

Bosnia and Herzegovina: A Success Story for the Independent Model

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The signing of the General Framework Agreement for Peace (GFAP, or Dayton Accords) in Paris on 14 December 1995 put an end to four years of civil war in the territory of the former Federal Yugoslav Republic of Bosnia and Herzegovina. The GFAP recognizes Bosnia and Herzegovina (BiH) as a sovereign parliamentary state made up of two entities, the Federation of Bosnia and Herzegovina and the Republika Srpska. Annex III of the GFAP mandated the Organization for Security and Co-operation in Europe (OSCE) to organize and conduct the 1996 general elections and establish an independent Provisional Election Commission (PEC). The PEC was established as an autonomous body including seven national commissioners, but the final decision-making powers rested entirely in the hands of the head of the OSCE Mission to BiH in his capacity as chair of the PEC. The PEC, authorized by the GFAP to operate on the basis of provisional 'rules and regulations', administered the first six elections that took place in the country up to 2000.

The Legislative Framework

The Election Law adopted by the Parliament on 23 August 2001 finally brought the electoral legislation of BiH under the country's own domestic law. However, the unique and transitional legal framework of BiH is still regulated by a supranational structure which has at its peak the GFAP, of which the BiH constitution is an integral part (annex IV of the GFAP). Under this structure, the ultimate authority remains with the international community, and in particular with the high representative, the international figure appointed to monitor, coordinate and facilitate the implementation of the civilian aspects of the GFAP. The adoption of the Election Law of BiH concluded a long and troubled four-year process overseen by the Office of the High Representative (OHR) and the OSCE. Remarkably, it was the first crucial piece of legislation adopted by the BiH Parliament through its normal procedures and not imposed by the high representative. It provided for the establishment of an independent central EMB, and in November 2001 the first Election Commission (EC) was appointed.

The Election Law provides for all the necessary elements for democratic elections, although the electoral system it establishes is highly complex. Five very different systems of representation are used for the five institutional and administrative levels of the country (this includes Brcko

where a special regime, under the Republic of Bosnia and Herzegovina, is in place) and specific quotas are introduced to ensure appropriate representation of all ethnic groups in all state and entity institutions.

Institutional Structure

The EC is composed of seven members, with two representatives for each of the three constituent peoples (Bosniacs, Croats and Serbs) and one representative of the 'Others'. The members of the EC are appointed by the Parliament for a five-year mandate, renewable for a second term, and the chair rotates among its members every 15 months. The EC is serviced by a Secretariat, headed by a secretary general who is the chief executive officer. It comprises six divisions, and has a total of around 40 permanent staff. After the appointment of the EC, the OSCE transferred its most experienced national staff to the Secretariat of the EC. From the beginning of 2003, all EC staff came under the national payroll.

The Election Law also established an Election Complaints and Appeals Council (ECAC), which has powers to adjudicate on disputes over violations of campaign rules and campaign financing irregularities. It consists of five members – one representative of each of the three constituent ethnic groups and the 'Others', and one member of the EC. The EC reviews all ECAC decisions and the EC Secretariat supports its work.

At the level of the two entities that make up the Bosnian state, two election commissions have recently been established. In addition, within the Federation of Bosnia and Herzegovina, each canton administration appoints its own election commission. However, the role of these intermediary commissions remains rather marginal and is essentially a monitoring one.

Finally, the municipal election commissions (MECs) have the functions of organizing electoral activities, including voter registration, within their respective municipalities.

Powers and Functions

The EC is vested with the power to issue regulations on all aspects of the electoral process, to maintain and update the central electoral register, to register parties and candidates, and to implement all levels of elections from the national to the municipal. More importantly, the EC has the power to coordinate, oversee and regulate the activities of all other election commissions provided for in the complex political and institutional set-up of BiH. The EC has proved so far to be a truly independent body, and has gained 'on the ground' a higher authority than originally envisaged.

The EC is also empowered to audit political party finances well beyond the election campaign periods, and has been given vast powers to investigate public officials, sanction them and remove them from their elected or appointed positions when a conflict of interest is proved.

Financing

The EC is financed by the national, entity, cantonal and municipal budgets. Their respective shares vary according to the type of election to be held. There are no clear provisions on how the disbursement mechanisms should function, and this has been a source of continuous disagreement and friction. To date, full funding for the EC has come only after strong pressure

from the international supervisors of BiH. Given the recent history of international support for elections, there is still a lack of appreciation, especially at the municipal level, that elections have now become a completely internal matter that must be funded by the domestic authorities.

Accountability

The EC is accountable to the Parliament of BiH, to which it submits an annual report of its activities. Its tendering, procurement and disbursement procedures have been established in compliance with the national legislation. The State Audit Commission audits the EC's expenditure regularly.

The Professionalism of Electoral Officers

A successful OSCE programme for the relocation of its national electoral staff to the EC ensured the rapid and effective transfer of knowledge that allowed the smooth running of the 2002 elections. However, the lack of appropriate transitional employment policies and rules caused the departure of many experienced staff in 2005. The recruitment and training procedures set out for the EC by the BiH Agency for Civil Service have proved so far to be too cumbersome and obsolete, and do not guarantee the conservation of the necessary levels of professionalism.

At the municipal level, some serious problems remain in ensuring that MEC members are properly qualified and sufficiently independent.

Relations with the Media

The EC enjoys very good relations with the media. Its sessions are always open to the media and observers, and are regularly followed by press releases. The Commission Regulatory Agency (CRA), the body that regulates the behaviour of the media in the country, has jurisdiction over all violations of the election law by the media, but the EC has the power to issue regulations on media coverage of political actors during the election period. The two agencies hold regular and transparent coordination meetings.

Relations with Other Institutions and Agencies

The creation of an independent and sustainable EC was a lengthy and complicated operation engineered by the international supervisors of BiH. The perception of the EC being an 'international' creation, together with its need to become operational immediately to run its first elections less than a year after it was set up, generated some initial criticism and boycotting in minor ways by other state agencies and ministerial offices. The EC faced the challenge with great energy and enthusiasm, and managed quickly to garner the respect of all stakeholders, especially the political parties.

Electoral Reform Management

The EC does not have the power to amend the Election Law, but it can recommend and draft amendments for parliamentary review and promote the setting up of ad hoc working groups on electoral reform with the government. While certain political actors still remain opposed to many of the complex formulae used to translate votes into seats, and are advocating changes, none of them has so far been able to propose new systems of representation that could be accepted by all the forces present in the Parliament and give equal protection to the interests of all the ethnic groups.

Sustainability

The first great achievement of the EC was to bring down the costs of elections to very affordable figures which are in line with those of other democracies of similar dimensions. However, a serious lack of appreciation remained on the part of many of the country's institutions regarding the challenges connected with the organization of elections in general, and in particular of the extraordinary complexity of the tasks the EC faces. This is reflected in a persisting reluctance to meet the EC's funding and procurement needs in a timely fashion.

The EC has already firmly established itself as a central asset in the BiH system, and is viewed as an example of how a central and multi-ethnic institution could impartially serve the different groups and interests present in the country. However, it is still a very young institution requiring international support to preserve its independence and impartiality.

The major sustainability problem facing the EC is the hiring and retaining of experienced and qualified personnel. Many of the procedures put in place by the EC rely in practice on sophisticated IT solutions. While this was a necessary move to rationalize operations and reduce costs, they require a very high level of specific technical expertise that is not found in any other sector of the BiH public administration. To guarantee the recruitment and retention of highly qualified and neutral IT professionals, the EC needs to be able to choose more freely the professional profiles that best meet its IT requirements and adopt competitive salary scales. Otherwise, the long-desired absorption of the EC within the BiH institutional framework might cause the lowering of the very professional standards that made the EC an example to be followed.

The second important issue of concern is the relationship between the EC and the MECs. The professionalization and depoliticization of most MECs has not been achieved. This might be remedied if the MECs were brought clearly under the EC chain of command, with the possibility for the EC to dismiss incompetent and biased MEC members. Under this framework, the other intermediate election commissions would continue to play a supervisory and guarantee role.