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Religions and Ethno-Religious Differences in Bosnia and Herzegovina. From Laboratories of Hate to Peaceful Reconciliation *

SUMMARY: 1. Introduction - 2. The Politicization of Religion and the Nationalization of Confessions - 3. The Place of Religion and Religious Confession - 4. The Constituent (Chosen) People and Religious Power-Sharing Mechanism - 5. The Education System and Religious Education - 6. The Legal Status of Churches and the State-Religions Relationship - 7. Conclusion.

1 - Introduction

Even though the war ended about twenty years ago, Bosnia and Herzegovina (hereinafter BiH) is still struggling to find its way of reconstruction and reconciliation that would result in a better life for its citizens. After so much time, it is clear that the political and institutional design made up by the 1995 Dayton agreement does not work to contribute fully to that aim. In particular, not much has been done to improve social and economic well-being¹.

One of the decisive factors behind this situation is the lack of mutual respect between moral agencies operating within the Country. It is no wonder if this situation is normally reputed more as absence of war than as peace and reconciliation: negative peace, the absence of war is all that has been achieved, as divisions still persist. Moreover, this situation is at times sustained by a religious context that still feeds ethno-national conflicting positions². Which proves the fact that, as in the past, religion is playing a

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¹ **M. KOINOVA**, *Conclusions: Building on Regional Trends to Develop New Mechanisms for Political Change*, in *Post-Yugoslavia New Cultural and Political Perspectives*, ed. by D. Abazović and M. Velikonja, Palgrave MacMillan, New York, 2014, pp. 198-203.

² See *ex plurimis* X. Bougarel, E. Helms, G. Duijzings (eds.), *The New Bosnian Mosaic: Identities, Memories and Moral Claims in a Post-War Society*, Ashgate, Aldershot, 2007.



significant role in many sectors of today's BiH, including those referring to institutional and political framework.

It would be wrong to understand the Bosnian war, the main source of the Country's current problems, only in terms of a religious war: the tragedy in the first half of 1990s was in large part a consequence of the processes taking place in the second half of 1980s, such as a growing economic crisis and a gradual decomposition of the legitimacy of the socialist political system. Yet, it would also be wrong to adopt the explanation that religion had no role in BiH's catastrophe. Of course, some dimensions of that sort cannot be neglected. But they cannot mask the ethnic-religious aspects of the conflict.

As a matter of fact, the misfortunes that occurred in the region during the first half of 1990s was in many respects the result of the abuse of the people's religious identity, relieved through myth and tradition that even today remain important inspirations for the future³. In this article I will first analyse the genesis of this situation and, in particular, the radical nationalism of BiH, which since the collapse of socialist Yugoslavia has been strictly related to the processes of politicization of religion and religious creeds. This will make it easier to understand the place and the role of religion and confession in the Country's current legal system. For this purpose, it will be worth focusing the attention on concrete issues, like those referring to the constitutional right to freedom of religion, the principle of secularism, the ethnic-religious oriented tripartite structure of BiH's political institutions, the education system, and the legal status of Churches and religious communities.

It is undeniable that religion and religious actors contributed largely to the bloodshed in the former Yugoslavia. For the same reasons, though, it is also unquestionable that, either for the better or worse, they have an important part to play in the existing reconstruction process.

2 - The Politicization of Religion and the Nationalization of Confessions

As is widely known, confessions were marginalized in public life throughout the period of socialist Yugoslavia. This brought hope to many that in future religion would not have given rise to significant problems in the Balkan region. Conversely, during the harsh reality of the war religion

³ V. TISMANEANU, *Fantasies of Salvation: Democracy, Nationalism, and Myth in Post-Communist Europe*, Princeton University Press, Princeton, N.J., 1998, p. 15.



was used as a tool in empowerment of national agendas, increasing the distance between the major ethnic groups⁴. From here two reciprocal processes stemmed, the politicization of religion⁵ and the nationalization of confessions⁶, which reduced religious creeds to mere nationalized symbols celebrating a God that loved and preferred one national group to other factions⁷.

Under these approaches, the Bosnian war was preceded and accompanied by an aggressive propaganda campaign, based on adapting ancient myths and religious doctrines to current ideologies⁸. It is thus that laboratories of hate renewed ancient atrocities⁹. Take, for example, the tragedy of Muslims in Bosnia, based on the fact that they were too Muslim for the West and not Muslim enough for the Islamic world: they were in effect caught between the nationalist interests and the most distinctive thing about them, their religious component. Conversely, the support of the Muslim world to the war efforts of the Bosnian side was prominent: despite the embargo, Iran and other Muslim-majority Countries sent arms and military advisors to the Bosnians; Saudi Arabia and other Gulf States provided financial aid; nongovernmental religious organizations and

⁴ See **S. VRCAN**, *Proselytism, Religion and Ethnicification of Politics. A Sociological Analysis*, in *Religion in Eastern Europe*, 1997, 17:5, pp. 1-20; **N. ANDJELIC**, *Bosnia and Herzegovina, the End of a Legacy*, Frank Cass, London 2003; **P. MOJZES**, *Balkan Genocides. Holocaust and Ethnic Cleansing in the Twentieth Century*, Rowman and Littlefield, Lanham (MD), 2011.

⁵ **D. ABAZOVIĆ**, *Reconciliation, Ethnopolitics and Religion in Bosnia-Herzegovina*, in D. Abazović and M. Velikonja (eds.), *Post-Yugoslavia New Cultural and Political Perspectives*, pp. 35-56.

⁶ See *ex plurimis* **M. SELLS**, *Serbian Religious Nationalism, Christoslavism, and the Genocide in Bosnia, 1992-1995*, in *Religion and the War in Bosnia*, ed. by P. Mojzes, Scholars Press, Atlanta (GA), 1998, pp. 201-202.

⁷ **G. SHENK**, *God With Us? The Roles of Religion in Conflicts in the Former Yugoslavia*, Life and Peace Institute, Uppsala 1993; **G. POWERS**, *Religion, Conflict and Prospects for Reconciliation in Bosnia, Croatia and Yugoslavia*, in *Journal of International Affairs*, 1996, 50:1, pp. 62-67; **P.H. LIOTTA**, **A. SIMONS**, *Thicker than Water? Kin, Religion, and Conflict in the Balkans*, in *PARAMETERS, US Army War College Quarterly, Winter 1998*, <http://strategicstudiesinstitute.army.mil/pubs/parameters/Articles/98winter/liotta.htm> (last accessed 17 September 2016).

⁸ **M. VELIKONJA**, *Liberation Mythology: The Role of Mythology in Fanning War in the Balkans*, in P. Mojzes (ed.), *Religion and the War in Bosnia*, cit., p. 38; **B. ANZULOVIC'**, *Heavenly Serbia: From Myth to Genocide*, C. Hurst & Co. Ltd, London, 1999.

⁹ **M. VELIKONJA** (translated from Slovenian by Rang'ichi Ng'inja), *Religious Separation and Political Intolerance in Bosnia-Herzegovina*, Texas A&M University Press, College Station, 2003, p. 245.



institutions offered everything from humanitarian help to recruiting Muslim volunteers for the fighting in Bosnia¹⁰.

Not to mention Radovan Karadžić, who said that forcing Serbs and non-Serbs to live together would be like doing the same to “cats and dogs”, adding that “Bosnia had never existed and it will never exist”¹¹. In this perspective one may explain, without justifying, the destruction of historical recollection. So, it is not by chance that the initial targets of Serbs and other nationalists were cultural-religious monuments and that the first goals of their aggression in BiH were religious leaders¹²: fifty-four Muslim clergymen had been killed by mid-June, 1992, while about two hundred people were interned in Serbian and Croatian camps for prisoners, including many active imams¹³.

In this manner, the return of religious-national integrationists produced tensions and intolerance, on the one hand, and the exclusion of the considerable atheistic population within each nation, on the other. The three main religious hierarchies in BiH were sending open or veiled appeals to people of their denomination to support the respective faction of their nation. The strongest political parties of the Bosnian Serbs and Croats tried to exploit the Orthodox and Roman Catholic churches as a means of acquiring support and legitimacy. The rhetoric of other party’s leaders was influenced by religious references, such as Qur’anic inscriptions and biblical texts¹⁴.

The major religious organizations were in other terms voluntarily involved in the war, even though in different ways and to different degrees. Some religious authorities went so far as to bless warring activities that resulted in persecution and killing. Others were silent about crimes committed in the name of their God¹⁵. To this respect, what was going on was a religious genocide, through which individuals were generally classified, and at times persecuted if not killed, on the basis of their religious

¹⁰ X. BOUGAREL, *L’Islam bosniaque, entre identité culturelle et idéologie politique*, in *Le Nouvel Islam balcanique: Les musulmans, acteurs du post-communisme, 1990–2000*, ed. by X. Bougarel, N. Clayer, Maisson and Larose, Paris, 2001, pp. 103-104.

¹¹ M. VELIKONJA, *Religious Separation*, cit., p. 254.

¹² M. SELLS, *Crosses of Blood: Sacred Space, Religion and Violence in Bosnia–Hercegovina*, in *Sociology of Religion*, 2003, 64:3, pp. 309-331.

¹³ M. SELLS, *Crosses of Blood*, cit..

¹⁴ L.J. COHEN, *Bosnia’s Tribal Gods: The Role of Religion in Nationalistic Politics*, in *Religion and the War in Bosnia*, ed. by P. Mojzes, American Academy of Religions-Scholars Press, Atlanta, 1998, pp. 43-69.

¹⁵ M. BAX, *Warlords, Priests and the Politics of Ethnic Cleansing: A Case-Study from Rural Bosnia Hercegovina*, in *Ethnic and Racial Studies*, 2000, 23:1, pp. 16-31.



identity¹⁶. The violence was grounded in a religious mythology, used to describe the targeted persons as race traitors and the extermination of 'others' as a sacred act¹⁷.

On the other hand, denial was present everywhere, which means that some parts of the population denied the facts, others replaced them with myths as counter-memory. The only thing they had in common was that they considered religion as a hard national-ethnic subject and confessions as crucial differentia *specifica*. This explains why political ideologies demanded the support of organized religious doctrines in order to legitimize new establishments; which implied the exploitation of religions for national purposes¹⁸. And, from this point of view, there was no significant difference between the major religious organizations; namely the Islamic community, the Roman Catholic Church, and the Serbian Orthodox Church.

All this mirrors the fact that the collapse of socialist and Yugoslav State opened room for the de-privatization of religion, feeding various national mythical constructs embedded in the minds of the population¹⁹. One of these constructs referred to the 'chosen people' that (by chance?) broadly coincided with the suitability of the dominant confession for the nation, the demonization of other creeds, and the mythologizing of important religious-national figures from the past and present. In addition, those constructs supported visions of an imagined future infused with religious integrism²⁰, which was melded almost perfectly with national integrism²¹.

Thus, nationalists on all three sides often denounced non-integrist individuals as atheistic and antinational. Correspondingly, the socialist regime was perceived as being responsible for the outbreak of hatred and violence because of its desertion of the Bible-Qur'an, and because of its religious immorality and anti-Serb-Croat-Muslim orientation. Likewise, the public sites of dramatic religious events from the past became the

¹⁶ M. SELLS, *The Bridge Betrayed: Religion and Genocide in Bosnia*, University of California Press, Berkeley (CA), 1998.

¹⁷ M. VELIKONJA, *Religious Separation*, cit., p. 260.

¹⁸ I. CVITKOVIC, *Religions in War: The Example of Bosnia and Herzegovina*, in *Occasional Papers on Religion in Eastern Europe*, 2001, 21:6, pp. 32-45.

¹⁹ V. PERICA, *Balkan Idols: Religion and Nationalism in Yugoslav States*, Oxford University Press, Oxford, 2004, pp. 4-11.

²⁰ D. ABAZOVIĆ, *Reconciliation*, cit., p. 37.

²¹ D. ABAZOVIĆ, *Rethinking Ethnicity, Religion and Politics: The Case of Bosnia and Herzegovina*, in *European Yearbook of Minority Issues*, Brill NV, Koninklijke, 2007, 7:08, pp. 317-326.



destinations of national pilgrimages and rituals: Ajvatovica for the Bosnians, Medjugorje for the Croats, and the tombs of Ustasha victims for the Serbs. Religious feasts (such as the Bajram, commemoration of the Battle of Badr, Easter, Assumption, Christmas, St. Vitus's Day) were also turned into national holidays and celebrated in public buildings.

In sum, national divisions ended up sustaining conflicting differences in religious identities and *viceversa*.

The result of such collective process on a largely secularized population soon became evident. Public opinion polls in 1988 showed that only 55.8% of Croats, 37.3% of Bosnians, 18.6% of Serbs and 2.3% of Yugoslavs declared themselves to be believers. The situation changed completely in 1999: 89.5% of Croats and 78.3% of Bosnians declared to be believers. A year later, research in the Doboje region showed that 88% of Croats, 84.8% of Bosnians, 81.6% of Serbs and 16.7% of those nationally undefined declared themselves "very religious" or "medium religious"²². In our time, according to the 2013 census of BiH (whose final results were published in June 2016)²³ 50.7% of BiH's population identify religiously as Muslim, 30.75% as Serbian Orthodox Christian, 15.19% as Roman Catholic, 1.15% as other, and only 1.1% as agnostic or atheist²⁴.

This demonstrates that, although in a less bloody way than during the war, within the Country the role and the place of religion and religious communities have continued to increase. As a matter of fact, in BiH religious identity still emerges as one of the most important form of collective conscience with the capacity to address fundamental concerns and existential questions, and to provide protective-collective cohesion. As such, it has been influencing political narratives and practices that, in turn, are being used to justify ethnically based constructions and institutions.

3 - The Place of Religion and Religious Confession

Religion in BiH is not confined to religious denominations or official leaders. It also involves local traditions, distinctive customs, peculiar value

²² M. VELIKONJA, *Religious Separation*, cit., p. 261.

²³ This census is based on the Law on Census of Population, Households and Dwellings in Bosnia and Herzegovina in 2013, *Official Gazette* of BiH, 10/12 and 18/13).

²⁴ Agencija za statistiku Bosne i Hercegovine, *Popis stanovništva, domaćinstava i stanova u Bosni i Hercegovini, 2013. Rezultati popisa/ Census of Population, Households and Dwellings in Bosnia and Herzegovina, 2013. Final results*, Sarajevo, 2016, pp. 68-81, <http://www.popis2013.ba/popis2013/doc/Popis2013provolzdanje.pdf> (last accessed 17 September 2016).



systems and unique practices, with or without specific doctrinal knowledge. It remains that religion is always a social phenomenon manifesting at different levels, from individual to community. Religion is perceived as a faith-based community with its doctrinal teachings, moral norms, symbols, and rituals. Besides, religion implies the level of institutions, as relevant bodies that include leadership and specific types of hierarchy.

In this sense, it may be said that the life of the majority of BiH citizens is overwhelmed by ethnic-religious modes, and their worldview channelled in ethnic-religious terms. The institutional and political milieu, in turn, is fully aware of this social situation. So, if a religious doctrine – that is norms, values and practices of a given confession – is the soil in which the ethnic differences are embedded, then religion appears as one of the most important sources of legitimization in politics. This also explains why in the experience of BiH, denominations and religious leaders are playing an important role in terms of transitional justice. Many people still vividly remember religious leaders' ambivalent role during the war. However, if a majority of members of religious groups are struggling with past and present injustices, their respective leaders have a moral obligation to provide a forum for the public articulation of needs²⁵; a forum that can serve both members of a religious group and, in order to establish a peaceful coexistence within the Country, non-members²⁶.

From the juridical point of view, all this leads to focus the attention on the way BiH's law system regulates the relationship between the State and confessions, which implies the legal status of Churches and religious communities, starting from the major ones.

These issues have been addressed by the legal reasoning of the Dayton Peace Accords (DPA) and the Constitution of Bosnia-Herzegovina (Annex IV of DPA)²⁷. And, to this respect, it should be first noted that, although most of the provisions of the Constitution of the Federation of BiH are devoted to institutional architecture, Part II of this Charter does not fall under that category. It is in effect dedicated to human rights and fundamental freedoms, which include the obligation of the Federation to ensure the highest level of internationally recognized standards in this

²⁵ **D. PHILPOTT**, *What Religion Brings to the Politics of Transitional Justice*, in *Journal of International Affairs*, Fall/Winter, 2007. 61:1, pp. 93-110, see in particular p. 101.

²⁶ **J.N. CLARK**, *Religion and Reconciliation in Bosnia & Herzegovina: Are Religious Actors Doing Enough?*, in *Europe-Asia Studies*, 62:4, pp. 671-694.

²⁷ **D. ABAZOVIĆ**, *Reconciliation*, cit., p. 36.



field²⁸. It means, for example, that rights and freedoms that the Federation shall ensure are those set out by the European Convention on Human Rights (ECHR), such as the right to life, the right to liberty and security of person, the right to property, the right to education, the right to freedom of expression, the freedom of peaceful assembly, and the rights to the freedom of thought, conscience and religion.

In addition, BiH's Constitution explicitly contains a non-discrimination clause, which secures the equal treatment of all people, irrespective of their "sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status"²⁹. It is important to underscore that the content of this clause is also reflected into the provisions of the 2003 Law on the Protection of National Minorities³⁰, which not for nothing has been published in *Official Gazette of BiH*³¹ in three official languages; so that the Law is available not only to all public institutions, but also to other users, such as media and academics. In particular, the Law has been translated into English and Romany languages³², and its copies printed and distributed to various addresses. No authority in BiH has thus justification or excuse for any failure to be informed about its content³³.

²⁸ Article 2 of the Constitution.

²⁹ Article 4 of the Constitution.

³⁰ This Law was passed and came into effect in May 2003.

³¹ No. 12/03.

³² That is the first translation of a law into the Romany language in BiH is deemed extremely important for the emancipation of the Roma national minority in BiH and considered an example of positive affirmation of Roma

³³ In late 2003 the entities in Bosnia and Herzegovina (*Republika Srpska* and the Federation of BiH) began activities to enact their own laws on the rights of national minorities, as required by the Law on the Protection of National Minorities at the state level. The Law on Amendments to the Law on the Protection of National Minorities adopted in October 2005 (*Official Gazette of BiH* no. 76/2005) was more specific and set a statutory deadline of 60 days of the date of enactment of this Law for the establishment of the Council for National Minorities within the Parliamentary Assembly of BiH. Finally, a decision establishing the Council for National Minorities within the Parliamentary Assembly of BiH was adopted and published in May 2006 (*Official Gazette of BiH* no. 38/2006), according to which the advisory body was established for the purpose of raising awareness about the importance of the establishment of the body for promoting and protecting rights and resolving outstanding issues of both all national minorities and Roma in particular as the largest and most vulnerable minority in our country. On 27 September 2005 the Roma Board within the Council of Ministers issued a conclusion to publish the strategy in a booklet in official languages of Bosnia and Herzegovina (Serbian, Bosnian and Croatian) and to translate and publish it in English and Romani. The expansion of network of non-governmental organizations of national minorities, particularly of Roma, and their



As can easily be seen, these provisions are theoretically fully in line with the basic principles of a constitutional democracy. Yet in BiH their execution is highly problematic, as demonstrated by BiH's institutional architecture, which is based on power-sharing mechanisms affirming the equal representation of the constituent ethnic-national components. And, once again, it is important to stress that these components correspond to major religious denominations (the Islamic community, the Roman Catholic Church, and the Serbian Orthodox Church).

4 - The Constituent (Chosen) People and Religious Power-Sharing Mechanism

In the Preamble of the Constitution, Bosnians, Croats and Serbs are described as “constituent peoples”, whose political representation reflects almost perfectly the composition of both the House of Peoples (the second chamber of the State Parliament) and the House of Representatives: the first is composed of five Bosnians and the same number of Croats from the Federation of BiH and five Serbs from the *Republika Srpska*, while a minimum number of 4 representatives of one constituent people shall be represented in the House of Representatives³⁴. In addition, there is the Presidency (the collective Head of State) composed by three members with a Bosnian and a Croat from the Federation of BiH and a Serb from the *Republika Srpska*. It follows that only persons declaring affiliation with a constituent people are entitled to run for the House of Peoples and the Presidency.

networking continues at the level of BiH. In this sense, the implementation of The Action Plan on the Educational Needs of Roma and Other National Minorities in BiH has been intensified. There has been a rise in the number of Roma children and children of other ethnic minorities enrolled in schools at all levels of education in the Country. Depending on the capabilities of municipalities, cantons and the entities they were given school supplies, textbooks and monetary aid for transportation and meals. See Ministry for Human Rights and Refugees of BiH, *Answers to the questionnaire on the International Convention on the Elimination of all Forms of Racial Discrimination (Cerd)*, 16 July 2014, http://www.ohchr.org/Documents/Issues/Racism/AdHoc/5thsession/Bosnia_Herz.pdf (last accessed 17 September 2016). See also Permanent Mission of Bosnia and Herzegovina to the United Nations Office at Geneva, *Information on the implementation of UN Resolution Named: “promoting human rights and fundamental freedom through a better understanding of tradition values of humankind”*: *The best examples in Bosnia and Herzegovina*, 18 February 2013, <http://www.ohchr.org/Documents/Issues/HRValues/BosniaHerzegovina.pdf>.

³⁴ The House of Representatives shall consist of ninety-eight delegates.



In other words, these institutions only include people from three ethnicities, factually excluding and discriminating against the group of 'Others', as expressly defined by the Preamble of the Constitution (*Bosniacs, Croats and Serbs as constituent peoples, along with Others ...*). It means that, despite being citizens of BiH, a person may be denied any right to stand for election to the House of Peoples and the Presidency on the grounds of his/her ethnic-religious belonging. And we should not forget that the Constitution specifically provides that no legislation can be adopted without the approval of both the House of Peoples and the House of Representatives³⁵.

For these reasons, in 2009 the Grand Chamber of the European Court of Human Rights (ECtHR) held that BiH's power-sharing mechanism is not capable of being objectively justified in a contemporary democratic State, built on the principles of pluralism and respect for different cultures and religions. This is due to the fact that the power-sharing mechanism allows unequal treatment, which is based exclusively on a person's ethnic-religious origin. As a result, BiH's constitutional provisions, which render a person ineligible for election because of his/her belonging, must be considered discriminatory and a breach of the ECHR's provisions³⁶. In Particular, they are in contrast with Article 14 ECHR taken in conjunction with Articles 3 of Protocol no. 1 and Article 1 of Protocol no. 12, in the light of which free elections are those held under two basic conditions:

- the free expression of the opinion of the people;
- the right to elect and stand for election shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status³⁷.

It is important to underscore that the constitutional provisions regulating the power-sharing mechanism were not included in the Agreed Basic Principles that constituted the first outline for what the future Dayton

³⁵ Article 17 of the Constitution.

³⁶ ECtHR, Grand Chamber, *Sejdić and Finci v. Bosnia and Herzegovina*, Applications nos. 27996/06 and 34836/06, 22 December 2009.

³⁷ ECtHR, Grand Chamber, *Sejdić and Finci v. Bosnia and Herzegovina*, cit. See S. BARDUTZKY, *The Strasbourg Court on the Dayton Constitution*, in *European Constitutional Law Review*, 2010, 6:2, pp. 309-333; M. MILANOVIC, *Sejdić and Finci v. Bosnia and Herzegovina*, in *American Journal of International Law*, 2010, 104, pp. 1-12; L. CLARIDGE, *Sejdić and Finci v. Bosnia and Herzegovina in Minority rights group international*, 12 march 2010, <http://minorityrights.org/publications/discrimination-and-political-participation-in-bosnia-and-herzegovina-march-2010/> (last accessed 17 September 2016).



Agreement would contain³⁸. Moreover, the international mediators reluctantly accepted these arrangements at a later stage because of strong demands to this effect from some of the parties to the conflict³⁹. When these constitutional provisions were put in place, a very fragile ceasefire was on the ground. The provisions were thus designed to end a brutal war marked by genocide and ethnic-religious cleansing.

The nature of the conflict was such that the approval of the constituent peoples – Bosnians, Croats and Serbs – was necessary to ensure peace. This explains the absence of representatives of the other communities at the peace negotiations and the participants' preoccupation with effective equality between the constituent peoples in the post-conflict society⁴⁰.

But this also explains the importance of the 2009 ECtHR's decision, capable of highlighting two conflicting aims of BiH's peace process in general and the Dayton Agreement in particular. On the one hand, the tripartite structure of that mechanism was and is necessary to establish and maintain peace within the Country; which highlights the fact that religion and religious communities still remain as powerful sources for reconciliation, giving meaning, identity and spiritual strength to believers and bring people together around common causes in local communities⁴¹.

³⁸ See paragraphs 6.1 and 6.2 of the Further Agreed Basic Principles of 26 September 1995.

³⁹ **G. NYSTUEN**, *Achieving Peace or Protecting Human Rights? Conflicts between Norms Regarding Ethnic Discrimination in the Dayton Peace Agreement*, Martinus Nijhoff Publishers, Leiden, 2005, p. 192. See also **J. O'BRIEN**, *The Dayton Agreement in Bosnia: Durable Cease-Fire, Permanent Negotiation*, in *Peace versus Justice: Negotiating Forward- and Backward-Looking Outcomes*, ed. by I. Zartman, V. Kremenyuk, Rowman & Littlefield Publishers, 2005, p. 105.

⁴⁰ Nevertheless, fully aware that these arrangements were most probably conflicting with human rights, the international mediators considered it to be especially important to make the Constitution a dynamic instrument and provide for their possible phasing out. Article 2 of Part II of the Constitution was therefore inserted establishing that the rights and freedoms set forth in the ECHR and its Protocols shall apply directly in BiH. Moreover, these rights and freedoms shall have priority over all other law. For example, the House of Peoples, together with the House of Representatives, decides upon the sources and amounts of revenues for the operations of the State institutions and international obligations of Bosnia and Herzegovina and approves a budget of the State institutions.

⁴¹ To this respect, it should be noted that since 1997 in BiH there is the Interreligious Council of BiH, which contributes to truth and reconciliation as well as to linking of diversities with the aim of living together, respecting each other and cooperating. It is no coincidence that the Council has printed the Glossary of Religious Terms, in order to promote better understanding of the cultural diversity of society of BiH. At the same time, the Council has condemned any violence against all human being, "because any human rights violation is a violation of God's laws". Its goal is in other words to promote dialogue and cooperation between BiH's religious communities in order to build a multi-



On the other hand, based on the major ethnic-religious components, that tripartite structure is in contrast with the basic elements of a constitutional democracy, by which BiH claims to be inspired.

5 - The Education System and Religious Education

In this respect, it should be recalled what the 2004 Law on Freedom of Religion and Legal Status of Churches and Religious Organisations in BiH (hereinafter the Law on Freedom of Religion)⁴² affirms in its Article 4.1:

“Churches and religious communities shall not, when teaching religion or in other actions, disseminate hatred and prejudices against any other Churches and religious communities or its members, or against the citizens of no religious affiliation, or prevent their freedom to manifest in public their religion or belief”.⁴³

This provision must be read in conjunction with the 2003 framework laws, namely the Law on Preschool Upbringing and Education in BiH (FPUE)⁴⁴ and the Law on Elementary and Secondary School Education in BiH (FESSE)⁴⁵, which were approved by the State in order to ensure compliance with minimum standards of human rights, including the prohibition of discrimination.

Concerning the FPUE, it does not refer expressly to religious education at preschool level. It nonetheless affirms that the preschool upbringing and education must be conducted without any discrimination,

ethnic and multi-religious democratic society. To this end, the Interreligious Council works with local leaders of BiH's major religions and members to build awareness of each other's beliefs, customs, and practices and to foster joint activities at the local level. In particular, the Council works directly with local community leaders, theology students, women, and young people to raise awareness and promote constructive interreligious dialogue. During the last years, the Council has: organized several meetings for theological students from all faiths; assisted women believers to organize community activities; organized activities for young people to learn about different religious customs and traditions.

⁴² *Official Gazette of BiH*, no. 5/04, ZAKONO SLOBODI VJERE I PRAVNOM POLOŽAJU CRKAVA I VJERSKIH ZAJEDNICA U BOSNI I HERCEGOVINI.

⁴³ On educational system in BiH see J. WOELK, *Freedom of Religion in the Educational System of Bosnia and Herzegovina*, in N. Ademović et alii, *Freedom of Religion and Inter-Religious Dialogue: Individual-Community-State. Scientific Study: Doctrinal and Practical Aspects of the Relationship between the State, Churches/Religious Communities and Individuals*, Skenderija-Sarajevo, Evropska akademija za primijenjena istraživanja i obrazovanje u Bosni i Hercegovini, 2012, pp. 67-88.

⁴⁴ *Official Gazette of BiH* no. 88/07.

⁴⁵ *Official Gazette of BiH* No. 16/03.



taking into serious account the generally accepted universal values of a constitutional democracy⁴⁶. In addition, the FPUE remarks the importance of the value systems concerning ethnic, historical, cultural and religious tradition of the peoples who live in the Country⁴⁷. In particular, languages and cultures of all constituent peoples of BiH shall be respected and included in the preschool institution in accordance with the Constitution, the ECHR, the Framework Convention for the Protection of National Minorities, and the Convention on the Rights of the Child⁴⁸. In brief, the preschool institutions shall develop, promote and respect ethnic and religious freedoms, customs, tolerance and culture of dialogue⁴⁹.

Likewise, the FESSE states the obligation to enhance and protect religious freedoms, tolerance and culture of dialogue, the prohibition of undertaking any measures or activities to limit the freedom of expressing one's own beliefs and of receiving knowledge about different religious beliefs. It also affirms the possibility of introducing religious classes for children, in accordance with their beliefs or their parents' beliefs⁵⁰.

More generally, in BiH religious education is largely decentralized and it falls under the competence of the Cantons. Public schools offer religious education classes in the municipality's majority religion, with some exceptions granted. The representative of the various religious communities must be responsible for teaching religious studies in all public and private preschools, primary schools, and universities. Individuals teaching religious education are employees of the schools in which they work; they however receive accreditation from the religious body, which in fact governs the curriculum. Normally, students have the right to opt out of religion classes, as do primary school students at their parents' request. When a sufficient number of students of a minority religious group attend a particular primary or secondary school (i.e. 20 in the Republika Srpska and 15 in the Federation of BiH), the school is required to organize religion classes on their behalf. In rural areas, though, qualified religious representatives are typically not available to teach minority religion courses.

⁴⁶ Article 6 of the FPUE.

⁴⁷ Article 8 of the FPUE.

⁴⁸ Article 10 of the FPUE.

⁴⁹ Article 11 of the FPUE.

⁵⁰ Article 9 of the FESSE. Besides, the 2004 Law on Freedom of Religion gives also the possibility of establishing private schools, from preschool to secondary level of education, stating the equality of these schools with public schools. See Article 29 and Article 10 of the Law on Freedom of Religion



In the Federation's five Bosnian-majority cantons, primary and secondary schools offer Islamic religious instruction as a twice-weekly elective class. In cantons with Croat majorities, Croat students attend an elective once weekly Catholic religion class in primary and middle schools. But, in 13 Croat-majority primary and secondary Catholic schools in the Federation, parents can choose between the elective Catholic religion class and a course in ethics.

As far as the Sarajevo Canton is concerned, religious education is regulated by three Cantonal laws: the Law on Preschool Upbringing and Education⁵¹, the Law on Primary Upbringing and Education⁵², and the Law on Secondary Upbringing and Education⁵³. Schools shall secure conditions for students to either attend religious education classes or take classes in ethics, whose curricula are passed by the Cantonal Ministry. At the beginning of each school year, with the consent of their parents, students choose one of the aforementioned classes. They can change the choice at the beginning of each school year. Marks obtained by a student in these kinds of classes shall be included in the calculation of the student's average mark. Yet, on 22 April 2001 the Minister of Education and Science of the Sarajevo Canton passed a decision establishing that marks obtained for religious education should not be included in the calculation of the average mark⁵⁴.

6 - The Legal Status of Churches and the State-Religions Relationship

Some parts of BiH's legal system point in the direction of upholding the principle of secularism, in the strict sense of the word, like that promoted by the French *laïcité*. This is the case of Article 14 of the Law on the Freedom of Religion, which declares that the State may not accord the status of established Church to any religious community⁵⁵, nor it has the right to interfere in the affairs and internal organization of Churches and religious communities⁵⁶. On the contrary, when reading other parts of the same legal system, the later conclusion cannot endure a test of generalisation. This is

⁵¹ *Official Gazette* of the Sarajevo Canton nos. 26/08 and 21/09.

⁵² *Official Gazette* of the Sarajevo Canton nos. 10/04, 21/06, 26/08 and 31/11.

⁵³ *Official Gazette* of the Sarajevo Canton no. 23/10.

⁵⁴ See J. WOELK, N. ADEMOVIĆ, *General about Secularism and the Relationship between the State and Religious Communities*, in N. Ademović et alii, *Freedom of Religion*, cit., pp. 23-24.

⁵⁵ Article 14.1 of the 2004 Law on Freedom of Religion.

⁵⁶ Article 14.2 of the 2004 Law on Freedom of Religion.



the case of rules regulating education, which are profoundly influenced by religious organizations, especially the major ones.

It is sufficient to mention the Preamble of the Constitution or Article 4 of the Law on the Freedom of Religion which affirms the right of Churches and religious communities to religious education, provided solely by persons appointed to do so by a religious official body. At the same time, though, both the Constitution and the 2004 Law guarantee the right of all to freedom of conscience and religion in conformity with the highest international standards of human rights, including those referring to the supranational Declarations and Conventions, being an integral part of the Country's law⁵⁷.

More specifically, the 2004 Law guarantees freedom of religion and belief in public and private⁵⁸, enforces equality before the law and forbids discriminations based on religion and religious belonging⁵⁹. Here is one of the reasons why it states that any group of 300 or more adult citizens may apply to form a new Church or religious community through a written application to the Ministry of Justice. The Ministry must issue a decision within 30 days of receipt of the application, and a group may appeal a negative decision to the State-level Council of Ministers⁶⁰. This Law, therefore, allows minority religious organizations to register and operate potentially without restrictions: new churches and religious communities acquire the status of legal person in the way prescribed in details by the Guidelines on Rulebook on Establishing and Keeping the Uniform Register of Churches and Religious Communities, their Unions and Organizational Forms in BiH⁶¹. But, once again, these provisions must be read in conjunction with other religious-oriented rules, such as those related to Article 15 of the Law on Freedom of Religion, which establishes that

⁵⁷ Article 1 of the 2004 Law on Freedom of Religion.

⁵⁸ Articles 4, 5, 6, and 7 of the 2004 Law on Freedom of Religion.

⁵⁹ Articles 2.1 of the 2004 Law on Freedom of Religion: “[d]iscrimination on the grounds of religion or belief means any exclusion, restriction, preferential treatment, omission or any other form of differentiation on the grounds of religion or belief having for its purpose or which may bring about - directly or indirectly, intentionally or unintentionally - the revocation or diminution of the recognition, equal enjoyment and exercise of human rights and fundamental freedoms in civil, political, economic, social and cultural matters”. See also Article 5.1: “[a]ll discrimination based upon religion or belief as defined in Art. 2.1. of this Law is prohibited”.

⁶⁰ Article 15.1 of the 2004 Law on Freedom of Religion.

⁶¹ *PRAVILNIK O USPOSTAVI I VOĐENJU JEDINSTVENOG REGISTRA ZA UPIS CRKAVA I VJERSKIH ZAJEDNICA, NJIHOVIH SAVEZA I ORGANIZACIONIH OBLIKA U BOSNI I HERCEGOVINI* - *Official Gazette of BiH*, no. 46/04.



“[t]he matters of common interest for Bosnia and Herzegovina or some or more Churches and religious communities can be governed by an agreement made between the BiH Presidency, the Council of Ministers, the governments of entities and Churches or religious communities”.

In other words, this Article legitimizes the bilateralism method, through which issues concerning religious denominations are essentially regulated by legislations based on agreements between the State and specific confessions. In this manner, religious denominations that have signed an agreement have the guarantee that their legal status cannot be altered without considering their will⁶².

It is no coincidence that the major religious groups of BiH intensely support that method, also because it is a part of a legal strategy aiming to preserve their special status and privileges within the State. The other parts of this strategy is based on political, historical and social discourse that, as seen before, tend to underscore the traditional connection between some areas of BiH and specific creeds (Islam, the Roman Catholic Church, and the Serbian Orthodox Church).

The best example of that is given by the 19 April 2006 Basic Agreement Between the Holy See and Bosnia and Herzegovina (hereinafter the 2006 BA) that, as stated in the Preamble, recognises “the centuries-old presence of the Catholic Church in Bosnia and Herzegovina and of her current role in social, cultural and educational fields”⁶³. Based on Article 15 of the 2004 Law on Freedom of Religion, one of the main characteristics of the 2006 BA is that it has the status of international agreement. So, the BA guarantees more rights to the Catholic Church than those normally prescribed by BiH’s general laws. It is no coincidence that similar agreements exist with both the Serbian Orthodox Church and the Islamic Community⁶⁴.

⁶² G. CIMBALO, *Religione e diritti umani nelle società in transizione dell’Est Europa*, in *Stato, Chiese e pluralismo confessionale*, Rivista telematica (www.statoechiese.it), February 2009, pp. 19-22.

⁶³ See *Acta Apostolicae Sedis. Commentarium Officiale*, 3 Novembris 2007, n. 11, pp. 939-946, <http://www.vatican.va/archive/aas/documents/2007/novembre%202007.pdf> (last accessed 18 September 2016).

⁶⁴ The Agreement with the Serbian Orthodox Church was signed in 2007 and ratified in 2008, but the Government has not established a commission for its implementation. The Islamic Community was the third organization in BiH that started (March 2008) negotiating this similar type of agreement with the Bosnian State: the Council of Ministers of BiH adopted the Agreement in September 2015, but it has not been signed yet. See United States, Department Bureau of State, Bureau of Democracy, Human Rights and



Article 8 of the 2006 BA, for instance, states that, in the case of a judicial inquiry into alleged offences against the penal code on the part of a cleric (a religious man or woman), the judicial authorities of BiH will inform the competent ecclesiastical authorities; in any circumstance, the seal of Confession is inviolable.

Likewise, under the 2006 BA BiH not only recognizes the public juridical personality of the Catholic Church and all ecclesiastical institutions⁶⁵, but it also undertakes to restore to the Church all real estate nationalized or seized without adequate compensation. This must be done within ten years from the entry into effect of the Agreement; for the properties that cannot be restored, BiH will give just compensation, to be agreed upon by the authorities and those with legitimate title to the properties⁶⁶.

Concerning education, in the light of the principle of freedom of religion, BiH recognizes the fundamental right of parents to see to the religious education of their children guaranteeing (within the framework of the academic programme and in conformity with the wishes of parents or guardians) the teaching of the Catholic religion in all public schools. Although teachers of religious education are full members of the teaching staff of the State's institutions, the programmes, the content, the text-books must be issued and approved by the Episcopal Conference of BiH⁶⁷.

Finally, the Catholic Church has the right to establish its own educational institutions at all levels and to administer them according to its norms. To this respect, BiH will accord to such institutions the same rights

Labor, *2008 Report on International Religious Freedom - Bosnia and Herzegovina*, 19 September 2008, <http://www.refworld.org/docid/48d5cbd52.html> (last accessed 2 November 2016). See also United States, Department Bureau of State, Bureau of Democracy, Human Rights and Labor, *2011 Report on International Religious Freedom - Bosnia and Herzegovina*, <http://www.state.gov/documents/organization/193003.pdf> (last accessed 2 November 2016); ICAAM YKPAIHI, *Bosnian Muslims Are the Unique Slavic Ethnic Linguistic Group, Practicing Islam*, <http://islam.in.ua/en/islamic-studies/bosnian-muslims-are-unique-slavic-ethnic-linguistic-group-practicing-islam>, 27 July 2016 (last accessed 2 November 2016).

⁶⁵ Institutions that possess such juridical personality in conformity with the norms of canon law. Article 2 of the 2006 BA.

⁶⁶ Article 10 of the 2006 BA: “[t]he restitution of immovable or nationalized goods seized without adequate compensation, including the term of their restitution, will be implemented in conformity with the law that shall regulate the matter of restitution in Bosnia and Herzegovina. For the identification of immovable goods to be transferred to ecclesiastical ownership or to be adequately compensated, a Mixed Commission will be established, composed of representatives of the two parties” (Additional Protocol to the 2006 BA).

⁶⁷ Article 16 of the 2006 BA.



that are guaranteed to public schools, including financial treatment and the recognition of academic degrees and any university qualifications obtained. In sum, BiH's authorities will guarantee to the pupils and students of the Catholic Church's educational institutions the same rights of pupils and students of State institutions of the equivalent level⁶⁸.

7 - Conclusion

Before the 2004 Law on Freedom of Religion entered into force, BiH's Courts of the first and second instance dismissed an appellant's request, claiming that her former husband had owed her a *mahr*/dowry, a type of compensation payable in the event of dissolution of a *Shari'a* marriage: the marriage had been celebrated under the Islamic precepts and not under the State's family law⁶⁹ which, in any case, contained no reference to the dowry, the Courts declared. The Constitutional Court of BiH went further saying that the claim of the appellant was ill founded, as she had not acquired "possession" within the meaning of the ECHR⁷⁰: the *mahr* property-related mechanism was unknown in the positive legal regulations in BiH, the Judges stated⁷¹.

In this occasion, though, the Constitutional Court also pointed out that the State and its judicial authorities have no right to interfere with autonomous rights of religious communities, such as those related to arrangement of religious marriages and rights and obligations stemming from such marriages. In doing so, the Court made clear that this is a result of the principle of separation between the State and Churches/religious communities⁷²; a principle that few years later (2004) was expressly affirmed in Article 14 of the Law on Freedom of Religion⁷³.

However, one should not underestimate the fact that the 2004 Law confirms the continuity of legal personality of the "historically based churches and religious communities" (namely the Islamic Community, the Serbian Orthodox Church, the Roman Catholic Church, and the Jewish

⁶⁸ The same rule also applies to the teaching and non-teaching staff of such institutes. Article 14 of the 2006 BA.

⁶⁹ *Official Gazette of BiH*, nos. 21/73 and 44/89.

⁷⁰ In particular Article 1 Protocol no. 1 ECHR.

⁷¹ Constitutional Court of BiH, case no. U 62/01 of 5 April 2002.

⁷² Constitutional Court of BiH, case no. U 62/01 of 5 April 2002.

⁷³ *Supra*, para. 6.



Community of BiH)⁷⁴. And there is more: Article 2.1 of the same Law states that

“making of distinctions or *preferences* by Churches and religious communities when the State judge it necessary to comply with religious obligations or needs *shall not be considered as discrimination* on the grounds of religion or belief” (emphasis added).⁷⁵

As one might expect, these provisions can be fully justified and understood under the role and influence exercised by major religions in BiH. And, as said before, we should not forget that religions remain important political and legal points of reference within the Country. This, one again, underscores a specific characteristic of BiH’s legal system, especially when related to religion and religious creeds.

If you simply read some provisions of that system, you would visualize its institutional design as a form of contemporary secular liberalism⁷⁶. If, on the contrary, the attention is focused on the other provisions, you would see a different attitude. This is an attitude of a more traditional, group-oriented society, in which individuals communicate with the State through their membership in an ethnic-religious community. As a result, in BiH’s legal system we find a co-mixture of different voices, which we have to comprehend if we are to appreciate and understand the current challenges and future scenarios in a Country whose stability, reconciliation and development are crucial for the destiny of the Balkan region, if not of all Europe.

⁷⁴ Article 8.

⁷⁵ Article 2.1.

⁷⁶ See Decision of the Constitutional Court of BiH No. U 5/98-IV, 18-19 August 2000. In the Constitution of BiH no explicit rule about secularism can be found. Nevertheless, the Constitutional Court of BiH pointed out that any public privileging of Churches and/or religious communities by public authorities must not lead to the marginalisation of freedom of religion. In addition, it is particularly important to take into account the sense of pluralism, which is required both by the European Convention of Human Right and the Constitution of BiH, as a necessary precondition for a constitutional democracy.