



# **Civil participation in the decision-making process**

## **Fact finding visit to Bosnia and Herzegovina**

**4 - 8 September 2022**

# **REPORT**

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## Introduction

The purpose of the fact-finding visits<sup>1</sup> is to meet domestic NGOs and public authorities to introduce them to the Conference of INGOs and discuss civil society organisations' participation in the public decision-making process. Certain legal frameworks are in place in countries in order to consult the civil society organisations and to associate them in decision-making. The Conference would like to hear the point of view of both the civil society organisations' and authorities to find out what use is made of these participatory tools. The result of the visit will also contribute to advancing the Council of Europe's work in this field. After a country visit, a report is prepared and sent to relevant parties and discussed at the General Assembly of the INGO conference. The ambassador of the country concerned will receive a copy in advance and is invited to contribute to the discussion.

This is the report prepared after the INGOs country visit to Bosnia and Herzegovina (Sarajevo, Mostar and Banja Luka) that took place on 4 - 8 September 2022.

The delegation was led by Dr. Gerhard Ermisscher, president of the INGO conference and further consisted of

- Mr Simon MATTHIJSEN, European Ombudsman Institute.
- Mr Goran MILETIC, Civil Rights Defenders.
- The CINGO members were accompanied by 2 members of the Secretariat, Ms Mary-Ann HENNESSEY, Head of the Division for Civil Society and Democratic Innovation and Ms Anu JUVONEN, Division for Civil Society and Democratic Innovation

**Because of the war of aggression Russia unleashed in Ukraine on 24 February 2022, and the attention this horrific event absorbed from the international community, the finalisation of the report has had to wait longer than usual. To keep the report up to date and relevant, we have also mentioned key developments that occurred after September 2022.**

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<sup>1</sup>List of reports of earlier country visits: <https://www.coe.int/en/web/ingo/countries>

## The Dayton Agreement

Before anything can be said about the findings of the country visit, it is necessary to consider the Dayton Agreement that was signed at the end of the three-and-a-half-year Yugoslav wars. It was the creation of the state Bosnia and Herzegovina, a single state in which the two warring parties, the largely Serb-populated Republika Srpska and the mainly Croat- and Bosniak-populated Federation of Bosnia and Herzegovina, would find a home. The official name of the Agreement (concluded in Dayton USA) is “the General Framework Agreement for Peace in Bosnia and Herzegovina”.

As good as it was that - with the forced intervention of outsiders - there was an end to a bloody war, genocide and ethnic cleansing, now, after more than 20 years, the Agreement is proving to be a stumbling block to a democratic future or genuine coexistence between the old warring parties. While it is clear that the Dayton Agreement is no longer working well and is even hindering the development of democracy, there is not enough political strength or willingness to change it.

The country visit to Bosnia Herzegovina was planned to better understand the situation of civil society in a complicated country with a complicated constitution, the shadows of the war still looming and elections coming up – a situation which also fostered some movements to question the integrity of the state. For this reason the visit was not restricted to the capital Sarajevo but included visits to Mostar and Banja Luka. This turned out to be very valuable as it provided insights in regional differences, as well as in the structure of the NGOs we could speak to.

Still the visit can not claim to offer an in detail insight in all the problems and challenges civil society faces in Bosnia Herzegovina but provided a good deal of information offered by representatives of the authorities and by representatives of a great variety of NGOs – which also showed in some cases a very different view on events and the situation.

As the legal framework in Bosnia Herzegovina is especially complex this report starts with an overview that also gives some historic framework for the situation in Bosnia Herzegovina today.

For a better understanding of the State organisation we refer to first appendix.

## Legal framework for the functioning of NGOs and its participation in policy decision-making process

### Legal framework for the functioning of NGOs

An enabling legal environment for civil society organisations and citizen participation has been recognized as one of the main pillars for a functioning democracy. This is based on the fact that the State Constitution incorporates the right to association as one of the main human rights and freedoms to be guaranteed. Furthermore, it has been incorporated into the political conditions for the EU accession process. Due to the political and administrative fragmented establishment, the right to association is also regulated twofold, on the state and entity level. The law on the state level was adopted in 2001 due to the high pressure of the international community. The legal framework consists of: Law on Associations and Foundations of Bosnia and Herzegovina, Law on Associations and Foundations of the Federation of Bosnia and Herzegovina and Law on Associations and Foundations of Republika Srpska. The framework regulates associations of citizens, foundations, and representative offices of foreign NGOs. There are no significant deviations among the laws.

Legislation on all levels stipulates that registration is voluntary, however, the registration is a pre-requisite to acquire a status of a legal entity. At least three persons who are either citizens of Bosnia and Herzegovina or have residency, or are legal entities from Bosnia and Herzegovina or registered in Bosnia and Herzegovina, or in a combination, can found an association (i.e. a legal entity lead by members) of citizens, whereas the law in Republika Srpska did not introduce the limitation to citizenship or place of business. A foundation (i.e. a non-membership legal entity lead by a board) can be established by one or more natural or legal persons, regardless of their citizenship or place of business.

State law stipulates that both associations and foundations can request to acquire a status of acting in public interest and enjoy tax, custom and similar benefits. Republika Srpska legislation provides this option only for association of citizens, whereas this was not stipulated by the law in the Federation of Bosnia and Herzegovina.

Associations of citizens and registered foundations can operate in Bosnia and Herzegovina regardless of where they are registered. If the association of citizens is operating on a territory of one canton within the Federation of Bosnia and Herzegovina, it is possible to register with corresponding cantonal Ministry of Justice. However, if the association is operating on the territory of two or more cantons within the Federation of Bosnia and Herzegovina, registration must be done within the Ministry of Justice of the Federation of Bosnia and Herzegovina. If the headquarters of the association is based in Republika Srpska, registration must be done within the corresponding District Court. As a result, several registries that contain data about associations of citizens and foundations can be found across the country: cantonal registries under cantonal ministries of justice, Federal Ministry of Justice, Registry of Republika Srpska governed by Ministry of Local Administration and Self-Government, Registry of Brcko Distrikt, and State Ministry of Justice. All registries are public.

The registration process is overall straight-forward and the information is publicly available. NGOs are obliged to file annual financial reports and statements to the corresponding institution, namely: Financial-intelligence Agency in Bosnia and Herzegovina, Financial-information Agency in the Federation of Bosnia and Herzegovina or Agency for intermediary, financial and informatic service in Republika Srpska. There are no indications that these processes are hindered. In its last report, the EU has assessed that the legal framework is generally aligned with EU acquis.<sup>2</sup>

The government in Republika Srpska is aiming to introduce new legislation in its jurisdiction that was announced in March 2023. The proposed changes involve Draft Law on the Special Register and Transparency of Operation of Non-Profit Organizations in Republika Srpska. This law intends to establish a special register for non-profit organizations (NGOs) operating in Republika Srpska that receive donations from foreign sources. The law categorizes these organizations as "agents of foreign influence" and imposes bureaucratic hurdles, complicating their activities. If introduced into legislation, this law has the potential to significantly curtail the freedom of association and work of NGOs.

### Legal framework for civil participation in policy decision-making process

Conducting public consultations is the most often used method of exercising the right to civil participation in decision-making processes. The most extensive approach is achieved at the state level, whereas the entity levels have a less comprehensive approach. The Rules in the Drafting of Legal Regulations of the Council of Ministers of Bosnia and Herzegovina were adopted and an online platform for conducting public consultations was established. The Rules regulate that all regulations of public interest must go through the process of public consultations before its consideration at the Council of Ministers. Additionally, public institutions are required to submit an official statement that public consultations have been conducted and a report on the conducted consultations. If the institutions fail to submit them, the Secretary General of the Council of Ministers is obliged to return the proposed regulation to the institutions and set a deadline for conducting public consultations. Furthermore, the Rules elaborately set the criteria for determining whether a matter is of public interest or not. The Ministry of Justice on the state level monitors and maintains the online platform, titled e-konsultacije. They also conduct annual assessments and track improvement in this area. The platform is open to both NGOs and to the general public. Despite the increased number of consultations within the existing framework, there is still a lack of substantial involvement from both public institutions and NGOs. The legal framework on the entity levels are not harmonized and is being inconsistently implemented.<sup>3</sup> Regulations are lacking, that would oblige public consultations with interested public on a local level. According to the latest data published by Council of Europe<sup>4</sup> from 2020, 2695 of natural and legal persons were registered

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<sup>2</sup>European Commission, Bosnia and Herzegovina 2022 Report, available at: [Bosnia and Herzegovina Report 2022.pdf \(europa.eu\)](https://ec.europa.eu/euro-observatory/files/2022/05/Bosnia-and-Herzegovina-Report-2022.pdf)

<sup>3</sup> Technical Assistance to the Civil Society Organisations, Final Report: *Assessment of the State of the Enabling Environment and Capacities of Civil Society against the 2014-2020 Guidelines for EU Support to Civil Society in the Enlargement region for the year 2020*, available at: <https://tacso.eu/wp-content/uploads/2022/05/Civil-Society-Assessment-Report-for-2020.pdf>

<sup>4</sup> Council of Europe, Handbook on Open Local Governments and Public Ethics, 2022, available at: <https://rm.coe.int/bih-handbook-on-open-local-government-and-public-ethics-eng-/1680a6a149>

on the online platform, whereas the number of public consultations in drafting of various types of legislation was 543. The EC Country reports are consistently addressing the lack of meaningful civil participation in decision-making processes. Most of the consultations were conducted formally, however, there is no substantial cooperation established. The 2022 EC report<sup>5</sup> indicates that there is a need to raise awareness about public consultations but also strengthen the capacities of all level governments to conduct public consultations more regularly.

### Advisory body for the Council of Ministers

In December 2020, an Advisory body for the Council of Ministers of Bosnia and Herzegovina for Cooperation with NGOs has been established. This came as a result of signing the national Agreement on cooperation between the Council of Ministers and NGOs. The main objective of this Advisory body is strengthening cooperation between civil society organizations and Council of Ministers in Bosnia and Herzegovina. The body shall also follow public policies that are of high relevance for civil society organizations and advocate for a higher degree of participation. It consists of 7 members that are elected as representatives of civil society organizations in Bosnia and Herzegovina following an open call. Council of Ministers have fulfilled their obligations from the abovementioned Agreement by establishing the Advisory body. The EU accession process set as one of the requirements the establishment of such body, aiming at enhancing civil participation in decision-making processes. Until very recently, we have not been able to discover any productions, reports, decisions or opinions of this body.

### Access to information

The right to access to information is another tool that is utilized for improving the space for civil society. The legislation remains fragmented and not in line with international standards. Institutions interpret the law in favor of restricting information for private interests rather than disclosing it. The legal remedies that are foreseen are not effective, as they are time-consuming and do not guarantee that the institution will disclose information of public interest.

Structured participation of NGOs in policy and decision-making processes has been set as a priority in the DG NEAR Guidelines for EU Support to Civil Society in the Enlargement Region 2021-2027<sup>6</sup>. The Guidelines will focus on the three following pillars: conducive environment for civil society to carry out its activities, strengthened cooperation and partnership between NGOs and public institutions and reinforced NGO capacity and resilience to carry out their activities effectively.

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<sup>5</sup>European Commission, Bosnia and Herzegovina 2022 Report, available at: [Bosnia and Herzegovina Report 2022.pdf \(europa.eu\)](#)

<sup>6</sup>DG NEAR Guidelines for EU Support to Civil Society in the Enlargement Region 2021-2027, available at: <https://tacso.eu/wp-content/uploads/2022/06/EU-Guidelines-for-Support-to-Civil-Society-in-the-Enlargement-region-2021-2027-1.pdf>

## Legal framework related to freedom of peaceful assembly

Freedom of assembly is guaranteed by the constitution of Bosnia and Herzegovina, entity constitutions, Statute of the Brčko District of Bosnia and Herzegovina, as well as by the laws on public assembly on entity and canton levels. Regulation of freedom of assembly is decentralized, and there is no unified legislation on the state level. Federation of Bosnia and Herzegovina still does not have a law on public assembly.<sup>7</sup> The workinggroup dealing with this law issued a draft Law on Public Assembly in late 2022. Even though they consulted with representatives of relevant NGOs, they did not implement any of their recommendations, which resulted in a very restrictive draft law still in need of changes before being adopted as a law.

None of the existing legislation regulating public assembly in Bosnia and Herzegovina, with the exception of Brčko District, is aligned with international standards. Brčko District Law on Public Assembly from 2020 is a good template and an example to be followed upon drafting entity and state-level legislation regarding this topic.

Generally, there are various restrictions to public assembly to the extent that it discourages individuals and groups to organize a public gathering. Organizers are burdened with restrictions on time, duration, and location and there are various administrative and procedural obstacles. Even though all existing laws state that the organizers should „notify“ the authorities about the gathering, the procedures that follow make it clear that it is actually a process of asking for permission. All of this makes the organization process too complicated. Organizers of public gatherings are often volunteers who do not have enough time nor expertise to meet all the requirements. In case that any of the procedures are not followed, a public gathering can be forbidden by relevant authorities.<sup>8</sup>

A significant burden is put on the organizers in terms of responsibilities as well, as they are required to maintain the public order, prevent any damage from occurring and clean the public space after the gathering. Organizers are also to make sure that security level meets the demands of relevant authorities. Should the Ministry of Interior recognize a gathering as a „high-risk“ one, it can demand that the organizers obtain additional fences and concrete barriers, which create a financial burden for the organizers. In addition, this shifts the responsibility for securing a gathering from relevant authorities to the organizers, which is another violation of international standards.

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<sup>7</sup>The European Law Student Association, dr. Katarina Golubović i Harun Išerić, Draft Law on Public Assembly in the Federation of Bosnia and Herzegovina: International standards of Freedom of Assembly in Bosnia and Herzegovina context, 2022, available at:

[https://www.researchgate.net/publication/366353669\\_Nacrt\\_zakona\\_o\\_javnom\\_okupljanju\\_Federacije\\_Bosne\\_i\\_Hercegovine\\_medunarodni\\_standardi\\_slobode\\_okupljanja\\_u\\_bosanskohercegovackom\\_kontekstu\\_Draft\\_Law\\_on\\_Public\\_Assembly\\_of\\_the\\_Federation\\_of\\_Bosnia\\_and\\_Herzegovina](https://www.researchgate.net/publication/366353669_Nacrt_zakona_o_javnom_okupljanju_Federacije_Bosne_i_Hercegovine_medunarodni_standardi_slobode_okupljanja_u_bosanskohercegovackom_kontekstu_Draft_Law_on_Public_Assembly_of_the_Federation_of_Bosnia_and_Herzegovina)

<sup>8</sup>OSCE Mission report, Enjoyment of Freedom of Peaceful Assembly in Bosnia and Herzegovina, 2021, available at: [https://www.osce.org/files/f/documents/a/7/500554\\_0.pdf](https://www.osce.org/files/f/documents/a/7/500554_0.pdf)



## Examples

Several cases of general prohibition of a public gathering have been documented, especially in Republika Srpska. Organizers are often intimidated, threatened, and even prosecuted to prevent a public gathering, which is best exemplified in the case of „Pravda za Davida“ informal group in Banja Luka. Spontaneous gatherings are not regulated by the majority of legislation, and fines for organizing one are disproportionately high.

## Complaint or appeal

In case that a gathering is forbidden, according to international standards, organizers should have the right to issue a complaint to the decision in such a time frame that does not prevent the planned gathering from happening. However, the majority of laws in Bosnia and Herzegovina have a very short complaint period, ranging from 24 to 72 hours, with one canton not even having complaint as an option by the law at all. There is no appropriate legal remedy in cases of forbidding a gathering, which very often results in gatherings not happening at all.

## Conclusion

In conclusion, freedom of assembly in Bosnia and Herzegovina still needs to be improved as it is highly in breach of international standards. Citizens are discouraged to attend and organize public gatherings. This prevents civil society to join together to express their problems and demand the betterment of their conditions. The existing legislation reflects efforts by the authorities to prevent public gatherings and demoralize the general public. A solution is present in the Law on Public Assembly of Brčko District. Harmonizing all laws on public assembly in Bosnia and Herzegovina to this one would prevent arbitrary restrictions and prohibitions, thus paving way towards a civil society that sees freedom of assembly as a powerful tool in shaping a democratic society.

## Transparency in NGO funding

Bosnia and Herzegovina is lacking in transparency when it comes to public NGO funding. It is not distinguished from other funds and there is no systemic approach to regulating the public grant funding system.

Public calls for grant proposals are published on public services and relevant information is available to potential applicants. Organizations selected for granting are published on relevant channels as well. However, processes of evaluation and grantee selection are not clearly communicated with the public. Successful evaluations are not clear enough, which makes it impossible to analyze and improve existing procedures as result analysis of the financial support to NGOs is not clearly defined either.

## Failing monitoring and evaluation

General systems of responsibility, monitoring and evaluation of public financing are mostly based on reporting by the NGOs to the relevant public institutions via financial and narrative

reports. There is also a general lack of transparency in fund allocation. There is no uniform system of reporting as each institution has its own system. Therefore, the level of transparency depends on how detailed each institution's regulations are.

In 2016, the Audit Office of the Institutions in Bosnia and Herzegovina published a report regarding grant management in the institutions of Bosnia and Herzegovina with a set of recommendations for the improvement of this process. The follow-up analysis by Audit Office of the Institutions of Bosnia and Herzegovina from 2021 showed that none of the 11 recommendations have been fully realized. Many institutions have improved monitoring procedures, introduced uniform reporting forms, as well as added other institution members to evaluation committees. However, there is no systemic analysis of realized projects and no evaluation of the extent to which a certain project contributed to the improvement of circumstances in a relevant field.<sup>9</sup> As a result, conducted projects do not focus on strategic goals and do not meet the actual local needs.

### Abuse and corruption

The results of the lack uniformity and transparency of public financing procedures on all government levels are growing corruption, political misuse of funds, as well as conflicts of interest as some public officials are heads of associations receiving public funding.<sup>10</sup> Funds intended for NGOs are often used for political campaign purposes, and are distributed without an open call or without following the grant procedure.<sup>11</sup> Subsequently, NGOs strategize based on needs of donors without focusing on their own vision and mission, which hinders the effective work of civil society and prevents its improvement.

### Suggestions

Even though there are visible positive changes within institutions, the general level of transparency has not significantly improved in past years. Further and more detailed legal regulation is needed with clear mechanisms of control of fund allocation to ensure full transparency and to establish an efficient system of financing of NGOs. With a straightforward system of regulation and monitoring of public funding that is uniform for all levels of government, it would be easier to monitor the entire granting process, leading to a much higher level of transparency and a significant reduction of institutional corruption.

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<sup>9</sup>Audit Office of the Institutions of Bosnia and Herzegovina, *Monitoring the Realization of Impact Audit Recommendations „Grant Management in the Institutions of Bosnia and Herzegovina“*, 2021, available at: <http://www.revizija.gov.ba/Content/OpenAttachment?id=d8d848bb-b19c-4fa4-8b62-afc3ece98e8b&langTag=en>

<sup>10</sup>Transparentno.ba, *Monitoring the Allocation of Public Funds to Associations and Foundations in Bosnia and Herzegovina*, 2022, available at: <https://transparentno.ba/2022/01/11/u-bih-za-dvije-godine-podijeljeno-121-miliona-km-neprofitnim-organizacijama-brojni-primjeri-politickih-zloupotreba-i-sukoba-interesa/>

<sup>11</sup>Technical Assistance to the Civil Society Organisations, *Final Report: Assessment of the State of the Enabling Environment and Capacities of Civil Society against the 2014-2020 Guidelines for EU Support to Civil Society in the Enlargement region for the year 2020*, available at: <https://tacso.eu/wp-content/uploads/2022/05/Civil-Society-Assessment-Report-for-2020.pdf>

## Point of views expressed by NGOs

### Challenges caused by ethnic and political divisions in the country

As a result of the Dayton Agreement, a sharply divided society has emerged along ethnic lines. This system leads to separate groups of voters for the various candidates along the lines of ethnicity.

Voters are known to belong to a particular group and they take advantage of that to get jobs distributed by the politicians. We understand that the control on actual voting behaviour is almost perfect and the dependence on jobs is unprecedented. The politicians seem to have the voters in a stranglehold.

These problems are compounded by the division of education along ethnic lines, not only in primary education but also in secondary education, higher education and universities (there are 14 ministries of education). With so many young people leaving BiH to find better prospects abroad, mostly the EU, the number of school children is shrinking and classes in the segregated system are becoming very small. Even when there are almost no pupils left, 'mixed schools' are not an option. There is no cooperation between schools. Dual teacher-qualifications, even for completely apolitical subjects (e.g. a maths teacher with Serbian-Bosnian parents teaching both Serbian and Bosnian children), does not exist. Such teachers have to choose which ethnic group they want to belong to before they are allowed to practise their profession within that ethnic group.

The political choice to maintain strict segregation along ethnic lines forces citizens to travel far or maintain almost empty schools. This segregation is costly (especially for small villages and towns).

As a result, members of different ethnicities have virtually no contacts, do not grow up together and are brought up in ethnic 'bubbles'.

This strict separation proves to be a powerful weapon to influence potential voters, as the curriculum focuses more on group identity than on what binds BiH residents together.

### Problems of NGO Funding

When it comes to funding, some of the cocernes expressed by NGOs were quite common:

- A tendency for project funding, which leads to the fact that no long-term organisation with associated knowledge accumulation can be formed
- No growth in the funding covering the rising expenses
- No coverage of the basic permanent costs e.g. administrative costs (office space, staff etc.) endangering the continuity of NGOs
- The labour laws (payments / civil servants' benefits), which are quite costly

Extra income above 50,000 Marks for example achieved by training courses is taxed in a very unclear way on all levels (like enterprise benefits). International grants are no problem, especially as a proposed law initiative to tax foreign subsidiaries with 17% was abandoned. It was seen as a problem that there seem to be no difference between not-for-profit organisations and businesses.

The complex system in Bosnia Herzegovina leading to many layers on which an NGO can or should be registered was often mentioned as a problem creating difficulties for NGOs operating on different levels. For project funding you can only apply on the level where you have registered, which might makes it necessary to register on several levels. It was stressed that there are inequalities in the NGO field, especially when it comes to religious organisations, which operate on a different set of rules.

### Corruption and legal recourse

In the general context of inherent corruption the unhealthy dependencies of some CSOs and political parties was mentioned.

It was stated that funding is often given to political / ethnic partisans and the system of granting the funds is very intransparent. The influence from outside the country was mentioned, from neighbouring states like Croatia and Serbia but also from other states with a vested interest, Russia and Turkey were named specifically. A big problem described was the influence of the “political families” in international organisations, which do not moderate the internal corruption and widespread nepotism.

Finally the lack of transparency and effective legal remedy in the subsidy distributing system was mentioned, even in cases of obvious misuse of power or law. There was a general dissatisfaction with the functioning of the ombudsman system for not effectively addressing this problem.

### Views from organisations that are providing services

Organisations that are providing services, like child care, social care etc., do not normally encounter problems with authorities. They can even have a certain leeway in dealing with principle obstacles, like segregation, because their services are needed for the state and valuable for the authorities. However, also here we heard complaints about a lack of transparency, up to dossiers which had gone lost. The financial reporting was described as chaotic and subdue to different rules for different CSOs.

Bosnia and Herzegovina is sometimes perceived as a switchboard between external grants and political / ethnical groups. A good transparency and anti-corruption system should be imperative. However, the anti-corruption NGOs provide a service that is not wanted. Here we got a picture of a very negative relation with authorities, with no support, and even perceived threats and the distribution of funds as not transparent.

## Challenges of organisations that are working with “unpopular topics”

### The case of Mostar

In Mostar we were told by the Minister of Justice that he was in the process of dissolving many associations, because they were actually founded as “family enterprises” to syphon off state funding. This principle was described as an aspect of the inherent corruption in Bosnia and Herzegovina. Understandably, organisations set up under false pretences to illegally syphon off subsidies are being dissolved; the number of cases is breathtaking. We learnt that there appears to be an imbalance between the authorities' power to grant or revoke a status entitling organisations to subsidies and the few effective legal remedies available. It raises questions about the way public funds are distributed, monitored and evaluated – this problem that was raised again and again by the NGOs themselves in our deliberations.

## The environment that affects work of NGOs

### The High Representative and the Office of the High Representative (OHR)<sup>12</sup>

The purpose of the High Representative and the Office of the High Representative (OHR) is to oversee the civilian implementation of the Dayton agreement. They also serve to represent the countries involved in the implementation of the Dayton Agreement through the Peace Implementation Council (PIC), which chooses the High Representative.

So far, all of the High Representatives named have been from European Union countries, while their principal deputies have been from the United States. The Principal Deputy High Representative serves as International Supervisor for Brčko, representing the international community in the Brčko District.

Due to the vast powers of the High Representative over Bosnian politics and essential veto powers, the position has been compared to that of a viceroy.

Both institutions should be protecting the state of the democratic foundations of Bosnia and Herzegovina, but – It is sad to hear that the institutions referred to, are not perceived as relevant at all by the CSOs. Different CSOs, describe a very difficult relationship with the institutions: they are unapproachable for CSOs and ordinary citizens, show no interest in actively defending democracy; turn a blind eye to undermining corruption, nepotism and eroding freedom of expression, association and assembly (right to demonstrate). The feeling is that they are only out to preserve the status quo.

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<sup>12</sup>[https://en.wikipedia.org/wiki/High\\_Representative\\_for\\_Bosnia\\_and\\_Herzegovina](https://en.wikipedia.org/wiki/High_Representative_for_Bosnia_and_Herzegovina)

## European Union

The (small) representation of the EU does not have the means for active protection of democracy in Bosnia and Herzegovina; they follow the developments. An EU Initiative to build a citizens Council on election reforms did not get any follow-up.

## The field office of the Council of Europe<sup>13</sup>

This office deals with all Council of Europe goals: Rule of Law, Democracy and Human Rights, implementation of ECHR judgements and case law. Many of the “Strasbourg entities” are involved in Bosnia and Herzegovina like the Venice commission, Private office etc. It is perceived as understaffed<sup>14</sup>, overasked, focusing on transferring the right information which leaves little room for monitoring, advising or even stimulating.

Part of the efforts are spent to cooperation with the other international actors in Bosnia and Herzegovina, like the High Representative, US, EU and OSCE.

## The OSCE Bosnia and-Herzegovina Mission<sup>15</sup>

Due to the consensus principle in the OSCE some activities in Bosnia and Herzegovina are limited, for example on anti-discrimination of LGBTQI communities and tackling the challenges to their rights of freedom of association or assembly, as member states of the OSCE like Russia and Turkey block such activities. OSCE does not involve itself in individual cases, only in developing standards (monitoring, reporting internally, alerting). NGOs complained that they have little or no influence on deciding what the topics for the next years will be.

## Some special topics requiring attention

### Working of the judicial system

The protection provided by the judicial system is considered to be in-effective, because:

- A failing democracy or law-making proces, leading to laws that only serve special groups.
- Courts and laws work and ostensibly in favour of those who are rich and or powerful.
- Good laws are not implemented.
- Access to justice is very difficult and the judicial process is agonisingly slow.
- Equality for the law is rare, abuse of power is not uncommon and is barely countered.
- There is no legal certainty (higher and lower judges may change case law any moment).

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<sup>13</sup> <https://www.coe.int/en/web/sarajevo>

<sup>14</sup> 7 core FTE and 18 administrative FTEs: no advisors analysts, no communication officers

<sup>15</sup> <https://www.osce.org/mission-to-bosnia-and-herzegovina>

We further learned of the following shortcomings

- laws and decisions are not made public in a for the intended addressees understandable way;
- laws and decisions are not definite and clear;
- the decisions of courts are not regarded as binding and are often not repeated;
- unethical appeals of authorities (knowing that in the end they will lose) are 'normal' and go unpunished on public funding;
- rape victims are treated horribly by police, so they rarely testify effectively, even worse off are abused children or disabled persons, while on the other side defendants can reach an agreement with the DA to limit prison time to 1 year (that can be bought off).

### Intervention of the ombuds-institute<sup>16</sup>

The role of ombudsperson is divided among three persons who are representatives of Bosnia and Herzegovina's three ethnic groups. There are five offices. In the process of selecting an ombudsperson, civil society institutions are no longer welcome.

The law requires these three people to agree on a report before it is published.

Since political sensitivity can be found in many cases, it often turns out that agreement cannot be reached, the report stays unpublished and thus the institution is winged.

While it was claimed by the ombudswoman that the system of three ombudspersons from the different ethnicities, who had to reach consensus, was difficult but lent much weight to the decisions agreed, the NGOs complained that a great number of cases are simply declared as unresolvable because of the foreseeable differences between the ethnic groups and therefore not really dealt with at all.

The self evaluation of the ombudsman system given in an interview with one ombudswoman compared to the picture painted by the NGOs in our meetings differ widely. While we were told by the ombudswoman that the system is supplied with sufficient means and staff for the whole of the country, NGOs claim that their demands are often rejected with the argument of lack of staff and resources.

A follow-up on the decisions was not considered by the ombudswoman as part of the agency's mandate, while NGOs indicated that it would be possible in principle but was not implemented, citing lack of resources.

### Freedom of expression, media freedom and safety of journalists

Especially for NGOs dealing with sensible themes or themes perceived as negative by the ruling parties (LGBTIQ +, womens rights) have great difficulties in exercising their rights of freedom of association and public demonstrations. Asking permits for demonstrations they required to pay for security measures, which can be quite accessive. The access to the area where the demonstration takes place can be restricted to a point where people cannot even

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<sup>16</sup> <https://www.ombudsmen.gov.ba/Default.aspx?id=2&lang=EN>

find the entrances to the area and are discouraged to join the demonstration. In the same time the massive security measures create problems for the people living in the area who then blame the protesters for their troubles. There is also a tendency to allow demonstrations only in outlying areas of towns and cities, even of making regulations or laws which would prohibit demonstrations in the greater parties of the cities.

From the side of media there were reports about intimidation, hate speech and threats to journalists. There was also mentioned a problem with SLAPPS (Strategic lawsuits against public participation), law suits issued against journalists or media with high compensation claims which endanger their existence and lead to court cases which in themselves can lead to the ruin of a person or organization.

The most recent developments for media freedoms are the new changes by the Government of Republika Srpska in March 2023. These laws include the Amendments to the Criminal Code of Republika Srpska, which criminalize slander and insult under Articles 208a and 208b. Additionally, Article 208v targets the disclosure of personal and family details. These laws have intentionally ambiguous wording, allowing for broad interpretations that severely restrict the freedom of expression and if introduced into legislation, will greatly limit already fragile media freedoms.

## Anti-Discrimination

A good example for the above mentioned measures is the Pride March, where the organisers must pay for fences, private security and even ambulances. In addition many challenges to the LGBTIQ+ communities were listed by the NGOs we spoke to:

- Because of the prevailing strict religious morality (Muslim, Catholic or Orthodox Christian) there are no social safe spaces for LGBTIQ+ community members (no bars, theatres, sports clubs). Only online can one meet like-minded people, but there the dangers of scams, stalking, sexual abuse and solicitation for the purpose of extortion are high.
- Politicians even use hate-speech against the community
- Reports on hate-speech are ignored

## Roma

We learnt that Roma still feel treated as second-class citizens, after centuries of presence they are still seen as passers-by, uninvited newcomers and sometimes even as a threat. In this highly ethnically divided country, they are a minority everywhere. There is almost never a formal place for them in decision-making circles. If such a place is 'formally' there at all, in practice there often has to be fought for a relevant and meaningful input.

Many Roma lack access to health insurance, which typically is related to their employment status or enrolment in education—conditions that many of them do not currently meet. Despite the allocation of funds to enhance Roma employment opportunities, the unemployment rate remains high. Discrimination against Roma women is extremely notable, occurring both within their own community and in wider society. This discrimination is further elevated by the fact that many Roma women do not possess primary-level education. This



has resulted in a higher number of early marriages, human trafficking, and labour exploitation of children among Roma women.

While there has been a recent rise in educational enrolment rates among the Roma community, the number of school dropouts has also risen. Regrettably, education in the Romani language is non-existent, and there is an absence of knowledge regarding Roma culture across Bosnia and Herzegovina which in turn further deepens stereotypes and increases discrimination.

In 2022, the Council of Ministers adopted the [Action Plan for Social Inclusion of Roma](#)<sup>17</sup>. The goal of activities within the Action Plan is to reduce discrimination of Roma; to prevent antigypsyism; to increase employment, as well as enrolment and completion rate of Roma in primary and secondary education; to ensure universal health insurance coverage among the Roma; and strive to legalise all informal settlements where Roma live or provide permanent and decent housing for those living in settlements that cannot be legalised. This Action Plan proposes measures in accordance with the “EU Roma Strategic Framework for Equality, Inclusion and Participation for 2020-2030”.

## Transitional Justice

The shadows of the war are still very visible in the country. Survivors struggle against statutes of limitation for claims. The problems raised in the deliberation with the NGOs were:

- Post war generation is a lost generation
- Pre-war generation are the Political elites who divide the revenues of the country among themselves, shielded by protections of the legal system and corruption / nepotism within the political parties
- Many young people of the post war generation leave the country, but because there has not been an official census for some time, it is difficult to give exact numbers for this diaspora.
- Transitional justice is hindered by
  - Inequality before the law
  - Legal uncertainty
  - Education system
  - The lack of willingness (if not ‘impossibility’) to face up to the group's own past
- The state does not fund for education of civil servants to bring them in line with ECHR-standards (this also applies to other areas of justice, for example in demonstration-licence handling)
- The Government of the Federation of Bosnia and Herzegovina implemented amendments to the Law on Civilian Victims of War which now regulates the status of children born after wartime rape and recognizes them as victims of war. This extends

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<sup>17</sup><https://www.rcc.int/romaintegration2020/files/admin/docs/86d1b88911c83898298eeb47b697d01c.pdf>

victim status to a large group as between 20 000 and 50 000 women were raped during the war in BiH

- Roma are a forgotten community and the fate of the Roma over the past centuries is an unrecognized tale.

### Living with a disability

- The Non-Accessibility of public offices for persons with disabilities is country-wide
  - There has been no realistic research into the needs for rights and facilities of the disabled
  - There is no inclusion of disabled persons in-, or cooperation with them in the policy making process decisions are being made - without their input - about them.
    - Illustration: a public building had an impossible wheelchair ramp (38-degree slope (while 8 degrees is about maximum) constructed. Funds raised by volunteers with crowd-funding to make it an acceptable wheelchair ramp were refused "because it was a monument"
  - In general it was stated that people with disabilities have few rights, but if the disabilities were caused during the war (soldiers, civilians who had become victims to shelling in general or specific war crimes) the situation is better, as they are treated well by their communities.

## Conclusions

The Dayton Agreement, signed at the end of the Yugoslav wars, aimed to bring peace to Bosnia and Herzegovina by establishing it as a single state with two separate entities: Republika Srpska and the Federation of Bosnia and Herzegovina. However, while the agreement succeeded in ending the war, it has created challenges in the development of democracy and genuine coexistence between these entities. A country visit aimed to understand the circumstances under which civil society operates and revealed challenges related to complex constitution and the ongoing effects of the war.

The legal framework for NGOs is complex, with regulations existing at both the state and entity levels. While the registration process is generally straightforward, nowadays concerns arise from Republika Srpska's proposed legislation that could limit the activities and freedom of association of NGOs receiving foreign donations. Additionally, amendments to the Criminal Code may further restrict media freedoms, compounding the existing challenges faced by civil society. There is a need to raise awareness and enhance the capacity of public consultations at all levels of government to encourage civil participation in policy decision-making. Access to information remains limited, with institutions often interpreting the law restrictively, hindering disclosure rather than promoting transparency.

Furthermore, the legal framework for freedom of peaceful assembly is decentralized and falls short of international standards, resulting in restrictions and obstacles to public gatherings. The lack of transparency in NGO funding is a pressing concern, as there is no systematic approach to regulating public grant funding. NGOs encounter challenges such as project-focused funding, rising expenses, and insufficient support for permanent costs. Corruption and a lack of transparency in funding distribution persist, with political and ethnic factors influencing decision-making. The perceived ineffectiveness of the judicial system, favoring special interest groups, is a significant obstacle to justice and accountability.

Transitional justice remains an ongoing issue, with war survivors facing difficulties in seeking justice due to limitations such as statutes of limitations and societal reluctance to confront the past. It is essential to address these challenges by ensuring accountability for past atrocities and providing comprehensive support for victims to foster healing and reconciliation. Moreover, the environment for NGOs working on sensitive or unpopular topics is challenging and the inclusion of marginalized communities, including individuals with disabilities, require greater attention and support. Despite the involvement of international actors in Bosnia and Herzegovina, their influence in protecting democracy and human rights is seen as limited.

In conclusion, Bosnia and Herzegovina faces significant challenges arising from ethnic and political divisions, corruption, limited transparency, and ineffective institutions. Tackling these multifaceted issues demands a comprehensive approach. Priorities include promoting transparency and accountability in funding processes, safeguarding freedom of expression and media freedom, and actively engaging international actors to uphold democracy and human rights.

The rise of populist and illiberal democracies is problematic, which threaten (and even devalue) the cornerstones of democracy and the triaspolitica: European norms are no longer unambiguous.

Furthermore, we learned of the growth in civil society organisations which seem to have close links to foreign governments and which tend not to be supportive of democratic development of Bosnia and Herzegovina.

## Recommendations

### Recommendations for Public Authorities:

- Withdraw the proposed legislation in Republika Srpska that would create a special register for NGOs receiving foreign donations labelling them as foreign agents, as it will obstruct the activities and freedom of association of these organisations.
- Strengthen cooperation between civil society organizations and the government through the Advisory body for the Council of Ministers of Bosnia and Herzegovina for Cooperation with NGOs, ensuring that it serves as a platform for meaningful dialogue and collaboration.
- Improve access to information by promoting transparency and accountability and ensure effective access to the information. Ensure that institutions interpret the law in a manner that facilitates rather than restricts the disclosure of information.
- Harmonize laws on freedom of peaceful assembly across all levels of government, taking the Law on Public Assembly of Brčko District as a model since it is aligned with international standards. Remove unnecessary restrictions and procedural obstacles to encourage citizen participation and protect the right to peaceful assembly.
- Establish a more transparent and uniform system for public financing of NGOs, including detailed legal regulations, clear mechanisms for fund allocation, and standardized systems for reporting, monitoring, juridical review and evaluation. This will help reduce corruption, political misuse of funds, and conflicts of interest.
- Safeguard freedom of expression and media freedom by actively addressing intimidation, hate speech, and threats against journalists. Withdraw Amendments to Criminal Code of Republika Srpska that will restrict media freedoms and ensure a safe and enabling environment for journalists to carry out their work.
- Promote transitional justice by removing obstacles to seeking justice for war survivors. Foster a culture of remembrance and accountability, and ensure support for the recognition and rights of victims of war, including children of women raped during the war.
- Actively engage with international actors, such as the Office of the High Representative, the European Union, the Council of Europe, and the OSCE, to

strengthen democracy, promote human rights, and support reform efforts in Bosnia and Herzegovina.

- Develop a system where Roma and other minorities that are not (yet) recognized, are given a relevant formal place in decision-making circuits that does justice to them as a group and respects European standards applicable to minorities.
- Ensuring efficient implementation of the Action Plan for Social Inclusion of Roma adopted in 2022

## APPENDIX

### Organisation of the state

Paraphrase of [https://en.wikipedia.org/wiki/Bosnia\\_and\\_Herzegovina#Politics](https://en.wikipedia.org/wiki/Bosnia_and_Herzegovina#Politics)

As a result of the Dayton Agreement, the civilian peace implementation is supervised by the High Representative for Bosnia and Herzegovina selected by the Peace Implementation Council (PIC). The High Representative is the highest political authority in the country. The High Representative has many governmental and legislative powers, including the dismissal of elected and non-elected officials.

Bosnia and Herzegovina has several levels of political structuring. The most important of these levels is the division of the country into two entities: the Federation of Bosnia and Herzegovina and Republika Srpska. The entities, based largely on the territories held by the two warring sides at the time, because of the tremendous changes in Bosnia and Herzegovina's ethnic structure.

The Brčko District in the north of the country was created in 2000, out of land from both entities. It officially belongs to both, but is governed by neither, and functions under a decentralized system of local government. For election purposes, Brčko District voters can choose to participate in either the Federation or Republika Srpska elections. The Brčko District has been praised for maintaining a multiethnic population and a level of prosperity significantly above the national average.

The third level of Bosnia and Herzegovina's political subdivision is manifested in cantons. They are unique to the Federation of Bosnia and Herzegovina entity, which consists of ten of them. Each has a cantonal government. Some cantons are ethnically mixed and have special laws to ensure the equality of all constituent people.

The fourth level of political division in Bosnia and Herzegovina are the 143 municipalities. Municipalities also have their own local government, and are typically based on the most significant city or place in their territory they are divided into local communities.

Besides entities, cantons, and municipalities, Bosnia and Herzegovina also has four "official" cities. These are: Banja Luka, Mostar, Sarajevo and East Sarajevo. The territory and government of the cities of Banja Luka and Mostar corresponds to the municipalities of the same name, while the cities of Sarajevo and East Sarajevo officially consist of several municipalities. Cities have their own city government whose power is in between that of the municipalities and cantons (or the entity, in the case of Republika Srpska).

More recently, several central institutions have been established (such as a defense ministry, security ministry, state court, indirect taxation service and so on) in the process of transferring part of the jurisdiction from the entities to the state. The representation of the government

of Bosnia and Herzegovina is by elites who represent the country's three major groups, with each having a guaranteed share of power.

The Chair of the Presidency of Bosnia and Herzegovina rotates among three members (Bosniak, Serb, Croat), each elected as the chair for an eight-month term within their four-year term as a member. The three members of the Presidency are elected directly by the people, with Federation voters voting for the Bosniak and the Croat and the Republika Srpska voters voting for the Serb.

The Constitutional Court of Bosnia and Herzegovina is composed of nine members: four members are selected by the Federal House of Representatives, two by the National Assembly of Republika Srpska and three by the President of the European Court of Human Rights after consultation with the Presidency, who cannot be Bosnian citizens.

### Agenda of the visit

#### Sunday 4 September- SARAJEVO

Afternoon Arrival of the delegation in Sarajevo, Transfers to Hotel

Meeting with the Civil Rights Defenders

18.30 Dinner for the visiting delegation, Civil Rights Defenders and guests

#### Monday 5 September- SARAJEVO

The consultations and the lunch afterwards will take place in hotel

08.30 Meeting with the Civil Rights Defenders

09.00-10.45 Meeting with organisations working on rule of law, corruption and electoral reform

11.00-12.45 Meeting with media organisations (journalists' associations, media association, independent media outlets), organisations working on freedom of expression and organisations working on minority rights and discrimination

13.00-14.00 Lunch for representatives of the delegation and organisations working on freedom of expression and media organisations

14.00-16.15 Meeting with authorities:

14:30 Ombudsperson Institutions

#### Tuesday 6 September- MOSTAR

10.00-12.00 Meeting with NGOs working in Mostar

12.00-13.00 Lunch with representatives of NGOs

13.00-15.00 Meeting with authorities:

#### Wednesday 7 September – BANJA LUKA

10.00-12.00 Meeting with NGOs working in Banja Luka

12.00-13.00 Lunch with representatives of NGOs

13.1-15.0 Meeting with authorities:

#### Thursday 8 September- SARAJEVO

09.00-10.30 Meeting at the Council of Europe Office in Sarajevo,

10:30-11:30 Meeting with OSCE representatives - Nina Šeremet and Igor Ličina (tbc)

11.30-12.30 Meeting with Civil Rights Defenders  
12.00-13.00 Lunch