Return to the Return of Rights: Completing Post-War Property Restitution in Bosnia Herzegovina*, in *International Journal of Refugee Law*, XVIII, 2006, pp. 30-80; **R.C. WILLIAMS**, *Post-conflict property restitution*, cit.

[39] General Framework Agreement for Peace in Bosnia and Herzegovina, Annexes IV and VII, 1995.

[40] This law (*Zakon o korištenju napuštene imovine*, OG RS 3/96 and 21/96) applied exclusively in the Republika Srpska, not being a law of the Federation.

[41] **REPUBLIKA SRPSKA**, *Law on the Cessation of Application of the Law on the Use of Abandoned Property (Zakon o prestanku primjene Zakona o korištenju napuštene imovine)*, 2018, OG RS 38/98, am. 65/02, where Article 1 annulled the use of "abandoned" property and ordered its restitution to lawful owners, invalidating de facto allocations, available

The restitution of ecclesiastical property proved even more difficult. During the socialist period, churches, mosques, and synagogues had been nationalized; during the war, many were destroyed or illegally occupied[42]. Lacking a coherent legal framework, religious institutions were forced to negotiate ad hoc with local authorities, producing inconsistent and incomplete outcomes[43]. The Law on Freedom of Religion (2004) proclaimed the principle of non-discriminatory restitution but remained largely declarative[44].

At the international level, the *Agreement on Succession Issues of the Former Yugoslavia* (2001) aimed to ensure an equitable distribution of state property among the successor states, yet provided little practical benefit for Bosnian citizens[45]. The combined result of these instruments is a fragmented legal framework whose uneven enforcement exposes the fragility of Bosnia's rule of law and its capacity to safeguard ethnic and religious pluralism[46].

4 - Between Law and Symbol: Religious Property as an Identity Marker

The end of the Bosnian conflict and the signing of the Dayton Peace Accords placed the new legal order before an urgent challenge: how to restore ownership rights over properties confiscated, abandoned, or occupied during the war. The task was daunting - requiring both the reconstruction of a constitutional system based on private ownership and the pursuit of restorative justice for victims in a context still fractured by ethnic divisions[47].

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at *licodu.cois.it* (*https://licodu.cois.it*). See also **H. HALILOVIĆ, M. H. KÜÇÜKAYTEKIN**, *Fulfillment of Property Rights*, cit., pp. 74-90.

[42] **M. KATAYANAGI**, *Property Restitution and the Rule of Law in Peacebuilding: Examining the Applicability of the Bosnian Model*, *JICA*, Working Paper, 2014, available at (*https://www. jica.go.jp/Resource/jicari/_archived/event/assets/Katayanagi_4053.pdf*).

[43] **H. VAN HOUTTE**, *Mass Property Claim Resolution in a Post War Society: The Commission for Real Property Claims in Bosnia and Herzegovina*, in *International & Comparative Law Quarterly*, 48(3), 1999.

[44] **P. PRETTITORE**, *The Right to Housing*, cit., pp. 1-30.

[45] **H. WALASEK**, *Bosnia and the Destruction of Cultural Heritage*, London, Routledge, 2015, pp. 45-60.

[46] **F. VECCHI**, *Il pluralismo*, cit., in particolare pp. 180-185.

[47] **UNITED NATIONS**, *Joint Committee on Succession Issues, Property Reports 2010-2012*, in *United Nations Treaty Series*, Annex G).

Two foundational statutes - the *Law on the Cessation of the Application of the Law on the Use of Abandoned Property* and the *Law on the Cessation of the Application of the Law on Abandoned Apartments* (both 1998) - were intended to implement the obligations deriving from Annex VII of the Dayton Accords[48]. Yet their practical enforcement was uneven, hindered by the fragmented post-Dayton institutional structure and by conflicting administrative interpretations across entities[49].

The consociational system introduced by Dayton distributed powers among the Federation of Bosnia and Herzegovina, the Republika Srpska, and the Brčko District, producing overlapping jurisdictions and inconsistent administrative practice[50]**.** Formally uniform legislation was thus executed in divergent ways, reflecting local political dynamics often hostile to minority rights. What emerged was a dysfunctional pluralism: a coexistence of laws and authorities that systematically neutralized national guarantees through local resistance, omission, and restrictive interpretation[51].

Even the intervention of the Office of the High Representative (OHR) - armed with "Bonn powers" to impose legislation and enforce peace implementation - proved insufficient to overcome entrenched clientelist logics and confessional biases[52]. The absence of effective sanctions and of a shared legal culture reduced international involvement to mere moral persuasion, leaving restitution largely symbolic[53].

For religious communities, this executive failure had profound consequences. Denominations, particularly minority ones within each entity, were left legally vulnerable, compelled to assert their rights within an uneven judicial environment lacking effective remedies. The absence of a comprehensive law on ecclesiastical restitution forced them to negotiate case by case with local authorities, often under conditions of political dependency and without judicial safeguards. The result was an

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[48] **P. PRETTITORE**, *The Right to Housing*, cit., p. 12 ss.

[49] **R.C. WILLIAMS**, *Post-conflict property restitution*, cit., p. 145 ss.

[50] **T. DONAÏS**, *Power Politics and the Rule of Law in Post-Dayton Bosnia*, in *Studies in Social Justice*, VII, 2013, pp. 191-210.

[51] **F. ALICINO**, *Religions*, cit., pp. 9-13.

[52] **M. KATAYANAGI**, *Property Restitution*, cit.; **R.C. WILLIAMS**, *Post-conflict property restitution*, cit.

[53] **H. HALILOVIĆ, M.H. KÜÇÜKAYTEKIN**, *Fulfillment of Property Rights*, cit., pp. 74-90.

asymmetrical system that perpetuated uncertainty over ownership and undermined the institutional autonomy of religious bodies[54].

Even where the 1998 restitution laws restored individual property to displaced citizens, they proved inadequate for legal persons such as churches, mosques, and synagogues. The destruction of archives during the war, together with unreliable cadastral records, made it almost impossible to prove historical title and continuity of possession. In many cases, the victims of confiscation were those least able to demonstrate their rights[55].

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[54] The law on the legal status of religious communities guarantees the right to restitution "in accordance with the law," yet provides no published implementing parameters. See **U.S. DEPARTMENT OF STATE**, *2023 Report on International Religious Freedom: Bosnia and Herzegovina* (available at *https://www.state.gov/reports/2023-report-on-international-religious-freedom/bosnia-and-herzegovina/*).

[55] The situation of the Jewish community of Sarajevo constitutes an emblematic example of the structural obstacles that hinder the restitution of religious property in post-Dayton Bosnia and Herzegovina. Despite the existence of reliable documentary titles proving ownership over numerous properties confiscated during the socialist period, the community has been unable to secure full restitution of its historical patrimony. The main causes lie, on the one hand, in the prolonged inactivity of the competent executive authorities and, on the other, in the normative and administrative fragmentation of the Bosnian system. The issue has been repeatedly raised by international bodies, including the Council of Europe, without producing concrete results.

The case of the Jewish community is not isolated but forms part of a broader context of structural discrimination against religious and ethnic minorities, as recognised by the European Court of Human Rights in *Sejdić and Finci v. Bosnia and Herzegovina* (judgment of 22 December 2009). In that decision, the Court held that the exclusion of "constituent-non" minorities - such as Jews and Roma - from access to high public offices (Presidency and House of Peoples) violated Article 14 of the Convention in conjunction with Article 3 of Protocol No. 1. Jakob Finci, co-applicant in the case, is also the president of the Jewish community of Sarajevo, and his legal position epitomises the institutional and patrimonial marginalisation of minority religious communities.

The failure to implement the Sejdić-Finci judgment internally, more than a decade after its adoption, demonstrates the inability of the Bosnian State to correct the systemic imbalances affecting non-majority communities, compromising not only political representation but also the full enjoyment of property rights. The link between political-institutional discrimination and the obstacles to ecclesiastical restitution thus emerges in its full relevance, showing how the issue of religious property must be assessed in light of the effectiveness of minority rights within the Bosnian constitutional framework.

See **ECtHR**, *Sejdić and Finci v. Bosnia and Herzegovina*, applications nos. 27996/06 and 34836/06, judgment of 22 December 2009; Osservatorio Balcani e Caucaso Transeuropa, *Sejdić-Finci, una sentenza ignorata*, 14 November 2013, available at (*https://www.balcanicau*

This legal and institutional fragmentation transformed religious property into a terrain of symbolic confrontation. Churches, mosques, and synagogues became "identity territories" whose restitution - or denial - carried meanings far beyond material recovery. Each act of restitution came to represent a reaffirmation of historical legitimacy, while each refusal reinforced the perception of exclusion and imbalance[56]. In this way, the fate of sacred property mirrored the struggle for recognition within a fragile pluralist democracy.

The European Court of Human Rights provided a crucial legal reference point. In *Orlović and Others v. Bosnia and Herzegovina* and in *Ristić and Others v. Bosnia and Herzegovina*, the Court reaffirmed the State's duty to secure effective restitution mechanisms in post-conflict contexts. The jurisprudence recognized that the absence of a clear legal framework for ecclesiastical restitution constitutes a structural violation of property rights and of the Convention's equality guarantees[57].

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caso.org/aree/Bosnia-Erzegovina/Sejdic-Finci-una-sentenza-ignorata-138171); **J. FINCI**, *Minority Rights and the Restitution of Property in Bosnia and Herzegovina*, in *Jewish Political Studies Review*, vol. 23, nos. 1-2, 2011, pp. 33-44; **S. PAVLOVIĆ**, *Church Property Restitution in the Balkans*, Belgrade, Institute for Balkan Studies, 2022, pp. 45-52.

[56] The Serbian Orthodox Church's influence on identity politics in Bosnia and Herzegovina also intersects with broader dynamics of sacralisation and symbolic territorialisation. See **F. HADŽIĆ**, *The Politicization of Religion and the Sacralized Balkan Nations Regarding Bosnia and Herzegovina, Occasional Papers on Religion in Eastern Europe*, vol. 40, iss. 7, September 2020, pp. 106-128 (available at *https://digitalcommons.georgefox.edu/ree/vol40/iss7/8*).

[57] These works highlight the dual nature of ecclesiastical property: on the one hand, indispensable for worship, education, and charitable action; on the other, symbolic territories and identity markers. Minarets and churches are often erected less to meet the needs of religious communities than to assert contested spaces symbolically; sacred architecture thus reflects local identity and functions as a cultural archetype. See **I. PAUKER**, *War Through Other Means: Examining the Role of Symbols in Bosnia and Herzegovina*, in O. SIMIĆ, Z. VOLČIČ, C.R. PHILPOT (eds.), *Peace Psychology in the Balkans. Dealing with a Violent Past while Building Peace*, New York, Springer, 2012, pp. 109-128; **A. HADŽIMUHAMEDOVIĆ**, *Three Receptions of Bosnian Identity as Reflected in Religious Architecture*, in G. OGNJENOVIĆ, J. JOZELIĆ (eds.), *Politicization of Religion, the Power of Symbolism, Palgrave Studies in Religion, Politics, and Policy*, New York, Palgrave Macmillan, 2014, pp. 105-158.

The destruction of religious buildings during the war was not merely material devastation but a strategy to symbolically erase the presence of the "other." See **G.M. MOSE**, *The Destruction of Churches and Mosques in Bosnia*, in *Buffalo Journal of International Law*, 1996.

The 2009 U.S. State Department Report notes that restitution remained largely

At the domestic level, however, competence over property matters remains divided among entities, each with its own norms and procedures. The restitution statutes of 1998 have occasionally been applied to religious assets but contain no specific provisions for ecclesiastical property, leaving broad discretion to local authorities and creating substantial legal uncertainty[58]. As a result, religious institutions

discretionary, used for purposes of political patronage, with rare restitutions to members of minority religious communities. See U.S. State Department, *International Religious Freedom Report* 2009, pp. 4-5.

[58] A systematic analysis of the case law of the European Court of Human Rights shows that the issue of ecclesiastical property restitution is not unique to Bosnia but forms part of a broader interpretative line concerning several post-socialist jurisdictions. Since the early 2000s, the Court has addressed numerous cases in which the property rights of religious denominations were compromised due to normative restrictions, state interference, or unjustified delays in restitution proceedings.

A seminal case is *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, in which the State revoked the legal registration of one of the Orthodox factions, thus excluding it from access to ecclesiastical property. The Court held that State intervention in the internal organisation of religious communities - when determining who may control property - violates both Article 9 and Article 1 of Protocol No. 1 of the Convention. See **F. BOTTI**, *Le proprietà delle comunità religiose*, cit., p. 195 ss.

Similarly, in *Greek-Catholic Parish of Lupeni and Others v. Romania*, the Court examined the compatibility with the Convention of the authorities' refusal to return a church confiscated during the communist period and subsequently assigned to the Orthodox Church. The rejection, grounded on the lack of "local community consent," was deemed contrary to the principle of legality, as it subordinated the property rights of a religious denomination to an extra-legal identity-based criterion. The Court again found that persistent State inaction undermined the effective enjoyment of property rights and weakened the autonomy of minority religious communities.

Another significant precedent is *Metropolitan Church of Bessarabia and Others v. Moldova*, where the Court condemned the Moldovan government for refusing legal recognition to a religious community dissenting from the official Orthodox Church. The denial impeded not only full religious practice but also the autonomous management of ecclesiastical property, amounting to a material restriction incompatible with Convention principles.

Also relevant, though in a different normative context, is *Church of Jesus Christ of Latter-Day Saints v. the United Kingdom*, which concerned differential tax treatment of Mormon places of worship. While not a restitution case, the Court reaffirmed that any disparity in property-related treatment of religious denominations must be justified objectively and proportionately, failing which it violates equality and confessional autonomy.

Across these decisions, the common thread is the centrality of the patrimonial dimension in safeguarding religious freedom. Ecclesiastical property is not viewed as an accessory but as a material condition essential for worship, community organisation,

often face arbitrary administrative denials, frequently justified by alleged gaps in documentation or by claims of public acquisition through adverse possession - arguments clearly inconsistent with international standards on property protection.

In this scenario, ecclesiastical restitution reveals the systemic weaknesses of the Bosnian legal order. Ethno-territorial pluralism has devolved into structural incapacity: the State fails to ensure uniform application of the law, legal certainty, and confessional equality[59]. Ecclesiastical law, deprived of enforcement mechanisms, has become a nominal discipline unable to fulfill its organizing function within a pluralist democracy.

These dynamics underscore that the restitution of ecclesiastical property is not a marginal or technical question but a key indicator of the resilience of the rule of law[60]. Only the adoption of a coherent, comprehensive law - aligned with European human-rights jurisprudence and grounded in principles of confessional equality and historical recognition - can fill the normative vacuum and inaugurate a genuinely inclusive form of patrimonial justice.

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and the public presence of religious denominations. The Court has thus developed a jurisprudential line recognising ecclesiastical property restitution as a component of restorative justice in post-totalitarian contexts, underscoring that administrative inertia, political interference, and confessional discrimination constitute serious obstacles to the rule of law. This interpretative framework is confirmed—not contradicted—by *Orlović and Others v. Bosnia and Herzegovina*, situating the protection of religious property as a fundamental marker of constitutional pluralism and democratic coherence.

[59] **BOSNIA AND HERZEGOVINA**, *Law on the Cessation of Application of the Law on the Use of Abandoned Property*, OG RS 16/1998 (emend. 32/2010).

[60] See the *Law on Real Rights, Zakon o stvarnim pravima*, 2008 (OG BiH 66/13, consolidated text), adopted in both entities of Bosnia and Herzegovina - the Federation of Bosnia and Herzegovina and the Republika Srpska - with distinct but substantially identical texts (**FEDERATION OF BIH**, *Zakon o stvarnim pravima Federacije BiH*, *Službene novine FBiH*, br. 6/2014 - consolidated text; **REPUBLIKA SRPSKA**, *Zakon o stvarnim pravima Republike Srpske, Službeni glasnik RS*, br. 124/08, 58/09, 95/11, 60/15 and subsequent amendments). Under Articles 58-60 of the above-mentioned Law, acquisitive prescription (održaj) requires peaceful, uninterrupted, and good-faith possession for ten years for registered property (twenty years if unregistered). Since possession acquired through confiscation or wartime occupation during the 1992-1995 conflict is considered malus, the statutory requirements are not met, and the institution of acquisitive prescription therefore cannot legitimise the public acquisition of ecclesiastical property seized during the war.

5 - The Orlović Case: Property Rights, Faith, and the Rule of Law

Few cases illustrate more vividly the intersection of law, religion, and post-conflict reconstruction than *Orlović and Others v. Bosnia and Herzegovina*. The dispute originated in the late 1990s, when a Serbian Orthodox church was erected on private land belonging to a displaced Bosniak Muslim family in the village of Konjević Polje, within the Republika Srpska. The ownership of the property had been duly registered and confirmed by the Commission for Real Property Claims (CRPC)[61].

Despite clear cadastral records attesting to the family's ownership, local municipal authorities and representatives of the Serbian Orthodox Church authorized the construction without consent, in violation of Bosnian property and expropriation laws - notably the *Zakon o stvarnim pravima* (*Law on Real Rights*, 2008), adopted separately in the Federation of Bosnia and Herzegovina and the Republika Srpska, but identical in substance (Art. 24 et seq.)[62].

Domestic litigation continued for over a decade. Multiple court orders required the removal of the illegally built church, yet none were enforced by local authorities. This pattern of administrative defiance violated not only judicial rulings but also the applicants' right to a fair trial and to effective legal protection under Article 6 of the European Convention on Human Rights.

When the case reached Strasbourg, the European Court of Human Rights found a violation of Article 1 of Protocol No. 1 (protection of property) and emphasized that "the State has a positive obligation to secure the effective enjoyment of property rights," even in post-conflict environments[63]. The Court also noted a breach of Article 8 (respect for

[61] The Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) was established under Article XI of Annex VII to the Dayton Accords (1995) and is regulated by State Law 1/2003 on its functioning (Official Gazette BiH, 18/03). The body has exclusive competence over claims for restitution or compensation concerning property abandoned between 30 April 1991 and 14 December 1995.

[62] See above note 60.

[63] See **ECtHR**, *Orlović and Others v. Bosnia and Herzegovina*, judgment of 1 October 2019 (application no. 16336/06), §§ 16(3) and 16(5).

private and family life), given the interference with land directly linked to the applicants' private sphere[64].

Crucially, the Court attributed the violation not to legislative shortcomings but to the persistent non-enforcement of domestic judgments - a systemic failure of governance. It stressed that the inaction of public authorities was especially grave because the property in question carried a powerful symbolic dimension in a region scarred by ethno-religious violence. By connecting property protection with non-discrimination and freedom of religion, the *Orlović* judgment articulated an interdependent vision of patrimonial and spiritual rights.

The Court reaffirmed that "the effectiveness of property protection must be guaranteed even in post-conflict societies and in respect of vulnerable minorities," and that administrative inertia can itself amount to a substantive violation of the Convention. The case provoked intense debate in both academic and political circles, as its execution required continuous supervision by the Committee of Ministers of the Council of Europe[65].

Beyond its legal holdings, *Orlović* carries a broader institutional and symbolic resonance. It exposed how violations of religious property rights reflect the deeper fragility of the rule of law in ethnically divided societies. From an ecclesiastical perspective, the case underscored the lack of neutrality of state and local authorities in handling religious property[66]. Ethno-confessional bias compromises not only patrimonial rights but also the core principle of religious freedom protected by Article 9 of the Convention and incorporated domestically by the 2004 *Law on Freedom of Religion*. Although that law remains formally in force, it lacks effective enforcement mechanisms - particularly where the claimant denomination is a minority within the relevant territory[67].

The *Orlović* judgment thus stands as both a legal precedent and an institutional warning. It calls on Bosnia and Herzegovina to ensure non-discriminatory access to property protection, to strengthen the enforcement of judicial decisions, and to restore the moral authority of

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[64] RFE/RL Balkan Service, *Bosnia Ordered To Remove Church From Muslim Woman's Property*, 1 October 2019.

[65] **COMMITTEE OF MINISTERS - COE**, Decision CM/Del/Dec(2021)1395/H46-15.

[66] **H. HALILOVIĆ, M.H. KÜÇÜKAYTEKIN**, *Fulfillment of Property Rights*, cit., pp. 74-90.

[67] **WORLD JEWISH RESTITUTION ORGANIZATION - WJRO**, *Reconciliation Report*, December 2016.

law in contexts where faith and identity intersect. Ultimately, *Orlović* symbolizes a test of constitutional maturity: affirming that the protection of religious property is essential for peace consolidation, diversity, and the realization of a pluralist constitutional order.

6 - Cross-Border Restitution and Successor-State Challenges

The disintegration of the Socialist Federal Republic of Yugoslavia in the early 1990s created a series of complex legal questions concerning the division of state assets and the protection of private and ecclesiastical property scattered across the territories of the successor states. To address these issues, Bosnia and Herzegovina became a party to the *Agreement on Succession Issues of the Former Yugoslavia*, signed in Vienna on 29 June 2001 and entering into force on 2 June 2004[68].

Structured across several annexes, the Agreement sought to guarantee the protection of patrimonial rights, including the cross-border restitution of immovable property (*Annex A* - state, movable, and immovable assets; *Annex G* - private property and acquired rights). In principle, it introduced the idea of equitable distribution of assets based on the territorial principle: property would belong to the successor state in which it was physically located at the time of independence[69].

In practice, however, the Agreement's implementation proved highly problematic - especially regarding ecclesiastical properties located in other successor states such as Croatia, Serbia, and Montenegro. The most emblematic example concerns assets belonging to Bosnia and Herzegovina in Croatian territory - fuel stations, hotels, and port facilities, some registered under Bosnian entities - that were meant to be returned through bilateral negotiations continuing until 2012. These talks collapsed when Croatia resisted granting perpetual ownership to Bosnian entities, effectively freezing the restitution process[70].

Within this context, cross-border restitution remains suspended between the opposing poles of international law and national

[68] **UNITED NATIONS**, *Agreement on Succession Issues, Annex G - Property Issues*, in *United Nations Treaty Series*, vol. 2262, Vienna, 26 June 2001, p. 251.

[69] **V. CRNIĆ-GROTIĆ, S. FABIJANIĆ GAGRO, P. PERIŠIĆ**, *Annex G of the 2001 Agreement on Succession Issues: Self-executing or Not?*, in *Poredbeno pomorsko pravo*, January 2024, pp. 95-121.

[70] **F. ALICINO**, *Religions*, cit., pp. 12-15.

sovereignty. The absence of political consensus and the reluctance of successor states to recognize ecclesiastical ownership across borders perpetuate a deep asymmetry in the protection of religious institutions. This not only marginalizes minority denominations but also weakens the regional coherence of restorative justice, leaving religious property entangled in a space of legal uncertainty and symbolic disenfranchisement.

7 - Structural Challenges and the Future of Ecclesiastical Law in Bosnia

Although a formal legal framework exists for the protection of property rights, the practical enforcement of laws concerning the restitution of ecclesiastical assets in Bosnia and Herzegovina remains deeply obstructed by structural weaknesses that mirror the unresolved tensions of the post-war system. The fragmentation of competences - an inheritance of the consociational architecture established at Dayton - has multiplied decision-making centers and prevented the creation of a coherent governance structure for restitution policies, producing stark territorial disparities in the protection of rights.

Within this framework, the ethno-confessional politicization of property rights has generated serious distortions. Religious assets are frequently instrumentalized by majority communities as tools of identity assertion and transformed into symbolic obstacles to the return and reintegration of minorities. The outcome is a form of indirect and systemic discrimination against non-dominant religious denominations, eroding social cohesion and undermining equality before the law.

Added to this is the persistent weakness of central authority and the operational ineffectiveness of ecclesiastical law. The absence of a comprehensive restitution statute highlights the marginalization of this subject within Bosnian legislation, where ecclesiastical law remains an ancillary discipline devoid of coercive or judicial efficacy. The substantive non-implementation of the 2004 *Law on Freedom of Religion* represents an unresolved constitutional fracture that jeopardizes the foundations of confessional pluralism.

These deficiencies are not isolated anomalies but structural indicators of an incomplete legal transition. The *Orlović and Others v. Bosnia and Herzegovina* judgment - paradigmatic both in its jurisprudential scope and symbolic resonance - demonstrates how the

absence of effective protection for religious property perpetuates divisions among ethnic and confessional communities, fostering institutional distrust and a lingering culture of conflictual memory.

From this perspective, religious property should not be understood merely as a category of private law but as a sensitive barometer of constitutional integrity. It reflects the State's capacity to recognize, protect, and guarantee the plurality of religious identities - ensuring not only formal freedom of worship but also the material and patrimonial conditions for its genuine exercise. The failure to return ecclesiastical property is therefore more than a violation of property rights; it represents a substantial obstacle to the realization of an authentic pluralist democracy capable of including and empowering all communities in the reconstruction of Bosnia's institutional fabric.

The patrimonial recognition of religious institutions is thus an indispensable step toward full pluralist citizenship. It is both a political and legal imperative for overcoming the fractures of the past, rebuilding a shared civic identity, and affirming a constitutional order grounded in equality, historical memory, and the dignity of all components of the social body.