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Provisional version

## **Honouring of obligations and commitments by Bosnia and Herzegovina**

### **Report<sup>1</sup>**

Co-rapporteurs: Mr Zsolt Németh, Hungary, European Conservatives Group and Democratic Alliance and Mr Aleksandar Nikoloski, North Macedonia, Group of the European People's Party

*Summary*

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<sup>1</sup> Reference to Committee: [Resolution 1115 \(1997\)](#).

## A. Draft resolution<sup>2</sup>

1. Bosnia and Herzegovina joined the Council of Europe on 24 April 2002. Accordingly, it entered into, and agreed to honour, a number of specific commitments which are listed in Opinion No. 234 (2002) of the Parliamentary Assembly. To date, the country has signed 94 Council of Europe treaties, of which 91 have been ratified.
2. The Assembly reiterates its full support for the state of Bosnia and Herzegovina and all its citizens and urges all Council of Europe Member States to respect its constitutional and legal order, sovereignty and territorial integrity.
3. The Assembly congratulates the authorities of Bosnia and Herzegovina for the pace of reforms since 2022, notably the adoption of a Law on the prevention of conflict of interest, amendments to the Law on the High Judicial and Prosecutorial Council, a Law on anti-money laundering and countering terrorism financing and a Law designating the human rights Ombudsman as national preventive mechanism against torture and ill-treatment.
4. The Assembly is pleased to note that following these reforms, the European Council decided to open accession negotiations with Bosnia and Herzegovina in March 2024.
5. The Assembly laments the fact that the 2022 elections were held for the fourth time under a legal and constitutional framework which is in violation of the European Convention on Human Rights (ETS No. 5) as made clear by the 2009 judgment of the European Court of Human Rights in the case of *Sejdić and Finci*. The Assembly regrets that, as pointed out by the International Election Observation Mission for the 2022 general elections: “the increasing segmentation along ethnic lines and the corresponding divergent views on the future of the country remain a concern for the functioning of democratic institutions”. The Assembly recalls that, since the country’s accession to the Council of Europe in 2002, it has consistently and repeatedly urged for a constitutional reform in Bosnia and Herzegovina.
6. The Assembly notes that the Committee of Ministers has already adopted five interim resolutions calling on the authorities and political leaders to bring the constitutional and legislative framework into line with Convention requirements. It also refers to the decision of 11-13 June 2024 by the Committee of Ministers which “insisted firmly on the utmost importance of instantly relaunching the electoral reform work, while pursuing all consultations necessary aimed at eliminating discrimination based on ethnic affiliation or failure to meet a combination of ethnic affiliation and place of residence in elections for the Presidency and the House of Peoples of Bosnia and Herzegovina.”
7. . The Assembly welcomes the changes introduced to the electoral legislation with a view to addressing the integrity of the electoral process in line with European standards and the recommendations made by the OSCE Office for Democratic Institutions and Human Rights, Group of States against Corruption (GRECO) and the European Commission for Democracy through Law (Venice Commission). However, the Assembly is concerned that these changes had to be enacted by the High Representative and could not be adopted by the authorities of Bosnia and Herzegovina despite the high level of agreement between the political parties on the substance of these reforms.
8. The Assembly expresses its concern regarding the deliberate failure of the Republika Srpska authorities to implement final and binding decisions of the Constitutional Court of Bosnia and Herzegovina. It is also concerned by the fact that the Constitutional Court of Bosnia and Herzegovina cannot function at full capacity, which hinders the effectiveness and credibility of the judicial system. Deliberately obstructing the functioning of the Constitutional Court undermines all three basic principles of the Council of Europe: democracy, human rights and the rule of law. The Assembly therefore urges the competent authorities to nominate all judges to the Constitutional Court of Bosnia and Herzegovina.
9. The Assembly refers to the United Nations General Assembly Resolution 78/282 on the International Day of Reflection and Commemoration of the 1995 Genocide in Srebrenica, which recalls the judgments of the International Tribunal for the Former Yugoslavia and the International Court of Justice on genocide committed at Srebrenica in 1995. The Assembly reiterates that criminal accountability under international law for the crime of genocide is individualized and cannot be attributed to any ethnic, religious or other group or community as a whole and joins the call on states to: “preserve the established facts, including through their

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<sup>2</sup> Draft resolution adopted unanimously by the Committee on 11 September 2024.

educational systems by developing appropriate programmes, also in remembrance, towards preventing denial and distortion, and occurrence of genocides in the future”.

10. As regards the strengthening of democratic institutions and the rule of law, the Assembly calls on the authorities of Bosnia and Herzegovina to:

10.1 bring the electoral legislation in line with the European Convention on Human Rights and ensure the equality and non-discrimination of citizens;

10.2 ensure the proper functioning of the Constitutional Court of Bosnia and Herzegovina, in line with the Venice Commission's opinions on the method of electing judges to the Constitutional Court and on certain questions relating to the functioning of the Constitutional Court of Bosnia and Herzegovina;

10.3 adopt a new law on the High Judicial and Prosecutorial Council taking into consideration the recommendations contained in the Venice Commission's interim follow-up opinion to previous opinions on the High Judicial and Prosecutorial Council;

10.4 improve the efficiency of the institutional framework, and adopt reforms with a view to meeting the objectives and conditions required prior to the closure of the Office of the High Representative as set out by the Peace Implementation Council;

10.5 intensify the fight against corruption and improve the legal framework for the prevention of corruption and implement the outstanding recommendations contained in the second interim compliance report by the GRECO on corruption prevention in respect of members of parliament, judges and prosecutors;

10.6 adopt legislation ensuring permanent funding of the three public broadcasters and transparency in the ownership of media outlets.

11. As regards the protection of human rights, the Assembly:

11.1 the Assembly recalls Bosnia and Herzegovina's accession commitment to continue reforms in the field of education and reiterate its call on the authorities to take all necessary steps to eliminate all aspects of segregation and discrimination in education, while respecting the right of education in the mother tongue as guaranteed by the UNESCO conventions. The learning of at least two national languages shall be encouraged;

11.2 encourages the establishment of a common core curriculum in history allowing for all to understand the diversity of points of views;

11.3 urge political parties and media outlets to address hate speech, in particular in the context of electoral campaigns, in line with ECRI's recommendations.

12. The Assembly, while welcoming positive developments in a number of areas, remains concerned about the lack of, or insufficient, progress in some areas crucial for the functioning of democratic institutions. Therefore, it resolves to pursue its monitoring of obligations and commitments by Bosnia and Herzegovina.

13. The Assembly invites the authorities of Bosnia and Herzegovina to translate this Resolution and the explanatory memorandum into the national languages, and to make these translations public.

## **B. Explanatory memorandum by Mr Zsolt Németh and Mr Aleksandar Nikoloski, co-rapporteurs**

### **1. Introduction**

#### **1.1. The monitoring procedure**

1. In becoming a member of the Council of Europe on 24 April 2002, Bosnia and Herzegovina consented to honour the obligations placed on all member States under Article 3 of the Organisation's Statute (ETS N° 1), together with a number of specific undertakings set out in Opinion 234 (2002) on Bosnia and Herzegovina's application for membership of the Council of Europe. With a view to ensuring compliance with these commitments, the Parliamentary Assembly decided, pursuant to Resolution 1115 (1997), to open a monitoring procedure with regard to Bosnia and Herzegovina upon its accession. The last recommendation on the honouring of obligations and commitments adopted by the Assembly was Recommendation 2201 (2018).

2. Mr Zsolt Németh (Hungary, EC/DA) and Mr Aleksandar Nikoloski (North Macedonia, EPP/CD) were appointed co-rapporteurs by the Monitoring Committee in September 2021 and March 2023 respectively. In the framework of the preparation of the report, the co-rapporteurs carried out fact-finding visits to Sarajevo and Banja Luka in September 2023, and to the European Commission (DG NEAR) in March 2024. During its meeting on 6 March 2024, the Monitoring Committee held a hearing with Mr Christian Schmidt, High Representative for Bosnia and Herzegovina.

3. The country has benefited from the co-operation programmes of the Council of Europe since 2003. Successive Action Plans covering the periods from 2015-2017 and 2018-2021 were implemented and an action plan for the period 2022-2025 has been agreed upon. In the last three years, the Bosnia and Herzegovina authorities have requested on a number of occasions the expertise of the European Commission for Democracy through Law (Venice Commission), which has adopted five opinions (on amendments to the Law on the High Judicial and Prosecutorial Council, on the draft Law on preventing of conflict of interests, on the draft law on Courts of Bosnia and Herzegovina, on the draft law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organizations, on certain questions relating to the functioning of the Constitutional Court of Bosnia and Herzegovina) and one *amicus curiae* solicited by Bosnia and Herzegovina's Constitutional Court on the question of the appellate review in the Courts of Bosnia and Herzegovina.

#### **1.2. Political context**

4. Bosnia and Herzegovina declared its independence from the former Yugoslav Republic on 1 March 1992. The tragic war that followed ended in 1995 with the "General Framework Agreement for Peace in Bosnia and Herzegovina" (GFAP) also known as the Dayton Agreements.

5. The only population census since the end of the war was conducted in 2013. By then, the total population stood at some 3.5 million. Bosnians declaring themselves "Bosniacs" made up 50.11% of the total, Bosnian "Serbs" 30.78%, Bosnian "Croats" 15.43% and "Others" 2.73%. In the Republika Srpska, 81% of the population declared to be Serbs, 14% Bosniacs and 2.4% Croats. In the Federation, 70% of the population declared to be Bosniacs, 22% Croats and 2.5% Serbs. BiH has the second largest diaspora in the world (share of native-born population living abroad).<sup>3</sup> There are roughly 2 million people originating from BiH living outside the country, including second- and third-generation emigrants.

6. Emigration is a major concern for Bosnia and Herzegovina. According to estimates, 600 000 to 800 000 people left Bosnia and Herzegovina between 2013 and 2023. The country's population is estimated to decrease by approximately 45 000 people every year, of whom over 20 000 are young, skilled people who emigrate on account of political instability, poor standards of living and corruption. In addition, the fertility rate is very low, at 1.35 birth per woman, resulting in a demographic decrease of up to 20 000 persons per year.<sup>4</sup>

7. Bosnia and Herzegovina applied for EU membership in February 2016. The European Commission issued an opinion on this application in May 2019, identifying 14 key reforms that Bosnia and Herzegovina had to implement in priority before the opening of EU accession negotiations.<sup>5</sup> Most of these key priorities are relating to the functioning of democratic institutions, the rule of law and human rights, and some are based on

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<sup>3</sup> Forbes, [The World's Biggest Diasporas](#)

<sup>4</sup> 65th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the UN.

<sup>5</sup> SWD(2019) 222 final, COM(2019) 261 final.

obligations and commitments entered upon accession to the Council of Europe, such as the implementation of judgments of the European Court of Human Rights.

8. In 2021, the European Commission assessment on the implementation of the 14 Key priorities for opening EU accession negotiations underlined many shortcomings. According to the Commission, the paralysis of state institutions left reforms unimplemented: “No progress was made in improving the electoral framework in line with European standards and ensuring transparency of political party financing. Bosnia and Herzegovina has yet to address the recommendations by the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (OSCE/ODIHR), the Venice Commission and the Council of Europe’s Group of States against Corruption (GRECO). A number of Constitutional Court decisions have yet to be fully enforced.”<sup>6</sup> In June 2022, ahead of the general elections, the leaders of the political parties represented in parliament and the members of the Presidency of Bosnia and Herzegovina adopted a political agreement “on principles for ensuring a functional Bosnia and Herzegovina that advances on the European path.”<sup>7</sup>

9. Following the October 2022 elections, a coalition made by the SNSD<sup>8</sup>, HDZ BiH<sup>9</sup> and the alliance “Troika” reached an agreement on the formation of a new government for the 2022–2026 parliamentary term, designating Borjana Krišto (HDZ BiH) as the new Chairwoman of the Council of Ministers. On 25 January 2023, the House of Representatives confirmed the appointment of Krišto’s cabinet.

10. In December 2022, the EU recalled that the 14 Key priorities were still to be implemented, but opened the way for starting accession negotiations provided 8 important steps were adopted. This decision created a momentum and several very important reforms that had been in waiting for long have been adopted in record time. Acknowledging this progress, the European Council officially decided to open accession negotiations with Bosnia and Herzegovina on 22 March 2024. The European Commission is invited to prepare the negotiating framework, which should be adopted when all the 8 steps set out in 2022 are taken.

11. As the negotiations between political parties on the reform of the Electoral law seemed unlikely to achieve results on time before the October 2024 local elections, the High Representative for Bosnia and Herzegovina enacted amendments to the Election Law in order to address the integrity of the electoral process, bringing it in line with the international and European standards. As a reaction, the Republika Srpska National Assembly (RSNA) adopted a set of conclusions<sup>10</sup> demanding, among others, the annulment of all High Representative decisions, and adopted an Election Law<sup>11</sup> intended to create a parallel election framework. On 24 July 2024, the Constitutional Court of Bosnia and Herzegovina adopted interim measures temporarily suspending the legal effect of this Law pending a final decision<sup>12</sup>.

12. On 23 May 2024, the UN General Assembly adopted a resolution designating 11 July as the “International Day of Reflection and Commemoration of the 1995 Genocide in Srebrenica”. The government of the Republika Srpska considered that the adoption of this resolution by the UN General Assembly was a breach of Dayton peace agreements and announced that it would prepare a draft agreement on the “peaceful dissociation” for the Republika Srpska from the Federation of BiH. On 8 June 2024, an “All-Serbian Assembly” met in Belgrade at the instigation of the president of Serbia and the president of RS and adopted conclusions declaring that: “The All-Serbian Assembly does not support the Resolution on Srebrenica” which, according to the text, constituted “an attempt to collectively blame the entire Serbian people”. These conclusions called, inter alia, to “act in a unified and coordinated manner to stop the assimilation of Serbs in the states of the region” and mentioned the role of the orthodox church to preserve the Serbian people “biologically, culturally and educationally.” This declaration has triggered strong reactions from politicians in the Federation, emphasizing its de-stabilizing effects and noting that it constituted a direct intervention from Serbia in Bosnian internal affairs.

<sup>6</sup> SWD(2021) 291 final /2.

<sup>7</sup> <https://www.consilium.europa.eu/en/press/press-releases/2022/06/12/political-agreement-on-principles-for-ensuring-a-functional-bosnia-and-herzegovina-that-advances-on-the-european-path/>

<sup>8</sup> *Savez nezavisnih socijaldemokrata*, Alliance of Independent Social Democrats.

<sup>9</sup> *Hrvatska demokratska zajednica Bosne i Hercegovine*, Croatian Democratic Union of Bosnia and Herzegovina.

<sup>10</sup> [Окончана Једанаеста посебна сједница Народне скупштине усвајањем десет Закључака | НСПС \(narodnaskupstinars.net\)](https://narodnaskupstinars.net/)

<sup>11</sup> [Народна скупштина на Дванаестој посебној сједници усвојила Нацрт изборног закона Републике Српске | НСПС \(narodnaskupstinars.net\)](https://narodnaskupstinars.net/)

<sup>12</sup> [https://www.ustavnisud.ba/uploads/odluke/\\_en/U-12-24-1441173.pdf](https://www.ustavnisud.ba/uploads/odluke/_en/U-12-24-1441173.pdf).

13. On 20 June 2024, the Steering Board of the Peace Implementation Council (PIC SB) emitted a statement in which: “The PIC SB strongly condemns flagrant attacks by the Republika Srpska (RS) ruling coalition against the GFAP, the constitutional and legal order of BiH, and its sovereignty and territorial integrity.”

## **2. The functioning of democratic institutions<sup>13</sup>**

14. The main constitutional texts applicable in the country were adopted during the war or at its end. The Dayton Agreements, signed in Paris on 14 December 1995, set out the conditions for peace. Annex 4 to these agreements, dealing with the Constitution of Bosnia and Herzegovina, acknowledges that Bosnia and Herzegovina shall continue its legal existence under international law as a state, with its internal structure modified and with its internationally recognized borders. It states that Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections and that it shall consist of two Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska.

15. Article 2, paragraph 2, of the Constitution incorporates the European Convention on Human Rights (ECHR) and its protocols, which are directly applicable in Bosnia and Herzegovina and shall have priority over all other law.

16. The state-level government of Bosnia and Herzegovina (BiH) has a three-member collective presidency, which consists of one Bosniac and one Croat each directly elected from FBiH, and one Serb directly elected from RS. The Presidency has responsibility for foreign policy as well as law enforcement. The Presidency appoints a chairman of the state Council of Ministers, subject to the approval of the House of Representatives. The chairman subsequently appoints the other ministers.

17. The Parliamentary Assembly of BiH is bicameral and comprises a directly elected House of Representatives and an indirectly elected House of Peoples. The House of Representatives comprises 42 members (serving a four-year term) of whom two-thirds are directly elected from the territory of the FBiH and one-third from the territory of RS. The House of Peoples comprises 15 Members, with five Bosniacs and five Croats selected by the FBiH House of Representatives, and five Serbs selected by the Council of Peoples of the RS national assembly.

18. In its preamble, the Constitution refers to: “Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina (...)” The notion of “constituent people” introduces a difference of treatment, as only constituent peoples are entitled to special collective rights, such as representation in institutions and veto power in decision-making processes. Until 2000, constituent people were associated to certain entities: Serbs were the only constituent people in the Republic Srpska, and Bosniacs and Croats were the only constituent peoples in the Federation of Bosnia and Herzegovina. On 1<sup>st</sup> July 2000, the Constitutional Court of BiH ruled that members of all three constituent peoples, and “Others”, had to have equal rights throughout BiH. As a consequence, power-sharing provisions were introduced in both entities and rules allocating the most important positions equally among the three constituent peoples were included in the respective constitutions. The representatives of the three constituent peoples now constitutionally have in these various units a strong blocking position, even where they represent only a very limited number of voters.

19. The Dayton Agreements also incorporated an Annex 10, establishing a High Representative of the International Community, with responsibility for oversight of civilian implementation of the peace settlement. Following the negotiation of the Dayton Peace Agreement, a Peace Implementation Council (PIC) was established, with 55 countries and agencies as members.

20. The nature of the institutions in Bosnia and Herzegovina and their functioning are among the most debated topics in the country. The institutional framework needs to be reformed to conform with the European Convention on Human Rights, but also to improve the effectiveness of the institutions and allow for the extinction of some exceptional oversight mechanisms decided to implement the peace agreements in 1995, such as the High Representative. But the inability to carry out such reforms means that the “safety valve” provided by the High Representative is still needed to adopt urgently required legal texts, while the political majority in RS entity threatens secession.

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<sup>13</sup> For a full description of the institutions of Bosnia and Herzegovina, refer to: CDL-AD (2005) 004, Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the high representative.

## 2.1. Constitutional reform

21. On accession to the Council of Europe, Bosnia and Herzegovina has committed to reform its constitution. In its Opinion 234 (2002) on Bosnia and Herzegovina's application for membership of the Council of Europe, the Assembly considered that: "the state institutions should be strengthened at the expense of the institutions at entity level, if need be by a revision of the constitution." The country also undertook to: "adopt and to implement, within one year after its accession, constitutional and legislative amendments necessary to comply with the decision of the Constitutional Court on the "constituent peoples of Bosnia and Herzegovina" of June-July 2000", and "to review within one year, with the assistance of the European Commission for Democracy through Law (Venice Commission), the electoral legislation in the light of Council of Europe standards, and to revise it where necessary".<sup>14</sup>

22. The opinion added: "The Assembly is aware that some of the above commitments are within the fields of competence of the entities (the Federation of Bosnia and Herzegovina and the Republika Srpska), whose actions are essential to their fulfilment. Nevertheless, it considers that the state authorities of Bosnia and Herzegovina are responsible to the Council of Europe for ensuring that the entities take the measures necessary to comply with these commitments."

23. On 23 June 2004, the Assembly adopted Resolution 1384 (2004) on "Strengthening of democratic institutions in Bosnia and Herzegovina"<sup>15</sup> in which it considered that "The constitutional order prescribed by the Dayton Peace Agreements, on which the state institutions are founded, is extremely complicated and contradictory. As the outcome of a political compromise reached in order to end the war, it cannot secure the effective functioning of the state in the long term and should be reformed once national reconciliation is irreversible and confidence is fully restored." The Assembly asked the Venice Commission "to make a comprehensive assessment of the conformity of the Constitution of Bosnia and Herzegovina with the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Charter of Local Self-Government (ETS No. 122), as well as of the efficiency and rationality of the present constitutional and legal arrangements in Bosnia and Herzegovina."

24. The Venice Commission issued the requested opinion in March 2005. Regarding the distribution of powers between layers of government, the Venice Commission considered that a revision of the Constitution to strengthen the responsibilities of the state was indispensable<sup>16</sup>, confirming the recommendation set out in Opinion 234 (2002).

25. Regarding the functioning of the institutions, the Venice Commission found out that: "The constitutional rules on the functioning of the state organs are (...) not designed to produce strong government but to prevent the majority from taking decisions adversely affecting other groups." "A balance has indeed to be struck between the need to protect the interests of all constituent peoples on the one hand and the need for effective government on the other. However, in the BiH Constitution, there are many provisions ensuring the protection of the interests of the constituent peoples, inter alia: the vital interest veto in the Parliamentary Assembly, the two-chamber system and the collective Presidency on an ethnic basis. The combined effect of these provisions makes effective government extremely difficult, if not impossible. Hitherto the system has more or less functioned due to the paramount role of the High Representative. This role is however not sustainable." In conclusion, the Venice Commission's assessment in 2005 was that: "Constitutional reform is indispensable since present arrangements are neither efficient nor rational and lack democratic content."

26. Regarding the conformity of the Constitution with the European Convention, the European Court of Human Rights has ruled in a series of cases that some dispositions of the Constitution of Bosnia and Herzegovina needed to be amended. The dispositions at stake regard the composition and election of the Presidency and the House of Peoples. The Court held that the rules restricting the possibility of standing in certain elections in accordance with ethnic criteria amounted to discrimination in breach of the Convention. The Court confirmed and detailed this case-law in 2014 in the *Zornić*<sup>17</sup> case and in 2016 in the *Pilav*<sup>18</sup> case. Bosnia and Herzegovina is therefore under the obligation to amend its Constitution in order to modify the passive and active voting rights of its citizens.

<sup>14</sup> Parliamentary Assembly, [Opinion 234 \(2002\)](#), Bosnia and Herzegovina's application for membership of the Council of Europe.

<sup>15</sup> <https://pace.coe.int/en/files/17232/html>

<sup>16</sup> CDL-AD (2005) 004, para 28.

<sup>17</sup> [CASE OF ZORNIĆ v. BOSNIA AND HERZEGOVINA](#)

<sup>18</sup> [CASE OF PILAV v. BOSNIA AND HERZEGOVINA](#)

27. In August 2023, the Court went further in the case of *Kovacevic vs. Bosnia and Herzegovina*.<sup>19</sup> According to this decision, the power-sharing arrangements in favour of constituent peoples amounted to ethnic privileges, as only persons declaring affiliation with one of the three constituent peoples were entitled to run for the House of Peoples and the Presidency. Moreover, only the voters residing in the Republika Srpska may participate in the election of Serb members of the House of Peoples (through indirect elections) and the Presidency (through direct elections), whereas only the voters residing in the Federation may participate in the election of Bosniac and Croat members of those institutions. In contrast, no ethnic requirements apply in elections to the House of Representatives (the first chamber of the State Parliament). The Court observed that “because of the power-sharing arrangements, Bosnia and Herzegovina was not a genuine democracy but an “ethnocracy” in which ethnicity – and not citizenship – was the key to securing power and resources and in which the three dominant ethnic groups controlled the State institutions to further their interests, whereas all the others were akin to second-class citizens.” The decision stated: “The Court is aware of the historical context, notably that the above-mentioned arrangements were designed to end a brutal conflict marked by genocide and “ethnic cleansing”. The nature of the conflict was such that the approval of the “constituent peoples” was necessary to ensure peace. It is therefore conceivable that the existence of a second chamber, composed of representatives of the “constituent peoples” only, would have been acceptable in the special case of Bosnia and Herzegovina, had the powers of the House of Peoples been limited to the precisely, narrowly and strictly defined vital national interests veto of the “constituent peoples”. However, the House of Peoples is currently a chamber with full legislative powers. (...) That being the case, it is of the utmost importance that all segments of society should be represented in the House of Peoples.”

28. This decision underlines that solutions exist that would maintain some power-sharing mechanisms and the protection of “constituent peoples” without breaching the European Convention on Human Rights. Such solutions have been identified by the Venice Commission.<sup>20</sup>

29. Many attempts to amend the Constitution and electoral law have been unsuccessful so far, although an agreement has sometimes been at hand’s reach. The April 2006 package of amendments failed by two votes in the House of Representatives. Other attempts occurred in 2008, 2009, 2012, 2013 and 2014. In 2019, the European Commission’s Opinion on Bosnia and Herzegovina’s application for membership of the European Union made electoral and constitutional reform a requirement for membership. Discussions under the mediation of the European Union and the United States and with technical support from the Venice Commission secretariat ended on 20 March 2022, for lack of political agreement. According to the High Representative, “the parties came close to an agreement on several issues discussed but the political courage to take the extra step needed to reach a compromise so close to the elections was not found.”<sup>21</sup>

30. The governmental coalition following the 2022 elections committed to adopt “limited constitutional reform” necessary to abide by the European Convention. Changes of the Constitution can only take place by consensus among the principal political forces of Bosnia and Herzegovina, both at state and entity level, but it is urgent to adopt this crucial reform. The March 2024 decision of the European Council to open accession negotiations has opened another window of opportunity, as the European Commission requested from Bosnia and Herzegovina to: “Thoroughly improve the institutional framework, including at the constitutional level (...)” and “ensure the equality and non-discrimination of citizens, especially following the judgment of the European Court of Human Rights in the *Sejdic and Finci* case.”

## **2.2. The Office of the High Representative**

31. Annex X of the Dayton agreements established a High Representative of the international community (OHR). The mandate of the High Representative was to facilitate the implementation of the peace agreement. To this end, at the Bonn Peace Implementation Conference (PIC) on 10 December 1997, the Peace Implementation Council “welcome[d] the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of difficulties by making binding decisions (...)” Following this conference, the High Representative started to impose legislation and to remove officials from office who did not fulfil their duty to implement the peace agreement. This is generally referred to as the use of the “Bonn powers” by the High Representative.

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<sup>19</sup> [CASE OF KOVAČEVIĆ v. BOSNIA AND HERZEGOVINA](#). The decision has been referred to the Grand Chamber and is not yet final as of July 2024.

<sup>20</sup> [CDL-AD\(2006\)004](#), Opinion on Different Proposals for the Election of the Presidency of Bosnia and Herzegovina; and [CDL-AD\(2006\)019](#), Opinion on the Draft Amendments to the Constitution of Bosnia and Herzegovina.

<sup>21</sup> Cf. 61st report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations, paragraph 29.

32. The use of Bonn powers has raised controversies. In its aforementioned Resolution 1384 on “Strengthening of democratic institutions in Bosnia and Herzegovina”, the Assembly asked the Venice Commission to assess the compatibility of the powers of the OHR with the ECHR.

33. Regarding the power to enact legislation granted to the OHR, the Venice Commission reminded that: “the legislative process in BiH is unduly cumbersome and provides far too many opportunities to block the adoption of legislation. (...) The power of the High Representative to enact legislation therefore provides a safety valve making it possible to adopt urgently required legal texts.” However: “The democratic principle of the sovereignty of the people requires that legislation is adopted by a body elected by the people. Art. 3 of the (first) Protocol to the ECHR requires the election of the legislature by the people, and this right is deprived of its content if legislation is adopted by another body.” As a consequence, the Venice Commission advocated that this power should be gradually abandoned, in parallel with a constitutional reform making the legislative process more efficient.

34. Regarding the power to take individual decisions removing elected officials or civil servants from office, the Venice Commission considered that such decisions should be made subject to full judicial control and made the responsibility of the proper national institutions.

35. In 2004, the rapporteurs for the Monitoring Committee considered that: “the time has come to define a clear strategy for transferring responsibilities from the High Representative to domestic authorities.”<sup>22</sup> In February 2008, the Peace Implementation Council set out five objectives and two conditions to put an end to the mandate of the OHR. These are known as the “5+2 Agenda”. The PIC SB has regularly reviewed progress on this agenda. While improvement has been made in some areas, chronic disagreement among the main political parties has produced gridlock that has prevented the full implementation of the agenda.

36. Since 2008, a gradual decline in the use of “Bonn powers” has taken place. No individual decisions have been issued since 2009. The power to enact legislation has not been used from 2014 to 2021, but this restraint did not coincide with a matching empowerment of the state institutions, and necessary reforms were not made. Due to political opposition between the parties representing the three constituent peoples, the functioning of state institutions was stalled for most of the 2018-2022 parliament.

37. In July 2021, Russia and China proposed to the UN Security Council to strip the OHR of some of Bonn powers and to shut down the office within a year. This proposal was rejected<sup>23</sup>.

38. At the same time, the Bonn powers were used once again to enforce a law banning genocide denial and outlawing the glorification of convicted war criminals. Previous attempts to legislate these questions in BiH had been blocked. Mr Milorad Dodik, then member of the tripartite presidency from the Republika Sprska, attacked the decision, saying Bosnian Serbs could “not live in a country where someone can impose a law by simply publishing it on his website”. Similar views were expressed by the opposition parties, and leaders of the Bosnian Serb political parties decided to boycott BiH state institutions in response. In October 2021, Mr Milorad Dodik announced that all laws imposed by the High Representative would be annulled<sup>24</sup>. The boycott of state institutions took an end with the formation of the new government following October 2022 elections.

39. In 2022, Bonn powers were used eight times; six times in relation to the holding of elections and the functioning of institutions, two times in relation to the question of state property. In 2023, the Bonn powers have been used eleven times.

40. Some of these interventions have been critical to allow the holding of the 2022 elections<sup>25</sup> as they guaranteed the necessary fundings for the holding of the elections and introduced some important integrity

<sup>22</sup> Honouring of obligations and commitments by Bosnia and Herzegovina, [Doc. 10200](#), 4 June 2004

<sup>23</sup> [Reuters](#) [22 July 2021].

<sup>24</sup> [Reuters](#) [14 October 2021].

<sup>25</sup> After the elections were called, the High Representative imposed several amendments to the legislation and the Constitution of the Federation of Bosnia and Herzegovina related to holding of elections. On 7 June 2022, amendments of to the Election Law and the Law on Financing the Institutions allocated funds required to organize the elections. Amendments of 27 July to the Election Law introduced a definition of hate speech, a prohibition on the misuse of administrative resources in the campaign and abuse of Polling Station Commissions (PSC) positions by contestants. On election day, after the closure of polling stations, the High Representative imposed further changes to the Election Law and the Constitution of the Federation of Bosnia and Herzegovina, with a stated aim of unblocking the affected key entity institutions.

safeguards to the electoral process. Amendments have been enacted to the constitution of the FBiH to allow the formation of government, as it had been in a deadlock for the five past years.

### **2.3. Electoral reform**

41. The latest use of the Bonn powers took place on 26 March 2024, to push a package of reform regarding election integrity. This long-awaited reform could not be postponed any longer in order to be implemented, at least in part, for the October 2024 local elections.

42. On becoming a member of the Council of Europe in 2002, Bosnia and Herzegovina undertook to “review within one year, with the assistance of the European Commission for Democracy through Law (Venice Commission), the electoral legislation in the light of Council of Europe standards, and to revise it where necessary”<sup>26</sup> The Assembly has constantly reminded this post-accession obligation and urged Bosnia and Herzegovina to adopt a new Constitution with a view to replacing “the mechanisms of ethnic representation by representation based on the civic principle, notably by ending the constitutional discrimination against ‘Others’.”<sup>27</sup>

43. The electoral reform concerns two sets of issues, some are of constitutional nature (see section 2.1 above), the other regard the transparency and the integrity of the election process.

44. Regarding the integrity of elections, the confidence of Bosnia and Herzegovina’s citizens in their electoral system is very low: in an opinion survey conducted by the OSCE in August 2021, 41.3% of respondents said that the electoral system allowed the expression of the true will of citizens only to a limited extent. 42% of respondents believed that elections in Bosnia and Herzegovina were conducted in an unfair manner and 67.5% believed that election fraud happened “often” or “always”. Lastly, 64.6% of respondents believed that it was important to amend the Election Law.

45. A first set of reforms regarding integrity and transparency took place immediately before the 2022 elections. For political reasons, the Ministry of Finance and Treasury hindered the smooth organisation of the October 2022 elections by withholding the required funds. On 6 June 2022, the High Representative made use of the “Bonn powers” to allocate the required budget and amend the electoral law and the law on the financing of state institutions to prevent such blockages in the future.

46. The October 2022 election observation mission has reported concerns about the secrecy of the ballot and cases of interference by unauthorized people in the voting process. The secrecy of the vote was potentially compromised in more than 25% of the observations. Ballot boxes were not sealed properly in 6% of cases, and other procedural problems were observed in 6% of visited polling stations. On the election day, the observers witnessed some serious electoral violations, including proxy voting, indications of vote buying, intimidation of voters or polling stations commissions members. As regards counting and tabulation of results, the observers assessed counting negatively in 36 out of 168 polling stations observed.

47. During our visit in Banja Luka and Sarajevo, we were told on numerous occasions that the integrity of elections was a critical issue that needed to be solved as a matter of priority, as it conditioned the possibility to address other problems. The substance of the reform required is known and had been discussed at length with the experts of OSCE/ODIHR and the Venice Commission. A draft law had been discussed and allegedly agreed upon by political parties in the parliament. However, in October 2023, the PIC noted that “less than 12 months before the 2024 local elections, BiH authorities have so far failed to bring the election law in line with international standards on transparency and integrity of electoral processes and good practices for democratic elections. These amendments have been clearly and repeatedly recommended by the OSCE/ODIHR, GRECO, and the Venice Commission of the Council of Europe.”<sup>28</sup>

48. The political stalemate brought the High Representative to enact amendments reforming the electoral law on 23 March 2024. These amendments are extremely substantial and seem to address most of the issues at stake. According to the High Representative, they grant enhanced integrity and oversight of voting and vote counting, including increased security for handling election materials before and after voting, and professionalization of election committees. The composition of election committees and the practice of swapping members of such committees between political parties was identified as one of the main sources of electoral fraud. The reform also includes greater transparency in voter registration, particularly concerning

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<sup>26</sup> Opinion 234(2002) of the Parliamentary Assembly of the Council of Europe of 22 January 2002, paragraph 15(iv)(b).

<sup>27</sup> Resolution 1383 (2004) on the honouring of obligations and commitments by Bosnia and Herzegovina; Resolution 1513 (2006) and Resolution 1626 (2008).

<sup>28</sup> <https://www.ohr.int/statement-by-the-ambassadors-of-the-peace-implementation-council-steering-board-5/>

absentee voters and refugees, as well as verification of election registry data ; enhanced transparency and security throughout the election process, involving electronic voter identification, video surveillance, and electronic ballot counting ; clearer protection of human and civic rights before, during, and after elections ; prevention of voter manipulation, and greater transparency in campaign and media financing.

49. In spite of its disappointment that such a reform had not been adopted by the Parliament of BiH, the EU stated that it expected authorities to implement the required reforms ensuring that the forthcoming local elections are conducted in line with the European standards.<sup>29</sup>

50. Time will be necessary to provide the necessary training and implement fully the transparency and integrity measures that have been enacted. The October 2024 local elections will provide a first appraisal of their efficiency. It is however disturbing to notice that these most important reforms, non-controversial in their content, which had been agreed upon in parliament, would never have been introduced without the use of to the Bonn powers by the OHR. At the same time, regrettably, on the ground of this use of Bonn powers, the parliament of the Republika Srpska adopted an electoral law and a law on referendum which amounts to taking over the competencies of the state by the entity. This electoral law was deferred to the Constitutional Court of Bosnia and Herzegovina which ruled, on 24 July 2024, that: “there are reasonable suspicions that the contested law might undermine the constitutional order and political stability of Bosnia and Herzegovina (...)”. The Constitutional Court therefore decided the adoption of an interim measure temporarily suspending the legal effect of the RS Election Law pending a final decision.<sup>30</sup>

#### **2.4. Secessionist trends**

51. The dispute over the powers of the state and the entities, the establishment of parallel legal frameworks and the denial of the authority of the Constitutional Court by RS is having deep destabilizing effects. In 2016, a referendum was organized on celebrating “The Day of Republika Srpska” which marks the establishment of the breakaway republic from BiH at the beginning of the wars in 1992. The referendum was held in defiance of a Constitutional Court ruling banning the vote for discriminating against non-Serbs. In 2020, following disagreement with decisions taken by the Constitutional Court, the RSNA threatened secession from BiH, and mentioned the ambition to organise a referendum on independence. The realisation of this plan was allegedly postponed following the Russian invasion of Ukraine<sup>31</sup>, but it stays prominent in the public debate and overshadows the real progress that has been made in the process of European integration.

52. In his report to the UN Secretary-General on 9 May 2023, the High Representative said that “the secessionist rhetoric and action by the RS authorities, namely Mr. Milorad Dodik, has intensified in the reporting period. It poisons the political climate in the entity and the entire country. RS authorities categorically reject the authority of the Constitutional Court of Bosnia and Herzegovina and the OHR, and they pursue a confrontationist attitude towards Western partners.” The High Representative also noted “a clear tendency toward authoritarianism in Republika Srpska, characterized by legislative initiatives which further shrink the space for civil society and media. Bosnia and Herzegovina risks becoming a country divided between authoritarianism in one entity and democracy in the other.”

53. In June 2023, the RSNA adopted legislation suspending rulings by the BiH Constitutional Court and stopping publication of High Representative’s decisions in the Official Gazette. This legislation was overturned by the High Representative, but it was enacted on 7 July 2023. On 11 August 2023, a case was opened against the president of the Republika Srpska entity on charges of failing to execute the decisions of the High Representative. The trial began on 5 February 2024.

54. The above mentioned High Representative’s report said the ruling coalition in RS had started to create the preconditions for a potential future secession of Republika Srpska from BiH, as outlined in a joint statement signed by the ruling parties of RS on 24 April 2023: “Non-implementation of Decisions by the BiH Constitutional Court, readiness to withdraw Republika Srpska representatives from the state institutions, non-replacement of the Serb judges on the BiH Constitutional Court, non-implementation of the Decisions of the High Representative, readiness to declare the independence of Republika Srpska if the High Representative imposes a Law on State Property, readiness to limit the competences of the BiH Central Election Commission,

<sup>29</sup> [EEAS](#) [26 March 2024].

<sup>30</sup> <https://www.ustavnisud.ba/uploads/odluke/en/U-12-24-1441173.pdf>

<sup>31</sup> [Reuters](#) [6 June 2024].

readiness to re-examine all laws and decisions imposed by all High Representatives so far, and a termination of contact with the OHR as well as the US and UK Embassies.<sup>32</sup>

55. Following the adoption of a resolution by the United Nation's General Assembly designating 11 July as the "International Day of Reflection and Commemoration of the 1995 Genocide in Srebrenica", the government of the Republika Srpska announced that it would prepare a draft agreement on the "peaceful dissociation" for the Republika Srpska and the Federation of BiH. However, the extraordinary session of the parliament of RS scheduled on 5 July to examine this "dissociation" documents did not take place.

56. The Ambassadors of the Peace Implementation Council's Steering Board underscored the dangerous and destabilizing consequences of the attacks against the General Framework Agreement for Peace in Bosnia and Herzegovina and the constitutional and legal order of Bosnia and Herzegovina. Such attacks include both legislative and political acts which attempt to undermine the competencies of the state. The Steering Board reminds actors that the international community retains the necessary instruments to respond to these actions and is fully united in the need to protect the sovereignty, territorial integrity, and multiethnic character of the country.

### 3. Rule of law

57. Article I (2) of the Constitution establishes that BiH "shall be a democratic state, which shall operate under the rule of law". In its last resolution on the monitoring of obligations and commitments by Bosnia and Herzegovina, the Assembly was: "very concerned about the increasing disrespect for the rule of law in Bosnia and Herzegovina and urged the competent authorities to abide by decisions of the Constitutional Court and the State Court, which are final and binding."<sup>33</sup>

#### 3.1. The Constitutional Court

58. The functioning of the BiH Constitutional Court is facing serious challenges, mainly for political reasons. This situation is putting in jeopardy the respect for individual human rights in Bosnia and Herzegovina and solutions must be found without delay.

59. The Constitutional Court of Bosnia and Herzegovina is composed of nine members. Four are selected by the House of Representatives of FBiH and two by RSNA. The remaining three members are selected by the President of the European Court of Human Rights after consultation with the Presidency. The Constitution provides: "Judges shall be distinguished jurists of high moral standing. Any eligible voter so qualified may serve as a judge of the Constitutional Court. The judges selected by the President of the European Court of Human Rights shall not be citizens of Bosnia and Herzegovina or of any neighbouring state".<sup>34</sup>

60. Following the retirement of a judge in 2022, the RSNA has failed to appoint a new judge. In April 2023, the RSNA adopted conclusions in which it: "call[ed] on the judges of the Constitutional Court of BiH from among the Serbian people to resign from the position of judges of the Constitutional Court of BiH until the National Assembly of the Republika Srpska decides otherwise."<sup>35</sup> In January 2024, the second judge selected by the RS resigned. Therefore, the Constitutional Court has currently only seven serving judges, the four domestic judges appointed by the FBiH and the three "international" judges. The failure to appoint judges is part of a deliberate policy to impose the end of the participation of international judges as, according to the authorities of RS: "Constitutional Court's legitimacy is badly undermined by the presence of foreign judges, the court's lack of independence, and the foreign judges' political alliance with Bosniac judges to serve the agenda of the High Representative and the SDA."<sup>36</sup> On 27 June 2023, the RSNA adopted a law on the non-application of decisions of the Constitutional Court in RS (and on the non-publication of decisions of the High Representative). The High Representative invalidated this law.

61. The presence of foreign judges in domestic jurisdictions is not an exceptional feature. In fact, it is a widespread practice occurring in over 50 jurisdictions over the world.<sup>37</sup> In the case of Bosnia and Herzegovina,

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<sup>32</sup> [64th Report of the High Representative for Implementation of the Peace Agreement on BiH to the Secretary-General of the United Nations](#), paragraph 11.

<sup>33</sup> Resolution 2201 (2018).

<sup>34</sup> Article IV(1) of the Constitution.

<sup>35</sup> [Окончана Шеста посебна сједница Народне скупштине Републике Српске | НСПС \(narodnaskupstinars.net\)](#)

<sup>36</sup> Republika Srpska's 18<sup>th</sup> report to the UN Security Council, October 2017, para. 7.

<sup>37</sup> See: The Cambridge Handbook of Foreign Judges on Domestic Courts, Cambridge University Press, 2023; Rosalind Dixon & Vicki Jackson, "Hybrid Constitutional Courts: Foreign Judges on National Constitutional Courts", *Columbia Journal of Trans. Law*, 2019.

the presence of international judges was seen as a way to ensure the neutrality of the Constitutional Court in a context where deep ethnic divisions within the state were likely to be reflected in the Court, as evidenced by the provision barring nationals of neighbouring states. In this regard, the fact not to belong to any of the constituent peoples may be seen as a way to escape perceived conflict of interests. The proposal to introduce ethnic criteria in the decision process of the Constitutional Court proves that this precaution was not superfluous.<sup>38</sup>

62. The Constitution is also providing that: "(...) the Parliamentary Assembly may provide by law for a different method of selection of the three judges selected by the President of the European Court of Human Rights". Attempts to modify the law and Constitution in order to remove international judges from the Constitutional Court have been made but did not gather the required majority.

63. The two remaining vacancies prevent the Grand Chamber of the Court from operating and taking decisions. The Grand Chamber should be composed of six domestic judges with a quorum of at least 5 judges to decide on appellate cases falling under the appellate jurisdiction (mainly about protection of human rights). To overcome this, international judges have agreed to deliberate and decide the cases normally assigned to the Grand Chamber in the Plenary of the Court. However, this situation resulted in a serious increase in its backlog of cases (around 9,000 cases involving 10,000 applicants). This renders access to constitutional justice excessively lengthy, and risks violating Article 6 of the Convention while jeopardising the effectiveness and credibility of the judicial system. Under the European Convention on Human Rights, states are bound to undertake promptly the necessary legislative, organisational or other measures to avoid excessively lengthy judicial proceedings.

64. The President of the Constitutional Court has requested an Opinion of the Venice Commission on possible solutions to the deadlock. In its opinion published on 18 March 2024, the Venice Commission reminded that: "crippling the effectiveness of a constitutional court undermines all three basic principles of the Council of Europe: democracy – because of an absence of a central part of checks and balances; human rights – because access to the Constitutional Court could be slowed down to a level resulting in the denial of justice; and the rule of law – because the Constitutional Court, which is a central part of the judiciary in Bosnia and Herzegovina, would become ineffective. It is undeniable that the failure of the authorities to fulfil their constitutional obligations to keep the Constitutional Court of Bosnia and Herzegovina functioning violates the Constitution."<sup>39</sup>

65. The opinion of the Venice Commission is providing some solutions to allow for the functioning of the Constitutional Court should the parliaments of the entities fail to proceed to the nominations of judges. Such solutions are required to avoid a complete paralysis of the Court. However, the long-term solution requires the parliamentary assemblies of FBiH and RS to nominate the judges to the Court, which is a constitutional obligation.

66. Several draft laws on the composition of the Constitutional Court have been proposed. However, the composition of the Constitutional Court is determined by the constitution, therefore its modification would require a constitutional reform and cannot be adopted by law. Moreover, some of the proposals tend to impose that decisions of the Court would require a consensus of domestic judges based on ethnic representation. Adopting such a proposal would be contrary to the Convention: according to the Venice Commission: "a rule requiring that decisions of the BiH Constitutional Court would be valid only if at least one judge from each constituent people supported the decision would run counter to European standards. The specific situation in BiH cannot justify such a solution, which would contradict a number of constitutional principles and might create serious practical problems."<sup>40</sup> The Venice Commission restated in its 2024 opinion that: "strict ethnic requirements or quotas are not consistent with the distinctive role and responsibility of the Constitutional Court as a federal institution reflecting and serving the rule of law."<sup>41</sup>

67. Ensuring the proper functioning of the Constitutional Court, hence the protection of fundamental rights of the population under its jurisdiction, is an obligation for the state of Bosnia and Herzegovina. Solutions should be found to ensure that the Court comes back to its full capacity as soon as possible. Failure to act

<sup>38</sup> CDL-AD(2005)039, Opinion on proposed voting rules for the Constitutional Court of Bosnia and Herzegovina, paras. 10 and 24.

<sup>39</sup> CDL-AD(2024)002.

<sup>40</sup> Venice Commission, CDL-AD(2005)039, Opinion on proposed voting rules for the Constitutional Court of Bosnia and Herzegovina, para. 24.

<sup>41</sup> CDL-AD(2024)015.

from one or both of the entities should not impede the functioning of state-level Constitutional Court since, as the Assembly stated in Opinion 234 (2002) on Bosnia and Herzegovina's application for membership of the Council of Europe: "the state authorities of Bosnia and Herzegovina are responsible to the Council of Europe for ensuring that the entities take the measures necessary to comply with these commitments."

### **3.2. Situation of the judiciary**

68. The Constitution of Bosnia and Herzegovina is silent on the organisation of the judicial system. Each entity and the Brčko District have their own courts systems, therefore there are four separate judicial systems, with no functional links between them. The Constitution does not contain provisions on judicial independence, nor is it explicitly stated in the Law on Courts of BiH. The principle of the independence of courts is enshrined in the entities' constitutions and laws on courts, as well as in the statutory and regulatory framework of Brčko District.

69. Upon accession to the Council of Europe, Bosnia and Herzegovina committed "to continue the reforms aimed at the establishment of a professional and independent judicial and prosecution system as well as to continue facilitating the expeditious and fair review of judges and prosecutors presently in office, and to assist the Independent Judicial Commission;"<sup>42</sup> However, the respect for judicial independence is still a considerable challenge. Flaws in the independence and impartiality of the judiciary, notably through political interference and pressure on certain criminal cases, have been reported. The organisation of the judiciary at the level of entities highly exposed the judiciaries to pressure from political leaders.

70. According to the Group of States against corruption (GRECO): "the complexity of the court systems and threats to judicial independence are deeply affecting the efficiency of justice in Bosnia and Herzegovina and are fuelling negative perceptions of the judiciary. (...) The current variety of court arrangements and their complexity is inevitably wasteful of all the resources that are available: financial, judicial, administrative support and legislative drafting are just a few aspects where simplification would enable far more to be achieved within resources available." Furthermore, "Independence and efficiency of justice are also affected by lack of certainty about available resources and inefficiencies of the current budgetary processes contribute to this uncertainty. Budgetary sources are fragmented, with up to 14 institutions involved in its planning. At best this is inefficient and does not ensure that the available budget is targeted appropriately to meet needs equally across the system. At worst it may mask attempts by governments and parliaments to inappropriately control and interfere with the judicial process."<sup>43</sup>

71. In 2004, both entities agreed to consolidate the authority over the judiciaries through the High Judicial and Prosecutorial Council of BiH (HJPC), "that shall bear primary responsibility for the judiciary at all levels". The creation of a single body for the management of the judiciary was a landmark decision. The HJPC is a single self-management body for the judiciary on the whole territory. It is composed of 15 members with a four-year mandate (renewable once), acting in their personal capacity. 11 members represent various judicial and prosecutorial bodies, 4 are elected by other bodies (Council of Ministers, Parliament and Bar Associations). The main tasks of the HJPC are to shield the judiciary from political interference, ensure its independence, guarantee its professionalism and promote judicial reforms. The HJPC appoints and assesses judges and prosecutors and exercises disciplinary powers in respect of them. Through its by-laws applicable in all the four judicial systems, it contributes to the defragmentation and consistency of judicial policy.

72. The functioning of the HJPC has raised criticisms. The Venice Commission issued some recommendations on the matter in 2012, 2014 and 2021. In 2019, the Expert Report on the Rule of Law Issues in Bosnia and Herzegovina, issued by the European Rapporteur for the State of Justice, noted that "in the current BiH judicial order, the HJPC is indispensable. However, the HJPC needs serious reform and a radical change of behaviour" because: "over the last years, the HJPC has itself become part of the problem"<sup>44</sup>. In 2020, the European Commission's report on Bosnia and Herzegovina noted that "numerous shortcomings have become evident in the independence, accountability and efficiency of the HJPC, which have further significantly deteriorated trust in the judiciary"<sup>45</sup>

73. In response to these criticisms, the BiH authorities started to work on a new legal framework. A first set of amendments has been adopted, and a comprehensive reform is being prepared. The Venice Commission

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<sup>42</sup> PACE, opinion 234 (2002).

<sup>43</sup> Greco Eval IV Rep (2015) 2E, para. 83 et 84.

<sup>44</sup> Expert Report on the Rule of Law Issues in Bosnia and Herzegovina (Priebe Report), Brussels, 5 December 2019.

<sup>45</sup> SWD(2020)350 final, Commission Staff Working Document, Bosnia and Herzegovina 2020 Report Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 6 October 2020, p. 17.

was seized on the draft of this reform and issued its opinion on 25 June 2024<sup>46</sup>. This opinion is providing precious guidance on the composition and mandate of the HJPC, the appointment and security of tenure of judges and prosecutors, and the disciplinary liability of judges and prosecutors.

74. In particular, the appointment and promotion system of judges requires special attention. In its evaluation report on BiH<sup>47</sup>, the GRECO raised its superficiality, lack of transparency and vulnerability to personal and political links. The ethnicity criterion that is considered in appointments to judicial positions complicates the process and is widely recognised as taking precedence over professional competence in some appointment decisions.

75. The proposed reform of the High Judicial and Prosecutorial Council contains dispositions on the appointment procedure and eligibility criteria. The draft stipulates that the HJPC's mandate in respect of judicial appointments will be carried out in a manner respectful of gender equality and fair representation of the constituent peoples. In practice, the HJPC chooses to take ethnicity into account by way of transposing the share of different ethnicities in a district, based on the census of 1991, on the share of these ethnicities in a court. This very strict solution does not necessarily follow from the wording and purpose of the Constitution and undermines the quality of the justice system because too often the most qualified person is not selected. In its June 2024 opinion, the Venice Commission said that: "courts should reflect as much as possible the country's diversity in terms of ethnic, gender, linguistic, religious or other criteria, as this diversity would enhance the legitimacy of and public trust in the courts. However, judgeship should, as a matter of principle, first and foremost, be dependent on objective qualification criteria, clearly set in law. Judgeship should not be dependent on a person's affiliation to an ethnic community which would in fact lead in the first place to granting special rights for constituent peoples to the exclusion of minorities or citizens of Bosnia and Herzegovina (as well as the granting of special rights for certain constituent people on parts of the territory of Bosnia and Herzegovina to the exclusion of both other constituent people and others)."<sup>48</sup>

76. We invite the authorities to incorporate the improvements proposed by the Venice Commission in the draft law and proceed to an inclusive consultation process, giving enough time and opportunities to all relevant stakeholders. These reforms would contribute to improve the quality of the judiciary and the service to the citizens. As of today, civil justice proceedings are laborious, complex and formalistic and take an excessive amount of time. Administrative justice is not efficient in protecting the individual rights of citizens against decisions or the failure to act of public authorities. As for the criminal justice system, it is failing to combat serious crime and corruption. None of the four existing criminal justice jurisdictions is adequately functioning. Cooperation between state, entities/district and cantonal jurisdictions is extremely weak. The lack of coordination and cooperation among the participants of the criminal justice system inevitably creates conditions for serious dysfunctionality and lack of efficiency. The quality of many criminal investigations is unsatisfactory. In some cases, prosecutors do not prosecute even when there is evidence to do so. Failure to take obvious investigative steps has been observed, without due justification, particularly in cases dealing with high-level crime or involving 'high level persons'. During our meeting with members of the HJPC in Sarajevo, the low level of results from the prosecutors was raised. Indictments are too few, and too often end with acquittals.

77. The trust of the population in the judiciary is still worryingly low. According to a 2023 national survey<sup>49</sup>: "citizens still consider the BiH judiciary to be affected by high levels of corruption, a perception that worsened in most areas [compared to 2022]. More than two in five respondents (42%) think the court system is extremely corrupt. This perception increased in the past few years and is at an all-time high." 63% of respondents doubt the impartiality of judges and prosecutors and only a quarter of respondents consider that they perform their duties impartially and in accordance with the law. 70% believe that BiH judges and prosecutors were taking bribes.

### **3.3. Fight against corruption and serious crime**

78. There is a general perception that corruption is prevalent in the country. In the space of ten years (2012-2022), the corruption perception index published by Transparency international fell from 42 to 34. The citizens' opinion in BiH is confirming this assessment. The perceived prevalence of corruption in public sector employment is very high, with 66% of the population considering that corruption is "extremely present". More

<sup>46</sup> CDL-AD(2024)009, "Interim follow-up opinion to previous opinions on the High Judicial and Prosecutorial Council".

<sup>47</sup> Greco Eval IV Rep (2015) 2E, para. 94 et s.

<sup>48</sup> [CDL-AD\(2024\)009](#), paragraph 97.

<sup>49</sup> National Survey of citizen's perceptions in Bosnia and Herzegovina 2022, (MEASURE II), Final report, August 2023.

than half believe that public procurement, the judiciary and inspections involve extremely high levels of corruption.<sup>50</sup> 79% believe that the fight against corruption is ineffective and 87% believe that there is no political will to fight corruption. And 60% believe that citizens cannot do much in the fight against corruption, regardless how hard they try.

79. Upon accession to the Council of Europe, Bosnia and Herzegovina committed “to increase efforts to combat corruption within the judicial and prosecution system and the police, as well as in the administration;” Bosnia and Herzegovina had joined the enlarged agreement of the Group of States against Corruption (GRECO) even sooner, in 2000. Since then, it has been subject to four evaluation rounds focusing on different topics linked to the prevention and the fight against corruption. BiH initially had a positive track record in implementing GRECO recommendations: in the First Evaluation Round, 83.3% of the recommendations were ultimately fully implemented. However, in the Second Evaluation Round, only 43.7% of the recommendations were fully implemented and only 45.4% in the Third Evaluation Round, confirming a declining trend. As for the Fourth Evaluation Round – concerning members of parliament, judges and prosecutors – none of the recommendation has been fully implemented so far. The evaluation round is still ongoing and BiH is under a non-compliance procedure since September 2020.

80. In its evaluation report on the prevention of corruption and promotion of integrity in central governments (top executive functions) and law enforcement agencies, GRECO lamented the legal vacuum in terms of corruption prevention policies in Bosnia and Herzegovina.<sup>51</sup> According to the European Commission 2023 report: “there continues to be an alarmingly low number of final convictions in high-profile cases.”<sup>52</sup>

81. Since the formation of the new governmental coalition, some promising steps have been taken to remedy the situation. A marginal increase in high-profile corruption and money-laundering cases was observed in 2022 and the first half of 2023. A new law on the prevention of conflict of interests was adopted on 8 March 2024, a law on anti-money laundering and countering terrorism financing was adopted in February 2024. A draft law on personal data protection, precondition for entry into force of the Eurojust cooperation agreement, should be soon submitted to Parliament. A strategy on public procurement 2024-2028 has been finalised and is pending adoption by the Council of Ministers. In January 2024 the Court of Bosnia and Herzegovina confirmed on appeal the sentence in the *Novalić et al.* case related to public procurement fraud, including against the then-acting Prime Minister of the Federation entity, who was sentenced for abuse of office and forging of documents. This is a first final court ruling on high level corruption. On 18 June, the BiH Council of Ministers adopted a new Anti-corruption strategy and an Action plan covering the period 2024-2028. On 12 June, the Brcko District Assembly adopted in the first reading the Draft Law on the Office for Prevention and Coordination of Activities for Fight against Corruption. A new permanent parliamentary committee, the Anti-Corruption Committee was established in the House of Representatives and has been extremely active in a short period of time.

82. Examples from other member states of the Council of Europe show that when political will is strong and backed by popular support, corruption can be beaten and uprooted. The progress made possible by the amendments on transparency and integrity of elections is a necessary first step. The 2022-2025 Action Plan is aiming “to enhance the legal framework for the prevention of corruption with a particular focus on political party financing, assets declarations, verification of assets and income of public officials, ethics, integrity and conflict of interests.” This roadmap is promising and should bear results, provided political conditions are met.

#### 4. Human rights

83. The European Commission against Racism and Intolerance (ECRI) published on 25 June 2024 its 6th monitoring cycle report on Bosnia and Herzegovina. While highlighting some progress since the adoption of its previous report in 2016, ECRI emphasised once again the need for “a fundamental paradigm shift to overcome the deeply entrenched resentments, mistrust and hatred that are still too often characterising inter-ethnic relations in the country.” The report also contains recommendations regarding LGBTI equality, promotion of inter-ethnic/inter-religious dialogue.

84. In its fifth opinion, published on 25 June 2024 alongside comments from the authorities, the Council of Europe's Advisory Committee on the FCNM urged Bosnia and Herzegovina to address “alarming trends and persistent challenges” concerning the country's 17 registered national minorities.

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<sup>50</sup> MEASURE.

<sup>51</sup> [GrecoEval5Rep\(2022\)8](#).

<sup>52</sup> SWD(2023) 691, Bosnia and Herzegovina 2023 Report, p.32.

85. The size of this report does not allow for a full review of the respect of human rights in the country; we would just like to draw the attention of the Assembly to some issues which we consider especially relevant. We refer to the decisions of the ECHR on individual cases, and on the thematic reports from other Council of Europe institutions, monitoring mechanisms and expert advisory bodies.

#### **4.1. Implementation of the European Convention on Human Rights**

86. According to the Constitution: “The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.” The Constitutional Court has appellate jurisdiction over issues concerning whether a law is compatible with the European Convention for Human Rights, it is therefore paramount that its functionality is not impaired for political reasons.<sup>53</sup>

87. Apart from the notable exception of the *Sejdic and Finci* series of cases, the execution of ECtHR decisions by the authorities of Bosnia and Herzegovina is satisfactory. Out of the 165 cases transferred to the Committee of ministers for supervision, 81% have been closed. Regarding the pending cases, some major positive developments have occurred in 2023. In two pending cases (one for 13 years, the other for 8 years), the authorities of FBiH have prepared the draft legislation/amendments, which were approved by the Government of FBiH and introduced in Parliament. The authorities of FBiH have made other major advances in another group of cases dealing with excessive length of proceedings. Cooperation with the Council of Europe in solving these cases has been praised. These positive developments illustrate the new political impetus existing in the FBiH following the 2022 elections, and the possibility to have reforms adopted.

#### **4.2. Media and freedom of expression**

88. Continuing reforms in the field of media, in order to guarantee freedom of expression and the independence of journalists, is a specific accession commitment. In its resolution 2201 (2018), the Assembly called on the authorities of Bosnia and Herzegovina to adopt legislation aimed at ensuring transparency in the ownership of media outlets and called on the authorities of Bosnia-Herzegovina to “complete the establishment of a unified public service broadcasting system with State-level management, set up the corporation of public broadcasting services and adopt legislation ensuring permanent funding of the three public broadcasters.”

89. The media market in Bosnia and Herzegovina is fragmented, but real media pluralism is weak.<sup>54</sup> There is a large number of private media outlets but their excessive reliance on public financing makes pressures from vested interests possible. According to the Human Rights Commissioner: “The low level of trust in the media and of media literacy and the limited presence of critical and independent journalism make the region particularly vulnerable to disinformation (...) such disinformation aims to undermine public trust in democratic institutions, deepen polarisation and ethnic divides (...)”<sup>55</sup> ECRI’s assessment is that the media is still heavily instrumentalised by political elites who use hate speech. As a result, hate speech has become a common occurrence in the media. In its final report on the 2022 elections, OSCE/ODIHR concluded that: “the campaign coverage was significantly limited and provided the voters with only partial information, thus reducing their opportunity to make an informed choice.”<sup>56</sup> According to the 2023 World Press Freedom Index, in Bosnia and Herzegovina: “the media operate in a relatively favourable legal environment, but in an extremely unfavourable political and economic milieu. Journalists do not feel protected while doing their work. There are large differences in media freedom and the quality of journalism across the country.”

90. In this context, the existence of a trustworthy and reliable public broadcaster is crucial. However, the situation of the national public broadcaster *Radiotelevizija Bosne i Hercegovine* (BHRT) remains locked in a constant crisis. If the broadcaster were to collapse, Bosnia and Herzegovina would be left as the only EU candidate country without a functional public broadcaster. The impact on the media landscape and citizens’ access to information would be significant.

91. In 2018, the Assembly called on the authorities of Bosnia-Herzegovina to “complete the establishment of a unified public service broadcasting system with State-level management, set up the corporation of public broadcasting services and adopt legislation ensuring permanent funding of the three public broadcasters.” So far, failure to implement the 2005 Law on the public broadcasting system has allowed to compromise the

<sup>53</sup> See section 3.1 on Constitutional Court.

<sup>54</sup> For a clear and complete assessment of the situation of the media in BiH, refer to the report from Media Freedom Rapid Response “Bosnia and Herzegovina: Media freedom in survival mode”, 25 January 2024.

<sup>55</sup> Commissioner for Human Rights, report on past (...) p.65.

<sup>56</sup> OSCE/ODIHR, final report, p.21.

editorial independence of the public broadcasting system, further eroding trust in its ability to provide unbiased and impartial information. We take note of the fact that a working group has been established to draft a new law on the public broadcasting system that will hopefully bring a long-term solution to this issue.

92. Bosnia and Herzegovina used to have an advanced legal regime governing freedom of expression. An analysis of civil lawsuits on defamation showed that courts applied the standards set in the European Convention more consistently.<sup>57</sup> However, recent initiatives in both entities have caused concern.

93. Political pressure, intimidation and threats against journalists are serious concerns. The polarised political climate, constant verbal attacks and nationalist rhetoric have created a hostile environment for media freedom. In 2022, 31 attacks on journalists were registered by the regional network of journalists' organisations Safe Journalists. Of these cases, 29 were classified as threats and pressure on journalists and media and two were physical attacks on journalists. The trend in 2023 continued to be problematic. Only 25% of those cases have been investigated, according to the BH Journalists Association. Prosecution rates are low, contributing to the climate of impunity for attacks on journalists. The recent training provided to police officers to handle cases involving attacks on journalists is a positive development, it has yet to translate into more thorough investigations and convictions.

94. The Council of Europe is supporting action to improve the capacity of legal professionals on topics such as defamation, hate speech, the protection of whistle-blowers, and to interpret and implement Article 10 of the Convention. Support was also provided to strengthen the institutional and policy framework for regulation, self-regulation and co-regulation with the aim of improving the performance of and trust in the media. These efforts should help improve the implementation of the existing legislation. Nevertheless, the legal framework itself needs to be improved. The Assembly's call to adopt a legislation to ensure transparency in the ownership of the media outlets has yet to be addressed.

95. A law passed in July 2023 by the Republika Srpska Assembly made defamation a criminal offence. Defamation laws, like all restrictions, must be proportionate to the harm caused to the reputation and cannot go beyond what is necessary in the particular circumstances. This legislation may be used as a threat on journalists who could be dragged into long and costly proceedings, in order to stifle independent voices. In December 2023, 30 criminal investigations in defamation cases had already been opened in RS, including at least one against a blogger.

96. In the Sarajevo Canton, a draft bill envisages the imposition of sizable fines for disseminating 'false news' with application to both ordinary citizens and legal entities, including the media. If adopted, this proposal would grant unchecked powers to the police to assess the veracity of free expressions, including reporting by the media. The fear of prosecution could induce self-censorship on the part of journalists and restrict the space for a debate on issues of public interest.

97. The European Court of Human Rights made clear that unreasonably high damages for defamation claims can have a chilling effect on freedom of expression. Therefore, there must be adequate domestic safeguards so as to avoid disproportionate awards being granted. The Court has also stressed that States are required to create a favourable environment for participation in public debate by all, enabling everyone to express their opinions and ideas without fear. Member states have a positive obligation to secure the enjoyment of the rights enshrined in Article 10 of the Convention: not only must they refrain from any interference with the individual's freedom of expression, but they are also under a positive obligation to protect his or her right to freedom of expression from any infringement, including by private individuals.

#### **4.3. Hate speech and genocide denial**

98. Discriminatory language and hate speech is prevalent in BiH and has a dire impact on interethnic relations. The Council of Europe Commissioner for Human Rights has for example condemned provocations by hatemongers in Srebrenica, Višegrad and Bratunac in 2020, regretting the lack of reaction by local authorities. The OSCE mission in Bosnia and Herzegovina, in its hate monitor of March 2022, reported a sharp increase in the number of hate crimes on ethnic and religious grounds, having recorded 60 between January and March 2022 alone.

99. In 2024, ECRI confirmed that racist hate speech in Bosnia and Herzegovina still originates mainly from members of the three main ethnic groups (constituent peoples) and is directed against members of another one of these groups. In 2017, ECRI assessed that "hate speech continues to be frequently used by politicians

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<sup>57</sup> See: Dejan Lucka, [Analysis](#) of specific judgments relating to defamation in civil lawsuits in Bosnia and Herzegovina, with an overview of defamation criminalization in the Republika Srpska, BH Journalist Association, 2023.

in the run up to elections in order to keep rallying voters from their respective ethnic group around an ethno-nationalistic narrative. In this context, controversial references to war-time events are frequently made by politicians in order to rekindle ethnic resentments.<sup>58</sup>

100. ECRI recommended developing a comprehensive strategy to combat hate speech, that should include, inter alia: a proactive hate speech monitoring mechanism; an extension of the Central Electoral Commission's mandate to monitor the use of hate speech during the entire duration of election campaigns; and a stronger involvement of the authorities in initiating and leading anti-hate speech campaigns, including the promotion of condemnation and counter-speech by political representatives and officials.

101. A special aspect of hate speech is linked to the denial of genocide and war crimes committed during the Bosnian wars. In July 2021, amendments to the Criminal Code of Bosnia and Herzegovina introduced prison penalties for the incitement of violence and hatred and for: "publicly condon[ing], den[ying], grossly trivialis[ing] or try[ing] to justify a crime of genocide, crimes against humanity or a war crime [...] when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group". However, the then President of the Republika Srpska shortly after decreed that this law would not be enforced in the RS. The OHR emphasised that the Constitution of Bosnia and Herzegovina does not grant entity authorities the right to take such a decision.

102. No one has yet been sentenced under the new law, despite numerous instances of denial since its adoption. In the 2022 Srebrenica Genocide Denial Report published by the Srebrenica-Potočari Memorial Center, it was found that "denial of the Srebrenica genocide and glorification of war crimes and criminals remains ubiquitous in both Bosnia and Herzegovina and the region, and that the prevalence of these practices has in fact increased in comparison to the 2020-2021 reporting period."<sup>59</sup>

103. On 2 April 2024, in a public meeting in Banja Luka, the president of the Republika Srpska announced that the entity's assembly would adopt a report which "says that there was no genocide in the area of Srebrenica". On 18 April 2024, the RSNA adopted conclusions stating that: "The term genocide for Srebrenica is incorrect. That qualification cannot be accepted, and the RS National Assembly permanently rejects it".<sup>60</sup> Quoting the Commissioner for Human Rights: "That a genocide was committed in Srebrenica in July 1995 is not a matter of opinion, it is a historical fact, legally established by the International Criminal Tribunal for the former Yugoslavia, the International Court of Justice, and domestic courts."<sup>61</sup>

104. On 23 May 2024, the UN General Assembly adopted a resolution designating 11 July as the "International Day of Reflection and Commemoration of the 1995 Genocide in Srebrenica". The resolution is recalling that eight judgements of the International Tribunal for the Former Yugoslavia contain guilty verdicts for the crime of genocide against Bosnian Muslims committed at Srebrenica in 1995, as well as the judgment of the International Court of Justice of 26 February 2007 in which the ICJ determined that the acts committed in Srebrenica constituted acts of genocide. The resolution also reiterates that criminal accountability under international law for the crime of genocide is individualized and cannot be attributed to any ethnic, religious or other group or community as a whole. In the operative part, the resolution: "Condemns without reservation any denial of the Srebrenica genocide as a historical event, and urges Member States to preserve the established facts, including through their educational systems by developing appropriate programmes, also in remembrance, towards preventing denial and distortion, and occurrence of genocides in the future (...)"

#### 4.4. History teaching

105. The instrumentalization of conflicting narratives shows that reconciliation need proactive policies on the long term. In this regard, the problem of school segregation and history teaching require close attention.

106. In its 2024 report, ECRI wrote: "It is obvious that education is the key mechanism for overcoming prejudices, resentment and hatred in future generations and is thus essential for building a more tolerant and inclusive society. However, it appears that in Bosnia and Herzegovina the ethnic political elites continue to embrace a very different priority when it comes to education: namely ensuring that it remains a tool at their

<sup>58</sup> CRI(2017)2, ECRI REPORT ON BOSNIA AND HERZEGOVINA (fifth monitoring cycle), February 2017, p. 14.

<sup>59</sup> Srebrenica genocide denial report 2022, Srebrenica Memorial Center, p.6. [www.srebrenicamemorial.org](http://www.srebrenicamemorial.org)

<sup>60</sup> In a speech held on the same day in a rally against the adoption of the UN resolution on Srebrenica, the President of RS admitted that the operation of the RS army in Srebrenica in July 1995 was a mistake that left crime, and he expressed condolences on behalf of the RS to all the victims. But at the same time he emphasized that in his opinion, according to the definition of international law, it shouldn't be called genocide.

<sup>61</sup> [Statement](#) by the Commissioner for Human rights [10 July 2024].

disposal to reproduce rather exclusive identities (based on ethnicity, often coupled with the corresponding religion, i.e. Islam, Catholicism or Orthodox Christianity). In this context, education is used to resist the formation of broader common and shared civic identities and to preserve a state of mutual ethnic mistrust and defensiveness, in which members of the respective ethnic group are constantly prompted to consider their identity group leadership as a protector and guarantor of safety in what is perceived as a weak overall state structure with continuing ethnic rivalry and hostile group relations.”<sup>62</sup>

107. These findings confirm the conclusions of the 2022 election observation mission: “The largest parties in the Federation of Bosnia and Herzegovina, HDZ BiH and SDA, targeted their traditional electorates mainly along ethnic lines, stressing the need for security and protection. During the campaign, both parties frequently referred to past and current “wars”, divides, ethnicity based “dangers” and “attacks”.<sup>63</sup>

108. A study of the content of history textbooks concluded that: “History books often demonstrated a tendency to interpret the relations between ethnic groups in BiH as irremediably conflicting and focusing only on wars as the most characterizing events in the region.”<sup>64</sup> Today, according to a population survey, the key divisive narratives fall broadly into the narratives about the (recent or distant) past and about current issues. Themes surrounding the 1990s war are perceived as the primary sources of division between different ethnicities in BiH: which ethnic group started the war, its (aggressive/liberation/genocidal) character, whose losses and suffering were adequately recognized, and who committed war crimes versus heroism acts. And about half of respondents occasionally find it challenging to understand the war from the other ethnic groups’ perspectives. Divisive narratives are also taken from more distant history, such as disagreements about the Battle of Kosovo and the entire Ottoman era, as well as issues related to World War I and World War II. Even issues dating to medieval times are at times hotly disputed.<sup>65</sup>

109. In the long-term interest of Bosnia and Herzegovina and the whole region, we consider it crucial and urgent to establish a common core curriculum in history, without erasing differences in perceptions and experiences, but sharing them and allowing for all to understand the diversity of point of views. The Council of Europe has produced several norms on history teaching that are especially relevant in the context of Bosnia and Herzegovina. Recommendation CM/Rec(2011)6 on intercultural dialogue and the image of the other in history teaching is providing guidance on history teaching in post-conflict situations regarding methods and educational approach, history books and teaching material, media education, inter alia. In its report “Dealing with the Past for a Better Future, Achieving justice, peace and social cohesion in the region of the former Yugoslavia”<sup>66</sup>, the Commissioner for Human Rights is also proposing many possible reforms to improve history teaching in Bosnia and Herzegovina.

110. The Observatory on History Teaching in Europe could also provide a very useful assistance in this regard. The Council of Europe’s work on history education is founded on the assumption that understanding the past is essential for building a shared future, for fostering European democracies and for strengthening active democratic citizenship. History teaching that is based on multiperspectivity, historical thinking and on the values of the Council of Europe can enhance students’ critical thinking skills, democratic competences and empathy. The OHTe has the mission to promote quality education in order to enhance the understanding of democratic culture. It provides a clear picture of the state of history teaching in its member states, based on reliable data and facts on how history is taught, through general and thematic reports. We consider that Bosnia and Herzegovina would benefit from joining this agreement.

#### **4.5. School segregation**

111. On joining the Council of Europe, Bosnia and Herzegovina committed to “continue reform in the field of education and to eliminate all aspects of segregation and discrimination based upon ethnic origins”. In its opinion on Bosnia and Herzegovina’s application for membership, the Assembly stated that it considered education “to be one of the most critical factors for establishing democratic stability in Bosnia and Herzegovina”<sup>67</sup> Indeed, education policies have often been used “to shape or reinforce social divisions, intolerance, and inequality or to eliminate spaces for the development of a critical citizenship”.<sup>68</sup> In its last resolution on the honouring of obligations and commitments by Bosnia and Herzegovina, the Assembly called

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<sup>62</sup> ECRI, [Fourth report on Bosnia and Herzegovina](#), 25/06/2024, p. 18.

<sup>63</sup> OSCE/ODIHR, Final report, p. 14.

<sup>64</sup> 155. Torsti, Pilvi, *Divergent Stories, Converging Attitudes: A Study in the Presence of History, History Textbooks and the Thinking of Youth in Post-War Bosnia and Herzegovina*, 2003

<sup>65</sup> Monitoring and evaluation support Activity (MEASURE II), Reconciliation assessment in Bosnia and Herzegovina: Peaceful co-existence through social and behavioural change, May 2023

<sup>66</sup> <https://rm.coe.int/issue-paper-on-transitional-justice-dealing-with-the-past-for-a-better/1680ad5eb5>

<sup>67</sup> See PACE, Opinion 234(2002)

<sup>68</sup> UNICEF/ICTJ, Education and Transitional Justice – Opportunities and Challenges for Peacebuilding, 2015, p. 4

on BiH to “take as a matter of priority all necessary steps to implement their accession commitment to eliminate segregation and assimilation in education.”

112. Despite legal obligations and past commitments made to integrated education, public schools in Bosnia and Herzegovina are still not organised as multicultural, multilingual, open and inclusive institutions for all children. Ethnic segregation, based on a politicised notion of mother-tongue education, persists. In 2024, there are still more than 50 cases of “two schools under one roof”, in which children are segregated based on their ethnicity. The possibility of establishing integrated education has been shown by the example of the autonomous Brčko District.

113. In its 2024 report, “ECRI reiterates its recommendation, as a matter of priority, to end all forms of discrimination in education, including the segregation in “two schools under one roof” in cantons of the Federation of Bosnia and Herzegovina and non-inclusive school environments in the Republika Srpska.”