

STATE-LEGAL VERTICAL BOSNIA AND HERZEGOVINA

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Summary

Bosnia and Herzegovina has millennial existence. Bosnia was first mentioned in second half of the tenth century in the work of the Byzantine emperor and writer Constantin Porphyrogenet „De administrando imperio“. The Charter of Kulin Ban as of 29 August 1189 is undisputed evidence that Bosnia was an independent State. During the domination of Tvrtko I Kotromanic in 1377, Bosnia was transformed into the kingdom and became the most powerful country in the Balkans. During 1463 Bosnia was ruled by the Ottoman Empire but retained certain features of political identification, first as the Bosnian province since 1580, and afterwards as the Bosnian Vilayet since 1965. After Austro-Hungarian having arrived, Bosnia became *Corpus separatum*. In the Kingdom of SHS, borders of Bosnia and Herzegovina complied with the internal regionalization of the country until 1929. During the Second World War, at the First Assembly of ZAVNOBIH in Mrkonjic Grad on 25th November 1943, Bosnian sovereignty within the Yugoslav Federation was renewed. After the Yugoslav crisis, which culminated in 1991 and 1992, Yugoslavia is in dissolution and peoples and citizens of Bosnia and Herzegovina at the referendum on 29 February and 1 March 1992 voted for independence. The protagonists of greater Serbs policy could not accept such solution for Bosnia and Herzegovina and that was followed by aggression, which, after three and a half years ended by painful compromises contained in the Dayton Peace Agreement.

Key words: Medieval Bosnia, Bosnian province, Bosnian Vilayet, *Corpus separatum*, sovereignty of Bosnia and Herzegovina, independence of Bosnia and Herzegovina, the Dayton Peace Agreement.

1. Medieval Bosnian state

The very first inhabitants of the Bosnia were the Illyrians who got in touch with an ancient culture through Greeks and Romans. With the beginning of a New Era they were integrated into the Big Roman Empire which experienced its cleavage in 395. In this region the government formed first the Western Roman Empire which has fallen in 476, when the power in these areas was taken by East Goths. Their ruling lasted by the 535 and this area was connected to the Eastern Roman Empire. During the reign of Justinian (527-565) these areas achieved enviable legal security and economic prosperity.¹

Shortly after that, during VI and VII century AD, at the territory of today's Bosnia there comes settling of Avars and Slavs. With their arrival there begins the political organization of the Medieval Bosnia. It is very debatable question if the new invaders drowned into the native Illyrian mass or it came to the full adoption of the habits and ways of life of Slavic population. Bearing in mind that, at the time, Bosnia was surrounded by the Slavic countries, it stroke as it was also a Slavic country even though it was not in its entirety.

The first written mentioning of the name Bosnia appears in the second half of the tenth century, in the 'De administrando imperio' (The management of the Empire) a work of Constantine Porphyrogenitus the Byzantine emperor and writer.

With this name Porphyrogenitus calls a small country 'horion bosona' near the spring, the upper and middle course of the homonymous river where were placed two cities Katera and Desnek. Most probably, Katera was placed at the wider area of now days Sarajevo. Desnek was associated with the Illyrian tribe Destiats who lived in the central Bosnia, between Breza and Visoko.² Besides Bosnia, Porphyrogenitus mentioned some other areas and places which in late years gradually became the part of Bosnian state. At the first place, there was an inhabited city of Salt, then area of Trebinje, Zahumlje and Paganija (area

of Neretva area) then Pljevska, Imotska and Livno district with the homonymous city.³

The political life of Medieval Bosnia was dominated by the autochthonous Bosnian aristocracy which was led by its governors who had a title of Ban⁴ while later on as of 1377 and coronation of Tvrtko I Kotromanic into a title of king. The religious life was dominated by the indigenous Bosnian church, which was by its learning different from either the Orthodox or Catholic church. This latter consider it as heretical religious. In Bosnia, along with members of the Bosnian Church there lived Orthodox population that especially was strong in Hum (later Herzegovina) as well as Catholic population that lived in the central parts of Bosnia and mostly thanked to the work of Franciscan Order. The members of all three confessions determined themselves according to their ethnicity and at the same time other saw them as Bosnians (Bosnjani).

Although the first name of any Ban that was mentioned is Ban Boric, along with Ban Stjepan II Kotromanic and King Tvrtko I Kotromanic the most important place in the national-legal tradition of Bosnia belongs to the Kulin Ban who ruled Bosnia from 1180 to 1204. During his rule Bosnia experienced political and economical development and significant territorial expansion. The most important document produced during his rule is the Kulin Ban Charter for Dubrovnik's traders written on 29 August 1189. From the content of the Charter it is clear that Dubrovnik's traders got guaranties for free movements and trading all over Bosnia. It just supports the fact that Kulin Ban had full authority over Bosnia and that this kind of guarantees can be given only by the one being absolutely sovereign on the territory for which he gave the guarantees. Just because of that, the Chart of Kulin Ban is considered as Birth Certificate of the Bosnian state as it represents undisputed evidence medieval Bosnian statehood. The Kulin Ban is also connected to the first news on the appearance of the Patarins learning, which was spread around quickly and easily so it was accepted by the Kulin ban himself together with his family and numerous population which just opens

¹ Ibrahimagić, O. (2008) „Politički sistem Bosne i Hercegovine“ izdavač „autor“, Sarajevo, str.29.

² ² Imamović, M. (1997) "Historija Bošnjaka", Izdavačko preduzeće „Preporod“, Sarajevo., str.25.

³ Idem.

⁴ Title Ban is extracted from the Avarian basic word *bajan* that means rich, president.

the door for further development of this kind of teachings, which is usually known under different names such as bosanski krstjani, Bosnian Church, Bogomil, Babuny, Katari etc.

After the reign of Kulin Ban, Bosnia experienced a great prosperity under the Ban Stjepan II Kotromanic who ruled during the period from 1322 to 1353. In this time the borders of Bosnia reached the following three rivers: Sava, Drina and Cetina. It is very interesting to point out that in the same time Serbian Emperor Dusan the Strong (Dusan Silni) tried to occupy the Bosnian territory but he failed because he was stopped by Stjepan II Kotromanic during 1350.

Medieval Bosnian State was marked by the effective authority of the rulers, existence of the ruler office but also the parliament which was called 'Stanak' which limited the power of the Bosnian rulers in the same time when the Europe was dominated by the concepts of the absolutistic monarchy.

Speaking about the state of Bosnia the biggest success was achieved during the reign of Tvrtko I Kotromanic who was officially crowned for a king in 1377 who transformed the Bosnian Ban land into the Kingdom. On that occasion he took a new name for himself being Stjepan (Stefan) and after that this practice was followed by other Bosnian Kings that in front of their names they all put the name Stjepan. Due to the family connection between Tvrtko and ruler family Nemanjic, as his grandmother Jelisaveta was a wife of Stjepan I Kotromanic and a daughter of Serbian King Dragutin. Tvrtko was offered, that after the death of the last Serbian Emperor Uros from Nemanjic dynasty in 1371, to become a King of Serbia because he has blood connection with Nemanjic dynasty and with this he was authorised to wear a king's crown⁵, and after this Tvrtko was officially signing as the 'Stefan Tvrtko v hrista kralj srbijem i Bosne i Primorju'.

From 1377 to 1390 King Tvrtko made Bosnia as the most important state at the Balkan peninsula⁶.

Unfortunately, Tvrtko did not have an appropriate successor, so after his death Bosnia started to lose its strength. After the Bosnian Crown was taken over by the last two Bosnian Kings Stjepan Tomas and his son Stjepan Tomasevic who was crowned 1461 by the Pope Crown. After 1463 when Jajce fell, this act was the end of medieval independent Bosnian state. On that occasion Stjepan Tomasevic was executed and Bosnia falls under the Ottoman rule.

2. Bosnia under Ottoman Rule

Despite the fact that Bosnia lost its statehood and arrival of the Ottoman Empire, the Bosnian state through the Ottoman Rule and the First Session of ZAVNOBiH held on 25 November 1943 which was held in Mrkonjic Grad, Bosnia managed to keep certain political identification marks. During the Ottoman rule period territory of Bosnia was divided into the small areas known as 'sanjak'. First of them was formed in 1463 and it was called Bosnian

Sanjak, then in 1470 Herzegovina Sanjak, between 1478 and 1483 Zvornik Sanjak and finally during 1537 Klis sanjak. These 'sanjak' areas were part of the 'beglerbegluk' areas (ejalet, pasaluk) which were also part of Rumelia, which reached the territory of the European part of the Ottoman Empire and with formation of the Budim beglerbegluk in 1540, 'Zvornik Sanjak' was the part of the same territory. All these small parts of territory (sanjak) after the formation of the 'Bosnian Eyalet' (Pasaluk) in 1580, were the part of this eyalet. The political centre of Bosnian Eyalet was the city of Banja Luka⁷ and the first pasha (pasa) was Ferhad beg Sokolovic.

Besides the territory of Medieval Bosnian State the Bosnian Eyalet was also consisted of the Ottoman occupied territory Dalmatia and Slavonia. The border of Bosnian Eyalet was at the same level as it was during the Medieval Bosnian state and since the Karlovac Peace signed in 1699, up to now days the borders never changed. This territory included four sanjaks: Bosnian, Herzegovian, Zvornik and Klis. It is important to mention that at that time Bosnia had two direct exits to the Adriatic one being Klek-Neum on the north and Sutorina in the south which citizens of Dubrovnik voluntarily handed over to the Ottomans because they didn't want Mlets to be their neighbours. It is important to point out that area of Novi Pazar which was a kind of corpus separatum in Bosnian sanjak was separated in 1790 and transformed into the special 'Novi Pazar Sanjak'⁸.

With the arrival of Ottomans into the Bosnia the members of the Bosnian Church disappeared and majority of them converted to Islam. It was expected due to the fact that the Orthodox and especially Catholic Church pressured them to accept these religions and that the last Bosnian King Stjepan Tomasevic made the largest pogrom of members of the Bosnian Church to accept Catholicism in order to satisfy the pope. Many members of authentic Bosnian Church left Bosnia towards Italy and France while some members found shelter with Herzeg Stjepan Kosaca whose name was given to that part of Bosnian territory – Herzeg land or Herzegovina. Those who stayed under the reign of Tomasevic converted themselves into the Catholicism or Crypto-Catholicism practicing fake Catholic religion and secretly kept their bogumil traditions. So it was natural, that when Ottoman Empire came they converted to Islam willingly.

In the religious point of view the Islam was predominated for the population of Bosnia and then Orthodox and Catholicism. In the ethnic point of view, for people living in Bosnia they used a term 'Bosnjak' regardless of their confession, or the fact if they were members of Islam, Orthodox or Catholicism. The medieval term 'Bosnjaniin' which was used to identify citizens of Bosnia was modified in term 'Bosnjak' which is closer to the Ottoman linguistics.

⁵ At the time prince Lazar Hrebljanovic was weaker than Tvrtko, and besides that he didn't possess the Nemanjic blood, for difference of his wife Milica.

⁶ Corovic V. (2005)'History of Serbs', 'Zograf', Nis, page 240

⁷ The centre of Bosnia Eyalet was in B. Luka (1580-1639), in Sarajevo (1639-1700), Travnik (1700-1850) and again Sarajevo (1850-1878). With Ottoman empire in Bosnia local citizens were called 'Bosnjak' no matter which confession they belong to (Islam, Orthodox and Catholic).

⁸ Ibrahimagic O. (2008) Politicki sistem Bosne i Hercegovine, izdavač, autor, Sarajevo, str. 44

Second important period which lasted shortly during the Ottoman period started with creation of 'Regulation on the settlement of the Bosnian Vilayet' which was published on 7 November 1864, and put into the force in Bosnia during 1865 and 1866⁹. With this regulation Bosnian Eyalet and Herzegovian Mutesafirlik created Bosnian Vilayet which was governed by 'Valia' (governor) who was nominated by the Central government. After this a Vilayet Council was established which had its session once per year. Bosnian Vilayet was consisted of seven sanjaks: Sarajevo, Zvornik, Travnik, Banja Luka, Bihać, Herzegovinian and Novi Pazar. This type of management of the Bosnian Vilayet was kept by the 1878 when, on the Berlin Congress, Bosnia was handed over to the Austro-Hungarian rule. The only exception was that before 2 February 1877 Novi Pazar Sanjak was excluded from the territory of Bosnia and was connected to the Kosovo Vilayet.

3. Bosnia and Herzegovina under the Austro-Hungarian Rule

With an Article XXV of the Berlin Agreement that was brought at the Berlin Congress held from 13 June to 13 July 1878 the period of 415 years of Ottoman rule over Bosnia was finished, although the Sultan remained formal sovereign over Bosnia all the time by the annexation. With this article Bosnia was temporarily given to be managed by the Austro-Hungarian Rule. Therefore, with the regulations of the Berlin agreement the Austro-Hungaria did not get the mandate to incorporate Bosnia to its state territory but only to govern its administration.

The legal position of Bosnia under Austro-Hungarian Rule was determined by the Regulations of the Berlin Agreement from 1878, Constantinople Convention from 1879 and Law on Management of Bosnia and Herzegovina from 1880 which changed the title of Bosnia to Bosnia and Herzegovina which was kept up to date.

All the time of Austro-Hungarian rule Bosnia and Herzegovina was a special area, in fact *Corpus separatum*. The supreme authority over Bosnia and Herzegovina was managed by the Joint Government through the Joint Ministry of the Finance from Vienna. This Ministry governed Bosnia and Herzegovina through the Provincial Government based in Sarajevo, which was consisted of three departments one for internal affairs, one for justice and finances and later on, added department for architecture. The Provincial Government was led by the military commander i.e. commander of the Austro-Hungarian Military Forces in Bosnia and Herzegovina while civilian affairs were dealt by the civilian *adlatus*.

Eventhough the Austro-Hungaria got governing of Bosnia and Herzegovina on temporarily basis, it always governed this territory as a part of its own territory, but it also used Young Turkish Revolution from 1908 and annexed Bosnia and Herzegovina transforming this country into its own colony. This act of annexation was illegal and counter to the regulations of the Berlin Agreement. All this led to annexation crisis which was finally resolved in a way that Austro-

Hungarian paid to Turkey 2.500.000 pounds sterling and accepted retreat of its own military forces and military basis from the area known as 'Novi Pazar Sanjak'.

The events that happened afterwards, primarily Sarajevo assassination of Austrian Archduke crown Franz Ferdinand on 28 June 1914 was the key element for declaring a war against Serbia. This very act set the fire which spread to the other countries and the first conflict between Austro-Hungaria and Serbia transformed into the world war that brought the largest suffering of people in history of that time. The final result of this world war was that the Austro-Hungarian was defeated and erased from the geopolitical map as one of the biggest monarchies in Europe, and the territory which was occupied by this country was populated by Slavs, including the territory of Bosnia and Herzegovina which entered into the new state established on 1 December 1918 which was called a Kingdom of SHS (Serbs, Croats and Slovenes).

4. Kingdom of the Serbs, Croats and Slovenes

The agreements made between representatives of the South Slovenes Board led by Anto Trumbić on the one side and representatives of the Kingdom Serbia led by Nikola Pašić on the other side, brought the creation of the new state (South-Slovenes State). These negotiations were held on the island Krk in July 1917. On this occasion the principles of the future state were determined and they accepted the ideas of the state to be unitaristic, centralistic and the form of the rule would be monarchy led by the Serbian dynasty Karadjordjević. The Serbs started to dictate the rules of common state (South Slovenes State) using their position of being a member to the victory coalition during the First World War.

In October 1918 a state of Slovenes, Croats and Serbs was established including the territory which was inhabited by the mentioned nations, and this territory was governed by the Austro-Hungaria. People's Council as a supreme independent power in this state had a temporary role which lasted by the time of connection with the Kingdom of Serbia and Montenegro. This connection was done by exchanging of the Addressees between People's Council of the State of the Slovenes, Croats and Serbs and Regent Alexander Karadjordjević who declared South Slovene State as 'Kingdom of Serbs, Croats and Slovenes'. The pure title of this state shows that a new state affirms only three nations, but the right of the Bosniacs, Macedonians and Montenegrins were violated. From the beginning of the functioning of the new state it carried Serb hegemony and the other non-serb nations felt as they were captured in the prison.

After the agreement made between leaders of Yugoslav Muslim Organization Mehmed Spaho and Radical Democratic Coalition the Vidovdan Constitution from 28 June 1918 accepted article 135, which Serbs called Turkish Paragraph. This article foresees idea of regional organisation of the Bosnia and Herzegovina territory in a way that its borders must stay untouched as they were set during the Austro-Hungarian rule. This regulation was respected but King Alexander Karadjordjević announced proclamation called '6th January Proclamation' which

⁹ Ibrahimagić, O (1998) *Državno-pravni razvitak Bosne i Hercegovine* "Izdavač Vijeće Kongresa bošnjačkih intelektualaca", Sarajevo str.18.

established dictatorship, abolished the Vidovdan Constitution and dismissed Government and Parliament. After this, on 3rd October 1929 a 'Law on Change of the Name of the Country to the Kingdom of Yugoslavia' and division of the country to the nine duchies (banovine). With this new transformation the territory of Bosnia and Herzegovina was divided into four duchies: Drinska with center in Sarajevo, Primorska with center in Split, Zetska with center in Cetinje and Vrbaska with center in Banja Luka. In none of these new created duchies, Bosnian Muslims did not represent the majority of population and the territory of Bosnia was completely destroyed, so all above mentioned duchies were not placed only on the territory of Bosnia and Herzegovina. This was the first time in a history that the border of Bosnia and Herzegovina was unrecognized. Therefore, this situation did not last long. A King's dictatorship was partly mitigated with the Constitution brought on 3 September 1931. Due to the way of the proclamation and principle and regulations which assured unlimited King's power this constitution was known as 'dictated or imposed constitution'. Despite this constitution, rather chaotic political situation was not calmed down in Kingdom Yugoslavia, due to the fact that non-serb population were very unsatisfied with their own status and position in this community. The strongest voices came from unsatisfied Croats and Macedonians who could not accept the fact that Macedonia was called South Serbia and they were called South Serbs. As a response to this unacceptable policy from Belgrade, Croatian-Macedonian nationalistic groups organized assassination of the King Alexander Karadjordjevic in Marseille which led to the even bigger Yugoslav crisis.

The solution of this crisis was found in the satisfying Croatian nationalistic interest in such a way that the Agreement Cvetkovic-Macek brought 'Regulation on the creation of Croatian Banates' which brings together Savska and Primorska Banates in one and added to it 13 large counties of Bosnia and Herzegovina: Brcko, Gradacac, Derventa, Travnik, Fojnica, Bugojno, Stolac, Mostar, Ljubuski, Livno, Konjic, Duvno and Prozor. The rest of the territory of Bosnia and Herzegovina, its larger part, was supposed to be part of Serb land. The Bosniacs were unsatisfied with this agreement which treated them as if they do not live in Bosnia and Herzegovina at all, and they protested asking for Bosnia and Herzegovina autonomy. It is very interesting to mention that the leader of Bosniacs Mehmed Spaho died in June 1939 few months before agreement was signed between Serbs and Croats, in a very unclear circumstances. Probably this leader was poisoned in order not to challenge this agreement. Due to the beginning of the First World War and German attack to the Poland on 1st September 1939 this regulation was never put into force.

5. Restoration of the statehood of Bosnia and Herzegovina

On 25 April 1941 the Cvetkovic-Macek Government signed a 'Protocole on Accession of Yugoslavia to the Triple Pact'. But, two days later group of Yugoslav generals carried out a *coup d'etat* ousting the regent and the Cvetkovic-Macek

government. The new government was formed and it was led by general Dusan Simovic and King Petar II, still a minor, was declared king. However, this was not good enough for Hitler who attacked Yugoslavia, bombarding Belgrade on 6 April 1941 without any advanced declaration of war. The capitulation was ensuing on 17 April, only 12 days after and the King Petar II Karadjordjevic together with the government escaped the country and settled in London. Kingdom Yugoslavia was completely disintegrated and it stopped to exist as a state.

On 10 April Slavko Kvaternik proclaimed the Independent State of Croatia with Bosnia and Herzegovina also forming a part. This state was marionette and accused for notorious crimes against non-croatian citizens especially Serbs and Jews but also against Croats and Bosniacs who raised their voice against ustasha politics.

In such a situation the leader of the national liberation fight was Yugoslav Communist Party which was forbidden and persecuted in the Kingdom of Yugoslavia. The leader of this fight was Josip Broz Tito, probably the most charismatic political figure that appeared in south Slovene areas, and who was Secretary General of the Party as of 1937.

The platform established by the Yugoslav Communist Party on V National Conference held in Zagreb in 1940 presented that the future concept of Yugoslavia accept federal principle to avoid all the unsatisfaction that was evident in the Kingdom of Yugoslavia. The autonomy was foreseen for Bosnia and Herzegovina. However, after the numerous enemy offensives that happened in Bosnia and Herzegovina, especially after the fourth and fifth offensives known among people as battle on Neretva and Sutjeska. During summer, near Kladanj Tito was recovering from wound he got at Sutjeska, he suggested to Bosnian leaders to establish ZAVNOBiH – National Anti-Fascist Council of the National Liberation of Bosnia and Herzegovina. Despite the fact that the most important persons of the national liberation fight such as Mosa Pijade, Milovan Djilas, Sreten Zujovic Crni were against this idea the position of Kardelj and Tito prevailed. This means that Bosnia and Herzegovina is established as a special federal unit which has been done at the First Constituent Assembly of ZAVNOBiH that was held in Mrkonjic Grad on the night between 25 and 26 November 1943. The Assembly was attended by 247 delegates from throughout Bosnia and Herzegovina, 173 of whom were elected as ZAVNOBiH Councillors who represented all three constitutive peoples from Bosnia and Herzegovina and the principle of voting was one person one vote. The Councillors adopted ZAVNOBiH Resolution expressing the willingness for creation of the Bosnia and Herzegovina as a federal unit which will together with other federal units consist the AVNOJ Yugoslavia. It was natural that 25 November is determined as a day of restoration of the statehood of Bosnia and Herzegovina, and this date was celebrated in Yugoslav Federation and was set as a state holiday again in the independent Bosnia and Herzegovina. With all this Bosnia and Herzegovina, even when lost its statehood and independence in 1463 falling under Ottoman Empire, managed to get back its statehood. It is true that part of it was transferred to the Yugoslav Federation.

6. Bosnia and Herzegovina as part of the Yugoslav Federation

The development and legal status of Bosnia and Herzegovina in AVNOJ Yugoslavia followed the development of the situation in the federal state. During the Second AVNOJ Session that was held on 29 and 30 November 1943, AVNOJ was constituted as Yugoslavias supreme legislative and executive body. After this, there was a second session of ZAVNOBiH held in Sanski Most from 30 June to 2 July where ZAVNOBiH was constituted as a supreme legislative and executive body of peoples of Bosnia and Herzegovina.

After the parliamentary elections held in November 1945, the election winner was National Front List led by Tito. The Constituent Assembly of Yugoslavia pronounced Yugoslavia as republic and from that day its official name was 'Federal National Republic of Yugoslavia (FNRY)'. It happened on 29 November 1945 in Belgrade. In February 1946 Bosnia and Herzegovina passed a Law which proclaims Bosnia and Herzegovina as a republic with its official name 'National Republic of Bosnia and Herzegovina (NRBiH)'.

On 31 January 1946 FNRY got its Constitution while NR Bosnia and Herzegovina got its own Constitution on 31 December same year.

This constitution along with all other constitutions and their amendments clearly declares that Bosnia and Herzegovina is a state. This claim eliminates all thesis about administrative borders of federal units which was supported by the protagonists of great serbian politics during yugoslav crisis.

The first development period of Bosnia and Herzegovina lasted by 1950 and that was the period of the administrative management of the country. After the conflict with Staljin in 1948, Yugoslavia is trying to find its own way to development of socialism, which is part of the brand new era known as workers selfmanaging, which started in June 1950 with passing the following Law: 'The basic Law on the Management of state Enterprises and High-level Commercial Associations of Labour Collectives'. This Law is well known among population as a Law on transmission of factories to the workers.

The new solutions asked for a new legal platform which was brought by enactment of the Constitution Law in 1953 on the state and federal level. This platform changed numerous regulations of the constitutional solutions back to the 1946.

The development of the workers selfmanaging reached the level that asked for new constitutional base that was done by enactment of the Constitution from 1963 on the state and federal level. In order to point out socialism and its character Yugoslavia changed its name into the 'Socialist Federal Republic of Yugoslavia' (SFRY) and BiH into the 'Socialist Republic of Bosnia and Herzegovina' (SRBiH). According to the Constitutional solutions from 1963 the Federal State dominated over the federal units. This situation remained unchanged until the Constitutional solutions and amendments from 1974. During the 1974 the Yugoslav Federation entered the new phase and different position because this solution enabled transfer of power

from federal state to the federal units but federal state kept only those powers that all federal units agreed upon.

The Bosnian Muslims went through a thorny path by the time they got national identity which was disputed until 1969 when the term Muslim with big M was accepted in national sense and under this name Bosnian Muslims for the first time got the opportunity to freely express themselves as Muslims at the population census in 1971. We know that later at the Bosnian Sabor held in September 1993, a decision was passed that a Bosnian Muslims bring back their historical name Bosniac which helped stopping with national wandering of the Bosnian Muslims.

SFRY was established on the three cohesion elements: Josip Broz Tito as the creator and undisputed ruler of the new Yugoslavia, Communist Union of Yugoslavia as avanguard and only political party and the Yugoslav People's Army as the force born in national liberation fight as the guarantee of defense and preservation of the country which due to its strength was called by some people a seventh republic.

By Tito's death on 4 May 1980 Yugoslav Federation was left without its creator. Even though the Yugoslav population swore to Tito on their loyalty during his life and even after his death it was not enough to prevent large crisis. The crisis first started in Kosovo, due to the different views on Yugoslav Federation that came from the Serbia on the one side and Croatia and Slovenia from the other side. While Serbia wanted stronger federation and limited autonomy to its own regions, Croatia and Slovenia wanted to transform Yugoslav Federation into the Confederal community.

On the XIV extraordinary Congress of the Communist Union of Yugoslavia held in January 1990 Serbian leader, Slobodan Milosevic tried to subdue unruly and to impose his own will which led to the situation that Slovenian Delegation left the Congress and after that the Croatian Delegation led by Ivica Racan did not want to stay any longer at the plenum. This was the formal end of the second cohesion element of the Yugoslav Federation.

The third cohesion element – Yugoslav People's Army (YPA) – was crashed when the Slovenia declared independence on 25 June 1991 and retrieving YPA from Slovenia after the short war with Slovenia and after the official position of the Serbian member of Presidency of SFRY who claimed that Yugoslavia can survive without Slovenia. By retrieving of YPA from Slovenia this army was definitely transformed and from the time it was joint military force and pride of all people in Yugoslavia it allowed itself to have a shameful position to be put into the function of the Serb national interests.

Declaring the independence of the Slovenia and Croatia, Bosnia and Herzegovina found itself on the cross road. The choice was to stay in defective Yugoslavia without Slovenia and Croatia, including all risks and dangers that one day it might be the part of Great Serbia, or to go on the road to the independence which included the sound of fire arms and threats of abolishing Bosnian Muslims that came from SDS leaders.

The delegates of the BiH Assembly following this idea on proposition of Party for Democratic Action (PDA) and

Croatian Democratic Union (CDU) on adoption of the Memorandum (Letter of Intention) and Platform on the position of BiH which again confirms sovereignty, territory and pronance its retriet from Yugoslavia which will be without Serbia and Croatia.

When Serb leader in BiH, Radovan Karadzic realized that Serb population in BiH does not have the majority when speaking about stay of BiH in Yugoslavia, but that forces who supports BiH independance prevail, Serbian leader could not control himself and stand up saying: „You want to take BiH in the same hell and suffering direction as Slovenia and Croatia goes. Do not think that you will not take BiH to the hell, do not think that you will not take Muslim people to the downfall because in the case of war Muslims will not be able to defeat themselves. How will you prevent that all people in BiH do not die?“¹⁰

All delegates were shocked. After that Bosnian president Izetbegovic stood up and addressed the Parliament:

„His words and behaviour explains why other people do not want to stay in that Yugoslavia. Nobody wants that Yugoslavia which is wanted by Mr. Karadzic. No one except maybe Serbs. That Yugoslav and Karadzic's behaviour simply hate people of Yugoslavia, Slovenians, Croats, Macedonians, Albanians, Hungarians, Muslims, Europe and World. To the citizens of BiH I want to say don't be afraid there is not going to be the war.....So, sleep in peace.....As the president of BiH I am sorry that in these circumstances I have to speak on behalf of the Muslim people. I solemnly declare that Muslims will not attack anyone. Hence, I also solemnly declare that the Muslims will defense themselves and survive. They will not disappear as Karadzic said. They can not disappear“¹¹.

The positions were confronted. Bosnian Serbs did not want to accept the possibility that BiH might became independant state. Because of this, Chairman of the Assembly, Krajisnik dismissed the Session. Serbs left the Session while Bosniaks and Croats voted for the mentioned proposals on independance. Ten days later Serbs formed their self-invited parliament¹². After that, on 9 and 10 November 1991 they organized illegal plebscit in which they claimed that they want to stay in Yugoslavia.

The situation was very complicated. The representatives of the three nations, transformed in the ruling nationalistic parties, could not find common language. The Solomon solution could not be found, as Serbs did not want to leave Yugoslavia, but Bosniacks and Croats did not want to stay in Yugoslavia. Numerically, these two nations were in advance in terms of securing majority for their proposals. It is obvious that people in BiH have had different interests. Bosniacs were afraid of Yugoslavia without Croats feared that they would be marginalized as people, and that this kind of union might be realization of Great Serbia, without possibility of creation of the new historical chance to live in an independant BiH. Serbs in BiH, in fact their vast majority, could not accept the fact to leave separately from the centre of its own population who lives in Serbia and

they ultimatively demanded that BiH stays in Yugoslavia regardless of the Slovenia and Croatia independance. Neither the Croats wants the BiH to stay in Small Yugoslavia. They came to the pat position.

In the same time there was held an International Conference for Former Yugoslavia. As they concluded that Yugoslav Federation has been dissambled the members of the European Community decided to call all Yugoslav Republics who wants to ask for recognition to ask for that not later then 24 December 1991. It was decided that their requests will be taken into consideration by the fifth members Arbitrary Commission consisted of the highest legal authorities, in fact the presidents of the constitutional courts: Germany, Italy, France, Belgium and Spain. This Commission was headed by the French Judge Robert Badinter, as a result, the Commision became known as the Badinter's Commission. This Commission adopted large number of opinions who had big importance and influence in dissolving Yugoslav crisis.

According to the opinion no. 1 that was published in December 1991 Arbitrary Commission concluded that the SFRY entered the process of dissolution. It means that republics did not secede, but that Yugoslav union broke down. Later in the opinion number 8, from July 1992, it was concluded that the process of dissolution is over and the SFRY does not exist any more, and that all former Republics are equal legal heirs in the succession of State.¹³

This Commission was supposed to determine the conditions that each of the Republics has to fullfil before being recognized by the European Community. It was supposed to hand over its report by the 15 January 1992.

The Government and Presidency of BiH decided to ask the European Community for Recognition on 20 December 1991. Two Serbian representatives voted against it. On this occasion, addressing the Sarajevo Television, President Izetbegovic said that BiH does not have any other choice: „or this or Great Serbia“. Yugoslavia does not exist any longer.¹⁴

So, BiH together with Slovenia, Croatia and Macedonia sent a request for recognition of their independance. Badinter's Commission determined that in the case of BiH recognition, the Constitution and legal system of BiH do exist, democratic order as well and there are guarantees of human rights and freedoms. Also it was determined that authorised state agencies adopted documents by which country can overtake all the obligations given by European Community declarations. Further on, it was presented that outside the offical frames of BiH, there were created bodies and pointed out the requests of Serbs population in BiH to stay in Yugoslavia, in fact to pronounce independance of the 'Serb Republic of BiH'. In these circumstances the Arbitrary Commission concludes in opinion no. 4 that expression of the BiH population will that SRBiH constitute as a sovereign and independant state can not be considered as totally grounded. It was mentioned that this mark can be changed if the republic which formulated the

¹⁰ Silber, L. I Little A. (1996) „Smrt Jugoslavije“, „Otokar Keršovani“, Opatija, cit tekst, str. 213

¹¹ Idem. Quoted text, page 213

¹² This parralel form of government did not have any official recognition

¹³ Trnka, K. (2000) „Konstitutivnost naroda“, „Vijeće kongresa bošnjačkih intelektualaca“, Sarajevo, str. 27,28.

¹⁴ Idem, page 215

recognition request organises a referendum where all the citizens from the SRBiH will be invited under the international control.¹⁵

7. Independance of Bosnia and Herzegovina

In that sense for achievement of the international recognition of Bosnia and Herzegovina a referendum was held on 29 February and 1st March 1992 under the supervision of the international observers who confirmed later that this referendum was implemented under the all international democratic standards.

All the citizens of BiH were invited to express themselves and answer the referendum question: "Are you in favour of sovereign and independant Bosnia and Herzegovina, state of equal citizens, people of Bosnia and Herzegovina – Muslims, Serbs, Croats and members of other nations who live in it?". According to the official results the referendum was attended by 64,31% (2.073.568) out of registered voters (3.253.847).

Out of those who attended referendum, 'for' voted 99,44% (2.061.932), 'against' 0,29% (6.037), while there were invalid ballots 0,25% (5.227).¹⁶

Because of great importance of this event, the 1st of March has been determined as a day celebrated as the Independant Day of Bosnia and Herzegovina.

As the referendum was sucessfull, it fulfilled the necessary condition for international recogniton of BiH. According to this, European Community and the states members recognized SR BiH as sovoreign and independant state within its existing borders on the session held in Luxembourg on 6 April 1992. It was decided that this recognition enters into force next day because the 6th April reminds Serbs on Hitler's bombardment of Belgrade and start of the war against the Kingdom of Yugoslavia. The USA recognized BiH, Slovenia and Croatia on 7 April.

Already the day after, the Presidency of the SR BiH on its session that was held on 8 April 1992 brought the Regulation on change of the official name of the SR BiH. Article 1 of this Regulation that was put into force immediatly, the existing name was changed into 'Republic Bosnia and Herzegovina'. The intention was just to eliminate the outdated term 'socialist'.¹⁷

At the time, the Regulation with the Law force on determination of the temporary emblem and flag of RbiH was brought. The motives for this state and legal marks were taken from the Medieval Bosnian State.

With this solutions Bosnian Serbs led by Radovan Karadzic, today a Hague indictee, did not want to agree and they started to implement their own will which was expressed in the illegally held plebiscit to live in common Yugoslav state which includes Serbia, Monte Negro, Autonomy Serbian County Kninska Krajina and territory of Slavonija, Baranja and Western Srem which they could not realize in any other way but using the power of fire arms challenging the overall international community. Due to this

situation the Presidency of BiH on its session held on 8 April 1992 declared an 'Imminent Threat of War'. Later on, starting from the point that BiH was under aggression by the Republic of Serbia, Monte Negro, Yugoslav People's Army, with mass involvement of the Bosnian Serbs who accepted a leadership role of Radovan Karadzic, the Presidency on its session held on 20 June 1992 passed a 'Decision Proclaiming a State of War'.

After the three and a half years of aggression against BiH by Federal Republic of Yugoslavia (consisted of Serbia and Monte Negro) it was emphasised all the time that Serbs need to and have right to live in one state stimulating and animating Bosnian Serbs who accepted Karadzic leader's role.¹⁸ It provoked the biggest suffering in Europe after the Second World War, with a numerous victims at the first place Bosniacs but also Croats and Serbs. There were many attempts to stop the agression, including the international plans and finaly The Dayton Peace Agreement was initialized on 21 November 1995 in Dayton. It was signed in Paris on 14 December 1995. It brought the painful peace as there was a lack of justice, and with its eleven amendments it awarded the destroyers of BiH with installation of one of the two entities named Republic of Srpska. Unfortunately, the power of BiH delegation was too weak to confront some of the unhappy solutions which became the part of this Agreement.

The Annex 4 provides the constitutional solutions for BiH which goes through the process of transformation in a sense that RBiH whose official name will be 'Bosnia and Herzegovina' continues its legal existence according to the international law as a state, with internal structure modified as determined here with existing internationally recognized borders. It will remain a state as member of the UN and as BiH can keep or apply for membership to organizations within UN system and other international organizations.¹⁹ As regards internal structure it claims that BiH will be consisted of two entities: Federation of BiH and Republic of Srpska.²⁰

Dayton Peace Agreement has a great merit for stopping the war in BiH but at the same time it became very serious brake on the way of BiH towards Euro Atlantic integrations. Certain solutions of this agreement lead to many blockades in normal functioning of this state. In this sense this peace agreement should be characterized as international agreement, which reached certain useful goals but became disturbance for normal development of BiH on its way to become a modern european country. The spirit of Dayton Peace Agreement was that BiH achieve all these goals, so in that light there is a need to address the countries which were members of the Contact Group because those countries were witnesses and guarantees of the implementation of the Dayton Peace Accord and all that was supposed to be achieved with this agreement.

¹⁵Trnka,K. (2000) "Konstitutivnost naroda", Vijeće kongresa bošnjačkih intelektualaca", Sarajevo, str.29.

¹⁶ Ibrahimagić, O. (2008) „Politički sistem Bosne i Hercegovine“izdavač „autor“, Sarajevo

¹⁷ Idem, page 270

¹⁸ It has to be pointed out that one part of Bosnian Serbs was against Karadzic politics and actively participated in defence of BiH or were oponents towards Karadzic politics and indicated on craziness of such a politics

¹⁹ Constitution BiH (Annex 4), article I, Paragraph 1.

²⁰ Constitution BiH (Annex 4), Article I, Paragraph 2.

8. Conclusion

At the end, I would like to point out that Bosnia and Herzegovina from its beginning up to these days went through so many difficult periods but never disappeared. It was an independent state during the important period of Middle Age, and at certain point of time, during the rule of Tvrtko I Kotromanić, the strongest medieval state in the Balkans. The Ottoman Empire occupied BiH in 1463, then the Empire was broken down while BiH survived. The Austro-Hungarian occupied BiH in 1878, after the First

World War this Empire collapsed but Bosnia survived. The both Yugoslav states which incorporated BiH, does not exist any longer, but BiH survived and got back its statehood and after that independence. With full right, we can say that many forces broke their teeth on BiH but this state still exists and continues with its statehood and legal tradition, sometimes with more and sometimes with less difficulties. It is the nature and destiny of Bosnia and Herzegovina.

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