



# **Democracy Assessment in Bosnia and Herzegovina**

Sarajevo, 2006.

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Democracy is probably one of the most frequently used words in both political and general public discourse in Bosnia and Herzegovina. As if it is an explanation in its own right, a justification, or a description of totally different phenomena and processes.

When we speak about democracy, do we have in mind a society where the same rights apply to all, where government policies depend on the needs and the will of the electorate, where the right to participate in decision-making processes is not merely a piece of paper, where the public not only has, but also exercises the right to full information on public affairs? Or, do we, perhaps, refer to the process of persuasion, where under the watchful eye of international institutions, political elites agree, sooner or later, to intervene in terms of changing the form, while keeping the substance more or less the same? Does it seem to us that the aim of numerous reforms is, first and foremost, to meet the requirements for joining this or that integration process, rather than an expression of the need for a better, fairer system?

Unfortunately, no guarantee of an automatic and certain transformation of views, values, awareness and political culture comes from the transformation of political institutions and changes of legislation. Even Mahatma Gandhi warned that “the spirit of democracy cannot be imposed from the outside”.

It has been long enough since Bosnia and Herzegovina adopted the form of representative democracy for us to have the right to ask how far have we gone from this minimum requirement, and how much of the “democratic spirit” has truly come to life in this area in the meantime, despite all our specific features, starting from the institution of the High Representative onwards.

With this in mind, the Open Society Fund BiH initiated the project titled “Democracy Assessment in Bosnia and Herzegovina” and its results are presented in this publication.

Our assessment was based on the methodology developed by *International IDEA*, whose primary quality is in the message that democracy is not merely a procedure, but rather a content of clear values.

More than one hundred and twenty different national experts took part in the assessment process in different ways. We wish to thank them all for the time and effort they invested in it. We hope that this assessment will generate among the public the same kind of interest in issues of our democratic present and future, as the case was with the authors and numerous collaborators in the project.

Dobriša Govedarica  
Executive Director  
Open Society Fund BiH

## **Democracy Assessment Methodology<sup>1</sup>**

### **Introduction**

Democracy assessment methodology used in this study was developed within the “State of Democracy” project of the *International Institute for Democracy and Electoral Assistance - IDEA*.<sup>2</sup> Its roots are in the methodology developed for the purpose of democracy assessment in the United Kingdom.<sup>3</sup>

IDEA tested this methodology in eight countries (Bangladesh, El Salvador, Italy, Kenya, Malawi, New Zealand, Peru, and South Korea)<sup>4</sup> in order to test its flexibility and universal applicability. The assessment was subsequently conducted in Australia, Ireland, the Philippines, and several states in Africa.

### **Why should a democracy assessment be conducted?**

As democracy spread across the world towards the end of the last century, a need was identified to assess to what extent were those democracies successful. What key problems do new democracies face? Can some aspects of the democratic process be introduced and developed more easily than others, and if so, which ones? What are the specific forms of democratic development in individual countries? All these questions become even more relevant in light of the usual perception of the electorate - democratic systems have not met the expectations by far, and practical changes, though appropriate, are not proportional to the global triumph of democratic norms.

A similar sense of disappointment in the political process is prevalent in “old” democracies as well, as evident in the decreasing voter turn-out at elections, decreasing party membership, and some other indicators. Government often seem more concerned with presentation than implementation, and they are often alienated from everyday concerns of their citizens. In many countries, people have started to feel that decisions that the quality of their everyday life is dependant on are no longer within the competence of their elected governments, but rather that they have moved outside the borders of their nation-state, into the hands of international organisations and transnational companies, or have become dependant on imperatives of globalisation and international markets.

The idea of a democracy assessment involves a systematic assessment by its own citizens of a country’s political life in order to answer the following questions: How democratic is it in practice? What areas are satisfactory from a democratic point of view, and which ones should be a cause for concern? How far have we progressed, and what remains yet to be done? How can we improve on what we have already achieved? Such an assessment can serve a number of purposes. From the point of view of a citizen of the country, it can:

- Serve to raise public consciousness about what democracy involves, and initiate a public debate on what standards of implementation the citizens should expect from its government;
- provide systematic evidence substantiating the citizens’ concerns on how the government functions;

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<sup>1</sup> The aim of this section is to present basic elements of the methodology applied and is, as such, a compilation of excerpts from *International IDEA Handbook on Democracy Assessment* by David Beetham, Sarah Bracking, Iain Kearton i Stuart Weir, Kluwer Law International, 2002, as well as texts published at [www.idea.int](http://www.idea.int) and [www.democraticaudit.com](http://www.democraticaudit.com)

<sup>2</sup> See more at [www.idea.int](http://www.idea.int)

<sup>3</sup> See more at [www.democraticaudit.com](http://www.democraticaudit.com)

<sup>4</sup> Beetham, David *et al.*, *The State of Democracy: Democracy Assessments in Eight Nations Around the World*, International IDEA/Kluwer Law International, 2002.

- contribute to public debate about ongoing reform, and help to identify priorities for a reform programme;
- provide an instrument for assessing how effectively reforms are working out in practice.

In all these ways a democracy assessment can, when published and disseminated, make a contribution to the democratic advancement of the country, be it a developed, developing, or transitional democracy.

The general framework and methodology developed by IDEA generated considerable interest, due to several specific features:

- *clarity of principles* – this method provides a systematic identification of institutional and criteria for assessment, starting from basic democratic principles and values;
- *comprehensiveness* – the assessment framework provides a comprehensive overview of key features of democracy, initiating at the same time a differentiated assessment of strengths and weaknesses in each area, rather than reducing them to a single conclusion or numeric “result”;
- *flexibility of assessment* – within the general assessment framework, in a given country, the assessors can set their own standards and comparators to assess development or lack thereof, and select relevant indicators on the basis of the specific situation their country is in;
- *the assessment process is that of a country* – the basic assumption is that the right people for a democracy assessment of a country are its own citizens, rather than foreigners judging it; such an assessment should be inclusive and allow for a wider public debate;
- *universal application* – democracies old and new can and should be subjected to a similar framework and method of assessment.

### **Democratic principles and values**

Democracy assessment methodology starts from an assumption that:

- popular control over decision-making and decision-makers, and
  - equality of citizens in effecting such control
- are the basic principles of democracy.

If those principles are embodied in the system of state governance, it may be called “democratic”. These are the principles that democrats of all times and parts of the world have fought for: to make popular control public decision-making both more effective and more inclusive; to eliminate the elite monopoly over decision-making and its benefits; and to overcome obstacles such as sex, ethnic background, religion, language, class, wealth, etc. and to reach equal enjoyment of civic rights.

*Democracy is thus not a case of all-or-nothing, but rather a matter of degree - to what degree can the citizens control public policy and policy makers, enjoy equal treatment by them, and express their opinion equally.*

In practice, these two principles are attained through the following set of values:

- *participation* – without citizen participation in the political process, and without developed agencies and resources for participation, the principle of popular control over decision-making cannot be realised;

- *authorisation* – the starting point of participation is the authorisation of public officials through free and fair elections;
- *representation* – if there is equality of different groups of citizens, then public institutions will also be representative of the population as a whole;
- *accountability* – if elected officials are to act as representatives of the people (and they should) rather than its masters, then accountability to the public, the parliament and the judiciary, is a primary requirement;
- *transparency* – without full insight into the work of elected officials, the accountability requirement cannot be met;
- *responsiveness* – accessibility and sensitivity of the government to public needs includes the existence of systemic procedures for consultation with public opinion and interest groups prior to legislative or regulatory activity;
- *solidarity* – the principle of equality is understood within the framework of all these values, but its primary confirmation is in the solidarity that citizens demonstrate towards different social groups at home and abroad.

Institutions of representative government draw their democratic character from these values, and in return, they can be used to assess how democratic they are in practice.

<b>Democratic values</b>	<b>Requirements</b>	<b>Institutional means of realisation</b>
<b>Participation</b>	<ul style="list-style-type: none"> <li>• right to participate</li> <li>• capacities/resources to participate</li> <li>• agencies for participation</li> <li>• participatory culture</li> </ul>	<ul style="list-style-type: none"> <li>• civil and political rights system</li> <li>• economic and social rights</li> <li>• elections, parties, NGOs</li> <li>• education for citizenship</li> </ul>
<b>Authorisation</b>	<ul style="list-style-type: none"> <li>• validation of constitution</li> <li>• choice of office holders</li> <li>• control of elected over non-elected executive personnel</li> </ul>	<ul style="list-style-type: none"> <li>• referenda</li> <li>• free and fair elections</li> <li>• systems of subordination to elected officials</li> </ul>
<b>Representation</b>	<ul style="list-style-type: none"> <li>• legislature representative of main political currents</li> <li>• all public institutions representative of social composition of the electorate</li> </ul>	<ul style="list-style-type: none"> <li>• electoral and party system</li> <li>• anti-discrimination laws</li> <li>• affirmative action policies</li> </ul>
<b>Accountability</b>	<ul style="list-style-type: none"> <li>• clear lines of accountability, legal, financial, political, to ensure effective and honest performance</li> <li>• integrity of civil service and the judiciary</li> </ul>	<ul style="list-style-type: none"> <li>• rule of law, separation of powers</li> <li>• independent auditing process</li> <li>• legally enforceable standards</li> <li>• strong legislative scrutiny</li> </ul>
<b>Transparency</b>	<ul style="list-style-type: none"> <li>• government open to legislative and public scrutiny</li> </ul>	<ul style="list-style-type: none"> <li>• freedom of information laws</li> <li>• independent media</li> </ul>



<b>Democratic values</b>	<b>Requirements</b>	<b>Institutional means of realisation</b>
<b>Responsiveness</b>	<ul style="list-style-type: none"> <li>• accessibility of government to electors and different sections of public opinion in policy formation, implementation and service delivery</li> </ul>	<ul style="list-style-type: none"> <li>• systematic and open procedures of public consultation</li> <li>• effective legal redress</li> <li>• local government close to the people</li> </ul>
<b>Solidarity</b>	<ul style="list-style-type: none"> <li>• tolerance of diversity at home</li> <li>• support for democratic governments and popular democratic struggles abroad</li> </ul>	<ul style="list-style-type: none"> <li>• civic and human rights education</li> <li>• international human rights law</li> <li>• UN and other agencies</li> <li>• International NGOs</li> </ul>

### **Assessment framework**

The assessment framework comprises 14 sections grouped into three pillars of democracy: citizenship, law and rights; representative and accountable government; civil society and political participation; and international aspects of democracy. Each section is covered by a set of assessment criteria presented in form of questions. All the questions share three features: they are presented in a comparative form, they cover different aspects of the given area and indicate the desired state, i.e. they contain in them the democratic values to strive towards.

Responses are to include an analysis of the legal framework, an analysis of implementation of laws, as well as negative indicators influencing or possibly influencing the given area. At that, the analysis uses different secondary sources, as well as international standards.

### **Citizenship, Law and Rights**

#### **1. Nationhood and citizenship**

Democracy as the rule of the people presupposes an agreement on who “the people” are. Such an agreement must differentiate between those who enjoy the rights of nationals and aliens.

Key provisions on citizenship must contain an aspect of external exclusion. At the same time, democratic principles require citizenship to be internally inclusive. That is, there should be mutual respect between different communities or identities making up a people, as well as effective and equal rights for all.

The way in which a country deals with possible tensions between the requirements of equal citizenship and particularities of different communities, and between internal inclusion and external exclusion, is an important indicator of the quality of its democracy. This is particularly so with immigration procedures, asylum rules and procedures for acquiring citizenship - all subject to intensive debate across western Europe. Procedures for resolving state border disagreements and disagreements over constitutional arrangements are also of democratic values.

#### *Research questions:*

- 1.1. How inclusive is the political nation and state citizenship of all who live within the territory?
- 1.2. How far are cultural differences acknowledged, and how well are minorities protected?

- 1.3. How much consensus is there on state boundaries and constitutional arrangements?
- 1.4. How far do constitutional and political arrangements enable major societal divisions to be moderated or reconciled?
- 1.5. How impartial and inclusive are the procedures for amending the constitution?
- 1.6. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

## **2. The rule of law and access to justice**

The idea of the rule of law has existed for a long time and it precedes the appearance of democracy. The law, rather than arbitrary will of certain people, in or outside the government, should rule the society. Features of the rule of law are:

- No one may be above the law, irrespective of their position or social standing, and everyone must be equal before law;
- All public officials are subject to law and must act within the limits of their legally prescribed duties, powers and procedures;
- Adoption of laws in the parliament must be in compliance with constitutionally defined procedures and restrictions;
- The judiciary must be institutionally and personally independent from the executive and the legislative powers, free to interpret and apply the law with no fear from outside influences;
- All laws must be precise, and their provisions and sanctions must be foreseeable;
- No one may be punished without a clear charge and a fair hearing before a valid court.

These ideas are the cornerstone of democratic government. However, in modern democracy, citizens expect from the “rule of law” more than what is entailed by this traditional meaning: that, for example, the police should apply the law effectively and fairly; that no one may be deprived the protection they are entitled to by civil or criminal legislation just because they cannot afford the cost, or due to serious delays in administration of justice.

### *Research questions:*

- 2.1. How far is the rule of law operative throughout the territory?
- 2.2. To what extent are all public officials subject to the rule of law and to transparent rules in the performance of their functions?
- 2.3. How independent are the courts and the judiciary from the executive, and how free are they from all kinds of interference?
- 2.4. How equal and secure is the access of citizens to justice, to due process and to redress in the event of maladministration?
- 2.5. How far do the criminal justice and penal systems observe due rules of impartial and equitable treatment in their operations?
- 2.6. How much confidence do people have in the legal system to deliver fair and effective justice?
- 2.7. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

### **3. Civil and political rights**

Democracy cannot function without effective civil and political rights. Citizens must have the right to associate and assemble freely, to discuss their problems and needs, their interests and possible solutions. Citizens must have the right to enjoy their opinions freely, and they must have the right of access to genuine information from the government and other independent sources. Open government and free media are the necessary pillars of these rights.

Moreover, citizens must be equal in the enjoyment of these rights, irrespective of their sex, race, religion, ethnic background, sexual orientation, economic or other status. All types of minorities must feel safe in their freedom to use their own language and practice their own religion and culture. Otherwise, there can be no political equality guaranteeing for all segments of society the possibility to express their own needs and opinions.

Finally, physical safety of an individual is the basis of enjoyment of all other rights.

#### *Research questions:*

- 3.1. How free are all people from physical violation of their person, and from fear of it?
- 3.2. How effective and equal is the protection of the freedoms of movement, expression, association and assembly?
- 3.3. How secure is the freedom for all to practise their own religion, language or culture?
- 3.4. How free from harassment and intimidation are individuals and groups working to improve human rights?
- 3.5. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

### **4. Economic and social rights**

Economic and social rights are relevant for a democracy assessment for several reasons. Most people assess the value of a democratic government on the basis of its ability to secure their financial as well as physical safety. Without personal and economic empowerment, enabled through access to health, education and economic protection, many civil and political rights cannot be realised effectively - starting from the knowledge and understanding of one's right to the right to vote, right to access to justice, enjoyment of personal and political freedoms, etc. Economic and social exclusion is not only damaging for those directly affected by it, but it also generates consequences affecting directly the quality of public life of all, through general insecurity accompanied by increased crime levels, loss of social solidarity, and expansion of hatred, which creates fertile ground for radical political movements.

#### *Research questions:*

- 4.1. How far is access to work or social security available to all, without discrimination?
- 4.2. How effectively are the basic necessities of life guaranteed, including adequate food, shelter and clean water?
- 4.3. To what extent is the health of the population protected, in all spheres and stages of life?
- 4.4. How extensive and inclusive is the right to education, including education in the rights and responsibilities of citizenship?

- 4.5. How free are trade unions and other work-related associations to organise and represent their members' interests?
- 4.6. How rigorous and transparent are the rules on corporate governance, and how effectively are corporations regulated in the public interest?
- 4.7. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

## **Representative and Accountable Government**

### **5. Free and fair elections**

Free, fair and regular elections are at the very heart of representative democracy. They are the main device for realisation principles of popular control and political equality. The possibility for citizens to maintain or reject their elected representatives and political parties at regular elections is, in fact, *the principle of popular control over public decision-making and decision-makers* in the true sense of the words.

#### *Research questions:*

- 5.1. How far is appointment to governmental and legislative office determined by popular competitive election, and how frequently do elections lead to change in the government parties or personnel?
- 5.2. How inclusive and accessible for all citizens are the registration and voting procedures, how independent are they of government and party control, and how free from intimidation and abuse?
- 5.3. How fair are the procedures for the registration of candidates and parties, and how far is there fair access for them to the media and other means of communication with the voters?
- 5.4. How effective a range of choice does the electoral and party system allow the voters, how equally do their votes count, and how closely does the composition of the legislature and the selection of the executive reflect the choices they make?
- 5.5. How far does the legislature reflect the social composition of the electorate?
- 5.6. What portion of the electorate votes, and how far are the election results accepted by all political forces in the country and outside?
- 5.7. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

### **6. Democratic role of political parties**

Political parties are among the least popular institutions of public life and their membership is generally in permanent decline. Still, if parties were not there, we would be forced to re-invent them. In a large society, people cannot exercise major public influence as individuals, but they can when associated with others. Political parties bring together those who share similar opinions and interest, for the purpose of conducting an election campaign for political office and influence. In doing so, they perform several functions necessary for a representative democracy. They help the electorate by simplifying the selection for a forthcoming election, by offering general political positions and programmes, but also by providing the culprit in case of a failed policy. Political parties give the government rather stable followers in parliament, who will allow them to realise their programmes. They give politically active citizens an opportunity to be included in public affairs, they are a tool of political education and an agent for effecting influence on public policies.

However, their positive features do have another side. Simplification of election choice may lead easily to a loss of true pluralism, as important opinions are marginalised and new parties have a hard time gaining ground. Such loss of pluralism may be even greater if the cost of election is high and if parties are tempted to subordinate themselves to interests of wealthy donors. A negative side of safe parliamentary followers is that party loyalty takes advantage over independent thinking, even when there is a clear understanding that government policy is wrong.

*Research questions:*

- 6.1. How freely are parties able to form and recruit members, engage with the public and campaign for office?
- 6.2. How effective is the party system in forming and sustaining government in office?
- 6.3. How free are opposition or non-governing parties to organise within the legislature, and how effectively do they contribute to government accountability?
- 6.4. How fair and effective are the rules governing party discipline in the legislature?
- 6.5. How far are parties effective membership organisations, and how far are members able to influence party policy and candidate selection?
- 6.6. How far does the system of party financing prevent the subordination of parties to special interests?
- 6.7. To what extent does support for parties cross ethnic, religious and linguistic divisions?
- 6.8. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

*7. Government effectiveness and accountability*

Two goals - accountability and effectiveness - are the two sides of a democratic government - and the reason to examine them together. A government must be organised and must have the resources to effect (or at least start to) the promises made in the election promises of the party or parties making up the government, and to act in general public interest. It is equally important for the government to be accountable: accountable between elections as well as at elections. Accountability is of vital importance for satisfying the basic democratic principle of popular control. This means that government, ministers and public servants are obliged to “be held to account”, directly or indirectly, by the citizens and the media, their representatives and watch-dog organisations, as well as the auditors, for their work and conduct. Citizens are then in the position to judge not only how well the government performs, but also how honest it is. For a government to be effective, it must be accountable. Policies and decisions made are better when they are transparent and subject to scrutiny through the legislature, the media, interest groups, etc.

*Research questions:*

- 7.1 How far is the elected government able to influence or control those matters that are important to the lives of its people, and how well is it formed, organised and resourced to do so?
- 7.2 How much public confidence is there in the effectiveness of government and its political leadership?
- 7.3 How effective and open to scrutiny is the control exercised by elected leaders and their ministers over their administrative staff and other executive agencies?
- 7.4 How extensive and effective are the powers of the legislature to initiate, scrutinise and amend legislation?

- 7.5 How extensive and effective are the powers of the legislature to scrutinise the executive and hold it to account?
- 7.6 How rigorous are the procedures for approval and supervision of taxation and public expenditure?
- 7.7 How comprehensive and effective is legislation giving citizens the right of access to government information?
- 7.8. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

### **8. Civilian control of the military and police**

The first duty of a state is to defend its territory from aggression and any other external danger, and to maintain law and order within its borders, so that citizens are protected as much as possible from physical danger and criminal activity. A state must normally have armed forces to prevent potential enemies and organised terrorism from abroad; it must have security and intelligence service, in order to monitor and combat potential attackers, terrorist, criminals and other threats from within and from the outside; and it must have police forces to maintain order and investigate crimes. Law enforcement forces and services are of vital importance for the wellbeing of a country and its citizens. It is, however, equally important for democracy to maintain them under strict civilian control and supervisions.

#### *Research questions:*

- 8.1. How effective is civilian control over the armed forces, and how free is political life from military involvement?
- 8.2. How publicly accountable are the police and security services for their activities?
- 8.3. How far does the composition of the army, police and security services reflect the social composition of society at large?
- 8.4. How free is the country from the operation of paramilitary units, private armies, warlordism and criminal mafias?
- 8.5. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

### **9. Minimising corruption**

Corruption, defined as abuse of public service for private, corporate or personal gain, or for the benefit of any public servant or his/her associates, is particularly damaging for democracy. It undermines the relationship of trust between citizens and their elected government. The purpose of democratic government is to serve public interest, not private or business interests of public servants, and confidence in the government may erode easily if there is a steady doubt that public servants abuse their position, paid for by the taxpayers, to advance their own financial interests.

However, it is difficult to give a clear definition of the line of what is denoted as “corruption”. Corruption covers a series of offences, usually financial: clandestine support for corporate interests in government decision-making; acceptance of bribes; unlawful party financing; different forms of nepotism; conflicts of financial interests; privileged access to ministers and other officials; and general abuse of office.



*Research questions:*

- 9.1. How effective is the separation of public office, elected and unelected, from party advantage and the personal business and family interests of office holders?
- 9.2. How effective are the arrangements for protecting office holders and the public from involvement in bribery?
- 9.3. How far do the rules and procedures for financing elections, candidates and elected representatives prevent their subordination to sectoral interests?
- 9.4. How far is the influence of powerful corporations and business interests over public policy kept in check, and how free are they from involvement in corruption, including overseas?
- 9.5. How much confidence do people have that public officials and public services are free from corruption?
- 9.6. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

**Civil Society and Popular Participation**

**10. The media in a democratic society**

The media play three basic roles:

- They act as the source of information needed by the citizens to allow them to make informed judgements about their political leaders and to participate effectively in the working of democracy;
- They are the public space where citizens may gather, debate and discuss issues important for the country, and to convey their opinions to elected representatives; and
- They provide critical examination of the government and political classes, in order to prevent abuse of political power and to secure that decisions and decision-making mechanisms are open to public control.

Ability of the media to fulfil its roles is often threatened by different political and commercial pressures, and their position in any country deserves careful analysis. In each of their roles, the media have the potential of providing great contribution; however, governments, powerful media moguls or major corporations often intervene and abuse their position for political or commercial ends, or both, and damage the quality of democratic debate and civil and cultural life of the country.

*Research questions:*

- 10.1. How independent are the media from government, how pluralistic is their ownership, and how free are they from subordination to foreign governments or multinational companies?
- 10.2. How representative are the media of different opinions and how accessible are they to different sections of society?
- 10.3. How effective are the media and other independent bodies in investigating governments and powerful corporations?
- 10.4. How free are journalists from restrictive laws, harassment and intimidation?
- 10.5. How free are private citizens from intrusion and harassment by the media?
- 10.6. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

## **II. Political participation**

Active citizenship and strong civil society are the necessary components of democratic life. Political participation of the citizens ensures more democratic functioning of the government in several ways: by allowing the government to learn about the popular opinion which it must respond to; by testing policies against independent sources of information and non-government expertise; through participation of the citizens in policy implementation; through the existence of an alert and informed body of citizens, as an obstacle to government excesses.

Active association with wide citizen participation helps realise the democratic criterion of popular control. A potential danger is that such participation may threaten the other democratic principle, that of political equality. Most of the citizen participation is subject to criticism that it does not, either individually or collectively, represent the relevant population, and that it tends to serve those who are already privileged and articulate. Even when groups are representative, their success in influencing elected government may include a triumph of interests of individual segments of society over the interest of a wider public which the government should represent. This potential danger, however, does not change the main issue, that democracy of a country rests on the necessity for its citizens to be self-organised in all aspects of communal life - which is what we call civil society - as well as in their formal relations with government. Civil society is the key factor that makes government accountable and responsive.

### *Research questions:*

- 11.1. How extensive is the range of voluntary associations, citizen groups, social movements, etc., and how independent are they from government?
- 11.2. How extensive is citizen participation in voluntary associations and self-management organisations, and in other voluntary public activity?
- 11.3 How far do women participate in political life and public office at all levels?
- 11.4. How equal is access for all social groups to public office, and how fairly are they represented within it?
- 11.5. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

## **12. Government responsiveness**

Government responsiveness to the public is a key virtue of democratic government. It is different from accountability, which it is often confused with. Accountability is the requirements for holders of office to be accountable for the actions they take *after* they have taken them. On the other hand, responsiveness is the requirement for the government to listen to relevant public opinion *prior* to deciding on a law or policy. This requires the existence of systemic and legally defined procedures for consultation, as well as informal mechanisms ensuring that elected officials remain in contact with the public.

### *Research questions:*

- 12.1. How open and systematic are the procedures for public consultation on government policy and legislation, and how equal is the access for relevant interests to government?
- 12.2 How accessible are elected representatives to their constituents?



12.3 How accessible and reliable are public services for those who need them, and how systematic is consultation with users over service delivery?

12.4. How much confidence do people have in the ability of government to solve the main problems confronting society, and in their own ability to influence it?

12.5 What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

### **13. Decentralisation**

Territorial aspect of policy is where democratic principles of popular control and political equality come in a state of tension in relation to one another. On one hand, regional and local governments enjoy numerous democratic advantages over centralised control: they are closer and more accessible to the people, and they may shape policies which correspond with regional and local variations and political identities. At the same time, the difference in policies and priorities between different locations may generate unacceptable inequality, which, in turn, creates a requirement for greater uniformity and centralised control.

In practice, an effective balance must be found between equality of citizens in a territory and the requirement of specific regional and local autonomy. Central government should act so as to ensure that no part of the territory is disadvantaged due to uneven distribution of resources among them. At the same time, central government must allow lower levels of government sufficient autonomy in exercising their powers and utilising resources.

#### *Research questions:*

13.1 How independent are sub-central tiers of government from the centre, and how far do they have the powers and resources to carry out their responsibilities?

13.2 How far are these levels of government subject to free and fair electoral authorisation, and to the criteria of openness, accountability and responsiveness in their operation?

13.3 How extensive is the cooperation of government at the most local level with relevant partners, associations and communities in the formation and implementation of policy, and in service provision?

13.4 What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

### **14. International dimensions of democracy**

A country may have the most advanced democracy within, but with very little self-governance, if most of the decisions important for the life of its citizens are made outside its borders. At the same time, the quality of democratic life of a country is measured by how it treats other countries and its citizens, whether it respects rights internationally, and how much support its policies lend to democracies outside its borders. It is thus necessary to consider how much, if at all, the policy of a country is decided upon abroad and in ways which remain outside its control; the nature of its power and influence in international bodies; its respect for international treaties and international law; its treatment of asylum seekers; and the consistency of its support to human rights and democracy abroad.

*Research questions:*

- 14.1. How free is the governance of the country from subordination to external agencies, economic, cultural or political?
- 14.2. How far are government relations with international organisations based on principles of partnership and transparency?
- 14.3. How far does the government support UN human rights treaties and respect international law?
- 14.4. How far does the government respect its international obligations in its treatment of refugees and asylum seekers, and how free from arbitrary discrimination is its immigration policy?
- 14.5. How consistent is the government in its support for human rights and democracy abroad?
- 14.6. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

## **About Bosnia and Herzegovina**

## HISTORICAL INFORMATION

- 958 First reliable record of Bosnia. In his writing *De administrando Imperio* (On Administering an Empire), Constantine VII Porphyrogenitos, the Byzantine Emperor, mentions Bosnia (*horion Bosona*) and two towns in it: Katera and Desnek.
- 1180 -1204 The age of Ban Kulin, a period of full affirmation of Bosnia, the time of development of the medieval state of Bosnia as a political unit and its presence in history.
- 1353 -1391 The second part of the reign of Tvrtko I Kotromanić marks the peak of territorial expansion and political articulation of Bosnia. Global feudal hierarchy of the southeast of Europe has another senior member. In 1377 Bosnia became a kingdom (“the Kingdom of Serbian Lands, Bosnia, Coastal Lands and Western Parts”).
- 1463 Sultan Mehmed II Fatih conquers Bosnia and crushes the medieval state of Bosnia. The unity of the Bosnian state weakens after Tvrtko’s death, and the Ottoman Empire appears on its political horizon.
- 1580 The Bosnian *eyelet* (*beglerbegluk*) established. Military reasons necessitate for the territory of Bosnia to be organised as a single unit capable of conducting autonomous offensive operations with its own resources.
- 1463 -1878 Bosnia and Herzegovina remains under the Ottoman rule, with constant changes of its borders, due to wars with Austria-Hungary, i.e. the Habsburg Monarchy, and the Venetian Republic.
- 1878 Following lengthy offensives and considerable losses, the Austrian-Hungarian troops succeed in entering and occupying Bosnia and Herzegovina in late October.
- 1908 Annexation of Bosnia and Herzegovina declared on 7 October, causing a major diplomatic crisis, alleviated only after the Ottoman Empire recognised the act, on 26 February 1909. By way of reparations, Austria-Hungary paid the Ottoman Empire 2.5 million pounds, withdrew its garrisons from Sanjak and promised economic concessions, thus terminating the sovereignty of the Sultan and establishing the sovereignty of the Hapsburgs over Bosnia and Herzegovina.
- 1918 The Austrian-Hungarian Empire dissolved at the end of the First World War and on 1 December Bosnia and Herzegovina, as an integral part of the State of Slovenes, Croats and Serbs, became part of the new Yugoslav state -the Kingdom of Serbs, Croats and Slovenes.
- 1941 The Vienna Agreement signed by Ministers of Foreign Affairs of Germany and Italy on 20 April finally ceded Bosnia and Herzegovina to the Independent State of Croatia.
- 1943 The Anti-Fascist Council of People’s Liberation of the Land of Bosnia and Herzegovina (ZAVNOBiH) established on 25 November in Mrkonjić-Grad, as the highest ruling body of the people of Bosnia and Herzegovina. The Resolution as the principal document of ZAVNOBiH, emphasizes that together with other peoples, the peoples of Bosnia and Herzegovina are creating the new Democratic Federative Yugoslavia of free peoples, and through its political representation -

ZAVNOBIH, the peoples of Bosnia and Herzegovina want their land, which is neither Serb, nor Croat, nor Muslim, but rather Serb and Croat and Muslim, to be free and united Bosnia and Herzegovina, securing full equality and equity of all Serbs, Croats and Muslims.

- 1945 At the end of the Second World War, Bosnia and Herzegovina becomes one of the six republics of the Federative People's Republic of Yugoslavia (as of 1963 the Socialist Federative Republic of Yugoslavia).
- 1990 On 31 July, Bosnia and Herzegovina adopted constitutional amendments effecting changes in socio-economic relations by introducing market economy, a multi-party system, and pluralist democracy. Following that, the first parliamentary elections were held in Bosnia and Herzegovina on 18 November.
- 1991 On 20 December, the Government of Bosnia and Herzegovina adopted a Decision on statehood, i.e. independence of Bosnia and Herzegovina, and the Assembly of Bosnia and Herzegovina decided to call a referendum to determine the status of Bosnia and Herzegovina as a sovereign and independent state of equal citizens and peoples of Bosnia and Herzegovina -Muslims, Serbs, Croats, and members of other nations living in it.
- 1992 International recognition of Bosnia and Herzegovina happened at the meeting of the Committee of Ministers of the European Community in Brussels on 6 April, taking effect on 7 April. With this recognition, Bosnia and Herzegovina formally ceased to be part of SFRY. Political and administrative borders of the former republic, as one of the six federal units of SFRY, became international state borders of Bosnia and Herzegovina.
- 1992 -1995 War in Bosnia and Herzegovina.
- 1995 With mediation by the international community, a peace agreement was reached in negotiations held in November in Dayton, Ohio, chaired by the United States of America. Negotiations among representatives of the parties to the 1992-1995 war in Bosnia and Herzegovina, including the neighbouring Republic of Croatia and Federal Republic of Yugoslavia, ended successfully on 21 November, and the Agreement was signed in Paris, France, on 14 December. The official title of the Agreement is General Framework Agreement for Peace in Bosnia and Herzegovina. The Peace Agreement established Bosnia and Herzegovina as a state comprising two entities, Republika Srpska and Federation BiH, with a high level of autonomy. The Agreement included the Constitution, as well as other provisions aimed at building a peaceful and stable state. The Peace Agreement also established the Office of the High Representative as the leading organisation in civilian aspects of implementation of peace in BiH. The High Representative was declared the highest authority in the country in interpreting the agreement on implementation of the civilian part of the Peace Agreement. The Peace Implementation Council, made up of a group of 55 states and international organisations sponsoring and leading the peace implementation process, further elaborated his mandate at a later stage. The High Representative is also tasked with coordinating activities of civilian international organisations and agencies active in the country. The High Representative had no authority over the military, i.e. the Stabilisation Forces, led by NATO. On 12 December, NATO troops in the IFOR (Implementation Forces) arrived to the territory of Bosnia and Herzegovina. The High Representative is pro-

posed by the Steering Board of the Peace Implementation Council, and the appointment is confirmed by the United Nations Security Council, which also approved the Dayton Peace Agreement as well as the dispatch of international troops to Bosnia and Herzegovina. The first High Representative of the international community to Bosnia and Herzegovina was Carl Bildt (December 1995 - June 1997), former Prime Minister of Sweden and Special EU Negotiator at negotiations ending the war in Bosnia and Herzegovina. He was succeeded by Carlos Westendorp (June 1997 - July 1999), former State Secretary for European Affairs and Minister of Foreign Affairs of Spain. Carlos Westendorp was succeeded by Wolfgang Petritsch (August 1999 - May 2002), former Chief EU Negotiator in peace negotiations for Kosovo at Rambouillet, France. The next High Representative was Paddy Ashdown (27 May 2002 - 31 January 2006), former leader of the Liberal Democratic Party and Member of Parliament and State Cabinet of the United Kingdom. The new High Representative is Christian Schwarz-Schilling.

- 1996 The first post-war elections in Bosnia and Herzegovina, held on 14 September, brought a total victory for the national parties -Party for Democratic Action (SDA), Serb Democratic Party (SDS), and Croat Democratic Community (HDZ).
- 1997 On 30 May, Steering Board of the Peace Implementation Council met at ministerial level in Sintra, Portugal. At that time, the High Representative was given the power to suspend the media violating the Dayton Peace Agreement.
- The first post-war municipal elections in BiH were held on 13 and 14 September. Early elections for the National Assembly of Republika Srpska were held on 22 and 23 November.
- The Peace Implementation Council met in Bonn, Germany, on 9 and 10 December. The High Representative was given the power to remove public officials in Bosnia and Herzegovina obstructing the implementation of the Dayton Peace Agreement, and to proclaim laws which legislatures in BiH are unable to adopt.
- 1998 Independent Media Commission for BiH, regulating technical and editorial aspects of electronic media in Bosnia and Herzegovina, was established on 11 June. General elections in BiH were held on 12 and 13 September.
- 1999 On 5 March, International Arbitration reached the final ruling on the Brčko District. The pre-war BiH municipality of Brčko was given the status of a District with local self-governance under direct sovereignty of Bosnia and Herzegovina. The Brčko District has an independent administration and an international supervisor appointed by the High Representative.
- 2000 Municipal elections were held on 8 April 2000.
- On 1 July, the Constitutional Court of Bosnia and Herzegovina, made up of nine judges, of whom six are selected by entity parliaments (four by the House of Representatives of the Federation BiH, and two by the National Assembly of Republika Srpska), and three by the President of the European Court of Human Rights in consultation with the Presidency of Bosnia and Herzegovina, issued a decision on the “constituent status of all three peoples in the entire territory of BiH” and on the unconstitutionality of certain provisions of the Constitution of FBiH and the Constitution of RS.

- 2001 On 23 August, the Parliament of Bosnia and Herzegovina adopted the BiH Election Law. The Election Law came into force on 28 September, terminating the Provisional Election Commission and the organisation of elections by the Organisation for Security and Cooperation in Europe (OSCE BiH), and establishing the Election Commission of Bosnia and Herzegovina.
- 2002 On 23 April, Bosnia and Herzegovina acceded to the Council of Europe as a member state.
- A decision by the High Representative to Bosnia and Herzegovina established the Court of Bosnia and Herzegovina on 9 May, and the Office of the BiH Prosecutor on 7 May.
- On 5 October, the first elections in compliance with the BiH Election Law were fully organised and executed by the authorities of Bosnia and Herzegovina.
- 2003 The European Union Police Mission to Bosnia and Herzegovina was launched on 1 January, and on 19 November the European Commission agreed on a Feasibility Study for Bosnia and Herzegovina.
- 2004 Municipal elections, including the first post-arbitration elections in the Brčko District, were held on 2 October.
- On 2 December, NATO troops ended the SFOR (Stabilization Forces) mission, and the new military mission of the European Union in BiH, EUFOR (European Union Forces) - Operation Althea, was established.
- 2005 On 12 January, the Parliament of Bosnia and Herzegovina adopted the Indirect Taxation Law, including a single value-added taxation rate of 17 percent.
- On 19 July, Office of the High Representative to BiH presented a project of transformation of the Office of the High Representative into the Office of the Special Representative of the European Union.
- On 21 October, the European Commission proposed to members states of the European Union to open negotiations on the Stabilisation and Association Agreement with Bosnia and Herzegovina. Member states of the European Union approved the opening of negotiations on the Stabilisation and Association Agreement with BiH, and on 25 November, Ollie Rehn, the Enlargement Commissioner, opened the negotiations in Sarajevo.

## POLITICAL DATA

Constitution of Bosnia and Herzegovina is contained in Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Peace Agreement).

Pursuant to the Constitution, Bosnia and Herzegovina is divided into two entities: Federation of Bosnia and Herzegovina, covering 51 percent of the territory, and Republika Srpska, covering 49 percent of the territory.

Sarajevo is the capital of Bosnia and Herzegovina.

Each of the entities has its own political structure and administration, with an umbrella structure of central authorities. The present state authorities are made up of the Parliamentary Assembly, divided into the House of Representatives and the House of Peoples; Presidency, a rotating three-member body (each member is of one of the constituent peoples -Bosniak, Croat, and Serb) and the Council of Ministers, with nine ministries.

Political structures of the Federation BiH are in three levels:

- Entity level, with a two-chamber Parliament (House of Representatives and House of Peoples), one President and two Vice-Presidents, and the Government, led by a Prime Minister;
- Cantonal level, with one assembly per each of the ten cantons, competent to enact cantonal legislation, as well as a cantonal government;
- Municipal level, with a municipal council and administration structure in each municipality.

Political structures of Republika Srpska do not include cantons, but are divided into two levels:

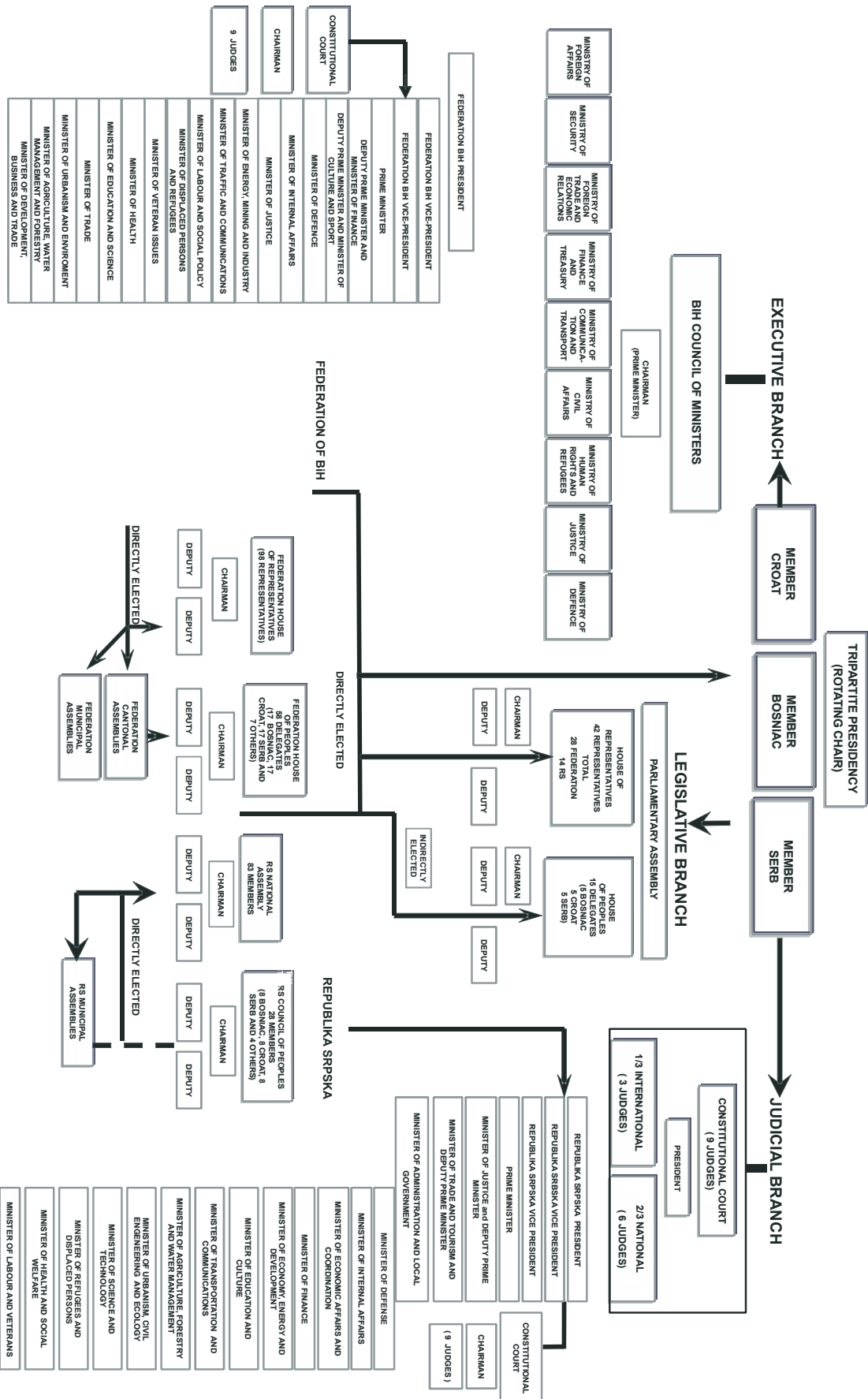
- Entity level, with the National Assembly, the Council of Peoples, one President, two Vice-Presidents and the Government led by the Prime Minister.
- Municipal level, with a municipal council and administration structure in each municipality.

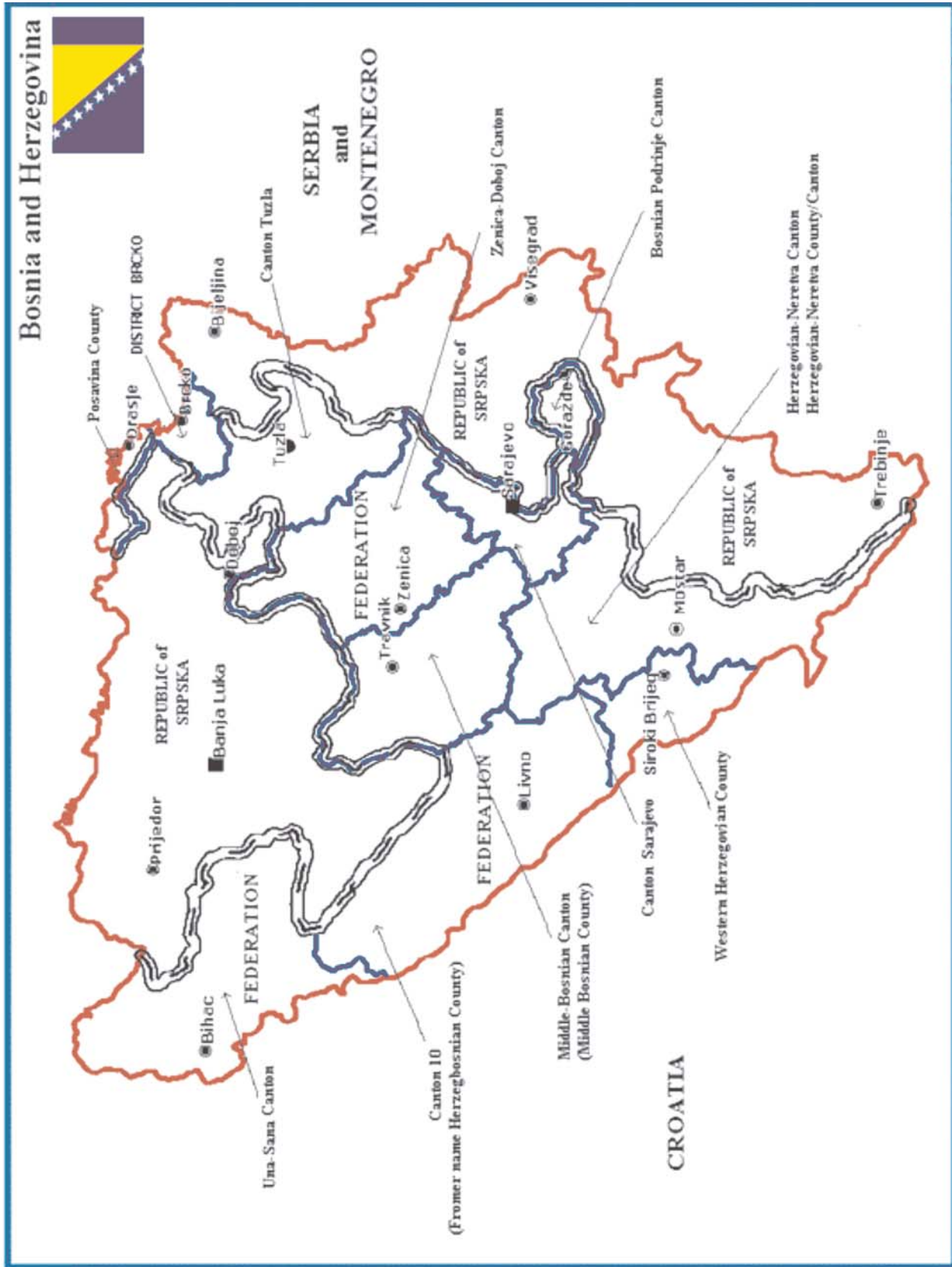
There are three constitutional courts, one at state level and two at entity levels.

Brčko District should be noted separately, as its existence was not part of the provisions of the Dayton Peace Agreement, but rather subject to international arbitration. The final decision on the status of Brčko was made in 1999, establishing the District, under the sole sovereignty of the state of BiH, with unique, multi-ethnic, democratic governance structures. Brčko is supervised by an international supervisor, appointed by the High Representative.



# GOVERNMENT STRUCTURE OF BOSNIA AND HERZEGOVINA





## SOCIO-ECONOMIC DATA\*

Source: The World Bank Group (World Development Indicators database), 2005. World Bank, <<http://dev-data.worldbank.org>>.

*Bosnia and Herzegovina, socio-economic data for 2004 (unless indicated otherwise):*

Population	<b>3.8</b>	million
Population growth in % (1998-2004)	<b>0.8</b>	
Work force growth in % (1998-2004)	<b>1.8</b>	
Average life expectancy (1998-2004)	<b>74</b>	
Number of deaths per 1000 new births (1998-2004)	<b>14</b>	
Literacy (% of population older than)	<b>95</b>	
Population below the national poverty line	<b>8.0</b>	
GDP 2004 (USD billion)	<b>8.5</b>	
Agriculture (% GDP)	<b>14.8</b>	
Industry (% GDP)	<b>31.9</b>	
Services (% GDP)	<b>53.3</b>	
GDP growth (annual %)	<b>4.7</b>	
Export of goods and services (annual growth rate)	<b>2.8</b>	
Import of goods and services (% GDP)	<b>60.5</b>	
Export of goods and services (% GDP)	<b>25.4</b>	
Foreign direct investments (USD)	<b>381.8</b>	million
Total debt (USD)	<b>2.2</b>	billion (in 2003)
Total debt servicing (USD)	<b>159</b>	million
Total debt servicing (% of export of goods and services)	<b>4.6</b>	
Foreign aid per capita (USD)	<b>140.6</b>	
Social protection (USD)	<b>78</b>	million (in 2005)
Social protection (% of total budget)	<b>23</b>	(in 2005)
Inflation (annual %)	<b>0.4</b>	

\* Due to considerable discrepancies in socio-economic data available for BiH, only official World Bank data was used for the purpose of this overview..

## **Citizenship, Law and Rights**

## I. Nationhood and citizenship\*

### Is there public agreement on a common citizenship without discrimination?

Author: Srđan Dizdarević

#### 1.1. How inclusive is the political nation and state citizenship of all who live within the territory?

##### 1.1.1. Laws

The Constitution of Bosnia and Herzegovina, as well as Constitutions of Republika Srpska and the Federation BiH<sup>1</sup>, prescribe that citizenship is based on entity citizenship. Each citizen is first a citizen of his/her entity and as such, acquires the citizenship of Bosnia and Herzegovina.

Provisions of the Constitution treat all the citizens of BiH solely as members of the three constituent peoples:<sup>2</sup> as Serbs, Croats, and Bosniaks, thus completely omitting the notion of affiliation with the state of BiH, i.e. being a member of the nation of BiH.

An exclusively ethnic approach which, inter alia, determines the right to take part in political life, is opposite to the inclusive concept. The overall organization and functioning of key state institutions are based only on the ethnic principle. Constitutions of the state and the entities reserve certain public offices<sup>3</sup> for persons belonging to certain ethnic groups. In this way, persons who do not declare themselves as members of the *required* ethnic group are prevented by law to take these offices. This situation is mainly relevant for persons who do not declare themselves as Bosniaks, Serbs, or Croats. Thus, instead of the citizen, a member of the BiH society, being at the forefront of all the constitutional provisions -as the case is with modern democratic societies -the sole concept accepted in BiH is that of the so-called constituent peoples.

As for citizenship in a narrow sense, the Constitution of BiH<sup>4</sup> excluded the possibility of arbitrary removal of citizenship, practically preventing the possibility of a person becoming stateless. Moreover, BiH citizens may hold citizenship of another country. Article 4 of the Law on Citizenship of BiH prescribes such an option, though provided the issue is regulated by bilateral agreements with other countries. So far, such agreements have been signed with Sweden and with Serbia and Montenegro.

<sup>1</sup> Article 1.7, BiH Constitution, Article 6, Constitution of Republika Srpska, Article 5, FBiH Constitution.

<sup>2</sup> The Preamble to the Constitution defines Serbs, Croats, and Bosniaks as constituent peoples. According to a ruling by the BiH Constitutional Court, the entities are obliged to incorporate the constituent status of all the three peoples into their constitutions, aimed at securing equality of Serbs, Croats and Bosniaks irrespective of which part of BiH they may be living in. (Decision of the Constitutional Court No. 5/98).

<sup>3</sup> Article 3 (b) reads: "Each chamber referring to houses of the Parliamentary Assembly shall by majority vote adopt its internal rules and select from its members one Serb, one Bosniak, and one Croat to serve as its Chair and Deputy Chairs..." This prevents citizens of BiH who are not members of the three constituent peoples to be appointed to leading positions in assembly houses.

Article 4 reads: "The House of Peoples shall comprise 15 Delegates, two-thirds from the Federation (including five Croats and five Bosniaks) and one-third from the Republika Srpska (five Serbs)." Article 5 reads: "The Presidency of Bosnia and Herzegovina shall consist of three Members: one Bosniak and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of the Republika Srpska".

Article 5 regulates in the same way the election of members of the Presidency of BiH so that the three positions may be taken by one Serb, one Croat and one Bosniak, thus excluding members of minorities or others from running or being elected for this body.

<sup>4</sup> Article 1.7 (b) BiH Constitution.

The Law on Citizenship of BiH provides that citizenship may be acquired by origin, birth in the territory of BiH, adoption, naturalization<sup>5</sup> - with a proviso that a request may be submitted after eight years of registered permanent residence in BiH - and through an international agreement. Citizenship may be terminated by force of law, a statement of waiver of that effect, dismissal, removal, and international agreement.

BiH citizenship may be removed if acquired by fraud, false information, or misrepresentation or concealment of any relevant fact that may be relevant for the applicant.<sup>6</sup>

On 16 November 2005, under summary procedure, the House of Peoples of the BiH Parliamentary Assembly adopted the Law on Changes and Amendments of the Law on Citizenship. This Law established a State Commission to review decisions on nationalization of foreign nationals. The Commission has the power to review the status of all persons naturalized after 6 April 1992, though this does not apply to nationals of former SFRY. It is estimated that between 1,200 and 1,500 persons will be affected by this Law.

The Law does not provide for any possibility of appeal by persons whose nationality is thus revoked.

### **1.1.2. Implementation: positive and negative indicators**

There have been cases of unlawful action in the process of removal of BiH citizenship. This was the case with members of the so-called *Algerian group*. The group consisted of six citizens of Algerian origin, of whom four had been granted BiH citizenship, who had been suspected by the US Administration for preparing terrorist attacks against the US and UK embassies in Sarajevo immediately following the terrorist attacks of 11 September 2001. In this case, a formal decision was issued stripping the four naturalized BiH citizens of citizenship based upon, as the Decision states, “justified suspicion of having attempted to commit the criminal offence as defined by Article 168 of the Criminal Code of the Federation BiH.”<sup>7</sup> In the letter sent to the Deputy Minister for Human Rights and Refugees on 15 January 2002, the Office of the High Commissioner for Human Rights in BiH stated: “Thus far, there has been no valid judgment, and the viability of the Decision based on suspicion is questionable. The persons whose BiH citizenship had been removed filed, through their counsel, for an administrative dispute against the Decision on Removal of Citizenship before the Supreme Court which, according to a statement by their legal counsel, cannot take their complaint into consideration as the defendant, in this case, the FBiH Ministry of the Interior, refuses to submit the file to the Supreme Court.”<sup>8</sup>

For the purpose of acquiring citizenship of other states, 38,075 persons have waived the citizenship of Bosnia and Herzegovina since Dayton.<sup>9</sup> As of early 1996, 113 persons have had their BiH citizenship removed.<sup>10</sup>

Based on the above, a conclusion can be made that BiH citizenship is formal, rather than substantive. BiH society is deeply divided, on two bases -ethnic and entity, so that no preconditions exist for the creation of the BiH political nation. At this moment, only every second inhabitant of

<sup>5</sup> Law on Citizenship of BiH, Article 5. Official Gazette BiH No. 13/99.

<sup>6</sup> *Ibid.* Article 23.

<sup>7</sup> Decision of the Federation Ministry of the Interior No: 02/1-13-4-98, dated 16.11.2001.

<sup>8</sup> Letter by Madeleine Rees, Head of Office of the High Commissioner for Human Rights in BiH, sent on 15 January 2002, to Ms. Kadrija Haračić-Šabić, Deputy Minister for Human Rights and Refugees.

<sup>9</sup> Data from the Ministry of Civil Affairs, letter No: 04-30-163-SK/05, dated 6.9.2005.

<sup>10</sup> Data from the Ministry of Civil Affairs, letter No: 04-30-163-SK/05, dated 6.9.2005.

BiH expresses pride in being a citizen of Bosnia and Herzegovina, a sentiment which varies considerably depending on the ethnic affiliation of the respondent.<sup>11</sup>

## **1.2. How far are cultural differences acknowledged, and how well are minorities protected?**

### **1.2.1. Laws**

In Article 2, the Constitution of BiH prescribes that BiH shall secure the highest level of internationally recognized human rights and fundamental freedoms. Included in this Article is a clause against discrimination, whereby all persons in BiH shall enjoy rights and freedoms “without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

An integral part of the Constitution of BiH includes additional human rights agreements, which BiH was obliged to apply pursuant to the Dayton Peace Agreement. In addition to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which takes priority over domestic law, the list of additional agreements includes the 1994 Framework Convention for the Protection of National Minorities and the 1992 European Charter on Regional and Minority Languages.

The Law on Protection of Rights of Members of National Minorities<sup>12</sup> came into force in BiH in 2003. The Law lists seventeen national minorities, whose members enjoy the protection of the state of BiH in terms of their position and equality with other citizens. Article 4 of the Law provides for the possibility of choice for each member of a national minority to be treated as a member of a minority or not, though with no disadvantage arising from either choice. Article 19 of the same Law provides that members of national minorities are to be represented in bodies of governance and in public services, including participation in the executive, the judiciary, as well as public institutions and enterprises, proportional to their participation in the population according to the last census.

The Law confirmed the right to freedom of assembly and association for members of national minorities in order to allow them to express and protect their cultural, religious, educational and other rights, interests and needs related to the protection of their identity. Pursuant to this Law, BiH recognizes and protects the right of each member of a national minority to use his/her own language freely and with no hindrance, in private or public life (Article 11).

When it comes to education, Article 18 of the Law provides for education in a minority language in those cities, towns and municipalities where members of national minorities are an absolute or a relative majority, for pre-school, primary and secondary education.

The Law provides for the possibility of establishing radio and TV stations and print media outlets in the language of national minorities, as well as libraries, cultural centers, museums, cul-

<sup>11</sup> In UNDP: Early Warning System, Report for October-December 2004, pp. 38-39: “.. at the level of the country, there have been no major changes in the feeling of strong pride of citizens in the fact that they are citizens of BiH. This Feeling is, according to research data, typical for almost one-half of the entire population of BiH. On the other hand, it is almost identical among men and women. Finally, a sense of pride in being the citizen of BiH is most evident among citizens in “majority” Bosniak areas in the Federation, where it was identified in three-quarters of the total population, radically lower in “majority” Croat parts of this entity, where it was noted in slightly more than one-third of the total population, and the smallest in the territory of RS. In this entity, this feeling is present in just one-fifth of the total population..”

<sup>12</sup> Official Gazette BiH No. 12/03.



tural, art, and folklore societies, and members of national minorities may maintain their own historical monuments and cultural heritage (Articles 15 and 17).

According to the same Law, public broadcasters are obliged to include programs for members of national minorities in their programming.

Article 20 of the Law provides that national minorities shall have their representatives in parliaments, councils and assemblies, but this Article has not been applied to-date.

Neither the Constitution of BiH nor the Law on Protection of Members of National Minorities provide for measures of affirmative action in relation to members of minorities.

### **1.2.2. Implementation: positive and negative indicators**

Since the adoption of the Law on Protection of Rights of Members of National Minorities, no necessary secondary legislation has been adopted. As a result, this Law has not been applied, despite the fact that it came into force two years ago.

Pursuant to Article 21 of the Law, the BiH Parliamentary Assembly was obliged to establish the BiH National Minorities Council as an advisory body, but this body has not been established as of yet.

As the last census in BiH was conducted in 1991, there is no reliable data on the number of members of national minorities.<sup>13</sup>

In its Report on Bosnia and Herzegovina, the European Committee Against Racism and Intolerance states that “those persons who do not declare themselves as members of one of the three constituent peoples, be it because they are members of another ethnic group, be it that they cannot or do not want to choose ethnicity, are at considerable disadvantage in relation to others and, in many cases, are victims of ethnic discrimination”.<sup>14</sup> The Commission observes that communities in BiH are ethnically divided, marginalizing all those who do not belong to the three constituent peoples.

The Helsinki Human Rights Committee for BiH holds that the ruling nationalist parties function on the basis of preservation of ethnic homogeneity, and that they feed the fear of the “Other” for that purpose.<sup>15</sup> Fragile and delicate inter-ethnic relations are further burdened by instances of

<sup>13</sup> The Roma minority is clearly the largest, though estimates vary. According to estimates by the Council of Europe, there are between 50,000 and 60,000 Roma in BiH. (Council of Europe. Fact-Finding Mission to Bosnia and Herzegovina on the Situation of Roma. Strasbourg, 1996, p 2. Minority Rights Group from London estimates that the number of Roma is between 40,000 and 50,000. (Roma, the European Minority. By: Liegeois Jean-Pierre i Nicolae Gheorge. London: Minority Rights Group, 2001, p 1.) OSCE Mission in BiH states that there are between 10, 40, or even 60,000 Roma living in BiH. (OSCE Mission in BiH: Background Information on Roma in Bosnia and Herzegovina: The Perception of Roma. Sarajevo 2002. www.oscebih.org) Activists in Roma non-governmental organizations cite figures of 80 to 120 thousand members of the Roma minority. (Interviews with Mr. Nijaz Biberović, President of the Roma Youth Association *Kate Acha*, and Mr. Dervo Sejdić, former Coordinator of the Roma Council, and activists in the *Roma Prosperity* NGO in Sarajevo. Interviews conducted by the European Roma Rights Center, 31 July 2003 in Sarajevo.) Estimates indicate that there are approximately 1,000 Jews living in BiH, and this is based on information from the Jewish Municipalities (European Committee Against Racism and Intolerance: Report on BiH, dated 25 June 2004, p. 22). There is no reliable data on the number of minorities. The Law listed 17, but pre-war statistics operated with 24 national minorities.

<sup>14</sup> European Committee Against Racism and Intolerance: Report on BiH, dated 25 June 2004, p. 29.

<sup>15</sup> “The cause of this situation is in the character of the ruling nationalist parties and the atmosphere they create. These parties, HDZ, SDA and SDS, promote, first and foremost, the interests of their own people and are not willing to condemn the perpetrators of human rights violations of the victims are from the other two peoples. The culprit is always among members of the other peoples. National parties are doing nothing to build tolerance among mem-



ethnically motivated violence, desecration of tombstones, attacks against religious buildings, and public display of messages promoting intolerance, hatred, and nationalism.<sup>16</sup> The European Committee against Racism and Intolerance expresses its concern over the fact that bookstores in BiH offer anti-Semitic books such as *Mein Kampf* and *The Zion Protocols*, which is interpreted as a threat against the Jewish community. There have been instances of desecration of Jewish cemeteries. On 3 October 2004, three tombstones at the Jewish cemetery in Sarajevo were damaged (*Oslobodenje* daily, 4 October 2004).

Inter-ethnic relations are burdened by a high level of ethnically based discrimination. Staff in public institutions and enterprises is practically mono-ethnic,<sup>17</sup> with the exception of the police and the judiciary.<sup>18</sup>

Economic and social rights are violated more frequently in relation to national minorities, so that the number of employed members of minorities is symbolic.<sup>19</sup> Measures of social protection, living conditions, particularly of the Roma, are sub-standard. The European Committee against Racism and Intolerance also observes that “the Roma are in a very disadvantaged position”, presenting data that less than 15% of the Roma children are truly included in the education process. It should be added that there are no schools in BiH which provides minority languages as the language of instruction.

There is in BiH today a close correlation between the possibility of an individual to exercise his/her rights and his/her ethnic background. That is why there can be no real discussion about protection of members of minorities, nor about recognition of cultural diversity in Bosnia and Herzegovina.

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bers of different peoples and religions. On the contrary! These parties secure their influence and power by maintaining a sense of fear and threat from the other and the different. Homogenization among nationalist parties feeds on greater or smaller accidents and incidents, even acts of terrorism. This statement does not mean a claim that national parties are directly instigating such phenomena, but their views certainly do encourage extreme nationalist as well as criminals who are behind most crimes whose victims are members of minority peoples. The belief that there will be no sanction against such acts, as practice has indeed confirmed, instigates extremists to commit acts which instill fear, discourage return and encourage departures from areas where members of a particular people feel unsafe and threatened.” Helsinki Committee for Human Rights in BiH - *Report on the State of Human Rights in BiH* (analysis for the period January-December 2003.) [www.bh-hchr.org](http://www.bh-hchr.org)

<sup>16</sup> Helsinki Committee for Human Rights in BiH - Report on the State of Human Rights for 2004. [www.bh-hchr.org](http://www.bh-hchr.org)

<sup>17</sup> Redžo Seferović, the only Roma employed by the BiH Security and Intelligence Agency, was dismissed (OSA BiH Decision No: 01-5776/232 dated 29.12.2004).

One of the rare exceptions is Jakob Finci, current Director of the Civil Service Agency, member of the Jewish minority.

The Civil Service Agency currently employs 1,207 persons, and is, in terms of structure, one of the few almost maintaining the pre-war ethnic structure. It employs 45.23 % Bosniaks, 31.15 % Serbs, 21.87 % Croats, and 1.75 % Other.

<sup>18</sup> According to data from the High Judicial and Prosecutorial Council, letter No: VSTV -08 -0855 -02092005 dated 2.9.2005, among prosecutors and judges in BiH there are 45.74% Bosniaks, 32.85% Serbs, 17.99% Croats, and 3.44% Other.

<sup>19</sup> European Roma Rights Center states that only 1.5% of Roma capable of work are, in fact, employed. (European Roma Rights Center: *The Non-Constituents-Rights Deprivation of Roma in Post-Genocide Bosnia and Herzegovina*, February 2004, p. 159).

According to *Dnevni avaz* daily, of 13 April 2003, only six Roma were employed in the territory of the Zenica-Dobojski Canton.

### **1.3. What is the level of consensus on state boundaries and constitutional arrangements?**

#### **1.3.1. Laws**

The Constitution of Bosnia and Herzegovina provides that the state shall continue its legal existence under international law, within its internationally recognized borders.

Signatories of the Dayton Peace Agreement committed themselves to uphold it, thus accepting this determination of Bosnia and Herzegovina and its borders.

#### **1.3.2. Positive and negative indicators**

Borders are taboo, particularly because the international community, as the guarantor and the interpreter of the Dayton Peace Agreement, believes that any opening of that issue to be a direct attack against the Peace Agreement, and is willing, through the work of the High Representative for BiH, to sanction strictly anyone who challenges the present borders of BiH. This does not mean that there are no tendencies in BiH itself to change the borders.

From time to time, a number of non-governmental organizations in Republika Srpska raise the issue of organizing a referendum in that entity on the issue of self-determination, which may ultimately lead to separation of Republika Srpska.<sup>20</sup> As only one-fifth of the citizens of that entity have a sense of belonging to Bosnia and Herzegovina, it is clear why there are separatist tendencies, at least when it comes to this entity.<sup>21</sup>

There are, in programs of some political parties, indications of tendencies towards the creation of a single state and legal territory to be inhabited by Serbs. The program of the Serb Radical Party, registered in BiH and with a delegate in the House of Representatives of the BiH Parliamentary Assembly, states that this party “advocates full national unity with the aim of conducting, thus united,<sup>22</sup> the necessary transformation of society in compliance with the values which satisfy the needs of our people,”<sup>23</sup> confirming and illustrating the above cited tendency.

The Croatian Democratic Union (HDZ) defines itself as the party which “works on the preservation of values of the Christian and the Croat cultural community” which places the interests of this party in the territory where Croats live.<sup>24</sup>

A number of political parties accepted the existing borders as a necessary evil, i.e. the price paid for the establishment of peace. In its program, the Serb Democratic Party (SDS) states that “accepting the fact that any solution is better than war, before the outbreak of war, the SDS had accepted international independence of BiH as a state ...”<sup>25</sup>

When it comes to the present constitutional arrangements, there is currently a comprehensive debate between supporters of constitutional changes and advocates of maintaining a *status quo*.

<sup>20</sup> *Dnevni avaz* daily, of 9 May 2005, p. 9.

<sup>21</sup> UNDP BiH, *Early Warning System* -Quarterly Report 2004, October-December, p. 39.

<sup>22</sup> The terms “full national unity” and “united” means the idea of Greater Serbia, which would include all the territories inhabited by Serbs. According to the leader of the Serb Radical Party, Vojislav Šešelj, “if SRS was to abandon the concept of Greater Serbia, there would be no reason for its existence.” *Oslobodenje* daily, of 20.8.2005. p 2.

<sup>23</sup> Helsinki Committee for Human Rights in BiH, Coalition of NGOs in BiH, *Elections 2002*, Sarajevo 2003, p 210.

<sup>24</sup> *Ibid.*, p. 28.

<sup>25</sup> *Ibid.*, p. 49.

According to the Venice Commission,<sup>26</sup> all the political parties of Serb provenance are against constitutional changes, whereas there is unison in the Federation BiH that state and municipal levels of governance should be strengthened.

Discussions about possible constitutional changes and initiatives to amend the BiH Constitution have been initiated by certain political formations with headquarters in the Federation BiH, as well as a number of domestic and foreign non-governmental organizations and institutes.

Three MPs of the BiH Socialist-Democratic Party proposed changes motivated by the need for BiH-level state bodies to acquire the necessary prerogatives of the state currently assigned to the entities. Their activities are aimed at strengthening individual rights, as opposed to the present situation which, according to the proponents, underscores the rights of nations as collectivities.<sup>27</sup>

As early as 2002, the Croatian Democratic Union (HDZ) initiated a proposal of changes to the BiH Constitution. The proposal was along the lines of abolishment of the entities, introduction of cantons to Republika Srpska, and re-definition of borders of existing cantons in the Federation BiH to make them mono-ethnic.

Late that year, the Croat People's Assembly was held, which included the HDZ as well as Croatian Christian Democrats, Croatian Party of Rights, United Croatian Party of Rights, and the Democratic Centre for Freedom and Equality in BiH. The Assembly proclaimed the third entity, comprised of Croat-majority cantons, a move seen by the international community as an attack against the statehood of Bosnia and Herzegovina.<sup>28</sup>

In its political campaigns, the Party for BiH (SBIH) has advocated a BiH with no entities, but this proposal was never articulated as a proposal for amendments to the BiH Constitution.

In 2003, a group of intellectuals introducing themselves as the Initiative Board, sent to the UN General Assembly, the UN Security Council, The European Parliament and the Council of Europe, a request for the establishment of BiH - The Third Republic. This proposal was based on the abolishment of the entities and a "rational regionalization" of the country.

The Preparatory Group of the project titled *Bosnia and Herzegovina -Possibilities and Perspectives of Development*, presented a declaration on the necessity to change the BiH Constitution and to establish the *Federal Republic of Bosnia and Herzegovina*. This proposal advocates the creation of a federation of functional regions and amendments to the Constitution which would assign to the state level all the attributes of a sovereign state, as well as competence in the areas of foreign policy, defense, police, single border service, customs, monetary and taxation policy.

The European Stability Initiative (ESI), a non-governmental organization based in Berlin, initiated changes to the BiH Constitution to the effect of abolishing the Federation of BiH as a complicated and expensive entity, and organizing BiH as a federal state with 12 autonomous units: ten cantons, Republika Srpska and the Brčko District.

<sup>26</sup> The Venice Commission is an alternative name for the European Commission for Democracy through Law, Council of Europe.

<sup>27</sup> MPs from SDPBiH: Jozo Križanović, Zlatko Lagumdžija and Selim Bešliagić, Sarajevo, 9 September 2004.: *Proposal for Changes and Amendments to the BiH Constitution*.

<sup>28</sup> Ideas about the third entity are contrary to Article 1.3 of the Constitution of BiH, which states: "Bosnia and Herzegovina shall consist of the two Entities, Federation BiH and Republika Srpska." Because of the decision of the Croat People's Assembly on the establishment of the third entity, Paddy Ashdown, the High Representative for BiH, removed from office the Croat member of the BiH Presidency and the then President of HDZ, Ante Jelavić, and banned him from political and public activity.

An integral critical overview of constitutional arrangements was also provided by the Open Society Fund BiH, starting from the opinion that in some of its provisions, the BiH Constitution deviates from the European Convention for the Protection of Human Rights and Fundamental Freedoms, and stating that the present Constitution opened the possibility for the creation of an expensive, complicated, and ineffective state. The proposal is along the lines of affirmation of the individual, the citizen, and his/her individual rights. Within that, the proposal is to re-define those constitutional provisions which deprive any citizen of BiH of passive election rights. Furthermore, the proposal is to introduce into the BiH Constitution provisions affirming the rights of members of national minorities, as well as citizens who do not fall within the category of the three constituent peoples or the category of national minorities.

Finally, the proposal is for the BiH Constitution to provide closer definitions of areas of education, social policy, health care and local self governance -areas treated by constitutions of developed democratic countries.<sup>29</sup>

At the present time, there is no explicit consensus on borders of Bosnia and Herzegovina, nor a consensus on its present constitutional arrangements.

#### ***1.4. How far do constitutional and political arrangements enable major societal divisions to be moderated or reconciled?***

##### ***1.4.1. Laws***

Article 3.1 of the BiH Constitution defines competences of institutions of BiH and its entities, as well as their mutual relations. BiH institutions were assigned competence in areas of foreign policy, foreign trade, customs policy, monetary policy, financial policy of institutions of BiH and financing of international obligations of BiH, immigration policy related to refugees and asylum, implementation of international criminal legislation applicable to both entities, as well as relations with Interpol, development and functioning of common and international communication facilities and links, inter-entity transport and air traffic control.

Article 3.3. sets: “All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.”

The Constitution provides for the possibility of transferring powers from entity to state level, with agreement of both entities. (Article 5 b).

The Constitution drafters opted for symbolic powers to be granted to institutions of BiH, and for substantive power to be located with the entities.

##### ***1.4.2. Positive and negative indicators***

Basic societal divisions are the consequence of the 1992-1995 war. They are reflected in strained inter-ethnic relations. Constitutional arrangements cemented ethnic divisions and failed to create the basis for overcoming inter-ethnic contradictions. The BiH Constitution rests on an ethnic concept, which bases the state on equality of three constituent peoples, rather than the equality of citizens. Interests of individuals are seen as based primarily on ethnic background, which hinders any development of a greater sense of belonging to a nation, which, in turn, inhibits the overcoming of current societal divisions.<sup>30</sup>

<sup>29</sup> Open Society Fund BiH, Sarajevo, June 2004, prepared by Srdan Dizdarević -Constitution BiH -towards new arrangements -[www.soros.org.ba](http://www.soros.org.ba)

<sup>30</sup> The Venice Commission, point 104.

Trying to overcome the consequences of war and to heal its wounds, the civil sector had initiated the establishment of a truth and reconciliation commission.<sup>31</sup> The establishment of the Commission has been postponed, as political formations holding the majority in the House of Representatives of the BiH Parliamentary Assembly have show little interest for the establishment of such a body.

The political sphere is dominated by the tendency to preserve ethnic divisions, at the expense of overcoming the consequences of war, including the consequences of ethnic cleansing. The country still encounters problems with racism and racial discrimination, including religious and ethnic discrimination, as well as segregation, often resulting from nationalist policies promulgated by national political parties. Such problems exacerbate the position of certain groups within the society, which suffers the overall consequences of harsh post-war socio-economic conditions. These groups include minority returnees, the Roma population, who are totally marginalized, other national minorities, and other individuals who cannot or do not want to identify themselves with these categories. Problems of direct or indirect segregation and discrimination are dominant in practically all walks of life, particularly in education,<sup>32</sup> employment, housing issues, access to health services and social protection.

Criminal legislation does not provide sanctions against instigation of racist violence, hatred and discrimination, racist insult and slander, expressions of racist ideology, distribution and dissemination of racist materials, or denial or justification of genocide, crimes against humanity and war crimes, which best illustrates the political relations dominant in Bosnia and Herzegovina.<sup>33</sup>

The current BiH Constitution and the current political arrangements do not create the preconditions for decreasing the existing divisions by instigating centrifugal tendencies.

### ***1.5. How impartial and inclusive are the procedures for amending the constitution?***

Article 10 of the BiH Constitution provides that amendments to the Constitution may be adopted by a decision of the BiH Assembly, with a two-third vote of all the present delegates voting at the House of Representatives.

No amendment may eliminate or diminish the rights and freedoms set by Article 2 of the Constitution.<sup>34</sup>

These constitutional provisions on amending the BiH Constitution are based on the determination that there has to be agreement among representatives of all the three constituent peoples in order to embark on changes to the Constitution.

The BiH Constitution was adopted at the International Conference in Dayton, Ohio, in 1995, by the highest representatives of the Republic of Bosnia and Herzegovina, the Republic of Croatia,

<sup>31</sup> At a conference held in Sarajevo on 12 May 2001, 120 non-governmental organizations supported the initiative to establish the Truth and Reconciliation Commission for BiH.

<sup>32</sup> According to data from OSCE, there are 54 so-called “two schools under one roof” in the Federation BiH. This term denotes schools where pupils are divided along ethnic lines, so that children of Croat ethnicity attend classes in one shift, and children of Bosniak ethnicity in the other, which is a typical example of segregation. (OSCE calls for termination of ethnic division in schools -[www.oscebih.org](http://www.oscebih.org) ).

<sup>33</sup> European Commission against Racism and Intolerance: Report on BiH, 25 June 2004, p. 9.

<sup>34</sup> Article 2 of the BiH Constitution provides that BiH and both its entities will provide the highest level of internationally recognized human rights and fundamental freedoms. Moreover, this Article prescribes that rights and freedoms set by the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto will be in direct application in BiH and will take priority over all other law.



and the Federal Republic of Yugoslavia. The Agreement was witnessed by the European Union, the French Republic, the Federal Republic of Germany, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. AS this Constitution was never confirmed by the BiH Parliamentary Assembly nor at a referendum, it never went through a normal democratic procedure.

In the past ten years, the BiH Parliamentary Assembly has never considered any proposals for changes to the BiH Constitution.

***1.6. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?***

In the area of citizenship, law and rights, the identified problems may be divided into two groups:

- a) problems related to the BiH Constitution and legislation;
- b) problems related to the expressed political will to overcome the current situation.

Some political formations located in the Federation of BiH insist on the necessity of changes to the BiH Constitution. All the political parties in Republika Srpska object to changes.

Although there are initiatives and proposals in the Federation of BiH for changes to the Constitution, they have not been harmonized. Political parties in the Federation of BiH favoring changes of the constitutional arrangements have different views on the possible changes.

Proposals by civil society are along the lines of creating a more effective and cheaper state, with full respect for human rights and freedoms.

When it comes to expressions of political will to overcome the problems identified, in addition to tendencies towards changes, there are also tendencies towards preserving the current situation.

Initiatives for changes are highly fragmented and insufficiently strong to assert themselves. Their proponents are partly political parties, partly the international community, and partly the civil sector in BiH. These initiatives are, in addition to changing the BiH Constitution, aimed at adopting new laws in compliance with international conventions, changes of existing laws with the necessary adoption of secondary legislation, and provision of resources to implement them. Specifically, the changes which are being initiated should eventually result in the adoption of a legal framework that would prevent the instigation of racial, national, ethnic, and religious hatred and intolerance, thus influencing the decrease of influences of nationalism as the principal source of problems of Bosnia and Herzegovina today. Adoption of secondary legislation and allocation of budget funds should create the preconditions for the implementation of the Law on Protection of Members of National Minorities, which would contribute to their protection as well as protection of cultural diversity.

The civil sector initiated the process of coping with the past through the possibility of establishing the Truth and Reconciliation Commission, which should be a contribution towards overcoming social tensions and building mutual trust and reconciliation of different communities. This proposal has also not been met by the necessary support of the parliamentary majority.

There is strong determination in BiH to accede to Euro-Atlantic integration. The Parliamentary Assembly adopted the Resolution on European Integration and the Stability Pact, expressing the will to enter NATO and the European Union. This should also mean the acceptance

of values that NATO and the EU are based on. However, in political terms, this declaratory position is not receiving the kind of support that would mean acceptance of the necessary reforms.

In Bosnia and Herzegovina, there is no political will to overcome the major problems that the country is faced with in the area of law and rights. Ongoing reforms are mainly the result of pressure over local authorities by the international community.

Namely, the reforms in BiH have mainly been the result of conditions presented to the authorities by the Council of Europe at the time when BiH was still a candidate for full membership in this organization. Reforms were conducted in order to satisfy the Criteria of the Council of Europe and were not the result of political will or needs coming from within. Changes and reforms taking place at the moment, particularly the reform of police and the armed forces, are also the result of requests of NATO and the EU as part of the approximation of BiH to these two integration processes.

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Constitution of the Federation BiH

Constitution of Republika Srpska

Law on Citizenship of BiH. *Official Gazette BiH*, No. 13/99.

Law on Protection of Members of National Minorities. *Official Gazette BiH*, No.12/03.

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## 2. The Rule of Law and Access to Justice\*

### Are state and society constantly subject to the law?

Authors: *Sevima Sali-Terzić i Ramiz Huremagić*

#### 2.1. How far is the rule of law operative throughout the country?

##### 2.1.1 Legislation

The Constitution of Bosnia and Herzegovina establishes BiH as a democratic state with the rule of law and democratic elections (Article I.2). International instruments in the area of protection of human rights take legal priority over domestic legislation, and thus the European Convention for the Protection of Human Rights and Fundamental Freedoms is an integral part of the BiH Constitution and its legal system.

On the other hand, the BiH legal system is *de facto* made up of four legal systems, as follows: the legal system of the state of Bosnia and Herzegovina, the legal system of the entity of the Federation of BiH, the legal system of the entity of Republika Srpska, and the legal system of the Brčko District BiH, as separate territorial and administrative units within BiH. It would even be more precise to say that there are five levels of the legal system, as the ten cantons making up the Federation of BiH also have legislative and executive powers. Thus, for example, in addition to the BiH Constitution, there are constitutions of both entities, as well as cantons in the Federation of BiH, just as there are four criminal codes and four codes of criminal procedure -state, entity, and Brčko District. The legislation enforcement system is organized in the same manner, as is the existing police system (see section 8.2).

It is important to note that the state of BiH and its bodies are directly responsible for implementation of those laws which the state adopted, which is, in turn, limited to a very small number of areas where the state has original competence (see the section on the constitutional organization of BiH). In the past several years, there has been an expansion of competences, with the establishment of new state institutions, and through transfers of powers from entity to state level. This is, first of all, related to the establishment of state level law enforcement agencies, such as the State Border Service of BiH, State Intelligence and Security Agency, Indirect Taxation Authority, and the establishment of the state Ministry of Justice.

In addition to the Constitutional Court of BiH, established by the Constitution, and until recently the only judicial institution at the level of the state, the state level Court of Bosnia and Herzegovina, Office of the Prosecutor of Bosnia and Herzegovina, High Judicial and Prosecutorial Council, and Office of the BiH Public Attorney have also been established and are operations.

A particular feature in BiH is the Office of the High Representative<sup>1</sup>, who is "... the highest institution with powers in Bosnia and Herzegovina (...) capable of adopting executive decisions, with no responsibility for them, nor the obligation to justify their validity, with no redress at that."<sup>2</sup> This is particularly present in the area of the rule of law, where the High Representative is *the highest* legislative level with unlimited powers to proclaim laws and decisions resolving individual and general political and legal issues.

<sup>1</sup> Established by the General Framework Agreement for Peace in BiH, whose mandate is set by Annex X to the Agreement.

<sup>2</sup> Report of the European Commission for Democracy through Law (the Venice Commission) CDL-AD(2005) 004 of 11 March 2005.

### 2.1.2. Implementation: positive and negative indicators

Consistent and effective implementation of the rule of law in BiH is conditioned considerably by the complex organization of its legal system, and its fragmented procedures of adoption and implementation of laws. Highly restricted powers assigned by the BiH Constitution to the state are insufficient to secure the functioning of a modern state,<sup>3</sup> thus slowing down the establishment of the rule of law in the entire territory, as one of the principal pillars of any modern democratic state.

The complicated system in BiH, with several governments and parliaments at different levels, leads to certain difficulties in the process of implementation of the rule of law in the entire territory of BiH. This is, first of all, related to mutual vertical and horizontal harmonization of current legislation. The situation in the judicial system is no different from that in other areas, where there are both the lack of harmony of laws regulating the judicial system, and the lack of laws regulating the organization and functioning of the judiciary and the prosecutors' offices, substantive and procedural norms, as well as laws on enforcement of criminal sanctions. The existence of several laws regulating civil and criminal matters differently also bears an impact on the inequality of citizens in their access to justice.<sup>4</sup> Thus, for example, BiH does not have a single prosecutorial system, as the Office of the Prosecutor of BiH is not the highest prosecutorial institution, but rather a *sui generis* institution with first instance jurisdiction within the Court of Bosnia and Herzegovina, i.e. the Criminal Code of Bosnia and Herzegovina. This Office of the Prosecutor has, in fact, no possibility of influencing or guiding the work of entity prosecutors, or others subordinated to them (cantonal in the Federation of BiH, and district in the Republika Srpska).

On the other hand, there are also problems in the work of law enforcement institutions, particularly in the judiciary. Thus, despite reforms of the judicial system in BiH, there is still a high number of citizens complaining about the work of judicial bodies, particularly at the local level. Year after year, there has been a growing number of persons complaining about municipal courts in particular. Inadequate presence of the rule of law at this level and problems related to it are reflected on everyday life of ordinary citizens, who expect the rule of law to start dealing with their problems in compliance with the rights guaranteed and the laws adopted, though largely remaining just a *dead piece of paper*, as they are simply not applied.

Complaints filed and data contained in reports by courts in the Federation of BiH, lead to a conclusion that the principal problem is in the number of cases pending, transferred into the next year over and over, always with an excuse, either in an insufficient number of judges, or inadequate legislation expanding unnecessarily the competence of courts, although they refer to disputes easily resolved by other authorities.<sup>5</sup> This becomes even more evident from indicators contained in the Information on the Work of the BiH Prosecutor's Office and the Level of Crime in BiH in 2004, which refers to the number of cases in all the prosecutors' offices in the territory of BiH in 2004. Indicators are presented in the table below:

<sup>3</sup> Report of the European Commission for Democracy through Law (the Venice Commission) CDL-AD(2005) 004 of 11 March 2005.

<sup>4</sup> More in *Functional Analysis of the Judiciary in BiH*, Office of the Public Administration Reform Coordinator, Publication No. 8.

<sup>5</sup> Report on the Activities of FBiH Ombudsmen in 2004 and the State of Human Rights in FBiH, available at: <http://www.bihfedomb.org/bos/reports/2004/rpt2004main.htm>

Table 2.1: Number of cases in prosecutor's offices in BiH, data for 2004.

	Cases transferred from the previous year	Cases opened in 2004	Total processed in 2004 (1+2)	Completed in 2004	Remaining pending (3-4)
	1	2	3	4	5
Prosecutor BiH	153	425	578	414	164
Prosecutor RS	6,523	8,811	15,334	6,832	8,502
Prosecutor FBiH	10,707	20,783	31,490	13,169	18,321
Prosecutor of the Brčko District	268	558	856	559	297
TOTAL	17,651	30,577	48,258	20,974	27,284

Source: *The Prosecutor Office of Bosnia and Herzegovina*

Ten years after the cessation of hostilities in BiH, when scores of war crimes were committed, prosecution of these crimes can certainly be not described as satisfactory or effective. There are few other areas which present more clearly the impotence and lack of readiness of the state and its institutions to prosecute such serious crimes. Based on activities and steps taken thus far, it is evident that the onus of the work has been on the work of the International Criminal Tribunal for Former Yugoslavia in The Hague. While this paper does not venture into any assessment of the work of this Tribunal, it is evident that the state bodies of BiH, particularly at the level of the entities, have failed completely. This is particularly so in relation to Republika Srpska, as most of the suspected war criminals have still not been brought to justice, including those at the top of the list - Radovan Karadžić and Ratko Mladić. According to the recent report of the OSCE Mission in BiH,<sup>6</sup> since 1996, only 114 war crime cases have been registered in different stages of prosecution, in relation to 184 perpetrators.<sup>7</sup> During 2004, cantonal courts in the Federation of BiH have delivered first instance judgment acquitting fifteen defendants, and delivering prison sentences from 18 months to 15 years for nine defendants. Moreover, in January 2005, two judgments were delivered by cantonal courts in FBiH, with sentences of 7 years and 4 years 6 months respectively. The report states that the "present failure of the authorities to prosecute war criminals seriously undermines the rule of law and bears a negative impact on the public confidence in the police and the judicial system in general, particularly among the returnee population. This assessment is particularly applicable to Republika Srpska."

As for the existence of groups and individuals who are above the law and whom laws do not apply to, this is a difficult question to answer at the moment. Namely, there is no objective data of adequate quality in BiH to indicate the existence of criminal groups or individuals above or outside the law, due to an evident lack of research in this area. This is particularly concerning as the law enforcement agencies have a legal obligation to prepare reports on such phenomena, and reports are either non-existent, or do not contain adequate data.

On the other hand, there are investigations and indictments in relation to organized crime, both for traditional criminal groups involved in drugs, kidnapping, extortion or theft, and for state and political officials at the highest level. It is indicative that such cases are processed mainly by the Court of Bosnia and Herzegovina, on the basis of indictments by the Office of the State Prosecutor, whereas there is no such conclusion for other lower level courts and prosecutors.

<sup>6</sup> OSCE BiH, *War Crime Trials in BiH -Progress and Obstacles*, March 2005.

<sup>7</sup> According to data from the Prosecutor of the Hague Tribunal and the BiH Prosecutors, some 10,000 persons in BiH have been indicated as possible perpetrators of crimes against international humanitarian law.

A fragmented and dysfunctional police system is a particular hindrance to the rule of law in the entire state, as it does not exist as such at the level of the state, but rather solely as part of the competence of the entities. (For more details, see section 8.2.). There is no solid operational cooperation between entity police forces, nor an institutional framework for their effective joint operations and joint investigations of the most serious forms of crime. “Organized crime, petty criminals and corrupt politicians regularly abuse the fragmented police in Bosnia and Herzegovina (...) Some criminals cooperate or enjoy police protection in their entity, particularly in Republika Srpska, where persons indicted for war crimes have found shelter.”<sup>8</sup>

## **2.2. To what extent are all public officials subject to the rule of law and to transparent rules in the performance of their functions?**

### **2.2.1. Laws**

Pursuant to Article I.2 of the BiH Constitutions, BiH is a democratic state functioning in compliance with laws and on the basis of free, democratic elections. Rights and duties of elected officials are regulated by different laws, depending on the level of power and the body they are elected to. The BiH Constitution does not contain particular provisions related to elected officials, whereas constitutions of the two entities and the Statute of the Brčko District regulate the issue of immunity of elected delegates in criminal and civil proceedings.

For the purpose of further protection of integrity of legislative and executive institutions of the state and the entities, laws on immunity have been adopted on all three levels, pursuant to which members of these legislatures may invoke immunity from criminal and civil liability, and members of the executive on all levels may invoke immunity from civil liability. For the purpose of these laws, “actions taken within their official duty” include actions arising from duties defined by the Constitutions of BiH, FBiH and RS. Although they may invoke immunity at any time, immunity is still not considered to be a general preclusion from criminal prosecution or civil proceedings. Should an individual invoke immunity, the issue is decided upon by a court of competent jurisdiction, and that decision is subject to appeal before the Constitutional Court of BiH, FBiH or RS, depending on the relevant level of governance.

The Constitutional Court of BiH defined the term “immunity” in the following way:

immunity is a public privilege assigned to the holder of public office in his/her capacity as holder of a public office and not as a private person -not for the protection of his/her personal interests but for the interests of the institution concerned. The immunity has two forms -the immunity from liability and the immunity from violability. The immunity from liability prevents a person from legal liability for his or her acts if they are covered by the immunity. The immunity from violability protects people against being arrested or detained in connection with acts covered by the immunity. The immunity from liability operates automatically, while the immunity from violability operates only if claimed by the immunity holder. In substance, the immunity from liability is a material immunity preventing any judicial prosecution for actions carried out within the scope of office -that is, actions through which the work of the institution concerned is carried out. So far as it applies to a person who is actually in office, it can be regarded as the status immunity, or the immunity *ratione personae*. When the person leaves office, the immunity operates *ratione materiae* in relation to the acts performed earlier in the exercise of his or her official functions in order to prevent the institution or office which he or she occupied being indirectly attacked through a legal action against a previous office-holder when the current office-holder would enjoy immuni-

<sup>8</sup> Bosnia’s Stalled Police Reform: No Progress, No EU, Crisis Group Europe Report N°164, 6 September 2005, p. 2

ty. The immunity from violability is a procedural immunity, which prevents application of the general right to the holder of a public office who cannot be deprived of freedom without an approval of the competent authority. The purpose of this immunity is to guarantee freedom from arrest (broader than immunity from liability). The immunity from liability concerns only criminal offenses within the scope of one's office but not criminal offenses committed by other actions.<sup>9</sup>

The legal status of civil servants in state and entity institutions is regulated by laws on civil service at state and entity levels. These laws also prescribe that employment of civil servants is based on public competition and professional competence. These laws also prescribe that civil service must secure the respect and application of principles of legality, transparency and publicity, efficiency, effectiveness, and professional impartiality. These laws also regulate the issue of rights and duties of civil servants, prescribing that they must perform their tasks in such a way as to ensure observance of the constitutional order and laws of BiH and both its entities.

In their work, civil servants must be guided by public interest, and in particular they must serve and assist the public, and provide the public, all the parties concerned, and public institutions, with information requested in compliance with laws on freedom of access to information. In particular, civil servants must work impartially, and avoid any activity in breach of or incompatible with duties set by law, and must refrain from presenting their political beliefs, and not except for themselves or their relatives any gain, benefits, monetary or in-kind compensation etc., other than those prescribed by law. Also, civil servants must not use any real estate owned by a refugee or a displaced person, or an apartment in relation to which a refugee or a displaced person has filed a request for return of occupancy rights, or an apartment which may be administered by a municipal housing authority as alternative accommodation. Further principles are elaborated in the Code of Ethics for civil servants.

There is a Law on the Conflict of Interest adopted at the level of BiH,<sup>10</sup> regulating special duties of elected officials, holders of executive office and advisors in their performance of duties in institutions of BiH.

In order to secure greater transparency of governance and greater access to information for the citizens, the Law on Freedom of Access to Information<sup>11</sup> was adopted at the state level (2000) and at the entity level (2001). These Laws prescribe that publication of information in possession of public authorities is a general rule, and exceptions to this rule are elaborated in detail by the Law, and cannot be applied automatically. Also, all the three Laws prescribe that "laws adopted after the adoption of this Law and whose purpose is not to change or amend this Law may not in any way restrict any rights and duties set by this Law."<sup>12</sup>

Furthermore, there is also a state level Law on Ministries and Other Administration Bodies in BiH<sup>13</sup> as well as the Law on Ministerial, Governmental and Other Appointments in BiH, and in RS,<sup>14</sup> aimed at securing quality and multi-ethnic appointment of personnel in governing bodies of state owned public enterprises.

<sup>9</sup> BiH Constitutional Court Decision No. 24/03 of 22 September 2004.

<sup>10</sup> Official Gazette BiH No. 16/02.

<sup>11</sup> Official Gazette BiH No. 37/03, Official Gazette FBiH No 19/03, and Official Gazette RS No. 20/01.

<sup>12</sup> Article 26. para. 4. Law on Freedom of Access to Information BiH, Article 25. para. 3. Law on Freedom of Access to Information FBiH and Article 25. para. 4. Law on Freedom of Access to Information RS.

<sup>13</sup> Official Gazette BiH No. 5/03, 42/03.

<sup>14</sup> Official Gazette FBiH No. 34/03 and Official Gazette RS No. 41/03.



### 2.2.2. Implementation and negative indicators

The *Corruption Perception Study* published by Transparency International in June 2004 is the best illustration of the perception of the rule of law and civil service transparency among general public. According to this study, 75% of the population believes that servants in the common BiH authorities are involved in corruption, and the same percentage believe that entity civil servants are corrupt. The Study observes that it is “difficult to expect citizens to have confidence in the activities undertaken by the public sector in combating corruption, in view of such a bad opinion about its officials.”<sup>15</sup> The Study continues:

Particularly concerning are research results showing that 52.3% of BiH citizens believe that the BiH Presidency is corrupt, and 54.9% believe the same about the BiH Council of Ministers. The situation becomes worse in light of the opinion of BiH citizens of the level of corruption of entity governments and entity assemblies. Entity governments are corrupt - according to 57.9% citizens of BiH, whereas 56.3% think the same about entity assemblies. According to public opinion, the least corrupt is the Brčko District Government, although 37.1% believe that there is corruption in this institution as well.<sup>16</sup>

For more on corruption, see Section 11.

Analyzing the application of the Law on Ministerial, Governmental and Other Appointments in FBiH, in their 2004 Report, the FBiH Ombudsmen pointed at a series of problems. Thus, although the adoption of the Law was supposed to eliminate “the practice which resulted in that persons with no adequate qualifications and with a conflict of interest were appointed as members of governing boards of public enterprises”,<sup>17</sup> there are still nepotism and corruption, there is no respect for the principle of representation on all grounds, and the entire appointment procedure “takes place away from the public eye, in a small circle of politically like-minded individuals”.<sup>18</sup> The Report also says:

FBiH Ombudsmen believe that, even two years after the adoption of the Law on Ministerial, Governmental and Other Appointments, the FBiH Government and Federation ministries have not accepted basic democratic principles introduced by the Law, and that even now, appointments to governing and supervisory boards are used to exercise political, family, or other forms of influence and control over key companies with majority state capital, aimed at covering up political corruption in particular, in a large number of public enterprises. That is why conflict of interest is present frequently, under the guise of “harmonization”, which means agreement among political parties, violating the Gender Equality Law and with other forms of discrimination.<sup>19</sup>

In their Special Report of 29 September 2004, the FBiH Ombudsmen found a violation in access to public service of a female university professor, because the appointment of the University Rector was conducted contrary to the Law on Higher Education and Rules of the University, so that political power overruled the quality of the candidate. The Ombudsmen stated that this was “a serious breach of University autonomy.” They also stated that this appointment:

represents total disregard for the Beijing Declaration and the Action Plan which the BiH Government adopted and signed in September 1995, and in particular for the BiH Gender Equality Law which was adopted in 2003, pursuant to this Declaration. The University as an education

<sup>15</sup> Transparency International BiH, *2004 Corruption Perception Study*, p. 44; at: [www.ti-bih.org](http://www.ti-bih.org)

<sup>16</sup> *Ibidem*, p. 45

<sup>17</sup> FBiH Ombudsmen’s report on the State of Human Rights in FBiH For 2004, June 2005, p. 7, at: [www.bihfedomb.org](http://www.bihfedomb.org)

<sup>18</sup> *Ibidem*.

<sup>19</sup> *Ibidem*, p. 10.



institution has particular significance and responsibility in the implementation of this Law. In 55 years of the University of Sarajevo, no woman has served as its Rector. In view of the fact that, in the opinion of the Ombudsmen, professor Lamija Tanovic has identical, if not superior professional qualifications in comparison to the Rector-elect, this was an opportunity to demonstrate true dedication and determination to implement consistently the BiH Gender Equality Law.<sup>20</sup>

The FBiH Ombudsmen's report also indicates numerous shortcomings in the work of the administration:

...reflecting negatively on fast and simple exercise of the rights of citizens and other parties before administration bodies and services. The series of shortcomings include a huge and irrational organization, inadequate professional competence of the employees, so that of the total number of staff, most are with secondary education, which must reflect on the employment of a number of staff higher than real needs, lack of professionalism at work, accompanied by corruption, and in smaller communities, politicization of staff (...) All this results in the professional profile of the employees not always being in line with the nature of work they are supposed to perform.<sup>21</sup>

The 2004 FBiH Ombudsmen's report also states that "the Law on Freedom of Access to Information in possession of public authorities in municipalities, cantons, and the Federation of BiH was applied unevenly and inconsistently throughout 2004, although the situation was, in general, slightly better than in the first two years of implementation,; which is certainly an opinion applicable to the other entity and the state level. The Ombudsmen believe that this right is "frequently restricted due to the lack of preparedness of most authorities on one hand, and on the other, lack of systemic harmonization of other laws with this Law." The Report states:

However, the Ombudsmen have come across examples of different interpretations of the Law on Freedom of Access to Information, where public authorities (government bodies) invoke other regulations, laws, and by-laws, in order to justify their lack of action and non-application of the Law on Freedom of Access to Information (such as the FBiH Criminal Procedure Code, FBiH Law on Tax Administration, FBiH Law on Petty Offence Courts, FBiH Law on Securities, etc.).

It is also a fact that in some laws adopted later, the legislators acted in opposition to the above view that freedom of access to information must not be restricted by any law "adopted after the adoption of this Law." The FBiH Criminal Procedure Code and the FBiH Law on Tax Administration are examples of such laws, as they restrict the right of access to certain information in advance, thus restricting the right of access to some information and thus, practically, making it relative.<sup>22</sup>

The Ombudsmen also state that they had "almost one hundred complaints in relation to actions by authorities, or legal persons with public powers, or supervised by public authorities. Part of those complaints are the consequence of the fact that some public authorities "do not feel obliged" to implement this Law, "as no one instructed them or warned them to do so."<sup>23</sup> In most cases, complaints were justified, and following the Ombudsmen's intervention, the right of access to information "was exercised in more than 90% of the cases." The Ombudsmen also emphasize a trend of the number of complaints growing year after year, which they believe is positive, on one hand, as it shows an increased awareness of the citizens about this right, and on the other hand

<sup>20</sup> FBiH Ombudsmen. *Special Report on Violations of the Right to Equal Access to Public Service*, 28 September 2004, p. 5.; at: [www.bihfedomb.org](http://www.bihfedomb.org)

<sup>21</sup> *supra* fn 9, p. 13.

<sup>22</sup> *supra* fn 9, p. 31; see also the Special Report of the FBiH Ombudsmen on the Lack of Harmonization of the CPC and the Law on Tax Administration with the Law on Freedom of Access to Information in FBiH, published on 17 December 2004; at: [www.bihfedomb.org](http://www.bihfedomb.org)

<sup>23</sup> *supra* fn 9, p. 32.

negative, as it shows unwillingness and resistance of one part of the authorities to truly implement these laws.

### **2.3. How independent are the courts and the judiciary from the executive, and how free are they from all kinds of interference?**

#### **2.3.1. Laws**

The BiH judicial system is set up in several systems reflecting the political organization of the state itself. Thus, there is judiciary at the level of the state, at entity level, and in the territory of the Brčko District.

At the state level, the judiciary is organized through the existence of the Constitutional Court of Bosnia and Herzegovina and the Court of Bosnia and Herzegovina.

The Constitutional Court of BiH is the highest level of judicial authority. It is competent to decide on disputes arising from the application (violation) of provisions of the BiH Constitution between the entities and between institutions of BiH. The Constitutional Court of BiH decides on issues of harmonization of laws with the BiH Constitution, the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto, i.e. laws of Bosnia and Herzegovina.

The Constitutional Court of BiH may consider judgments by any court, on appeals stating where the violation of the Constitution and the guaranteed human rights occurred. Decisions by the Constitutional Court of BiH are final and binding.

Judges of the Constitutional Court of BiH, nine in total, are appointed for a term of office of five years, by entity parliaments (4 from FBiH, 2 from RS), and additional three members are appointed by the President of the European Court of Human Rights.

The Court of Bosnia and Herzegovina was established pursuant to the Law on the Court of BiH, which came into force on 8 December 2000. The Court has three departments, criminal, administrative, and appeals. The specific feature of the Court of BiH is that it is a court of first instance, a court of appeals, and a court of cassation, at the same time.

In FBiH and in RS, there are five judicial instances: in FBiH, the Constitutional Court of FBiH, the Supreme Court of FBiH,<sup>24</sup> 10 cantonal courts, municipal courts, and petty offense courts; in RS, the Constitutional Court of Republika Srpska, the Supreme Court of Republika Srpska,<sup>25</sup> district courts, basic courts, and petty offense courts.

Pursuant to the Law on Courts of the Brčko District BiH,<sup>26</sup> there are the Basic Court of the Brčko District BiH and the Court of Appeals of the Brčko District BiH.

Since May 2004, when the Law on the High Judicial and Prosecutorial Council was adopted,<sup>27</sup> the process of appointment of judges and prosecutors in BiH has been the sole competence of the High Judicial and Prosecutorial Council of BiH (HJPC). This Law abolished the previous three high judicial and prosecutorial councils (one at state level and two at entity levels), which had been established in 2002. The establishment of these councils was part of the overall judicial

<sup>24</sup> Law on the Supreme Court of the Federation of BiH, Official Gazette FBiH No. 2/95, 9/96, 20/01 and 44/01.

<sup>25</sup> Law on Courts and Judicial Service, Official Gazette RS No. 13/00, 15/00, 16/00, 70/01, 77/02, 85/03, 114/03.

<sup>26</sup> Official Gazette of the Brčko District BiH No. 4/00, 1/01, 10/01 i 5/02 i 6/02.

<sup>27</sup> Official Gazette BiH No. 25/04

reform in BiH, under the auspices of the international community and under the leadership of the Office of the High Representative. That is why the Independent Judicial Commission was established, tasked with conducting the process of re-election of all the judges and prosecutors in BiH. In order to enable the establishment of the high judicial and prosecutorial councils, it was necessary to amend entity constitutions, which was also done by intervention of the High Representative. This was the first time that the legislature in BiH was prevented from appointing judges and prosecutors, which had been the case until then.

Members of the HJPC, 15 in total, are representatives of courts, prosecutors' offices, bar associations, as well as two members appointed by the BiH Assembly and the BiH Council of Ministers. The primary task of the HJPC is to secure impartial, independent, and professional judiciary within its competence, as prescribed by Law,<sup>28</sup> so that members of the HJPC, *inter alia*:

- (1) appoint judges, including presidents of courts, lay judges and auxiliary judges, in all courts at state, entity, cantonal, district, basic, and municipal levels in BiH, including the Brčko District BiH, with the exception of constitutional courts of BiH entities;
- (2) appoint chief prosecutors, deputy chief prosecutors and prosecutors in all the prosecutors' offices at state, entity, cantonal, and district levels in BiH, including the Brčko District BiH;
- (3) to give proposals to competent authorities in relation to their nominations and appointments of judges of the Constitutional Court of Republika Srpska and appointment of judges of the Constitutional Court of the Federation of Bosnia and Herzegovina. In effecting duties set by this paragraph, prior to giving its proposal, the Council shall seek written opinion from the relevant constitutional court;
- (4) receive complaints against judges and prosecutors, conduct disciplinary procedures, set disciplinary responsibility, and deliver disciplinary measures against judges, lay judges, auxiliary judges and prosecutors;
- (5) decide on appeals in disciplinary procedures;
- (6) decide on temporary removal from duties of judges, lay judges, auxiliary judges, and prosecutors.

The same Law sets competences of the HJCP, as well as procedures for the process of election and appointment of judges and prosecutors, as well as forms of offenses and disciplinary procedures against judges and prosecutors.

### **2.3.2. Implementation**

For a long time, the judicial system of BiH was burdened by political pressure, both directly and indirectly. Namely, until the onset of judicial reforms in BiH, in early 2001,<sup>29</sup> the executive had direct influence over the work of the judiciary, as political executive authorities elected and appointed judges and prosecutors.<sup>30</sup>

<sup>28</sup> *Ibid.*, Article 17.

<sup>29</sup> 14 March 2001 can be considered to be the launch of activities in judicial reform, when the Decision of the High Representative established the Independent Judicial Commission, although some activities had already been taken by then (such as activities of the Judicial System Assessment Project (JSAP) of the UN Mission in BiH, activities by the American Bar Association, ABA CEELI, OSCE Mission in BiH, etc.). However, all these activities were aimed at monitoring and advising with no direct influence over the BiH judiciary, in terms of issuing enforceable decisions.

<sup>30</sup> Independent Judicial Commission, Final Report for 2004.

In that, it is important to note that the Law on Courts and Judicial Office in Republika Srpska, as well as the Law on Public Prosecutor in Republika Srpska came into force on 2 June 2002, after being adopted by the Republika Srpska Assembly. The Law on Judicial and Prosecutorial Functions in the Federation of BiH was proclaimed by the High Representative on 17 May 2000, after strong resistance in the FBiH Parliament against provisions allowing appointment commissions at the level of the Federation to take part in the appointment process at cantonal and municipal levels. Although these laws contained serious shortcomings, their adoption and enforcement applied a different approach to judicial and prosecutorial appointments, i.e. the appointments process was beginning to be de-politicized, and disciplinary procedures were introduced.

There is an inevitable question as to the role of the international community, which initiated this process and which, at a certain point, transferred responsibilities for the application of these laws to local institutions, although it was illusory to expect that the current local institutions would have been able to respond to the obligation imposed on them.<sup>31</sup>

In order to secure greater independence of the judiciary, issues of salaries and other benefits of judges and prosecutors were regulated by separate laws, establishing special salary grades for judges and prosecutors.

Despite the establishment of a single High Judicial and Prosecutorial Council of BiH, competent for appointments of all judges and prosecutors in BiH, the system of financing is a considerable problem in effecting judicial independence. Namely, municipal and cantonal courts in the Federation of BiH are financed by cantonal budgets, making them dependent on the local executive and judiciary. This system of financing of the BiH judiciary is inadequate as it may lead to uneven access to justice for BiH citizens. It is thus possible for the local political authorities to influence the effectiveness of courts by denying or providing financing irregularly, thus, influencing the right of citizens to quick and effective access to justice.

Furthermore, as there is no state level system for re-distribution of resources from the wealthy to the poor parts of the country, some courts work in relatively acceptable financial conditions, whereas others (due to a lack of funds) simply do not function at all. This situation is exacerbated by debts, piling up in a considerable number of courts.<sup>32</sup>

The non-institutional position of the High Representative inevitably bears an impact on independence of the judiciary, automatically breaching the principle of the rule of law. The rule of law cannot exist without independence of courts and the authority of law (*auctoritas iuris*), as the independent position of courts and the authority of law are a normative boundary for the political power.<sup>33</sup> Actions by the High Representative, in the way as he has taken them thus far, are in direct breach of this basic postulate of the rule of law. Namely, in 2002 alone, the High Representative issued some 60 decisions changing, amending or abolishing existing legislation, and introducing new ones.<sup>34</sup> On the other side, the FBiH Parliament adopted 49 laws.<sup>35</sup> Also, in May and July 2002, the High Representative suspended 14 judges and one prosecutor for obstructing the implementation of the peace agreement.<sup>36</sup>

<sup>31</sup> *Ibid.*

<sup>32</sup> Annual Report of the High Judicial and Prosecutorial Council for 2004, [www.hjpc.ba](http://www.hjpc.ba)

<sup>33</sup> Miodrag Simović, *Ustavnopravni osnov vladavine prava u Bosni i Hercegovini kroz funkcionisanje ustavnih institucija*, [Constitutional Basis of the Rule of Law in BiH through the Functioning of Constitutional Institutions] [www.soros.org.ba](http://www.soros.org.ba)

<sup>34</sup> [www.ohr.int](http://www.ohr.int)

<sup>35</sup> UNDP BiH, *Human Development Report -Millennium Development Goals -2003*.

<sup>36</sup> *National Integrity System Study -BiH 2004*. p. 64., Transparency International BiH, [www.ti-bih.org](http://www.ti-bih.org)

Until now, the High Representative alone appointed international judges and prosecutors at the Court of Bosnia and Herzegovina and the Office of the BiH Prosecutor, and the HJCP as the national (state) body for appointment of judges and prosecutors, had no role at all.

As of several months ago, this situation has changed, to an extent, with the establishment of the Registry,<sup>37</sup> so that now, the High Representative appoints international judges at a jointly justified proposal by the Registry, the President of the HJCP, and the President of the Court of Bosnia and Herzegovina, i.e. Chief Prosecutor of Bosnia and Herzegovina.

However, until recently, staff of the Office of the High Representative, as a political body, were involved in criminal investigations conducted by international prosecutors at the Special Department of the BiH Prosecutor's Office for crime, fraud and corruption, although they had no powers to do so, as they did not have the status of authorized officials pursuant to provisions of the BiH Criminal Procedure Code (Article 20, CPC BiH).<sup>38</sup>

Despite the fact that the Law on the High Judicial and Prosecutorial Council of BiH<sup>39</sup> neither recognizes nor contains special provisions on international judges and prosecutors, only in the past few months, international judges and prosecutors have started to give a solemn oath (Article 47, Law on HJCP) although the Law prescribes that they are to do so prior to taking office.

As for formal conditions and regulations, there are no direct mechanisms of influence of the executive over the judiciary in BiH, other than indirectly, as stated above, through financing of the judiciary at entity level. On the other hand, the time since the establishment of a new judicial system is short (and reforms are still under way), and there are no clear indicators on methods and/or cases of influence over the work and independence of the judiciary. Individual cases of disciplinary and even criminal procedures are in no way a strong enough bases to claim that the judiciary is exposed to political, national, economic, or any other influences, in a systemic way. It is true that the number of complaints to the Office of the Disciplinary Prosecutor at the HJCP has been growing and in 2004 there were 1,726 new complaints: 1,528 against judges, and 178 against prosecutors,<sup>40</sup> which is considerably more in comparison with 2000, when there were no registered disciplinary procedures.<sup>41</sup> Nonetheless, this does not mean that there were no breaches of regulations in 2000, but simply that at that time there were no relevant procedures for registration and conduct of such proceedings.

Of the total number of complaints received, 14 were found to be justified and led to disciplinary proceedings.

<sup>37</sup> Office of the Registry was established on the basis of an Agreement between the High Representative for BiH and BiH, signed on 1 December 2004, competent to administer and provide services of support for Section I for War Crimes, and Section II for Organized Crime, Fraud and Corruption of the Criminal and the Appeals Departments of the Court of Bosnia and Herzegovina, as well as to provide services of support for the Special Department for War Crimes and the Special Department for Organized Crime, Fraud and Corruption of the Office of the BiH Prosecutor.

<sup>38</sup> At the time of writing, there is a reduction of OHR's capacities for combating crime, and a decrease in their participation in criminal investigations is also expected.

<sup>39</sup> Official Gazette BiH No. 25/04.

<sup>40</sup> Violations of ethics and official duty in 2004 which lead to disciplinary procedures against judges and prosecutors in BiH, FBiH, RS and the Brčko District, HJPC, Office of the Disciplinary Prosecutor, [http://www.hjpc.ba/reports/pdf/bos\\_2004%20ethics%20brochure\\_22mar05.pdf](http://www.hjpc.ba/reports/pdf/bos_2004%20ethics%20brochure_22mar05.pdf)

<sup>41</sup> Final Report of the Independent Judicial Commission, November 2004, [http://www.hjpc.ba/reports/pdf/final\\_report\\_eng.PDF](http://www.hjpc.ba/reports/pdf/final_report_eng.PDF)



## 2.4. How equal and secure is the access of citizens to justice, to due process, and to redress in the event of maladministration?

### 2.4.1. Laws

The Constitution of BiH guarantees the right to a fair hearing in civil and criminal matters, as well as other rights related to criminal proceedings in Article II/3.e), and that right is guaranteed by entity constitutions as well. Through interventions of OHR in 2003, with no amendments to the BiH Constitution, the BiH Criminal Code,<sup>42</sup> the BiH Criminal Procedure Code<sup>43</sup> and the BiH Civil Procedure Code<sup>44</sup> were proclaimed, and then adopted, and the Court of BiH and the Office of the BiH Prosecutor were established.<sup>45</sup> With the adoption of almost identical laws at the level of the entities and the Brčko District BiH, these laws have led to -according to the letter of the law -a common approach at the level of the entire state to the issue of equality of all citizens before the law and the issue of a fair trial.

Principles of a fair trial have found their place in systemic procedural laws, particularly laws on criminal procedure in BiH, FBiH<sup>46</sup> and RS<sup>47</sup> from 2003. These laws are almost identical, based on the same principles, with differences of a technical nature, and not of substance. These laws were prepared under the direct guidance and strong influence of the international community. One of the results is that the *inquisitorial* system was replaced with an *adversarial* system, accepted widely as a step forward. Still, it should be noted that criminal legislation is a peculiar mixture of continental and common law, with instruments of one system inserted into the other. This hybrid, with a mixture of two systems of law, is focused largely on the principle of efficiency, sometimes to the detriment of the principle of fairness. That is why this system of criminal legislation is already being changed and amended through decisions of the BiH Constitutional Court,<sup>48</sup> and the same can be expected from the European Court of Human Rights in Strasbourg, as BiH citizens have, since the accession of BiH to the Council of Europe, the right to lodge applications with this Court in cases of complaints related to rulings by domestic courts.

Laws on Civil Procedure in BiH, FBiH<sup>49</sup> and RS<sup>50</sup> are largely based on the prescribed constitutional principles, but civil justice is rather marginalized in comparison with criminal justice, which receives major attention from the international community. Amendments of legislation gave priority to the assumed “efficiency” and the still unattained effectiveness of proceedings, and less to equality and fairness, which can ultimately lead to very negative consequences.

One of the elements of the right to a fair trial is the possibility of receiving legal assistance in access to court. There is no system in BiH providing legal aid to indigent and socially vulnerable groups. Criminal procedure legislation regulates the issue of *ex officio defense* and provide for the possibility of a lawyer to be appointed by the court, not only when the crime in question may lead to a particular category of sanctions, but rather in all cases when “interests of justice so require”. The RS Civil Procedure Code provides for the possibility for a representative of an NGO providing legal aid to appear as legal counsel, and the Brčko District BiH has a Legal Aid Office, which

<sup>42</sup> Official Gazette BiH No. 37/03.

<sup>43</sup> Official Gazette BiH No. 36/03 i 56/03.

<sup>44</sup> Official Gazette BiH No. 36/04.

<sup>45</sup> For more on organization of the judiciary, see section 2.3 of the Study.

<sup>46</sup> Official Gazette FBiH No. 35/03.

<sup>47</sup> Official Gazette RS No. 50/03 i 111/04.

<sup>48</sup> See, for example, Decision of the Constitutional Court No AP-661/04 of 22 April 2005, at: [www.ustavnisud.ba](http://www.ustavnisud.ba)

<sup>49</sup> Official Gazette FBiH No. 53/03.

<sup>50</sup> Official Gazette RS No. 58/03.

some believe is the model of regulating the legal aid system across BiH. Although there have been several attempts, there is still no law on legal aid in BiH.

#### **2.4.2. Implementation and negative indicators**

Within the context of a very complex and eroding social, political, and economic system, resulting in an unpredictable and enormous increase in court cases of all kinds, a fragmented judicial system has been established, with a large number of pending cases; courts are overburdened and slow, and citizens are displeased with the way the judiciary acts.

First of all, despite interventions by OHR, i.e. the international community, the “Court of BiH” project has not been the factor of unification of the judicial systems in BiH, but rather just another “high”, though still a first instance court, competent for the most serious offenses of organized crime and war crimes. This Court is also the court of appeals for first instance decisions within its competence and it has no systemic connection with supreme courts of the entities and other courts of regular jurisdiction. Thus, there are still two separate entity judicial systems with supreme courts at the top, or at the end of the proceedings -i.e. three, including the separate system of the Brčko District BiH, and three separate, though almost identical, legal systems. (For more on judicial reform and organization of the judiciary in BiH, see section 2.3. of this Study.) It may be observed that the focus of the international community and OHR as the sole arbitrator has mainly been focused on issues of organized crime at the highest level and the future activities related to war crime trials at the Court of BiH. General crime, civil, extra-judicial and administrative procedures enjoy far less attention of the international community.

It is necessary to point out the problem indicted by the Parliamentary Assembly of the Council of Europe in its Resolution 1384 on “strengthening of democratic institutions in BiH”. Namely, the Resolution stated that the “scope of OHR is such that it is, in every sense, the supreme judicial institution with powers in BiH” and that the “Assembly believes that it is irreconcilable with democratic principles for OHR to be able to adopt such executive decisions and that it should be bound by any responsibility for them, nor an obligation to justify their validity, with no legal remedy available.”<sup>51</sup> Accordingly, the Venice Commission was asked to consider several constitutional issues in BiH. In its opinion in relation to legislative powers of OHR, the Venice Commission observed that:

the democratic principle of sovereignty of nations requires laws to be adopted by legislature elected by the people. Article 3. of Protocol 1 to the European Convention on Human Rights requires that the legislature be elected by the people, and this right is devoid of any content if laws are adopted by another body. As a member state of the Council of Europe, BiH is responsible for commitments related to this organization and these commitments are to be fulfilled by the state, and not by the international community.<sup>52</sup>

According to the Venice Commission, this engagement by OHR is “fundamentally incompatible with the democratic character of the state and the sovereignty of BiH” and that “there is a risk of creating a culture of dependence incompatible with future development.”<sup>53</sup>

Unfortunately, this fear is founded because such dependence is already a generally accepted rule of conduct of domestic legislative, executive, as well as judicial authorities. Systemic legis-

<sup>51</sup> CoE Resolution No. 1384 (2004) on Strengthening Democratic Institutions in BiH, of 23 June 2004, para. 13. Resolutions at: [www.assembly.coe.int](http://www.assembly.coe.int)

<sup>52</sup> European Commission for Democracy through Law (the Venice Commission), Opinion on the Constitutional Situation in BiH and Powers of the High Representative, No. CDL-AD(2005)004 of 11 March 2005, para. 88, p. 20.

<sup>53</sup> *Ibidem*, para. 90, p. 21.



lation in BiH, including the Constitution, is largely the product of initiatives, realization, coordination and donations by the international community. All the activities in this area are fully supervised by the international community, through OHR as the initiator, the implementer and the interpreter of any legislative changes. In light of that, the issue of functioning of domestic legal systems, systemic laws and their implementation, have a completely different meaning.<sup>54</sup> (On the role of OHR, see also Section 2.2.)

An important corrective of inadequate action of the judiciary was, to an extent, the BiH Human Rights Chamber, which decided on applications against BiH and the entities, though not against actions by OHR. According to constitutional provisions, harmonization of legislative provisions with constitutional principles and their application compliant with standards of the European Convention was effected by the Chamber, and upon its establishment, the Constitutional Court of BiH was left as the highest judicial authority in the country, which protects human rights through its competence, including its appellate jurisdiction.<sup>55</sup>

It is important to note that despite the legislative changes, the time that BiH citizens spend waiting for valid judgments is very long. In one of its decisions, the BiH Human Rights Chamber observed that, pursuant to Article 6 of the European Convention, the state has a positive obligation to organize its legal system in such a way so that it provides for all persons not only the right to a fair trial in relation to their civil rights and duties, but also to guarantee the “reasonable time” of duration of such proceedings. Shortcomings in the organization of the judicial system in the entities and the state, must not bear any impact on the respect for individual human rights and freedoms provided, *inter alia*, by the Convention and its Article 6, nor must it be assigned to an individual.<sup>56</sup>

In another case, dealing with the issue of reasonable time, the Chamber found a violation of Article 6, paragraph 1. of the European Convention, in that in proceedings initiated by the applicant, in relation to exercising the right of transfer of occupancy rights, there was no decision within reasonable time, as the administrative and judicial proceedings were still not ended at the time of this ruling, i.e. had been going on for 6 years and 11 months,<sup>57</sup> i.e. that expert testimonies by financial experts and numerous hearings scheduled regularly were not, after all, making the cases so complex that the proceedings should extend to more than six years.<sup>58</sup> The F BiH Ombudsmen’s report for 2004 also indicates violations of the right to a fair trial in that proceedings sometimes continue for ten, even 15 years.

Official data on duration of proceedings before BiH courts, and thus the duration of investigation, waiting for a hearing, appeals procedure, either on civil or criminal charges, though officially gathered, is not available. Moreover, in the domestic legal system, there is “no effective legal remedy allowing an applicant to appeal against excessively long proceedings.”<sup>59</sup>

The F BiH Ombudsmen’s report states that in late 2004, there were 467,138 pending cases from earlier years before the courts in F BiH, whereas cantonal courts had 14,304 pending cases.

<sup>54</sup> For more on the role of the international community and cooperation with local authorities, see section 14.

<sup>55</sup> The Human Rights Chamber was a body established by Annex 6 of the General Framework for Peace in BiH. Its term of office ended on 31 December 2003. Pursuant to the Agreement between the parties in compliance with Article XIV of Annex 6, signed on 22 and 25 September 2003 and in January 2005, the Human Rights Commission of the Constitutional Court of BiH was established with the mandate to decide on applications received by the Chamber until 31 December 2003. More on [www.hrc.ba/comission](http://www.hrc.ba/comission)

<sup>56</sup> CH/99/1713, at: [www.hrc.ba/comission](http://www.hrc.ba/comission)

<sup>57</sup> CH/01/8054

<sup>58</sup> CH/00/4295

<sup>59</sup> Decision of the BiH Constitutional Court No. 769/04 of 30 November 2004. at: [www.ustavnisud.ba](http://www.ustavnisud.ba)

The Supreme Court of the Federation of BiH had 12,094 pending cases in late 2004, of which 10,746 were in relation to pending administrative disputes dating as far back to 1999 (nine cases). Therefore, the total number of cases pending before courts in the Federation of BiH at the end of 2004 was 493,536.<sup>60</sup>

Since the adoption of new legislation on civil procedure, and due to inadequate management of a large number of pending cases and a growing number of new cases, courts are no longer capable of observing the prescribed deadlines for acting on cases. For example, although the new legislation on civil procedure prescribes strict deadlines for court action on complaints received, practice has shown that courts are unable to honor those deadlines, primarily due to an enormous number of pending cases, thus breaching the law at the onset. Efforts of the legislator to focus on the speed of proceedings and efficiency by decreasing the number of judges, and ignoring the trend of constant increase in the number of cases, and the fact that there are more than 1,000,000 “old” cases, have greatly reduced, or at least brought into question, the citizens’ constitutional right to a fair trial, a public hearing within reasonable time -i.e. access to court and equality before law.

Information on the work of the BiH Prosecutor for 2004 also confirms inefficiency, piling up of cases, and the wording “cases carried over from 2003 and earlier years,” with no data on the duration of investigation and trial, confirm years of duration of some cases. According to this information, in 2004, prosecutors in RS worked on a total of 15,334 cases, of which 8,811 were received in 2004, and the rest, 6,523, were carried over from earlier years (see table in Section 2.1.). 6,832 have been decided on, 8,502 are still pending. This number should also include 37,061 cases with unknown perpetrators, with 29,170 having been carried over from 2003 or earlier. 5,492 cases against unknown perpetrators have been completed, leaving 31,669 pending cases. In the same period, prosecutors in the Federation of BiH worked on a total of 31,490 against identified perpetrators, of which 10,707 were carried over from 2003. In 2004, 13,169 charges against identified perpetrators were completed, and 18,321 charges remain pending (see table in Section 2.1.). The number of cases related to unknown perpetrators in the FBiH prosecutors’ offices was 69,192, of which 45,123 were carried over from 2003 or earlier. 17,082 cases were completed. The number of pending cases which entity prosecutors carried over into 2005 is more than 110,000. Each prosecutor in FBiH (and the situation is similar in RS), works on an average of 595 cases, which illustrates the impossibility to work in compliance with constitutional and legal principles. It is difficult to speak about equality of citizens before law and effective access to justice in a situation whereby the prosecutor, due to insufficient time and the enormous number of cases, has no possibility of observing “reasonable time” and other elements of the right to a fair trial and equality before law.

The right of citizens to a fair trial in criminal proceedings may also be challenged by the application of new legislation. In one case, the Constitutional Court of BiH found a violation of the right to a fair trial by the fact that a criminal judgment was delivered solely on the basis of a statement by a witness who entered a plea bargain with the prosecutor, which rendered a prison sentence below the legally prescribed minimum, and who testified against another person in return. Elaborating its decision, the Constitutional Court stated:

The law introduced the institute of a settlement related to admission of guilt into the criminal justice system in BiH, which is, to an extent, equivalent to the institute of “plea bargaining” in common law. Originally, and in the new criminal legislation, the basic ratio of this institute is to reduce the number of trials and to cut the cost of proceedings. On the other hand, this institute is

<sup>60</sup> *supra* fn 9, p. 18.

used in common law jurisdiction to obtain information and testimonies against other persons, mainly in relation to organized criminal groups or networks, which can be very positive. However, in obtaining evidence in this way, i.e. in securing evidence by using this institute in countries of continental law, such as Bosnia and Herzegovina, it is necessary to use, along with this type of evidence, other fundamental principles of criminal procedural legislation, such as careful and conscientious assessment of evidence individually and in combination, and the principle of *in dubio pro reo*. As stated above, by applying the principle of free assessment of evidence the courts may not *a priori* assign greater value to this type of evidence just because it was obtained on the basis of a plea bargain with a witness who was originally charged with the same offense. On the contrary, courts must assess this evidence in the same way and under the same rules provided by Law in relation to any other evidence presented, i.e. individually and in relation to other evidence, and establish a logical mutual connection between each piece of evidence presented.<sup>61</sup>

In several cases, the BiH Constitutional Court found a violation of the right of access to court, on account of laws adopted by BiH and its entities, and related to the lack of possibility of enforcement of valid judgments. In those decisions, the Constitutional Court found that there was “no effective legal remedy allowing applicants to complain against the failure to enforce a valid decision allowing for enforcement of a judgment” and that “shortcomings in the organization of the judicial system of the entities and the state must not bear an impact on the respect for individual rights and freedoms set by the Constitution of Bosnia and Herzegovina, as well as the requirements and guarantees set by Article 6. of the European Convention.” The Constitutional Court also found that the “European Convention does not grant member states the right to adopt laws inhibiting the enforcement of valid judgments delivered in compliance with Article 6. of the European Convention” and that, in the given case, it was the law that prevented the enforcement of a valid judgment related to confirmed claims to be paid from the budget.”<sup>62</sup>

There is the question of adequacy of legal provisions on detention, in relation to standards prescribed by the European Convention. Detention pursuant to Article 5.1.c refers only to criminal proceedings, as the first step of deprivation of liberty, solely on the basis of existence of a *grounded suspicion*. This clause allows for the so-called *detention during investigation*, and *grounded suspicion* represents facts, i.e. information that would lead an objective observer to believe that a person could have committed an offense. It has been noted that a considerable number of cases, in combination with restricted time, challenges the objective perception of “grounded suspicion” in relation to the presumption of innocence, which can easily lead to a violation of rights guaranteed by the Constitution. Particular weight in this situation rests with public statements by representatives of the prosecutor, who give public comments on indictments before they are confirmed by courts, which can, in some cases, not only violate the right to the presumption of innocence, but may also jeopardize the investigation itself.

There is a particular issue with extension of detention. Namely, continuation of detention may only be justified with the presence of the necessary evidence on real requirements of public interests which, without violating the presumption of innocence, exceed the rule of respect for individual freedoms. The continued existence of *grounded suspicion* that a person in detention did commit the offense is a requirement *sine qua non* for the continued lawfulness of detention, but after a certain amount of time, that is in itself no longer sufficient. There have to be relevant and satisfactory grounds justifying the detention. The court must confirm that the prosecutor demonstrated “due diligence” in the proceedings, which is frequently, due to issues of organizational nature, questionable. The problem is all the more complex as it is a very delicate measure of depriving an

<sup>61</sup> Decision of the BiH Constitutional Court No AP-661/04 of 22 April 2005.

<sup>62</sup> Decision of the BiH Constitutional Court No AP-288/03 of 17 December 2004, and AP-464/04 of 17 February 2005.

individual of liberty in order to secure his/her presence in criminal proceedings, rather than to sanction them.

The BiH Constitutional Court noted a problem related to bringing a person deprived of liberty before a judge or other competent person, as prescribed by Article 5. of the European Convention. In one case, the Constitutional Court instructed that the applicant should “no later than 24 hours from the time of receipt of the decision, be brought before a competent judge, in compliance with Article 5. paragraph 3. of the European Convention”, finding first that the person had been deprived of that right. Namely, the BiH Constitutional Court found that there is, in the Criminal Procedure Code, “no strict obligation for a person in detention to be brought before a judge, and that the judge calls the suspect only in cases of imprecise, unclear or unsubstantiated requests for detention,” and it continues:

In the given case, it is clear that the applicant was arrested, that his detention was ordered and then extended, and it continues at the present time, without being brought at all before a judge, as requested by Article 5. paragraph 3. of the European Convention. Such a situation cannot be justified by the fact that provisions of the Criminal Procedure Code do not prescribe strictly that a person placed in detention must be brought before a judge, in view of the direct application of the European Convention, pursuant to Article II/I. of the Constitution of BiH.<sup>63</sup>

The basic element for the application of the constitutional principle of availability of legal remedy (Article 13. of the European Convention) is the so-called substantive effectiveness, requiring the legal remedy not only to be available in the domestic legal system, but also for the applicant to be able to utilize it effectively. The principle to be applied in this case is that the rights contained in the European Convention must be practical and effective, rather than just theoretical. Legal remedies prescribed by law and described as effective will have no effect if they are not applied correctly, or if the authorities do not respect them at all.

Moreover, legal provisions providing a final resolution to a case through an appeals procedure, were inspired by efficiency and the need for a *fast* and *final* resolution, but have not yet allowed for an increase in the efficiency of courts, nor have they improved it significantly. Ineffectiveness of legal remedies is augmented by the fact that the number of cases pending before higher and supreme courts is enormous, and that resolution takes years.

The specific features of this segment of legal activity in BiH was also noted by the Venice Commission in the above-cited *Opinion on the Constitutional Situation in BiH and on Powers of the OHR*. Namely, contrary to the standard and the constitutional principle of availability of legal remedies, the OHR makes individual decisions, usually related to removal from office of state and entity officials, elected politicians, and previously judges and police officers. These decisions are not subject to appeal, and there is a belief that courts of regular jurisdiction are not competent to examine the validity of decisions of the High Representative. The Venice Commission states that the removal from office of dignitaries and other officials is a serious interference with their rights and that “in order to satisfy the democratic standards, there has to be a fair trial on the basis of serious grounds and with sufficient evidence and a possibility of legal appeal.” In the opinion of the Venice Commission, the High Representative “does not act as an independent court” and does not leave any possibility of appeal. “The High Representative is not an independent judge and does not have the democratic legitimacy drawn from the people of BiH,” and the Venice Commission therefore underscores that “it does not appear acceptable that decisions related to the

<sup>63</sup> BiH Constitutional Court, Decision on Provisional Measure No. AP 924/04 of 19 November 2004 and AP 1010/04 of 30 November 2004, at: [www.ustavnisud.ba](http://www.ustavnisud.ba)

rights of an individual, and made by a single political body, are not subject to a fair hearing, or at least a minimum due process and analysis before an independent court.”

However, even before this opinion, in dealing with applications by persons affected by such decisions by OHR, the BiH Constitutional Court decided that the applications were not admissible since the applicants had not exhausted domestic legal remedies, implying that courts of regular jurisdiction were competent to decide on the High Representative’s decisions on removal. The Constitutional Court underscores that:

... it is competent to assess acts by the High Representative when he replaces domestic authorities (see Decision of the Constitutional Court No. U -9/00 of 3 November 2000, Official Gazette of Bosnia and Herzegovina No. 1/01). Also, the Constitutional Court is competent to assess the harmonization of any act with the Constitution of Bosnia and Herzegovina, irrespective of who adopted it, for as long as this assessment is based on one of the competences listed in Article VI/3 of the Constitution of Bosnia and Herzegovina...

[...]

Considering the formal aspects of the disputed and other similar decisions by the High Representative, as well as consequences arising from them in relation to persons they refer to, the Constitutional Court is of the opinion that such decisions raise a serious issue of existence of violations of human rights and fundamental freedoms set by the Constitution of Bosnia and Herzegovina and the European Convention. Inter alia, the Constitutional Court observes that the impossibility to challenge such decisions by the High Representative leaves such persons with no protection of their human rights and fundamental freedoms. Such an approach also leaves an individual with no effective legal remedy, seriously challenging the enjoyment of rights set by Article 13. of the European Convention. Consequently, there is a question of violation of the right of prohibition of discrimination as set by Article II/4 of the Constitution of Bosnia and Herzegovina.<sup>64</sup>

If the judicial segment of the system is observed in the context of the above, particularly in view of the key role of the OHR in judicial and systemic legislation reform, there is an inevitable conclusion identical to that reached by the Venice Commission in its opinion that such practice (i.e. utilization of the so-called *Bonn powers*) is “not compliant with democratic principles, when used with no due process and with any possibility of judicial review”. This is certainly a serious threat to the right of citizens to equality before the law and the right of access to court, as prescribed by the BiH Constitution.

## **2.5. How far do the criminal justice and penal system observe due rules of impartial and equitable treatment in their operations?**

### **2.5.1. Laws**

As part of the criminal justice system reform, in early 2003, the new Criminal Procedure Code came into force, as part of the substantive change in criminal proceedings. This law abolished the institution of an investigating judge and assigned investigation powers to the prosecutor, introduced the adversarial system and the principle of equality of arms, introduced new legal institutes such as plea bargain, prescribed penalty, prohibition of trials in absence, etc. The purpose of introducing such new provisions is to strengthen the rule of law and to establish a more effective criminal procedure, where justice would be available to all and equal for all.

<sup>64</sup> Decision of the BiH Constitutional Court No. AP 759/04 of 29 September 2004.



Discrimination on any grounds by official or responsible persons in institutions of Bosnia and Herzegovina is prohibited, and such actions are prescribed by the BiH Criminal Code as an offense (Article 145.). There are analogue provisions in criminal codes of the entities and of the Brčko District.

Provisions of the Criminal Procedure Code prescribe the procedures for deprivation of liberty and its duration. Police authorities have a legal obligation to bring a person deprived of liberty to a competent prosecutor within 24 hours, or to release them. A competent prosecutor may hold such a person for no more than 24 hours, during which time the person must be heard, or deliver them to a court, or release them. As for the duration of detention during investigation, it is limited to six months. If the prosecutor fails to submit an indictment during this time, the person in detention is to be released. Following a confirmation of an indictment, detention may continue for one year, irrespective of whether the judgment has been delivered or not. Upon delivery of a first-instance judgment, detention may continue for another six months, or a total of one year from the delivery of a second instance judgment rendering the first instance one null and void.

The Law on Criminal Procedure also prescribes the enforcement of detention, treatment of detainees, rights and freedoms of detainees, as well as judicial supervision over enforcement of detention.

Enforcement of criminal sanctions is prescribed by special legislation regulating this matter. There are four such laws in BiH: the BiH Law on Enforcement of Criminal Sanctions, Prison and Other Measures,<sup>65</sup> the Law on Enforcement of Criminal Sanctions in the Federation of Bosnia and Herzegovina,<sup>66</sup> the Law on Enforcement of Criminal and Petty Offence Sanctions in Republika Srpska<sup>67</sup> and the Law on Enforcement of Criminal Sanctions in the Brčko District.

### **2.5.2. Implementation: positive and negative indicators**

There are 14 prison institutions in BiH, of which eight are in the Federation of BiH and six in Republika Srpska. There is no state prison at the level of BiH, and prisoners serving sentences on the basis of judgments of the Court of Bosnia and Herzegovina serve their sentences in entity prisons. Early this year, a detention unit of the Court of Bosnia and Herzegovina was built, with the accommodation capacity of 21 beds, and preparations are under way for the first state prison to be built, with a capacity of 330 beds. The detention unit of the Court of BiH was built in compliance with European standards, and each detainee has a separate cell.

As of 31 January 2005, there were 1,509 persons in prison institutions of the Federation of BiH, whereas the capacity of those institutions is 1,183. There is an evident accommodation problem in the Federation of BiH, as the existing capacities are insufficient to meet the current needs. At the same time, the capacities in Republika Srpska are utilized to 98%, i.e. there are 1,052 persons in prisons in this entity, in comparison with a total capacity of 1,073.<sup>68</sup> The trend of increase in prison population in the Federation of BiH and Republika Srpska, expressed in prison rates, and an overview of utilization of capacities, are presented in tables 2.2, 2.3, 2.4 and chart 2.1.

Of the total number of persons in detention, some 20% are persons who have not yet received a criminal legal sanction.<sup>69</sup>

<sup>65</sup> Official Gazette BiH 13/05.

<sup>66</sup> Official Gazette FBiH, 44/98.

<sup>67</sup> Official Gazette RS 64/01 and 24/04.

<sup>68</sup> Prison Brief for Bosnia and Herzegovina, [http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/europe\\_records.php?code=129](http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/europe_records.php?code=129) i [http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/europe\\_records.php?code=128](http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/europe_records.php?code=128)

<sup>69</sup> Barbara Nazareth Andrade de Oliveira, Prison Service: Bosnia and Herzegovina, <http://www.legislationline.org/index.php?country=8&org=0&eu=0&topic=12>

Table 2.2: Trends of increase of prison population in the Federation of BiH

Year	Total number of prisoners	Rate
1994	626	(25)
1997	754	(30)
2000	1,041	(42)
2003	1,369	(52)
2004	1,509	(58)

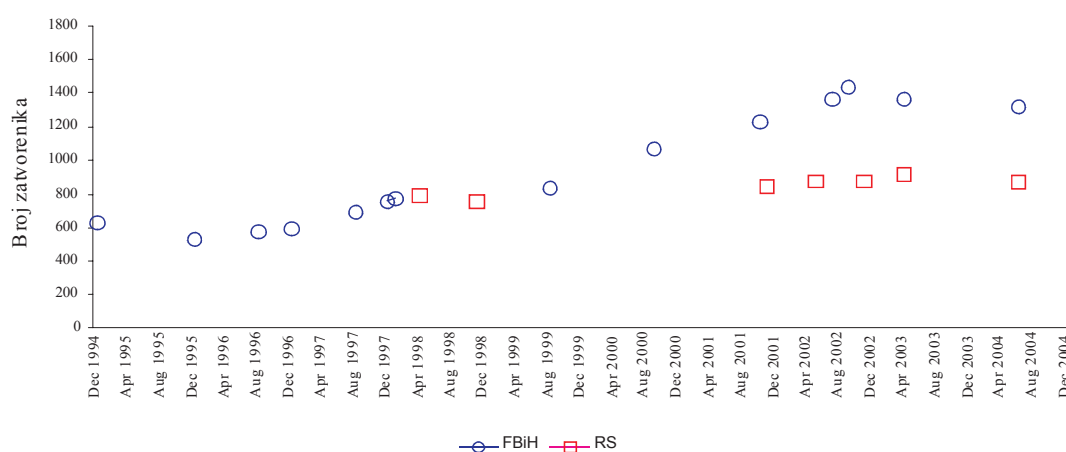
Table 2.3: Trends of increase of prison population in Republika Srpska

Year	Total number of prisoners	Rate
1998	872	(67)
2001	849	(65)
2003	899	(64)
2004	1,052	(75)

Table 2.4. Utilization of prison capacities

	Utilization	Capacity	Level of utilization
FBiH	1,509	1,183	113.1%
RS	1,052	1,073	98%

Chart 2.1: Prison population trends in BiH



[vertical text: Number of prisoners]

### Negative indicators

There has been no reform of the prison system in BiH, either in terms of legal reforms, or institutional. Namely, there are two separate prison systems in BiH: that of the Federation of BiH, with its own legal framework, and that of Republika Srpska, with its own, independent legal and institutional framework. There is no prison institution at the level of BiH, although the detention unit of the Court of BiH was established in the spring of 2005, administered by the BiH Ministry of Justice. The Brčko District as a separate administrative and territorial unit has its own Law on Enforcement of Criminal Sanctions, but there are no prison institutions in its territory.

As for the respect for standards of rights of prisoners and detainees, as prescribed by domestic legislation<sup>70</sup> as well as by international standards,<sup>71</sup> there have been cases of violations of those

<sup>70</sup> Laws on Enforcement of Criminal Sanctions in BiH, FBiH, RS, and BDBiH.

<sup>71</sup> European Prison Rules and the European Convention for the Protection of Human Rights and Fundamental Freedoms.



rights. The scope and type of such cases do not indicate that there are serious violations of rights of detainees or convicts in BiH, as indicated by the recent Report of the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) for Bosnia and Herzegovina.<sup>72</sup>

As the most serious case, this Report cites action by the management and guards of the Prison in Zenica on 11 February 2003. Following a rebellion by the prisoners, which resulted in considerable material damages, on the night of 21 February 2003, the prison management decided to separate 50 prisoners who were considered to have been the *organizers and leaders* of the riot. The operation included approximately 170 prison guards, some of whom were brought from other prisons, and the result was that 24 prisoners were placed in separate premises (the so-called intensive supervision and solitary confinement cells) where they were held for 90 days. The remaining 26 prisoners were transferred to other prisons in the Federation of BiH. It is assumed that in this case the prison guards exceeded their powers considerably, as prisoners were hand-cuffed and beaten. Official reports of this event do not mention any use of force. What is concerning is that there was no investigation. In the response of the BiH authorities to the above mentioned Report, the actions of the prison guards are justified by the circumstances and the need to control the rebellion and rioting among the prisoners. What is not mentioned is the fact that the riot happened on 11 February, and that the separation of “organizers and leaders” of the rebellion happened on 21 February.<sup>73</sup>

Another important problem is that in BiH, psychiatric patients and mentally unaccountable persons who received a court sanction of mandatory psychiatric treatment and confinement in a health institution are held in prisons, as there are no specialized institutions of that kind. This is particularly evident in the Federation of BiH, where such persons are accommodated at the Zenica Prison. Such a situation is not compliant with hospital standards in terms of hygiene, or in terms of organized activities or treatment of such patients.<sup>74</sup>

The issue of minors and their accommodation in prison and detention institutions is particularly concerning. Namely, there is no institution in BiH specialized in accommodating juvenile detainees, so that underage persons are usually placed with adult detainees and/or prisoners. Minors in detention are usually not able to attend school. There have also been cases of minors who received a particular education/development measure serving such sentences in prisons or centers (homes) for abandoned children.

## **2.6. How much confidence do people have in the legal system to deliver fair and effective justice?**

An independent and autonomous society is the guarantee for enjoyment and protection of human rights and freedoms. The confidence of people in its judiciary is directly dependent on the level of its efficiency. At the moment, it does not enjoy major public support. Data presented in the *Early Warning System* by the UNDP, for the last quarter of 2004, show that “citizens of Bosnia

<sup>72</sup> Council of Europe, Report to the Government of Bosnia and Herzegovina on the Visit to Bosnia and Herzegovina Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 9 May 2003, CPT/Inf (2004) 40.

<sup>73</sup> Initial Report of the BiH Council of Ministers on the Application of the International Covenant on Civil and Political Rights in BiH for the period 1994-2004. pr.25, <http://www.mhrr.gov.ba/PDF/ICCPR-%20B%20-.pdf>

<sup>74</sup> *Ibidem*, as well as Special Report of the FBiH Ombudsmen on violations of rights in enforcement of measures of mandatory psychiatric treatment and confinement in health institutions for persons who received such sentences in judicial proceedings, <http://www.bihfedomb.org/bos/reports/special/lijecenje.htm>

and Herzegovina (...) demonstrate a low level of confidence in the institutions of Bosnia and Herzegovina. (...) Only the police and the judiciary enjoy support of more than one-half (the police 61.7%, the judiciary 57,5%)..." This is just an observation related to a slightly better rating of the judiciary as compared with other state institutions, though this cannot be considered to be a confirmation of confidence.

The problem of non-functioning judiciary, particularly manifested in the first few years after the war, led to a loss of public confidence. This was the consequence of the method of appointment of judges, who were selected primarily on the basis of their ethnicity and political suitability, their insufficient professional competence, and a large number of pending cases at the end of each year, as well as the poor financial situation of courts, etc.

It is evident that judicial reform has not yet showed the expected effects.<sup>75</sup> Delays in courts have increased, duration of proceedings has been extended, costs and debts have grown. Still, the judicial reform is felt the least at the level of municipal courts. Year after year, there are more and more citizens who complain about the work of municipal courts in particular, about being denied the right to a fair trial, equality before the law, efficiency and professionalism of courts and judges. The 2004 Report of the FBiH Ombudsmen states that there has been an increase

in the number of complaints where citizens identify courts in the Federation of BiH as the party responsible for violations of their rights. Statistically, in 2003, in comparison with the total number of complaints received, courts were implicated in 27%, whereas during 2004, 1,695 complaints were received in reference to 2,207 persons, which is 30.15% in relation to the total number of complaints received, higher by 3% in comparison with 2003. Thus, for example, 1,360 persons complained about a violation of the right to effective court protection, 650 persons complained about a violation of the right to a fair hearing within reasonable time, 141 persons complained about a violation of the right to a fair criminal trial...<sup>76</sup>

Courts continue to justify the quantitative indicators of dissatisfaction with administration of justice by citing a large number of pending cases carried over year after year, and they see the cause for that in inadequate numbers of judges, or inadequate legislation expanding the competence of courts unnecessarily, although disputes could be resolved by other authorities or by mediations.

Data contained in the cited report by the Ombudsmen on the number of cases still pending in municipal courts in the Federation of BiH in 2004 (the situation in RS is similar), with 467,138 cases still pending from earlier years, certainly cannot lead to any satisfaction with judicial reform, nor do they contribute to an increase of public confidence in the judicial system. The fact is that at the end of 2004, the Supreme Court of the Federation of BiH had 12,094 pending cases (of which 10,746 were related to unresolved administrative disputes, of which nine were from 1999) and the fact that delays have been increased, indicate poor effects of the reform. The cited figures, i.e. this latent situation effects the feelings among the population, particularly those who are involved in court proceedings, and their perception of an ineffective judiciary. A statement by the President of the HJPC of 25 February 2005, that the Council "received approximately 5,000 complaints against the work of judges and prosecutors", i.e. an average of 5 complaints per one holder of judicial office, is also an indicator of the level of mistrust of the citizens in the judiciary.

According to this statement, the President of the HJCP believes that "the key problems are the lack of money and problems in communication with the citizens, with lawyers, prosecutors and

<sup>75</sup> For more on problems in judicial reform, see section 2.3.

<sup>76</sup> *supra* fn 9, p. 17.

the media,” as well as “sensitivity of judges to disciplinary procedures, because although they receive more than a hundred complaints a week from citizens complaining about delays and reacting to the duration of proceedings, 98% of the complaints are unfounded.” Moving the responsibility for the situation in the judiciary to the citizens, lawyers, prosecutors in the media, and ignoring the fact that 2% of the complaints to the HJPC are *founded*, and that this, in essence, delivers a number of some one hundred justified complaints, the HJPC President gave, in fact, a confirmation of existence of considerable dissatisfaction of the citizens with how the judicial system functions.

The issue of a lack of confidence of the citizens in the judiciary, and independence and impartiality of this branch of government, is certainly caused by the omnipresent belief of the public that all the institutions of BiH and its entities, including the judiciary, are directly dependent on the Office of the High Representative, and the utilization of the High Representative’s powers in the way they are administered.<sup>77</sup> Greater confidence is certainly not aided by the appointment of foreign judges and prosecutors for the Court of BiH, and the actual procedure of their selection is very questionable, not transparent, and is the source of considerable controversy.<sup>78</sup>

## **2.7. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?**

Functioning of the judiciary certainly required thorough changes and the judicial reform in BiH was launched in 1998. However, real progress only came in the past year, following the establishment of the High Judicial and Prosecutorial Council, and primarily with the establishment of the Court of Bosnia and Herzegovina, and the War Crimes Department within that court. One of the first steps in the reform was re-appointment of judges and prosecutors, with a parallel reform of legislation, which brought systemic novelties into procedural legislations.

According to the Council of Europe, the inauguration of the War Crimes Department of the Court of BiH, and the Special Section for War Crimes of the Office of the BiH Prosecutor, held on 9 May 2005, was “the most significant event in the area of judicial reform in BiH in the past several months.”<sup>79</sup> With it, all the necessary institutional and legal preconditions for prosecuting war crimes in BiH in compliance with the highest European standards have been met. BiH thus became the first country in the region to become an equal partner of ICTY in prosecuting persons indicted by The Hague with its own resources.<sup>80</sup>

The process of re-appointment of judges and prosecutors by the High Judicial and Prosecutorial Council (HJPC) was almost completed a year ago, and only 80 judges are yet to be appointed. The number of judicial posts was decreased by 30%, and 20% of the remaining positions have been filled by new judges. There are several disciplinary procedures under way, mainly in relation to unethical conduct. The duty chief disciplinary prosecutor was effected by a foreign national, and in August 2005, the HJPC appointed a BiH national to this post.<sup>81</sup>

<sup>77</sup> On the relationship between local authorities and OHR see more in section 14.

<sup>78</sup> See more in section 2.3 of the Study.

<sup>79</sup> BiH: Fulfillment and Implementation of Post-Accession Commitments and Cooperation Programmes, Council of Europe, Information Documents, SG/Inf(2005), Report of 15 April 2005, pp. 76-80.

<sup>80</sup> *Ibidem*.

<sup>81</sup> At: [www.hjcp.ba/pr/preleases/](http://www.hjcp.ba/pr/preleases/)

Courts and prosecutors still lack sufficient staff and adequate resources. After the decision of the High Representative froze the salaries for judges in December 2005, a Working Group comprising representatives of state and entity ministries of justice, agreed on a reduction of judges' salaries by 10% to reduce the personnel cost and to allow for financing of other operational costs of courts and prosecutors. As of 2007, the BiH judiciary will be financed solely by the state.<sup>82</sup>

Since the reform has not achieved improvements in terms of pending cases and enforced judgments, the European Commission will invest several million euros in the introduction of IT into judicial administration. The HJPC is proposing the establishment of a single Centre for Training of Judges and Prosecutors in BiH, to be financed by the state budget as of 1 January 2006. The Council of Europe, in collaboration with the European Commission, played an important role in providing support for the existing two training centers, mainly through assistance in training events (for judges and prosecutors) and the establishment of a system of initial training (for future judges and prosecutors).<sup>83</sup>

The existing entity centers for training of judges and prosecutors organize professional training for judges and prosecutors every year. These centers, supervised by the Council of Europe, prepare curricula and provide teaching for professional development, guaranteeing for judges and prosecutors to maintain and expand their knowledge in technology, culture and society, necessary for their work. There is training for judges and prosecutors in areas such as interpretation and application of procedural and substantive legislation, standards of ethics for judges and prosecutors, most recent scientific and professional developments in law, judicial and prosecutorial practice in other countries, and other areas defined by their governing boards.

Another measure aimed at achieving greater efficiency and faster disposal of old cases is the appointment of auxiliary judges. According to plans by the Independent Judicial Commission, it was assumed that some 60 auxiliary judges would be appointed, to work on cases piled up in courts. A very small number of auxiliary judges appointed so far does not indicate that the problem of pending cases has been resolved, but rather that the executive and the legislature have not provided adequate funds for the necessary judges. This process of appointment of auxiliary judges is under way, and in July 2005 the HJPC stated that it had appointed 12 regular and 28 auxiliary judges at different courts in BiH.<sup>84</sup>

One of the measures to be taken for the purpose of strengthening judicial independence is in relation to court budgets. In the future (on compliance with entity laws on courts -this law is still in the legislative procedure in the Federation of BiH -as well as the Law on HJPC) each court will submit its own budget proposal to the competent ministry of justice, along with comments by the HJPC. Also, the relevant parliaments will approve budgets for each individual court.

As for the problem of the prison system, it is important to note that the new state level Law on Enforcement of Criminal Sanctions has been adopted, elaborated with assistance by experts from the Council of Europe. As for detention units, prison reforms are under way, led by the Council of Europe. However, there is still no clear strategy in BiH in relation to the issue of prisons. A strategy like this would open the issue of creating a single prison administration for BiH, consider alternative detention measures and elaborate a National Action Plan for Combating Drug Abuse. An improvised pre-fab closed detention unit with 21 beds has been in use since February 2005, in order to satisfy the needs of the newly established War Crimes Department, and it will

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<sup>82</sup> *supra* fn 43, para. 81.

<sup>83</sup> *Ibidem*, para. 82.

<sup>84</sup> *supra* fn 45.

also be used for detainees in cases of organized crime, depending on the space available. At the same time, international donors are sought for the project of construction of a new prison and detention unit (closed type) at the level of BiH, for approximately 400 persons.<sup>85</sup>

All the measures aimed at improving the situation in the judiciary are supported and publicly advocated by the authorities and politicians. However, what really moves the changes is the engagement of the international community: on one hand, it is good, as it does move changes, and on the other, it is a problem, *inter alia*, because it imposes certain solutions that may cause problems in implementation.

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<sup>85</sup> *supra* fn 43, pp. 90-92.

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### 3. Civil and Political Rights\*

#### Are civil and political rights equally guaranteed for all?

Author: *Sevima Sali-Terzić*

#### 3.1. How free are all people from physical violation of their person, and from fear of it?

##### 3.1.1. Laws

The BiH Constitution and entity constitutions protect the right of any person to life, and the right not to be subjected to torture, inhuman or degrading treatment or punishment. Moreover, the constitutions guarantee the right of any person not to be held in slavery or servitude, forced or compulsory labor, and the right to liberty and security of person.

These constitutional rights are affected through relevant laws. The death penalty was abolished in BiH, in both entities, immediately after the war, on account of relevant provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the European Convention) and Protocol 6 to the European Convention (pursuant to Article II.2 of the BiH Constitution, the European Convention is an integral part of the BiH legal system and takes priority over all other law). Still, it must be noted that the Constitution of Republika Srpska still provides for the death penalty (Article 11. paragraph 2.), although there is no practical provision for it in the RS criminal legislation, nor could one be delivered, following the application of the European convention. The Criminal Codes of BiH<sup>1</sup>, FBiH<sup>2</sup> and RS<sup>3</sup> (hereinafter: CC BiH, CC FBiH and CC RS) define criminal offenses and legal sanctions against those forms of behavior which threaten or violate personal freedoms and human rights, as well as other rights and societal values guaranteed and protected by the BiH Constitution and international law in such a way that the protection of those rights, freedoms or values could not be attained without criminal-legislative enforcement.<sup>4</sup>

Entity laws on enforcement of criminal sanctions guarantee that any person against whom a criminal or petty offense sanction is to be enforced is to be treated humanely and with respect for their dignity, guarding their physical and/or mental integrity, with a prohibition of torture and/or other cruel, inhuman or degrading treatment or discrimination on any grounds.<sup>5</sup>

In addition to criminal legislation, the BiH Gender Equality Law<sup>6</sup> also prescribes that all persons shall live free from violence on the basis of sex, and that gender-based violence is defined as a criminal offense.

The Law on Protection from Domestic Violence was adopted in the Federation BiH,<sup>7</sup> providing for petty-offense protection, unless provided otherwise by the Law, and perpetrators may

<sup>1</sup> Official Gazette BiH No. 37/03.

<sup>2</sup> Official Gazette FBiH No. 36/03.

<sup>3</sup> Official Gazette RS No. 49/03.

<sup>4</sup> Article 2. para. 1. CC BiH, Article 2. p. 1. CC FBiH and Article 1. CC RS.

<sup>5</sup> Article 11. of the FBiH Law on Enforcement of Criminal Sanctions, Official Gazette FBiH No. 44/98 and 42/99, and Article 9. of the RS Law on Enforcement of Criminal and Petty Offense Sanctions, Official Gazette RS No. 64/01 and 24/04.

<sup>6</sup> Official Gazette BiH No. 16/03.

<sup>7</sup> Official Gazette FBiH No. 22/05.

receive the following protective measures: removal from apartment, house, or any other housing premises and prohibition of access to any such premises, a restraint order prohibiting access to the victim of violence, security provision for a person subjected to violence, prohibition of harassment or stalking of a person subjected to violence, compulsory psychiatric treatment, and compulsory treatment for substance abuse.<sup>8</sup>

### 3.1.2. Implementation and negative indicators

The US Department of State Report for 2004<sup>9</sup> states that -although there had been some improvements in the respect for human rights -there were still some serious problems in BiH. This assessment is very general, with no major indicators or specific data. Thus, the Report says that “the police continues to mistreat and abuse detainees and other citizens, although the Constitution prohibits such practice.”<sup>10</sup> However, when it comes to specific data, the Report states that the FBiH Ministry of the Interior conducted investigations on the basis of 91 reports of excessive use of force in arrests, and that it found that 7 charges had been founded. The Report also states that in addition to these, there were no other registered cases of physical and/or mental abuse of detainees or other citizens in 2004. In RS, investigations were conducted on the basis of 951 reports, of which complaints were founded in 69 cases. Although human rights violations cannot be justified by a small number of registered cases, it is certainly excessive to draw a general conclusion which may indicate systemic abuse or physical mistreatment of prisoners and other citizens, as this Report may appear to say.

As a positive change, the Report cites that there is an increased number of holding police officers accountable for excessive use of force. According to data from EUPM and entity prosecutors, reports against police officers generally remained at the same level as in 2003, though methods of investigation improved in 2004, as well as holding accountable all the officers involved in such conduct. During 2004, investigations for violations of official duty were conducted in FBiH in 152 cases, of which 67 reports were founded, and 56 reports of serious violation of official duty were forwarded to competent prosecutors for further processing. In RS, of 951 reported cases, 57 were sent to competent prosecutors on the basis of a serious violation of official duty.<sup>11</sup>

The Commission for Prevention of Torture of the Council of Europe (hereinafter: CPT) states in its report that many persons deprived of liberty and interviewed by the CPT delegation during their visit to BiH, stated that police officers had treated them fairly during the arrest and throughout the time spent in police stations. Still, a number of interviewees from different parts of the country stated that they had been physically mistreated. The worst allegations are related to abuse during arrest. The report states that “a considerable number” of the interviewees stated that police officers or inspectors had mistreated them during police hearings. Types of mistreatment include punches, kicking, blows to different parts of the body with sticks, metal bars, plastic-insulated metal cords or baseball bats.<sup>12</sup> Unfortunately, this report also fails to present specific indicators, or at least the number of interviewees and the number of those who complained of mistreatment, and it is thus difficult to conclude as to what is the extent of such treatment of detainees. Also, in

<sup>8</sup> Article 9. of the Law

<sup>9</sup> Country Reports on Human Rights Practices -2004, US Department of State, Bureau of Democracy, Human Rights and Labor, 28 February 2005. Source: [www.state.gov](http://www.state.gov)

<sup>10</sup> *Ibid.* p. 2.

<sup>11</sup> *Ibid.* p. 4.

<sup>12</sup> Report to the Government of Bosnia and Herzegovina on the Visit to BiH by the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 5 December 2003, p. 10.

the absence of specific indicators, the actual situation may be misrepresented and erroneous indications may be made as to systemic police abuse.

As for abuse of police powers, specific data based on research into experiences of the citizens, is presented by the United Nations Development Program (hereinafter: UNDP) in its report, which presents a more balanced picture of the situation.<sup>13</sup> The report indicates an increase or a decrease of satisfaction with police work, depending on the ethnic group, and the criterion of belonging to the *majority* or the *minority* population of a given area, and whether the respondents were from rural or urban areas, men or women.

The UNDP report also states:

Area	Bosniaks				Croats				Serbs			
	Majority		Minority		Majority		Minority		Majority		Minority	
Population	3/#4	04/#4	03/#4	04/#4	03/#4	04/#4	03/#4	04/#4	03/#4	04/#4	04/#4	03/#4
Research	3/#4	04/#4	03/#4	04/#4	03/#4	04/#4	03/#4	04/#4	03/#4	04/#4	04/#4	03/#4
In %	42.1	21.8	39.0	28.8	42.9	44.4	33.5	4.5	36.5	51.3	27.4	69.9
Index	04/#4	4	03/#4	51.8	73.8	103.5	13.4	140.5	255.1			

Source: *Public opinion research for this project*, PRISM Research

[...] decrease in the level of satisfaction with police work could be linked with an increase in personal experiences or testimonies about situations when the police clearly abused its powers. However, this growth has not been identified in the past year. On the contrary, there has been a decrease in the above personal experiences or testimonies. This is not applicable to all parts of the country, though. In “majority” Croat areas of the Federation, for example, personal experiences or testimonies about situations when the police abused its power increased. Not only that, it is of alarming intensity.

The trend of decrease of this type of experiences or testimonies was a partial feature among citizens even if the stratification was conducted on other characteristics. For example, it can be identified among the male and the female part of the population. It can also be identified among the urban population. However, it has not been a feature evident in rural areas in the past year. It is true, though, that it is not a matter of an increase in personal experiences or testimonies about a situation where the police abused its powers, which would be of any theoretical significance.<sup>14</sup>

Research	Total		Bosniaks		Croats		Serbs	
	3/#4	04/#4	03/#4	04/#4	03/#4	04/#4	03/#4	04/#4
In %	7.2	5.1	7.6	2.7	5.9	13.2	7.2	5.6
Index	03/#4	4	03/#4	4	70.8	35.5	223.7	77.8

Source: *Public opinion research for this project*, PRISM Research

<sup>13</sup> UNDP, *Early Warning System*, Annual Report 2004, p. 77, source: [www.undp.ba](http://www.undp.ba)

<sup>14</sup> *Ibid.*, p. 46.

Table XII

In the past six months, have you experienced or witnessed a situation where the police clearly used its powers?

	town		village		men		women	
Research	3/#4	04/#4	03/#4	04/#4	03/#4	04/#4	03/#4	04/#4
In %	10.8	5.8	4.4	4.6	8.2	5.8	6.2	4.4
Index	03/#4	03/#4	53.7	104.5	70.7		70.1	

Source: *Public opinion research for this project*, PRISM Research

The same report contains data referring to an overall sense of security or fear among the citizens. The report states that research among the citizens shows that in 2004 “positive trends were noted in the area of security”,<sup>15</sup> and it states that in 2004 “at the level of the country, there was a relative decrease in the citizens’ need for police intervention, as shown in the next table, which varies in relation to ethnic background of the respondents, i.e. affiliation with the *majority* or the *minority* people in a given part of the country.”<sup>16</sup>

Table V

In the past three months, have you or a member of your family requested police intervention for any reason?

Area	Bosniaks				Croats				Serbs			
	Majority		Minority		Majority		Minority		Majority		Minority	
Research	3/#4	04/#4	03/#4	04/#4	03/#4	04/#4	03/#4	04/#4	04/#4	04/#4	04/#4	03/#4
In %	5.8	7.9	8.9	7.4	9.1	6.8	20.1	12.0	4.5	1.0	11.8	1.8
Index	04/#4	4	03/#4	136.2	83.1	74.7	59.7		22.2		15.3	

Source: *Public opinion research for this project*, PRISM Research

On the basis of its analyses and comparison, the UNDP Report concludes the following:

Generally, the past year was marked by positive trends in the field of security. First of all, there is a marked decrease of all types of disturbance experienced by citizens, particularly theft. There is also a clear decrease in the citizens’ requests for police interventions for any reason. There is marked decrease in personal experiences or testimonies about situations when the police clearly abused its powers. Finally, in comparison with the previous year, there is a decrease in frequency in cases of citizens being detained in police stations without detention warrants.

However, it is true that some negative trends have been noted as well. For example, in comparison with the previous year, there is an increase in the level of agreement with the opinion that the police are not energetic enough towards different forms of threats against citizen safety. Moreover, there has been a decrease in the level of citizens’ satisfaction with what the police have done on the basis of their requests for intervention.

Still, in our opinion, all these negative trends cannot question the general assessment. And we believe that it can generally be observed that the situation with security of BiH citizens is satisfactory, more so than the year before.<sup>17</sup>

<sup>15</sup> *supra* fn 13, p. 44.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

The US Department of State Report also indicated continued presence of isolated cases of politically-, ethnically-, or religiously-motivated violence, and prevention of “minority” returns by political leaders.<sup>18</sup> The Report states that there was still violence against members of “minority” communities in eastern RS and Herzegovina. Still, police investigation of these cases and protection in general remain at the same level as in 2003.<sup>19</sup>

Amnesty International states that, according to information by the United Nations High Commissioner for Refugees -Mission in BiH (hereinafter: UNHCR), in the period from January to May 2004, there were more than one hundred attacks against returnees and their property and attacks against monuments and religious buildings. At least two resulted in deaths and, although police investigations were initiated immediately, no perpetrators were found by the end of 2004.<sup>20</sup>

The Report of the Helsinki Human Rights Committee for BiH for 2004 (hereinafter: the Helsinki Committee Report) also indicates such violations of human rights,<sup>21</sup> citing specific examples of ethnically-based violence and physical attacks against returnees, their property, national and religious monuments, although it does say that -as compared to earlier years -the security situation has improved.<sup>22</sup> The Helsinki Committee Report also indicates the fact that a number of the perpetrators of such acts (though no exact number is cited) were never identified or prosecuted, and that impunity for such offenses encouraged violent persons to maintain an atmosphere of fear and insecurity among a large number of citizens.<sup>23</sup>

The US Department of State Report also states that an estimated number of 15-20,000 persons are still registered as missing since the 1991-1995 war.<sup>24</sup> The Helsinki Committee Report observes that certain positive moves have been made in shedding light on the fate of the missing. Although the number of persons still considered missing remains high -approximately 17,000 according to this report, following the adoption of the Law on Missing Persons and the establishment of the Institute for Missing Persons, as well as efforts of both domestic and foreign institutions, the search for the missing does not seem as hopeless as it did several years ago.<sup>25</sup>

Another serious problem noted by numerous domestic and international organizations is the problem of trafficking in women and children for the purpose of forced prostitution, in relation to which the US Department of State Report states that “the Government has taken considerable steps”.<sup>26</sup> It is true that in December 2003 the state adopted its Action Plan for Combating Trafficking in Persons in BiH, and then established a state commission to follow up on this plan. Also, the Council of Ministers issued a decision establishing a working group for combating trafficking in persons and organized illegal immigration.<sup>27</sup> Led by the BiH Ministry of Security, this group is mandated to work on preventing trafficking in persons and prostitution, in collaboration with representatives of Ministries of the Interior, the international community and the European police. The Council of Ministers’ decision on procedures and methods of work in combating trafficking in persons and illegal migration established the office of the State Coordinator for BiH.

<sup>18</sup> *supra* fn 9, p. 2.

<sup>19</sup> *Ibid.*, p. 3.

<sup>20</sup> Amnesty International Report 2004, Bosnia and Herzegovina, source: [www.amnestyusa.org/countries/](http://www.amnestyusa.org/countries/)

<sup>21</sup> Helsinki Committee for Human Rights in BiH, *Report on the State of Human Rights in BiH (Analysis for the Period January -December 2004.)*, source: [www.bh-hchr.org](http://www.bh-hchr.org)

<sup>22</sup> *Ibid.*, p. 5 i 7.

<sup>23</sup> *Ibid.*, p. 5.

<sup>24</sup> *supra* fn 9, p. 2.

<sup>25</sup> *supra* fn 21, p. 1.

<sup>26</sup> *supra* fn 9, p. 2.

<sup>27</sup> Official Gazette BiH No. 3/04.



However, the Office of the High Commissioner for Human Rights (hereinafter: UNOHCHR) notes that the development of structures which are supposed to deal with the issue of trafficking in persons is sometimes “characterized by inconsistency and confusion,” and that its *ad hoc* nature and the sometimes contradictory decisions “seriously question the existence of an effective and functional framework for dealing with the issue of trafficking in persons in BiH”.<sup>28</sup> However, following a comprehensive analysis, this Report states that considerable positive changes have taken place in legislation, in the forces applying the law, and the role of NGOs. The Report also observes that there have been serious improvements in the treatment of victims of trafficking.<sup>29</sup>

The Helsinki Committee Report states that, despite the measures taken, women victims of trafficking are left to the almost sole care of local NGOs and the International Organization for Migrations (hereinafter: IOM), which provide those women with shelter, rehabilitation, and return to their countries of origin. With a group of NGOs which established the RING network and have developed adequate capacities, IOM opened shelters for female victims of trafficking (Mostar - 2 shelters, Sarajevo - 2, Bijeljina - 1).<sup>30</sup>

When it comes to prosecution of BiH nationals involved in trafficking in women, they are usually monitored by UNOHCHR. According to the above cited UNOHCHR Report, the BiH prosecutor has 26 registered cases dealing with crimes of trafficking in persons and smuggling, and in the reporting period proceedings were at different stages.<sup>31</sup>

The Helsinki Committee Report states that there are no relevant statistics on the number of victims of trafficking in persons in BiH, and that all the estimates of this number are based on incomplete reports of court proceedings and reports of the State Border Service on the number of entries and departures of female foreign nationals at airports in BiH. The Helsinki Committee Report cites data from the UNOHCHR Report, stating that 264 foreign nationals were registered exiting BiH at the Sarajevo airport, after having been in BiH illegally. For example, in 2002, there were 286 registered entries and 139 departures of nationals of Moldova and the Ukraine. According to estimates from early 2004, it can be assumed that the number of foreign nationals - female victims of trafficking in BiH had decreased. Unfortunately, there is no real data or any relevant research about the number of BiH nationals as victims of trafficking, but there are estimates that trafficking in female nationals of BiH for the purpose of sexual exploitation is on the rise.<sup>32</sup>

Numerous reports by NGOs also show that BiH has tragic statistics on domestic violence, with women and children as the typical victims. The Helsinki Committee Report states that, according to some estimates, more than 55% of women in BiH are believed to be suffering some kind of domestic violence, although there is no indication as to whose estimates these are and based on what data.<sup>33</sup> Relevant statistics are not maintained by statistics agencies or by ministries of the interior, and no data can be obtained from health institutions. Although the Federation BiH has adopted the Law on Prevention of Domestic Violence, numerous issues are still pending. For example, it remains to be seen as to how the protective measures are to be applied and enforced, and delivered by whom. It should be in petty offense court proceedings, but petty offense courts are not mentioned explicitly in the Law, which may lead to practical problems, as indicated by the

<sup>28</sup> Report on Trafficking in Persons in BiH, UNOHCHR, July 2004, p. 7.

<sup>29</sup> *Ibid.*, p. 19.

<sup>30</sup> *supra* fn 21, p. 15.

<sup>31</sup> *Supra* fn 28, p. 16.

<sup>32</sup> *supra* fn 21, p. 15.

<sup>33</sup> *Ibid.*, p. 14.

Report by the FBiH Ombudsman.<sup>34</sup> Practical effects of this Law remain to be seen. The Law also prescribes that the Federation Minister is supposed to adopt implementation regulations, prescribing ways of enforcing these protective measures. The fact that the Law has not fully regulated all the relevant issues may be a considerable shortcoming and hindrance in its implementation.

### **3.2. How effective and equal is the protection of the freedom of movement, expression, association and assembly?**

#### **3.2.1. Laws**

The Constitutions of BiH and of both its entities guarantee the freedom of movement, expression, association and assembly. These rights are also guaranteed by the European Convention which, in addition to being ratified following the accession of BiH to the Council of Europe -pursuant to the BiH Constitution -has a special position in the legal system of BiH and takes priority over all other law. These rights are not restricted by the constitutions, and it arises from the status of the European Convention that these rights may only be restricted in cases provided for by the European Convention.

#### *Freedom of movement*

One of the most important aspects of freedom of movement is undoubtedly the citizens' right to depart from and return to the territory of their state. This aspect of freedom of movement is regulated by the BiH Law on Travel Documents.<sup>35</sup> This Law prescribes that all the citizens have the right to a travel document, under conditions prescribed by law (Article 3), and restrictions of this right are prescribed in strictly defined cases, when a relevant authority may refuse to issue a travel document (Article 21) or may remove a travel document already issued (Article 23). In both cases, such persons are entitled to appeal to relevant authorities prescribed by the Law (Articles 22 and 24).

Another very important aspect of freedom of movement is freedom of movement within state territory, which is crucial for BiH from the point of view of return of refugees and displaced persons to their pre-war homes. Article II/5 of the BiH Constitution prescribes that refugees and displaced persons have the right to return to their pre-war homes, and that, pursuant to Article 7 of the Dayton Agreement, all the property they were deprived of in the war was to be returned to them or, if that is impossible, they are to receive compensation. Annex 7 to the Dayton Agreement refers to the return of refugees and it prescribes that all the refugees and displaced persons are to be allowed to return safely to their pre-war residence, "with no risk, harassment, intimidation, expulsion or discrimination, particularly on the basis of their ethnic background, religious affiliation or political opinion". The state is also obliged to create within its territory all the political, economic and social conditions which "contribute to voluntary return and harmonious integration of refugees and displaced persons with no preference of any group" (Article 1, paragraph 2, Annex 7). The rights of refugees and displaced persons, including freedom of movement, are further elaborated by laws on refugees and displaced persons adopted at state and entity levels.<sup>36</sup>

<sup>34</sup> FBiH Ombudsman's Report on the State of Human Rights in FBiH for 2004, June 2005; p. 29; source: [www.bihfedomb.org](http://www.bihfedomb.org)

<sup>35</sup> BiH Law on Travel Documents (Official Gazette BiH No. 4/97, 1/99, 9/99, 27/00, 32/00, 19/01 and 47/04).

<sup>36</sup> Law on Refugees from BiH and Displaced Persons in BiH, Official Gazette BiH No. 23/99, 21/0 and 33/03; Law on Displaced Persons and Refugees-Returnees to FBiH, Official Gazette FBiH No. 18/03 and 44/04.

Another important aspect of freedom of movement is the issue of immigration and asylum, i.e. the right of foreign nationals to enter and stay in the territory of the state, particularly because of the pronounced problem of trafficking in persons and smuggling of illegal migrants across the border. The Law on Movement and Stay of Aliens and Asylum<sup>37</sup> prescribes that a foreign national will be granted temporary stay, exceptionally, on humanitarian grounds, even when he/she does not meet the conditions prescribed by law, if such a person is a victim of organized crime, i.e. trafficking in persons, with the aim of providing protection and assistance in recovery, and return to the country of residence (Article 35, paragraph 1, point a). (On issues of immigration and asylum, see more in section 1 of this Study.)

#### Freedom of association and peaceful assembly

Freedom of association and peaceful assembly is guaranteed by Article II/3.i of the BiH Constitution, Article II/2.1 of the FBiH Constitution, and Articles 30 and 31 of the RS Constitution, which guarantee the “right to peaceful assembly and public protest,” as well as freedom of political organization and action, and Article 41, which guarantees freedom of trade union organization and action (for more on this, see Section 4). Freedom of association and peaceful assembly is also guaranteed by Article 15 of the Statute of the Brčko District BiH.<sup>38</sup>

Enjoyment of freedom of peaceful assembly is further regulated by laws, namely, in FBiH by the Law on Public Gatherings<sup>39</sup> and by cantonal legislation on citizen gatherings, and the Law on Civic Assembly in RS.<sup>40</sup> These laws prescribe what is considered to be a public gathering or a civic assembly, conditions for holding such gatherings, restrictions of these rights, and penalties for violations of legal provisions.

Freedom of association is regulated by the BiH Law on Associations and Foundations,<sup>41</sup> and parallel entity legislation. This Law is the basic legislation for establishment, registration and work of an association, including business associations, wanting to work in the entire territory (BiH), and for some business associations, particularly the so-called professional ones, in addition to this, applicable is also special legislation for this area (RS Law on Enterprises<sup>42</sup> and FBiH Law on Companies<sup>43</sup>). This Law is not applicable to political organizations, religious communities and trade union organizations -these areas are covered by separate legislation. The Law prescribes that an association is a form of voluntary joint establishment of a group of natural or legal persons for the purpose of promoting or attaining a particular common or public (general) interest or aim (Article 2 paragraph 1 of the Law). The Law also does not list the types of activities in relation to which associations may be established, but rather prescribes that an association may be established for any form of activity which is not prescribed as a crime punishable by law. (On political participation of citizens, see Section 11 of this study.)

#### Freedom of expression

Constitutions do not provide for any restriction of the freedom of expression, and this freedom can, therefore, only be restricted in compliance with the European Convention.

<sup>37</sup> Law on Movement and Stay of Aliens and Asylum in BiH, Official Gazette BiH No.29/03.

<sup>38</sup> Official Gazette BDBH No 1/00.

<sup>39</sup> Official Gazette SRBiH No. 41/90, 19/01 i 38/01.

<sup>40</sup> Official Gazette RS No. 21/96.

<sup>41</sup> Official Gazette BiH No. 32/01.

<sup>42</sup> Official Gazette RS No. 24/98.

<sup>43</sup> Official Gazette FBiH No. 23/99 i 45/00.

There is no state-level BiH law on print media, but there is a laws that is related to the media. Since the end of the war, electronic media have been in the focus of interest of various international organizations and agencies active in BiH. After a long and difficult process, in 2002, the High Representative for BiH imposed the Law on the Public Broadcasting System and the Law on the Public Broadcasting Service in BiH.<sup>44</sup> There is also the Law on Radio and Television of FBiH<sup>45</sup> and of RS. There are also the Code of Conduct for broadcasting radio and TV programs<sup>46</sup> and the Code of Conduct on advertising and sponsorship for radio and television.

The Communications Regulatory Agency (CRA) was established by a Decision of the High Representative in 2001, whereby competences of the Independent Media Commission (broadcasting) and the Regulatory Agency for Telecommunications (telecommunications) were merged. After that, in 2002, the Law on Communications<sup>47</sup> came into force, defining the mandate and the area of regulation of the CRA: telecommunications, broadcasting and regulation of frequencies. In March 2004, the CRA Council adopted Rules on Media Concentration (in application since 1 April 2004). These Rules limit the ownership over electronic and print media, prescribing that a natural or legal person already an owner of one print media outlet may only be the owner of one electronic media outlet (radio or television) at the same time (Article 3.a.). On the other hand, a natural or legal person may own one radio and one TV station for the population ratio of coverage (Article 3.b). (See more in Section 10 of this study.)

As for print media, as stated above, there is no state or entity level law on media, but there are cantonal laws in FBiH regulating this area. In some cantons, those laws, usually titled laws on public information, and in two cantons -Sarajevo and Bosansko Podrinje -laws on media.

The Law on Protection from Defamation<sup>48</sup> was adopted in identical text in both entities The Law regulates civil liability for “damages caused against reputation of a natural or a legal person by presenting or conveying untrue facts identifying that natural or legal person to a third party.” The importance of this Law is that it de-criminalized defamation, which had been a criminal offense until its adoption. Its adoption was, in fact, with the aim of attaining the right to freedom of expression, as guaranteed by the FBiH and RS constitutions and the European Convention, and to protect it as one of the key foundations of democratic society, particularly in issues of political and public interest.<sup>49</sup>

### **3.2.2. Implementation and negative indicators**

#### Freedom of movement

The US Department of State Report gives a general assessment that -although constitutions do guarantee freedom of movement -“certain restrictions do exist in practice.”<sup>50</sup> Thus, for example, the Report states that the difficult economic situation and unemployment are the most important factors hindering the return of refugees and displaced persons, followed by inadequate reconstruction assistance, and absence of improvement of security for returnees in some areas, etc.<sup>51</sup>

<sup>44</sup> Official Gazette BiH No. 13/02.

<sup>45</sup> Official Gazette FBiH No. 40/02.

<sup>46</sup> 14 June 2004.

<sup>47</sup> Official Gazette BiH No. 31/03.

<sup>48</sup> Official Gazette RS No. 37/01 and Official Gazette FBiH No 19/03.

<sup>49</sup> Article 2. para. 1. point a) of the FBiH Law and Article 1. para. 1. point a) of the RS Law.

<sup>50</sup> *supra* fn 9, p. 2.

<sup>51</sup> *Ibid.*, p. 12.

The Helsinki Committee Report states that, according to data from the international community and the state Ministry for Refugees and Displaced Persons, since the signing of the Dayton Peace Agreement and as of October 2004, more than one million refugees and displaced persons, citizens of Bosnia and Herzegovina, had returned to their pre-war addresses.<sup>52</sup> However, the Helsinki Committee estimates that the number of one million returnees is “absolutely unrealistic” and that the actual number of returnees is far lower. The Report states:

It is unjustified to identify the number of returnees with the number of returned property (houses and apartments). What is registered is the returned property, or rather, the number of completed requests for return, multiplied by the number of household members who applied for return. Information held by the Helsinki Committee indicates that a large number of returnees sold or exchanged their real estate as soon as they had entered into possession. Some use their reconstructed pre-war homes as holiday cottages, or they simply rent it. Thus, for example, according to official data, a total of 4,000 refugees have returned to Srebrenica. However, in practice, more than 60% of them only stay there from time to time.<sup>53</sup>

The Helsinki Committee also believes that a realistic assessment of returns of refugees and displaced persons is no more than 30% of a total of 2,200,000 persons. It also indicates the reasons for such limited returns, and it notes:

Difficult economic and social conditions in BiH, even in 2004, are among the obstacles to return, particularly sustainable return. The impossibility in obtaining employment, to exercise the right to education and health care, are the causes for some returnees opting to leave again... Returnees often complain about the unfair treatment by municipal authorities when it comes to obtaining different permits or the work of inspectorate services. This is particularly evident in urban areas, where minority returnees are prevented from working and generating income under the same conditions as the majority population. Moreover, in many cases, public enterprises deny returnees the supply of power and water, telephone, road repair and communal utility services. This behavior is the most direct method of obstruction of minority returns. Displaced persons across BiH are in the same situation.<sup>54</sup>

UNDP Report states that returns in 2004 failed to reach even two-fifths of the level from the year before, and that there was a radical drop in returns, particularly related to those BiH citizens who had fled to third-countries, and that “[a]ccording to indicators, it is possible to claim that this type of return is basically finished”.<sup>55</sup>

Table V  
Return of refugees and displaced persons for the period January-December 2-4 and January-December 2004

	Refugees	Displaced Persons	Total
Time of return			
I-XII 2003	14,012	40,303	54,315
Time of return			
I-XII 2004	2,442	17,948	20,390
Returns index			
2004/2005	17.4	44.5	37.5

Source: UNHCR Statistics Package, Sarajevo, 31 December 2003 and 31 December 2004

<sup>52</sup> *supra* fn 21, p. 6.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*, p. 7.

<sup>55</sup> *supra* fn 13, p. 38.



Freedom of association and peaceful assembly

The US Department of State Report states that the authorities generally respect these rights, and that there are in BiH “numerous social, cultural and political organizations acting with no interference by the state.”<sup>56</sup> According to this Report, the BiH Law on Associations and Foundations allowed NGOs to register at the state-level and to be active in the entire country, with no administrative barriers. However, the Report shows that some NGOs did have problems at the Ministry for Civil Affairs and Communications in the registration process, and that some requests were rejected with no explanation of they were “unusual or complicated,”<sup>57</sup> though with no examples other than this provided in the Report.

Problems related to application of this Law are indicated in the Helsinki Committee Report for 2004. The Report states that -although the Law is in compliance with the European Convention -in practice, NGOs come across numerous problems when trying to register in compliance with provisions of that Law. However, the Report places the problems with the BiH Ministry of Justice, which is tasked with the implementation of this Law and with registrations, and it states:

[the Ministry of Justice] has introduced a complicated and lengthy procedure which hinders registration. Instruction on implementation of this Law is far more restrictive than the Law itself, so that some NGOs lost up to several months trying to exercise the right to freedom of association. Some NGOs which are *de facto* active in the entire territory of BiH still do not have the necessary registration, and some have given up the idea of registering at the level of BiH, maintaining their registration at entity or cantonal level.<sup>58</sup>

According to the Helsinki Committee, this not only restricts the freedom of association in practice, but also inhibits reintegration of the “fragmented BiH society” and prevents citizens from entering associations on the basis of their interests across entity boundaries.<sup>59</sup>

Freedom of expression

The US Department of State Report states that freedom of expression, i.e. freedom of speech and press is generally respected, and that individuals are free to criticize the government, with no fear of consequences. However, the Report states that in 2004 there were cases of restriction of rights of the press, and open threats by some officials, although there was a noted drop in pressure on the media which had been present in the years before.<sup>60</sup>

A similar assessment is given by the Helsinki Committee. Although it states that pressures on the media have decreased, it nonetheless emphasizes that “frequent statements by representatives of the authorities, party and religious leaders, indirectly demonstrating the desire not only to place public speech under control, but even openly calling for physical attacks on disobedient media and individuals working for them, are a source of concern.”<sup>61</sup>

The Helsinki Committee Report gives an example of physical attacks against journalists, even death threats delivered to journalists by phone, but it presents no instances of arrests or police harassment of journalists.<sup>62</sup> There are similar observations in the Report of the F BiH

<sup>56</sup> *supra* fn 9, p. 14

<sup>57</sup> *Ibid.*, p. 10.

<sup>58</sup> *supra* fn 21, p. 9.

<sup>59</sup> *Ibid.*

<sup>60</sup> *supra* fn 9, p. 7 i 8.

<sup>61</sup> *supra* fn 17, p. 10.

<sup>62</sup> *supra* fn 17, p. 10.



Ombudsmen.<sup>63</sup> However, both the US Department of State Report and the Helsinki Committee Report state that there was pressure on the media and journalists by politicians and the authorities during 2004, citing as an example a statement made by the RS police chief, who

[...] first, in late June, spoke through a press statement warning that he would take the “appropriate measures” against journalists allegedly trying to ruin the reputation of that institution, and then in August the RS police chief Radomir Njeguš accused journalist of “Nezavisne novine” and RTS that they were part of a group working in concert to discredit the police and ruin its reputation. The head of the RS police stated that journalists from those media outlets should “end up in prison or a madhouse”.<sup>64</sup>

In several instances during 2000 and 2001, the FBiH Ombudsmen analyzed cantonal legislation covering the area of public information, and found that some provisions of laws in the Sarajevo and Una-Sana cantons were not in compliance with constitutional provisions or the European Convention in the segment on freedom of expression. Namely, provisions of these laws provide for the possibility of prohibition of distribution of press, even electronic media and other forms of public information. These laws also provide for the prohibition to be issued by a competent court whose jurisdiction covers the area where press is distributed, whereas a temporary prohibition order may be issued by the public prosecutor. In their special report on this issue, the FBiH Ombudsmen believe that prohibition of distribution or broadcasting may be excepted only with very precisely limited conditions (in terms of content and time, i.e. as a prohibition of particular content, and not the entire media outlet, and a prohibition of limited duration) and only in cases of instigation of racial, ethnic or religious hatred and intolerance, instigation of crime and threat to public security and territorial integrity -with a necessary specification of the meaning of these terms.<sup>65</sup>

It is important to say that in most cases, print media are privatized. The Code of Conduct for print media, as an instrument of self-regulation, obliges “journalists and their publications” to respect and maintain high ethical standards “at all times and under any circumstances,” and it obliges the press to uphold the “generally accepted societal standards of decency and respect for ethnic, cultural and religious diversity of Bosnia and Herzegovina”.<sup>66</sup> Practical application of the Code is monitored by the BiH Press Council, resolving any disputes between the public and the press by using journalistic tools, such as the right to rebuttal, publication of corrections, apologies and denials. The Council does not have the power to penalize, issue or revoke licenses, or impose fines on newspapers or magazines.<sup>67</sup>

There is also a Journalists’ Help-Line (LPN) within the Coordination of BiH Journalists’ Associations, as the BiH institution providing support and assistance for journalists in their daily work, and protecting their rights and freedoms.<sup>68</sup> In its report for ten months of 2004, the LPN states that complaints were mainly related to threats, physical assaults, removal of equipment, pressure, and labor disputes. The report also states that most journalists approach LPN because of their unresolved status in the media outlets where they work, i.e. because of unpaid salaries and fees, employment with no contract, non-payment of social benefits, and unfair treatment by the

<sup>63</sup> *supra* fn 34, p. 32.

<sup>64</sup> *Ibid.*, p. 9.

<sup>65</sup> FBiH Ombudsman, Special Report on Violation of Media Freedoms in the Law on Public Information and the Media in the Sarajevo Canton and the Una-Sana Canton, 23 October 2003, source: [www.bihfedomb.org](http://www.bihfedomb.org)

<sup>66</sup> Article 1 of the Code, source: [www.nupn.ba](http://www.nupn.ba)

<sup>67</sup> source: <http://www.vzs.ba>

<sup>68</sup> source: [www.nupn.ba/linija](http://www.nupn.ba/linija)

owner or the editor of the media outlet. That is why this report marks the lack of respect of employment terms, along with difficult access to information, particularly at local level, as the leading problem faced by journalists in BiH.<sup>69</sup> This problem is also noted by the Helsinki Committee, whose report states that “most journalists have problems with their employers in relation to their rights, primarily those related to their employment status,” which certainly weakens their efforts to improve independent and professional journalism.<sup>70</sup>

In the 2003 Report on the level of preparedness of BiH to enter negotiations with the EU on the Stabilization and Association Agreement,<sup>71</sup> there is an assessment that independence of the media and freedom of expression are generally respected, “other than some isolated incidents”. The report states that “politically motivated abuse of the law on defamation against critical journalists was recently restricted by the new civil law on defamation”.

Analyses from 2004 indicate that in the two years of application of the Law on Protection from Defamation, not much changed in terms of charges against journalists. On the contrary, some analysts conclude that the number of cases against them even increased. The difference is that the number of politicians pressing charges decreased, but the number of journalist pressing charges against other journalists increased.<sup>72</sup> The Helsinki Committee also notes the tendency of a growing number of journalists suing other journalists and observes that “a large number of inter-media disputes [...] does not contribute to strengthening the consumers’ confidence in the media”. Moreover, the Helsinki Committee also notes that a large number of cases is the consequence of “insufficiently professional approach of some journalists and editors, and when it comes to print media, non-functioning of self-regulation, i.e. failure to respect the Code of Conduct”.<sup>73</sup>

This Report provides an illustration:

The most frequent violations of the Code by daily newspapers is related to discrimination and invasion of privacy, whereas in weekly or fortnightly magazines, most evident is the use of anonymous sources, confusion of comments, assumptions and fact, and violation of editorial responsibility and lack of respect for generally accepted standards of decency. Discussions in the media on sexual and gender minorities have reached the level of vulgarity. The method of reporting by some radio and TV stations, as well as print media, on the death of the badly ill 21-year old Ukrainian woman in Mostar, who was forced to prostitute herself and was held in servitude, was mainly sensationalist.<sup>74</sup>

The Helsinki Committee Report emphasizes that the media sometimes do not respect the basic principles and rules of coverage of court proceedings as established by the European Convention and in the way as interpreted by the case-law of the European Court of Human Rights. With such unprofessional reporting, says the Report, the media violate principles such as protection of the right to freedom of expression, but also the right to a fair trial, and particularly the principle of the presumption of innocence, the rights of minors, etc., and of the right to privacy.<sup>75</sup>

At the end, it is important to note that pluralism of information is secured in BiH, that there is no concentration of media and no monopoly over information, which was clearly contributed

<sup>69</sup> *Ibid.*, Report from the LPN press conference on 12 November 2004.

<sup>70</sup> *supra* fn 21, p. 11.

<sup>71</sup> COM(2003) 692.

<sup>72</sup> Mehmed Halilović, Deputy FBiH Ombudsman for the Media and a highly experienced journalist, in an article, *How is the Defamation Act applied in BiH: journalists are sued by politicians, but also by journalists*, Media Online 2004.

<sup>73</sup> *supra* fn 21, p. 10.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*, p. 11.

by the timely adoption on the Rules on Media Concentration. (More on this in Section 10 of this study.)

### **3.3. How secure is the freedom for all to practice their own religion, language or culture?**

#### **3.3.1. Laws**

Constitutions guarantee for any person the right of freedom of religion, and in January 2004 the BiH Parliamentary Assembly adopted the Law on Freedom of Religion and on Legal Position of Churches and Religious Communities in BiH.<sup>76</sup> The Law regulates a common legal framework for the work of churches and religious communities in BiH in the same way and with no discrimination.

The Law prescribes that everyone has the right to freedom of religion and beliefs, including the freedom to practice or not to practice religion in public (Article 4 paragraph 1), the right to accept or change religion, to express one's religious feelings and convictions, and the right to religious education. Public expression of faith and beliefs can only be restricted on the basis of law and in compliance with international standards "when the competent authority has proved that it is necessary in the interest of public safety, protection of health, public morals, or the protection of rights and freedoms of others, in compliance with international standards" (Article 14 paragraph 1 point 6).

Churches and religious communities are prohibited from preaching their faith in such a way so as to disseminate intolerance or biases towards other churches or religious communities (Article 4 paragraph 2), or to act in a way contrary to the legal order, public safety or morals, or detrimental to life and health, or the rights and freedoms of others (Article 4 paragraph 3).

According to the Law, churches and religious communities are separated from the state, and the state cannot recognize the status of state religion for any faith, nor can it recognize the status of state church or state religious community to any church or religious community (Article 14 paragraph 1 point 1), nor can any church or religious community enjoy any privileges from the state in comparison with other churches or religious communities (Article 14 paragraph 1 point 3). Also, the state has no right to interfere with the internal organization and affairs of any church or religious community, nor may it interfere with selection, appointment or removal of religious officials, or the establishment of structures of churches or religious communities or organizations (Article 14 paragraph 1 pt. 2 and 6).

With their registration, churches and religious communities acquire the status of a legal person. Still, in Article 8, the Law recognized the continuity of legal personality of four churches and religious communities in BiH, as follows: the Islamic Community in BiH, the Serb Orthodox Church, the Catholic Church, and the Jewish Community in BiH (Article 8 paragraph 2), so that they did not have an obligation to register after this Law had come into force. Registration of churches and religious communities is within the competence of the BiH Ministry of Justice.

As for language, the BiH Constitution does not contain a provision on language and the right of use of language - such provisions are contained in entity constitutions.<sup>77</sup> The RS Constitution

<sup>76</sup> Official Gazette BiH No. 5/04.

<sup>77</sup> Entity constitutions previously contained provisions on languages in official use, which were declared unconstitutional by the BiH Constitutional Court decision No 5/98-IV, and relevant amendments were adopted, replacing the discriminating provisions.

states that official languages of Republika Srpska are “language of the Serb people, language of the Bosniak people, and language of the Croat people” (Amendment LXXI to the Constitution RS), and Constitution FBiH prescribes Bosnian, Croatian and Serbian as official languages (Article I/6 Constitution FBiH). Both constitutions prescribe Latin and Cyrillic scripts as official. Also, the RS Constitution (Amendment LXXVII), and the FBiH Constitution (Amendment XXXVII) identify vital national interests of constituent peoples in an identical way, so that they, for example, state “equal rights of constituent peoples in the decision-making process in relation to: education, religion, language, promotion of culture, tradition, and cultural heritage”. Issues of education, language, religion, promotion of culture, tradition and cultural heritage are set by entity constitutions as issues of vital national interest of constituent peoples.<sup>78</sup>

In relation to the equal use of language, the BiH Constitutional Court stated in its decision U 5/98-IV:

[...] ... there is an implicit, though necessary responsibility of the state of BiH to secure minimum standards for the use of language through framework legislation. At that, BiH legislation must take into account the effective possibility of equal use of Bosnian, Croat, and Serb languages not only before BiH institutions, but also at the level of the entities and all their administrative units, in legislative, executive, and judicial authorities, as well as in public life. The highest standards of Articles 8 to 13 of the European Charter on Regional and Minority Languages should serve as the guideline for the three languages cited. Lower standards referred to in the European Charter could, in view of the relevant conditions, be adequate only for other languages.<sup>79</sup>

As for minority languages, neither the BiH Constitution nor entity constitutions list national minorities by name. The BiH Constitution differentiates between *constituent peoples* and national minorities “with the intention of affirming the continuity of Bosnia and Herzegovina as a democratic, multi-national state”.<sup>80</sup> The Framework Convention for the Protection of National Minorities is one of 15 documents contained in Annex I to the BiH Constitution and, according to the opinion of the BiH Constitutional Court as expressed in the aforementioned decision U 5/98-IV, is in direct application in BiH. This principle is also expressed in the Law on Protection of Members of National Minorities,<sup>81</sup> whose Article 2 prescribes that the Framework Convention is in direct application and is “an integral part of the legal system of BiH and its entities”.

Pursuant to this Law, a national minority is part of the population -citizens of BiH “who do not belong to any of the three constituent peoples, and is made up of persons of identical or similar ethnic origin, identical or similar tradition, custom, belief, language, culture, and spirituality, close or related history and other features” (Article 3 paragraph 1). The Law recognizes the following minorities in BiH: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenes, Turks, Ukrainians, and “others who meet the criteria contained in Article 3 paragraph 1. The Law prohibits discrimination against members of national minorities and prohibits assimilation of members of national minorities against their will” (Article 4). Furthermore, the Law recognizes the right of members of national minorities to use their own language “freely and with no hindrance, in public or in private, in oral or written expression” (Article 11). According to the Law, the entities and cantons in the Federation BiH must secure that in those cities, municipalities and settlements where members of a national minority make up the absolute or the relative majority, education is provided in the language of

<sup>78</sup> Amendment LXXVII to the RS Constitution and Amendment XXXVII to the FBiH Constitution.

<sup>79</sup> source: [www.ustavnisud.ba](http://www.ustavnisud.ba)

<sup>80</sup> BiH Constitutional Court Decision No. 5/98-III, source: [www.ustavnisud.ba](http://www.ustavnisud.ba)

<sup>81</sup> Official Gazette BiH No. 12/03.

the minority (Article 14 paragraph 1). However, irrespective of the number of members of national minorities, entities and cantons must provide members of a national minority, at their request, additional classes providing instruction in the language of the minority, as well as in literature, history and culture, in the language of the minority (Article 14 paragraph 2).

As for the right to culture, members of national minorities have the right to establish libraries, video collections, cultural centers, museums, archives, cultural, art or folklore societies, and practice all other forms of freedom of cultural expression, including the right to maintain their own cultural monuments and cultural heritage (Article 17).

Members of national minorities also have the right to be represented in government and other public services on all levels, “proportional to their percentage share in the population according to the last census in BiH” (Article 19 paragraph 1), which is to be regulated in greater detail by entity and BiH legislation, as well as other regulations in cantons, cities and municipalities (Article 19 paragraphs 2 and 3). The Law also instructs the BiH Parliamentary Assembly to establish the BiH National Minorities Council, as a special advisory body to provide opinions, advice and proposals to the BiH Parliamentary Assembly on all issues related to rights, position and interests of national minorities in BiH. The Law prescribes the same obligation for entity legislatures (Articles 21 and 22). (On national minorities see also Section 1.2. of this study.)

### **3.3.2. Implementation and negative indicators**

The US Department of State Report notes the constitutional-legal guarantee of the freedom of religion, but it also notes that “as for members of minority religions in areas where there is no ethnic mixing, their right to free observance and practice of their religion was restricted, in some cases even violently”. Although there is no specific data to support this claim, the Report cites, as an illustration, stoning of a Catholic church in Sarajevo for Easter 2004, destruction of construction material prepared for the construction of a mosque in Višegrad, “open conflict between Bosniak returnees and Serbs who came to attend mass in an Orthodox church built on land belonging to a Bosniak returnee”.<sup>82</sup> The Report also notes that RS authorities, including the police, “often allowed or instigated an atmosphere where attacks against freedom of religion happened, although there has been improvement in comparison with earlier years”.<sup>83</sup> The Report does not cite specific improvements, but it does cite examples such as the fact that burials at the Srebrenica-Potočari Commemoration Centre in March and July 2004 were conducted with no incidents, and that Catholic and Orthodox religious leaders appeared together at a press conference in Sarajevo and made a joint call for tolerance, reconciliation, and forgiveness.<sup>84</sup>

However, although religious leaders often make public calls for tolerance, reconciliation and forgiveness, there is a noted lack of will on the side of the police, as this Report continues, to protect religious minorities, as well as failures of the judicial system to prosecute effectively and to punish violence against members of other religions, which this Report sees as the two principal obstacles to effective enjoyment of this right. The Report also states that in earlier years, the RS authorities failed to take measures to prevent violent obstruction of reconstruction of mosques and churches destroyed during the war. There are also administrative and financial barriers to the process of reconstruction of religious buildings in RS, which also bears an impact on returns. The Report notes attacks against ethnic symbols, religious officials and buildings in RS, and it notes

<sup>82</sup> *supra* fn 9, p. 11.

<sup>83</sup> *Ibid.*, p. 10. For other examples of ethnically motivated violence cited by this report in support of its conclusions, see also pp. 20-21.

<sup>84</sup> *Ibid.*



that the police failed to conduct a single serious investigation to uncover the perpetrators. However, the Report offers no specific indicators to support such conclusions.

The 2004 Helsinki Committee Report states that delicate and fragile inter-ethnic relations are additionally burdened by instances of violence, desecration of tombstones, attacks against religious buildings, and publicly displayed messages whose content promotes intolerance, hatred and nationalism. The number of such incidents is much lower now than it was immediately after the war, but their resonance is equally disastrous.<sup>85</sup> As an illustration, the Report cites:

In four days in the month of March, from 18 to 22, the roof of the Orthodox Church of Our Lady Holy Mother in the Bugojno suburb of Čipuljić was burned, the seat of the Islamic Community in Banja Luka was stoned, Baba Bešir's mosque in the Mostar suburb of Balinovac was stoned, two hand grenades were thrown at the Emperor's Mosque in Orahova near Gradiška (RS) and sacred items were damaged in the Church of St. Peter and St. Paul in the town of Vagan near Glamoč.<sup>86</sup>

The Helsinki Committee Report cites examples of attacks against mosques during the month of Ramadan, graffiti of offensive content on the door of the Catholic church in Kakanj, destruction of tombstones at the Jewish cemetery in Sarajevo, and physical attacks against religious officials, etc.<sup>87</sup>

The right to freedom of religion and discrimination related to it was dealt with by the Human Rights Chamber, and in one case, it concluded:

Toleration by Republika Srpska and its support to the quest for Serb Orthodox heritage at the Muslim cemetery in Rataj, and its toleration towards attempts of the Serb Orthodox church to conduct religious ceremonies at that cemetery, does not attain a reasonable relation between the opposing needs of the two religious communities. Therefore, toleration and support for activities of the Serb Orthodox church at the Muslim cemetery in Rataj is, in fact, discrimination against the applicant in his enjoyment of rights to freedom of religion and to the respect for his private and family life.<sup>88</sup>

The UNDP Report refers to results of research on ethnic discrimination, and it states that “at the level of the country, one can also speak about a decrease in experiences or feelings of being discriminated against on the basis of one's ethnic background. This, of course, is not a rule in all three ethnically specific parts of the country [...]».<sup>89</sup> The UNDP Report substantiates this claim with the following indicators:

Table II

Civic and national rights of members of peoples who are currently the minority in the municipality of their residence:

Area	Bosniaks				Croats				Serbs			
	Majority		Minority		Majority		Minority		Majority		Minority	
Population	3/4	04/4	03/4	04/4	03/4	04/4	03/4	04/4	03/4	04/4	03/4	04/4
Research	8.5	6.4	22.7	15.4	19.6	75	38.4	22.4	12.5	6.2	39.6	29.6
In %	75.3		67.8		37.2		58.3		49.6		47.7	

Source: *Public opinion research for this project*, PRISM Research

<sup>85</sup> *supra* fn 21, p. 5.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

<sup>88</sup> CH/02/12016, *Čengić v. BiH and RS*, Decision on Admissibility and Merits, 5 September 2003, para. 119.

<sup>89</sup> *supra* fn 13, pp. 37 and 38.



Table IV

In the past year, in their place of residence, they were discriminated against or they felt they had less rights than others, due to their religion:

Area	Bosniaks		Croats		Serbs	
Population	Minority		Minority		Minority	
Research	3/#4	04/#4	03/#4	04/#4	03/#4	04/#4
In %	6.0	2.8	20.7	21.5	14.0	2.5
Index 04/# 4 03/#4	46.7		102.9		17.9	

Source: *Public opinion research for this project*, PRISM Research

In their Report on the State of Human Rights in the Federation BiH for 2004, the FBiH Ombudsmen also state:

... in any nationally homogenized community, the rare members of the other two peoples are, in terms of discrimination, in a far more difficult situation in comparison with members of standard national minorities (Jews, Roma, and others). Conscientiously and in a planned manner, three separate national, religious and psychological ambiances were created, wherein in all the details, it is evident and easy to recognize the domination of one people and the message for others is that in that area there is no tolerance and cohabitation, i.e. there is no room for the other and the different (examples of almost mono-ethnic appointments to governing boards).<sup>90</sup>

However, the UNDP Report concludes that indicators demonstrate:

[...] undoubtedly positive trends in the past year. [...] There has been, for example, a decrease in the citizens' belief that the rights of those who are a nominal minority on the municipality where they live are threatened. It is even more important that there has been such a decrease among members of "minority" population. There is also an evident decrease in the experience or belief of the citizens that they are, in the areas where they live, discriminated against, or that they have less rights than others due to their ethnicity or religion.<sup>91</sup>

As for the rights of national minorities, the Helsinki Committee states that -although it was adopted in 2003 -the Law is still not in practical application. Minority languages are not in use in administration, education or the judiciary, and minorities have no media in their own languages. The Report further states:

Economic and social rights are violated more frequently in relation to members of national minorities, so that the percentage of members of minorities who are employed is indeed symbolic. Measures of social protection, housing conditions, especially for the Roma, are below any standard provided for by international conventions.

Finally, due to procedural problems, at this year's elections again, members of national minorities did not have an opportunity to elect their representatives at local assemblies. Thus, members of minorities are still outside the parliaments and with no possibility of any influence over political events.<sup>92</sup>

The best illustration of discrimination against national minorities and failure to fulfill commitments accepted through the Framework Convention for the Protection of National Minorities as

<sup>90</sup> *supra* fn 34, pp. 1 and 2.

<sup>91</sup> *Ibid.*, p. 43

<sup>92</sup> *supra* fn 21, p. 6.

defined by the state Law is certainly the position of the Roma, the largest and, at the same time, the most vulnerable national minority in BiH. Problems related to the Roma, the national minority which is socially, economically and politically marginalized as a group, are varied: from issues of access to education and non-discrimination in employment, to housing and property issues, and issues of revival of Roma culture and language.<sup>93</sup>

As for the issue of equal use of language, the decision of the BiH Constitutional Court is interesting. Deciding on the request of the Speaker of the House of Peoples of the Parliamentary Assembly, requesting an examination of procedural correctness, i.e. to determine the existence of constitutional bases for the statement by the Croat Caucus that the Draft Framework Law on Higher Education in BiH (hereinafter: the Framework Law) was destructive for vital national interests of the Croat people, the BiH Constitutional Court found that the proposed Framework Law, providing for the possibility of use of one or more language of constituent peoples and the procedure for adoption of statutes of higher education institutions, was destructive for vital national interests of the Croat people.<sup>94</sup> Elaborating its decision, the BiH Constitutional Court emphasized the following:

... the possibility of equal use of Bosnian, Croatian and Serbian languages, not only before institutions of Bosnia and Herzegovina, but also at the level of entities and all their administrative units, in legislative, executive and judicial authorities as well as in public life, is one of the protected collective rights. It should be emphasized that, in the widest sense, official use of a particular language certainly includes education in that language.<sup>95</sup>

Article 18 of the Framework Law prescribed that, pursuant to the Law, higher education institutions had the right, *inter alia*, to determine as official language, or official languages, one or more languages of the constituent peoples of Bosnia and Herzegovina, which gave them the possibility to determine all three, but also only one or two official languages of the constituent peoples as the official language of a given higher education institution, should an approval be received for a statute with such a provision. The Constitutional Court further elaborates:

... the Framework Law does not state unconditionally that the decision (for the purpose of Article 18) on the use of official language at a given higher education institution contained in its statute would be accepted, as the approval to the statute is granted by the relevant entity minister. This would mean that allegations made in point one of the Statement by the Croat Caucus were founded, that the Framework Law does not contain a clear, undisputable and unambiguous provisions guaranteeing that Croats, as well as two other equal and constituent peoples, would have a higher education institution in their own language.

However, the Constitutional Court believes that this approach to the issue of official use of language, which would lead to a situation whereby in some higher education institutions the official language would be only one or two official languages of constituent peoples, may mean a reduction of the right to equal use of official languages of all three constituent peoples. In a multi-ethnic state such as Bosnia and Herzegovina, neither assimilation nor segregation in the field of language may be a legitimate aim.<sup>96</sup>

<sup>93</sup> More on the position on Roma at [www.oscebih.org](http://www.oscebih.org); Helsinki Committee Report, *supra* fn 17, pp. 5, 6, and 18, and US State Department Report, , *supra* fn 9, p. 20.

<sup>94</sup> BiH Constitutional Court Decision No. 8/04, 25 June 2004.

<sup>95</sup> *Ibid.*, para. 38.

<sup>96</sup> *Ibid.*, paras 47 and 48.

### **3.4. How free from harassment and intimidation are individuals and groups working to improve human rights?**

#### **3.4.1. Laws**

See 3.2. and Section 11.

#### **3.4.2. Implementation and negative indicators**

According to the US Department of State Report, there are numerous different international and domestic organizations for the protection of human rights, “which generally act with no restrictions from the authorities”,<sup>97</sup> and which research, document and publish their findings on the state of human rights in BiH. The Report states that NGOs became more active in 2004, emphasizing the Helsinki Human Rights Committee in relation to monitoring of local elections and drawing public attention to hate speech which party candidates, as well as religious leaders, used during election campaigns. However, it was this organization and its leadership who were subjected to harsh attacks by both the local authorities and certain international institutions, because of their relentless engagement in relation to the case known as the *Algerian Group*, and part of the media were involved in this campaign against this human rights organization of superb standing.<sup>98</sup> It was particularly striking and concerning that neither OHR nor European ambassadors expressed any public support to the Helsinki Committee, nor did they point at the unacceptability of such attacks against a human rights organization.

The US Department of State Report states that, although NGOs enjoy “relative freedom to investigate human rights violations,” they are rarely successful in receiving responses from governments to their recommendations related to those violations. Although the authorities are, according to the Report, sometimes open for views and positions coming from the civil society, still, NGO interventions were “often taken into delayed consideration or categorically refused by the authorities”.<sup>99</sup>

There is no data indicating cases of intimidation, attacks, or financial pressure against NGOs or their members.

### **3.5. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?**

In general, intense legislative reform in the area of criminal, substantive and procedural legislation, as well as civil and enforcement procedures, changes in the area of family legislation, adoption of the Law on Protection from Domestic Violence, and the Gender Equality Law, etc. have, despite their shortcomings, built a good legislative framework for improving the state of human rights in BiH. Also, considerable efforts have been taken in relation to reducing trafficking in women, and measures being taken by the authorities have improved considerably the treatment of victims of trafficking.<sup>100</sup>

In its report on fulfillment of post-accession commitments, the Council of Europe observes that there have been positive changes in the area of human rights and the rule of law. The Council

<sup>97</sup> *supra* fn 9, p. 14.

<sup>98</sup> Helsinki Committee, Report on the State of Human Rights for 2002.

<sup>99</sup> *supra* fn 9, p. 14.

<sup>100</sup> *supra* fn 28, p. 19.

of Europe sees improvements in adoption of laws on restructuring the ombudsman institution and in the area of public broadcasting in BiH; in the extension of the mandate of the Human Rights Commission at the BiH Constitutional Court; in the establishment of the War Crimes Department of the BiH Court; in the ratification of the Convention on Extradition of Convicts and completion of procedures for ratification of three more conventions of the Council of Europe in the area of criminal legislation. However, the Council of Europe is very concerned with the fact that the process of verification of compatibility of domestic legislation with the European Convention for the Protection of Human Rights and Fundamental Freedoms has not yet been completed -the process has been under way for quite some time, but with no major results.<sup>101</sup>

It is also important that in 2003 BiH ratified Protocol 12 to the European Convention, which prohibits discrimination related to any rights provided by domestic legislation, which came into force on 1 April 2005. However, BiH should have signed and ratified the European Convention on Regional and Minority Languages by 24 April 2004, and this has not yet been done.<sup>102</sup>

A positive step has been made in relation to returns of refugees and displaced persons. Namely, in late January 2005, relevant ministries of BiH, Croatia and Serbia and Montenegro signed a Declaration on regional approach to the issue of refugees and displaced persons, which allows the three state signatories to reach joint agreements on methods for resolving all the pending issues in the area of refugee return. This Declaration also contains a political determination “to close the chapter on refugees by 2006”.<sup>103</sup>

In general, it may be concluded that measures in the area of protection of human rights and freedoms are mainly related to improvements of the legislative framework. The issue of consistent implementation of these laws is, in most cases, a source of problems.

It is important to note that there is no report containing data on what is the level of public support for measures being undertaken.

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<sup>101</sup> BiH: Fulfillment of Post-Accession Commitments and Cooperation Program, Council of Europe, Information Documents, SG/Inf(2005), Report of 15 April 2005.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*, p. 61.

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## 4. Economic and Social Rights\*

### Are economic and social rights equally guaranteed for all?

Author: Nedim Ademović

#### 4.1. How far is access to work or social security available to all, without discrimination?

##### 4.1.1. Laws

The Constitution of Bosnia and Herzegovina, an annex to the treaty -the General Framework Agreement for Peace in Bosnia and Herzegovina -did not, on one hand, define the state of Bosnia and Herzegovina as a *welfare state*, nor did it, on the other hand, provide for the right to work as a separate constitutional rights. Indirectly, though, point 4 of the Preamble to the Constitution of BiH obliges the state to “promote the general welfare and economic growth through the protection of private property and the promotion of a market economy“. This means that the state has an obligation to manage policies and take necessary measures with the aim of creating an environment favorable for the creation of new jobs and preservation of existing ones, and to provide social security for all employees, employable persons, and all other categories of the population.

On the other hand, the Annex to the Constitution of Bosnia and Herzegovina listed 15 different international human rights protection mechanisms, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the International Covenant on Social, Cultural and Economic Rights. These mechanisms became legally relevant on 14 December 1995.<sup>1</sup> Moreover, pursuant to Article II, paragraph 3 of the Constitution of Bosnia and Herzegovina, the European Convention for the Protection of Human Rights and Fundamental Freedoms takes priority over all other laws.

The legal basis for the right to work with no discrimination and work related rights can be found in the International Covenant on Social, Cultural and Economic Rights. Its Articles 6 and 7 provide direct protection of the right to work. Article II, paragraph 4 of the Constitution of Bosnia and Herzegovina provides the following guarantee:

... The enjoyment of the rights and freedoms provided for in this Article [referring to the catalogue of rights and freedoms] or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

There is a similar provision in Annex VI of the Dayton Peace Agreement which, in addition to the Constitution of Bosnia and Herzegovina, regulates the issue of protection of human rights in Bosnia and Herzegovina.<sup>2</sup> Moreover, decisions of the higher legal institutions of Bosnia and Herzegovina -Constitutional Court of Bosnia and Herzegovina and the BiH Human Rights Chamber<sup>3</sup> -pro-

<sup>1</sup> The Constitution of Bosnia and Herzegovina came into force on that date.

<sup>2</sup> Articles 1(1) and 1(14) of Annex 6.

<sup>3</sup> According to the Agreement entered in compliance with Article XIV, Annex 6 of the General Framework Agreement for Peace in BiH of 22 and 25 September 2003 (Official Gazette BiH No. 35/03), this institution's name was changed to Human Rights Commission of the Constitutional Court of BiH, with competence to rule in all cases received until 31 December 2003. Competence for receipt and registration of new applications after this date was assigned to the Constitutional Court of BiH.

tect and recognize the right to work with no discrimination and protection of employment rights.<sup>4</sup> Although it has had no practical meaning, the provision of Article I, paragraph 4 of the BiH Constitution, guaranteeing freedom of movement of labor and services, which also incorporates prohibition of discrimination, should not be underestimated.

As for procedural protection, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms protects work related rights as civil rights. This means that any person enjoying these rights has the right to a fair trial.<sup>5</sup> Furthermore, the 12th Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms guarantees equal application of all the rights provided for by the legal system of Bosnia and Herzegovina -in this case, those related to the specific right of equal access to work and social security.

However, it should be noted that Bosnia and Herzegovina does not guarantee the right to work *in abstracto*, i.e. as the right to have the state secure work for every person in compliance with his/her qualifications and abilities.<sup>6</sup>

A wider basis for protection of the right to work and social security is offered at lower administrative levels. Thus, the Constitution of the Federation of BiH guarantees the “right to work” in its catalogue of human rights and fundamental freedoms,<sup>7</sup> and as for the directly applicable international legal mechanisms, it includes, *inter alia*, the 1990 Convention on the Rights of Migrant Workers and their Families, as well as the 1061 European Social Charter and its Protocol 1, annexed. Article 39 of the Constitution of Republika Srpska guarantees the “right to work and freedom to work”. Article 43 of that Constitution guarantees the right of workers and their families to social security and social insurance. Under conditions set by law, the right to financial provision during temporary unemployment is guaranteed. Citizens of Republika Srpska with partial work capacity are provided conditions for employment by training for an appropriate job, in compliance with the law. On the basis of the same Article, Republika Srpska provides assistance and social security to citizens who are unable to work and have no means of subsistence.

Lower level legislation also guarantees the right of access to work and social insurance for all with no discrimination.<sup>8</sup>

Persons who fall within the category of vulnerable workers enjoy positive discrimination by law. In other words, the laws provide for a way for these negative differences to be balanced, so that all the categories of workers have equal rights and equal opportunities to work. Thus, an injured or ill worker cannot be dismissed from work for as long as he is incapacitated due to health reasons.<sup>9</sup> In addition to relevant labor legislation, some administrative units of the state have adopted special laws on professional rehabilitation, training and employment of persons with disabilities, by an RS law of the same title. It provides for special measures ensuring equal rights for these persons at the labor market.

<sup>4</sup> See, for example, decisions of the Human Rights Chamber: CH/99/2239, *Cipot-Stojanović v. FBiH*, Partial Decision on Admissibility and Merits of 4 April 2003; CH/98/565, *M.K. v. FBiH*, Decision on Admissibility and Merits of 4 December 2003; Decision of the Constitutional Court of BiH AP 119/04 of 9 December 2004.

<sup>5</sup> See, for example, *loc. cit.*, AP 119/04.

<sup>6</sup> See decisions of the Constitutional Court of BiH U 110/03, of 21 July 2004; AP 750/04, of 9 December 2004; AP 535/04, of 18 January 2005; Decision on Admissibility of the Human Rights Commission of the Constitutional Court of BiH, CH/02/9501, *Golub v. FBiH* of 5 September 2002, point 7.

<sup>7</sup> Article 2(1)(1), Constitution FBiH.

<sup>8</sup> Article 6, Law on Employment in Institutions of BiH (Official Gazette BiH No. 26/04); Article 5, Labor Law FBiH (Official Gazette FBiH No. 43/99) and RS (Official Gazette RS No. 38/00); Article 4, Labor Law of the Brčko District BiH (Official Gazette of the Brčko District BiH No. 43/04).

<sup>9</sup> Article 44, Law on Employment in Institutions; Article 64, FBiH Labor Law, Article 80, RS Labor Law, Article 53, BDBiH Labor Law.

On the other hand, in order to prevent injuries at work and occupation-related diseases, employers are obliged to take certain measures of protection at work, including information on regulations about work, protection at work, as well as regulations and rights and duties arising from collective agreements and rules of work.<sup>10</sup> It should be noted that minors and women enjoy special protection in regards to their physical condition and maternity, which enjoys special status due to its particular social value.<sup>11</sup>

By providing non-discriminatory regulation of different possibilities of employment (limited period, unlimited period, interns and volunteers, trial work, occasional work), the same regulations ensured that all categories of citizens have the same right of access to work on one hand, and on the other, that there is no abuse of any given situation to the detriment of the worker. Thus, the law provides that one or more limited duration contracts, of total duration of two years, are to be treated as an unlimited duration contract, which offers a wider spectrum of protection than a limited duration one.<sup>12</sup>

Finally, there are also provisions regulating working hours, annual leave, paid and unpaid absence, etc., protecting employees from any abuse of their rights, and guaranteeing that all categories of citizens (with families or without, young and old, women and men, etc.) have equal access to the right to work.

As for foreign nationals in Bosnia and Herzegovina, current legislation provides that such a person has to have a permanent or a temporary residence permit, and that there is no domestic worker with the qualifications necessary for the position in relation to which a work permit is to be issued.<sup>13</sup> These special conditions are fully justified by public interests of the state -protection of the domestic labor market.

Unemployed persons are treated by relevant legislation on employment and social security of unemployed persons. These laws are adopted, *inter alia*, to maintain the financial system of unemployment benefits on one hand, and on the other, to take certain measures aimed at adjusting issues of employment and unemployment to that of a market economy. These measures include, first of all, regulation of relations between employers and the unemployed, through relevant employment bureaus. These laws *explicitly* prohibit discrimination.<sup>14</sup>

Finally, it is important to note that Bosnia and Herzegovina has not yet ratified the European Social Charter, a very important international legal instrument of protection of social rights and freedoms.

#### **4.1.1. Implementation and negative indicators**

Due to the fact that the war destroyed vast amounts of available economic resources, the number of jobs in post-war Bosnia and Herzegovina is considerably smaller. In 1990, the number of employed persons was 1.05 million, with 70% of the total population of 4.3 million were between 15 and 64

<sup>10</sup> Article 32. *et sequ.* Law on Employment in Institutions of BiH; Article 48. *et sequ.* Labor Law FBiH, Article 62. *et sequ.* Labor Law RS; Article 39. *et sequ.* Labor Law BDBiH.

<sup>11</sup> Article 34. *et sequ.* Law on Employment in Institutions of BiH; Article 51. *et sequ.* Labor Law FBiH, Article 69. *et sequ.* Labor Law RS; Article 41. *et sequ.* Labor Law BDBiH.

<sup>12</sup> Article 16. Law on Work in Institutions, Labor Law FBiH, Labor Law RS; Article 12. Labor Law BDBiH.

<sup>13</sup> Article 7. Law on Employment of Foreign Nationals FBiH ( Official Gazette FBiH No. 8/99), Article 5. Law on Employment of Foreign Nationals and Stateless Persons (Official Gazette RS No. 97/04), Article 3. Law on Employment of Foreign Nationals BD BiH (Official Gazette BDBiH No. 17/02).

<sup>14</sup> Article 2. Law on Employment and Social Security of Unemployed Persons FBiH (Official Gazette FBiH No. 55/00), Article 3. Law on Employment RS (Official Gazette RS No. 38/00); Article 5. Law on Employment BDBiH (Official Gazette BDBiH No. 33/04).

years of age. Today, the right to work is exercised by a much lower number of citizens. The total number of employed persons is 638,000.<sup>15</sup> Of that number, 383,369 are men, and 238,451 are women.

If we analyze the gender structure of the unemployed, the relative male-to-female ratio is 46% unemployed women, and 54% unemployed men. It should be noted that the ratio is almost identical in both entities, and the same ratio was recorded at the end of the third quarter of 2004. The percentage of men who were looking for employment in 2004 was 17% higher than the number of unemployed women.<sup>16</sup> The ratio was similar in the preceding years (1996-2003).<sup>17</sup>

Table 4.1.: Gender structure of employed population

	Ukupno <i>Total</i>	Muški <i>Male</i>	Ženski <i>Female</i>
1996	298.822	187.529	111.293
1997	364.856	206.037	158.819
1998	398.639	221.605	177.034
1999	409.290	225.155	184.135
2000	415.037	226.414	188.623
2001	416.753	226.871	189.882
2002	435.505	238.889	196.616
2003	442.941	240.435	202.506

Source: Statistics Agency of Bosnia and Herzegovina, Gender Centre of Bosnia and Herzegovina, topical bulletin No. 3 (2005), p. 56.

High unemployment was to be resolved by privatization and the renewal of economic resources. Unfortunately, as of yet, the state has not been able to implement a successful privatization concept, especially in relation to large companies predominantly owned by the state. In its 2004 report,<sup>18</sup> *European Stability Initiative* stated:

When international agencies began planning for post-war reconstruction, they believed that Bosnia would make an easy transition to a market economy, through rapid privatization and a large injection of reconstruction aid. They overlooked the combination of misplaced investment, outdated technology, excess capacity, over-employment and enterprise debt which was the real legacy of authoritarian development. Though the privatization process was slow and poorly designed, in truth there were few enterprises left that could be sold as going concerns.

Moreover, there are numerous irregularities related to the right to work and insurance in a large number of privatized companies. In relation to that, the BiH Ombudsman stated:<sup>19</sup>

Violations of rights of this category of citizens have become widespread in the privatization process. Namely, the privatization process is leaving a growing number of earlier employees jobs, and thus without any protection. Even in those cases when the new employer accepted a contractual obligation to keep the workers already employed in the company and to possibly increase the number of employees, such obligations are largely unfulfilled. Competent authorities and services are not taking the necessary measures to protect the rights of these workers. Thus, the Law on Pension and Disability

<sup>15</sup> Preliminary Report on the State of Poverty in BiH for the period 2001-2004; Office for Monitoring and Implementation of BiH Mid-Term Development Strategy (PRSP), May 2005.

<sup>16</sup> UNDP Annual Report for 2004, *Early Warning System*, p. 20.

<sup>17</sup> Statistics Agency of BiH, *Gender in BiH*, subject bulletin No 3 (2005), p. 56.

<sup>18</sup> European Stability Initiative, *Post-Industrial Society and the Authoritarian Temptation*, Sarajevo - Berlin, October 2004, available on-line at [www.esiweb.org](http://www.esiweb.org).

<sup>19</sup> FBiH Ombudsman Report for 2004.

Insurance (Article 24) provides an obligation for the legal successor to settle any outstanding dues related to payment of contributions for pension and disability insurance, if the preceding legal person failed to do so. However, this provision is not respected in practice, and competent bodies and services accept that, although any failure to fulfill this obligation is, in fact, defined as an offence (Article 133 of the Law).

Due to the horrific consequences of the war, primarily due to the fact that many territories were ethnically cleansed, the right to work and social security is, in most cases, reserved for members of the majority population in a given territory. The magnitude of forced population shifts are best illustrated by statistics, and by comparison of data from 1991 and 1997 for the territory of Republika Srpska:<sup>20</sup>

Table 4.2: Ethnic structure of the population in Republika Srpska in 1991 and in 1997

	1991	1997
Serbs	54.30%	96.79%
Bosniaks	28.77%	2.19%
Croats	9.39%	1.02%
Other	7.53%	0.00%

Source: *Decisions of the Constitutional Court of Bosnia and Herzegovina No U 5/98, III. Partial decision of 1 July 2000, para. 86.*

The issue of revival of employment of the “expellees” after the war, which is of key impact on the return of “all to their own”,<sup>21</sup> has, in Republika Srpska, succumbed to the “economic interests of employers”. Namely, in its Decision *U 19/01*<sup>22</sup> the Constitutional Court of Bosnia and Herzegovina found that “unlawfully dismissed workers” (mainly members of minority national groups) do not have to be re-hired, and a certain severance pay is sufficient and proportional to economically threatened interests of employers.<sup>23</sup> This “sealed” ethnic cleansing, and largely discouraged the return of refugees and displaced persons. On the other hand, in the Federation of BiH, a similar solution was institutionalized through the so-called cantonal commissions for implementation of Article 143 of the Labor Law. These institutions mainly do not function; they process applications within unreasonable time, or they commit serious breaches of administrative procedures. Thus, the commission in the Western Herzegovina Canton resolved only 15 applications/complaints in 2004. In the Herzegovina-Neretva Canton, this commission has not been functional since 2001, and there are some 7,000 pending before it. In the Central Bosnia Canton, out of more than 10,000 requests, the commission has resolved only one third. In this way, former employees can neither return to work, nor receive the legally prescribed severance pay.<sup>24</sup>

As one of the “counter-measures”, the return of “former” employees should be stimulated by the legal and constitutional equality of all the constituent peoples in the entire territory of Bosnia and Herzegovina,<sup>25</sup> which opens the possibility for the consequences of ethnic cleansing to be somewhat neutralized. However, the implementation of this legal obligation of the state depends on the level of functionality of the system. Unfortunately, implementation on the area of labor law and business policy shows a negative trend. Moreover, not only in relation to future rights to work

<sup>20</sup> IMG, on the basis of the 1991 census and UNHCR estimates for 1997, taken from the decision of the Constitutional Court BiH U 5/98, III. Partial Decision of 1 July 2000, point 86.

<sup>21</sup> Return of refugees and displaced persons is regulated by Annex 7 of the Dayton Peace Agreement.

<sup>22</sup> Of 2 November 2001, point 26. *et sequ.*

<sup>23</sup> Article 152. Labor Law RS.

<sup>24</sup> FBiH Ombudsman report for 2004, available on-line at [www.bihfedomb.org](http://www.bihfedomb.org).

<sup>25</sup> The last line of the Preamble to the BiH Constitution, as interpreted in the III Partial Decision of the BiH Constitutional Court, *U 5/98*, of 1 July 2000.



and to social security, but also in relation to the existing issues of labor and social security, there is massive discrimination on national grounds across the state.<sup>26</sup>

This situation in the country contributes to unlawful activities both by employers and employees. The consequence is, inter alia, continuous development of the black market, which is, according to official data, very pronounced in Bosnia and Herzegovina. Of a total number of 999,500 employed persons, 638,000 work in the formal sector (63.8%), whereas 361,500 (36.2%) work in the informal sector. The ratio of the informal sector is clearly higher in RS (41.4%) than in FBiH (32%).<sup>27</sup> Some sources present an even bleaker picture. Thus, the UNDP Mission in Bosnia and Herzegovina states:<sup>28</sup>

According to data for 2004, the total number of registered unemployed in both entities in BiH reached almost 460,000. In addition to the fact that official unemployment is very high, unemployment data for BiH also shows a trend of additional increase of the unemployed each year. This trend is particularly evident in the Federation of BiH, where the relative share of employed persons is decreasing in relation to those who are looking for work, and it shifted from 1.5 employed to one unemployed in 2001, to 1.2 in 2004.

Finally, in addition to the problem of major unemployment in BiH, there is also very high percentage of inactive population, which is a particular burden for the state, unable to provide resources for this category of population, due to the overall situation.<sup>29</sup>

Table 4.3: Labour structure of the population for the period 2001-2004

	2001	2002	2003	2004
Unemployed	22.9%	21.1%	19.6%	21.5%
Employed	36.1%	36%	40.9%	42.6%
Inactive	41%	43.6%	39.5%	35.9%

Source: Preliminary Report on Poverty in BiH for the Period 2001-2004; Office for Monitoring and Implementation of the BiH Mid-term Development Strategy (PRSP), May 2005.

Table 4.4: Labour structure of the population by age for the period 2001-2004

	Employed	Unemployed	Inactive (outside the labor market)
15-24	32%	28%	40%
25-34	35%	25%	40%
35-44	38%	24%	38%
45-54	38%	22%	40%
55-64	32%	25%	43%
65+	32%	24%	44%

Source: Preliminary Report on Poverty in BiH for the Period 2001-2004; Office for Monitoring and Implementation of the BiH Mid-term Development Strategy (PRSP), May 2005

The age structure of the employed, the unemployed and the inactive leads to a similar conclusion.<sup>30</sup>

<sup>26</sup> As for employment related rights, see Decision on Admissibility and Merits of the Human Rights Commission, BiH Constitutional Court, CH/99/2726, of 6 April 2005; as for the right to social insurance, see CH/02/8923 etc., *Kličković et al. v. BiH, FBiH, and RS*, Decision on Admissibility and Merits of 6 January 2003.

<sup>27</sup> Preliminary Report on the State of Poverty in BiH for the period 2001-2004; Office for Monitoring and Implementation of BiH Mid-Term Development Strategy (PRSP), May 2005.

<sup>28</sup> UNDP Annual Report for 2004, *Early Warning System*, p19.

<sup>29</sup> Preliminary Report on the State of Poverty in BiH for the period 2001-2004; Office for Monitoring and Implementation of BiH Mid-Term Development Strategy (PRSP), May 2005.

<sup>30</sup> Preliminary Report on the State of Poverty in BiH for the period 2001-2004; Office for Monitoring and Implementation of BiH Mid-Term Development Strategy (PRSP), May 2005.

Violation of the citizens' right to pension takes place in several forms. There is still the practice that an increase in salaries is not accompanied by an increase in pensions -which is something that both the associations and the union of pensioners have indicated on numerous occasions. This fact and the growing cost of living bring this group into a very difficult situation, particularly the large number of pensioners who receive minimum amounts. Pensioners have not yet received all delayed, unpaid pensions, and over time, their real value is decreasing.

Violations of retirement-related rights has become widespread. Namely, employers had not been paying any pension and disability contributions for their employees. After they meet the criteria for retirement, workers have their employment terminated, but they cannot begin to enjoy their pensions, as payments have not been made into pension and disability insurance funds. This is a breach violation of the rights of these citizens, as they are no longer employed and have no right to health insurance on that basis. In addition, as they do not enjoy the right to pension, although they are formally retired, they have no right to health insurance on the basis of retirement.<sup>31</sup>

Finally, despite all these violations, relevant labor inspectors are, in fact, not engaged in a way that would make all the relevant parties inclined to respect their legal obligations.

## **4.2. How effectively are the basic necessities of life guaranteed, including adequate food, shelter and clean water?**

### **4.2.1. Laws**

As stated in 4.1, the Constitution of Bosnia and Herzegovina did not define BiH as a welfare state. Point 4 of the Preamble to the Constitution, obliges the state to “promote the general welfare and economic growth through the protection of private property and the promotion of a market economy“. The term “general welfare” entails a positive obligation of the state to take all the necessary measures so that any person, particularly the vulnerable categories, may enjoy quality life.

Constitutions of lower administrative levels are more specific. Thus, the Constitution of the Federation of BiH, in its Article 2(1)(n-r), provides for the right to social protection, health care, food, and shelter. The Constitution of Republika Srpska provides for the right to a healthy environment (Article 35), health care (Article 37), the right to limited working hours, daily and weekly rest, and paid annual leave and absences (Article 40), the right to social protection (Article 43). Pursuant to Article 51, Republika Srpska is obliged to promote economic development and increase the overall social welfare of citizens, through measures of economic and social policy.

With the aim of providing legal elaboration of the notion of “general welfare” in the state, numerous laws have been adopted, aimed at providing better quality of life for the population. Thus, laws were adopted on the protection of environment, establishing an institutional framework for the protection of plants, animals, minerals, etc., and other measures of protection of the environment in the future. Moreover, lower administrative levels have adopted separate environmental protection laws. According to those laws, each person has the right to a healthy, ecologically acceptable environment, as a basic constitutional right. Additionally, relevant environmental laws provided for special legislative protection of water, air, forests, and other parts of nature. For example, laws protecting water resources, adopted at the entity level, provide for long term plans for the best protection of water resources, water supply, etc.<sup>32</sup>

<sup>31</sup> For active legitimization in exercising these rights, see also section 4.5.

<sup>32</sup> Law on Provision of Partial Funds and Conditions for Implementation of Long-Term Water Supply Program for Population and Business Entities in SRBiH (Official Gazette SRBiH, No. 42/67), FBiH Law on Water Resources (Official Gazette FBiH No. 18/98), RS (Official Gazette RS No. 3/98); Law on Protection of Water Resources (Official

Furthermore, there are laws that award each person certain specific rights allowing minimum subsistence. Thus, laws on pension and disability insurance at the entity level offer the right to old age, disability and family pension, as well as the right of workers whose ability to work changes.<sup>33</sup> Pensions are provided from entity pension funds, replenished by contributions paid by employers and employees.<sup>34</sup>

On the other hand, special rights related to employment allow employees to enjoy humane working and living conditions. This includes relevant provisions regulating working hours, annual leave, paid and unpaid absence, prevention and protection at work, special rights in case of injury at work or occupational illness, etc.<sup>35</sup>

Unemployed persons also enjoy economic and health provisions under certain conditions prescribed by law. Institutional protection of the unemployed is provided for at lower administrative levels, decentralized in FBiH (at the cantonal level), and centralized in RS. Through its Employment Agency, the state only coordinates the work of entity institutional frameworks and deals with international affairs.

Vulnerable categories such as disabled persons, minors without guardianship, persons with mental and physical development impediments, non-insured persons with no subsistence, persons with socially unacceptable behavior, etc., enjoy certain rights aimed at improving their general living conditions. Most of all, they include social work services, financial and other material assistance, preparation for autonomous life, accommodation in social welfare institutions or other families, home care, etc.<sup>36</sup>

As for the right to an apartment, the former social system imposed a large commitment on employers and workers. Namely, everyone was obliged to make contributions to the housing fund, which socially owned enterprises used to provide for the housing needs of their workers. The so-called *occupancy right* of employees is a *sui generis* economic right, protected by the Law on Housing, but also -according to the case law of relevant judicial institutions, primarily the Constitutional Court of BiH -Article 1, Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>37</sup> The economic strength of this right became particularly prominent in the privatization process, when the entire *social property* became state, i.e. private property. In that process, holders of occupancy right were given the possibility of privatizing their apartments under very favorable financial conditions. Most workers had their housing secured in this way. After the change of the social system in mid-1990s, this obligatory contribution was abolished, and the housing policy was changed completely -and negatively. The state and

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Gazette BDBiH No. 25/04); Law on Environmental Protection (Official Gazette FBiH, No. 33/03), RS (Official Gazette RS No. 53/02), BDBiH (Official Gazette BDBiH No. 24/04), Law on Protection of Nature in FBiH (Official Gazette FBiH No. 33/03), RS (Official Gazette RS No. 50/02), BDBiH (Official Gazette BD BiH No. 24/04).

<sup>33</sup> Article 2. Law on Pension and Disability Insurance in FBiH (Official Gazette BiH No. 29/98), RS (Official Gazette RS No. 32/00).

<sup>34</sup> Article 4. Law on Pension and Disability Insurance in FBiH (Official Gazette BiH No. 29/98), RS (Official Gazette RS, No. 32/00).

<sup>35</sup> Law on Employment in Institutions of BiH (Official Gazette BiH No. 26/04), FBiH Labor Law (Official Gazette FBiH No. 43/99) and RS Labor Law (Official Gazette RS No. 38/00), Labor Law BDBiH (Official Gazette BDBiH No. 43/04), Decision on Working Hours in Certain Business Activities in the Territory of BDBiH (Official Gazette BDBiH No. 15/03), similarly RS (Official Gazette RS No. 27/94).

<sup>36</sup> Law on Mediation in Employment and Social Security of Unemployed Persons in FBiH (Official Gazette FBiH No. 55/00), RS Law on Employment (Official Gazette RS No. 38/00), Law on Work and Employment Agency of BiH (Official Gazette BiH No. 21/03), Law on Basic Social Protection, Protection of Civilian Victims of War and Protection of Families with Children (Official Gazette FBiH, No. 36/99), RS Law on Social Protection (Official Gazette RS No. 5/93), BD (Official Gazette BDBiH No. 1/03).

<sup>37</sup> See, for example, decision of the BiH Constitutional Court *U 3/99* of 17 March 2000, Official Gazette BiH No 21/00.

the employers no longer have a positive obligation to provide housing for their workers, other than in relation to the remaining apartments which have not yet been allocated and in relation to which there is no *occupancy right* held by an individual.<sup>38</sup>

#### 4.2.2. Implementation and negative indicators

Although an overview of the legal system in this area appears positive, the situation on the ground is very negative.

As for a “healthy” environment -although BiH has adopted a series of laws aimed at protecting the environment, these laws are not operational, nor are there regulations to achieve that. On the other hand, BiH has not signed the Aarhus Convention, which would allow for the exercise of human rights in the area of environment.

During the war in BiH, 1.2 to 1.4 million persons became displaced,<sup>39</sup> whereas 0.8 to 1 million fled abroad. The *non-destroyed* housing fund of the state, which was established on the basis of “pre-war” holders of the occupancy right abandoned their homes, was assigned principally to the displaced population. They received temporary decisions awarding the apartments. When the Law on Cessation of Application of the Law on Abandoned Apartments came into force in 1998, these decisions became null and void *ex lege*. Apartments were returned to the “pre-war” holders of the occupancy right, as Annex VIII of the Dayton Agreement was supposed to meet the goal of *return of all to their own* and to neutralize consequences of the war.<sup>40</sup> The project of the return of refugees and displaced persons unfortunately remains unfulfilled, as out of 2 million people, according to UNHCR estimates, only 441,523 refugees and 567,480 displaced persons returned to their pre-war homes.<sup>41</sup> However, among the returnees, there are very few who returned to the areas where their ethnic group is not the majority, and such returns make up for a mere 20% of the total number of refugees and internally displaced persons (a total of 451,584 in the country<sup>42</sup>). Property has been returned in 95% of the cases. This is the explanation of the absurd situation that the property return has been successful, and the “return” -in principle - has not.

Consequently, the consequences of ethnic cleansing have been frozen. For comparison, in the “pre-war BiH, only some twenty municipalities had [...] such ethnic composition that one ethnic group had absolute numerical dominance over the other two. In some 80% of the total municipalities, no ethnic group had absolute majority. Today, only in Tuzla, the majority population does not reach 90% of the total population, whereas in other areas, the average is between 92% and 99.9%.”<sup>43</sup> Causes of this situation are the still evident national hatred, intimidation, insecurity, difficult economic situation, impossibility of finding employment, etc.

Apartments which have not been returned (no return requested, holder of the occupancy right deceased, return request submitted after the legally prescribed deadline, etc.) entered the alternative

<sup>38</sup> Decisions of the BiH Constitutional Court *U 70/03* of 30 January 2004, Official Gazette BiH No. 11/04; *AP-979/04* of 17 February 2005, points 30-36.

<sup>39</sup> There were massive, forceful shifts of population. On this, see statistics in section 4.1.

<sup>40</sup> On this, BiH Constitution, Article II/5, provides: “All refugees and displaced persons have the right freely to return to their homes of origin. They have the right, in accordance with Annex 7 to the General Framework Agreement, to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void.”

<sup>41</sup> UNHCR Statistics: Returns summary to Bosnia and Herzegovina from 01/01/1996 to 30/06/2005, available on-line at <http://www.unhcr.ba/return/index.htm>.

<sup>42</sup> UNHCR Statistics: Total minority returns in/to BiH from 1996 to 30/06/05, available on-line at <http://www.unhcr.ba/return/index.htm>.

<sup>43</sup> Helsinki Committee Report for 2004, available on-line at <http://www.bh-hchr.org/Izvjestaji/izvj2004.htm>.

accommodation fund, used for persons who could not return to their own property immediately, for different reasons (for example, the pre-war property was destroyed). These apartments could not be awarded to persons who had lived in them on the basis of temporary decisions.<sup>44</sup> The number of persons not provided for is large, meaning that the *alternative accommodation* fund is insufficient. For example, in 2004, in the territory of FBiH there were still 33 collective centers, nine collective settlements, and three transit centers, accommodating a total of 6,549 persons, i.e. 2,288 families.<sup>45</sup>

Horrible consequences of war, non-functioning state, obstructions and incompetence, have rendered BiH a state with a disastrous economic situation. Accordingly, living standards of the population are very low. GDP per capita in BiH, in convertible marks, was 3,387 for 2004. Average net salary in FBiH in 2004 was 533.52 convertible marks, and the average pension was 199.20 convertible marks, whereas the parameters for RS are much lower. The average consumer expenses were 456.80 convertible marks. All this confirms the assessment that approximately 50% of the BiH population lives on the verge of poverty.<sup>46</sup>

The most vulnerable categories in 2004 were: <sup>47</sup>

- households with three or more children are the poorest category in BiH: 66% or 2/3 of these households are poor, and making up 10% of the total number of the poor in BiH;
- refugees and displaced persons: 37% of these are poor, 10% of the total number of the poor;
- households with two children: 32% of such households are poor, or 22% of the total number of the poor;
- households where the head of the household is younger than 25;
- households where the head of the household completed no more than basic primary education.

Other consequences include high mortality rate, decreased birth rate, and low average life expectancy of the population:

Average age of men and women, 2004:<sup>48</sup>

Table 4.5: Average age for men and women, 2004:

	n	Average	Standard deviation
Men	6603	42.5	17.3
Women	7224	44.5	17.7
Total	13827	43.5	17.5

Source: *Health Statistics Yearbook of the Federation BiH, FBiH Public Health Institute, Sarajevo 2004.*

Unfortunately, different forms of social assistance and services for the vulnerable categories, their volume, form and quality, depend on the financial capacities of social care providers, which, in turn, depend on the financial capacities of the state. In BiH, they are at a very low level.<sup>49</sup>

<sup>44</sup> See Human Rights Chamber Decision on Admissibility and Merits, CH/99/2980, of 4 July 2005.

<sup>45</sup> Helsinki Committee Report for 2004, *op. cit.*

<sup>46</sup> Statistics Bulletin BiH No. 4, December 2004, p. 17 *et seq.*; reports by statistics bureaus of BiH, FBiH and RS.

<sup>47</sup> Statistics Bulletin BiH, No. 4, *op. cit.*

<sup>48</sup> Health Statistics Yearbook of the Federation BiH, FBiH Public Health Institute, Sarajevo 2004.

<sup>49</sup> On this, see the analysis of the economic and financial situation in the country, in the UNDP Annual Report for 2004, *Early Warning System*, p. 16. *et sequ.*



### 4.3 To what extent is the health of the population protected, in all spheres and stages of life?

#### 4.3.1. Laws

The Constitution of Bosnia and Herzegovina does not set explicitly the right to health care as a constitutional right. A positive obligation may be derived from the already cited point 4 of the Preamble to the Constitution, which obliges the state to “promote the general welfare and economic growth through the protection of private property and the promotion of a market economy“. Indirectly, this should include the right to health insurance, as the notion of *welfare* cannot be defined without it. On the other hand, Annex I to the BiH Constitution, i.e. the catalogue of international legal mechanisms of protection of human rights and fundamental freedoms, contains the International Covenant on Social, Cultural, and Economic Rights, which guarantees the right to health care.

Entity constitutions are far more explicit. Thus, in Article 2(1)(n-o), the FBiH Constitution provides for social protection and health care. Article 37 of the RS Constitution provides for health care. The third administrative unit - Brčko District - does not have its own catalogue of human rights, but rather refers to the rights guaranteed by the BiH Constitution.

Institutionally, health coverage has very complicated regulations. In principle, the entities and the Brčko District are responsible for organizing and guaranteeing health care.<sup>50</sup> Additionally, in FBiH, implementation of health care legislation was delegated to the 10 cantons, which makes the system even more complex. As a result, there is a total of 12 health institutes in BiH.

Health care in BiH is based on the principle of *solidarity*. This means that health policy is designed by the health insurance funds, on the basis of needs of the collectivity, rather than the individual. Health insurance is based on the principle of mandatory contributions. The basis is a percentage of gross salary -the contribution rate in FBiH is 13%,<sup>51</sup> and in RS 15%.<sup>52</sup> In addition to this, employers contribute 5% to health insurance of employees. Payments for pensioners are made by pension funds, and employment bureaus pay for the unemployed. Total contribution for health insurance is estimated at 7.6% of the GDP from public spending, whereas *informal contributions*<sup>53</sup> make up for additional 4.7%, which makes up a total of 12.3% of the GDP. *Health spending per capita* in FBiH is 218.00 convertible marks, whereas it is much lower in RS -100 convertible marks. Thirty-seven percent is allocated for primary health care, 35% for secondary, and 18% for tertiary.

Most of the population is covered by insurance on the basis of laws on health insurance and health care, whereas there are some groups of the population, such as, for example, veterans of war and civil victims of war, who are covered by separate legislation.

Health care is regulated as expanded, voluntary health coverage<sup>54</sup> and compulsory health coverage.<sup>55</sup> Although the law provides for three types of insurance, only the compulsory insurance has been made operational. Moreover, although the law prescribes that entities are to regulate this

<sup>50</sup> Article III/3(a) BiH Constitution, Article 2(b) Constitution FBiH, Article 68(2) Constitution RS, Article 9(1)(h) Statute DB.

<sup>51</sup> Article 10. Law on Contributions in FBiH.

<sup>52</sup> Law on Contributions in RS (Official Gazette RS No. 51/01).

<sup>53</sup> “Informal contributions” are payments not provided for in general legal acts as such, and they include all forms of assistance, donations, etc.

<sup>54</sup> Article 78. Law on Health Care FBiH (Official Gazette FBiH No. 29/97), Article 71. Law on Health Care RS (Official Gazette RS No. 18/99), Article 68. Law on Health Care DB (Official Gazette BDBiH No. 2/01).

<sup>55</sup> Article 70. Law on Health Care FBiH (Official Gazette FBiH No. 29/97), Article 76. Law on Health Care RS (Official Gazette RS No. 18/99), Article 20. Law on Health Care DB (Official Gazette BDBiH No. 2/01).



area, the entities never adopted acts prescribing the “basic” set of health services, guaranteed for all.<sup>56</sup> Expanded insurance cannot function because of this, as the basic set remains unclear.

Through health institutions, health insurance institutes guarantee services in case of illness, disability to work due to illness or pregnancy, compensation of treatment-related travel costs and other services prescribed by law.

One of the key shortcomings in the area of health care are cross-border entity health care for displaced persons. Namely, due to the formal and strict application of the territorial principle, and in the absence of appropriate agreements, displaced persons in one administrative unit cannot receive health services in the territory of another administrative unit, where they should return to their pre-war homes. In 2001, the entities and the Brčko District signed an Agreement on Health Insurance,<sup>57</sup> in which it was agreed that all persons attending professional training or education, as well as displaced persons, have the right to receive health services in their place of residence. The same principle was applied to pensioners, irrespective of where the contributions were paid.

#### 4.3.2. Implementation and negative indicators

In Bosnia and Herzegovina -in light of the huge economic differences between different parts of the country, and the extremely highly institutionally fragmented system of health care -not all the citizens have the same right to health care. In addition, access to health care is ethnically conditioned. On the other hand, out of approximately 3.8 inhabitants, only 638,000 are employed.<sup>58</sup> Unfortunately, from this number one must deduct some 15-20% of those who are formally employed, but not receiving health insurance:

Table 4.6: Classification of persons with no insurance coverage for the period 2001-2004

	No health insurance	No pension insurance
Employed by an employer – private or state sector	19%	21%
Independently employed / self-employed	53%	55%
Temporary / authors' contract	33%	37%
Seasonal work	89%	91%
Assists in family business	84%	89%

Source: Preliminary Report on Poverty in BiH for the Period 2001-2004; Office for Monitoring and Implementation of the BiH Mid-term Development Strategy (PRSP), May 2005

Therefore, the ratio of those who pay health care contributions and others is 1:7, which is clearly a heavy burden for the state. It is estimated that 26% of the population (17% in FBiH and 35% in RS) are not covered by health insurance. Finally, some sources<sup>59</sup> state that some 60% of women have no health insurance. The authorities in BiH have not provided appropriate safety nets and are not strengthening the system at the level of the state or at the level of the community, through social policies aimed to provide women living in poverty with mechanisms of coping with poor economic conditions.

<sup>56</sup> For example, in FBiH Article 32. Law on Health Insurance (Official Gazette FBiH No. 30/97).

<sup>57</sup> Agreement on Health Insurance (Official Gazette BiH No. 30/01).

<sup>58</sup> Preliminary Report on the State of Poverty in BiH for the period 2001-2004; Office for Monitoring and Implementation of BiH Mid-Term Development Strategy (PRSP), May 2005.

<sup>59</sup> BiH Helsinki Committee Report, January-December 2004.

An additional problem is in the war-related health problems, which puts Bosnia and Herzegovina into the group of countries with extremely large needs in health care. In the period 1992-1995, 45,377 persons in FBiH became disabled by the war, and 52,419 became family members of persons killed in the war. In RS, the numbers are somewhat lower 41,994 disabled, and 28,456 family members of persons killed in the war.<sup>60</sup>

The situation did not improve greatly after the war. On one hand, low standard of living,<sup>61</sup> bad health care, large numbers of persons with no insurance, poor health policy, etc., resulted in the poor overall health status of the population. The best indicator is the average age of men and women, birth rates and death rates, and an increased percentage of diseases and phenomena typical of underdeveloped countries:

*Population health indicators:*<sup>62</sup>

Average age: men 65.8 (2003); women 71.2 (2003);

Death rate: 7.9/1000 (2003);

Birth rate: 10/1000 (2003);

Natural growth: 2.1/1000 (2003);

*Tuberculosis cases:* 65.6/100,000 (2000);

HIV infections: 350 persons;

Malignant diseases: 275/100,000 (2000);

Immunization for TB, diphtheria, tetanus, pertussis, poliomyelitis, and measles: 95% (2000);

*Table 4.7: Violent deaths in BiH by type and gender BiH (2003):*

	total	accident	suicide	homicide	unknown
total	1.169	630	458	70	11
men	891	520	312	48	11
women	278	110	146	22	0

*Source: Health Statistics Yearbook of the Federation BiH, FBiH Public Health Institute, Sarajevo 2003.*

Injuries in traffic accidents: 243/100,000 (2000).<sup>63</sup>

As for provision of health services between the entities, the cited Agreement functioned poorly in the first year, as the RS authorities were not *de-registering* people adequately to allow them to register as health insurance beneficiaries in the other entity. However, according to OHR, problems in this area no longer exist.<sup>64</sup>

As for social and health insurance, particular attention should be afforded to the Roma population, especially children. Their situation is disastrous: a state plan to change that is more than necessary.<sup>65</sup>

<sup>60</sup> Preliminary Report on the State of Poverty in BiH for the period 2001-2004; Office for Monitoring and Implementation of BiH Mid-Term Development Strategy (PRSP), May 2005.

<sup>61</sup> On this, see section 4.2.

<sup>62</sup> Public Health Institute, Health Statistics Yearbook, 2003.

<sup>63</sup> MISC 2000.

<sup>64</sup> OHR, Report on Health Insurance in BiH, June 2002.

<sup>65</sup> On this, see OSCE BiH, Action Plan on Education Needs of Roma and Members of other National Minorities in BiH, February 2004, p. 6, available at [www.oscebih.org](http://www.oscebih.org) (as on 17 October 2005).

#### **4.4. How extensive and inclusive is the right to education, including education in the rights and responsibilities of citizenship?**

##### **4.4.1. Laws**

In Article II/3.1, the BiH Constitution guarantees the right to education. This right is directly linked with the right to private and family life, home and correspondence, on one side, and the right to freedom of thought, conscience, and religion, i.e. freedom of expression, on the other. All the above rights are interconnected, expressing also public interests of the state, i.e. the rights of children and the rights of parents.

Lower administrative units also guarantee the right to education (Article 2(1)(m) of the FBiH Constitution, Article 38 of the RS Constitution). The RS Constitution deals with this constitutional right in greater detail, prescribing that primary education is compulsory and free of charge, and that secondary and higher education is accessible to all, under the same conditions. Private schools are also provided for in the Constitution.<sup>66</sup>

Since 2003, education up to university level has been regulated in principle at the level of the state. The BiH Parliament adopted the Framework Law on Primary and Secondary Education in BiH. Thus, the same basic principles of education are applied in the entire territory of the state. Moreover, the Law on Common Core Curricula in BiH has also been adopted. The Law obliges all the competent institutions and bodies to prescribe curricula in all schools so as to include the common core curricula and vocational subjects as of the academic year 2003/2004. Unfortunately, the common core curricula do not include the so-called national subjects, which - if exceeding the limits - may easily become a tool for negative charges in relations between members of different ethnic and national groups.

The curriculum has a positive obligation to promote and protect religious freedom, tolerance and culture of dialogue. In view of the multi-religious population of the state, students may attend religious education only if it complies with their beliefs and beliefs of their parents (Article 9 of the Framework Law on Primary and Secondary Education in BiH).

The Framework Law on Primary and Secondary Education in BiH<sup>67</sup> provides for four types of education: pre-school, primary, secondary, and adult education (Article 1). The Law provides for the same right of access to education and the same right to education for all, with no discrimination (Article 3). Schools enjoy autonomy, particularly regarding employment of teachers and other staff, and freedom in teaching (Article 41).

Pre-school education is provided for in the Framework Law only formally, and its elaboration is left to the lower administrative level. In principle, pre-school education is free of charge, the cost is bore by the taxpayers. The problem is that no legal elaboration of pre-school education at lower levels exists, which is why there is no uniform system, different standards are used, financing is not the same, etc.

Primary education is compulsory and free of charge and is secured for all children (Article 16). All persons younger than 18 are defined as children. As of the academic year 2004, the duration of primary education is 9 years.

Secondary education in public institutions is free of charge (Article 17). Upon completion of primary education, students have the right to apply for admission to any secondary school in the state. Enrollment is based on equal rights in competition (Article 12, paragraph 5).

<sup>66</sup> Article 38. RS Constitution.

<sup>67</sup> Official Gazette BiH, No. 18/03.

Parents have the right and the duty to provide education for their children (Article 23). Education may be public or private, though in terms of conditions and procedures, private schools must secure equal opportunities for enrollment for all candidates (Article 26). Private schools may be established by domestic or foreign natural or legal persons (Article 30).

University education is regulated at the cantonal level in FBiH,<sup>68</sup> whereas in RS the new Law on Universities was adopted in 1993.<sup>69</sup> Universities enjoy certain autonomy. Within the general reforms of higher education, in September 2003, the state ratified the so-called Lisbon Convention (Convention for Recognition of Qualifications in the Area of Higher Education in the European Region), and in January 2004, it signed the so-called Bologna Declaration (Joint Declaration of European Ministers of Education). These documents should allow the state to overcome obstacles in the process of recognition of studies and titles, university reform aimed at creating a two-cycle structure, introduction of the credit system, quality assurance, and student and teacher mobility.

Adoption of the Law on National Minorities<sup>70</sup> ensured that all children in BiH have the same rights and conditions in education, including national minorities. This Law allowed for national minorities to define their own education needs.

#### **4.4.2. Implementation and negative indicators**

94% of children in BiH are covered by education, and 99% of all children who enter the first grade reach the fifth grade of primary school.<sup>71</sup>

Children returnees to areas with majority population of another constituent people still have problems with education, as education policies and curricula are mono-ethnic. This system creates segregation in education. There are still *two schools under the same roof*,<sup>72</sup> of which there are more than 50 across the country. Discrimination is also present due to the use of mono-ethnic titles and symbols in schools, and mono-ethnic subjects.

As for the national subjects, textbooks in minority languages have not been prepared, meaning that these children, who are covered by education, cannot use their own language, but rather, have to use the majority language. The Coordination Board responsible for implementation of the Interim Agreement adopted the criteria for names and symbols of schools and elaborated prototype regulations on this issue. Despite that, implementation of the criteria is very slow. In order to avoid discrimination, children are forced to travel to schools away from their places of residence in order to attend school in their own language and with no ethnically-based discrimination.<sup>73</sup>

Religious education is one of the basic forms of discrimination. In principle, in territories with majority population of one people, religious education is offered only for children of that people. On the other hand, there is pressure on parents to send their children to religious education classes.<sup>74</sup>

<sup>68</sup> See, for example, Law on Universities of the Sarajevo Canton.

<sup>69</sup> Official Gazette RS; No. 12/93.

<sup>70</sup> Official Gazette BiH No. 12/03

<sup>71</sup> Helsinki Committee Report for 2004, available on-line at <http://www.bh-hchr.org/Izvjestaji/izvj2004.htm>.

<sup>72</sup> Due to national policies leading to segregation, with the motto of “everyone with their own” or “different but equal”, one school building is divided into two schools, administratively autonomous from one another, and each applying their own national education program for children of their own people (on this, see also Open Society Fund BiH: The Constitution and Education in BiH, prof. dr. Adila Pašalić-Kreso, September 2005, available on-line at <http://www.oscebih.org/documents> (as on 3 August 2005).

<sup>73</sup> Helsinki Committee Report for 2004, available on-line at <http://www.bh-hchr.org/Izvjestaji/izvj2004.htm>.

<sup>74</sup> U.S. Department of State, Country Reports for 2004, BiH, as on 28 February 2004, available on-line at <http://www.state.gov/g/drl/rls/hrrpt/2004/41673.htm>.

On the other hand, children belonging to the constitutional group of *others* are also discriminated against, as they have to fit into mono-ethnic curricula, accept the majority language, and have no adequate religious education. This category is still not defined constitutionally, and there are no mechanisms for their protection.

Children from rural parts of BiH, where there is almost no transportation to school provided, are frequently deprived of education. Moreover, because of their own beliefs -stereotypes -parents do not want to send their children, in particular, girls and disabled children, to school, even at the risk of paying fines or even going to prison.<sup>75</sup>

As for Roma as the largest national minority in BiH, the state still has no exact data on how many children of this minority group do not attend school. Some sources say that only 15% of those children have, in fact, entered school. Although the Action Plan on Education Needs of Roma and Other Minorities in BiH has been signed, very little has been done by way of its implementation. Moreover, the Report of the European Committee on Racism and Intolerance stated: "In general, the report indicates that efforts by the authorities in BiH to implement compulsory education for Roma children have so far been very limited."<sup>76</sup>

Most schools in BiH do not have the necessary technical aids, and many schools are still badly damaged. There are also no uniform education system nor curricula, and the staffing is inadequate in terms of pedagogical standards and general norms -there is a lack of psychologists, social workers and, in smaller communities, pedagogues.<sup>77</sup> Recognition of diplomas and procedures of *nostrification* and equivalence of foreign diplomas, are a major problem in education.<sup>78</sup> Procedures for recognition of diplomas in BiH are far too rigid and non-compliant with the criteria established by the Lisbon Convention on Recognition.<sup>79</sup> For example they are not based on an assessment of learning outcomes, as provided for by the Convention, but rather on an assessment of qualifications based on detailed comparison of curricula, their duration, number of hours and content. The Lisbon Convention on Recognition is based on an assumption that foreign diplomas of the same level if there are no substantive differences, whereas the approach in BiH is far less flexible: if two programs of study do not overlap between 70 and 90 percent, recognition will be refused. Furthermore, documents must be translated and certified, and the actual procedure is often quite lengthy (in some cases longer than one and a half years), expensive and non-transparent. In most cases, additional courses and hours are required in order to receive recognition of foreign diploma/education as equivalent.

In such a situation, recognition of diplomas acquired at recognized foreign universities may be refused just because their modern curriculum is not comparable with the rather cumbersome and outdated curricula at universities in BiH.<sup>80</sup> Graduates who have completed modern programs

<sup>75</sup> Helsinki Committee Report for 2004, available on-line at <http://www.bh-hchr.org/Izvjestaji/izvj2004.htm>.

<sup>76</sup> European Committee on Racism and Intolerance, Report on BiH, ECRI (2005) 2 (adopted 25 June 2004, published 15 February 2005).

<sup>77</sup> Helsinki Committee Report for 2004, available on-line at <http://www.bh-hchr.org/Izvjestaji/izvj2004.htm>.

<sup>78</sup> Law on Nostrification and Equivalence of School Leaving Certificates (Official Gazette SRBIH, No. 7/88).

<sup>79</sup> Lisbon Convention (full title: Convention on Recognition of Qualifications related to Higher Education in the European Region) signed 17 July 2003 and ratified by BiH Presidency on 19 November 2003.

<sup>80</sup> In 2003, in addition to its regular supervision of legality of work, the FBiH Inspectorate checked 1,780 diplomas and school leaving certificates at the request of different institutions and individuals in BiH and abroad, and completed on appeal 32 nostrifications of school leaving certificates and diplomas in second-instance procedure (FBiH Ministry of Education and Science, *Dostignuća u oblasti nauke i obrazovanja u Federaciji Bosne i Hercegovine u 2003. godini* [Achievements in Science in Education in FBiH in 2003] Report, Mostar, January 2004, p. 8).



of study, in compliance with principles of the Bologna process<sup>81</sup> and European standards, are required to take additional courses. This problem certainly bears and impact on the return of refugees to their country.

Finally, the difficult situation with education and employment in the country leads to a large number of young persons trying to leave and start their lives in other countries. There is an estimate that approximately 92,000 young persons left BiH in the period from 1996 to 2001, and that today almost one quarter wants to leave BiH permanently.<sup>82</sup>

#### **4.5. How free are trade unions and other work-related associations to organize and represent their members' interests?**

##### **4.5.1. Laws**

In view of the lengthy and ongoing privatization process, low level of productivity, well developed black market, and the overall process of transition towards a modern, democratic society, BiH should demonstrate a great interest for establishing a strong institutional system of protection of individual and collective workers' rights.

Union organization in BiH in the area of labor, and the right to organize and represent interest of its members, are guaranteed, first of all, at the level of the state. Namely, legal provision and protection of institutional framework of freedom of trade unions and other workers' organizations is, though not explicitly, provided for in the already cited point 4 of the Preamble to the BiH Constitution, and in Article II/3(i) of the BiH Constitution. The cited point of the Preamble obliges the state to "promote the general welfare and economic growth through the protection of private property and the promotion of a market economy". On the other hand, Article II/3(i) of the BiH Constitution, but also Article 1(9) of Annex VI to the General Framework Agreement for Peace in BiH, protect the freedom of assembly, which certainly includes organization of workers' associations.

A more explicit legal situation may be found in the Statute of the Brčko District, whose Article 15 provides for a separate right to freedom of peaceful assembly and association, including the right to establish political, social and other organizations. However, a clear legal basis is established in the RS Constitution and the FBiH Constitution (Article 41 of the RS Constitution; Preamble and Article 2(1)(l) of the FBiH Constitution), which guarantee the freedom of union organization and work, i.e. association into trade unions.

Current legislation also guarantees freedom of association with no restrictions. Thus the Law on Employment in Institutions of BiH<sup>83</sup> guarantees the right of employees to establish a union of their choice, to become its member, to elect their representative bodies, with no previous approval (Article 3).

Specific regulations vis-à-vis substantive rights related to trade unions is incorporated in labor legislation of the entities and the Brčko District.<sup>84</sup> These laws provide for collective bargaining, for the entire territory of the administrative unit, as well as for lower level units, such as cantons

<sup>81</sup> BiH acceded to the process on 19 September 2003 and became full member with all the related obligations and regulations.

<sup>82</sup> OSCE, Strategic Reform, Key Areas of Education Reform, available on-line at <http://www.oscebih.org/education>.

<sup>83</sup> Official Gazette BiH No. 26/04.

<sup>84</sup> Labor Law FBiH (Official Gazette FBiH No. 43/99), RS (Official Gazette RS No. 38/00), BDBiH (Official Gazette BDBiH No. 43/04).



in FBiH, or districts in RS. Moreover, collective agreements may be entered into in relation to one business activity, or one or more employers. Collective agreements set the rights and duties of parties entering it, as well as rights and duties arising from employment, in compliance with laws and other regulations. Collective agreements regulate rules of procedure for collective bargaining, composition and procedures of bodies authorized to conduct peaceful resolution of collective labor disputes. Collective agreements are entered into by one or more trade unions on the side of employees, and a single employer, several employers or an employers' association as the other party. Until the establishment of an employers' association, the collective agreement is signed by the government of the administrative unit as the employer's party to the agreement. Thus, entity governments signed general collective agreements for the entire territory. The rights and duties set by general collective agreements may not be diminished by *branch* collective agreements, rules of employment or contracts of employment.

In case of disputes related to collective work-related rights, if the collective agreement has not provided for resolution methods, trade unions have the right to take part in conciliation councils or even arbitration, equal to the other side -the employer.

The Labor Law provides for, and thus also formally recognized, the right to strike as a democratic tool of enforcement in the process of exercising and protecting economic and social rights and interests of members of trade unions. Moreover, FBiH and RS have separate legislation on strikes,<sup>85</sup> prescribing conditions and methods for organizing workers' strikes. Trade unions have the right to call and conduct strikes. Finally, relevant labor legislation provided explicitly that there is an active and a passive right to strike, i.e. the right to participate or not participate in one. An employee may not be disadvantaged in relation to other employees on account of organizing or taking part in a strike.<sup>86</sup>

It should be noted that labor legislation provides that employees with those employers who employ no less than 15 full-time workers have the right to establish a staff council, to represent them with the employer and to protect their rights and interests. Representation is particularly important in programs aimed at providing for surplus workers, in contesting the legality of rules of work of a company or its provisions before a competent court, in conducting inspection activities related to implementation of provisions of Labor Law, etc.

#### **4.5.2. Implementation and negative indicators**

Upon closer examination of implementation of all the procedural and substantive rights of unions and other association protecting the rights of employees, there is an evident gap between legal potentials and legal *reality*.

Although there is legal basis, on the ground the situation with trade unions is not quite clear. The strongest trade union organization is the Association of Independent Trade Unions of BiH, with headquarters in Sarajevo. This organization is considered to be the legal successor of the trade union organization that had previously covered the entire Republic of Bosnia and Herzegovina prior to dissolution of SFRY. However, although it functions under the same name, it is a *de facto* union organization of FBiH, rather than the entire country. This is confirmed by the fact that in 1992 RS established its own trade union organization, which is still active. This way, there is no state-level trade union organization to protect interests of all the workers in BiH. Because of all this, there is a question of representation of interest of employees in state-owned

<sup>85</sup> Law on Strike FBiH (Official Gazette FBiH No. 14/00), RS (Official Gazette RS No. 3/98).

<sup>86</sup> On the right to strike and its restrictions, see Decision of the Constitutional Court BiH, AP 279/04, of 12 April 2005.

companies, who, due to the strict application of the territorial principle of protection, remain without such protection. On the other hand, the existing trade unions are financially very weak. Non-compulsory membership, though not free of charge (1% of net income), the black market, and the overall poor economic situation, prevent trade unions from having the basic resources to facilitate their everyday work and provide them with the necessary infrastructure. It is assumed that there are in BiH some 120,000 and 180,000 employees active in trade unions, out of a total of 638,000 employees in the formal sector.

A good example of poor implementation is the privatization process, which is very important for employees. In the period from 1999 to 2001, when privatization was at its peak, they were not included in the process of preparing balance sheets of companies being privatized. In this way, in order to *facilitate* privatization, some companies did not include unpaid dues to their employees in their declared liabilities.<sup>87</sup> Court proceedings initiated by trade unions in order to protect workers' rights could not stop the privatization process. On the other hand, the length of proceedings contributes to the entire problem becoming outdated. Finally, the state never established commercial courts, which would, *inter alia*, deal effectively with these problems.

Another example is in the area of social rights of employees. Although formally employed, many of them never receive any remuneration for their work, nor any benefits. According to current laws on pension and disability insurance, trade unions do not have any active legitimation to initiate court proceedings in cases when employers do not meet their obligations -the relevant fund does. Moreover, employees themselves do not have active legitimation regarding the employers' obligation to pay contributions for benefits. However, the funds acted very rarely on this procedural obligation. For that reason, within its appellate jurisdiction, the Constitutional Court of BiH ruled that the interpretation of provisions in such a way as to restrict active legitimation of employees, for the purpose of protecting their rights in the area of social security, is a violation of the right of access to court for the purpose of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>88</sup>

Finally, socio-economic councils do not function, as they have not been established in most cases, although there is a legal obligation to that effect. In this way, trade union activity is weakened considerably, which is certainly reflected on workers' rights.

The relationship between employers, workers and trade unions functions better in the public sector, than in the private. On the other hand, because of the unclear and unadjusted regulations and their practical implementation, employees in the private sector are often left to the arbitrariness of employers, and there are no clear and practically effective sanctions for violations of workers' rights. Because of that, there are cases of threats of dismissal in cases of workers entering associations.<sup>89</sup> Therefore, it may be concluded that the private sector has not yet developed any awareness or organization of trade unions.

On the other hand, because of the poor system of payment and control of social security contributions, many persons employed formally have no pension or health insurance, which is not felt now, when they receive remuneration for their work, but it will certainly become a major problem in the future.<sup>90</sup> At that, trade union organizations have very little influence, as their legal position is unclear.

<sup>87</sup> On this, see section 4.1. ( number of persons uninsured or those who are formally employed, but the employer is not paying contributions).

<sup>88</sup> See decision *AP 311/04*, of 22 April 2005, point 30. *et sequ.*

<sup>89</sup> U.S. Department of State, Country Reports for 2004, BiH, as on 28 February 2005, available on-line at <http://www.state.gov/g/drl/rls/hrrpt/2004/41673.htm>.

<sup>90</sup> See table in section 4.3.

Finally, although the general situation with freedom of work-related organization is positive,<sup>91</sup> there are examples indicating that institutional protection of establishment of trade unions is sometimes too slow, as the registration procedure is excessively long, and refusal of registration is based on reasons not provided by legislation.<sup>92</sup>

#### **4.6. How rigorous and transparent are the rules on corporate governance, and how effectively are corporations regulated in the public interest?**

##### **4.6.1. Laws, implementation and negative indicators**

In principle, the BiH Constitution does not regulate corporate or company policy. Still, four provisions could be of importance. On one hand, Article 11 of the European Convention guarantees the freedom of assembly and association. Article I/4 of the BiH Constitution is of even greater importance, as it guarantees a single market in BiH in terms of freedom of movement of persons, goods, and capital across BiH. “Single market” is part of the economic system of BiH. In the well-known case before the Constitutional Court of BiH, No. *U 5/98*,<sup>93</sup> the Constitutional Court stated that the “single market” imposes a positive obligation to create an effective economic system. Interpreting this provision of the Constitution regarding prohibition of discrimination in Article II/4 of the Constitution of BiH, it can be concluded that the BiH Constitution guarantees a “single market” with no discrimination in relation to equal treatment.<sup>94</sup> This interpretation is certainly related to corporate policy. Finally, corporate governance must be based on the letter of the law,<sup>95</sup> and the principle of democracy (Article I/2 of the BiH Constitution), particularly in relation to Article 10 of the European Convention, guarantees the right of every person to be informed on key issues of economic life, including the obligation of the state to organize the economic system in a transparent way.

In addition to the BiH Constitution, it is important to mention Annex IX of the General Framework Agreement for Peace in BiH, which has the same force as the BiH Constitution,<sup>96</sup> provides for the establishment of a joint committee for public corporations. This committee should develop governance policies for key infrastructural resources and needs of Bosnia and Herzegovina. Unfortunately, implementation of this Annex is very poor, although it contains great potentials for renewal of the destroyed infrastructure in the entire territory of BiH in the post war-period.<sup>97</sup>

Similar rights are guaranteed by constitutions of lower administrative units. The RS Constitution provides for special rights regarding economic life. Thus, Article 28 guarantees freedom of business and other activities, whereas Article 57 guarantees the same right to foreign nationals, with no possibility of applying the notion of *reformatio in peius*.

Corporate policy and regulation of this area is, in terms of legislation and implementation, in principle, within the competence of lower administrative levels.<sup>98</sup> Exceptions are legal persons

<sup>91</sup> U. .S. Department of State, Country Reports for 2004, BiH, as on 28 February 2005, available on-line at <http://www.state.gov/g/drl/rls/hrrpt/2004/41673.htm>.

<sup>92</sup> See the Human Rights Chamber, Decision on Admissibility and Merits, CH/02/11033, *Associated Workers' Union FBiH v. FBiH*, of 6 November 2003.

<sup>93</sup> Of 19 November 2000.

<sup>94</sup> *Mutatis mutandis* decision of the Constitutional Court BiH, *U 39/01* of 4 May 2001.

<sup>95</sup> Article I/2 Constitution BiH.

<sup>96</sup> See *mutatis mutandis*, decision of the Constitutional Court BiH, *AP-133/02* of 4 March 2004.

<sup>97</sup> See *mutatis mutandis* decision of the Constitutional Court BiH, *U 18/00* of 10 and 11 May 2002.

<sup>98</sup> Article III. Constitution BiH

established by institutions of the state, as well as the state-level Law on Registration of Business Entities in BiH<sup>99</sup> which, as a framework law, in principle and uniformly for the entire territory of BiH, regulates the issue of procedure for registration of business entities. This Law is elaborated at lower administrative levels.

As stated above, corporate policy is regulated in principle by laws on companies.<sup>100</sup> These laws prescribe the method of establishment, a list of necessary documents, amounts of founding capital, business records and books, etc., providing basic guarantees for all persons in the process of business activity. As for establishment of companies, it should be noted that there is a principle of *numerus clausus* for types of companies (legally prescribed and limited by type), whose registration is maintained by courts of competent jurisdiction.

There is a centralized system of registration of companies in RS and in the Brčko District, whereas in FBiH it is decentralized, i.e. the ten cantons maintain company registrations.<sup>101</sup> Each registration of a company is published in the official gazette of the relevant administrative unit. Moreover, data and documents (owners and ownership structures, representation, statute, etc.), and all key information regarding the company (such as bankruptcy and liquidation, merger or severance of a company, capital increase or decrease, etc.) are entered into the company register, and must be available for insight and copies.<sup>102</sup> This form of transparency is facilitated by state and entity laws on freedom of access to information for any party concerned.

Business activity of companies also must not be secret. However, in FBiH and in RS there is no obligation to submit annual reports, i.e. closing accounts, to the register of companies, but rather only to relevant taxation authorities.<sup>103</sup> This makes transparency of companies somewhat more difficult, which is a big minus in the privatization process. The exception are regulations in the Brčko District, where reports are submitted to the register, making the work of any company accessible to any party concerned.<sup>104</sup> This is a legal provision of protection of interests of potential investors and business partners of the companies. It is interesting to note that, in relation to accounting in companies, the legislation in FBiH and RS prescribed explicitly that the code and standards of accounting must be in compliance with international standards and EU guidelines.<sup>105</sup> This is the only case of BiH prescribing direct application of EU regulations.

Finally, laws on companies<sup>106</sup> as well as the state-level Law on Competition<sup>107</sup> and laws on foreign trade<sup>108</sup> regulate the issue of prohibition of unfair competition, monopolies and concentration, as well as basic sanctions in cases of breaches of these prohibitions. Institutional protection is secured in the form of an autonomous state-level Competition Council and entity competition offices.<sup>109</sup>

<sup>99</sup> Official Gazette BiH No. 42/04.

<sup>100</sup> Law on Companies FBiH (Official Gazette FBiH No. 23/99), RS (Official Gazette RS No. 24/98), BDBiH (Official Gazette BDBiH No. 11/01).

<sup>101</sup> Law on Procedures of Entry of Legal Persons in the Court System FBiH (Official Gazette FBiH No. 4/00), RS (Official Gazette RS No. 24/98) and DB (Official Gazette DB No. 11/01).

<sup>102</sup> Articles 53 and 54 in FBiH, Article 95 in RS, Articles 18 and 19 in BD, as well as relevant laws on registration of companies and entrepreneurs.

<sup>103</sup> Law on Accounting in FBiH (Official Gazette FBiH No. 58/95); in RS (Official Gazette RS No. 18/99).

<sup>104</sup> Law on Procedures of Entry of Legal Persons in the Court System DB (Official Gazette DB No. 11/01), Article 51.

<sup>105</sup> Article 7. Law on Accounting in FBiH, Article 3. Law on Accounting in RS.

<sup>106</sup> Article 34 in FBiH, Article 88 in RS, Article 29 in DB.

<sup>107</sup> Official Gazette BiH No. 30/01.

<sup>108</sup> Official Gazette FBiH No. 2/95.

<sup>109</sup> Article 9. *et sequ.* Law on Competition.

Another form of corporate activity where transparency and control are very important is emission and trade in securities, with particular significance of shares and their public offering at securities exchanges. These issues are regulated by special laws on securities,<sup>110</sup> and control of implementation of these laws is assigned to commissions for securities at the entity level.<sup>111</sup> These are autonomous and specialized entity institutions, with a wide spectrum of tasks aimed at securing lawful and transparent work of the securities market.

A particular form of judicial protection of *transparency* of work of companies in relation to third parties is prescribed by laws on bankruptcy and laws on liquidation, at lower administrative levels.<sup>112</sup> These laws allow any party to file a request with a bankruptcy court to initiate bankruptcy proceedings in a situation provided for by law, primarily in case of insolvency of a company. An important provision allows for creditors, in case of failure to enforce a legally valid judgment within 60 days, to initiate bankruptcy procedure directly, with no prior examination of reasons for it.<sup>113</sup>

Still, in bankruptcy procedures as well as other types of change of status (such as severance), companies do not consider the employees and their fate, and they are left to decision-makers with no systemic responsibility. In that, there are frequent cases of ethnically-based discrimination. Moreover, even courts do not respond quickly and effectively in labor disputes, and laws protecting employees in such cases are often ignored or interpreted arbitrarily (see, for example, Human Rights Chamber cases CH/98/565, *M.K. v. Federation BiH*, Decision on Admissibility and Merits, 4 December 2003; CH/99/1714, *Vanovac v. Federation BiH*, Decision on Admissibility and Merits, 4 November 2002).

Finally, it should be noted that company activities related to business policy are also regulated by law -basic principles and legal categories are based on the Law on Obligatory Legal Relations.<sup>114</sup>

As the work of business entities is, in principle, related to production and provision of services, i.e. in order to secure harmonious functioning of market economy and to maximize market benefits for consumers, effective consumer protection is required. In modern democratic countries, consumer protection is a very important issue. In BiH, consumers are currently protected by the Law on Obligatory Legal Relations and entity laws on trade,<sup>115</sup> as well as the state-level Law on Consumer Protection,<sup>116</sup> which has, however, not been implemented since its adoption. The first two legal documents do not contain provisions that could respond to the needs of consumers related to their protection. In relation to this, it may be concluded that there is a legal void regarding the obligation of manufacturers to provide products in compliance with international standards, to protect health of the consumers, and to provide them with adequate information and education.

In 2002, the European Commission started a comprehensive project aimed at creating a “single economic space”. Consumer protection is another area of work within the single economic space. Its task was to prepare new, comprehensive and EU compatible draft legislation on con-

<sup>110</sup> Law on Securities FBiH (Official Gazette FBiH No. 39/98), RS (Official Gazette RS No. 4/02), BDBiH (Official Gazette BDBiH No. 15/03).

<sup>111</sup> Law on the Securities Commission in FBiH (Official Gazette FBiH No. 39/98) u RS Law on Securities (Official Gazette RS No. 4/02).

<sup>112</sup> Law on Liquidation in FBiH (Official Gazette FBiH No. 29/03), RS (Official Gazette RS No. 64/02), BD BiH (Official Gazette BDBiH No. 1/02).

<sup>113</sup> Article 44. FBiH and RS, Article 36. in DB.

<sup>114</sup> Official Gazette SFRY, No. 29/78-57/89.

<sup>115</sup> Law on Trade FBiH (Official Gazette FBiH 2/95), RS (Official Gazette RS No. 16/96).

<sup>116</sup> Law on Consumer Protection in BiH (Official Gazette BiH No. 17/02).

<sup>117</sup> Report on the Single Economic Space, available on-line at <http://www.jep.ba/bh/izvjestaji.php>.



sumer protection, which would, *inter alia*, include active consumer protection policy, establishment of an independent and effective administrative structure and implementation bodies, in order to secure basic health and safety conditions, and to ensure representation, information and education of consumers. As for independent and effective administrative structure, the draft law provides for a single consumer protection council, which should prepare a consumer protection program for the entire state, and the establishment of an ombudsman for consumer interests. The ombudsman will act on behalf of consumers and will have the power and the authority to communicate with private and public companies, as well as the government, with the aim of protecting consumer interests. The ombudsman will also cooperate closely with the existing consumer groups and assist in the establishment of new ones, so that citizens themselves can become the first line of defense of consumers. Adoption of this new law is planned for the second half of 2005.<sup>117</sup>

**4.7. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?**

The state and the entities have taken measures to prepare a comprehensive “Development Strategy of BiH (PRSP)”, which is to set priorities of the country’s economic development in the forthcoming mid-term period. This is also a poverty reduction strategy. Principal aims of the strategy are, *inter alia*, to increase the number of employed persons by strengthening the private sector, to decrease public spending, to establish a stable system of social security, including health, education, and environment. With the development strategy, governments of the state and of lower administrative units defined problems in specific areas and proposed exhaustive measures to overcome them. Implementation of strategy measures is under way.

As for a comprehensive right to education, in collaboration with the international community (primarily, with the Organization for Security and Cooperation in Europe), the state is preparing a new law on universities, which should set the basic principles of higher education, its autonomy, new methods of work, and new curricula. In order to include disabled children into regular education, a campaign for inclusive teaching was launched recently in all the schools in BiH. The Organization for Security and Cooperation in Europe is organizing programs and recommendations to overcome problems related to education of children with disabilities, which are to be presented to the competent state authorities by the end of 2005.

As for corporate activities, in 2002, in collaboration with BiH authorities, the European Commission started a large project aimed at creating a “single economic space”. The onus of the project is, first of all, on consumer protection, both in formal and in substantive legal sense, as well as institutionally.<sup>118</sup>

As for the problem of trade union protection of workers, the Association of Independent Trade Unions of BiH and the Association of Unions of Republika Srpska entered an agreement in 2005, to establish a joint delegation at the Socio-Economic Council of Bosnia and Herzegovina. The delegation is comprised of seven members, three from either association of unions and one from the Brčko District. The chairperson of the delegation will rotate every six months, a member of the Socio-Economic Council of BiH from the Association of Independent Trade Unions of BiH and the Association of Trade Unions of RS, and the delegation will have a common stand in the Socio-Economic Council in terms of protecting and effecting workers’ rights in the entire territory of Bosnia and Herzegovina. This agreement is the result of good cooperation between entity trade union organizations, as well a step further towards creating a state-level trade union.

<sup>118</sup> Report on the Single Economic Space, available on-line at (<http://www.jep.ba/bh/izvjestaji.php>).



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# **Representative and Accountable Government**



## 5. Free and Fair Elections\*

### Do elections give the people control over governments and other politicians?

*Author: Kenan Ademović*

#### **5.1. How far is appointment to government and legislative office determined by popular competitive election, and how frequently do elections lead to change in the governing parties or personnel?**

##### **5.1.1. Laws**

###### State level

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the Constitution of the country, stipulates that its legislative authority is the Parliamentary Assembly. The BiH Parliamentary Assembly is constituted following the principle of two-chamber parliament, where representatives to one of them, the House of Representatives, are elected directly by the respective entity electorate, while the House of Peoples is composed of ethnic delegations elected within entity representative bodies. This is a case of indirect elections.<sup>1</sup>

In accordance with the Constitution, the Presidency and the Council of Ministers represent the executive authorities at the BiH level. The three members of the presidency are representative of the three constituent peoples and are elected directly, with every voter being allowed to vote for one of the candidates only.

The Presidency appoints the Chairman of the Council of Ministers, while the Chairman, in turn, appoints individual ministers. To assume their office, these ministers need the approval from the House of Representatives. The fact that this appointment is not made following direct elections cannot be regarded as a deficiency, since this is how governments in all countries with parliamentary tradition are formed.<sup>2</sup> It also takes a subsequent approval from the Parliamentary Assembly of Bosnia and Herzegovina granted in separate sessions, first of the House of Representatives and then of the House of Peoples, in accordance with Article V Point 4 of the Constitution of Bosnia and Herzegovina.

###### BiH Federation: Entity and cantonal levels

In accordance with Article I point 3 of the Constitution, Bosnia and Herzegovina consists of two entities: the Federation of Bosnia and Herzegovina and Republika Srpska. The Federation of Bosnia and Herzegovina was originally established by the Washington Agreement of March 1994, following which the Constitutional Assembly adopted the Constitution of Federation of Bosnia and Herzegovina. In the past eleven years, this constitution has been amended on eight occasions, with 88 amendments in total.

According to the version still in effect, the legislative power in the Federation of Bosnia and Herzegovina is vested in two representative bodies: House of Representatives and House of Peoples. The House of Representatives consists of 98 representatives elected at direct elections,

<sup>1</sup> Article IV point 1 Constitution of Bosnia and Herzegovina.

<sup>2</sup> Article V point 3 Constitution of Bosnia and Herzegovina.

so that their appointment is dependent on election results. Unlike this, 58 delegates to the House of Peoples are elected by cantonal assemblies, amongst the ranks of their own representatives, i.e. by indirect elections.

The executive power in the Federation is delegated to the President, two Vice-Presidents and the Government of the Federation of Bosnia and Herzegovina. The President and two Vice-Presidents represent the three constitutive peoples and are elected from within the Legislature of the Federation of Bosnia and Herzegovina, following a procedure stipulated by the Constitution. At least one-third of delegates from the Bosniak, Croat or Serb caucuses in the House of Peoples can nominate candidates for election of the President and two Vice-Presidents of the BiH Federation. This election requires approval of a joint three-candidate slate by a majority vote in the House of Representatives and, subsequently, by a majority vote in the House of Peoples, including a majority of each constituent people caucus.<sup>3</sup>

The Government of the Federation of Bosnia and Herzegovina is nominated by the President of the Federation of Bosnia and Herzegovina, with the approval of both vice-presidents. The Government is considered appointed after the House of Representatives confirms its nomination by a majority vote.

Pursuant to provisions of the Washington Agreement and the Constitution of the BiH Federation, this entity consists of ten cantons, whose assembly members are elected at direct elections. Cantonal assemblies have between 30 and 50 members, depending on the size of population and territory of a particular canton. The executive power in a canton is delegated to the cantonal government composed of its prime minister and a certain number of ministers. The number of ministries and, consequently, of ministers differs from canton to canton and depends on specific features pertaining to the economic and social situation of a particular area.

Upper houses of representative bodies are elected indirectly, meaning that they are delegated by representatives at lower levels of government (the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina is elected by entity assemblies, the House of Peoples of the BiH Federation by cantonal assemblies, while the House of Peoples of Republika Srpska is elected by ethnic caucuses of the National Assembly of Republika Srpska).

#### Republika Srpska: Entity level

The legislative body of RS is its National Assembly, originally a one-chamber body, which, pursuant to Amendment LII, comprises 83 representatives. They are elected directly, which guarantees the influence of the electorate to the full extent. This model was in effect until the end of 2002, when Amendment LXXVI introduced two houses into the legislature and the institution of the House of Peoples. Pursuant to Amendment LXXVIII, the House of Peoples has a parity composition, with 8 representatives per each constituent people and another 4 from the ranks of others. Members of the House of Peoples are elected by relevant caucuses. For example, the Bosniak member of the House of Peoples is elected by Bosniak members of the National Assembly.

The executive power in Republika Srpska is delegated to the President of Republika Srpska, Vice-Presidents and the Government. The President of Republika Srpska and two Vice-Presidents are elected in direct elections from a joint slate, where the candidate winning the largest number of votes is elected president and candidates from the other two constituent peoples winning the largest number of votes are elected vice-presidents representing their respective peoples.<sup>4</sup>

<sup>3</sup> Section IV B. Article 1 and Article 2 Constitution of the Federation BiH.

<sup>4</sup> Decision of the High Representative No 150/02.

The Government of Republika Srpska is elected by the National Assembly. The candidate for the President of the RS Government presents the program and proposes the composition of the Government to the National Assembly. The Government is considered elected if it wins a majority vote against the total number of national representatives.<sup>5</sup>

Local self-governance: Municipal level

The local level of government is based on a municipal system; there are 97 municipalities in the Federation of Bosnia and Herzegovina and 62 in Republika Srpska.<sup>6</sup>

As stipulated by the Constitution, members of municipal councils and mayors in the BiH Federation are elected directly. Following the original version of the constitution, the mayor had been elected by the Municipal Council, whereas direct elections were introduced by a relevant law in 2004. Pursuant to provisions of this law, the mayor is elected by voters registered in the Federation (*i.e. voters having their place of residence in a particular municipality*) for a four-year term. The same law also introduces preferential voting, meaning that, putting the number 1 next to the name of a candidate, voters are marking their choice of preference. Consequently, number two is put next to their second choice, number 3 next to the third one, and so on. This is undoubtedly a way to make elections of authorities much more democratic, since voters are given the possibility to vote in an utterly differentiated way when it comes to electing their mayor. The election of the Sarajevo Mayor and members of the City Council is placed within an indirect election framework.

The basic unit of local self-governance in Republika Srpska is the municipality, which is formed for one part of a populated area, for one populated area or more than one populated area. Each municipality has its legally-defined name and its statute elaborating provisions of the Law on Local Self-governance of Republika Srpska. In accordance with this law, municipal authorities are municipal assembly and the mayor.<sup>7</sup>

The municipal assembly is the authority responsible for making decisions and policies of the municipality. It consists of councillors elected for a four-year term. The number of councillors of one municipal assembly is determined by the municipal statute, pursuant to the Election Law. The Election Law of Bosnia and Herzegovina stipulates that a municipality with less than eight thousand registered voters can have between eleven and seventeen councillors, a municipality with eight to twenty thousand voters can have between seventeen and twenty-five councillors and, finally, a municipality with over twenty thousand voters can have between twenty-five to thirty-one members. The municipal assembly makes its decisions by a majority vote. It has its president and vice-president. The president of the municipal assembly represents and acts on behalf of the municipal assembly, convenes its sessions and chairs them.

The executive branch in the municipality consists of the mayor and deputy mayor.<sup>8</sup> The mayor represents and acts on behalf of the municipality, manages municipal administration and is responsible for its work. The mayor is elected by citizens in direct general elections for a four-year term. He can be removed before the end of this term and, should the mayor resign at a point where there is more than one year until the end of this term, new elections are to be held within sixty days.

<sup>5</sup> Article 93 Constitution of Republika Srpska.

<sup>6</sup> Dr Sead Dedić, *Lokalna samouprava u FBiH* [Local Self-Governance in FBiH].

<sup>7</sup> Article 29 Law on Local Self-governance of RS, *Official Gazette RS* 49/04.

<sup>8</sup> Article 38 Law on Local Self-governance of RS, *Official Gazette RS* 49/04.

The deputy mayor is elected by the municipal assembly on a proposal given by the mayor, following the procedure set for the election of the president of the municipal assembly. Each municipality has its administrative service. The mayor is responsible for defining the structure and internal organisation of the municipality, independently but within the framework of relevant legal provisions. In addition to this, the assembly can set up a supervisory board responsible for supervising public spending in the municipality and management of the municipal property.

Municipalities have their local communities managed by their respective councils. A council can have no more than eleven members. The president and members of a local community council are elected by voters whose place of residence is in the territory of the given local community. They are elected directly at a local citizens' meeting, following the procedure set forth in the statute of this local self-governance unit.

In accordance with the Law on Local Self-governance of Republika Srpska, it is also possible to set up a town in an urban area making a coherent entity in geographical, social, economic, historical and territorial terms. Such a town has its statute governing issues pertaining to organisation and work of its bodies.

The Election Law of Bosnia and Herzegovina does not govern the frequency of holding elections but only stipulates that, in the election year, elections are to be held on the first Saturday in October. However, constitutions in Bosnia and Herzegovina do specify the duration of terms of office at different levels of government which, subsequently, determines the date of the following elections.

### **5.1.2. Implementation and negative indicators**

Considering the above stated, the following items can be assessed as positive:

- The two-chamber character of representative bodies at the state and entity levels, enabling equally distributed representation of both citizens and constituent peoples in BiH.
- Direct elections for some executive bodies in BiH.
- The Law on Local Self-governance of Republika Srpska, adopted in November 2004, is in accord with the European Charter of Local Self-governance.

Division of the electorate, following which elections for the state level are held in the entities, implies that citizens of Bosnia and Herzegovina are not citizens in their full capacity throughout the country. For instance, two members of the Presidency are elected in the territory of the Federation of Bosnia and Herzegovina, while one member in the territory of Republika Srpska, so that citizens in the BiH Federation cannot actually vote for the third member. Similarly, citizens in the territory of Republika Srpska can elect only one member of the Presidency. This reflects the key problem of the election system of Bosnia and Herzegovina, i.e. the fact that there is no balance between the rights of the citizen and the rights of ethnic communities. Namely, BiH citizens can participate in the political life of the country only as members of one of the constituent peoples, whereas their opportunities in the same sense are considerably restricted if they are ethnically uncommitted or are members of another group having the status of an ethnic minority in BiH.

This creates a divided electorate and represents a major shortcoming of the current solutions. Thus, in fact, the citizen of Bosnia and Herzegovina is not a citizen throughout its territory as citizens' ethnic background presents a limiting factor, while the Presidency - instead of acting as a truly collective head of state - appears only as a group of representatives of their respective peoples.

A personnel structure analysis<sup>9</sup> focusing on leaderships of political parties in Bosnia and Herzegovina shows that election processes and their results cannot lead to significant changes in terms of personnel of certain parties. Specifically, it is evident that parties have the same leadership regardless of whether they are in power or in opposition.

Thus, voters gain in terms of election quantity, getting long slates in elections, with a number of political parties running for several levels of government in the country, but at the same time lose in terms of quality, since the main goal of pre-election and post-election activities is proving one group of politicians right as opposed to other groups of politicians, instead of building the country, implementing political priorities and developing political programmes. These political priorities should be oriented towards strengthening democracy, developing mechanisms of market economy and protecting the rights of citizen as an individual.

Statutes of certain political parties in Bosnia and Herzegovina set forth their impeachment procedure for members elected to various bodies within those parties.<sup>10</sup> However, it is never explicitly said that impeachment proceedings will be initiated following unfavourable election results. In principle, impeachment is applied when party discipline is breached.

## **5.2. How inclusive and accessible for all citizens are the registration and voting procedures, how independent are they of government and party control, and how free from intimidation and abuse?**

### **5.2.1. Laws**

In August 2001, the Parliamentary Assembly of Bosnia and Herzegovina adopted the Election Law of Bosnia and Herzegovina. Pursuant to this law, voter registration is carried out by means of the Central voters' list, registering all citizens of Bosnia and Herzegovina over 18 years of age. Each citizen of Bosnia and Herzegovina who is over 18 years of age can exercise their right to vote on the basis of their registration in the central voters' list. The central voters' list contains the names and data of BiH citizens entitled to vote and registered for voting.

With regard to the fact that the Constitution of Bosnia and Herzegovina stipulates the possibility of dual citizenship (in case of states having signed relevant bilateral agreements), citizens holding dual citizenship are entitled to vote in Bosnia and Herzegovina provided that their place of residence is in this country.<sup>11</sup>

With regard to accessibility, it is important to note that registration can be done personally only and that no one can register another person. The data from the Central Register are used to compile separate registers for individual municipalities or municipal registers for another constituency, while the competent municipal authority, i.e. the municipal election commission, is responsible for authenticity and accuracy of these data.<sup>12</sup> The same responsibility for voters living outside the BiH territory lies with the Election Commission of Bosnia and Herzegovina.

Voters' lists are public documents. Citizens have the right to access voters' lists. This legal provision is important in terms of accessibility related to the registration process. Competent municipal authorities establish registration offices in public buildings and train staff responsible

<sup>9</sup> Any major political party in BiH has its own web page, presenting to the public views of its governing bodies.

<sup>10</sup> Chapter V, examples from the Statue of the Peoples' Party Work for Progress, Chapter IV of the Socialist-Democratic Party.

<sup>11</sup> Article I point 7 Constitution BiH.

<sup>12</sup> Article 4 Rules on Registration of Voters and Central Voter Register, of 26 April 2004, BiH Election Commission.



for these tasks. No registration center can be established in religious facilities, buildings owned by a political party, facilities where a population was tortured during the war or places where alcohol is being consumed.<sup>13</sup>

The same law guarantees that no citizen will be deprived of any right for not being registered to vote. A person whose name is not found on the list or who believes that their data are not accurate can file an appeal to the municipal election commission.

Article 2.9 Point II of the Election Law of Bosnia and Herzegovina authorizes the Election Commission of Bosnia and Herzegovina to adopt rules of procedure for maintaining the Central Register and voter registration. These rules govern the contents, maintenance, corrections, copying and presentation of the Central Register, as well as amending procedures, data accuracy verification, evidence confirming citizenship, place of permanent or temporary residence and registration procedure pertaining to the Central Register. The Central Register is maintained by the Election Commission and it contains the name, date of birth, personal identification number, residential municipality, registration municipality and the registration number of the voter. The Election Commission compiles voters' lists for each municipality, containing the name, date of birth, personal identification number, residential municipality, registration municipality, registration number of the voter, etc. A provisional voters' list is published in the election year, 150 days prior to the elections. This register is published in order to enable the public and all participants in the election process to access the data in the provisional register and to request their correction. After such corrections are made, the final voters' list is published, distributed to municipal election commissions 28 days prior to the elections and used in polling stations on the election day.

Citizens of Bosnia and Herzegovina entitled to vote are registered in their residential municipalities, unless otherwise stipulated by this law.<sup>14</sup> Voters temporarily living abroad are registered in those municipalities where their last place of residence was before they left. They can register in the registration center in the country, send their registration forms by mail or send their confirmation form by mail. Voter registration in municipal registration centres is a permanent process. The election commission must announce the deadline for registration of voters resident in Bosnia and Herzegovina.

Citizens must register in person, while their identity is established on the basis of one of the following documents: identity card, passport, driver's license or military records.<sup>15</sup>

Citizens of Bosnia and Herzegovina submitting a registration request for the first time must be at least seventeen. They must prove their citizenship, for which purpose they can present a certificate confirming their citizenship, a valid passport or identity card issued within the CIPS project (*Central Information Protection System*). The Rules of Procedure also specify the possibility of correcting the voter's list. Corrections can refer to personal data, data relating to a populated area and to changing voter's options.

The BiH Election Commission adopts regulations governing the way and procedure of the Central Voters' List registration for citizens living outside the territory of Bosnia and Herzegovina and submitting their registration requests outside the BiH territory, including the registration procedure by mail.<sup>16</sup> BiH citizens having the right to vote and having refugee status or temporarily living abroad, who hold the right to vote in the next elections, can register by mail provided that

<sup>13</sup> Article 3.2 BiH Election Law.

<sup>14</sup> Article 5.3 BiH Election Law.

<sup>15</sup> Article 3.10 BiH Election Law.

<sup>16</sup> Article 3.11 BiH Election Law.



they fill in and submit a request to the BiH Election Commission. Citizens voting in this way must confirm their registration for each election by submitting confirmation forms to the BiH Election Commission.<sup>17</sup>

Such voters will be sent confirmation forms for registration by mail to the last registration address or to the address of which they notified the BiH Election Commission of. BiH Citizens Who Live Abroad, want to vote in the next elections and did not register by mail for the last elections should register by submitting a request to the BiH Election Commission. The form can be obtained from diplomatic and consular missions, the web page [www.izbori.ba](http://www.izbori.ba), clubs and association of BiH citizens, offices of international, governmental and non-governmental organizations working with refugees and dealing with migration issues.<sup>18</sup> Should the citizen's name not be found on the Central Voters' List because he had registered to vote abroad but came back to vote in BiH in person, their name will be added to a separate form containing all the data, as well as the relevant record from the Central voters' list.<sup>19</sup> BiH citizens registered to vote by mail who come back to BiH submit a request for their registration data to be updated to the competent municipal authority in the municipality they came back to.<sup>20</sup>

In order to enable all voters to have a fair and equal access to voting, the Election Law sets out the conditions for selection of polling stations similar to those for registration offices. One polling station cannot have more than 1,000 registered voters and, while selecting a polling station, the distance in terms of place of residence must be taken into account. Polling stations must have premises ensuring secrecy of voting. On the day of election, the municipal election commission must supply polling-station committees with adequate quantities of election material. No symbol or sign with political connotations can be taken to polling stations. Members of polling-station committees are obliged to explain the voting procedure to voters, without making any influence whatsoever on their choices.<sup>21</sup>

In order to expand and clarify provisions of the Election Law, the Election Commission of Bosnia and Herzegovina passed the Rules of procedure for voting and counting ballots. These rules govern the way polling stations are organized, responsibility and roles of polling-station committees, voting procedure at polling stations, voting by mail and the procedure for counting ballots at regular polling stations. The municipal election commission selects polling stations no later than 65 days prior to the elections, in accordance with the Instructions for allocation of populated areas to polling stations and setting up polling stations. The selected polling stations must be announced 15 days prior to the elections.

The same rules specify activities to be carried out a day before the elections, including distribution of voting material to polling-station committees, ensuring that the material is complete and securing polling stations. Only members of polling-station committees and registered observers can be present in polling stations before they are opened.

During the voting procedure, voters must prove their identity by presenting an official document. After identification, voters collect their voting material and vote in a designated area. Voters who cannot leave their homes due to age, illness or disability submit a written request for registration or voting at home 30 days prior to the elections. For this purpose, polling-station committees set up mobile teams who visit such voters. Mobile teams visit voters who are placed in cer-

<sup>17</sup> Article 3.13 BiH Election Law.

<sup>18</sup> [www.izbori.ba](http://www.izbori.ba)

<sup>19</sup> Article 5.18 BiH Election Law.

<sup>20</sup> Article 3.13. BiH Election Law.

<sup>21</sup> Article 3.11 BiH Election Law.

tain institutions and are not able to leave them even for a short period, such as prisons, correctional facilities, geriatric, dystrophic and other health institutions. Mobile teams make these visits while polling stations are open.<sup>22</sup>

Closing these polling stations is subject to a procedure including the following:

- Fifteen minutes before closing, the vice-president of the polling-station committee informs the voters present that the polling station will be closed. Voters standing in the line to vote will be allowed to vote.
- One polling-station committee member will have the task to, in the moment when the station is being closed, prevent third parties from joining the line of voters who arrived there on time.
- After the last person from the line votes, the door is closed and locked.
- The time of closing the polling station must be entered into the relevant record.
- The ballot box is sealed with a self-adhesive tape over the opening of the ballot box.
- A signature must be put over the tape.

Ballot counting includes taking over ballots, in which unused ballots are first counted, packed and returned to the Election Commission. Used ballots are counted in accordance with specifically defined procedures. Only valid ballots are taken into account, i.e. ballots clearly showing voters' intentions and officially issued and verified by the Election Commission. Ballots which are not signed or otherwise marked so that the voter's identity cannot be established, or ballots damaged in such a way that the voter's intention cannot be established will not be taken into account.<sup>23</sup>

### **5.2.2. Implementation and negative indicators**

One of the principal requirements for accession of Bosnia and Herzegovina to the Council of Europe was the adoption of the Election Law of BiH. The Election Law of Bosnia and Herzegovina and rules of voting procedures adopted by the Election Commission are in accord with the standards of European election law and enable the election process to be carried out with a high degree of accessibility to all citizens, independence from the authorities and governing parties, protection of elections from abuse and voters from intimidation.

One of the most important elements of voter registration is the Provisional Voters' List, enabling voters to have access to the recorded data and to timely intervene in terms of correcting incomplete and inaccurate data. Furthermore, it is important to note that provisions governing registration also take into account consequences of the war in BiH, owing to which a large number of BiH citizens are refugees and displaced persons, so that there are additional registration mechanisms, such as registration by mail and on-line registration.

In countries with well-organized constitutional and election systems, voters' lists represent permanent documents and it is, therefore, not necessary to re-register voters before each individual election, since they do not change their personal data or places of residence. This, however, is not the case in BiH.

An identical voter registration programme was implemented from April to June 2002. This registration was funded by the Association of Election Officials in BiH. Municipal election commissions were allocated funds for updating voters' lists and motivating voters to register using the

<sup>22</sup> Article 4.7 BiH Election Law.

<sup>23</sup> Article 5.8 BiH Election Law.

media and various advertisements. Altogether 88 municipal election commissions from both entities participated in the registration process, there were 43,531 pre-registrations, 25,983 new voters were registered and 9,575 other changes were made to the voters' list (crossing out deceased citizens and changing personal data).<sup>24</sup>

With regard to 2003, the situation was the following: out of 148 municipal election commissions in total, 77 municipal election commissions were allocated funds from the municipal budget for 2003. The total number of registered voters in these municipalities amounted to 1,517,404. Out of this number, 35 municipal commissions were allocated fewer funds than the amount planned for municipal election commissions, which was based on the action plan of the Election Commission. The total number of registered voters in these municipalities amounted to 630,310.<sup>25</sup>

Registration of deceased persons was observed during the last elections and it is presumed that persons who had already exercised their right to vote voted in their place.<sup>26</sup>

It is extremely difficult to prove abuse and intimidation of voters on the part of certain governing structures, political parties and institutions during registration or the election day, although there is circumstantial evidence as to such activities.

Elections in 2002 are very important for democracy in Bosnia and Herzegovina, since these were the first post-war elections for whose organisation and implementation local authorities were fully responsible. These elections were preceded by the new Election Law, specifying the possibility of registration in voters' pre-war places of residence, which was a significant step ahead in comparison with previously used P-2 form practically legalizing the consequences of the aggression and ethnic-cleansing, and enabling those who thus obtained other people's property to use it as grounds for exercising their right to vote.

### **5.3. How fair are the procedures for the registration of candidates and parties, and how far is there fair access for them to the media and other means of communication with the voters?**

#### **5.3.1. Laws**

Section IV of the Election Law of Bosnia and Herzegovina governs the process of candidate registration. Pursuant to provisions of this law, political parties, independent candidates, coalitions and lists of independent candidates must register with the Election Commission of Bosnia and Herzegovina. In order to be verified, they must be registered as voters in municipalities where they are standing for elections. A candidate can stand for only one office in one constituency, i.e. can be on only one list.<sup>27</sup>

In order to take part in elections, a political party must be registered with the competent authority in one of the entities. A request for verification of a political party or independent candidate consists of a list comprising full names, original signatures and personal identification numbers of voters supporting the registration of the political party or independent candidate. Verification signatures can be collected only on official forms issued by the Election Commission. Verification applications are submitted no later than 140 days prior to the elections. Should the

<sup>24</sup> [www.izbori.ba](http://www.izbori.ba)

<sup>25</sup> [www.izbori.ba](http://www.izbori.ba)

<sup>26</sup> The author worked for OSCE in 2000, when he visited Srebrenica and confirmed this in person.

<sup>27</sup> Article 4.4 BiH Election Law.

Election Commission establish that the data submitted are incomplete or inaccurate, it will request the political party or independent candidate to correct them within two days. Should the election Commission reject the application, the applicant can, within two days, submit a request for reconsideration of the previous decision. In this case, the Election Commission issues its decision within three days. There is also a procedure for verification of political parties and independent candidates, following which an officer of the Election Commission Secretariat establishes the following:

- whether the president of the political party or the independent candidate has signed the statement on compliance with the General Framework Agreement for Peace in Bosnia and Herzegovina;
- whether the submitted data are accurate, including the signatures of persons authorised to represent the political party;
- whether a certificate of registration with the competent authority, issued no more than six months ago, is enclosed and whether the data relating to the president and main office of the party stated in the verification application are the same as those in the relevant records from the Court Register;
- whether the verification duty is paid and whether the amount corresponds to the election level the political party or the independent candidate stands for;
- whether the relevant financial statement is submitted;
- whether a candidate is among persons wanted by the Hague Tribunal;
- whether the support signatures are submitted and whether they are submitted on relevant forms issued to the political party or the independent candidate.

Each candidate verified by the Election Commission must, within 15 days, submit to the Election Commission a completed form concerning their income. This form should contain data relating to the candidate's income, their spouse, children and members of the household. The Election Commission of Bosnia and Herzegovina is not competent for establishing the accuracy of data stated in the income form.

Pursuant to provisions of the Law on conflict of interest in institutions of Bosnia and Herzegovina,<sup>28</sup> being a member of a business board, executive board, supervisory board, managing board or being an authorized person in a public company is in conflict with public office of elected official, executive or advisor.

During the election campaign, all political parties have equal access to the media, both printed media - in terms of publishing their press releases, and electronic media, particularly in terms of having an equal treatment in public debates.

Slogans and advertising messages used in election campaigns cannot include symbols and messages offending any category of the BiH population. Provisions of the Election Law do not explicitly mention individual persons, but any broader interpretation of the relevant part of the Election Law would include protection of personal privacy as well.

The issue of access to the media and other means of communication with voters is governed by the Rulebook on Presenting Political Agents in the Media during the Election Period. This Rulebook tasks the electronic media with covering election activities of political agents. They must ensure that the facts they include in their information are accurate, complete, fair, just and impartial.<sup>29</sup> The media

<sup>28</sup> Official Gazette BiH No. 13/02.

<sup>29</sup> For more information on the position of the media in the election process, see section 10 of this Study, titled "The Media in a Democratic Society".

must not become involved in distorting, hiding and fabricating information or in misrepresentation and censorship. The media must not use any material spreading ethnic or religious hatred, or instigating violence and other forms of disorder that may obstruct the election process<sup>30</sup>

The electronic media must broadcast press releases and information issued by the Election Commission free of charge, and must equally, fairly and impartially present political agents, ensuring that they include direct statements of candidates. Political parties may request that their political spots be broadcast with adequate compensation; they cannot be broadcast before, during or after the news program. Article 7 of the Rulebook specifically emphasizes that the media are obliged to observe election silence 24 hours before the elections. In addition to this, the media must not broadcast polling results in the period from 72 hours prior to the elections till after the preliminary results are announced.

This rulebook is in accordance with a recommendation<sup>31</sup> of the Committee of Ministers of the Council of Europe, adopted on 9 September 1999, at 678th meeting of deputy ministers, on measures related to media reporting during campaigns. The Regulatory Agency for Communications is responsible for monitoring compliance with the Rulebook.

It is, however, important to note that printed media are not subject to this Rulebook.

### **5.3.2. Implementation and negative indicators**

The above procedures for registration of candidates are logically complete and make a coherent whole ensuring equal and, therefore, fair access to all candidates.

One of more significant objections could be made in relation to Article 51 of the Rules of procedure for verification of political parties, independent candidates, coalitions and lists of independent candidates for elections. According to this article, as it has already been said, the Election Commission is not responsible for establishing the accuracy of data stated in the income form. In developed democracies, the income of the candidate and of their immediate family falls within the competence of the election commission.

A positive trait of this Rulebook is that it imposes equal obligations on all agents of the election process and establishes supervising institutions authorised to fine individuals, political parties and state authorities involved in the election process.

Activities undertaken by the Association of Election Officials in Bosnia and Herzegovina related to educating voters and raising their awareness are also very important. For this purpose, the municipal election commissions of 102 municipalities organized meetings with students, members of civic associations, local population and pensioners, aiming to clarify and explain the election procedure. The media coverage was also very useful in this sense, as such activities were expanded to include local radio and TV stations as well as press conferences. Hotlines were also opened to enable citizens to obtain necessary information or clarification at any given moment.

It could be said that conflicts among parties are inflated by the press, that reputations of political figures and parties are being systematically destroyed and that the coverage of election campaigns has come down to sensationalism. We see trench warfare in place, absorbing practically all relevant agents of the political and public arena. Specifically, the battle for voters includes the media as much as politicians, where the media do not shy from openly siding with and support-

<sup>30</sup> Article 12 Rules on Access to the Media, BiH Election Commission.

<sup>31</sup> Recommendation to member states No. R (99) 15 by the Committee of Ministers, on measures related to media reporting in pre-election promotion.



ing certain political options to the detriment of other ones. The battle is fought among parties, between parties and the media and, finally, among the media themselves.<sup>32</sup>

#### **5.4. How effective a range of choice does the electoral and party system allow the voters, how equally do their votes count, and how closely does the composition of the legislature and the selection of the executive reflect the choices they make?**

##### **Legal framework**

The issue of distribution of seats is governed by Section V of the Election Law of BiH and, in this context, there is the electoral threshold, or prohibition clause, amounting to 3%. The purpose of this measure is to avoid having extremist political parties in the political life of Bosnia and Herzegovina, which is in accordance with democratic procedures of mature democracies.

Adoption of the Election Law of Bosnia and Herzegovina also introduced open lists into elections, enabling voters to influence the order of candidates in elections by voting for a specific name within one party, in addition to voting for the party itself.<sup>33</sup> The open list system thus enables the electorate to choose one political option and, in addition, people who represent that option as well.

With regard to the election levels, it should be pointed out that there are three levels of government in Bosnia and Herzegovina: state, entity and local. Constituencies are organized in the following way: five at the level of Bosnia and Herzegovina, twelve in the BiH Federation, and seven in Republika Srpska.

Article 4 of the Constitution of Bosnia and Herzegovina and Section IX of the Election Law stipulate that the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, consisting of 42 representatives, is also elected following the principle of divided electorate, where 2/3 of representatives are elected by voters in the territory of the BiH Federation and 1/3 by voters in the territory of Republika Srpska.

The Election Law of Bosnia and Herzegovina, in Section IX Article 3, defines five constituencies at the BiH level. Two constituencies elect three representatives and encompass two cantons each. The third constituency elects four representatives from two cantons as well. The fourth constituency elects six representatives from two cantons, while the fifth one five representatives from two cantons, including the Brčko District. It is evident that these constituencies are organised to elect different numbers of representatives, taking into account the number of voters in one unit. Out of a total 42 terms of office, 8 are kept for compensation terms in Republika Srpska.

##### **5.4.2. Implementation and negative indicators**

The majority electoral system reduces turnout, since voters in such a system can vote for one person amongst several candidates, which reduces their possibilities and, therefore, their interest. On the other hand, the proportionate electoral system enables each political party to stand for the elections and win the number of seats in proportion with the number of votes won. Thus, all these votes count, and no individual can feel that their vote is neglected in terms of the election results.

<sup>32</sup> Chapter IV of the Report by the Mediacentar Sarajevo, titled “Deconstructing Public Discourse”, April 2003.

<sup>33</sup> Articles 4, 5 and 6 of BiH Election Law.



Inequality in terms of exercising the right to vote is even more expressed as some cantons consist of dominantly urban areas and encompass bigger towns in Bosnia and Herzegovina, while other cantons, in turn, consist of smaller towns with large municipalities in terms of their territory and villages which are often difficult to approach. It is expected that voters in urban constituencies can easily approach their polling stations and exercise their right, putting voters from rural areas in an unequal position and leading to inequality when it comes to their right to vote.

There is no doubt that the election Law is consistently applied with regard to distribution of direct terms of office in multi-member constituencies, i.e. twelve such constituencies electing representatives to the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina, nine constituencies for the National Assembly of Republika Srpska, and eight constituencies for the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina.

At the same time, however, the electoral threshold of 3% is being ignored in distribution of compensation terms, making the Election Law being ignored itself. The legal and political purpose of compensatory seats is not to represent a reward for unsuccessful candidates, but to introduce a more democratic division of power. The legislature defined a single procedure for dividing direct and compensatory seats in Articles 9.6 and 9.7 of the Election Law, stipulating the obligatory 3%<sup>34</sup> threshold at the level of the Federation of Bosnia and Herzegovina as one constituency while calculating compensatory seats, which is followed by a comparison of seats at the level of the BiH Federation as one unit with the results of twelve multi-member constituencies in the Federation of Bosnia and Herzegovina. A compensatory seat is conditioned on winning a certain percentage of votes throughout the country or the entities, which amounts to 3% in this case. Compensatory seats in Bosnia and Herzegovina represent a structural copy of the Scandinavian model. In Scandinavian states, there is no legal electoral threshold at the level of original districts, since the so-called natural threshold is at work. This system is transferred to Bosnia and Herzegovina but in a reversed order. Editors of the Election Law placed this election at the level of constituencies, not at the state level, where compensatory seats are actually being awarded. The electoral threshold of 3% is too low for electoral units electing five to six representatives. It appears so because they will win 0.5 or 1% votes at the state level.

## **5.5. How far does the legislature reflect the social composition of the electorate?**

### **5.5.1. Laws**

The Election Law is amended by Section XIX, setting forth a complex system of municipal elections in integrated Mostar. The law stipulates the establishment of a City Council with 35 members, including three representatives from each of the six constituencies, and 17 members from the city constituency. Each of the three constituent peoples must have at least three seats, while members from the ranks of others at least one seat. The problem here is there are unequal constituencies electing the same number of councillors. Moreover, there is a certain inequality between the members from the city constituency and other six constituencies.

Article 13.14 of the Election Law (Participation of members of ethnic minorities in elections at the municipal level) is changed in terms of minority peoples. According to this change, every minority people have the right to elect their representatives in municipal councils, with the right of every people to elect one representative if this people participates with at least 3% in the total population. However, the application of the Law on Self-governance is not defined, which creates

<sup>34</sup> Article 12.1 BiH Election Law.

contravention between this law and the Election Law. According to the standards adopted by the BiH Parliamentary Assembly, women must account for 30% in representative bodies in our country; the same percentage applies to the category of population under 35 years of age.

### **5.5.2. Implementation and negative indicators**

Analyzing the personnel composition of the Parliamentary Assembly of Bosnia and Herzegovina, the Parliament of the Federation of Bosnia and Herzegovina, and National Assembly of Republika Srpska, we can establish the following: there is no female delegate among fifteen delegates to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina. In the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, seven out of forty-two representatives are women.<sup>35</sup> This shows that the standardized minimum is not observed (standardized through practice of modern democratic states), according to which women should account for at least 30% of the legislature.

With regard to composition in terms of age, there are no delegates under 40 in the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina. There are six such representatives in the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, but there are no representatives under 30. These indicators are also negative, since a considerable part of the labor population is not represented and young people are not stimulated to take greater interest in election processes either. With regard to composition in terms of education, all members of both houses have college or university qualifications, implying that workers and farmers are not represented. It is evident from this that the composition of the Parliamentary Assembly of Bosnia and Herzegovina does not reflect the social composition of the population.

In the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina, women account for four out of seventeen Bosniak delegates, there is one woman delegate among seventeen Croat delegates, and six women out of eleven Serb delegates. There are no women delegates among the ranks of *others*.

The composition of the Federation Parliament in terms of education, including both houses, shows that other education categories of the population are not represented.

In the National Assembly of Republika Srpska, women account for nineteen out of eighty-three members. With regard to age, it can be said that its members are between 30 and 60 years of age, with the average age of 45.<sup>36</sup> This means that the so-called middle-aged generation is represented to a large extent, while young members are lacking.

In terms of education, the composition of the National Assembly of Republika Srpska is quite similar to that in the Federation of Bosnia and Herzegovina and in the state of Bosnia and Herzegovina.

## **5.6. What proportion of the electorate votes, and how far are the election results accepted by all political forces in the country and outside?**

### **Implementation and negative indicators**

As early as in the first months of aggression against the Republic of Bosnia and Herzegovina, diplomatic missions and subsequently embassies of all major states of the political arena began to

<sup>35</sup> Brochure titled *BiH Parliamentary Assembly 2002-2006*.

<sup>36</sup> [www.narodnaskupstinars.net](http://www.narodnaskupstinars.net)

open in Sarajevo. At the same time, general consulates and consular missions of certain countries began to open in other towns in Bosnia and Herzegovina (Banja Luka, Mostar, Bihać). In this way, all relevant political agents outside the country were able to monitor election processes from the moment they were planned, to monitor election campaigns, election silence and election day, as well as announcements of preliminary and final election results.

Opinions expressed by international officials relating to the previous elections in Bosnia and Herzegovina, 1996-2004, suggest that there is an obvious improvement in democratization of the election process and the society in general, which meets the support of the international community. International officials are also present in the process of government constitution by establishing dynamic diplomatic relations after a new set of officials is elected. These relations fluctuate between periods of partnership and of domination.

This reflects a somewhat inconsistent attitude on the part of international officials, particularly in terms of giving preference to one or another political option, while advantage is given to those political forces that, at a given moment, better serve political interests of certain groups within the international community itself.

It would be very important to annul negative influences of the immediate environment and reduce hegemonist tendencies which have, throughout the given period, been sometimes more and sometimes less expressed and made their consequences felt in the territory of Bosnia and Herzegovina. In the constellation of political relations of Bosnia and Herzegovina, despite the fact that there was no bilateral agreement signed with the Republic of Croatia, citizens of Bosnia and Herzegovina were granted dual citizenship enabling them to take part in elections in the Republic of Croatia.

The turnout at elections organized in September 1998 was 70.74% or 1,879,338 voters.<sup>37</sup> At the elections organized in November 2000, there were 2,508,349 registered voters; 1,597,805 voted at the elections, meaning that the turnout was 63.70%<sup>38</sup>

*Table 5.1: 1998 General Elections*

Elections-year	House of Representatives of the BiH Parliamentary Assembly	House of Representatives of the BiH Parliamentary Assembly
General elections 1998	Elected from the F BiH <ul style="list-style-type: none"> <li>• Coalition CD BIH 14 seats</li> <li>• HDZ BIH 6 seats</li> <li>• SDP BIH 4 seats</li> <li>• Social-democrats BIH 2 seats</li> <li>• DNZ BIH 1 seat</li> <li>• NHI HKDU 1 seats</li> </ul>	Elected from RS <ul style="list-style-type: none"> <li>• SDS Lista 4 seats</li> <li>• Sloga 4 seats</li> <li>• Coalition CD BIH 3 seats</li> <li>• SRS RS 2 seats</li> <li>• Radical Party RS 1 seat</li> </ul>

*Source: [www.electionguide.com](http://www.electionguide.com) 15 Sept 2005*

<sup>37</sup> [www.electionguide.org](http://www.electionguide.org)

<sup>38</sup> [www.electionguide.org](http://www.electionguide.org)

Table 5.2: 1998 General Elections

Elections–year	House of Representatives of the BiH Parliamentary Assembly
General elections 1998	Division of seats <ul style="list-style-type: none"> <li>• Coalition CD BiH 68 seats</li> <li>• HDZ BIH 28 seats</li> <li>• SDP BIH 19 seats</li> <li>• Social-democrats BIH 6 seats</li> <li>• NHI HKDU 4 seats</li> <li>• DNZ BIH 3 seats</li> <li>• HSP 2 seats</li> <li>• BPS 2 seats</li> <li>• Socialist Party RS 2 seats</li> <li>• Pensioners' Dem. Party 2 seats</li> <li>• BSP BIH 1 seat</li> <li>• Centre Coalition 1 seat</li> <li>• HSS BIH 1 seat</li> <li>• BOSS - Bosnian Party 1 seat</li> </ul>

Source: [www.electionguide.com](http://www.electionguide.com), 15 Sept 2005

Table 5.2: 1998 General Elections

Elections–year	National Assembly of Republika Srpska
General elections 1998	Division of seats <ul style="list-style-type: none"> <li>• SDS of Serb Lands 19 seats</li> <li>• Coalition CD BIH 15 seats</li> <li>• Serb Popular Alliance 12 seats</li> <li>• Serb Radical Party RS 11 seats</li> <li>• Socialist Party 10 seats</li> <li>• SNSD - Milorad Dodik 6 seats</li> <li>• Radical Party RS 3 seats</li> <li>• Serbian Coalition ZA RS 2 seats</li> <li>• SDP BIH 2 seats</li> <li>• HDZ BIH 1 seat</li> <li>• NHI - HKDU 1 seat</li> <li>• Coalition for King and Homeland 1 seat</li> </ul>

Source: [www.electionguide.com](http://www.electionguide.com), 15 Sept 2005

Table 5.4: 2000 General Elections

Elections- year	House of Representatives of the BiH Parliamentary Assembly - Elected from the F BiH	House of Representatives of the BiH Parliamentary Assembly - Elected from RS
General elections 2000	<ul style="list-style-type: none"> <li>• Coalition CD BiH 14 seats</li> <li>• HDZ BiH 6 seats</li> <li>• SDP BiH 4 seats</li> <li>• Social-democrats 2 seats</li> <li>• DNZ BiH 1 seat</li> <li>• NHI HKDU 1 seat</li> </ul>	<ul style="list-style-type: none"> <li>• SDS List 4 seats</li> <li>• Sloga 4 seats</li> <li>• Coalition CD BiH 3 seats</li> <li>• SRS RS 2 seats</li> <li>• Radical Party RS 1 seat</li> </ul>

Source: [www.electionguide.com](http://www.electionguide.com), 15 Sept 2005

Table 5.5: 2002 Presidential Elections

Year - elections	Presidency of Bosnia and Herzegovina
Presidential Elections 2002 Registered voters: 2,342,141 Total number of ballots: 1,298,827 Confirmed votes: 1,210,315 Invalid ballots: 88,512	<ul style="list-style-type: none"> <li>• Sulejman Tihić (total number of confirmed votes 192,661 and % of the total number of confirmed votes 37.29%)</li> <li>• Dragan Čović (total number of confirmed votes 114,606 and % of the total number of confirmed votes 61.52)</li> <li>• Mirko Šarović (total number of confirmed votes 180,212 and % of the total number of confirmed votes 35.52%)</li> </ul>

Source: [www.electionguide.com](http://www.electionguide.com), 15 Sept 2005

Table 5.6: 2002 Parliamentary elections

Year – elections			
Parliamentary elections 2002 <ul style="list-style-type: none"> <li>Registered voters 2,342,141</li> <li>Total number of ballots: not available</li> <li>Valid ballots: 686,003</li> <li>Invalid ballots: not available</li> </ul>			
Parliament 2002 (BiH Federation)	Party	Total number of confirmed votes and %	Seats
	SDA	232,325 i.e. 32.4%	10
	SBIH	116,114 i.e. 16.2%	5
	HDZ	114,207 i.e. 15.9%	5
	SDP	112,258 i.e. 15.6%	4
	BOSS	18,411 i.e. 2.6%	1
	DNZ	16,454 i.e. 2.3%	1
	HDU - Za boljita	16,053 i.e. 2.2%	1
	NHI	13,820 i.e. 1.9%	1
	OTHERS	28,774 i.e. 4.2	
Parliament 2002 (Republika Srpska)	Party	Total number of confirmed votes and %	Seats
	SDS	172,544 i.e. 33.7%	26
	SNSD	114,591 i.e. 23.4%	19
	PDP	53,177 i.e. 10.4%	9
	SDA	37,102 i.e. 7.2%	6
	SBIH	19,976 i.e. 3.9%	4
	SRS-RS	24,559 i.e. 4.8%	4
	SPRS	22,126 i.e. 4.3%	3
	Others	6,376 i.e. 1.4%	12

Source: *www.electionguide.com*, 15 Sept 2005

With regard to the fact that governing authorities are constituted in accordance with election results, all elections can be seen as accepted by the authorities and, consequently, by citizens themselves.

### **5.7. What measures, if any, are taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?**

In the period from 1996 to 2004, there were eight election processes in Bosnia and Herzegovina, including the municipal elections held in October 2004. Pursuant to Annex III of the Dayton Peace Agreement, the international community was responsible for monitoring elections for all levels of government until 2000. After the Election Law was adopted in August 2001, 2002 general elections were the first elections whose administration was the responsibility of local authorities. Elections in 2004 were the first elections fully organized and funded by authorities in Bosnia and Herzegovina. Representatives to all municipal councils in the BiH Federation were



elected in these elections, as well as members of municipal assemblies in Republika Srpska. It was the first time the electorate in the Brčko District could directly elect representatives to the Brčko District Assembly, which also applies to mayors in municipalities. Six different election systems were used in these elections:

- proportional representation system
- majority system
- summary preferential system
- proportional representation system with subsequent indirect election
- proportional representation system with subsequent direct election
- direct election system

### **Indicators**

This, undoubtedly, implies maximum heterogeneity of the current election systems in Bosnia and Herzegovina which, on the one hand, creates confusion on the part of the electorate and increases the possibility of incorrect voting which, in turn, can only lead to an increased number of invalid ballots and decrease regularity of elections. On the other hand, different election systems require long-term, complex and expensive staff training responsible for the election process.

As it has already been mentioned, the good side of the last elections is the fact that open lists were introduced, as well as different types of polling stations for different categories of voters, including mobile ballot boxes.

The 2001 Election Law was amended in 2004 in order to introduce direct elections for mayors, strengthening direct democracy at the local level. A positive result of this is that both entities adopted this law in their parliaments, meaning that it was not imposed by the international community.

Application of the Law on conflict of interest in institutions of Bosnia and Herzegovina and the Law on funding election campaigns has additionally burdened the Election Commission of Bosnia and Herzegovina, calling for necessary corrections to be made by setting up a sub-commission of the Election Commission, which would specialize in certain type of work and tasks. Municipal election commissions consist of 3 to 5 members, which should be levelled, making all the commissions consist of the same number of members. A single procedure for selection of members of polling station committees should be established at the level of Bosnia and Herzegovina.

It is necessary to introduce provisions stipulating that meetings of the council for election appeals and complaints are open for monitors, as well as meetings of the Election Commission of Bosnia and Herzegovina.

Unfortunately, no measures have been taken to solve these problems, so that much more knowledge, energy and funds should be invested in educating state authorities, or the wider public even, in order to implement the recommended measures. This, of course, cannot be done without a thorough reform of the entire constitutional system of Bosnia and Herzegovina.

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## 6. Democratical role of political parties\*

### Does the party system assistant the working of democracy?

Author: Rebeka Kotlo

#### 6.1. How freely are parties able to form and recruit members, engage with the public and campaign for office?

##### 6.1.1. Laws

###### Freedom of association and organization into political parties

The right to association, to political association, and free expression of political will of the citizens through elections, establishment and functioning of political parties, articulation of political programs, entry into political parties, election procedures and campaigns, are regulated by constitutions of Bosnia and Herzegovina, Federation BiH and Republika Srpska, Statute of the Brčko District, Law on Political Organisations<sup>1</sup> and Election Law of BiH.<sup>2</sup> Since the Constitution of BiH incorporates a number of international conventions, treaties, and other legal acts, political rights and freedoms in this country are also regulated by the Universal Declaration on Human Rights (Preamble to the BiH Constitution), the 1966 International Covenant on Civic and Political Rights and Optional Protocols to that Covenant from 1966 and 1989 (Annex I to the BiH Constitution), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 2, paragraph 2 of the BiH Constitution).

The BiH Constitution (Article 1, paragraph 2) states that BiH is a democratic state functioning in compliance with law and *on the basis of free and democratic elections*. Furthermore, Article 2, paragraph 3 of the BiH Constitution guarantees for all person within the territory of BiH full enjoyment of human rights, including freedom of peaceful assembly and association with others, and non-discrimination. Prohibition of discrimination on the basis of political opinion, contributing significantly to freedom of expression of political opinion and action, is contained in the non-discrimination provision of the BiH Constitution. The non-discrimination provision secures the “enjoyment of rights and freedoms set by the Constitution of BiH and Annex I for all persons in Bosnia and Herzegovina, with no discrimination on any grounds such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status”. Provisions of the same meaning are contained in constitutions of both entities and the Statute of the Brčko District.

Establishment, membership, activities, financing, nomination and election campaigns by political parties are regulated in detail by the Rules and Regulations of the Provisional Election Commission (PIC),<sup>3</sup> Law on Financing of Political Parties,<sup>4</sup> rules on annual and periodic financial reports by political parties,<sup>5</sup> rules on verification of political parties, independent candidates, coalition and independent candidate lists for participation at elections,<sup>6</sup> statutes of political parties

<sup>1</sup> Law on Political Organisations, *Official Gazette SRBiH* No. 27/91.

<sup>2</sup> BiH Election Law, *Official Gazette BiH* No. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, and 20/04, 25/05.

<sup>3</sup> Rules and Regulations of the Provisional Election Commission (for the 2000 Election), *Official Gazette BiH*, No. 18/00.

<sup>4</sup> Law on Financing of Political Parties, *Official Gazette BiH* No. 49/00.

<sup>5</sup> Rules on Annual and Periodic Financial Reports by Political Parties (from 2004).

<sup>6</sup> Rules on Verification of Political Parties, Independent Candidates, Coalitions, and Independent Candidate Lists for Participation at Elections (from May 2003, and April and May 2004).

(particularly provisions relevant to establishment, membership, activities, and financing of political parties), and other documents regulating the status and activities of political parties in BiH. Use of the media for election purposes and conduct of the media during election campaigns is regulated by the Rules on Media Presentation of Political Subjects in the Election Period.<sup>7</sup>

The Law on Political Organisation guarantees the freedom of citizens to organize politically and to establish political parties for that purpose. According to the Law, political parties are organizations established by the citizens, freely and voluntarily, for the purpose of manifesting political activities and attaining political goals. According to current legislation,<sup>8</sup> no political parties/organizations may be established or functional in BiH whose statutory and program objectives and methods of attaining them are aimed at forceful changes of the constitutional order, threatening territorial integrity and independence, violation of constitutionally guaranteed rights and freedoms, and instigation of national, racial or religious hatred or intolerance. A political party may be prohibited for these reasons.

#### Establishment and membership of political parties

The minimum requirement for establishment of a political party is 50 citizens nationals of BiH of legal age - as founders, who meet at a founding assembly of a political organization/party, to decide on the establishment, statute and program orientation, i.e. the program. Following that, they file a request to register with a court of competent jurisdiction. A political organization has the right to act only upon entry into the register, other than activities related to the actual establishment. Political organizations are established on the territorial principle and their work is public, other than in cases defined by the statute of the party. They may engage in business or other activities, in compliance with the law, and they may enter alliances and other forms of association of political parties, or enter an international organization. As for recruitment of members, the Law on Political Parties prescribes that any citizen of legal age may, under equal conditions and in compliance with the statute, become member of a political organization, and states that only BiH nationals may be members.<sup>9</sup> BiH Election Law (as well as PIC Rules and Regulations) prohibit competent authorities on all levels from any discrimination of persons on the basis of their membership in a political party or coalition, or on the basis of their support for an independent candidate or a list of independent candidates.<sup>10</sup>

Statutes of political parties mainly prescribe that a member may be any person of legal age and full mental competence, a national of BiH, who accepts the statute and the program of the party and signs an entry form, in compliance with current legislation. Only one of the statutes of BiH parties available and analyzed for this research sets 16 years of age for membership, which is not in compliance with the Law on Political Organisations, requiring that members should be of full legal age. BiH Election Law and PIC Rules and Regulations prescribe restrictions related to members, particularly party officials, stating basically that a political party or coalition will not meet the requirements for participating at elections for as long as a function or position in the party is held by a person who is serving a sentence delivered by the International War Crimes Tribunal for Former Yugoslavia, or is indicted by the Tribunal and has failed to appear before it when requested. Also, the prohibition of participation at elections refers to persons convicted for violations of humanitarian law, persons holding incompatible office (until they resign from such office), per-

<sup>7</sup> Rules on Media Presentation of Political Subjects in the Election Period, 28 June.2004.

<sup>8</sup> Law on Political Organisations, *Official Gazette SRBiH* No. 27/91.

<sup>9</sup> See Articles 2, 3, 4, 11, 13, 5, 6, 8 and 11.2 of the Law on Political Organisations, *Official Gazette SRBiH* No. 27/91.

<sup>10</sup> See Article 1.12 of the BiH Election Law, *Official Gazette BiH* No. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, and 20/04, 25/05 Article 113. PIC Rules and Regulations, *Official Gazette BiH* No. 18/00.

sons who hold elected office in another state (until they resign), unlawful users of real property owned by displaced persons or refugees, or, an apartment over which a refugee or a displaced person holds the right of occupancy, and which they have not left within the prescribed time, or elected officials with a conflict of interest.<sup>11</sup>

### Conduct and financing of election campaigns<sup>12</sup>

The Law on Political Organisations does not regulate the conduct of an election campaign, but it does cite “manifesting political activities and attaining political goals” which, in the case of political parties, refers to participation at elections and winning power through elections, as well as participation in election campaigns. The Law guarantees full freedom of political parties, coalitions, as well as independent candidates and others in the election process, to conduct their election activities in the entire territory of BiH during the election process, and competent authorities are obliged to secure freedom of movement of candidates, supporters and the electorate throughout the entire election process.

In order to take part at elections, in addition to fulfilling all the preconditions and presenting all the necessary documents, a political party must be verified by the BiH Election Commission. According to the Rules on verification of political parties, independent candidates, coalitions and lists of independent candidates for participation at elections, along with an application for verification, political parties must submit the following: a decision on entry into the court register, a number of signatures of supporters among registered voters (3,000 for BiH elections, 2,000 at entity level, 500 at cantonal level 100 for municipal councils), a receipt for payment of verification tax (10,000 KM for elections at state level, 5,000 KM for entity level, 2,000 KM for cantonal level, 1,000 KM at the level of municipality or the Brčko District), a financial report for the period of three months prior to applying for verification, and a list of constituencies where the political party intends to offer its lists of candidates.<sup>13</sup>

Chapter 7 of the BiH Election Law and Chapter 700 of the PIC Rules and Regulations set the rules of conduct for political parties, coalitions, independent candidate lists and independent candidates. Political subjects have the right to run an election campaign, to organize and hold public rallies, where they may express their views freely in order to win voter support, and print and distribute flyers, posters, and other material related to the election campaign. At that, competent state authorities are obliged to secure equal treatment for all political subjects in their use of public places and facilities for the needs of their campaign, including holding rallies, or displaying announcements, banners, posters, and other similar material.

As for financing of election campaigns, Election Law (and the PIC Rules and Regulations) prescribe that all the political subjects are obliged to submit to the Election Commission its financial report from the date of application for verification of participation at elections, to the date of verification of election results. Each political subject may only collect funds in compliance with the law, and no one may spend more than one KM per voter in each round of elections, and the number of voters entered into the Central Voter Register is published by the BiH Election Commission 90 days prior to election day.<sup>14</sup>

<sup>11</sup> See Article 1.6., 1.7. and 1.8. of the BiH Election Law, *Official Gazette BiH* No. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, and 20/04, 25/05 and Articles 104-109 of PIC Rules and Regulations, *Official Gazette BiH*, No. 18/00.

<sup>12</sup> This section should be read in conjunction with Section 5 - Free and Fair Elections.

<sup>13</sup> See Article 1.11 of the BiH Election Law, *Official Gazette BiH* No. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, and 20/04, 25/05 and Article 7. of the Rules on Verification of Political Parties, Independent Candidates and Independent Candidate Lists for Participation at Elections (May 2003, and April and May 2004).

<sup>14</sup> See Article 15.1 Of the BiH Election Law, *Official Gazette BiH* No. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, and 20/04, 25/05 and Article 1601 of PIC Rules and Regulations, *Official Gazette BiH*, No. 18/00.



According to the Election Law, Chapter 16 on the media, during the pre-election campaign, all the electronic media shall present political subject fairly and equally, and inform the public about the campaign and the election process, and secure, one month prior to the elections, free direct public address by political subjects. Rules on media presentation of political subjects in the election period obliges electronic media to cover pre-election activities of political subject, and to present factually accurate, complete, honest, fair and impartial information. The Communications Regulatory Agency (CRA), as the body competent to monitor electronic media, forwards any case of breach of the Rules to the Election Appeals Council for further action.

Political clips may not be shown immediately before, during or after news programs, nor may they be shown if their tenor or content carry a clear and direct risk of instigating ethnic or religious hatred among the communities in BiH, or which may, on the basis of reasonable judgement, cause violence, disorder, or unrest, or could instigate crime or criminal action, cause public damage (death, injury, harm to property or other kinds of violence or distraction of police activities or medical services or activities of other public law and order agencies away from their usual duties). The media must not publish public poll surveys related to voting and elections in the period of 72 hours prior to the elections, nor may they cover any political activities during the period of pre-election silence.

Restrictions related to election campaign may be observed from the point of view of conduct of political parties in the election campaign.<sup>15</sup> According to these rules, in an election campaign, political subjects and their supporters are not allowed to: remove, cover, damage or alter printed announcements, ads, posters or other materials belonging to other political subjects in the election process, interfere with their gatherings, prevent journalists from conducting their work professionally, support voting by persons who are not eligible to vote, support individuals to vote more than once or to vote for another person, use the language of hate or violence, or publish or use materials that may have such an effect, or breach the election silence. According to PIC Rules and Regulations, the Election Appeals Sub-commission, i.e. pursuant to provisions of the BiH Election Law - the Election Complaints Commission, is competent to issue sanctions against any political subject on the basis of breaches of these regulations and laws.

### **6.1.2. Implementation and negative indicators**

#### *Nature of the party system in BiH*

The multi-party system in Bosnia and Herzegovina is characterized by segmented pluralism (highly fragmented, ideologically strongly polarized and competitively centrifugal),<sup>16</sup> with a relatively large number of political parties and the so-called “Weimar Syndrome”, reflected in “fragmentation, dysfunctional operation, and inefficiency of democratic forces”.<sup>17</sup> Looking at the political arena in BiH, it may be concluded that “political parties do not yet have the necessary number of developed, capable, qualified and professional politicians and they do not manage to har-

<sup>15</sup> See Chapter 7, Rules of Conduct for political parties, coalitions, independent candidate lists and independent candidates, of the BiH Election Law, *Official Gazette BiH* No. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, and 20/04, 25/05.

<sup>16</sup> Sartori tries to differentiate multi-party systems by type as: party fragmentations, which include number and size of parties in the legislature, and ideological distances among parties, including the position on the left-to-rights scale. See: Giovanni Sartori, *Stranke i stranački sustavi, Analitički okvir* [Parties and Party Systems, An Analytical Framework], Vol. I, Politička kultura, Zagreb 2002, p. 342. See the party structure of legislatures in BiH, section 6.2.2.

<sup>17</sup> See: Prof. Dr. Čazim Sadiković, “Uloga političkih stranaka u funkcioniranju države BiH” [Role of Political Parties in BiH State Functioning] (editorial), in *Ljudska prava, human rights review*, year 4, vol. 1-2, Sarajevo, 2003, pp. 7, 8.

monise their efforts with other players in the political and democratic life in BiH, particularly with trade unions, professional, interest, humanitarian and other associations, the media, etc.”<sup>18</sup>

Since its inception, there has been at the political scene in BiH an almost uninterrupted domination of the three national parties, Party for Democratic Action (SDA), Serb Democratic Party (SDS) and Croatian Democratic Union (HDZ), i.e. the respective parties of Bosniak, Serb and Croat peoples in BiH. In the first democratic, multi-party elections in 1990, these three parties had an absolute victory, winning more than 75% of total seats:

*Table 6.1: Distribution of seats in percentage. 1990 elections*

Party of Democratic Action (SDA)	almost 30% (1,888) seats
Serb Democratic Party (SDS)	approx. 28% (1,801) seats
Croatian Democratic Union (HDZ)	approx. 17% (1,085) seats
All other parties and coalitions	approx.25% seats

A total of fifteen parties or coalitions registered for the elections, and their candidates were voted by an electorate of 2,300,000, with their votes electing 6,419 delegates on all levels of governance.

At the first general election to follow these, held seven years later, i.e. after the war, national parties won most of the seats again, some 66%, although there was a noted increase of voter support of some 10% for other parties, coalitions and independent candidates (SDP, United List and other parties, coalitions and independent candidates):

*Table 6.2: Distribution of seats in percentage. 1996 Election*

Coalition for Integral and Democratic BiH (SDA, Party for BiH, Civic Democratic Party - GDS, and Liberals)	33% seats
SDS	approx. 20% seats
HDZ	13% seats
Social-Democratic Party (SDP)	almost 4% seats
United list	approx. 1% seats
All other parties, coalitions and independent candidates	more than 27% seats

Voter turnout at this election was 2,174,592 (approximately 61% of the potential electorate) voting for 135 municipalities in both entities, for 93 parties, 8 coalitions and 155 independent candidates.<sup>19</sup>

At the last general elections, held in 2002,<sup>20</sup> out of 42 seats at the House of Representatives of the BiH Parliamentary Assembly, the national parties, SDA, HDZ- Croat Christian-Democrats (HDZ-HD) and SDS won 19 seats (approximately 45% of the seats) and all other parties (13) won 23 seats altogether (approximately 55% of the total):

<sup>18</sup> *Ibid.*

<sup>19</sup> Ermin Čengić. “*Pola desno, četvrt lijevo*” [Half to the Right, Quarter to the Left] *Dani* weekly, vol. 150, 14 April 2000.

<sup>20</sup> For a more detailed distribution of seats in BiH legislatures, see section 6.2.2.

*Table 6.3: Distribution of seats at the House of Representatives of the BiH Parliamentary Assembly, in percentage. 2002 General Elections.*

SDA	9 seats (approximately 21%)
HDZ-Croat Christian-Democrats	5 seats (approximately 12%)
SDS	5 seats (approximately 12%)
Other 13 parties	23 seats (approximately 55%)

At the same elections, out of 98 seats at the House of Representatives of the Federation BiH, the national parties, i.e. SDA and the HDZ - Croat Christian-Democrats - Croat National Union (HDZ-HD-HNZ) won a total of 48 seats (approx. 49%), and the remaining 16 parties won 50 seats (approx. 51%).

*Table 6.4: Distribution of seats at the FBiH House of Representatives, in percentage. 2002 General Elections*

SDA	32 seats (approximately 33%)
HDZ - Croat Christian-Democrats - Croat National Union (HDZ -HD-HNZ)	16 seats (approximately 16%)
Other 16 parties	50 seats (approximately 51%)

Also at the 2002 elections, out of 83 seats at the National Assembly of Republika Srpska, the national parties, SDS and SDA, won a total of 32 seats (approximately 39%) and the remaining 16 parties won 51 seats (approximately 61%):

*Table 6.5: Distribution of sets at the RS National Assembly, in percentage. 2002 General Election*

SDS	26 seats (approximately 31%)
SDA	6 seats (almost 8%)
Other 16 parties	51 seats (approximately 61%)

In addition to the national, i.e. ethnically defined political parties, in BiH there is also a block of political parties of general civic orientation, with multi-ethnic composition and citizens as their basic membership, mainly of social-democratic and liberal orientation. There are no major differences in the programs of these parties, although there is an evident social-interest difference among them. However, it would be difficult to see this group of parties as a relatively organized civic 'party block in BiH', as the civic option is fragmented, disharmonized, open to occasional coalitions with individual national parties and, as such, cannot attain any major influence over the public opinion in BiH. Moreover, the civic party block also suffers from a notable difference in the strength and organization of parties, with several strong and relatively numerous parties and a considerable number of parties missing one or more features of a modern political party.<sup>21</sup> A number of these parties have an evident phenomenon of personal ambitions of their leaders, so that those parties are sometimes publicly perceived as means to political ends of one or more of its founders or leaders.

<sup>21</sup> "Many of these parties do not have relevant membership or organizational structure, they barely collaborate with each other, and each leader tries to be self-sufficient. As a rule, small parties prefer the interests of their leadership, i.e. the limited interest of a small leading group.... All civic parties have an identical attitude towards historically relevant issues of future of BiH society (integrity and statehood of BiH, renewal of the multi-ethnic structure of BiH,

Key features and organization of political parties

Irrespective of their ideological or program orientation, political parties in BiH share certain features: most of them aspire to be mass<sup>22</sup> integration parties, but also with notable individual features of a *catch-all* party.<sup>23</sup> They may be divided into *status quo* parties (such as national parties, particularly the ruling ones) or reformist parties (opposition parties, such as the Liberals or SDP), whereas there are no revolutionary parties in BiH. There are anti-system parties in BiH.<sup>24</sup> In view of the criteria offered by Sartori, anti-system parties in BiH would be those advocating a change of the political system in BiH, i.e. a change of the Dayton Constitution (Constitution of BiH). Following this criterion, anti-system parties would include parties such as SDA and HDZ, to a lesser extent, as well as SBiH, SDP, and some other *smaller* parties. The most prominent parties advocating *status quo*, i.e. objecting to any changes in the Constitution of BiH, are parties from Republika Srpska, particularly SDS. According to this criterion, these parties may be considered regime parties. However, the notions of *regime party* and *anti-regime party* should be differentiated from the notions of *state* and *anti-state party*. *State parties* are those advocating a change in the BiH Constitution aimed at strengthening the BiH state institution and functional organization of the state. Contrary to this, *anti-state parties* are those advocating *status quo*, particularly those whose political action through bodies of governance (parliaments, governments) *block* the adoption of laws and other decisions, thus slowing down political, social, and any other development of BiH.

Although mainly or completely democratic in their party documents,<sup>25</sup> (party bodies are elected democratically from the lowest to the highest, and the supreme party body is the largest, dem-

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integration of BiH into the EU and NATO)...” Mirko Pejanović. “Uloga političkih stranaka u funkcionisanju države Bosne i Hercegovine - Kako politički pluralizam u BiH prilagoditi standardima Evropske unije?” [Role of Political Parties in State Functioning - How to Adapt Political Pluralism in BiH to EU Standards?], paper presented at “Role of Political Parties in State Functioning”, a conference held on 6 April in Sarajevo, organized by the Human Rights Institute of the Law School, University of Sarajevo, published in *Ljudska prava*, human rights review, Year 4, vol. 1-2, Sarajevo, 2003, p. 12.

<sup>22</sup> There are numerous criteria for classification of political parties: 1. by their openness towards new members, into personnel and mass; 2. by their attitude towards the existing political order, into status quo parties, reformist and revolutionary ones; 3. by the nature of their in-party regime, into democratic and autocratic; 4. by relations among in-party groups, into monopolist and pluralist (party wings, factions and sects); 5. by relations between local and central bodies, into centralist and de-centralist; 6. by their class structure, into workers’ and bourgeois; 7. by their program orientation, into “parties of thought” and “parties of ideology”. See: Čazim Sadiković, *Politički sistemi* [Political Systems], Sarajevo, 2004, p. 62.

In mass bureaucratic parties the central role is played by the bureaucracy, which performs political administration tasks; those are membership parties with a strong vertical organization and reliant on their own electorate; they are dominated by party leaders and collective leadership, they are financed by membership fees and “collateral activities” and emphasize ideologies and the central role of “party believers”. See: Giovanni Sartori, *Stranke and stranački sustavi, Analitički okvir* [Parties and Party Systems, An Analytical Framework], Vol. I, Politička kultura, Zagreb 2002, p. 343.

<sup>23</sup> Such as: strengthening the role and influence of leaders and leading groups in the party, weakening the role and influence of individual party members, suppression of the *clase gardée*, and class-social and denominational clientele, in favour of recruiting membership from the entire population. See: Giovanni Sartori, *Stranke and stranački sustavi, Analitički okvir* [Parties and Party Systems, An Analytical Framework], Vol. I, Politička kultura, Zagreb 2002.

<sup>24</sup> According to Sartori, “anti-system opposition is based on a system of beliefs which does not share the values of the political order faced with maximum ideological distance. Anti-system is in no way equivalent with ‘revolutionary’. If the aim of a party is to prepare for a revolution, only then can we call it a revolutionary party.”

<sup>25</sup> “... There are numerous differences between the norm and the reality in terms of political party action. Party documents are full of democracy... sometimes, under a new name, and always with the prefix democratic, real relations and processes are hidden, often disguising personnel who have problems with innovations entering party work.” Dr. Bećir Macić, “Opći uslovi za konstituiranje višestranačkog sistema u BiH” [General Conditions for Establishing a Multi-Party System in BiH], paper presented at “Role of Political Parties in State Functioning”, a conference held on 6 April in Sarajevo, organized by the Human Rights Institute of the Law School, University of Sarajevo, published in *Ljudska prava*, human rights review, Year 4, vol. 1-2, Sarajevo, 2003, p. 24.

ocratically elected party forum - the party convention, which then, from among its members, elects the highest permanent party body accountable to the convention), in the implementation of their (inner) party policy<sup>26</sup> in some cases many parties have demonstrated autocratic tendencies. Parties are decentralized on the territorial principle, which is also their obligation according to the Law. Outside their headquarters, parties are organized in different forms of basic organizations, branches, usually autonomous in their work within their competences, and higher level bodies may give them binding instructions and other measures guiding their work only exceptionally. This leaves enough room for abuse of rights and unjustified restrictions of activities and autonomy of lower levels of organization of political parties, in order to preserve “strong central authority and control” in the party.

In most political parties in BiH there are wings, and in some cases even factions, resulting sometimes in divisions, or separation of factions and establishment of other parties with orientation similar to that of the original party. Most parties are ideological, there are very few pragmatic parties, and there are several parties with features of an ideological as well as pragmatic party. They are focused on promoting ideas and winning power and gains. In the party system of BiH, there are no parties of the left, center, and right, in the usual sense of these notions. This conclusion arises from the fact that parties in BiH do not have clear-cut political programs, and certainly no credible political practice and vision of their own political goals; instead, they mainly act on an *ad hoc* basis, depending on political and other current circumstances in BiH.<sup>27</sup> It can thus be concluded that political parties in BiH are, in terms of their organization and function, below the standards of practice of political organization in modern European states.<sup>28</sup>

#### Territorial distribution of political parties

Out of 71 parties certified by the BiH Election Commission for participation at the last municipal elections, held on 2 October 2004, most of them have headquarters in two major urban centers: Banja Luka (17) and Sarajevo (16). Far fewer parties have their headquarters in four other cities in BiH: Mostar (4), Tuzla (3), Bihać (2), Zenica (1), and some other towns in different parts of BiH, i.e. in its entities, cantons, cities and municipalities.<sup>29</sup>

<sup>26</sup> “There is very little benefit of a party defining itself as ‘democratic’ or ‘peoples’ in our situation... The criteria for evaluating political parties should be the political practice manifested in safeguarding the BiH society... to rely on the democratic rhetoric of political parties for evaluating their profile is simply too naive.” Doc. Dr. Nedžad Duvnjak, “*Neki aspekti etničkog višepartizma u Bosni i Hercegovini*” [Some Aspects of Ethnic Multi-Party System in BiH], in *Ljudska prava*, Human Rights Review, Year 4, vol.1-2, Sarajevo, 2003, p. 46. (For example, parties containing the word ‘democratic’ in their name: Party for Democratic Action (SDA), Croatian Democratic Union (HDZ), Serb Democratic Party (SDS)... as well as several ‘smaller’ non-ruling parties. (by the author)

<sup>27</sup> Views on features of political parties and party system in BiH derived from an interview with Prof. Dr Nurko Pabrić, Professor of Constitutional Law at the Law School, “Dzemal Bijedic” University in Mostar, conducted on 25 May, 20 September and 10 November 2005 in Mostar.

<sup>28</sup> “In all democratic and economically prosperous states of Europe and the world, political parties are the pillars of their stability. First of all, because political parties and their ideals and interests always follow the social structure and social divisions of society... parties have a state-building awareness... multi-party systems produce stable social and political development of society.” See Prof. Dr. Mirko Pejanović, “*Uloga političkih stranaka u funkcionisanju države Bosne i Hercegovine - Kako politički pluralizam u BiH prilagoditi standardima Evropske unije?*” [Role of Political Parties in State Functioning - How to Adapt Political Pluralism in BiH to EU Standards?], paper presented at “Role of Political Parties in State Functioning”, a conference held on 6 April in Sarajevo, organized by the Human Rights Institute of the Law School, University of Sarajevo, published in *Ljudska prava*, human rights review, Year 4, vol. 1-2, Sarajevo, 2003, p. 10.

<sup>29</sup> www.izbori.ba

Table 6.6: HQs of political parties in BiH - territorial and regional distribution:

Banja Luka	17
Sarajevo	16
Mostar	4
Tuzla	3
Bijeljina	3
Brčko District	3
Bihać	2
Ljubuški	2
Tomislavgrad	1
Srpsko Sarajevo -Pale	1
Ilijaš	1
Velika Kladuša	1
Šipovo	1
Modriča	1
Ilidža/ Srpska Ilidža	1
Drvar	1
Grude	1
Lukavac	1
Šekovići	1
Srbac	1
Maglaj	1
Zenica	1
Laktaši	1
Prijedor	1
Livno	1
Rudo	1
Trebinje	1
Laktaši	1
Šipovo	1

Source: BiH Election Commission, [www.izbori.ba](http://www.izbori.ba)

#### Membership of political parties

Data on membership (numbers) of parliamentary parties which submitted the data requested for this study:



Table 6.7: Overview of membership of political parties

Croatian Democratic Union BiH (HDZBiH)	66,352
BiH Pensioner's Party (SPU)	app.60,000*
Social-Democratic Party of BiH (SDPBiH):	56,238*
Peoples' Party Work for Progress	22,300
Socialist Party of Republika Srpska (SPRS)	app 15,000
Serb Radical Party of Republika Srpska (SRSRS)	app 14,000
Croatian Party of Rights BiH (HSPBiH)	app 12,000
Pensioners' Party of Republika Srpska	app 11,300
New Croat Initiative (NHI)	app 3,500
Liberal-Democratic Party of BiH (LDSBiH)	2,160
Croat Christian-Democratic Union (HKDU):	2,000
Civic Democratic Party of BiH (GDSBiH)	app 1,600
Croat Democratic Union BiH (HDUBiH)	1,768

Any consideration of the data presented in the table above should take into account that political parties in BiH are not effective membership organizations, as the case is in other European countries, and membership numbers do not reflect the relative strength of the party, but can, in fact, be linked to the structure of its membership or the context of creation of the party. Also, as there is no unified and transparent system of collection of membership data, the data supplied by the parties is sometimes based on assessments of the number of supporters or the number of signatures collected to secure participation at elections.

#### Prohibition of work of political parties, removals and suspensions of politicians

Prohibition of work of a political party, as a very unpopular move, has been used rarely in BiH. The district (cantonal) court in Sarajevo prohibited the work of SDS in 1993.<sup>30</sup> However, in the period since the end of the war, there have been frequent prohibitions of political engagement or nomination at elections for members and officials of political parties, imposed by the High Representative for BiH. In some cases, the High Representative prohibited any public office for the removed officials. In 1998, the High Representative issued six decisions on removal or suspension of politicians, twenty six in 1999, and nine in 2000 and 2001 respectively. Four decisions by the High Representative on removal or suspension of politicians were made in 2002 and 2003 respectively, and two in 2004 and again two in 2005.<sup>31</sup> It should also be borne in mind that, starting from 1996, political parties committing breaches during election campaigns received penalties in the form of removal of candidates from the top of their lists, as decided by the Election Appeals Sub-Commission, acting on the basis of a report on a branch or on its own, when it deemed that conditions had been met for such a decision.

#### Interference with election campaigns

According to the data published by the BiH Election Commission, during election campaigns at all the post-war elections, the Election Appeals Council delivered different sanctions, usually in relation to covering, removal or destruction of posters placed by other political subjects, use of

\* According to information provided by the party (SPU), unreliable, as membership verification is under way.

\* According to the latest membership records, sent from municipal SDPBiH organizations in January 2005.

<sup>30</sup> See: Prof. Dr. Ismet Dautbašić, "O ukidanju i finansiranju političkih stranaka" [On Abolishment and Financing of Political Parties], in *Ljudska prava*, Human Rights Review. Year 4, vol. 1-2, Sarajevo, 2003, p. 13.

<sup>31</sup> <http://www.ohr.int/decisions/removalsdec/archive.asp>, 25 September 2005.

defamatory language or hate speech at public rallies and in the media, violation of pre-election silence, as well as irregularities in the voting process.<sup>32</sup> Notwithstanding the presence of these and similar incidents, their number is quite small and they are sporadic and mutually isolated occurrences of no influence over the high democratic standards present in the election process in BiH. For example, according to an assessment by the Helsinki Human Rights Committee in BiH, “shortcomings and sporadic incidents have not had any major influence over the election results and... the 2004 local elections can be said to have been fair and democratic,”<sup>33</sup> leading to a conclusion that the democratization trend in BiH elections is on the rise.

As for the media coverage of elections in BiH, the situation is satisfactory. In the time period June 1998 - December 2001, in relation to which the Broadcasting Department of the Communications Regulatory Agency issued an analysis and a report, BiH broadcasters were said to have committed “breaches related to municipal elections in BiH usually related to Licence Terms, Rules on the Media during Election Periods and Guidelines on Fair Access. As for the general elections held in November 2000, offenses were mainly related to the Licence Terms and the Broadcasting Code.”<sup>34</sup> The Implementation Board of the IMC (Independent Media Commission, now the Communications Regulatory Agency - CRA) issued 10 decisions related to election issues and coverage in the election period for the 2000 municipal elections: the number of political clips shown immediately before or after news programs, broadcasting of inappropriate content, programs which represent paid political advertising, violation of media silence, and media coverage during the election period.

IMC believed that during the election period, with some exceptions, *radio and TV stations respected IMC codes* as well as the Rules of the Provisional Election Commission related to programs, and in general, provided *a fair application of the principle of fair access, and mainly avoided instigating language and inappropriate conduct.*<sup>35</sup> In relation to the 2002 general elections, the CRA was “pleased to note that the BiH broadcasters’ method and approach during this period, noting also several exceptions, demonstrated *a growing trend of full editorial independence and professional accountability, as well as a serious approach to the task of informing the public about these important issues.*” The Board identified three cases of violations of Election Rules, and two decisions of the Board were case dismissals.<sup>36</sup> In the election period for the 2004 municipal election, the Rules on media presentation of political subjects in the election period were breached 23 times: once Article 6 - Political clips, four times Article 7 - Election silence period, six times General Provisions, four times Article 3 - Fair and equal presentation, five times Article 8 - Implementation, twice Article 5 - Paid political advertising, and once Article 4 - Direct addresses.<sup>37</sup>

<sup>32</sup> *Ibid.*

<sup>33</sup> Helsinki Human Rights Committee for. “Izbori su fer i demokratski” [Elections were fair and democratic], A. Mujić, *Oslobodenje* daily, 6 October 2004, p. 10., <http://www.idoc.ba>

<sup>34</sup> Case analyses, June 1998-December 2001, prepared by the Broadcasting Department, CRA, December 2001, p. 4, <http://www.rak.ba/bs/depts/observ/msword/CRA%20izvjestaj%20o%20slucajevima%20krstenja%20pravila%20od%201998%20-%202001%20-%20bos.doc> 25 September 2005.

<sup>35</sup> *Ibid.*, pp. 49-50.

<sup>36</sup> CRA reports on cases of violations of rules and regulations in 2002, CRA, July 2003, <http://www.rak.ba/bs/depts/observ/msword/CRA%20izvjestaj%20o%20slucajevima%20krstenja%20pravila%2020021%20-%20bos.doc>, p. 24, 25 September 2005.

<sup>37</sup> Communications Regulatory Agency, Reports on cases of violations of rules in 2004, August 2005, <http://www.rak.ba/bs/depts/observ/default.aspx?cid=3865>, p. 22, 25 September 2005.

## 6.2. How effective is the party system in forming and sustaining governments in office?

### 6.2.2. Implementation and negative indicators

Due to the specific nature of the multi-ethnic and horizontally fragmented political system of the post-Dayton BiH, no political party is capable of forming government alone or in coalition with one other party; as a rule, participation, negotiations and coalitions of several ethnically affiliated parties are required in the process of forming government after the elections. Efficiency of the party system in BiH in forming and maintaining government in office and its successful functioning is generally at a very low level, as demonstrated by frequent crises at cantonal, entity and state levels.<sup>38</sup> Causes are to be sought, first and foremost, in the current ratio of political forces in the multi-party system of BiH, which must act within the legal framework mainly requiring consensus and simple or two-third (i.e. entity) majority for any decision, bearing in mind the opposition of party goals and interests, often shaded by ethnic undertones and connotations, i.e. invocation of “protection of interests of one’s own people”.<sup>39</sup>

According to the data from the 2002 general elections, distribution of seats in the legislature is as follows:<sup>40</sup>

House of Representatives of the BiH Parliamentary Assembly (42 members, 2/3 elected directly from FBiH, 1/3 from RS, following the election formula of proportional representation of open candidate list in multiple constituencies, with compensation seats and an election threshold of 3%<sup>41</sup>):

<sup>38</sup> For analyses of political party functioning, see Dr. Omer Ibrahimagić, “*Stranačko organiziranje i funkcioniranje u demokratskom političkom sistemu*” [Party Organisation and Functioning in Democratic Political Systems], in *Pravna misao*, magazine for legal theory and practice, Public Administration Institute of the FBiH Ministry of Justice, year XXXII, August-September, No. 7-8, Sarajevo, 2001, p. 20.

<sup>39</sup> For more details on decision-making in the executive and the legislative branches in BiH, see section 7 - Government effectiveness and accountability.

<sup>40</sup> Omer Hamzić, “*Izbori se - Rezultati općih izbora 2002*” [Elect Yourself - 2002 Election Results], *Građanički glasnik* No. 14, November 2002, p. 2, <http://glasnik.gracanica.net/arhiva/14/oh-zavicaj.htm>, 2 May 2005.

<sup>41</sup> Gojko Ivaniš, *Izborne formule* [Election Formulae], p. 1. <http://www.acobih.com.ba/local/izbori2002.htm>, 2 May 2005.

Table 6.8: Distribution of seats in the BiH Parliamentary Assembly, House of Representatives. 2002 General Election:

House of Representatives, BiH Parliamentary Assembly	From Federation BiH (total of 28 seats)	From Republika Srpska (total of 14 seats)
Party for Democratic Action (SDA)	9	
Party for BiH (SBiH)	5	
Croatian Democratic Union - Croat Christian-Democrats (HDZ-HD)	5	
Social-Democratic party BiH (SDPBiH)	4	
Democratic People's Union (DNZ)	1	
Bosnian Party (BOSS)	1	
New Croat Initiative (NHI)	1	
Pensioners' Party (SPU)	1	
Economic Block - Croat Democratic Union for Progress	1	
Serb Democratic Party (SDS)		5
Alliance of Independent Social-Democrats (SNSD)		3
Party of Democratic Progress (PDP)		2
Party for Democratic Action (SDA)		1
Socialist Party of Republika Srpska (SPRS)		1
Party for BiH (SBiH)		1
Serb Radical Party (SRS)		1

House of Representatives of the Federation BiH (98 members, elected directly by voters registered to vote in FBiH, of whom 73 members are elected in 12 multiple constituencies, and 25 seats are compensation mandates<sup>42</sup>):

Table 6.9: Distribution of seats in the House of Representatives, FBiH Parliament, 2002 General Election:

FBiH House of Representatives	Total of 98 seats
Party for Democratic Action (SDA)	32
Coalition Croatian Democratic Union - Croat Christian- Democrats - Croat People's Union (HDZ-HD-HNZ)	16
Party for BiH (SBiH)	15
Social-Democratic Party (SDP)	15
Bosnian Party (BOSS)	3
Democratic People's Union (DNZ)	2
New Croat Initiative (NHI)	2
Pensioners' Party (SPU)	2
Economic Block - Croat Democratic Union for Progress (HDU-Za boljitak)	2
Croat Peasants' Party (HSS)	1
Croat Christian-Democrats' Union (HKDU)	1
Alliance of Independent Social-Democrats (SNSD)	1
Civic Democratic Party (GDS)	1
Croatian Party of Rights (HSP)	1
Pro-European People's Party	1
Croat Rights Block	1
Liberal-Democratic Party (LDS)	1
Bosnian Patriotic Party (BPS)	1

<sup>42</sup> *Ibid.*, p. 2.

National Assembly of Republika Srpska (83 members, elected directly by voters registered to vote in RS, of whom 62 members are elected by 6 multiple constituencies, and 21 are compensation mandates<sup>43</sup>):

Table 6.10: Distribution of seats at the RS National Assembly. 2002 General Election:

National Assembly of Republika Srpska	Total of 83 seats <sup>44</sup>
Serb Democratic Party (SDS)	26
Alliance of Independent Social-Democrats (SNSD)	18
Party for Democratic Progress (PDP)	9
Party for Democratic Action (SDA)	6
Serb Radical Party (SRS)	3
Party for BiH (SBiH)	4
Democratic People's Alliance	3
Socialist Party of Republika Srpska (SPRS)	2
Social-democratic Party BiH (SDPBiH)	3
Democratic Party	1
Democratic Patriots' Party	1
Serb Patriots' Party SPAS	1
New Croat Initiative (NHI)	1
Serb People's Alliance	1
RS Pensioners' Party	1
Serb Radical Alliance "Dr. Vojislav Šešelj"	1
Democratic Party of Srpska	1
People's Democratic Party	1

The failed political pluralism of BiH is based on ethnocracy, practically manifested in form of parallelism of government, ethnic demarcation of territory and dominantly mono-ethnic structures of public administration at municipal, cantonal and entity levels. In the BiH Parliamentary Assembly, laws are often adopted only thanks to the High Representative's mediation, due to frequent blockages of the decision-making process. When ruling in coalitions, ethnic parties do not have the capacity for social compromise on strategic issues of state development of BiH, and ethnic political representatives survive on the idea of threat against their own people, and postpone the adoption of laws with no accountability for the pace of reform.<sup>45</sup>

In view of the fact that "the real initiators of all reforms in BiH are mainly the international institutions... there is not only 'passivism' of political parties in power and in opposition, but also the 'passivism' of legislative and executive structures on all levels of political organization in BiH."<sup>46</sup> Inefficiency of government is reflected primarily in the slow and untimely implementation of set policies, initiation of laws and other regulations, decision-making on issues within their competence. The results of state government<sup>47</sup> (i.e. the Council of Ministers) in the adoption or

<sup>43</sup> *Ibid.*

<sup>44</sup> <http://www.narodna.skupština.net/lat/stranke/stranke.php>

<sup>45</sup> See: Prof. Dr Mirko Pejanović, "Političke stranke i državnost Bosne i Hercegovine" [Political Parties and Statehood of BiH], in *Ljudska prava*, legal and political review, Year 5, vol. 1, Sarajevo, 2004, pp. 38, 39.

<sup>46</sup> Dr. Nurko Pobrić, "Političke stranke, država i društvo - nekoliko načelnih napomena" [Political Parties, State and Society - Key Aspects], in *Ljudska prava*, human rights reviews, year 4, vol. 1-2, Sarajevo, 2003, p. 18.

<sup>47</sup> Every new Parliamentary Assembly of BiH appoints a new Chairman of the Council of Ministers, and the Chairman of the Council of Ministers takes office upon approval of the appointment by the House of Representatives of



submission of laws for parliamentary procedure is poor, mainly due to the lack of political will and opposition of national interests, but also due to structural weaknesses of underdeveloped legal drafting capacities, and underdeveloped support structures which are not yet fully functional.<sup>48</sup>

Coordination between 14 governments, the number BiH actually has (one state government, two entity governments,<sup>49</sup> Government of the Brčko District and 10 cantonal governments) is far from optimal and is, to a large extent, burdened by the ethnic aspect of national parties, which are usually the ones forming the government at different levels.<sup>50</sup> Relatively frequent personnel changes caused by frequent elections (until 2002, every two years), constant party and ethnic combinations and removal from office by the High Representative - all this also burdens the work of governments at all levels in BiH. Thus, for example, in the period 1998-2000, in the FBiH government there were 14 changes of composition of the Government (appointments, removals from office and resignations), and eight in the period 2001-2002.<sup>51</sup>

### **6.3. How free are opposition or non-governing parties to organize within the legislature, and how effectively do they contribute to government accountability?**

#### **6.3.1. Legal framework**

Although opposition parties are not mentioned explicitly in the relevant legal framework in BiH, provisions on composition, organization and decision-making in legislatures in BiH, and working bodies and committees/ boards of the legislature - and in view of their party composition,

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the BiH Parliamentary Assembly. The Chairman of the Council of Ministers appoints ministers and deputy ministers, who take office upon approval by the House of Representatives. The Council of Ministers adopts acts within its competence by majority vote of all its members, on any issue or topic further elaborated and finally decided upon by the BiH Parliamentary Assembly, and all other issues are decided upon by consensus of the Council of Ministers, particularly on issues within its competence. See: Law on the Council of Ministers of BiH, *Official Gazette BiH* No. 30/03 and 42/03. For more details on decision-making in the executive and the legislative branch in BiH, see section 7 - Efficiency and accountability of government.

<sup>48</sup> Commission of The European Communities, *Report from the Commission to the Council on the Preparedness of Bosnia and Herzegovina to Negotiate a Stabilisation and Association Agreement With the European Union*, Brussels, 18 November 2003, COM(2003) 692 final, [www.ohr.int](http://www.ohr.int), p. 8, 20 August 2005.

<sup>49</sup> FBiH Government is appointed by the President of FBiH, with approval by both vice-presidents, and upon consultation with the Prime Minister or the candidate for the office. Appointment of FBiH Government requires a confirmation by majority vote of the FBiH House of Representatives. If a proposed government is not confirmed, the procedure is repeated. FBiH Government may decide if the meeting is attended by more than one half of its members, and it decides by majority vote of the members present, unless otherwise provided by the FBiH Constitution. FBiH Government is entirely accountable for its work to the FBiH Parliament. RS Government is elected by the National Assembly, at the proposal of candidate prime minister, or vice prime minister. Members of RS Government are accountable for their work to the RS national Assembly, which may give a vote of no confidence to the Government or its members, at the proposal of no less than 20 delegates, and the Government and each member may resign to the National Assembly. The Prime Minister may propose to the National Assembly to remove the entire Government. RS Government decides at meetings attended by a majority of its members. Decisions are made by majority vote of all members of the Government, other than collective resignation, acts proposing changes to the RS Constitution or draft final financial report, which are decided by a two-third majority vote of all Government members. See: Law on FBiH Government, *Official Gazette FBiH* No. 1/94 and 8/95; Law on Changes and Amendments to the Law on FBiH Government, *Official Gazette FBiH* No. 19/03; Law on RS Government, February 1997. <http://www.vladars.net/lt/zakoni/vlada.html>

<sup>50</sup> See: Commission of The European Communities, *Report from the Commission to the Council on the Preparedness of Bosnia and Herzegovina to Negotiate a Stabilisation and Association Agreement With the European Union*, Brussels, 18 November 2003, COM(2003) 692 final. <http://www.ohr.int>, 20 August 2005.

<sup>51</sup> See, for example, chronology of appointments and changes of FBiH Government following parliamentary approval after 1998, available at: <http://www.fbihvlada.gov.ba/bosanski/uvod%20stari.htm> and chronology of appointments and changes of Government, available at: <http://www.fbihvlada.gov.ba/bosanski/uvod2.htm>, 9 June 2005.



as well as in terms of relationship between the legislature and the executive, and the rights and duties of delegates - indicate what level of freedom opposition and non-ruling parties have to organize within the legislature and how capable are they of providing an effective contribution to government accountability.

Pursuant to the BiH Constitution, any legislative decision has to be adopted by both Houses of the BiH Parliamentary Assembly,<sup>52</sup> by a majority vote of those present and voting, and the majority of all the members elected to the House of Representatives make up a quorum. A decision proposed by the Parliamentary Assembly may be declared destructive for vital interests of the Bosniak, Croat or Serb people, by a majority vote of Bosniak, Croat or Serb delegates respectively. Such a decision requires agreement of the House of Representatives, adopted by the majority of respective Bosniak, Croat or Serb delegates present and voting. The House of Peoples of the BiH Parliamentary Assembly may be dismissed by a decision of the Presidency or the House itself, provided the decision on dismissal of the House is made by a majority vote, including the majority of delegates of at least two of the three peoples.

The BiH Constitution may be changed or amended by a decision of the Parliamentary Assembly, including a two-thirds majority of delegates present and voting at the House of Representatives. The BiH Presidency appoints the Chairman of the Council of Ministers, who comes into office following approval of the House of Representatives, and then appoints ministers, who also take office upon approval of the House of Representatives. Unless provided otherwise by the Constitution, decisions of the FBiH Parliament require adoption by both Houses, other than rules and declarations which the Houses adopt autonomously. Provisions of the FBiH Constitution prescribe that decisions are made by a simple majority vote of both Houses,<sup>53</sup> unless provided otherwise by the rules of procedure of the respective House or the FBiH Constitution. Amendments to the FBiH Constitution may be proposed by a majority vote of the House of Representatives or by majority votes of the Bosniak and the Croat members at the House of Peoples. A proposed amendment may be adopted: by a simple majority vote of the House of Peoples, to include majority of Bosniak and majority of Croat members respectively; by the House of Representatives, by a two-thirds majority vote.

Laws, regulations and acts related to vital interests will be adopted provided the majority of each caucus represented at the House of Peoples votes in favor of such laws, regulations or other acts. If there is agreement on amendments in the House of Peoples, such laws, regulations and acts are re-submitted to the House of Representatives for approval. If no agreement, and thus approval is reached by the House of Peoples, a joint committee is established, comprising representatives of both Houses. The joint committee is established on the basis of parity and it decides by consensus. The joint committee harmonizes the text of the law. If the text is agreed upon, the law is considered adopted. If no agreement is reached, the law is not adopted, and is then returned to the proponent for a new procedure. In such a case, the proponent may not re-submit the same text of the law, regulation or act.

Appointment of the FBiH Government requires an approval of the majority of the House of Representatives, and removal of the FBiH Government requires a majority vote of no confidence to the Government by both Houses. A cantonal legislature decides by a majority vote, and it prepares and approves the cantonal constitution by a two-thirds majority vote. A candidate for prime minister of the cantonal government is appointed by the speaker of the cantonal legislature, upon

<sup>52</sup> For party structure of the House of Representatives of the BiH Parliamentary Assembly, see 6.2.2.

<sup>53</sup> For party structure of the House of Representatives of the FBiH Parliament, see 6.2.2.

consultation with deputy speakers. The candidate for prime minister proposes other ministers. The ministers and the prime minister make up the cantonal government. The cantonal government is confirmed in office by a majority vote of the cantonal legislature. The cantonal government comes into office upon confirmation by the cantonal legislature. The government resigns if the cantonal legislature gives it a vote of no confidence at any time. Pursuant to provisions of the Constitution of Republika Srpska, the National Assembly decides by a majority vote of all the delegates, unless a particular majority is provided for by the Constitution. Each delegate has the right to propose laws, other regulations and general acts. Laws and other regulations adopted by the National Assembly and related to a matter of vital national interest of any of the constituent peoples, will come into force only after the adoption by the Council of Peoples. Provisions of the Statute of the Brčko District provide that the Assembly may adopt a valid decision if the session is attended by more than one half of the total number of delegates. Unless provided otherwise by the Statute, decisions are adopted by a simple majority vote of the delegates present and voting. Any delegate may act as the proponent of a law.

The issue of rights and duties of delegates, caucuses of peoples and caucuses of delegates, are further regulated by rules of procedure of BiH legislatures.<sup>54</sup> Thus, for example, Rules of Procedure of the RS National Assembly prescribes that a caucus of delegates at the National Assembly may be established by: delegates elected from one list, if there are no less than four of them; delegates elected from several lists who are forming an association of no less than four delegates on the basis of similar political aims. National Assembly delegates from the same party who do not constitute the prescribed minimum number, and who do not wish to associate with any other delegates, make up a group of delegates. The order of caucuses of delegates is determined by the number. Delegates' caucuses or groups propose members for working bodies proportionate to the number of delegates they have in the National Assembly. The composition of a working body will, as a rule, correspond to the party representation of delegates at the National Assembly. Professional, administrative and technical services are provided for delegates' caucuses by the General Services of the National Assembly. Secretary General of the National Assembly provides the caucuses with premises and other technical requirements, as available.

Within the competences of the National Assembly, a delegate has the right and duty to take initiatives, submit proposals and present delegates' questions. The Speaker of the National Assembly is obliged to call a session at the request of one-third of the delegates. Delegates, boards and other working bodies of the National Assembly, and the Government may propose changes and amendments to a proposed agenda. The National Assembly decides by a vote of the delegates in compliance with the Constitution, the law and the Rules of Procedure. At each regular session of the National Assembly, as the very first item on the agenda, delegates make oral presentations of questions for the Government in relation to its competences.

Rules of Procedure of the House of Peoples of the FBiH Parliament prescribe that there are three caucuses of delegates of the constituent peoples (peoples' caucuses): the Bosniak Caucus, the Croat Caucus and the Serb Caucus. As available, the House of Peoples provides: premises for the caucuses, sources of financing for their work at the House, documents and other information

<sup>54</sup> Rules of Procedure of the BiH Parliamentary Assembly, *Official Gazette BiH* No. 53/00.

Rules of Procedure of the House of Representatives, BiH Parliamentary Assembly, *Official Gazette BiH* No. 48/00. Rules of Procedure of the House of Peoples, Parliament of the Federation BiH (28 May 2003), FBiH Parliament, House of Peoples, Sarajevo, October 2003, [http://www.parlamentfbih.gov.ba/bos/dom\\_naroda/poslovnik/pdf/1.pdf](http://www.parlamentfbih.gov.ba/bos/dom_naroda/poslovnik/pdf/1.pdf) 25 July 2005.

Rules of Procedure of the RS National Assembly (edited text), *Official Gazette RS* No. 50/01 and 108/04.

related to the work of the House of Peoples, working bodies of the House, delivery of Official Gazettes of the Federation BiH and Official Gazettes of BiH, and administrative, technical and other services. Delegates at the House of Peoples may present initiatives for adoption or amendments to the Constitution, laws, other regulations and general acts of the House of Peoples, initiate discussions on enforcement of such acts, as well as issues of policy, present delegates' questions within the competence of the FBiH Parliament, and launch initiatives of interest for peoples and citizens. In their duties as delegates, they may also seek assistance from Professional Services of the House of Peoples.

### 6.3.2. Implementation and negative indicators

One of the reliable indicators of engagement and influence of opposition and non-ruling parties in the BiH legislature is the data on their presence in working bodies and committees/boards of the legislatures, where they do not exert major influence due to the method of selection for working bodies and their level of representation in the legislature, i.e. the number of delegates, but they are engaged in their work.

An illustration may be the party composition of parliamentary committees of the House of Representatives of the BiH Parliamentary Assembly.<sup>55</sup>

Table 6.11: Party composition of parliamentary committees of the House of Representatives of the BiH Parliamentary Assembly (opposition parties in italics):<sup>56</sup>

Constitutional-Legal Committee	9 members in total Members from opposition: 2	SDA: 2 members (chairperson and 1 member) Coalition HDZ-Christian Democrats: 2 members (deputy chairperson and 1 member) Party for BiH: 2 members SDS: 1 member <i>SPRS: 1 member</i> <i>1 independent (first deputy chairperson)</i>
Foreign Affairs Committee	9 members in total Members from opposition: 3	Coalition HDZ-Christian Democrats: 2 members (chairperson and 1 member) SDA: 2 members <i>SNSD-Milorad Dodik: 1 member (first deputy chairperson)</i> Party for BiH: 1 member SDS: 1 member <i>PDPRS: 1 member</i> <i>1 independent (SDU, formerly SDP)</i>
Trade and Customs Committee	9 members in total Members from opposition: 4	SDA: 2 members (first deputy chairperson and 1 member) <i>SNSD-Milorad Dodik: 1 member</i> Party for BiH: 1 member SDS: 1 member <i>DNZBiH: 1 member</i> <i>3 independent (second deputy chairperson - formerly NHI, and 2 members 1 formerly Ecc. Block - HDU)</i>

<sup>55</sup> Ruling parties: SDA, S BiH, HDZ-HD, SDS.

<sup>56</sup> Data received from the BiH Parliamentary Assembly on 4 October 2005.

Finance and Budget Committee	9 members in total Members from opposition: 2	SDA: 3 members (second deputy chairperson and 2 members) Coalition HDZ-Christian Democrats: 1 member (first deputy chairperson) <i>SNSD-Milorad Dodik: 1 member</i> <i>SDPBiH-Social-Democrats: 1 member</i> SDS: 2 members (chairperson and 1 member) Party for BiH: 1 member
Committee for Human Rights, Immigration, Refugees, and Asylum	9 members in total Members from opposition: 3	Coalition HDZ-Christian Democrats: 2 members (first deputy chairperson and 1 member) SDA: 2 members (chairperson and 1 member) <i>SPRS: 1 member (second deputy chairperson)</i> Party for BiH: 1 member SDS: 1 member <i>SDPBiH - Social-Democrats: 1 member</i> <i>BiH Pensioners' Party: 1 member</i>
Trade and Communications Committee	9 members in total Members from opposition: 3	SDS: 2 members (chairperson and 1 member) <i>SNSD-Milorad Dodik: 1 member</i> SDA: 1 member <i>SDP- Social-Democrats: 1 member</i> Party for BiH: 1 member Coalition HDZ-Christian Democrats: 1 member SDS: 1 member (chairperson) <i>BOSS-Bosnian Party: 1 member (first deputy chairperson)</i> <i>1 independent (formerly NHI)</i> <i>(second deputy chairperson)</i>
Administration Committee	9 members in total Members from opposition: 3	Coalition HDZ-Christian Democrats: 2 members (first deputy chairperson and 1 member) SDA: 2 members SDS: 1 member <i>SDPBiH- Social-Democrats: 1 member</i> Party for BiH: 1 member (chairperson) <i>SNSD-Milorad Dodik: 1 member (second deputy chairperson)</i> <i>1 independent (formerly Ecc. Block – HDU)</i>
Committee for Implementation of Gender Equality in BiH	9 members in total Members from opposition: 2	SDA: 3 members (second deputy chairperson and 2 members) <i>PDPRS: 1 member</i> Party for BiH: 2 members SDS: 1 member (first deputy chairperson) <i>SDPBiH- Social-Democrats: 1 member (chairperson)</i> Coalition HDZ-Christian Democrats: 1 member

Joint Committee for European Integration	12 members in total Members from opposition: 3	SDA: 3 members (chairperson and 2 members) HDZ: 3 members (first deputy chairperson and 2 members) <i>PDPRS: 1 member</i> Party for BiH: 1 member <i>SDPBiH- Social-Democrats: 1 member</i> <i>SNSD-Milorad Dodik: 1 member</i> SDS: 2 members
Joint Committee for Defence and Security Policy and Supervision over Defence and Security Structures at the level of BiH	12 members in total Members from opposition: 2	SDS: 2 member(chairperson and 1 member) HDZ: 2 members Coalition HDZ-Christian Democrats:1 member SDA: 4 members Party for BiH: 1 member <i>PDPRS: 1 member</i> <i>1 independent</i>
Joint Security and Defence Committee for Supervision over Intelligence and Security Agency	12 members in total Members from opposition: 5	<i>SDP: 1 member (chairperson)</i> SDA: 2 members (first deputy chairperson and 1 member) <i>SRS: 1 member (second deputy chairperson)</i> Party for BiH: 2 members <i>SNSD-Milorad Dodik: 1 member</i> HDZ: 1 member Coalition HDZ-Christian Democrats: 1 member <i>PDPRS: 1 member</i> <i>1 independent (SDU, formerly SDP)</i>

Data received from some of the opposition parties usually indicates a lack of adequate possibilities of media presentation,<sup>57</sup> difficulties for small parties to win acceptance of their views in parliaments,<sup>58</sup> as well as to find potential coalition partners with joint program points.<sup>59</sup> A number of opposition parties believe that as opposition/non-ruling parties they have no influence over the government, but that they do not face major restrictions, as assembly delegates are free to present their opinions and advance interests of their parties.<sup>60</sup> What they do identify as a difficulty is poor media representation, conditioned by their political affiliations, particularly in pre- election campaign periods, when aggressive action of the largest parties comes into play.<sup>61</sup>

Activities of opposition parties are also restricted considerably by financial resources, as quite a few of them have no major income from the budget, as they win few seats at elections. Most of the opposition parties have limited budgets and believe this to be a major obstacle to greater media coverage of their activities. There are cases of opposition parties generating considerable non-budget income from, for example, real estate rental, etc.<sup>62</sup> Some opposition parties and politicians try to overcome the handicap of poor media coverage and poor financial resources by public and parliamentary addresses and by advocating policies different from the ruling ones, hoping that this would facilitate their political promotion.

<sup>57</sup> E.g. People's Party Work for Progress and Croatian Democratic Union.

<sup>58</sup> E.g. New Croat Initiative.

<sup>59</sup> E.g. Croat Party of Rights BiH.

<sup>60</sup> E.g. Pensioners' Party RS.

<sup>61</sup> E.g. Liberal-democratic Party.

<sup>62</sup> Overview of party financing presented in 6.6.2.

## **6.4. How fair and effective are the rules governing party discipline in the legislature?**

### **6.4.1. Laws**

Analyses of the legal framework regulating this area indicate that the issue of party discipline is mainly left to statutes and rules of the parties themselves. This area is treated indirectly by the BiH Election Law, which prescribes that the seat is that of an elected holder and not of the party, coalition, or independent candidate list which proposed them. Should the holder of the seat leave the party, coalition or independent candidate list during the term of office, he/she becomes an independent councillor or delegate.<sup>63</sup>

Political party statutes<sup>64</sup> define conditions for acquiring membership, rights of duties of members, party officials and holders of elected office at different levels of governance in BiH, disciplinary measures applicable to members and party officials, as well as termination of party membership. With more or less harmonised membership conditions (legal age or at least 16, full mental capacity, BiH citizenship, acceptance of the statute and program of the party, and signing of entry documents), there are also explicit restrictions, such as that a member may not be member of another party, nor a person who has publicly damaged the party's reputation or worked against the aims or interests of the party. Special procedures and liabilities are prescribed for candidacy and performance of party members when elected into office in BiH government of any level.

In cases of violations of duties related to party membership, all members are subject to disciplinary responsibility. Disciplinary responsibility of members is invoked on the basis of violation of duties, principally including the duty of party members to act in compliance with the program, statute and decisions of party bodies, to act so as to protect the party's interest and reputation, to pay membership fees and to take part in activities of the party and its bodies he/she has been elected to. Disciplinary responsibilities of the members, and/or appeals against measures delivered, are usually decided upon by the party's court of honour. Disciplinary measures for cases of violations of duties are usually warnings, reprimands, public warnings prior to removal, removal from the party (unconditionally, or a conditional suspension) and removal from records, removal from all party duties. Measures depend on the seriousness of the breach. Some party statutes also state explicitly that in-party disputes are to be resolved by mutual understanding and agreement, and failing that, a disciplinary procedure. In most parties, disputes between party members and bodies are decided upon by the party's court of honor. As for any in-party disagreements related to party policies and actions, as well as factions, secession and establishment of new parties, some party statutes contain different provisions.

### **6.4.2. Implementation and negative indicators**

Following the analyses of several cases of delegates elected from party lists and declaring themselves independent,<sup>65</sup> one of the conclusions of the BiH Election Commission presented at a

<sup>63</sup> BiH Election Law, *Official Gazette BiH* No. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, and 20/04, 25/05, Article 1.9.

<sup>64</sup> See, for example: Statue of the Socialist-Democratic Party BiH (SDPBiH) prescribes that SDP candidates and holders of public office are obliged to build and maintain their personal, as well as public and political integrity and reputation of SDP. SDP delegates establish an SDP caucus in order to harmonise their work, take positions and maintain parliamentary action, and members are removed from SDP if they apply as independent candidates, switch parties or become independent delegates or councillors, or accept nomination by another party for office in executive or legislative bodies.

<sup>65</sup> For example there are currently five independent delegates in the House of Representatives of the BiH Parliamentary Assembly. From: List of Delegates of the House of Representatives, BiH Parliamentary Assembly, elected at elections on 5 October 2002, data made available for this study, 4 October 2005.



professional conference on the 2004 local elections was that such provisions of the BiH Election Law did grant too wide a freedom to office holders to *abuse their office by trading* their seat after the election in an undemocratic way, thus deceiving the will and confidence of the voters who had given their vote to a particular party's list.

One of the best known examples of a dispute between the candidate and the original party of the presidency of the New Croat Initiative (NHI) to remove Ivo Lozančić (member of the House of Representatives of the BiH Parliamentary Assembly) from the party, on account of his "long-term destructive action in party bodies, and public self-proclamation as an independent member of the House of Representatives of the BiH Assembly, although he received the seat on the basis of NHI compensation votes, rather than directly on the party list." The NHI presidency approached the BiH Election Commission with a request to re-examine this case, and to award Lozančić's office to the next candidate from the NHI list. However, pursuant to provisions of the BiH Election Law, the Election Commission decided to award the seat to the elected candidate, rather than the party.<sup>66</sup>

As this area is not regulated in detail by law, political parties try to deal with in-party discipline through their statutes. However, there is no possibility of major influence on delegates elected from party lists, due to consistent application of the aforementioned provisions by the BiH Election Commission. Therefore, parties are very careful in their use of sanctions they are allowed to have in their statutes, as there is always a possibility for the delegates receiving sanctions against them to *become renegade* and become independent or join another party, taking their seat with them. Thus, the Municipal Board of the Party for BiH (SBiH) Banja Luka requested Milosava Jakovljević to be removed from the party because "Jakovljević, a delegate from SBiH, voted in favor of the RS Government led by Pero Bukejlović, which is contrary to the position of the party that it would not support any government led by SDS."<sup>67</sup> At an extraordinary session of the Executive Council of SDA Una-Sana Canton, held after a vote of no confidence had been given to the cantonal government, including three votes by delegates from this party why thus breached the party position on the vote of confidence to the Government of the Canton, "it was decided that a measure of *warning prior to removal from the party* should be issued against Atif Hodžić, Enisa Duraković, and Emir Cinac."<sup>68</sup>

Information on disciplinary sanctions/measures delivered by parties in the parliaments made available for this survey:

In the Party for Democratic Action (SDA), in the period 2001-2005, first-instance disciplinary bodies issued 13 measures of removal from the party and one reprimand, all of which were appealed before the SDA Court of Honour as the second-instance body. First-instance body did deliver more measures, but as they were not appealed against, the Court of Honour did not act on them. The Statute of NHI regulates that disciplinary measures are applied only in extraordinary cases of breaches of the Statute and Programme of the party and have been used very rarely. Disciplinary measures have also been used very rarely in the People's Party Work for Progress, as

<sup>66</sup> NHI Main Board (statement) "Ivo Lozančić isključen iz stranke" [Ivo Lozančić removed from the party], *Oslobodenje* daily, author not cited, 18 March 2005, p. 3. <http://www.idoc.ba>. Data confirmed by NHI Main Board on 5 October 2005.

<sup>67</sup> Dževad Osmančević, "Zatraženo isključenje Milosave Jakovljević iz SBiH" [Request to remove Milosava Jakovljević from SBiH] V.P., *Nezavisne novine* daily, 17 February 2005, p. 8. <http://www.idoc.ba> "As Jakovljević deviated from party position, we request her removal from the party, because we do not want to be involved in political trade-offs. Although we have had significant offers, we are not interested in buying votes," emphasized Osmančević, head of SBiH caucus and leader of the Banja Luka council of the party.

<sup>68</sup> "Vanredna sjednica stranačkog vrha, SDA kaznila neposlušne poslanike u Skupštini USK" [Extraordinary Meeting of SDA Party Leadership Sanctions Disobedient Cantonal Delegates], S. Džanić, *Dnevni avaz* daily, 20 July 2005, p. 2. <http://www.idoc.ba>

there has been no need to, other than removal from office due to failure to implement party policy. In the BiH Croatian Democratic Union there has been no need to use disciplinary measures. In the BiH Pensioners' Party, disciplinary measures have been used against members who tried to demonstrate separatist interests, though such cases have been few. In the past several years, the BiH Liberal Democratic Party resorted to disciplinary measures only once. The Court of Honour of the BiH Croat Party of Rights (HSP BiH) sanctioned several party members on four occasions, on the basis of breaches of the Statute.

## **6.5. How far are parties effective membership organizations, and how far are members able to influence party policy and candidate selection?**

### **6.5.1. Laws**

The Law on Political Organisations in BiH prescribes that a political organization must have a statute and that the statute regulates, inter alia, internal organization of the party, conditions and procedures for entry into and termination of membership, as well as rights, duties and responsibility of members of a political organization.<sup>69</sup> All members of a party have an active and passive election right - to elect and be elected to party bodies.<sup>70</sup> Decisions are usually made by simple majority of the members present, and voting is, depending on the election and pursuant to provisions of individual party statutes, mainly secret, though in some situations public. Particular conditions are prescribed for membership in governing, executive, supervisory or advisory bodies of the parties, and are related to the process of nomination, the actual voting and election, and the performance in the office assigned, responsibilities and termination. The assemblies or main board/s of the central or local bodies of the party propose and elect leading officials, and election based on the number of votes won (usually the simple majority of the members present and with the right of vote) is conformed by the party president or presidency.

Some party statutes contain explicit provisions aimed at supporting democratic operation and membership activity. For example, SDPBiH grants the right of public presentation of minority opinions. A minority opinion may not be in contravention of the SDPBiH Program. SDPBiH does not allow a minority opinion to be institutionalized in an organized form, i.e. in faction activity. In SNSD and PDPRS, a minority or an individual disagreeing with majority decisions have the right to maintain their opinion, to advocate it and defend it, and to request a decision they disagree with to be re-examined, but they are obliged to implement a majority decision. SDP Statute allows for the possibility to organize a survey among the members and a general discussion, in order to determine the will of the membership and strengthen their influence over policies and activities of SDPBiH on all key issues of policy and development. Pursuant to their statutes, relationships in SNSD and PDP are based on the principles of democracy, freedom of political thought an initiative, equality and mutual respect, constant and open dialogue, accountability of party leadership and members, respect for and implementation of democratically adopted decisions. Statute of the Party for BiH (SBIH) pre-

<sup>69</sup> Law on Political Organisations, *Official Gazette SRBiH* No. 27/91, Article 14.

<sup>70</sup> According to party statutes, party bodies include, as a rule:

- Assembly/convention - as the highest decision making body, usually elected on the principle of delegates, deciding in the presence of simple majority of members, and simple or two-third majority vote;
- Main Board - the highest body between two assemblies/conventions, elected by the assembly;
- Presidency/president and vice-presidents - executive and political body elected and removed by the assembly,
- Supervisory Board - an independent body supervising financial affairs of the party;
- Court of Honour - decides on responsibilities of members and officials of the party;
- in some cases, advisory, political, administrative-technical councils, as well as special interest-based associations or forums, such as: women, youth, trade unions, farmers.

scribes that internal organization of SBiH is established on the principles of organizational unity, multi-level organization, territorially-based forms of organization, and democratic organization allowing full involvement of the members in designing and implementing policies.

In addition to the basic right of members to elect and be elected, most party statutes recognize the right of members to submit to party bodies any initiative, proposal, or opinion, on any issues related to program orientation, to take part in proposing, setting, and implementing general party policy, to take part in activities organized by the party, and to execute duties entrusted by party bodies, to be informed about the work of the party, about general policy implementation and financial affairs of the party, and to initiate issues related to accountability of party officials before party bodies.

### 6.5.2. Implementation and negative indicators

Judging by data from media reports and data collected from political parties related to good membership response to sessions, assemblies, regular and extraordinary conventions,<sup>71</sup> their participation in in-party elections and nominations of party representatives for public office in BiH, participation in discussions, presentation of proposals and critique of officials and their work, the interest of party members for the work of their parties is at a very high level. However, there is notably more engagement of those members who are already party officials, rather than *ordinary* members, who are mainly *lobbied* and there to give support to this or that candidate, or this or that party option.

Data on in-party politics obtained from political parties for this survey indicate active membership engagement in decision-making, party work, election of party officials, and party policy design. In practice, almost as a rule, party conventions and elections are accompanied by numerous speculations and media reports, as well as statements by party officials and members on irregularities in in-party elections and nominations of members for public office. Objections and accusations mainly refer to *in-party lobbying*, presentation of false information about candidates, manipulation of membership, vote counting fraud, and rigging media campaigns.

A convention of the BiH Social-Democratic Party (SDP) introduced a novelty, that candidates for party president organize election campaigns and visit municipal and cantonal boards lobbying for themselves, i.e. their program. During and after the last convention, there were various in-party disputes regarding cantonal positions and staffing, and a removed cantonal official was competing as party president at the convention.<sup>72</sup> These disputes resulted in resignations and removal from membership of several leading party members, some of whom later decided to establish new parties of similar social-democratic orientation. At the last assembly of the HDZ BiH, there were serious disagreements between in-party factions, and after the victory of Dragan Čović, who became the new party president, his competitor Božo Ljubić expressed his doubts regarding the regularity of elections, and the data he presented to the public question even the regularity of the 9<sup>th</sup> convention of HDZ BiH.<sup>73</sup>

<sup>71</sup> An illustration of frequency of meetings and possibility of participation of members and bodies in the work and policy of the party and their influence, is that, for example, from the 3<sup>rd</sup> convention of SDA until its 4<sup>th</sup> convention (more than three years and seven months), the party presidency had 39 regular and 10 extraordinary sessions, the main board had 12 regular, 2 topical sessions (employment and refugee return) and one ceremonial session. The period included one party convention, and a Youth Association convention. Data available on <http://www.sda.ba>, July 2005.

<sup>72</sup> See: Nataša Krsman, “*Lideri i stranke*” [Leaders and Parties], *Nezavisne novine* daily, 7 June 2005, p.7, [www.idoc.ba](http://www.idoc.ba).

<sup>73</sup> Ljubić based his claims on several elements: the quorum was changed at least three times, and eventually it turned out that more than 100 percent of accredited members actually voted; ballot papers included three names, although Ivan Madunić had withdrawn his nomination in favour of Ljubić; preparation of the assembly was partly barely

## 6.6. How far does the system of party financing prevent the subordination of parties to special interests?

### 6.6.1. Laws

Financing of political parties and election campaigns in BiH are regulated by the BiH Election Law, Chapter 15 - Financing of election campaigns,<sup>74</sup> Law on Financing of Political Parties,<sup>75</sup> Law on Political Organisations,<sup>76</sup> and rules on annual and periodic financial reports by political parties (from 2004). This area is, of course, regulated by party statutes, which must contain provisions on party finances. The Law on Financing of Political Parties<sup>77</sup> prescribes that a political party may secure funds from membership fees, contributions by natural or legal persons, revenues from property owned by the party, BiH budget for financing of parliamentary groups, as well as entity budgets and their lower level units, in compliance with entity legislation. Another source of financing is the profit form companies owned by the parties, with a proviso that such companies may only be in the fields of culture or publishing. Annual revenues from property owned by the party and profits from companies owned by the party may not exceed 20% of the total annual revenue of the party, and if it does, the party must, no later than 30 days following the submission of a financial report, transfer the amount exceeding the required 20% to one or more charity organizations.

The entire amount of one-off contributions to parties by natural or legal persons may not exceed eight average salaries according to official data from the BiH Statistics Agency (490 KM in 2005) in one calendar year. This amount may be donated no more than once per year. Any contribution exceeding 100 KM must be entered into the financial report, even when such a contribution is made by a member or a group of members. Provisions of the Law on Financing of Political Parties also specify strictly prohibited activities, and regulate financial reporting control for political parties, their accountability and competences of the BiH Election Commission to issue sanctions. State, entity, and cantonal authorities, municipal and town community bodies, public institutions, public enterprises, humanitarian organizations, companies with strictly non-profit activities, religious communities, companies with public capital of no less than 25%, and enterprises providing public services on the basis of government contracts, may not finance political parties.<sup>78</sup>

Parties are obliged to submit regular financial reports to the Election Commission (until 31 March of the following calendar year), as well as special reports for election campaign periods, and additional reports when requested by the Election Commission.<sup>79</sup> In the report, a party must present all its available cash, all its revenues and expenditures, identity of persons or sources of payment or contribution in-kind, total amount of all debts and payments, amount and type of pending liabilities and debts. All candidates for public office in BiH must submit a signed statement on their property status, including data on property status of closest family members. The

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within, and partly outside the statutory framework: a number of delegates were appointed in breach of the statute - through a commission, i.e. by Ljubić's opponent, rather than through regular election' a number of members of the former presidency made arbitrary decisions as to which cantonal youth organization worked well and which did not, and decided on their delegate quota on that basis; from the onset, there were more than 100 delegates practically delegated in such a fabricated procedure - according to the defeated Božo Ljubić. Emil Karamatić, "Božo Ljubić: Ja sam pobjednik" [I am the winner], *Slobodna Dalmacija* daily, 7 June 2005, <http://www.slobodnadalmacija.hr/20050607/bih01.asp>, 12 August 2005.

<sup>74</sup> BiH Election Law, *Official Gazette BiH* No. 23/01,7/02,9/02,20/02, 25/02,4/04,20/04,25/05.

<sup>75</sup> Law on Financing of Political Parties, *Official Gazette BiH*, No. 22/00.

<sup>76</sup> Law on Political Organisations, *Official Gazette SR BiH* No. 27/91

<sup>77</sup> Law on Financing of Political Parties, *Official Gazette BiH* No. 22/00, Article 3.

<sup>78</sup> Law on Financing of Political Parties, *Official Gazette BiH* No. 22/00, čl.8.

<sup>79</sup> Law on Financing of Political Parties, *Official Gazette BiH* No. 22/00, Article 11.

BiH Election Commission makes such reports available to the public.<sup>80</sup> The BiH Election Commission has the power to examine any action not complying with the Law, to initiate an investigation or to take appropriate measures, autonomously or on the basis of an objection filed, and to deliver sanctions. Should the BiH Election Commission note any breaches of the Law or any irregularities in financial reports, it may deliver sanctions, including removal of candidates from election lists, or fines exceeding 10,000 KM.<sup>81</sup> On 10 March 2005, in compliance with the Law on Financing of Political Parties, the BiH Election Commission established its Party Financial Audit Service.<sup>82</sup>

### 6.6.2. Implementation and negative indicators

It has become evident in practice that the area of party financing is one of the most serious problems in political life of BiH. In addition to the BiH Election Commission, this problem is regularly dealt with by the High Representative for BiH, who has used his powers in several instances to issue sanctions against political parties and their members who were proved to have participated in unlawful financial transactions. The most recent case was the OHR intervention in the case of a loan from *Privredna banka Srpsko Sarajevo* which SDS secured unlawfully. Thus, as part of its overall effort, at its session held on 9 June 2005, the BiH Election Commission decided to fine those political parties which had breached the Law, as follows:<sup>83</sup>

Table 6.12: Fines against political parties issued by the Election Commission in 2005.

Fine amounting to 3,000 KM per party for failing to submit annual and post-election financial reports, as well as failing to submit property information	17 parties
Fine amounting to 2,000 KM per party for failing to submit annual and post-election financial reports	5 parties
Fine amounting to 2,000 KM per party for failing to submit annual and financial reports and property information	4 parties
Fine amounting to 1,000 KM per party for failing to submit annual financial reports	4 parties
Fine amounting to 1,000 KM per party for failing to submit property information	9 parties

Source: BiH Election Commission, Public statements, [www.qry.izbori.ba/Saopstenja.asp](http://www.qry.izbori.ba/Saopstenja.asp).

The BiH Election Commission publishes on its Internet site a database containing financial reports by political parties, allowing public insight into overall and individual revenues and expenditures, loans, borrowings, debts, bank accounts and petty cash for 69 political parties, as well as an overview by year, and annual, pre-election, and post-election reports that parties submitted to the BiH Election Commission. Vice-President of the BiH Election Commission, Lidija Korać, stated for *Nezavisne novine* daily in September 2004 that certain illogical items were noted when data was being entered into the new data base, indicating possible irregularities. In the case of one political party, it was noted that some of the municipalities paid flat rate reimbursements for their

<sup>80</sup> BiH Election Law, *Official Gazette BiH* No. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, and 20/04, 25/05, čl.15.1, 15.5 and 15.7

<sup>81</sup> See: Law on Financing of Political Parties, *Official Gazette BiH* No. 22/00, čl.13.

<sup>82</sup> BiH Election Commission, Public Statements, Sarajevo, 11 April 2005.

<http://www.qry.izbori.ba/Saopstenja.asp?Datum=11.4.2005>, 9 June 2005.

<sup>83</sup> BiH Election Commission, Public statements, Sarajevo, 9.6.2005, [www.qry.izbori.ba/Saopstenja.asp](http://www.qry.izbori.ba/Saopstenja.asp).



assembly members directly to party accounts, rather than to the assembly members who should receive them as persona income.<sup>84</sup>

As for financing from the state budget, on the basis of data from the BiH Election Commission, an amount of approximately 14 million KM was given to political parties in 2003, of which 90% of the money went to ten parties.<sup>85</sup> The Election Commission also published a list of parties receiving one million KM or more from the budget:

1. Most of the budget allocation goes to SDA, whose total revenue for 2003, amounting to 3.1 million KM, included 2.7 million KM from the budget, followed by
2. Party for BiH, with approximately 1.5 million KM,
3. HDZ with 1.2 million KM, and
4. SDS with 1.08 million KM.

1. Of total revenue of 848,000 KM, SNSD received 740,791 KM from the budget.
2. Of total revenue of 1,094,000 KM, SDPBiH as the strongest opposition party in FBiH received 349,000 KM from the budget, and reported 504,000 KM of its own revenue.
3. Of 331,000 KM, NHI received 303,000 KM from the budget.
4. PDP received 295,000 KM.
5. In addition to 9,500 KM in membership fees, the Pensioners' Party received 185,000 KM from the budget.
6. Of a total of 142,000 KM, DNSRS received 129,000 KM from the budget.
7. Of total revenue of 76,700 KM, Serb Radical Party RS received 75,000 from the budget.
8. Of total revenue of 78,300 KM SPRS received approximately 70,000 KM from the budget.
9. Of total revenue of 44,000 KM, SDU received 35,800 KM from the budget.
10. Of total revenue of 72,000 KM, RS Pensioners received approximately 51,000 from the budget.
11. Of total revenue of 57,000 KM, DPS Predrag Radić received 54,000 from the budget.

Parties leading the list of those who receive revenue mostly or only from the budget include:

1. BiH Patriotic Party (BPS) with approximately 103,000 KM from the budget and less than 2,000 KM from other sources;
2. BOSS received 88,100 KM from the budget and 193 KM from other sources;
3. LDS received 39,500 KM from the budget and approximately 3,000 KM from other sources;
4. ProEns, which transformed into the European Environmental Party, received 39,500 KM from the budget only;
5. Croat Christian-Democrats received 46,700 KM from the budget;
6. HSS received 58,900 KM from the budget;
7. HKDU received 50,000 KM from the budget;
8. of a total of approximately 17,000 KM, the Bosniak Party of Rights received 15,600 KM from the budget;
9. in 2003 the Serb Youth Party received only 1,080 KM, from the budget only.

<sup>84</sup> R. Čengić, "Na Internetu podaci o finansiranju partija" [Internet Info on Party Financing] *Nezavisne novine* daily, 18 September 2004, p. 13, [www.idoc.ba](http://www.idoc.ba).

<sup>85</sup> According to the Law on Financing of Political Parties in BiH, budget allocations for political parties are distributed so as to distribute 30 percent evenly among those working in the parliament, and the remaining 70 percent are distributed on the basis of seats won.

<sup>86</sup> R. Čengić, "Najviše novca iz budžeta za SDA i Stranku za BiH" [Most of the Budget Money for SDA and SBiH] *Nezavisne novine* daily, 9 May 2005, p. 6, [www.idoc.ba](http://www.idoc.ba).



During 2003, the People's Party Work for Progress *attained* a total revenue of 1.7 million KM, of which some 64,000 KM from the budget and approximately 1.5 million KM from contributions by natural persons as anonymous donors, in individual amounts from 3,000 to 4,000 KM. Voluntary contributions appear in the SDA listing as well.<sup>86</sup>

An illustration of the budget financing of political parties is also the fact that on the basis of a Decision by the FBiH Government on allocation of funds titled "Transfer for parliamentary parties", a total of 2,000,000 KM was allocated for this purpose from the FBiH budget for 2005,<sup>87</sup> most of which went to:

*Table 6.13: Overview of allocation of FBiH budget funds.*

Party for Democratic Action ( SDA)	386,105. 00 KM
HDZ, Christian-Dem., HNZ Coalition:	
HDZ	266,105.00 KM
Christian-Democrats	195,777.00 KM
HNZ	70,328.00 KM
BiH Social-Democratic Party	250,105.00 KM
Party for BiH	242,105.00 KM
Union of Independent Social-Democrats Milorad Dodik	74,106.00 KM

According to conclusions reached at the professional conference on the 2004 local elections,<sup>88</sup> political parties receive most of their revenues from two sources: from budgets and donations. Budget financing of political parties is totally transparent, and financing by donations is partly transparent, if at all. Outside the official data, there is the insufficiently researched segment of 'grey economy' directed by political parties, particularly the ruling ones, with questionable participation of managerial personnel holding office in the executive in decisions made on financing and donations for different legal persons, often accused by the media to be laundering money in favour of the ruling parties.

## **6.7. To what extent does support for parties cross ethnic, religious and linguistic divisions?**

### **6.7.1. Indicators**

Constitutional provisions and legal framework in BiH guarantee human rights and freedoms, prohibit discrimination, and promote freedom of association, including political association, and the "ethnic principle is the dominant determination of constitutional procedures and the functioning of state authority,"<sup>89</sup> reflecting considerably on the party system and the nature of political parties in BiH, and working in correlation to them.<sup>90</sup> It is evident from the name, statute, program, and ethnic composition of members of most political parties that if not only, then dominantly oriented towards a single national group and promotion and protection of its own interests and identity. The largest ruling parties in BiH: Croatian Democratic Union, Party for Democratic Action

<sup>87</sup> FBiH Government. Decision on allocation of budget funds, "Transfer for parliamentary parties for 2005". <http://www.fbihvlada.gov.ba/bosanski/zakoni/2005/odluke/51hrv.htm>, 2 May 2005.

<sup>88</sup> Local Elections 2004 - Lessons Learned, conference conclusions, 26-28 April 2005, Mt. Jahorina, BiH Election Commission and Association of BiH Election Officials.

<sup>89</sup> According to: Edin Šarčević, *Ustav i politika* [Constitution and Politics], Sarajevo, 1997, p. 53.

<sup>90</sup> See preceding sections.

and Serb Democratic Party, are mainly with mono-ethnic membership, though the situation is similar with opposition parties, even those of formally civic orientation. This statement arises from data on entity and ethnic affiliation of members, supplied by the parties for this survey

Table 6.14: Overview of party members by entity and ethnic affiliation.

Political party	Total number of registered members	Entity affiliation of members: from the Federation BiH	Entity affiliation of members: from Republika Srpska	Ethnic affiliation of members
Croatian Democratic Union (HDZ)	66,352	79%	21%	92% Croats 4% Bosniaks 2% Serbs 2% Others.
New Croat Initiative (NHI)	3,500	approx. 70%	approx. 30%	Croats most numerous, though in urban areas (e.g. Sarajevo, Tuzla, Travnik, Zenica) membership structure includes Bosniaks, Serbs, Jews, etc.
BiH Pensioners' Party	approx. 60,000	/	/	Most of the members are Bosniaks, but ethnic representation in party bodies corresponds to the national structure of FBiH Population
Social-Democratic Party BiH	47,336	84,62%	15,38%	/
People's Party Work for Progress	22,300	60%	40%	42% Bosniaks 35% Serbs 20% Croats 3% Others
Serb Radical Party	14,000		100%	100 % Serbs
Croat Party of Rights (HSP) BiH	12,000	/	/	78% Croats 20% Bosniaks 2% Serbs
Liberal-Democratic Party BiH	2,160	92%	8%	85% Bosniaks 7% Bosnians 5% Serbs 2% Croats 1% Others

Civic Democratic Party (GDS)	approx. 1,600	/	/	60% Bosniaks 15% Croats 15% Serbs 10% Others
Croat Democratic Union (HDU)	1,768	100 %		100 % Croats
Croat Christian-Democratic Union (HKDU) BiH	2,000	100%		99% Croats
Socialist Party of Republika Srpska	approx. 15,000	5%	95%	80% Serbs 10% Bosniaks 10% Croats
RS Pensioners' Party	approx. 11,300	/	/	Serbs the most numerous, few Croats, Bosniaks, Hungarians, Slovenians, Macedonians, etc.

It is evident that if not most parties are if not completely (such as Serb Radical Party and Croatian Democratic Union), then dominantly mono-ethnic in membership, and their members come from one entity. It is particularly important that such statistics are not relevant for the so-called national, i.e. single-ethnicity parties, but also for political parties whose programs are focused on the citizen as an individual rather than a member of an ethnic group. Minorities in BiH (Jews, Hungarians, Slovenes, Macedonians, listed as “others” in some parties) are very poorly represented in party membership. A particular problem is an almost total exclusion of the Roma, the most numerous minority in BiH, from political life and from membership in political organizations.

As for religion in BiH, this issue is almost identical to the issue of ethnic affiliation, as the three constituent peoples are also members of separate religious groups (Bosniaks - Muslims, Croats - Catholics, Serbs - Orthodox Christian). National political parties, particularly the three ruling ones: SDA, HDZ, and SDS, are focused on and closely cooperate with religious communities in BiH, on issues including *political ones*, particularly at election time.<sup>91</sup> Parties of civic or formally civic orientation are also, in certain situations, particularly during pre-election campaigns, prone to flirting with religious organizations. Parties immune to religious influences note the other extreme, i.e. near-militant atheism and anti-religious program orientation. This is particularly noted in some political parties which rose from a block of once ruling socialist and communist parties.

<sup>91</sup> On the basis of an interview with Prof. Dr. Nurko Pobrić, Professor of Constitutional Law at the Law School, “Džemal Bijedić” University in Mostar, on 10 November 2005, in Mostar.

**6.8. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?**

The area of political organization and association through political parties is constantly under major scrutiny of the public which, according to most public poll surveys, believes that party work is not adequately regulated and subject to different forms of corruption. Constant scandals and problems appearing in the surface, particularly in pre-election periods, lead to a conclusion that much more needs to be done in order to improve the situation in this segment of public life. However, it should be noted that in the post-war period, BiH has taken considerable steps forward in this area, and further progress has the willingness and support both of the public and of political institutions. Such progress is reflected primarily in taking ownership of elections from the international community and adoption of relevant laws and regulations, regulating the field of action of political parties in political life in BiH. Consistent application of the regulations successfully terminated the possibility of cheating in issues of conflicts of interest by elected officials, and considerable improvement has been achieved in controlling cash flows, budget transparency, and financing of political parties.

Generally, problems in political organization in BiH may be listed under several broadly defined categories: 1) the problem of financing of political parties and possibilities for abuse; 2) the problem of public conduct of political parties, especially in the pre-election period, and accountability of parties and their leaders for violations of regulations; 3) the problem of media coverage and presentation of activities of political parties, i.e. their relationship with the media; 4) the problem of ensuring in-party discipline, i.e. the problem of 'seat trading' by elected officials; 5) the problem of ethnic and religious exclusivism of the parties.

The problem of financing of political parties, i.e. how they spend funds at elections, is also noted in the conclusions of the professional conference on the 2004 local elections, recommending measures to decrease campaign costs, to establish and strengthen the Party Financial Audit Service, and to increase transparency of contributions and donations. The financial audit and full implementation of the Law on Financing of Political Parties strive towards greater transparency in disbursement of budget funds allocated for this purpose. The plan includes a reduction of per-voter campaign cost from a maximum of 1 KM per voter, to a maximum of 0.5 KM per voter (reduced at lower levels of governance). Moreover, parties are obliged to submit regular annual financial reports to the BiH Election Commission, as well as special reports for election campaign periods, and additional reports upon request of the Election Commission. All the candidates for elected office in BiH are obliged to fill out the so-called property card, which includes data on property status of their immediate family. The BiH Election Commission makes all this data available to the public.

As for the conduct of parties in public life, particularly during election campaigns, the BiH Election Commission adopted the Code of Conduct for political subjects in pre-election campaigns, regulating in detail all aspects of work of parties and their members. Even from before, the Election Commission has had the right to sanction parties and individuals by removing names from candidate lists and by issuing fines. Removal of candidates from election lists, first used by the Election Appeals Sub-commission at the 1996 elections, proved to be particularly effective to *discipline* political parties, which do not wish to risk losing their key personnel in this way.

As for the problem of media coverage of party and candidate activities during pre-election campaigns, in 2004 the Election Commission adopted the Rules on media presentation of politi-

cal subjects in election campaigns, as an attempt to introduce order in the media-political parties relationship. The last local election, in 2004, the first election fully financed and executed by the state of BiH, were conducted in an excellent atmosphere, with superb organization and with very few problems with parties or candidates.

A particular problem in political practice in BiH is the abuse of seats, so-called *seat trading*. As the current BiH Election Law prescribes that the seat won is that of an individual and not of the party that nominated him/her, this arrangement allows for abuse and creates fertile ground for corruption among elected delegates. At the moment, ways are being sought to stop this abuse, i.e. seat trading, with full consideration for the protection of freedom of an elected office holder to dispose of his/her seat.

In the organization of political life in BiH, the least amount of progress has been noted in the area of continuing ethnic and religious exclusivism of political parties. Insight into data provide by parties themselves shows that time is yet to come for political parties to act in representing and struggling for interests of citizens as individuals, irrespective of their national or religious affiliation. However it should be borne in mind that this situation in the political arena is largely the result of Dayton arrangements and the *de facto* partition of BiH along ethnic lines. Accordingly, a reversal of these non-democratic tendencies will not move from a stand-still until there has been a change in the political organization of the country itself.

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## 7. Government effectiveness and accountability\*

### Is the Government accountable to the people and their representatives?

Author: Ešref Kenan Rašidagić

#### 7.1. How far is the elected government able to influence or control those matters that are important to the lives of its people, and how well is it informed, organized and resourced to do so?

Throughout the war and the period prior to the 2002 elections, Bosnia and Herzegovina functioned as a union of two frequently contradicting entities<sup>1</sup>, the governments of which were responsible for the making of all decisions relevant to the daily functioning of the state and its administrative agencies. *De jure*, the central government had minimal authority, and, *de facto*, barely existed as an organized institution. During this time, Bosnia and Herzegovina did not have a typical government; instead, there was a Council of Ministers presided by rotating members, a council that did not handle issues normally addressed by a government, but that represented a type of a forum for negotiations and contests between entity governments and national politics.

The entities themselves differ significantly in the character and organization of their governance. Republika Srpska is a highly centralized entity with all the insignia of a classical state, but without internationally recognized independence. There are only two levels of government within RS: the central (“republic-based”) level and the municipal level. Its high level of achieved ethnic homogeneity within the electoral body, with the Serb population distinctly dominant, would lead one to expect an efficiently operative government and general state apparatus within the entity. However, the entity’s political setting is extremely fragmented, featuring a great many political parties vying for power, which are mostly extremely nationalistically oriented. As a result of a large number of parties competing for the favor of the same electoral base, an organization of power after an election becomes possible only after an arduous coalition-forming process, the principles of which differ from municipality to municipality. Two political parties can exist in coalition within the entity parliament (the RS National Assembly), but can at the same time be in opposition in all the municipal councils in the RS. This situation, along with a non-functional economy, economic crime, corruption and ubiquitous poverty, has resulted in a slow, inefficient and incompetent state apparatus, which on top of everything, lacks the resources to implement its own policies.

On the other hand, the Federation of Bosnia and Herzegovina, although the relatively stronger entity in terms of its economy<sup>2</sup>, is burdened by an extremely fragmented political system, in which the path between the central and the municipal levels of government is occupied by 10 cantons,

<sup>1</sup> Until recently, the official webpage of the Government of Republika Srpska read that RS is “a state entity bordering with the Federal Republic of Yugoslavia, Croatia and the *Federation of BiH (sic!)*”. After the protest in the media, the definition was altered and the current introductory statement on the web page reads: “Today, Republika Srpska is a parliamentary republic with restricted international personality. It therefore realizes some of its interests through common government bodies at the level of Bosnia and Herzegovina as the internationally recognized state”. An interesting fact is that this sentence, though included in the Latin and Cyrillic alphabet versions of the text, does not feature the English language version. For more details, please visit: [www.vladars.net](http://www.vladars.net)

<sup>2</sup> According to World Bank data, the GDP per capita in the Federation BiH amounts to US\$ 1.453, while it amounts to US\$ 873 in RS. See PEIR, Table 1.3 *Key Economic Indicators 1990-2001*. According to the information of the EPPU, the 2004 average net salary was BAM 530 in the Federation of BiH and BAM 422 in RS. 21% of the population in RS live below the poverty limit, whereas this percentage is 15% in t FBiH. See Bosnia and Herzegovina-The 2004 Economic Report, pp. 7, 47-49.

which in fact have the largest authority in decision making process and developing respective budgets for their implementation. Since Dayton and the Washington Agreements saw the Federation of BiH as primarily Bosniak and Croat in its makeup, the cantons themselves were created with this division in mind: there are now five cantons with Bosniak and three with Croat ethnic dominance, and two cantons with a mixed ethnic composition. In terms of its constitutional organization, the Federation of BiH is a notably decentralized entity, wherein the Federal Government bears the responsibility for the adoption of framework legislation, while the cantons use these laws as a basis for the adoption of their own legislations in order to regulate certain issues in practice. Within this system, the municipality as such has lost practically all of its competencies and resources, and has become a kind of communal service. The cantons differ significantly in their level of organization, efficiency and competence, with the more affluent cantons functioning as genuine miniature states within the Federation, while certain segments of governance (usually the welfare and health insurance services) within the less prosperous cantons barely function at all.<sup>3</sup>

Overall, the state apparatus in operation throughout Bosnia and Herzegovina is overly bulky; defined not professionally, but ethnically; and, despite a chronic lack of resources for its own functioning, represents an enormous burden on the weak economy in BiH: the financing of the state takes up a total 54% of the country's GDP, 30% of this amount being spent on the salaries of administrative officials<sup>4</sup>. These figures are supported by the fact that, as a result of its unique political system, Bosnia and Herzegovina has fourteen constitutions (13 constitutions plus the Constitution of the Brčko District, which stipulates the direct application of the BiH Constitution), the same number of governments and parliaments, and 180 ministers and ministries. In comparison with the European average of one public official for every 2000 inhabitants, Bosnia and Herzegovina employs one official of the state for every 500 inhabitants.<sup>5</sup>

In order to gain true insight into the organization and functioning of the political system and system of governance in BiH, one should also take into account the role played by the international community, embodied in the person of the High Representative and the Office thereof (OHR - Office of the High Representative). In the application of his authority, the High Representative has throughout the years demonstrated the Office's two most important functions- the legislative authority and the right to remove elected officials and officers of the state from their respective posts for different violations of the laws and regulations of the Peace Accords. A paralysis of the political system, which Bosnia and Herzegovina suffered in the immediate post-war period made the authority of the High Representative crucially significant for establishing freedom of movement throughout the country, the introduction of joint identification documents and state symbols (a passport, national coat of arms and anthem etc.), and the prevention of obstructions to the return of refugees and displaced persons by means of a removal of the officials undertaking such obstructions.

<sup>3</sup> A good illustration of this situation are the initiatives from the (greatly impoverished) Podrinje Canton for the unification of the health insurance funds and employment bureaus in this Canton and in the (relatively prosperous) Sarajevo Canton. Also illustrating the distinction between the poorer and the relatively prosperous cantons is the recent misunderstandings between Sarajevo's Clinical Centre and the Zenica-Doboj Canton over referring Zenica to Sarajevo for medical treatment. Please refer to different headlines in the *Avaz* and *Oslobodenje* newspapers in the first two weeks in September 2005.

<sup>4</sup> An interview with Dirk Reinermann, Head of the World Bank Mission in BiH, 14 May 2005, available at: [www.worldbank.org.ba](http://www.worldbank.org.ba)

<sup>5</sup> The administration and democracy in Bosnia and Herzegovina- the post-industrial society and the authoritative challenge. A detailed review of the appropriation of funds for the salaries of officers of the state is available in the EPPU publication of *Bosnia and Herzegovina- The 2004 Economic Report*, p.20.



The unchallengeable role and position of the High Representative and of international institutions in Bosnia and Herzegovina in general, have fallen under the increasing criticism of the public and of local political factors. The reasons behind this reversal of opinion lie mostly in the discontent with the position of international officials, who are considered to be carrying out their policies without transparency and without having to account for their actions. For instance, as the Office of the High Representative was established ad hoc, and has no precedent in the history of international practice, it is largely unclear to what authority the officials of this institution are accountable for in their work. On the one hand, OHR officials benefit from all the privileges of diplomatic officials, but with no ministry or state to which they are directly accountable for their actions. On the other, unlike the role of the typical diplomatic officers, officials of the OHR are key actors in the political life of Bosnia and Herzegovina. There are numerous examples of clashes in the media between local and foreign officials regarding a perceived self-will and corruption of the latter group.<sup>6</sup> Even in cases where the responsibility for failure on the part of the international organizations and officials was either supported by evidence or implicitly confessed, there is no mechanism to hold the said parties accountable before local or foreign authorities, and the problems are usually resolved by transfer or relieving of duty of certain individuals who then leave Bosnia and Herzegovina.

After the parliamentary elections in 2000, and especially after the 2002 elections, the State of BiH invested great efforts (although greatly as a result of initiatives and pressure on the part of the international community) in the establishment of a functional state apparatus. The state abolished the principle of a rotation in the position of Chairperson of the Council of Ministers on a six-month basis, as well as the positions of deputy minister of a different ethnicity at all levels of government except at the central level, and we are seeing a gradual increase in the number of ministries and in the competencies of the central government. Also, the Resolution on Constitutiveness of all the peoples of the BiH throughout its territory was implemented; and the Law on Civil Service adopted and Civil Service Agency established, which has made the civil service professional and independent of political influence. Also established were a number of agencies and offices at the level of the state that took over the professional management of certain segments of state power etc.

Regardless of the above improvements, a closer inspection of the functioning of state apparatus reveals that Bosnia and Herzegovina is not yet capable to accept the full responsibility of preparing and adopting state-based laws and legislations, and there are two main reasons: firstly, even ten years after the birth of the present state, the policy-making capacity of the state apparatus is more that inadequate. The second is a problem dating back to socialism, and regards the inability of the state to implement and execute the measures it has prescribed using legal regula-

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<sup>6</sup> One of the best-known examples is the 2001 scandal when the CRA Director at the time Jerken Tornngren intended to sell the licence for the third mobile telephone operator in Bosnia and Herzegovina to a buyer already known to the public for a ridiculous amount of 2 million KM. The said international officer arrogantly and disdainfully rejected all the attempts by local politicians and experts to contest the disadvantageously cheap sale of this national resource. The entire process was brought to a halt over night and the matter hushed up. The opinion of the expert public is that the sale was not prevented by the local public opposition, but by an energetic international intervention by the ambassador of the state from which the second competitive bid was placed. Another example is the intervention by the US Ambassador to Bosnia and Herzegovina several years ago, who contested the need of BiH to have its own national airline. The public considered this an abuse of power on the part of the international community, as the intervention immediately followed a Federal Government decision to procure aircraft from the AIRBUS European Consortium for the needs of the state-run company AirBosna. The above cases are considered in the study entitled *Arithmetic of Irresponsibility*, a Friedrich-Ebert-Stiftung publication, Sarajevo, June 2005.



tions and bylaws. Most of the countries of the Socialist Block, which today are states in transition, differed as to the extent in which they suffered from too many regulations, which were not accompanied by the formation of policy enforcement capacities.

The preparation of policies and legislations which are forwarded to the parliaments of Bosnia and Herzegovina is an activity that is as a rule, given too little attention by the those involved in the composition and processing of legislative proposals, and carried out on the basis of incomplete information and inadequate analyses of the problems to be regulated by the new legislations. Government services lack the personnel and material resources necessary to approach the creation of legal regulations in a systematic fashion. Hastily adopted laws often have to be amended several times shortly after their adoption, and this is because of the inexistence of proposing bodies, which would enable a detailed drafting of a legislative document which would, as such, be able to stand the test of implementation and practice. The frequently made amendments to the certain legislations lead us to believe that a law is sometimes adopted only to test its rough draft, and that the implementation of such a law will point to its positive and negative characteristics, and thus enable a second adoption *mutatis mutandis*.<sup>7</sup> The practice in the governments of the BiH has been to commit the drafting of laws and bylaws to one or two attorneys, who then compose the draft of legislation. The draft is then directed to parliamentary procedure and adopted in its original form without proper inspection. This is especially the case with legislations that regulate routine state affairs and do not result in particular repercussions in the sphere of everyday politics, and are as such uninteresting for most of the parliamentary representatives. There are unfortunately no studies that approach such problems either statistically or analytically, and the problems are therefore currently considered on the basis of anecdotal examples visible in practice, which are obtained through the media or by means of a direct contact with the parties involved.

The most recent example of such an inadequate preparation of legislative wording is a set of laws in the field of social protection and family and children care, families and civil victims of war. On the basis of the BiH Development Strategy Plan of Action, the Federation of the BiH had the obligation to adopt the above set of laws.<sup>8</sup> In order to fulfil these obligations, the Federal Government appointed a team of attorneys from the Ministry of Justice to prepare drafts of new legislations, which were then immediately put into the parliamentary procedure. Regardless of the fact that the Plan of Action clearly names the Federal Ministry of Labor and Social Policy as the main agent of the activity of drafting the new set of laws, the competent minister did not receive the proposal of the new legislation for inspection until the day of the Parliament session at which he acted as the former proposal-maker for the said legislation<sup>9</sup>. In the interest of expedience, the drafting of these sensitive laws was therefore entrusted to individuals without any experience in the relevant fields, individuals who did not consult the experts of the formally competent ministry in the preparation process. This situation is more or less to be expected, when one takes into account the meagre legislative capacities that the governments as proponents dispose of. There is, for instance, the Legislative Office within the Council of Ministers, which employs only three per-

<sup>7</sup> In the interests of objectivity, it should be emphasized the laws prepared and imposed by the Office of the High Representative are neither immune to these problems. It will suffice to mention the Law of the judicial and prosecutorial functions, the first version of which, as imposed by Wolfgang Petrisch, the High Representative at the time, contained contradictory and incorrectly numbered articles, inapplicable stipulations and irrelevant references. Due to the noticed mistakes, the law had to be thoroughly reviewed just two months after the first version came into effect.

<sup>8</sup> The General Plan of Action for the Implementation of the BiH Medium term Development Strategy (PRSP) for the period of 2004 to 2007, pp. 36-42

<sup>9</sup> The data was obtained through the interview with the state officers employed in the said ministry, August 15 2005.

sons, whose task is, in theory, to review all the legislative acts referred to a parliamentary procedure. The Federal Government is somewhat better off in this respect, as there is, in addition to the Office of the Prime Minister, the Legislative Office with 11 employees, seven of whom are lawyers. The situation with respect to this sphere is extremely unfavorable in the RS, as departments or offices with specific powers to prepare legislative acts do not exist: there are only technical services which are at the disposal of all the ministries. Ministries with poor personnel resources (such as the Ministry of Health and Social Protection, the Social Protection Department of which employs only 4 people, including an assistant minister) have very limited capacities for quality drafting of legislation. Some ministries have also resorted to contracting external consultants when the need arises for reviewing certain legislation.

There are attempts to establish capacities for the analysis and policy development at the level of the state by means of the newly established agency within the Office of the Chairman of the Council of Ministers, the Unit for Economic Planning and Implementation of Mid-term Development Strategy (EPPU), established by the entity and state parliaments upon the adoption of the Mid-term Development Strategy for BiH. The EPPU consists of two offices: the Monitoring and Implementation Office and the Economic Planning and Research Office, the joint goal of which is successful implementation of the Mid-term Development Strategy.<sup>10</sup> With the establishment of the EPPU, for the first time since independence, the state has tried to develop policies in a systematic and professional way. The EPPU is still searching for its place in the process of drafting public policies, as it is a newly established institution financed by donations (from the World Bank and the DFID), which places it somewhat outside the framework of standard structures of governance in BiH.

One of the basic problems of the authorities in Bosnia and Herzegovina is the lack of an adequate amount and quality of information at the disposal of the state apparatus. The problem is a consequence of a mixture of different factors, the most important being the breakdown of the pre-war state-based system statistics, as a result of the effects of war, the fragmentation of post-war political system in BiH, as well as lack of resources for the financing of existing data collection structures.

During the socialist era, the state had access to systematically collected, analyzed and processed data, the responsibility for which rested with Statistics Bureaus, established in all the federal republics as well as at the level of the federal state. Since almost all of the segments of society in the socialist regime were completely in the hands of the state (economy, education, health, culture etc.), the task of collection and processing of data by the Statistics Bureau was relatively easy. With all the relevant institutions controlled by the state, a negligible grey economy and a clearly established hierarchy leading towards the center of power, the flow of information was undisturbed and one could argue that the figures presented reflected the actual situation to a great extent. Alongside the Statistics Bureaus, the state also disposed of other formal and informal mechanisms of data collection through the branches of the Socialist Union, the Communist Party, the labor unions, municipal and central government information agencies, and even the intelligence departments within the civilian and military secret services.

The data collection system was completely destroyed as a result of the war and of the *de facto* division of BiH into three ethnically-defined *para-states*. With the establishment of entities and cantons, which assumed most of the powers of the state, the flow of information towards the central level was interrupted, and there was no longer a state-based statistics bureau. The system of

<sup>10</sup> [http://www.eppu.ba/upp\\_bos.html#stajceppu](http://www.eppu.ba/upp_bos.html#stajceppu)

coordination, communication and reporting between different governments and state offices and agencies is highly underdeveloped, even in the cases of where there is clear hierarchy of competencies and responsibilities. In terms of coordination between the entity and the central governments, the rules of procedure of the Council of Ministers and the Federal Government include a binding clause for governments to coordinate activities each with the other two governments,<sup>11</sup> although this obligation is not adequately elaborated and no sanctions are prescribed in case of non-compliance. The RS Government Rules of Procedure do not even contain such a symbolic obligation. In the Federation of BiH, wherein many of the competences of the state have been assigned to the level of cantons, the Government is often unable to force the cantons to adopt laws which they are obliged to adopt on the basis of framework legislation adopted at the Federal level, let alone demand from the cantonal ministries to report to the state of affairs in particular areas.<sup>12</sup> Some ministries of the Federation have adopted decisions requiring relevant cantonal ministries to report on particular issues or on the implementation of laws and regulations, but the readiness to cooperate on the part of cantonal ministries remains sporadic and essentially dependent on their good will.<sup>13</sup>

Numerous economic activities moved into the area of grey economy, where there is no possibility to collect any official data.<sup>14</sup> Other segments of society also underwent radical transformation, generating a new situation, unrecognizable to earlier data collection systems. The situation in this sector remains disastrous, regardless of certain progress, such as the establishment of a state statistics agency and the incorporation of the responsibility for coordination and communication into legislation and rules of procedure of different state bodies. An illustration of the situation with statistics in BiH is an anecdote from one of the round tables held during the PRSP drafting process, during which a World Bank official ended a heated discussion as to the validity of available data with the question: “Can anyone here tell me how many people live in this country?”<sup>15</sup> It is a disastrous fact that, ten years after the end of the war, the only statistically relevant data regarding practically every sphere of social life in BiH is to be found in different pieces of research conducted by various non-governmental associations and international organizations.<sup>16</sup>

Unlike the policy making processes, where the government, regardless of the difficulties, eventually more or less realizes its goals, i.e. the adoption of adequate policies in the form of leg-

<sup>11</sup> Article 19, Rules of Procedure, Council of Ministers. Article 10, Rules of Procedure, Government of BiH, sets an obligation for the Prime Minister to “ensure cooperation between Federal Government, the Council of Ministers, Government of RS, and Government of the Brčko District.” Article 88, Rules of Procedure, sets an obligation of the Government “to cooperate with cantonal government to cooperate on issues of common interest.”

<sup>12</sup> An example of a failed adoption of the Laws on Social Protection and Education in some of the cantons.

<sup>13</sup> As there are no relevant studies regarding this problem in the BiH, the anecdotal data was collected through interviews with competent officers of the Federal Ministries of Education, Labor and Social Policy and of the Ministry of Health held in August 2005.

<sup>14</sup> The estimates of the BiH Central Bank and of USAID stipulate that the participation of the grey economy in the overall GDP for the BiH is over 50% i.e. more than EURO 3 billion. Bosnia and Herzegovina, The 2004 Economic Report, p.46

<sup>15</sup> The most interesting fact is that, as a result of this discussion, the State Statistics Agency was asked to deliver official information as to the total population figure for Bosnia and Herzegovina. The answer, presented in two paragraphs, is the best indicator of the problems existing in this area. The answer contained the total number of inhabitants in the BiH (x), divided into the population figures for Federation of the BiH (y), Republika Srpska (z) and the Brčko District (w) respectively. However, if you were to add the said figures (y + z + w), you would arrive at a number that is larger than the total number of inhabitants (x) given in the response by some 100000 (sic!) inhabitants. “A document in the possession of a team of expert authors of the PRSP”

<sup>16</sup> Even the extensively quoted panel survey of homes entitled “Living in the BiH”, conducted in 2004 by the Federal Statistics Bureau, RS Statistics Bureau, and the BiH Statistics Agency, was carried out on the basis of a project financed by the DFID, with the assistance of a British consulting company and a local NGO.

isolation, a successful implementation of legislation still remains the largest obstacle to the normal functioning of the state of Bosnia and Herzegovina. Here too, the basic problem lies in inadequate governmental capacities to ensure the implementation of measures the government adopts itself. The poorly planned legislative activity, as described above, resulted in an enormous corpus of laws whose implementation never even began, though for objective reasons. For instance, the mere copying of pre-war regulations on employment, welfare benefits, the right to health insurance and similar regulations has led to the situation that many of the rights that citizens may exercise in theory pursuant to these laws remain, in fact, just a piece of paper, as the state of BiH simply does not have the funds to finance them.<sup>17</sup>

Notwithstanding the fact that the state apparatus in Bosnia and Herzegovina has been rightly described as large, complicated and cumbersome to the economy, it is actually, in terms of absolute figures, deficient and understaffed, thus preventing it from performing its function and implementing its policies. On one hand, an administration which spends over half of the state's GDP on financing of its activities makes this state very expensive and suffocates the private sector with the high taxes it demands. On the other hand, the absolute amounts of public spending are very small, even in comparison with other countries in transition in region. According to data from a study by the European Stability Initiative, "the total public expenditure at all levels of government in BiH amounts to less than one-third of the annual budget of the City of Vienna".<sup>18</sup> Since this amount is quite small in the absolute sense, most of it goes to salaries of employees and financing of running costs. In Slovenia, the public sector spends an annual amount of 4,299 euro per capita, whereas the Bosnian public sector spends only 846 euro per capita.<sup>19</sup>

In sum, one could conclude that the main problems of the state as an administrative apparatus in Bosnia and Herzegovina are as follows: inadequate institutional and functional links and coordination between different governments, and between bodies and organs within individual governments; absence of a direct causal link between identified problems and measures to be undertaken by the government in order to solve them; inadequate legislative framework for the solution of many problems burdening the BiH society; lack of suitable capacities in the policy-making segment; inadequate institutions and mechanisms for the implementation of adopted governmental policies, as well as the problem of presence of the international community and the interaction with international officials, especially with the OHR.

## **7.2. How much public confidence is there in the effectiveness of government and its political leadership?**

The State of Bosnia and Herzegovina has no instruments to conduct a survey of public confidence and measure the scale of public support for the government (government approval ratings). The only available representative data on public confidence in the government and political leadership were collected and processed by international organizations, primarily by the UNDP and

<sup>17</sup> Examples of this practice are numerous and are to be found especially at the municipal and cantonal levels. For a study of typical problems in the field of the violation of social protection rights, please see the Federal Ombudsmen's Special Report on the conditions in the sphere of social protection in the Herzegovina-Neretva and the West-Herzegovina Canton: <http://www.bihfedomb.org/bos/reports/special/socialmostar.htm>

<sup>18</sup> Administration and Democracy in Bosnia and Herzegovina- the Post industrial Society and the Authoritative Challenge. The European Initiative for Stability, Berlin- Sarajevo, 2004. p.17. In fact, The Vienna annual budget amounts to approx. Euro 10 billion. Source: [www.wien.gov.at/finazen](http://www.wien.gov.at/finazen)

<sup>19</sup> *Ibid*, see also the IMF Staff Report, July 2003, p. 27, and the World Bank Report: Bosnia and Herzegovina, From Aid Dependency to Fiscal Self-Reliance, A Public Expenditure and Institutional Review 2002

other UN agencies. This document uses data from four high quality and comprehensive surveys, namely, the UNDP Governance Perception Survey, the MDG 2003 Human Development Report, the 2004 Early Warning System (EWS), as well as the SEED Regional Survey 2002.<sup>20</sup> In addition to the above surveys, there were quite a few other surveys conducted in BiH, though mainly only partial, methodologically poor, or of dubious character and objectivity. An illustration of public attitude towards their elected leaders is the voter turn-out data, available in the reports of the BiH Election Commission.<sup>21</sup>

According to the data from the above research, Bosnia and Herzegovina fares very badly in terms of confidence that its inhabitants have in elected government. Naturally, different research present different results, which vary depending on the size of the statistical sample, the precision of the question, the methodology applied, the quality of training given to the interviewers, etc. However, a significant fact is that, regardless of these differences, all the surveys are in agreement in concluding that public confidence in the efficiency of government in BiH is very low. According to the results of the UNDP's Governance Perception Survey, 52% of the citizens of BiH have an unfavourable opinion of the performance of state administration, 23% gave a favourable opinion on the same issue, while a high 25% of those interviewed were undecided, a number that also testifies to the generally unfavorable disposition towards government bodies. Symptomatically, the same survey showed that, of the seven aspects of *good governance*, *efficiency* feared the worst, as a total of only 19% of the citizens of Bosnia and Herzegovina judge their administration favourably with respect to this aspect, 56% gave a negative judgment, and 26% of the interviewees were undecided with respect to efficiency.

The above mentioned survey, as well as the data produced by the EWS, gives results with properly categorized demographic characteristics of the sample population, including entity, ethnic area of residence, gender, location, age and education. A detailed cross-section across all the categories, with the exception of the categories of age and education, is not especially relevant for the purpose of this report. In terms of the first category, it is significant that the least favorable judgements in the survey were given by the youngest group (18 yrs to 30 yrs) and by the oldest (55+) inhabitants of the country, with an average percentage of favorable answers to the amount of 21% and 22% respectively. Interviewees in the middle age groups answered somewhat more favorably (25-26%). The above dissatisfaction with the work of the authorities expressed by the youngest and the oldest BiH citizens is quite easy to explain, when one takes into account that these are the people most in need of attention and protection from the state. For the younger respondents, the main cause of discontent lies in the state's perceived indifference to the problems of their education and timely employment, whereas for the older groups of inhabitants, the cause lies in the low pensions and inadequate health and social security for the elderly. The above relation between the responses of the said age groups is common in similar surveys throughout the world.

The 2002 SEED Network Regional Survey also presents significant data in the sphere of public confidence in government efficiency, and especially with regard to the confidence in the elected leaders. Namely, the poorest results overall in the survey appear in the sphere of elected government bodies i.e. the country's political leadership, where only 21.0% of the statistically representative sample expressed to have *great* or *some* trust in the president of state, 18.0% have con-

<sup>20</sup> The results of all the aforementioned surveys were available on the Bosnia and Herzegovina UNDP offices web page at the time this report was written. See: [www.undp.ba](http://www.undp.ba)

<sup>21</sup> [www.izbori.ba](http://www.izbori.ba); An excellent review of post-war election trends in the BiH, see: <http://www.cai.ba/artman/publish/trendovi.shtml>



confidence in the elected parliament, and 19.7% have confidence in the elected governments. A further 18.4% have confidence in the local government. It is very disappointing for the democracy of a state that only one-fifth of its inhabitants has no more than a positive opinion of any elected government body, while that same population has the greatest amount of confidence in the church (48.2%), the army (50.0%), privately owned enterprises (37.4%) and in the police (32.0%). The results of this survey therefore show that the population of Bosnia and Herzegovina has far more confidence in nongovernmental organizations (22.6%) and in the media (33.3%) than in their country's political system.

The data obtained in the EWS surveys for the first quarter of 2004 show more favourable results with respect to public confidence in the work of the executive, the legislature and the judiciary, where approximately 50% of the interviewed approves of the work of the Presidency, the Parliamentary Assembly of BiH and entity governments. The differences in the surveys mentioned above can be accounted for both by the passage of time (a period of two years) and by a different wording of the questions, since citizens were now asked whether they approve of the efforts of individual institutions and officials, instead of how much general confidence they have in the work of *the parliament, the government* etc., where less favourable responses are to be expected. In any case, the approval ratings are very low in the latter survey, with no local government body receiving the support of more than 50% of the surveyed population.

The registered voter turnout, as the universally accepted means of assessing the relation between the administration and the electorate, especially in countries in transition, also paint a grim picture of the reality in BiH. With the exception of the 1996 elections, which were rather plebiscitary in nature, the 1998 election hold the record in voter turnout, with 70.74% of registered voters actually turning up at ballot stations and voting. In the year 2000, the voter turnout was 65.64% in the local elections and 63.7% in the general elections. The falling trend continued with the 2002 general elections, with only 55.5% of the registered electorate going to the polls. At the 2004 local elections, for the first time ever, the voter turnout fell under 50% with only 46.8% choosing to vote.

As regards the cause of the low level of public confidence in the government and its political leadership, another research project, the Human Development Report 2003 (which measured the achievement levels of the set millennium development objectives- the MDG 2015), also addressed the evaluation of the efficiency of the state administration bodies. According to this research, the main reasons for the lack of confidence in the administration lies in the low level of public participation in the activities of governmental bodies and in the perception of widely spread corruption at all governmental levels in BiH. As for the participation of the public in the government of the country, the general impression is that the public administration in BiH, from local to central level, makes decisions without giving the public or interest groups any true opportunity for active participation in drafting and decision making processes. Even when authorities do make an effort to include the public into their activities, this participation is usually reduced to a short *public debate*, the conclusions of which, even if they do reach the real decision makers, do not contribute much to the process of designing decisions, which is a long and formally intricate process typical of BiH.<sup>22</sup>

Regarding corruption, the public of Bosnia and Herzegovina believes that it is a prevailing phenomena among the authorities in BiH in general, and 40% of the interviewees in the EWS survey perceive the government as being corrupt and, consequently, have no confidence in it.

<sup>22</sup> UNDP, The 2003 Human Development Report



Traditionally, the local administrative bodies have the worst rating, partly also due to the fact that many citizens were in a situation to meet face to face with a representative of the authorities who expected to receive a counter service for being efficient in doing what his or her duties would normally require.

The Study of Corruption Perception in BiH, conducted in 2004 by Transparency International, indicates that public awareness of the problems the society faces does not differ significantly from that perceived in 2002. According to the data presented in the Study, “most citizens believe that the main cause of widespread corruption is poverty, moral crisis, non-existence of rule of law and the inefficiency of the system, and perceive corruption as the second biggest problem the society is faced with”<sup>23</sup>. The data from the above study demonstrates that 52% of citizens believe the Presidency of BiH to be corrupted, 54.9% believe the same for the BiH Council of Ministers, whereas the entity governments are perceived as corrupted by 57.9% of citizens. The same Study also concludes that the authorities at the local level are “the most expensive, the least transparent and the most complex”.

### **7.3. How effective and open to scrutiny is the control exercised by elected leaders and their ministers over their administrative staff and other executive agencies?**

#### **7.3.1. Legal framework**

The largest part of the period after the proclamation of the independence of Bosnia and Herzegovina in 1992 until the latest parliamentary elections was characterized by a disorderly situation in the state administration sector. The administration inherited from the times of a single-party system was considered burdened by the then ideology and disloyal to the new democratic government, which led to a massive tide of personnel changes after the first democratic elections held in 1991 within the Socialist Federal Republic of Yugoslavia. These changes affected all levels of the government, from municipal to the state level, as well as the entire administrative hierarchy - many of the newly elected ministers felt necessary not only to change the upper echelons of the bureaucracy but also to employ assistants, chauffeurs and other technical staff whom they considered to be loyal to them. The situation naturally opened the doors to all kinds of nepotism, appointment by party and kinship ties, and also the corrupted practice of promising money and services in exchange for employing in the state administration. With the economy in Bosnia and Herzegovina, overwhelmed by a serious crisis even before the outbreak of the war, employment in the state administration was seen as the safest option in the unsafe times, and the positions in the administration became, therefore, increased in value.

The newly appointed multiparty and multiethnic administration had practically not even settled into their positions when war broke out as a consequence of the aggression against Bosnia and Herzegovina. The new circumstances led to an almost absolute collapse of the state administration with the government unable to function normally and to communicate with the rest of the country from the besieged and isolated capital. Moreover, the administration had split along ethnic lines.

Signing of the Dayton Peace Accords brings with it the establishment of new state structures with the already mentioned complex structure of power organized at the levels of municipalities, cantons (the Federation of BiH), entities (the Federation of BiH and Republika Srpska) and at the

<sup>23</sup> Transparency International BiH, The 2004 Annual Report.: [www.ti-bih.org](http://www.ti-bih.org)

state level. This massive administrative apparatus demanded a functional integration of the administrative apparatuses of the three peoples resulting in an avalanche effect in employment at all the three levels. The situation, as it was, led once again to the emergence of corrupted practices during the selection and appointment of employees in state administration, where, since the 1996 elections, the main qualification was the candidate's eligibility along the party affiliation lines. The national parties that won the first post-war elections invested all the efforts to have their loyalist occupy the newly established administrative positions, greatly assisted by the fragmented governmental structure, as well as by the absence of appropriate legislation, regulations, by laws and guidelines, especially those at the state level.

The situation in the public sector assumed a chaotic dimension due to the fact that with new elections, the parties that *were allocated* certain ministries, agencies and services through the redistribution of powers and new agreements, made new appointments and employed new staff in order to maintain control over their portfolios. Due to the practice of rotation present at all parliamentary elections, appointments in certain ministries and agencies controlled by individual parties, the first task of a new minister or director would be to replace the previous personnel (usually of a nationality different to their own) with their own people, people of an eligible national and party belonging. The situation reached its climax after the 2000 elections, when, for the first time the parties of social-democratic orientation that won the elections, launched a new trend in personnel changes, having no confidence in the personnel appointed by the national parties. Since the elections in the post-war Bosnia and Herzegovina were held every two years, this led to the total paralysis within the administration capacities. The reason for the paralysis is that it takes an average of six months for newly elected parties to organize their administration, and in this case, the last six months of the term all of were preoccupied with the campaigns for the new elections, which, in effect, left the administration with only a year to freely carry out its duties.

Such an unsustainable paralysis of the government compelled the international community to intervene and urge the adoption of appropriate legislation, by laws included, to bring order into the functioning of the administration and protect it against the excessive influence and control exerted by the political parties. This led to the adoption of new laws and amendments to the existing legislation in order to regulate the state administration, such as the Administration Law (Official Gazette of BiH, No. 32/02), the Law on Civil Service in the Institutions of Bosnia and Herzegovina (Official Gazette of BiH, Nos. 12/02, 19/02, 35/03, 4/04, 17/04, 26/04, 37/04), the Law on the Ministries and Other Administrative Agencies of Bosnia and Herzegovina (Official Gazette of the BiH, No. 5/03), the Law on the Council of Ministers (Official Gazette of BiH, No. 38/02) and setting up the Civil Service Agency (The Decision to establish the Civil Service Agency, adopted by the Council of Ministers on 20 June 2002).

The aim of adopting the above laws and the establishment of the Civil Service Agency was to create a professional and independent state apparatus after, for instance, the British model. Turning civil servants and other employees into professionals was accompanied by setting up of the semi autonomous state agencies, also after the British model, to be entrusted with particular sectors of state affairs (e.g. the communications<sup>24</sup>).

The newly adopted laws and regulations are, in terms of their general makeup, very strict. A full professionalism comprising all the personnel in the civil services is foreseen at all levels of

<sup>24</sup> The Decision to join the competences of the Independent Commission for the Media and of the Regulatory Telecommunications Agency, which lead to the establishment of the Regulatory Communications Agency, was made by the High Representative on March 2 2001.

the government, from the lowest-ranked employees (up to the higher school degree)<sup>25</sup> to the senior civil servants (i.e. those with a university degree), and finally, assistant ministers<sup>26</sup>. The purpose of introducing these measures is clear in Article 2 of the Law on Civil Service, which prescribes that “the employing and promotion in one’s professional career... (is based) ... on a public competition and professional competence” (paragraph 1), although the same Article includes also a provision whereby “the structure of civil servants employed in the state service shall also generally reflect the national structure of the population of Bosnia and Herzegovina...” (paragraph 2). Article 3 of the same Law states that the state civil service shall ensure compliance and application of the following principles: a) legality, b) transparency, c) efficiency and cost-effectiveness, d) professional impartiality. The Law further stipulates the manner and procedure of appointing personnel to the state service (Articles 19-24), which ended the practice of arbitrary employment of personnel by ministers and other supervisors. The employment procedure demands the publication of both internal and public vacancy (Articles 20 and 21), after which an Appointment Committee, which includes representatives of the Civil Service Agency, selects a suitable candidate (Article 24).

As it can be seen in the above mentioned regulations, civil servants enjoy unique legal protection in terms of their status and duties. The control over the work of civil servants employed in the state’s administrative bodies by ministers and other elected officials is founded on “principles defined by the Law on Administration” and by the “Internal Organization Regulations”<sup>27</sup>. Internal Organization Regulations of Ministries is passed by the respective minister (i.e. the head of the administrative body), given a prior opinion by the Minister of Justice. A Book of Regulations is considered to be adopted once it has been confirmed by a decision of the Council of Ministers<sup>28</sup>. This procedure eliminates any arbitrariness in procedure of adoption of Books of Regulations, and as a result, most of these documents are almost unified legal acts developed by the jurists in the Ministry of Justice.

Civil servants may be sanctioned for inappropriate performance of their prescribed duties by instituting disciplinary or criminal proceedings. Chapter VIII of the Law on Civil Service determines the disciplinary liability for breach of official duties, which includes (*inter alia*): d) failure to execute or the unscrupulous and negligent execution of commissioned activities and tasks e) the refusal to execute the legal orders from one’s immediate supervisors; f) performing activities that inhibit or hinder the public and other persons in the realization of their rights in proceedings before civil service agencies; g) performing activities contradictory to the interests of the civil service; i) an unaccountable absence from the work place; j) a violation of labor discipline regulations pertaining to the civil service duties; k) an untimely and irregular execution of accepted duties and tasks in the civil service; l) inappropriate conduct when addressing the public, work colleagues and other individuals in the execution of civil affairs (Article 54). This Chapter also determines the disciplinary procedure (Article 55), prescribes disciplinary measures (Article 56), and also addresses issues regarding the instituting of criminal proceedings against a civil servant (Articles 57-58). The available disciplinary measures range from a written rebuke/reprimand to a suspension and a final termination of employment in the civil service. The provisions of Article 50 of the Law on Civil Service stipulate that a civil servant’s appointment is terminated in the fol-

<sup>25</sup> Article 69 of Law on Administration

<sup>26</sup> See for example Article 7.1. of the Law on Civil Service

<sup>27</sup> Article 22 of the Law on Ministries and Other Governmental Offices of Bosnia and Herzegovina, Article 52 of the Law on Administration;

<sup>28</sup> *Ibid*

lowing cases (among others): h) refusal to take the official oath and/or to sign the wording of the oath; i) unsatisfactory performance during a trial period; j) the receipt of two consecutive negative job evaluations; k) if the individual in question has been convicted of a criminal act and is obliged to refrain from the work place in order to serve a prison sentence for a period of more than six months; l) if he/she receives an official disciplinary measure terminating their appointment in the civil service.

Chapter IX (Management of the Civil Service) of the Law on Civil Service in the administrative institutions of Bosnia and Herzegovina regulates the mechanisms of personnel policies, as well as the relations between the overall manager of an administrative office on the one hand, and civil servants on the other. The above Law specifies the directives for the management of personnel policies which ensure, for instance, that all employees be given a dossier in their relevant institutions, as well as uninhibited access to the dossier (Article 60). Article 61 introduces the institution of the ombudsman into the civil service, who “aids the realization and observance of principles determined by this Law, and serves, in accordance with the Provisions laid out in this Law, as a mediator with respect to issues regarding the status of civil servants”. Article 63 establishes the Civil Service’s Board of Complaints, which “in compliance with this Law and its bylaws, is responsible for the review of all final decisions, undertaken or omitted activities pertaining to institution in question and/or to the Agency, which regard the status of civil servants, and at the request of: a) the civil servant to whom the decision, or undertaken or missed activity, is ascribed to; b) the institution in which the civil servant carries out his duties; c) the Agency”

### **7.3.2. Implementation and negative indicators**

The adoption of the above laws and regulations radically changed the situation in the domain of the state administration in Bosnia and Herzegovina. Order was brought into the process of appointing civil servants, making of arbitrary decisions by senior management staff was prevented and the conditions for the establishment of a professional and independent civil service in Bosnia and Herzegovina were created. Setting up of a series of agencies and directorates responsible for performing tasks in certain areas of civil service made it possible to separate politics from purely professional areas of the civil service, such as communications, customs, etc. Furthermore, the establishment of the Civil Service Agency contributed to the process of defining the professional standards for the work of civil servants, as well as for their further specialized training and protection in the execution of their duties.

In terms of negative effects, the basic problem, which negatively affected the process of establishing a professional state administration in BiH described above, is related to the time when the professional civil service and other independent agencies were formed. In fact, the beginning of this process coincided with the transfer of power from the social democratic parties back into the hands of the national parties following the 2002 parliamentary elections. The social democratic parties used (and partly even influenced) the slow pace of establishing the new administration in order to be able to make many appointments to newly professionalized positions before the end of their technical mandate. When the national parties finally took over, they were unable to make almost any changes in the ministries and other administrative bodies except for appointing a relevant minister. At the time, the media reported, *ad infinitum*, about the protests of newly appointed ministers, who realized upon taking office that they were unable to replace even the office secretaries, let alone the assistant ministers, executive secretaries and heads of departments who were, at the time, mostly members of the Social Democratic Party.

This situation has persisted to the present day, where conversations with individual heads of different bodies and even with the civil servants themselves often include the opinion that civil servants are over protected by the mentioned Laws<sup>29</sup> i.e. that the legislature puts too much emphasis on the rights and protection of civil servants and pays too little attention to their responsibility in terms of the work they perform and in terms of the supervision performed by their superiors: ministers and heads of individual bodies. Similar conclusions are also often heard concerning individual agencies and authorities or administrations, established as a result of these laws, the Regulatory Agency for Communications Agency (CRA) in particular, which indeed is an almost completely independent organization, capable of generating its own budget and having to submit only a summary annual report to the Council of Ministers (in accordance with the general provisions of Article 30 of the Law on Administration). However, we should also take into our consideration the opinion of the other party, in this case the media themselves, who claim that the independent CRA is the only guarantee of the independence of the electronic media sector and the only safeguard against the arbitrariness and the influence of the state onto the media sector in general.

After the initial problems with adaptation, the said ministers and heads of departments or bodies quickly discovered ways how to bypass the legal provisions and thus fulfil their goals in the field of personnel policy. In order to infuse the ministries with loyal personnel, the said parties used the legal possibility of appointing advisers, who are appointed only for the duration of the term of office of the official who appointed them, and who do not have the status of a civil servant. Advisors have become the favorite solution for the problem of the lack of loyalty among the personnel and of the inability to exercise adequate control over a particular professional administration, due to the simplicity of appointing and relieving advisors of their duty, almost no limitations in the number and qualifications of appointed advisors, and due to the fact the advisors are accountable for their actions exclusively to the official who appointed them. Shortly after the most recent parliamentary elections, appointment of new advisors acquired epidemic proportions, and they, *de facto*, came to constitute a sort of a parallel administrative service absolutely loyal and accountable to particular ministers and heads of offices and existing outside the jurisdiction of the Civil Service Agency<sup>30</sup>.

The civil servants themselves enjoy the minimum probability that they would be removed from office and the probability that they would be sanctioned is not very high either, taking into account the existing comprehensive procedure which includes protective mechanisms such as the Office of the Ombudsman and the Civil Service Complaint Commission. Due to these circumstances, ministers and other heads of office have resorted to using the possibility of the internal re-assignment of civil servants, which is foreseen by Article 32, Paragraph 1 of the Law on Civil Service, stipulating “that the internal transfer of a civil servant from one position to a similar position can either be voluntary or imposed on the civil servant in question in accordance with objectively determined needs of the civil service for such a relocation”. As it can be seen in the text of this Article of the above Law, the imprecisely formulated *objectively determined needs of the civil service*, as well as the possibility of *imposing* relocation to a *similar position* on a civil servant opens the room for the possibility of using this Article for justified as well as unjustified purposes and based on an arbitrary decision of the particular head of a department or a minister himself. In practice, these provisions are used to effect an exchange of personnel among ministries when the time comes for a rotation of portfolios between representatives either of the constitutive peo-

<sup>29</sup> Based on comments of a number of employees in the Office of the Chairperson of the Council of Ministers, who were interviewed for the purposes of this research in July 2005.

<sup>30</sup> The media in the BiH led genuine campaigns at different times with respect to this problem. Cf. for examples “The Position of Advisor: The Importance of Knowing a Minister”, Start Magazine, no .177, issued September 20, 2005, p. 16



ples or between different parties, and also to discipline and control the personnel, members of which can be threatened at any time with a possible relocation to a similar position, which, due to the lack of precision of this legal act, can, *de facto*, may imply degradation of employees and seriously threaten their careers. Therefore, it can be concluded in principle that the adoption and application of this legislation in practice has resulted in the intentional or unintentional creation of a solid balance between the rights of civil servants and their accountability to ministers and other elected heads of office.

#### **7.4. How extensive and effective are the powers of the legislature to initiate, scrutinize and amend legislation?**

##### **7.4.1. Legal framework**

The Legislative power in Bosnia and Herzegovina is organized at four levels in the Federation of BiH and three levels in the RS. At the state level, there is a Parliamentary Assembly, consisting of two Houses: The House of Representatives and the House of Peoples. The House of People comprises 15 delegates, two-thirds from the Federation of BiH (five Croats and five Bosniaks) and one-third from Republika Srpska (five Serbs). The delegates from the Federation are elected by the Bosniak and Croat delegates in the House of Peoples of the Federation respectively. The delegates from Republika Srpska are elected by the National Assembly of Republika of Srpska<sup>31</sup>. The House of Representatives within the BiH Parliamentary Assembly comprises 42 members, two-thirds of which are appointed from the territory of the Federation, while one-third are elected from the territory of Republika Srpska. The appointments are made directly and are part of the Elections, in compliance with the Election Law<sup>32</sup>. All legislative decisions have to be approved by both Houses<sup>33</sup>. Both Houses adopt all decisions by a majority vote by all those present and voting at particular sessions, and if possible, all decisions should be supported by at least one-third of the votes pertaining to each of the entities. If this cannot be the case, “decisions will be adopted by the majority of votes from those present and voting, provided that the votes against are not made by two-thirds or more delegates or members from each of the entities”<sup>34</sup>.

There are various institutions of the legislative power at the level of the entities. The Parliament of the Federation of Bosnia and Herzegovina is also a two-chamber system and consists of the House of Representatives and the House of Peoples. On the other hand, the National Assembly of Republika Srpska was originally unicameral. With the aim of guaranteeing the status of constituent people to all the peoples residing on the territory of Bosnia and Herzegovina, a Peoples’ Council was organized within the RS National Assembly by means of an agreement between the relevant parties and under the patronage of the Office of the High Representative (the OHR). The Council cannot be considered a second House of Parliament in the classical sense, because it operates only to discuss laws already in the parliamentary procedure and only in the case when the mechanism of “the protection of vital national interests”<sup>35</sup> has been put into motion. Unless the mechanism is put into motion by a representative of one or more constitutive peoples, the legislation adopted by the National Assembly is considered automatically adopted.

<sup>31</sup> The Constitution of Bosnia and Herzegovina, Article IV (The Parliamentary Assembly of the BiH), Paragraph 1, Item (a)

<sup>32</sup> *Ibid*, Paragraph 2, Item (a)

<sup>33</sup> *Ibid*, Paragraph 3, Item (c)

<sup>34</sup> *Ibid*, Paragraph 3, Item (d)

<sup>35</sup> Article 1 of the Constitutional Change Agreement, March 27, 2002, Amendment LXXII, Paragraph a) regarding the Constitution of RS



In FBiH, below the entity level, the government structure is organized at the level of ten cantons, each of which has an organized legislative, executive and judicial power. In essence, The cantons are often considered in practice as *mini para-states*, due to the fact that most of the political competences of the Federation have been transferred to the level of the cantons and are now regulated by legislations adopted by cantonal assemblies. At the last level, in both entities, there are municipalities. According to the present organization of the political system in BiH, municipal councils are not legislative bodies, because they do not adopt laws and other legislative acts. The municipal councils do however have a certain powers with respect to the adoption of their budgets, the implementation of provisions and laws passed by the legislative bodies of the entities and cantons, etc. Practice frequently shows that the implementation of certain legal acts is usually hampered by the functioning (or lack thereof) of the municipal councils<sup>36</sup>. In Sarajevo, part of the Federation of BiH, the space between the level of the Canton and the level of the municipalities is occupied by a City Council, virtually a delegated body with no true powers, established to ensure the continuity in the existence of the City as an institution after the newly formed Canton took over the true prerogatives of the government (Mostar, also in the Federation, and Banja Luka and East Sarajevo in RS have, like Sarajevo, the status of a *City* .)

The procedures for initiating, adopting and supervising amendments to the legislation are precisely regulated by Rules of procedure addressing the functioning of the parliamentary bodies at all levels of government in Bosnia and Herzegovina. It is not necessary to carry out a detailed review of the provisions that regulate these procedures at various levels, as they are very similar; similar to the extent that we can in fact claim that the main difference is of a terminological rather than procedural nature. The procedures for the adoption of legislation usually consist of two phases: a processing or drafting phase carried out within an executive authority (The Council of Ministers, entity and cantonal governments) and the processing phase carried out within a legislative authority, which also votes on a legislative text. The Rules of Procedure of legislative bodies (the Houses of Parliament, the Assemblies) stipulate that the common procedure for the adoption of a law is based on the preparation of the wording on the part of the *drafting body*, which is, practically speaking, the competent ministry or a commission within an executive body, and which harmonizes the text and refers it to a parliamentary procedure. Once it has reached the legislative body, the draft law becomes a law proposal (a Bill). A relevant parliamentary committee then assigns a *sponsor*, or a proponent, to that particular piece of legislation. Special emphasis is given to the role of the committees in the entity and state parliaments, while at the level of the cantons, the role of the committee is limited and varies from one canton to another.

The Rules of Procedure addressing the functioning of legislative bodies at all government levels also foresee for a parliamentary committee to be a proponent, or houses of parliament, individual representatives and groups of representatives, as well as groups and associations of citizens, public corporations at the cantonal level, etc. Alongside the regular procedure, the Rules of Procedure also foresee also the summary or urgent procedure in certain cases, when such a move is considered to be justified for reasons as specified by law. One of the positive characteristics of parliamentary procedure in BiH is its complete and constitutionally guaranteed transparency and

<sup>36</sup> An example of this are 52 schools in the Federation of the BiH which still function according to the “two schools under one roof” system, a system in conflict with the Framework State Legislation on primary and secondary schools. The implementation of this and other cantonal legislations is obstructed by municipal councils and their failing to adopt decisions regarding the administrative unification of schools. With respect to this situation, the Council of Europe, in its 9<sup>th</sup> Report dated January 28 2005, expressed their serious concern over the slow improvement of the situation in this area (the working papers of the PA (Parliamentary Assembly) of the BiH, The Office of Foreign Affairs of the BiH, no: 07-2-2-2481-2/05).

public openness; at all parliamentary sessions open to the general public and regularly attended by the media<sup>37</sup>.

What is specific to the legislative process of Bosnia and Herzegovina is the principle of *the protection of vital national interests*. This institution has its roots in the Dayton Peace Accords and the Ruling of the BiH Constitutional Court on the Constituent Status of the Peoples of Bosnia and Herzegovina residing throughout its territory<sup>38</sup>. It was given its final form with the signing of the Agreement for Constitutional Change, concluded by representatives of the local government and the international community in Sarajevo on March 27, 2002. By decision of the High Representative, the provisions of this Agreement were included in the Constitutions of both Entities<sup>39</sup>. Article 1 of the Agreement stipulates that the legislative power in the Federation rests equally with both the House of Representatives and the House of Peoples, while “the laws and other regulations regarding RS, accepted by the National Assembly of RS, and concerning issues of vital national interest of any of the constitutive peoples, will come into effect only after being adopted in the Peoples’ Council”<sup>40</sup>. Article 2 of the Agreement specifies that “both the RS National Assembly and the Federal House of Representatives will each host at least four members of each of the constitutive peoples”<sup>41</sup>. Furthermore, Article 3 prescribes that the composition of the House of Peoples (in the Federation) and the Peoples’ Council (within the RS) will follow a rule of parity, “with every one of the constitutive peoples will have the same number of delegates. The minimum number of members from one of the constitutive peoples is 8, while the maximum is 17. The number of representatives for the other peoples can not exceed the number of half of the representatives of one of the constitutive peoples in the Peoples’ Council or the House of Peoples, as applicable”. The members of the Peoples’ Council from the RS are elected by the Caucuses of representatives in the RS National Assembly. On the other hand, the delegates in the House of Peoples are elected by cantonal assemblies from their own delegate body in compliance with the national structure of the population.

Article 4 of the Agreement defines the vital national interests of the constitutive peoples as follows:

...the achievement of the right of a constitutive peoples to be suitably represented in agencies of legislative, executive and judicial authority; the identity of the constitutive peoples; amendments to the constitutions; the organization of public authority; equal rights for all the constitutive peoples in the decision making process; education; religious affiliation; language; the appreciation of cultures, traditions and cultural heritages; territorial organization; public information systems; and other issues, which would be considered questions of vital national interest if such a consideration is given the support of two thirds of one of the pools of the representatives of the constitutive peoples in either the House of Peoples or the Peoples’ Council.<sup>42</sup>

Article 5 of this Agreement regulates the parliamentary procedure in order to protect the vital interests in the entity assemblies: “The legislations or other regulations and legal acts passed by the RS National Assembly, and referring to the vital interests as defined in Article 4, will be for-

<sup>37</sup> The Constitution of Bosnia and Herzegovina, Article IV (the Parliamentary Assembly of the BiH), Paragraph 3, subparagraph (i): “The complete minutes of sessions in both of the houses will be published, and the sessions themselves made public, unless exceptional circumstances stipulated in the Rules of Procedure prevail”.

<sup>38</sup> A Ruling of the BiH Constitutional Court of the Constituent Status of the Peoples of the BiH, dated July 1, 2000

<sup>39</sup> Amendments to the Constitution of the Federation of the BiH; Amendments to the Constitutions of RS proclaimed by the High Representative on April 19, 2002.

<sup>40</sup> Amendment XXXI to the Constitution of the Federation of the BiH, Amendment LXXVI to the Constitution of RS

<sup>41</sup> Amendment XXXII to the Constitution of the Federation of the BiH, Amendment LXXVIII to the Constitution of RS

<sup>42</sup> Amendment XXXVII to the Constitution of the Federation of the BiH, Amendment LXXVII to the Constitution of RS

warded to the Peoples' Council for discussion. Legislations or other regulations and legal acts, submitted to the Federal House of Representatives, will also be adopted in the House of Peoples of the Federation<sup>43</sup>. The procedure for launching mechanisms that protect the vital national interests is precisely regulated by Amendments to the Constitutions of the Federation of BiH and of Republika Srpska<sup>44</sup>. The essence of the amendments is that they allow the Speakers or Vice-speakers of the House of Peoples and the Peoples' Council to initiate discussions on issues concerning the vital interests. If the majority of delegates in every delegate caucus in the House of Peoples and the Peoples' Council vote for a proposal of a law or of any other legal act, the ruling is then referred back for approval to the Federal House of Representatives and the RS National Assembly respectively. If it proves impossible to reach an agreement in the House of Peoples or in the Peoples' Council, or to adopt approval for an amendment in the House of Representatives or the National Assembly, a joint commission is formed on a parity basis comprising representatives from both houses of Parliament, which reaches a decision by a consensus. If the legislative text is agreed, the legislation is considered to be adopted. If a consensus cannot be reached, the proposal is referred back to the proponent for a new procedure, in the case of which case the proponent cannot submit the text of a law or other legal act to the Parliament. If a particular legislative proposal is voted as being of vital national interest by a two-third majority in one of the constituent peoples caucus, the proposal shall be entered into the same procedure as above, with the exception that, in the case the appointed joint commission does not reach a consensus, the proposal will be referred to the Chamber for the Protection of Vital Interests within the Constitutional Courts of the Federation of BiH and of Republika Srpska respectively.

The Constitutional Court of the Federation of Bosnia and Herzegovina and the Constitutional Court of Republika Srpska each have a maximum of nine members. The Chambers for the Protection of Vital Interests within the Constitutional Courts of the Federation of the BiH and of Republika Srpska non-existence were established in order to make rulings on particular issues of vital interest and also to deliberate on all other issues of vital interest. Each of the Chambers for the Protection of Vital Interests comprises seven members, two from each of the constituent peoples and one member representative of "others". In the Federation of BiH, the judges are chosen by the House of Representatives and the House of Peoples and by the RS National Assembly and the Peoples' Council in Republika Srpska. It takes two-thirds of the judges (Chamber members) to decide on admissibility, and at least the votes by two judges to proclaim an issue to be of vital interest. If the Court rules a vital interest to be at stake, the legislation is referred back to the proponent, who has to instigate a new procedure and who is prohibited from submitting the same text of the legislation or legal act at issue. If the Court declares itself incompetent with respect to a particular issue, the legislation shall be considered adopted if it is supported by a simple majority<sup>45</sup>.

At the level of the state, the institute of vital national interest is incorporated into the Constitution of Bosnia and Herzegovina, which is a part of the Dayton Peace Accords. According the provisions laid out in Article IV of the Constitution of BiH (the Parliamentary Assembly), "a decision proposed by the Parliamentary Assembly can be declared destructive to the vital interests of either the Bosniak, Croat or Serb peoples by a majority vote of the delegates of either the Bosniak, Croat or Serb peoples, elected in accordance with Paragraph 1, Item (a) of this Article. To be adopted, this declaration needs the approval of the House of Peoples, which is agreed upon

<sup>43</sup> Amendment XXXVIII to the Constitution of the Federation of the BiH, Amendment LXXII to the Constitution of RS

<sup>44</sup> Amendments XXXVIII-XL to the Constitution of the Federation of the BiH, Amendment LXXXII to the Constitution of RS

<sup>45</sup> Amendment XL to the Constitution of the Federation of the BiH, Amendment LXVIII to the Constitution of RS

by the majority of the Bosniak, the majority of the Croat and the majority of the Serbs delegates present and voting at the particular session”<sup>46</sup>. If the majority of the Bosniak, Croat or Serb delegates object to the application of subparagraph (e) of the Article, the Speaker of the House of Peoples convenes a Joint Commission, composed of three delegates from the constituent peoples in order to resolve the issue. If the Commission fails to reach a resolution after a five-day period, the problem is referred to the Constitutional Court, which initiates an emergency procedure to re-examine the procedural suitability of how the issue was handled<sup>47</sup>.

Since Bosnia and Herzegovina is still a state where the international community has special powers, embodied in the Office of the High Representative, besides the above listed *regular* legislative procedures there is also an additional instrument which allows for laws to be imposed based on the decisions of the High Representative. Using his powers, the High Representative can proclaim any legislation at any level of government, provided that the said legislation does not contradict the Constitution of Bosnia and Herzegovina and does not surpass the powers of the High Representative himself/herself<sup>48</sup>. The legislation comes into effect immediately after the OHR has made its ruling, regardless of the no involvement of the legislator, though it is expected to adopt the said legislation in the subsequent regular procedures.

#### **7.4.2. Implementation and negative indicators**

Parliamentary assemblies that exist at all levels of government have access to the appropriate institutions, mechanisms and powers which enable them to function in their full legislative capacity. However, parliamentary practices at different levels of government demonstrate that political activity in Bosnia and Herzegovina throughout the post-war period oscillates between incidents and total paralysis. The causes behind this disorganized state of affairs are multiple and are often manifested differently at the level of the cantons, entities or at the state level. With respect to the cantons, the atmosphere at the cantonal assemblies is often described as *burdened with personal agendas, disorderly, insufficiently professional* etc., but these descriptions do differ from canton to canton. For instance, the authorities of the Sarajevo and Tuzla Cantons approach the drafting and adoption of legislation with due diligence; the draft laws are submitted into procedure by qualified committees, and the adoption of laws and their subsequent practical application rests on meaningful discussions in the assemblies and an appropriate level of cooperation with the executive authorities. On the other hand, there are Cantons that have for years ignored the duty to draft and adopt laws prescribed in particular sectors by the relevant Federal framework laws, such as the Law on Social Protection, or the Law on Primary and Secondary Education. The three Cantons that have still to adopt the relevant legislation regulating the social security are probably attempting to limit their budget deficits, which would only be aggravated by a legal introduction of social financial benefits, which the Federal framework legislation prescribes.

The entire situation is somewhat difficult to understand, since it is obvious that, in these cases the above mentioned Cantons directly violate Federal regulations and the citizens’ rights to welfare and protection, rights guaranteed by the Constitution, and that such violations have lasted for years with no sanctions. The situation becomes even more complex in the two Cantons of mixed ethnic composition (namely, Central Bosnia Canton and the Herzegovina-Neretva Canton) with the continued friction between the representatives of the Bosniak, i.e. Croat political, which is evident in the failure to adopt and implement the Law on Primary and Secondary Education, which

<sup>46</sup> Article IV, Paragraph IV, Item (e)

<sup>47</sup> *Ibid*, Item (f)

<sup>48</sup> Annex 10 of the Dayton Peace Accords

implies abolition of the practice of *two schools under one roof* system i.e. a unification of the education of Bosniak and Croat children<sup>49</sup>.

The situation is much more favorable at the level of the entities with respect to the work of the legislative authorities. This is especially applicable to Republika Srpska, an almost entirely mono-ethnic entity, where the national parties of the Serb people are in constant majority in the National Assembly and the possibilities for the opposition limited, due to the influences of mechanism for the protection of threatened vital national interests. However, it is this limited possibility for the Bosniak and Croat parties to act that presents a problem which affects the very core of the decision to establish the status of constituent peoples throughout the territory of BiH. The provision that the Chamber for the Protection of Vital Interests within the RS Constitutional Court becomes competent to reach decisions only when proclaimed competent by a majority of two-thirds of its members, in itself prevents *de facto* the rights of vital interest from being exercised, as it is practically impossible for the Bosniaks and Croats to ensure 5 votes in the seven-member Chamber, especially given the dubious formally declared ethnic identity of the member belonging to the category of *others*. The proposals that are repeatedly submitted by the Bosniak Caucus in the RS National Assembly for the protection of their vital interests are routinely rejected by the RS Constitutional Court.

The situation is rather different in the Federation of Bosnia and Herzegovina, hosting quite a few strong parties catering to the Bosniak or Croat people, as well as a powerful social democratic opposition. The adoption of a law in the Parliament of the Federation is quite usually the result of an earlier agreement or *trade* in concessions and services between the leading parties of the two peoples. Furthermore, in comparison with Republika Srpska, the Federation of BiH has relatively few powers, and most of the laws, where the cantons are vested with competences pursuant to the Constitution, are adopted as so called *umbrella* laws. In such cases, a Federal law would prescribe for example minimum standards, principles and measures, to be observed and further developed by, as well as deadlines for the cantons to adopt their respective laws, which are in effect regulations that condition practical implementation of the laws. The example of the Law on Social Protection demonstrates that cantons often observe neither the deadlines nor the obligations prescribed by Federal laws<sup>50</sup>.

The Parliamentary Assembly, as an example of a legislative body at the central governmental level, best illustrates the *de facto* paralysis of the parliamentary system in Bosnia and Herzegovina. It is sufficient to point out that in the case of Bosnia and Herzegovina, all the basic laws that make a country a state had to be proclaimed by the High Representative by means of a special decree, as the Parliament failed to agree and adopt them. These laws include the laws on the national flag, the coat of arms, the national anthem, unified licence plates for vehicles, identification documents etc. The present Parliamentary Assembly holds the post-war record, having adopted over 100 laws so far, whereas the previous sitting of the Assembly managed to adopt only 8 laws -the earlier ones had even poorer results. However, a more detailed analysis of the procedures which resulted in the adoption of all of the laws above, reveals that a great many of them were adopted exclusively as a result of arm-twisting policies exerted by representatives of the international community, i.e. exerting pressure on particular parties and delegates, ranging from public *bona fide* suggestions to secretly and publicly exerted pressure, even blackmail, on behalf of the OHR, the OSCE, the embassies of PIC member states etc.

<sup>49</sup> The Law on Primary and Secondary Schools had to be imposed by the High Representative in three cantons.

<sup>50</sup> The framework Law on Social Protection for the Federation of the BiH, adopted in 1999, stipulated that the cantons are obliged to adopt their own social protection legislation within a period of 6 months after the coming into effect of the framework law, which three cantons failed to do until 2005.



Although Article IV of the Constitution of Bosnia and Herzegovina prescribes a bicameral parliamentary system with the same authorities given to both Houses, this system is in practice quite different from the parliamentary systems in other federal states. In all democratic federal states, the bicameral system serves to ensure equal representation of the entities, wherein the lower house is organized by proportional representation, and upper house employs a particular formula whereby it is ensured that different entities (federal states, provinces, cantons etc.) are equally represented. However, in both of the Houses of the Parliamentary Assembly of Bosnia and Herzegovina, two-thirds of the delegates represent the Federation of BiH, and one-third of the delegates represent RS, keeping in mind the fact that the delegates from the Federation of BiH represent only the Bosniak and the Croat peoples, while those from RS represent only the Serb people<sup>51</sup>. Furthermore, according to the Constitution of BiH, the main function of the House of Peoples is the authority to veto laws expected to be threatening to the vital national interests of one of the constituent peoples. The result of this make-up is that the House of Representatives has become a parliamentary body which in effect hosts the legislative process, whereas the role of the House of Peoples is entirely negative: it uses the veto as a mechanism for the protection of the vital national interests. It is the opinion of the Venice Commission that “the mechanisms for decision-making at the level of Bosnia and Herzegovina are neither efficient nor rational, but are bulky and open to too many possible blockages in the decision-making process. Though it would not be realistic to expect the complete discontinuation of the mechanisms after the veto model with respect to the protection of vital interests, the criteria they use should be limited and highly qualified”<sup>52</sup>.

With respect to the legislative authority of the international community, embodied in the institution of the Office of the High Representative, the past High Representatives made extensive use of their powers to impose legislation. This became particularly evident in the period of establishing the state structures of BiH, when a lack willingness of the delegates of some of the constituent peoples, and the consequential impasse of the legislative organs, forced the High Representative to impose all the legislations that are essentially significant for the functioning of the state and of its bodies. It can practically be said that the entire legislation essential for the functioning of the state of Bosnia and Herzegovina was in fact imposed by the Office of the High Representative at different times. Alongside the direct decree imposing individual laws, the Office of the High Representative has also continuously used its role of an advisor, and has exerted direct and indirect pressure on the individual bodies and officials in order to procure the adoption of the laws and regulations considered to be necessary. The most recent example of the kind took place in the summer of 2005: the process of the reform of the police forces in BiH. The OHR took on the role of instigator of the entire process, but refrained from imposing any of final solutions to the local officials. Notwithstanding the fact that the current High Representative has used his powers more sparingly, he did have to resort to them in 2005 in order to make several important legally binding decisions, amendments to existing laws and one new law<sup>53</sup>.

In sum, one can conclude that the legislative authority in Bosnia and Herzegovina is, in terms of its constitutionally defined powers, mechanisms, basic laws and rules of procedure, both formally and legally completely independent and with capacities to complete the entire legislative cycle: from incentives to adoption and amending of laws and other regulations. The limitations

<sup>51</sup> It would be interesting to assess the compatibility of this arrangement with the Decision on the Constituent Status of the Peoples residing throughout the territory of the BiH.

<sup>52</sup> «Mišljenje o ustavnoj situaciji u Bosni i Hercegovini i ovlaštenjima Visokog predstavnika» [*An opinion regarding the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative*], A Report of the Venice Commission dated March 11, 2005

<sup>53</sup> For a list of decisions adopted in 2005, please see: [www.ohr.int/decisions/archive.asp](http://www.ohr.int/decisions/archive.asp)



that parliamentary bodies have in the execution of their legislative functions are a result of a complete paralysis and lack of organization in political activity in the country i.e. the presence of conflicting policies articulated in the voice of advocates of the national interests of the three constitutive peoples. The aspirations of Serb nationalist parties for an independent state of Republika Srpska, and the tendencies of a part of the Croat political parties towards limiting the prerogatives of the Federation and of the State of BiH in favour of the cantons with Croat majority, contribute neither to the lifting of the blockages in the political system nor to the increase of understanding between the representatives of the constituent peoples. Resorting too frequently to the use of the mechanism for the protection of vital national interests also delays the adoption of absolutely necessary laws, an adoption that is essential in the interests of continuing the process of association into Euro-Atlantic integrations<sup>54</sup>. And finally, it is often the case that the adoption of certain laws is often deliberately hampered in order to compel the Office of the High Representative to act and impose these laws, which representatives of the parties in power see as possible threats to their credentials as the protectors of the interests of the peoples they represent.

### **7.5. How extensive and effective are the powers of the legislature to scrutinize the executive and hold it to account?**

#### **7.5.1. Legal framework**

We shall focus our efforts on analyzing the relation between the legislative and executive branch at the central level, as the characteristics of these two branches at this level are also greatly reflected at the lower levels of government. There is also a visible trend of strengthening the central governmental bodies in BiH by means of adopting state framework or umbrella legislation in many of the areas that were, until recently, exclusively regulated by entity laws.

Like in other democratic parliamentary systems, the executive authority is supervised by means of 1) the parliamentary supervising function, and 2) the work of different parliamentary committees and other similar bodies. In the analysis of the relations between the legislative and executive authority at the central level in Bosnia and Herzegovina, one needs to consult the relevant legislation, which includes the Constitution of Bosnia and Herzegovina and the Rules of Procedure of both the House of Representatives and the House of Peoples within the State Parliament<sup>55</sup>. These documents regulate the establishment of parliamentary committees, as well as their composition, position and competencies with respect to the executive authority. Article 38 of the Rules of Procedure of the House of Peoples and Article 44 of the Rules of Procedure of the House of Representatives stipulate that both the Houses of the State Parliament can set up both provisional and permanent joint committees. The same Article in Paragraph 2 also determines that the *scope of the activity, tasks and competencies of the committees* shall be determined on the basis of *identical conclusions* reached by both Houses.

<sup>54</sup> Examples of procrastination with respect to the transfer of authority over defence issues to the level of the state, instituting a state legislation on higher education etc.

<sup>55</sup> Ustav Bosne i Hercegovine [*The Constitution of Bosnia and Herzegovina*], Poslovnik o radu Zastupničkog doma Parlamentarne skupštine BiH [*The Rules of Procedure of the House of Representatives within the BiH Parliamentary Assembly*], Poslovnik o radu Doma naroda Parlamentarne skupštine BiH [*Rules of Procedure of the House of Peoples within the BiH Parliamentary Assembly*], internal publications of the Secretariat of the BiH Parliamentary Assembly

The joint committees of the BiH Parliamentary Assembly are:

1. *The Joint Committee for European Integrations*<sup>56</sup>,
2. *The Joint Committee for Defense and Security Policies and the Supervision of the Defense and Security Structures at the level of BiH*<sup>57</sup>,
3. *The Joint Security and Intelligence Committee entrusted with the Supervision of the BiH Intelligence and Security Agency*<sup>58</sup>.

According to Article 35 of the Rules of Procedure of the House of Representatives, the standing Committees of the House of Representatives within the Parliamentary Assembly of Bosnia and Herzegovina are as follows:

- a) The Legal and Constitutional Committee;
- b) The Foreign Affairs Committee;
- c) The Foreign Trade and Customs Committee;
- d) The Finance and Budget Committee;
- e) The Committee for Human Rights, Immigration, Refugees and Asylum;
- f) The Traffic and Communications Committee;
- g) The Administration Committee;
- h) The Gender Committee.

According to Article 23 of the Rules of Procedure of the House of Peoples, the standing Committees of the House of Representatives within the Parliamentary Assembly of Bosnia and Herzegovina are as follows:

- a) The Legal and Constitutional Committee;
- b) The Committee for Foreign Trade and Trade Policy;
- c) The Financial and Administrative Affairs Committee

Other temporary or permanent committees can be established based on the conclusions of both Houses of Parliament.

The Rules of Procedure for both Houses of the Parliamentary Assembly prescribe in detail the competencies and responsibilities of the standing Committees. For example, the Legal and Constitutional Committee of the House of Peoples has, *inter alia*, the duty to monitor the application of the Constitution of BiH, discuss issues that are significant for the constitutional order, gives incentives for the adoption of amendments to the Constitution of BiH, and discuss other issues concerning the Council of Ministers (Article 24). The Rules of Procedure grant similar, seemingly great powers to the standing committees from both the Houses of Parliament. The competencies of individual provisional committees are regulated by the very decisions on creation of the committee in question, although these powers are, as a rule, narrower and more specific in practice. In their roles as advisory, observing or consulting bodies, the committees are given the full authority in performing their own activities within the legislative branch of government. However, in terms of regulating the relation between the legislative and executive branch, the Rules of Procedure are mainly silent concerning the work of the Houses of the Parliamentary Assembly. Only one article, included in same form in the Rules of Procedure of both the House of Representatives and House of Peoples (Article 32 in the former, and Article 30 in the latter case), stipulate that “in the performing of duties within its scope of activities, a committee *may*

<sup>56</sup> *Službeni glasnik BiH [Official Gazette]*, No. 13/03

<sup>57</sup> *Službeni glasnik BiH [Official Gazette]*, No.38/03

<sup>58</sup> *Službeni glasnik BiH [Official Gazette]*, No. 17/04

cooperate with the following governmental bodies, as necessary: Presidency of BiH, BiH Council of Ministers, entity parliaments, as well as with other bodies and institutions at all levels of government, and with groups of citizens”.

The basic function of the control over the executive by the legislative bodies of the state of BiH is the function of the assessment and approval of budgets, which are, without exception, subject to parliamentary procedure at all levels of government in Bosnia and Herzegovina. At this point it would be worth mentioning levels of government other than the state, since the state budget is extremely low and has no real impact on the country's internal policies. The budgets that really finance the work of governments within BiH can be found at the entity level (in the case of Republika Srpska) and the cantonal levels (in the case of the Federation BiH). The Federal budget, though it includes some items in terms of financing the state apparatus, in principle reflects the setup at it is at the state level, allocating only symbolic amounts to the financing of certain commitments of the governmental bodies. It is also important to highlight that the size of the budgets does not correspond to the common administrative logic in other democratic parliamentary systems, seeing as the State and Federal budgets are very restricted and are fuelled by the net contributions from the entities or the cantons. Furthermore, the size of the budgets varies from one canton to another, with the budgets of the more prosperous cantons (primarily the Sarajevo Canton) exceeding the budgets of both entities and of the state. On the other hand, the budgets of individual municipalities surpass the budgets of the less affluent cantons etc. The situation will soon radically change with the introduction of the Value Added Tax (VAT) at the state level, as well as with the beginning of the functional operation of a single customs authority at the state level. These are all measures that will ensure the primacy of the state level in the processes of distribution of budget funds to the different levels government.

The supervisory function of the Parliamentary Assembly: alongside providing for committees as part of the legislative authority, the Rules of Procedure of the Houses of Parliament also regulate the activity of the Houses (Chapter V of Rules of Procedure of the House of Representatives and the Rules of Procedure of the House of Peoples). Article 80 of the Rules of Procedure of the House of Representatives foresees the following activities to be performed by the House of Representatives: a) legislative regulation; b) information regulation; c) supervisory regulation; d) internal regulation. Article 75 of the Rules of Procedure of the House of Peoples includes also the activity of e) decision-making concerning issues of vital interest and self-dissolution. In terms of the Parliament's supervisory function, both Rules of Procedure include in a greater detail the powers and rights of the legislative authority. Article 114 of the Rules of Procedure of the House of Representatives includes the general provision that “The BiH Council of Ministers shall be accountable to the House of Representatives for the execution of its policies, implementation of laws, other regulations and provisions within its constitutional and legal powers, as well as for guidance and coordination of the work of the ministries”. Articles 115 to 123 regulate the activities, powers and rights of representatives in the process of voting on appointments and suspensions to the Council of Ministers of BiH, as well as in the process of voting on motion for no confidence in the government or on resolutions. In compliance with these powers, the Parliamentary Assembly approves the appointment of a candidate to the position of Chairman of the Council of Ministers (mandate holder), on the basis of his/her presented program, as well as the appointments of all ministers (Article 115). The next articles regulate the mechanism used in passing a no confidence vote to the Council of Ministers, where it should be noted that the regulations are too general and insufficiently precise concerning the procedures on passing a no confidence vote and the subsequent steps.

The main powers of supervision and accountability of the executive authorities are described in Chapter V, Section 4 of the Rules of Procedure of the House of Representatives: Public Informing Activities, Part 3 - Informative sessions and the Council of Ministers' Annual Report. (A similar provision can be found in the Rules of Procedure of the House of Peoples, in the Section 3 with the same title, Part 1- Questions, Article 117.). Pursuant to the provisions of this Article, the members of the Council of Ministers "shall ... at the request of a relevant authorized committee, come before the Committee and hold an informative session to discuss the issue at hand" (Paragraph 1). After concluding the hearing, "the Committee may adopt a resolution that presents its stand or its guidelines concerning the policy of the relevant ministry", (Paragraph 3). Furthermore, Paragraph 4 of this Article specifies that the Committee may initiate the procedure for determining responsibility should a member of the BiH Council of Ministers a) fail to respond to a summons of the particular Commission, b) fail to submit the necessary information to the Committee, and c) fail to submit complete and accurate information to the Committee. The above functions correspond to the functions of parliamentary supervision and control over the executive authorities in developed democratic parliamentary systems (the checks and balances system)

### **7.5.2. Implementation and negative indicators**

A review of the legal regulations that control the relation between the legislative and the executive authorities in Bosnia and Herzegovina reveals that, on the basis of relevant documents, the Parliament is vested with general and basic powers which concur with the standards of developed democratic parliamentary practices. The problems with particular legislations are a result of the incompleteness and insufficient preciseness of the relevant legal provisions and bylaws that address the supervision over the executive authority by the elected Parliament. To start with the Rules of Procedure of the Houses reading them from the end: it becomes obvious that the issue of the *responsibility* of members of the Council of Ministers, in the cases where the Council does not satisfy the requests of parliamentary committees, has not been completely regulated. Article 134 of the Rules of Procedure states that a relevant committee may institute procedures for *determining the responsibility* of one of the members of the government, without clearly defining what constitutes *responsibility*; it is not clear what repercussions await the individuals proved to be 'responsible' for failures, nor is it clear what consequences there are for an elect government if it is, in general, unwilling to cooperate with the Parliament. In other words, the BiH Parliamentary Assembly has the authority to call to account individual members of the Council of Ministers, at the same time taking for granted the voluntary cooperation of the executive, as the system almost completely lacks the efficient measures and sanctions to ensure their observance of the Rules of Procedure. Practice has shown that the Council of Ministers frequently delivers late and incomplete responses to the questions posed by the committees, and has also been known to completely disregard certain requests. However, attempts are being made to resolve these problems by repeating the requests referred to the government, by means of supplementary questions etc. All these measures result in slow operation of the relevant institutions and lead to imbalance *or* distorted balance in the interaction of the executive and the legislative authority.

With respect to the provisions regulating the mechanisms for voting down the confidence in the executive, which represent a powerful tool in the hands of the legislative branch for ensuring control of the activity of the executive, the problem of incomplete and imprecise bylaws referring to this issue is also present. Though the Rules of Procedure prescribe the procedural mechanism for passing a vote on no confidence in the government, there are no precise regulations or guidelines as to what is to be done should such a vote be passed. Since this mechanism has never been put into practice in Bosnia and Herzegovina, we can only speculate how the Parliamentary

Assembly would address this issue, in light of its proven incapacity to solve far more benign problems which fall under the day-to-day legislative practice. The existing legislation lacks measures to ensure the continuity of government in case that no confidence in the elect government is voted down. There are no measures foreseen either to prevent a vacuum in the distribution of powers, or if need be to organize and ensure elections and establish a new government, etc. In any case, since the political stake holders in BiH believe the procedures for passing a vote on no confidence in government to be something that simply cannot take place in practice, the executive feels that it has a *de facto* immunity against the application of these powers by the legislative authorities. An illustration of this fact is the Council of Ministers, in its current composition, has not once in the period since it was inaugurated, i.e. between 2002 and 2005, submitted a report on its activities to the BiH Parliamentary Assembly, though it is bound to do so annually by the provisions stipulated in the Law on the Council of Ministers and in the Rules of Procedure for both Houses of the BiH Parliamentary Assembly<sup>59</sup>.

With respect to the activities and competencies of the parliamentary committees themselves, there is the problem of how to use them to supervise and to ensure the accountability of the executive. The parliamentary committees supervising the work of relevant ministries are one of the key safeguards of democratic processes in a state government. However, if the Rules of Procedure of the Houses of Parliament determine that the only authority these committees have is *the right to cooperate* with the executive, the committees of the Houses of Parliament, as an institution of their own, become inoperative for the purposes of the effective control of the executive authority.

The Parliamentary committees are also plagued by a paralysis of the system, which is the result of splits along the lines of national and ethnic interests, which are in turn prescribed by the above mentioned Rules of Procedure that clearly determine the national and ethnic composition of committees. The work of the parliamentary delegates has shown there that the committees lack adequate work discipline, with many of the members seeing their appointment in the less popular committees merely as a burden, and there have been cases where members of individual committees never attended a single session. In sum, the legislative authorities in BiH possess insufficiently developed mechanisms to supervise their executive counterparts, and this function suffers from the internal weaknesses of the Parliament itself.

## **7.6. How rigorous are the procedures for approval and supervision of taxation and public expenditure?**

### **7.6.1. Legal framework**

Bosnia and Herzegovina possesses an exceptionally intricate and complicated fiscal system, which is a result of combining practices and regulations inherited from the former Yugoslavia, and the specific post-war political solutions specified in the Dayton Peace Agreement. In this kind of system, the central state institutions had, until recently, very few or no powers in the sphere of taxation and the regulation of public expenditures. The fiscal system was, and still is, decentralized to the level of entities (in the RS) and cantons (in the Federation of BiH). Entity and cantonal parliaments play an important role in the control of public spending through planning and adopting budgets of relevant governments. However, the possibilities of any major influence by the repre-

<sup>59</sup> Article 135 of the Rules of Procedure of the House of Representatives of the Parliamentary Assembly; Article 65 of the Rules of Procedure of the BiH Council of Ministers; Article 34 of the Law on the Council of Ministers. The latter stipulates that the “Parliamentary Assembly has the right to request the Council of Ministers to submit an extraordinary report with respect to a particular issue”.



representatives on the creation of fiscal policies are *de facto* limited, which results from the fact that the planning of the budget is preceded by long and painstaking stage of preparations and negotiations between the political parties in power, in which great attention is paid to the exchange of provisions. This is done in order to achieve a balance between the interests of different parties or peoples in the budget-planning process.

The allocation of resources between different governmental levels is often not adjusted to the expenditures that are incurred in the provision of public services, which is especially the case in the municipalities whose competence include many of the services catering for the needs of the citizens, and who, like all the other municipalities in both entities, have been left without the largest part of their revenues collected through taxes by the entities and the cantons. There are also great differences between individual cantons and between the two entities in the amounts of collected funds and in the types and rates of taxation. Poorer cantons are faced with major problems because they have to fulfil their obligations that are prescribed by entity regulations, for which, the amounts of taxes collected at present are insufficient. Partly due to this problem, two of the cantons, the Bosnian Podrinje Canton and the Posavina Canton, receive annually regular net transfer payments from the Federal budget. The situation at the municipal level is completely chaotic, with different regulations applying in different municipalities, unclear legal regulations regarding the division of tax jurisdictions between the cantons and the municipalities, or between the municipalities and the entities. Furthermore, a great many municipalities do not collect taxes to which they have legal right according to, for instance, cantonal regulations. At the same time, certain municipalities collect illegally imposed taxes and tariffs to replenish their budgets<sup>60</sup>.

The adoption of the Law on Indirect Taxation of BiH and the Law on Value Added Tax led to the systematic restructuring of the fiscal system of Bosnia and Herzegovina in the past two years<sup>61</sup>. The once miniscule jurisdictions and proceeds of central state agencies have now become the essential instruments and are realized through a newly established Indirect Taxation Administration, which is under the jurisdiction of the BiH Council of Ministers. The Value Added Tax (VAT) will replace the former entity-collected turnover tax, which was abolished at the state level by the Sixth Directive of European Union regarding the VAT. VAT payments are made to a joint account and are then distributed by the Administration at the level of the state (Articles 1 and 2 of the Law on the VAT). The activities of the indirect taxation system and of the Administration are controlled by the Board of Directors. Its members will be the state and entity ministers of finance, as well as three experts appointed by means of a public competition. With respect to the currently ongoing registration of tax payers, the accounting of the VAT should begin on January 1, 2006.

The second segment of the public expenditures, which was recently put under the control of central government agencies and is regulated by single state level provisions, is the segment of public procurement.<sup>62</sup> Prior to the Law on Public Procurement in BiH coming into effect in November 2004, this segment was regulated by various provisions at all levels of government in BiH (by a Decision regarding the institutional needs of BiH, by a Decree in the Federation of BiH, the Law of Republika Srpska and the Statute in the Brčko District). The above medley of regula-

<sup>60</sup> Bosnia and Herzegovina, *From Aid Dependency to Fiscal Self-Reliance, A Public Expenditure and Institutional Review 2002* (WB PEIR); The World Bank: *Bosnia and Herzegovina, Creating an Efficient Decentralized Fiscal System*, June, 2003

<sup>61</sup> *Zakon o sistemu indirektnog oporezivanja u BiH [The Law on the Indirect Taxation System in the BiH]*, (BiH Official Gazette, No. 44/03 and 52/04); *Zakon o PDVu [The Law on the Value Added Tax]*, (BiH Official Gazette, No. 09/05); *Zakon o izmjenama i dopunama Zakona o PDV-u [The Amendment to the Law on the Value Added Tax]*, BiH Official Gazette, No.35/05)

<sup>62</sup> *Zakon o javnoj nabavci u BiH, [The Law on Public Procurement of BiH]*, (BiH Official Gazette, No. 49/04)



tions, their incompleteness and inadequacy, led to the opening of possibilities for civil servants to overstep their official powers, bribes, corruption and uneconomical use of the taxpayers' funds.

Against this background, the aims of the new legislation are: to ensure reduced and more efficient spending of public funds, to reduce corruption, increase transparency of public spending by means of improving the access to information, as well as to ensure the equal treatment of all the parties in the process of public procurements. The Law will also establish a Public Procurement Agency (Article 48), the role of which is to ensure a proper enforcement of the Law. The Complaints Review Office will be established as a second instance organ in the enforcement process (Article 49). The Law also prescribes five types of public procurement procedures: the transparent, the limited, and the negotiable procedures (with or without prior announcement), and a tender procedure for a project design solution (Articles 10 - 12). Particular attention is given to the transparency and openness of the entire procedure, and for that purpose, direct cooperation has been established with the BiH Official Gazette (Articles 19 - 21). The activity of the Agency, as well as the entire procedure of public procurement, is controlled by the Agency's Board of Directors, whose members include the entity and state finance ministers, as well as independent professionals appointed through public selection procedure (Article 48, Section 9).

Since the signing of the Dayton Peace Accords, up until the adoption of the Customs Policy Law by the Parliamentary Assembly in December 2004, the entity governments held exclusive jurisdiction over the customs system<sup>63</sup>. There were separate customs administrations and customs proceeds flowed into the entity budgets. However, according to the provisions of a new and single law, "customs regulations apply universally in the entire customs territory of BiH". (Article 2, Section 2 of the Law on Customs Policy). The customs administrations have now been unified, the Law enforced by the Indirect Taxation Administration (Article 2, Paragraph 2), and there is a single customs territory of BiH (Article 3, Paragraph 1). According to the provisions of this Law, all future customs regulations will include the Law itself, as well as regulations and bylaws adopted by the Parliamentary Assembly of BiH, the Council of Ministers and/or by the Board of Directors of the Administration (Article 1, Paragraph 1).

### **7.6.2. Implementation and negative indicators**

Fiscal planning and management in Bosnia and Herzegovina are burdened by a complex political structure of the state with frequently overlapping jurisdictions at different levels. The existing fiscal model also generates alarming tax burdens, which de-stimulate the transformation from a grey to a regular economy and limit foreign investments and new employment etc. The Development Strategy of BiH prescribes as one of its basic priorities, the establishment of a mechanism for a more efficient collection of public revenues, reduction of the grey economy, a stronger control of the collection of public revenues and spending, and an improved control and management of budgets<sup>64</sup>. According to PRSP data, 94% of the overall spending of budget funds relates to the administrative institutions at the entity and at lower governmental levels, with 55% of the relevant budget in the Federation of BiH being allotted to the cantonal and municipal authorities, and 22% of the relevant budget in the RS allotted to municipal authorities. Generally speaking, one of the basic problems that BiH faces in the sphere of fiscal policy, is enormous public spending. According to the data of the World Bank and of the EPPU, public spending in BiH amounts to 54% of the GDP and, as such, takes first place among other countries in the region and is far

<sup>63</sup> Zakon o carinskoj politici Bosne i Hercegovine [*The Customs Policy Law of BiH*], *Official Gazette* of BiH, No. 57/04)

<sup>64</sup> PRSP BiH, p. 42

above the averages applicable in other countries in transition. This percentage is expected to decrease to 43.1% of the GDP by the end of 2007.<sup>65</sup>

The development strategy of BiH has most seriously addressed the resolution of structural problems in the state's fiscal sector. Together with the economic growth, the reform of this sector is, with every reason, considered to be the key factor for the success of all other reforms in the state. The current complicated and corrupt fiscal system has contributed significantly to the disastrous position of Bosnia and Herzegovina in world corruption rankings, which are drawn up annually by Transparency International<sup>66</sup>.

The first part of the reform of the fiscal sector, initiated with sponsorship by the PRSP, implies a reform of public administration with the aim of "eliminating the doubling of activities, increasing efficiency and establishing coordination between different levels of government". The adequate allocation of public funds at different governmental levels is ensured alongside the enforcement of the administrative system for the collection of public funds. The former implies:

- To ensure coordination of activities with respect to the adoption of decisions that influence income and expenditure policies. This is especially significant in the case of the Federation of BiH, where the Federal Ministry of Finance has established a regular coordination with cantonal finance ministries, which has to be further strengthened.
- To ensure that distribution of resources between offices at entity and sub-entity levels reflects the distribution of responsibilities applied in the public services sector,
- To establish a greater level of solidarity in order to support less prosperous cantons and municipalities.

The administration reform anticipates the introduction of limits to the salaries in the public sector. With its current claim on 19.6% of the GDP in Bosnia and Herzegovina, this sector spends three times as much as its counterparts in other countries in transition.

The establishment of the Indirect Taxation Administration at the onset of 2004, and the planned introduction of the Value Added Tax in January 2006, both represent *centerpiece* reforms of the fiscal system in Bosnia and Herzegovina, as it is the first time since the birth of the state that the entire system of collecting and distributing funds from the Value Added Tax and customs duties is placed under the control of the central government<sup>67</sup>. The strengthening of the role of the state in fiscal policy will put into motion the replenishment of the state budget from the state revenues, unlike the former practice when the state budget was formed on the basis of transfers from the budgets of the entities. Alongside taxes, the state budget will also be replenished by means of funds from customs duties obtained through a consolidated customs administration. In connection to this, the extraction of income from customs funds will, in the period to come, be reduced by 20% due to the implementation of free-trade agreements with neighboring states. The Law on Public Procurement of BiH was adopted with the aim to strengthen further the single economic space in Bosnia and Herzegovina, as well as the transparency of public spending. This legislation has replaced the entity regulations which had previously regulated this sector<sup>68</sup>. The adoption of this law is one of the

<sup>65</sup> Okvir za fiskalnu reformu [*The Fiscal Reform Framework*], p.1, [www.eppu.ba](http://www.eppu.ba)

<sup>66</sup> 2003.: Ranked 75<sup>th</sup> in the world; 2004.: Ranked 82<sup>nd</sup> in world. Source: Transparency International BiH, the 2004 Annual Report: [www.ti-bih.org](http://www.ti-bih.org)

<sup>67</sup> Zakon o sistemu indirektnog oporezivanja u BiH [*Law on the Indirect Taxation System in BiH*]( *Official Gazette of BiH*, No. 44/03 i 52/04); Zakon o carinskoj politici Bosne i Hercegovine [*Law on the Customs Policy in BiH*], ( *BiH Official Gazette*, No. 57/04)

<sup>68</sup> *Official Gazette of BiH*, No.49/04

conditions for the integration of BiH into the European Union and into WTO membership. The Law is also expected to result in significant savings in the area of public spending.

At the present, it is impossible to give an assessment of the success of the above legislation, since they are in force only for a short period of time, in which it is impossible to conduct adequate analyses due to lack of suitable parameters. The implementation of the Law on Value Added Tax has yet to begin, and many hypotheses are currently being made so to whether its application will bring discipline to the fiscal sector and replenish the budget, which is what many of its creators expect. A number of analysts are also concerned that the introduction of the VAT could bring about a tide of increases in the prices of the basic necessities and thus be detrimental to the social peace. This peace has been sustained throughout the post-war period with the help of a stable currency, the Currency Board system, as well as a nearly nonexistent inflation.

The fiscal system will remain burdened with numerous problems, regardless of its stabilisation through the introduction of the VAT. These problems are especially related to the system's complexity and an inadequate organization of collecting and spending tax based revenue at different levels. In the Federation of BiH, a formal mechanism for the distribution of tax-based revenue between the entities and the cantons does not exist, and the distribution is executed on the basis of the decisions by entity parliaments. At the cantonal level, all cantons have passed legislations on the distribution of public revenues, and in accordance with these laws, suitable taxes are further distributed to cantons and municipalities. In Republika Srpska, this kind of distribution exists only between the entity and its municipalities. On the other hand, the possibilities of the government at the sub-entity level to make decisions on the distribution of public revenues are limited in both entities, seeing as the prerogatives of this segment have remained with the entity parliaments. Even when deciding on the distribution of tax-based revenues, the cantons do not have the authority to determine tax rates and tax bases, all in the interest of preserving a harmonised system at the level of the entities. In Republika Srpska, the entity Assembly is responsible for all fiscal issues, whereas the municipalities are only responsible for determining communal taxes and income.

With respect to public spending, the entity governments, in compliance with the measures prescribed in the Action Plan, adopted medium term expenditure frameworks (MTEF) in 2003. These frameworks represent an important step towards the further development of the system of planning and managing public spending. The MTEF prescribes that governments organize regular monthly consultative meetings at different levels, (with special focus on the federal and cantonal governments), with the aim of revenue projection and budget preparation. This year, BiH adopted budget laws for the first time at all administrative levels, in compliance with the recommendations of the EU Feasibility Study<sup>69</sup>. These laws and other regulations introduce measures for making record of payments, grants included, to all public bodies at all governmental levels. Entity finance ministries need to strengthen the departments that address macroeconomic analyses and forecasting, as well as those that deal with fiscal analysis and the budget policy analysis, the consolidation and analysis of fiscal data and fiscal reporting. The most significant relevant ministries are expected to establish units within the departments responsible for creating strategies, programmes and budgets. On the other hand, the budget beneficiaries are expected to submit quarterly, semi-annual and annual reports regarding the execution of budgets (Article 33 of the Law). In addition to these measures, the legislation also prescribes the establishment of a treasury system of opera-

<sup>69</sup> Zakon o izvršenju budžeta institucija BiH i međunarodnih obaveza BiH za 2005. godinu (*The Law on the Execution of the Budget of the Institutions of Bosnia and Herzegovina and on the Execution of the International Obligations of Bosnia and Herzegovina for the year 2005*), Official Gazette of Bosnia and Herzegovina, No. 7/05

tions in all public institutions at the sub-entity levels, including the levels of the cantons and municipalities. This provision was influenced by a very positive feedback and savings achieved through the establishment of the treasury system in the operation of institutions at the level of the BiH, in 2001. According to PRSP Action plan, Bosnia and Herzegovina should establish an institutional frame for the drafting of a consolidated fiscal balance sheet at the level of the BiH, a task performed so far exclusively by the Office of the International Monetary Fund in the country. The coordination of fiscal issues will be assumed by a council which will be formed as part of the Indirect Taxation Administration.

Finally, with the introduction of external auditors, Bosnia and Herzegovina has made a big step forward in terms of upgrading transparency and responsibility in the collection and spending of public funds, which need to be strengthened even further. The practice of managing public revenues outside the budget is still very widespread. In both entities, almost 50% of the public spending is managed outside, mostly through health insurance and social security funds<sup>70</sup>. As stated before, mechanisms of coordination between different administrative levels do not exist, and this leads to the overlapping of jurisdictions, the lack of coordination between the allocation of revenues and the liability in spending, which is a particularly significant problem at cantonal and municipal levels. In accordance with the PRSP, entity finance ministries must have capacities that will enable them to monitor the extra-budgetary funds, which represent a significant element of the government's fiscal operations. The inadequate monitoring and analysis of the spending at sub-entity levels has created unbalances in many of the public sectors of the BiH government. The correction of these problems will be possible when entity governments and finance ministries start working towards including the extra-budgetary sources of financing into the budget, as well as towards the improvement of the performance of budget analyses and monitoring by the bodies established to this effect.

## **7.7. How comprehensive and effective is legislation giving citizens the right of access to government information?**

### **7.7.1. Laws**

Bosnia and Herzegovina shares (and has shared) the destiny of other socialist states, in which citizens were not subjects, but exclusively objects of the authorities, and their role was merely to listen to and obey the decisions made by the authorities. There was no genuine participation of citizens in the government, regardless of the fact that the Former Yugoslavia (in contrast to other communist countries) was governed by a softer form of socialism, which allowed for formal possibilities of the citizens' political participation through para-democratic institutions: *socialist unions* and self-management bodies in companies. In consequence, all the information controlled by offices of the state was considered to be more or less *confidential*, *secret*, etc., and was not usually made available to the public. The situation changed very slowly after the democratic elections held in 1991. This segment of democratic rule was among the last segments to receive any attention not only from the decision makers, but also from the public and its representatives in parliamentary bodies. The reasons behind this trend were the extraordinary circumstances caused by the war in Bosnia and Herzegovina, and by post-war (non)conditions of life, where a great many instruments of democratic governance were tacitly neglected in the interest of protecting allegedly threatened national interests of the three constituent peoples of BiH.

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<sup>70</sup> EPPU data

The Law on the Freedom of Access to Information in Bosnia and Herzegovina (FOIA) which was adopted by the Parliamentary Assembly of Bosnia and Herzegovina in October 2000<sup>71</sup>, was a turning point in the legal regulation of the rights of citizens to access to information controlled by public institutions. The same legislation, with minor differences in the wording, were adopted by the entity parliaments of RS and the F BiH in May 2001 and July 2001 respectively<sup>72</sup>. The FOIA guarantees minimum standards of accountability and transparency in the functioning of public institutions at all levels of government. This Law also defines the rights and obligations of state institutions established on the basis of these legal texts, including the obligation to develop forms of requests and guides for access to information, as well as to appoint personnel in all institutions, who will be responsible for providing unimpeded access to information to the citizens. The Law stipulates that “all natural and legal persons have the right to access information controlled by public institutions, and all public institutions have the corresponding obligation to publish this information” (Article 4).

FOIA regulates important issues such as the definition of the terms such as information and right of access, as well as exceptions to these rights of access. The text of the Law comprehensively and exhaustively defines the *public institution* as every public institution and body in Bosnia and Herzegovina, including the executive, legislative and judiciary authorities, as well as individual administrative agencies and legal persons that have control of information (Article 3). This legislation is detailed, decisive and guarantees citizens the right of access to information, and, if necessary, the right to request an amendment of or to add comments to their own personal information controlled by a public institution (Article 1). Exceptions to the access rights are very limited both in number and content and, as such, comply with the highest democratic standards. The exceptions include information expected to be able to cause serious damage to legitimate goals of foreign and monetary policies, crime fighting policies, confidential commercial information, as well as information subject to the protection of privacy (Articles 6-8). Perhaps the most important segment in this Law is that it prescribes the detailed procedure of access to information, with very clear instructions published in guidebooks and information request forms that have been developed and published in a simple and understandable language to assist natural persons may request access to information from any public body.

### **7.7.2. Implementation and negative indicators**

The implementation of the Law on the Freedom of Access to Information is one of the key factors for the development of participatory democracy at all levels of the government in Bosnia and Herzegovina. Its implementation is most evident at the central and entity levels, where most public institutions and agencies readily accepted the Law, and, to that effect, developed procedures, appointed the responsible staff and published guides for the access to relevant information. The implementation of the Law at the cantonal, and especially at the municipal level, proceeds at a considerably slower pace. The reasons for the delay are twofold: the incompetence and non-resourcefulness of administrative bodies play an important role, but what should be necessarily mentioned is the (still) omnipresent culture of reserve, as well as the lack of trust on behalf of state institutions towards the citizens in whose interest they supposedly work.

The recognition of these problems at the local level pushed the OSCE Mission in BiH to launch the *CONTRACT* project, the goal of which is to cooperate with municipal authorities throughout BiH in order to oblige them to practically implement the Provisions of FOIA. CON-

<sup>71</sup> *Official Gazette of BiH*, No. 28/2000, November 17 2000

<sup>72</sup> *Official Gazette of RS* No. 08/01; *Official Gazette of FBiH* No. 32/01



TRACT obliges the municipality to, among other duties, appoint a responsible official to the project, publish a guidebook and a register of all the available information, respond to at least 80% of the requests for information in a period defined by Law, etc. The fact that an international organization (once again) felt the need to intervene so as to enforce the implementation of laws adopted long ago indicates that the degree of penetration of democratic mechanisms into public institutions is still very low, especially at the local level.

Moreover, Bosnia and Herzegovina certainly cannot boast with an especially effective participation of citizens in the functioning of the state bodies. The public in BiH largely acts as passive observers of the decision-making processes regardless of the fact that they are directly affected by the decisions made, and instances of lobbying with the authorities are therefore very rare. The other reason for the lack of interest of the public in the implementation of the Law (FOIA) is its lack of awareness of the Law as such, and also of the mechanisms that enable a free access to information. The central and entity governments had at one point organized a very well prepared public campaign in order to inform the citizens about the application of the Law. However, only a small number of municipalities executed the campaign at the local level. Since the establishment of a legal framework and mechanisms does not fall under the implementation of FOIA, this legislation also stipulates that “a public institution shall undertake all regular measures of providing assistance to every natural or legal person requesting to realize any right prescribed by Law”(Article 18). Therefore, failing to inform the public about their rights and failing to ensure a regular operation of the system of access to information, which is what happened in a great number of municipalities in BiH, can be considered a direct violation of the legal regulations on the part of these authorities.

The above mentioned legacy of secrecy in the operation of state institutions, as well as failure to respond satisfactorily to the demands of the public for the access to information controlled by certain government institutions, represents a continuous and great problem in the sphere of access to public information. In numerous cases, in the realization of certain projects, local administrative offices will refuse to grant the participants in this process insight into the drafts of the project. This is especially the case with projects that prescribe the realization of municipal budgets. The same problem also occurs frequently at the cantonal level, wherein, for instance, those receiving social security services are disabled from gaining insight into the amount of funds that the cantons forward to municipal social security centres<sup>73</sup>. These findings are supported by field research, such as the survey conducted in November 2004 by Transparency International BiH in cooperation with the OSCE, which examined the implementation of FOIA and the demonstrated problems in the operation of this segment of the state’s administrative responsibility. In the conduction of the survey, the interviewers sent letters of request for information to the addresses of over one hundred public institutions and administrative offices at all levels of government. The results were very unfavorable: the data collected by TIBiH showed that only 54% of the public institutions included into the sample responded to the requests within the legally set time limit of fifteen days. During the two months that followed, and only after interventions from the interviewers, an additional 11% of institutions responded. All in all, only 65% of the administrative agencies examined found necessary to respond to the requests for access to information in one way or another, while an unacceptable percentage of 35% of the public institutions in BiH did not respond at all, even after being urged repeatedly to do so.<sup>74</sup>

<sup>73</sup> Field data collected by the author

<sup>74</sup> Transparency International BiH, the 2004 Annual report:: [www.ti-bih.org](http://www.ti-bih.org)



### **7.8. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?**

Based on all of the above mentioned, it can be concluded that the government, and the BiH political system in general, suffers from problems that could be organized into three headings: 1) constitutional or structural problems in the organization of the state and its apparatus; 2) problems in the functioning of the state and its bodies; 3) a lack of resources for normal functioning of the state. Certain advances have been made in along each of these lines when compared to the immediate post-war period, but still, the general impression is that Bosnia and Herzegovina, even ten years after signing of the Dayton Peace Accords, remains trapped in a deep political, economic and social crisis.

With respect to the organized and systemic resolution of the problems identified in functioning of the state it can be said that there has been a certain degree of progress since the 2002 parliamentary elections. This year symbolizes a first great turning point in the perception of the state as a functional union of its constituent parts, rather than as a forced union of conflicted parties. By the beginning of 2002, a great number of laws were passed, regulating issues of vital importance for the functioning of the state, such as administration, state civil service, taxation, and an entire set of agencies and administrations were established, which took over the professional care over certain public sectors. Furthermore, a trend to strengthening of central governance was launched by abolishing the rotation principle concerning the Chairman of the Council of Ministers, adopting a Law on the Council of Ministers and increasing the number of portfolios at the state level.

The momentum of the reform process in Bosnia and Herzegovina is currently at its turning point. The changes caused by the described processes have reached such proportions that any continuation of the reforms would inevitably lead to a thorough redefinition and modification of the overall political system in BiH, placing the existence of entities, the principles of national exclusiveness, etc. at trial. The current political setting in BiH also features a great number of nationalistic political officials, who are either truly not willing or afraid to admit that they are willing to accept the further weakening of their prerogatives at cost of a professionalized, organized and capable government at the central level. Further changes in the political fabric of the BiH will probably soon address the making of amendments to the Constitution of BiH (the entity constitutions have already been amended once by the High Representative), which the political authorities in Republika Srpska simply would not allow. The current discussion over the defense and internal affairs reforms illustrates the best exactly how long and strenuous the journey which lays ahead of Bosnia and Herzegovina is in its desire to join European integrations.

In contrast to constitutional reform, the situation is far better in the sphere of legislation reform, the goal of which is to establish a functional state apparatus. As mentioned before, the adoption of the necessary laws and bylaws enabled the establishment of public services after the model of the most developed European countries. The Medium Term Development Strategy/Poverty Reduction Strategy Paper (the PRSP) has been drafted and adopted for the period from 2004 till 2007 at the level of the state and with the full support of both entities. The PRSP addresses the systematic reform of all sectors of public life, and also prescribes an Action plan for the said period, which specifically sets out the relevant measures and identifies the players competent for their implementation. Within the Council of Ministers, there has been a unit established that is responsible for the implementation and monitoring of reforms within the PRSP. The Strategy itself has been scrutinized and suffered different types of criticism, some of which were

quite justified. One should however emphasize that the most important aspect of this issue is the fact that, with the adoption of the PRSP by the Parliamentary Assembly and entity Parliaments, this country has received, for the first time, a strategic document, on the basis of which it can start planning its development.

With respect to the freedom of access to information under the state control, it should be noted that the State of BiH is one of the very few countries in the region that has taken measures to adopt the concept of *the e-government*, through the implementation of the 2004-2007 Medium Term Development Strategy (PRSP).<sup>75</sup> The e-Gov concept is in full compliance with the EC White Book, which, in the section on development, tenders and employment of Ministers, insists that the amount of information controlled by the state that is not available to the public be as minimal as possible. The complete application of the e-Gov concept is still a long-term goal for the state of Bosnia and Herzegovina. At the present, only a limited number of state ministries, institutions and agencies have achieved a nominal presence on the Internet through web pages that offer the basic information and legal provisions on their work, but are not regularly and comprehensively updated.

Notwithstanding all the difficulties it faces, Bosnia and Herzegovina is one of the few countries in Eastern Europe, and especially in the region, that systematically approaches the complete practical application of the e-Gov principle. With the help of the international community as the sponsor, there are a significant number of infrastructural projects currently undergoing or in drafting phase in BiH, among which we must mention the CIPS new identification documents project, which has enabled a network of different state agencies throughout BiH and become interconnected in terms of infrastructure and information resources; the registrar system, the partial linking of databases within the different internal affairs agencies in the state etc. The Council of Ministers sets the aims of the realization of the e-Gov project as follows<sup>76</sup>:

- Internet access to the updated and precise information on the programs and services of the administrative bodies;
- The possibility to communicate with administrative agencies through relevant web pages. The web pages are to be organized in accordance with citizens' needs and issues of interest, and shall ensure the legal and technical protection of the personal security and privacy of the citizens of BiH in the process of communicating electronically with administrative authorities;
- Easier access to the reports on the activities of administrative bodies.

And finally, the problems in the economic sector, i.e. the resources which are insufficient for proper functioning of the state, and which probably present the most serious threat to the stability and development of the state. A great deal has been achieved in this sector with respect to fiscal reform, the regulation of public spending and in the reduction of opportunities for financial fraud and thriftlessness. The latest results in the segment of the administrative-institutional reform of the key players ensuring the resources for the normal operation of state agencies and public services are encouraging. However, the fact remains that the state of Bosnia and Herzegovina is, in comparison to neighbouring countries also established with the fall of former Yugoslavia, and in both the absolute and the relative sense, a very poor country. The consequences of this poverty of our state are twofold: on one hand, low salaries of the civil servants and state officials give way to a general corruption in the society, while, on the other, the insufficient funds for social security and employment programs result in unemployment, poverty, apathy and a weakening of public moral.

<sup>75</sup> PRSP, p. 249, for the implementation of the e-Gov concept, see [www.eppu.ba](http://www.eppu.ba)

<sup>76</sup> *Ibid*

The powers of the state are clearly defined legally and formally in all segments of the society, including those where state intervention is most visible and of crucial importance, such as the health insurance, social security and education. The lack of funds in the municipal, cantonal and entity budgets necessary for the financing of these sectors puts at risk even the skeleton of services that the state is legally bound to provide for its citizens. A successful implementation of the 2004 - 2007 Medium Term Development Strategy for the BiH (the PRSP) should lead to a growth of the real GDP with the aim bringing it to the level of 70% of the pre-war GDP in BiH by 2008. The accomplishment of this aim should, in combination with an efficient state apparatus and the collection of the VAT and customs duties at the central level, create a stronger state and replenish the empty budgets with funds to finance basic services and the operation of the government apparatus.

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Constitution of Bosnia and Herzegovina

Constitution of the Federation BiH

Amendments to the Constitution of the Federation BiH, adopted April 19 2002

The Constitution of Republika Srpska Amendments to the Constitution of the RS, adopted April 19 2002

The General Framework Agreement for Peace in Bosnia and Herzegovina (The Dayton Peace Accords)

The Ruling of the Constitutional Court of BiH on the Constituent Status of the People of BiH, adopted July 1 2000

Poslovnik o radu Doma naroda Parlamentarne skupštine BiH (*Rules of Procedure of the House of Peoples of the Parliamentary Assembly of BiH*)

Poslovnik o radu Zastupničkog doma Parlamentarne skupštine BiH (*Rules of Procedure of the House of Representatives of the Parliamentary Assembly of BiH*)

Poslovnik o radu Vijeća ministara BiH (*Rules of Procedure the BiH Council of Ministers*)

Pravilnik o radu uposlenih u Sekretarijatu Parlamentarne skupštine BiH (*Rules of Procedure Concerning the Employees of the Office of the Secretary of the Parliamentary Assembly of BiH*)

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Zaključak i odluka o formiranju Zajedničke sigurnosno-obavještajna komisije PS BiH za nadzor nad radom Obavještajno - sigurnosne Agencije BiH (*The Conclusion and the Decision to establish a Joint Security and Intelligence Commission of the Parliamentary Assembly of BiH for the Purposes of Supervising the Operation of The BiH Security and Intelligence Agency*), *Official Gazette of Bosnia and Herzegovina*, No. 17/04

Zakon o carinskoj politici Bosne i Hercegovine (*Customs Policy Law of Bosnia and Herzegovina*), *Official Gazette of Bosnia and Herzegovina*, No. 57/04

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Zakon o javnim nabavkama Bosne i Hercegovine (*Law on Public Procurement of Bosnia and Herzegovina*), *Official Gazette of Bosnia and Herzegovina*, No. 49/04

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Zakon o slobodi pristupa informacijama u FBiH (*Law on Freedom of Access to Information in the Federation of BiH*), *Official Gazette of Bosnia and Herzegovina*, No.32/01

Zakon o slobodi pristupa informacijama u RS (*Law on Freedom of Access to Information in the RS*), *Official Gazette of Bosnia and Herzegovina*, No. 20/01

Zakon o upravi (*Law on Administration*), *Official Gazette of Bosnia and Herzegovina* No. 32/02

Zakon o Vijeću ministara BiH (*Law on the Council of Ministers*), *Official Gazette of Bosnia and Herzegovina*, No. 38/02

### **Web pages**

<http://www.cra.ba>

The Communications Regulatory Agency

<http://www.worldbank.org.ba>

The World Bank office in BiH

<http://ww.ohr.int>

The Office of the High Representative in BiH

<http://www.undp.ba>

The UNDP BiH

<http://www.izbori.ba>

The BiH Elections Commission

<http://www.oscebih.org>

The OSCE Mission in BiH

<http://www.eppu.ba>

The Economic Planning Unit



<a href="http://www.ads.gov.ba">http://www.ads.gov.ba</a>	The Civil Service Agency
<a href="http://www.uiNo.gov.ba">http://www.uiNo.gov.ba</a>	The Indirect Taxation Agency
<a href="http://qww.vijeceministara.gov.ba">http://qww.vijeceministara.gov.ba</a>	The BiH Council of Ministers
<a href="http://www.fbihvlada.gov.ba">http://www.fbihvlada.gov.ba</a>	(The Government of the Federation of BiH)
<a href="http://www.vladars.net">http://www.vladars.net</a>	(The Government of Republika Srpska)
<a href="http://www.ustavnisud.ba">http://www.ustavnisud.ba</a>	(The BiH Constitutional Court)

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## 8. Civilian control of the military and police\*

### Are the military and police forces under civilian control?

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#### 8.1 How effective is civilian control over the armed forces, and how free is political life from military involvement?

##### 8.1.1. Laws

###### A. Control over the armed forces

Civilian control over the Armed Forces of BiH (*Oružane snage BiH* - OS BiH) is regulated by the Constitution of Bosnia and Herzegovina, Law on Defense of Bosnia and Herzegovina, Law on Defense FBiH, and Law on Defense RS.

Article 13 of the BiH Law on Defense<sup>3</sup> prescribes that the Presidency of BiH, acting on the basis of consensus, effects operative and administrative command and control over them. This means that, inter alia, it has the power to request the Parliamentary Assembly of BiH to declare a state of war or emergency, and to send OS BiH into operations during a war, a state of emergency, or peace operations outside the country, in compliance with international agreements.

Justification of this Article, contained in the report by the Defense Reform Commission from September 2003, recommending to the parliaments the provisions to be contained in this first state-level law on defense, specifies that only the Presidency may determine the existence of a threat, or declare an emergency or a state of war. However, in order to secure full democratic accountability, transparency and supervision, the Presidency must request the BiH Parliamentary Assembly to declare an emergency or a state of war, or to approve dispatch of troops to international missions. Thus, Article 35 specifies that the Parliamentary Assembly effects democratic parliamentary control over the OS BiH and all defense institutions at the level of the state. Article 37 notes that the Parliamentary Assembly confirms appointments for Chief and Deputy Chief of Joint Staff, Commander and Deputy Commanders of Operational Command, and all the commissioned officers holding the rank of general in the OS BiH. Also, Article 38 states that Parliamentary Assembly holds supreme power in conducting investigations on anything related to organization, financing, staffing, training, dispatch and of the OS BiH. Should there be an investigation on a case which is already subject to investigation and supervision of an entity parliament, the BiH Parliamentary Assembly may assume competence over that investigation as well, or it may request the establishment of a joint committee, together with the relevant entity parliament, for the purpose of such an investigation.

As the result of work of the Defense Reform Commission, as well as the BiH Mission of the European Organization for Security and Cooperation, even before the adoption of the BiH Defense Law, a standing joint parliamentary committee was established for defense and security policy and supervision over the work of defense and security structures at the level of the state.<sup>4</sup>

<sup>1</sup> Antonio Prlenda is the author of sections 8.1, 8.3, 8.4 and 8.5.

<sup>2</sup> Ramiz Huremagić is the author of section 8.2.

<sup>3</sup> Report by the Defense Reform Commission, *The Road to PfP*, from September 2003, and Official Gazette BiH No. 43/03.

<sup>4</sup> Official Gazette BiH No. 38/03.

Rules of Procedure of both Houses of the BiH Parliamentary Assembly were amended accordingly. Article X of the Rules was amended to state that the Defense and Security Committee submits its opinions, proposals and reports to the House of Peoples and the House of Representatives.<sup>5</sup> Its competences were specified to include all aspects of defense, from verification of reports on implementation of the budget, to military maneuvers, structure, staffing policy and equipment of the OS BiH, including professional conduct and ethical standards for civilian and military personnel.

Whereas this role of the BiH Parliamentary Assembly should secure democratic supervision over the OS BiH, civilian control is secured by the abovementioned role of the BiH Presidency, but also by the fact that the BiH Minister of Defense and his deputies are civilians. Thus, Article 18 of the BiH Law on Defense specifies that an individual may be appointed to the post of Minister or Deputy Minister of Defense no sooner than three years following completion of service as officer in the OS BiH<sup>6</sup>. Moreover, government ministers are subject to verification by the Office of the High Representative (OHR) of the International Community in BiH. The High Representative received such powers on the basis of conclusions of the Peace Implementation Council (PIC) Conference held on 10 December 1997 in Bonn, Germany (the so-called Bonn Powers).<sup>7</sup>

As for the defense budget and financing of the military, Article 46 of the BiH Law on Defense prescribes that the entire budget for defense comprises three parts - state budget and two entity budgets. The BiH Minister of Defense coordinates budget planning with entity Ministers of Defense. Article 47 states that parliaments of the state and the entities adopt their respective parts of the overall budget, through regular parliamentary procedures.

#### B. How free is political life from military involvement

The BiH Law on Defense prohibits military personnel from any political engagement or party membership. Chapter VIII of the BiH Defense Law<sup>8</sup> regulates the conflict of interest and professionalism of members of the OS BiH. Article 69 prescribes that members of the OS BiH, including generals, are neutral in political matters and will not be engaged in any activity by political parties, nor will they be elected/selected or appointed for public office. This article does not prevent members of the OS BiH to register for elections and vote. And pursuant to Article 1.8 of the BiH Election Law, a member of the OS BiH may be a candidate for elected public office only upon resigning from the military.<sup>9</sup> A member of the reserve elected or appointed to public office is not obliged to resign from that duty if drafted for regular training.

On the basis of a decision by the commander of the international peace forces (previously IFOR - Implementation Forces, then SFOR - Stabilization Forces, and as of late 2004 EUFOR - European Forces and the NATO Headquarters in Sarajevo), as justified by powers arising from Article VI, Annex 1-A of the Dayton Peace Agreement, the peace forces supervise the validity of appointments and removals of officers in the rank of general, and the assess the validity of appointed staff and generals.<sup>10</sup> This is a method of verification of candidates preventing from being

<sup>5</sup> Report by the Defense Reform Commission, *The Road to PjP*, from September 2003, edition in Serbian, p.192.

<sup>6</sup> Report by the Defense Reform Commission, *The Road to PjP*, from September 2003, and Official Gazette BiH No. 43/03.

<sup>7</sup> Paragraph 2c, Chapter XI. The Bonn Conclusions - [http://www.ohr.int/pic/default.asp?content\\_id=5182](http://www.ohr.int/pic/default.asp?content_id=5182)

<sup>8</sup> Report by the Defense Reform Commission, *The Road to PjP*, from September 2003, and Official Gazette BiH, No. 43/03.

<sup>9</sup> <http://www.izbori.ba/documents/IZBORNI%20ZAKON%20BOSNE%20I%20HERCEGOVINE-HRV.pdf>

<sup>10</sup> For this purpose, Office of Inspector General was established at the SFOR Command on 1 February 1999. Chapter 14 of Instructions to the Parties, issued by SFOR Commander, prescribed eight officers, an equal number of representatives from both entities and SFOR. For more, see <http://www.nato.int/sfor/indexinf/86/whatins/t000427v.htm>.

appointed general any person whose links with any political or business circles may reflect negatively on the performance of their military duties or may damage the reputation of the OS BiH.

Members of the Armed Forces enjoy no immunity in relation to ordinary citizens. There are no military courts in BiH.

### **8.1.2. Implementation and negative indicators**

The BiH Law on Defense, adopted in 2003, put the armies of the entities - Army of the Federation of BiH (VF) and Army of Republika Srpska (*Vojska Republike Srpske* - VRS) - under the control of the state. Thus, these two armies make up the Armed Forces of BiH, with a single chain of command, headed by the BiH Presidency as the supreme civilian commander of the OS BiH. There is a state level Ministry of Defense of Bosnia and Herzegovina, BiH Joint Staff, and BiH Operational Command.

On the basis of decisions by the BiH Presidency of 24 March 2004 and 28 July 2004,<sup>11</sup> OS BiH officially received appointment for 12 new generals in compliance with the NATO standard stipulating one general per one thousand professional soldiers. Earlier generals of the VF and VRS, who had acquired their ranks through participation in the war, were retired or do not hold state-level positions. This avoided any possibility for the rank of general to be held by someone who may have gained it by having been loyal to a particular political party during the war. Each of the three constituent peoples were assigned four posts in the rank of general. Another general, the thirteenth, was appointed as Inspector General of the BiH Ministry of Defense. He is of Bosniak ethnicity. All the candidates for the rank of general (holding the rank of brigadier in the VF or colonel in VRS) were first verified by the Office of Inspector General of SFOR and a parliamentary procedure, to be appointed by the BiH Presidency. They all received the rank of brigadier general, though to wear and be addressed in compliance with the rank they would hold in compliance with the relevant formation.

Democratic control over OS BiH should be guaranteed by the fact that it is effected through the BiH Parliamentary Assembly, which has, for that purpose, a separate Joint Committee for defense and security policy and supervision over the armed forces and security structures at state level (OS BiH, State Border Service - DGS, State Investigation and Protection Agency SIPA, INTERPOL BiH, Mine Clearance Centre BiH BHMAL, and ministries of defense and security).

As for appointment of the BiH Minister of Defense and his two deputies, it is interesting that on 15 March 2004, the High Representative informed in writing the Chairman of the BiH Council of Ministers that there was nothing in the verification procedure that would prevent the three candidates from being considered for those posts. However, in the case of the Bosniak deputy, he appealed for an additional verification of his suitability in relation to the condition that the candidate had to have at least three years of professional military service.<sup>12</sup> Based on this, 15 days later, the issue of suitability of the deputy minister was raised at the fourth meeting of the Joint Committee for defense and security policy and supervision over the armed forces and security structures at state level.<sup>13</sup> Along with analysis of several documents, the issue was considered over several meetings, and then the deputy minister continued his service in office.

After 2001, there have been no instances of political activity of military personnel, nor participation of senior officers at party or election gatherings. This consistent observance of the law is

<sup>11</sup> Official Gazette BiH No. 40/04.

<sup>12</sup> Unofficial translation from 15 March 2004, filed at the BiH Parliamentary Assembly under ref. No. 01-03-286/04.

<sup>13</sup> Minutes from the 4<sup>th</sup> meeting of the Commission, on 30 March 2004, No. 4/1-50-1-149-4/04

probably the consequence of frequent reductions of the armed forces and frequent possibilities of dismissal of surplus military personnel, particularly those who violate the law in any way, or prove to be unfit for military service due to their involvement in politics.

The most drastic example of absence of democratic and civilian control of the armed forces by state structures happened in 2001 with the launch of the Croat *self-governance*, leading to mass disobedience and separation of the Croat component of the VF. Related to this is a court case against the former Croat member of the BiH Presidency, still in trial.<sup>14</sup>

This could happen thanks do the Bosniak-Croat parallelism in the FBiH Ministry of Defense,<sup>15</sup> reflected in the fact that for a long time the Bosniak and the Croat segments maintained separate lines of functioning and management.<sup>16</sup> In that ministry, each senior official (such as assistant minister) had a deputy of the *opposite* ethnicity. This was further aided by the situation following the adoption of the BiH Law on Defense in 2003, when the state was not fully accountable for defense and control over the armed forces because, pursuant to the Dayton Agreement, this responsibility rested with the entities as well. Thus, the Federation of BiH and Republika Srpska (RS) had their respective ministries of defense and their separate armies - VF and VRS. The entities gave different interpretations to Article 3, paragraph 6a of the BiH Constitution. While the Bosniak and the Croat members of the BiH Presidency were considered by FBiH to be civilian commanders of VF, in RS the civilian commander of VRS was the president of that entity. Also, the excessive system could not be financed; army salaries were often low and late which, as in the case of the “Croat self-governance”, opened the possibility for political manipulation of the soldiers.

However, in addition to the cited state-level institutions, managing the operational line of command over the armed forces, the 2003 BiH Law on Defense maintained the entity ministries of defense and command structures, which were responsible for the administrative line of command and management. This soon proved to be problematic and inefficient, particularly because it seriously restricted the control over OS BiH at state level. The administrative line of command meant that the entities maintained their powers over the organization of units, management of resources, equipment and personnel, logistics and supplies, individual and unit training, mobilisation, de-mobilisation, and military discipline. In early summer 2004, this allowed VRS to hide the indicted war criminal Ratko Mladić in an underground shelter near Han-Pijesak, according to OHR and EUFOR.<sup>17</sup>

Because of all this, late that year, the High Representative of the International Community in BiH gave a new mandate to the Defense Reform Commission, to create legal preconditions for the abolishment of entity ministries of defense by the end of 2005.<sup>18</sup>

In the meantime, a serious incident took place on 16 May 2005, when conscripts were giving their solemn oath at VRS barracks in Manjača and Bileća. In Manjača, a vast majority of some

<sup>14</sup> “Self-Administration trial postponed because of Jelavic” *Slobodna Dalmacija* daily, 13 January 2005. See also “Jelavic and others enter their plea today”, [www.bosnia.ba/vijesti/index.php?sta=3&pid=6687](http://www.bosnia.ba/vijesti/index.php?sta=3&pid=6687)

<sup>15</sup> Official title: *Federalno ministarstvo obrane*, Federation Ministry of defense..

<sup>16</sup> Report on the State of Human Rights in FBiH in 2002, published by the Office of the FBiH Ombudsmen, states: “As for the functioning of the executive, there is evident progress only in the formal unification of ministries, whereas there are still factual parallelisms and division on all levels, depending on whether it is the so-called Bosniak or Croat part.” <http://www.bihfedomb.org/bos/reports/2002/rpt2002mostar.htm>.

<sup>17</sup> Statement for the media by OHR and SFOR, 16 December 2004. <http://www.euforbih.org/press/p041216b.htm>

<sup>18</sup> Decision extending the mandate of the Defense Reform Commission. [http://www.ohr.int/decisions/statematters-dec/default.asp?content\\_id=33883](http://www.ohr.int/decisions/statematters-dec/default.asp?content_id=33883)



500 conscripts, while repeating the text of the oath, instead of pledging allegiance to BiH, said “to Republika Srpska”, and the attending family and friends booed the national flag and anthem. The fact that the “to Republika Srpska” phrase was uttered in unison suggested that this was a “performance” prepared in advance, since the ceremony had been rehearsed. In Bileća, the text of the oath was delivered accurately, but the BiH flag and anthem were booed.<sup>19</sup>

This showed clearly that systemic weaknesses in the organization of defense still existed. It also showed, in a way, that the RS Ministry of Defense failed to identify the culprits of an event clearly prepared in advance. The RS Ministry of Defense mainly recommended symbolic reprimands for senior officers and staff present at the events. And to the disappointment and insistence of the NATO Headquarters in Sarajevo as well as EUFOR, the BiH Presidency also failed to show a timely reaction.

The incident also indicated the strong link between the army and the ethno-national parties, which are still trying to fortify their influence over the military by frequent contacts between the veterans’ organizations and the army. Namely, in his address at one of the two cited events, representative of the RS Veterans’ Organization addressed the gathering in an inappropriate manner (in language of war and instigation), which also influenced the atmosphere to *heat up*.<sup>20</sup>

Moreover, the practice of playing the Croatian anthem (the official national anthem of the Republic of Croatia) along with the BiH anthem when soldiers of the Croat component of VF give their oath, led some media outlets to question the readiness of this component to defend the integrity and sovereignty of BiH, although the procedure itself was not in breach of the law.<sup>21</sup> This should also be resolved with the recently announced new rules of procedure for military ceremonies by the BiH Ministry of Defense.

This case also showed the ineffectiveness of the cited Joint Parliamentary Committee for security and defense, which did not demonstrate any desire to deal with this delicate case, although professional conduct and ethical standards for military and civilian personnel do fall within its competence.<sup>22</sup>

Examples of shortcomings in the democratic control over OS BiH certainly includes the fact that on 1 June 2005 a small BiH contingent was assigned to the Coalition Forces in Iraq, by an unclear decision of the BiH Presidency, with no deliberation in the Parliament.<sup>23</sup> However, this could be avoided in the future through application of the Law on Participation of Members of OS BiH, the Police and Other Civil Servants in Peace and Other Operations Abroad, adopted in the meantime by the BiH Parliamentary Assembly.<sup>24</sup>

<sup>19</sup> Additional Report on Investigation of the Event during the Oath Ceremony in Barracks in Manjača and Bileća on 16 April 2005, by the BiH Ministry of Defense, presented to the media on 5 May 2005, pp. 1 and 2.

<sup>20</sup> *Ibid.*, p. 3.

<sup>21</sup> “Playing Croatian Anthem against the BiH Law on Defense”, *Nezavisne novine* daily, 18 June 2005, p. 3, and “Prohibition of the Croatian Anthem is a Blow to Our Identity”, *Oslobodenje* daily, 21 June 2005, p. 7.

<sup>22</sup> Following this incident, Boško Šiljegović, chairman of the Committee, stated to the author of this text that “the Commission is competent only for state-level institutions.” “This is not within the competence of this parliamentary committee. We have parliamentary supervision over the BiH Ministry of Defense, the State Agency for Investigation and Protection, State Border Services, BiH Mine Clearance Centre and Interpol. I think that investigation authorities of the RS MoD will investigate the case. Should this committee receive the report from the BiH MoD, I think we’ll take a position on it.” So, the chairman explicitly transfers the responsibility only to the entity MoD of RS, which is not correct, as the Committee is competent for “conduct of members of the entire OS BiH.” This quote was never published.

<sup>23</sup> See “Date of Departure for Iraq Still Unknown”, *Oslobodenje* daily, 9 April 2005, p. 6, and “Full Responsibility is with Tihić, Paravac, and Čović”, *Oslobodenje* daily, 20 May 2005, p. 8.

<sup>24</sup> Official Gazette BiH No. 14/05.



On the basis of the above, political life today can be said to be free from influences by military structures, and military structures are under civilian control. However, more work will be required to improve the effectiveness of democratic control. In addition to an objective lack of abilities at the very onset of its work, the BiH Ministry of Defense has shown the capacity and the will to deal more effectively with such challenges in the future.

## **8.2. How publicly accountable are the police and security services for their activities?**

### **8.2.1. Laws**

Police in BiH is organized at several levels, representing a combination of inherited police structures and newly established police bodies. Before the war in BiH, until 1992, in the then Socialist Republic of Bosnia and Herzegovina, there was a Secretariat of the Interior of the Republic, comprising nine regional units - Security Service Centres. Secretariat of the Interior of the Republic brought together all public security services as well as state security matters.

Following the changes in the internal organization of BiH due to events of the war, there were also changes in the structure of police and intelligence structures. The police was organized at the level of the entities, in compliance with the constitutional organization of BiH, as confirmed by the Framework Agreement for Peace in Bosnia and Herzegovina (the so-called Dayton Agreement), so that one Ministry of the Interior and ten decentralised cantonal ministries of the interior were established in the Federation of BiH. In Republika Srpska, there was the Ministry of the Interior of Republika Srpska, with five regional public security centers, organized, that is, on the basis of the same principle as the pre-war Secretariat of the Socialist Republic of Bosnia and Herzegovina.

The most important change in the field of intelligence was that this segment was separated from the interior, and intelligence and security services were established. Thus, the Agency for Investigation and Documentation (AID) was established in the Federation of BiH, although there was also the National Security Service (SNS) active in the Federation of BiH, organized by the authorities of the so-called Croat Republic of Herzeg-Bosnia during the war. Both agencies were mainly working against one another, although they functioned within the same state and the same entity and, to make the absurd situation even worse, both were funded from the same budget. An additional aspect of this absurd situation was that the heads of these services, restricted to the Federation of BiH and, as such - components of the intelligence system of the entity, were appointed by the Bosniak member of the BiH Presidency (in the case of AID) and the Croat member of the Presidency (in the case of SNS).

These two services were unified only in 2002, with the adoption of the Law on Intelligence and Security Service of the Federation of BiH,<sup>25</sup> although the new service never became unified, but rather continued to function as one service with two components.

In Republika Srpska, the state security sector was part of the Ministry of the Interior of Republika Srpska, until 1998. With the adoption of the Law on Intelligence and Security Service of Republika Srpska<sup>26</sup> (OBS), the then state security department became an autonomous administrative body.

The High Representative issued a decision in May 2003 on the establishment of an Expert Commission for Intelligence System Reform, aimed at creating a single state intelligence agency in compliance with European standards of intelligence and security work. The Former head of the

<sup>25</sup> Official Gazette FBiH No. 23/02 of 07.06.2002. [http://www.fbihvlada.gov.ba/bosanski/zakoni/2002/zakoni/19\\_bos.htm](http://www.fbihvlada.gov.ba/bosanski/zakoni/2002/zakoni/19_bos.htm)

<sup>26</sup> Official Gazette RS No. 21/98 and 17/99.

Hungarian intelligence agency was appointed head of the Commission. The work of this Commission resulted in a draft Law on Intelligence and Security Agency of Bosnia and Herzegovina (OSA), subsequently adopted by the BiH Parliamentary Assembly.<sup>27</sup>

### Intelligence and security affairs

Establishment of the state intelligence and security agency created the formal legal framework for intelligence and security work in BiH. This Law established OSA as the agency responsible for collection, analysis, and distribution of intelligence for the purpose of protecting security, including sovereignty, territorial integrity, and constitutional order of Bosnia and Herzegovina, in compliance with provisions of the Constitution of BiH, including provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto, and other international treaties and agreements signed or acceded to by Bosnia and Herzegovina.<sup>28</sup> Also, for the very first time, this Law introduced several levels of control of operation of this Agency, such as:

- a) BiH Presidency,
- b) BiH Council of Ministers,
- c) Executive Intelligence Board,
- d) Security and Intelligence Committee of the House of Representatives and the House of Peoples of the BiH Parliamentary Assembly.

The Director General of the OSA and his deputy are appointed and removed by the Council of Ministers, at the proposal of the chairman and in consultation with members of the Presidency, the Executive Board and the Security and Intelligence Committee.

Appointment of the Director General and Deputy Director General is conducted on the basis of demonstrated professionalism and experience acquired in intelligence and security matters and law enforcement, and not on the basis of party affiliation. The requested experience cannot be acquired only in positions obtained by political appointment.<sup>29</sup> However, there is a question as to how consistently will the provisions be applied and to what extent will it be possible to make this Agency publicly accountable for its work, knowing that its staff includes employees of the previous three agencies in BiH, which mainly dealt with each other, acting only in compliance with guidelines and interests of the ruling political structures.

### Police

The police in BiH is organized at several levels, with no particular principles of coordination and subordination in their action. At the level of the state, there are currently two police agencies, the State Border Service of Bosnia and Herzegovina (DGS) and the State Investigation and Protection Agency of Bosnia and Herzegovina (SIPA).<sup>30</sup>

DGS was the first state-level law enforcement agency to be established in BiH, and it started its operations in 2000. At the time, it was covering some 10% of the state border, and in 2005 this grew to 100% control of the border area, including all airports and river crossings.

SIPA was the second state-level law enforcement agency, with a mandate to act in the entire territory of Bosnia and Herzegovina in areas of organized crime and other forms of serious crime,

<sup>27</sup> Official Gazette BiH No. 12/04 i 20/04.

<sup>28</sup> Article 1 of this Law.

<sup>29</sup> Article 25 of this Law.

<sup>30</sup> Even in the languages of BiH, the acronym is derived from the title in English.

including war crime investigations. SIPA was planned to be of service to the BiH Prosecutor, and to act within the jurisdiction of the Court of BiH and the BiH Prosecutor.

At the level of FBiH, there are the FBiH Ministry of the Interior and 10 cantonal ministries. Each of these ministries is headed by a politically appointed minister. Each ministry is divided into two sections: administration and police. At the level of the Federation of BiH, the police section is headed by a police director, and police commissioners at the level of cantons. At the level of FBiH, directors of administration and police sections are selected by an Independent Board, itself appointed by the FBiH Parliament, and made up of seven members not associated with any political party. Of those seven members, two are representatives of the Federation Ministry, and five are distinguished experts in the area of law, social science, criminology, human rights, and other related areas. The process of appointment of cantonal commissioners follows a similar analogy, in that each canton appoints its own Independent Board to elect the police commissioner.

A similar solution was applied in Republika Srpska, with the Ministry of the Interior led by the minister, and the police section led by the police director. The process of appointment of the police director is identical to that in the Federation of BiH, with a proviso that in RS the Ministry of the Interior is organized in five regional public security centres, whose heads are appointed by the Minister. The system in Republika Srpska is evidently centralized, whereas in FBiH the appointment of ministers of police and police commissioners is at the local - cantonal level.

In the area of the Brčko District, there is the police force of the District, led by the police chief. The police chief is appointed by the mayor of the District, with approval of the Assembly, on the basis of binding recommendations of the Independent Board conducting selection of the candidates.

### **8.2.2. Implementation and negative indicators**

The issue of public accountability of the police and intelligence services for their work and results of their work to the citizens of BiH was, in fact, never an issue. Namely, even before the outbreak of the war in 1992, police and intelligence had been accountable exclusively to the ruling party, and were serving to protect the system, rather than serving the citizens.

In the period of war, from 1992 to 1995, police and intelligence structures were an integral part of the warring parties' armed forces. A consequence of this type of engagement is a considerable number of cases where members of the police committed serious crimes against humanity and international law. The most blatant example is the participation of police forces of Republika Srpska in events in and around Srebrenica in July 1995, when the police was actively involved in "a joint criminal enterprise, the common purpose of which was: to forcibly transfer the women and children from the Srebrenica enclave to Kladanj, on 12 July and 13 July 1995; and to capture, detain, summarily execute by firing squad, bury, and rebury thousands of Bosnian Muslim men and boys aged 16 to 60 from the Srebrenica enclave from 12 July 1995 until and about 19 July 1995."<sup>31</sup>

At the end of the war, separate police forces continued to serve the authorities and the regime, though unlike the pre-war period, the communist party was now replaced by the ruling nationalist parties.<sup>32</sup> As stated by the International Crisis Group, in their Report No. 130:

<sup>31</sup> Judgement against Momir Nikolić before the International Tribunal for Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in the Territory of Former Yugoslavia from 1991, Case No IT-02-60/1-S; also in: Bosnia's Stalled Police Reform: No Progress, No EU, International Crisis Group Europe Report N°164, 6 September 2005, [www.crisisweb.org](http://www.crisisweb.org)

<sup>32</sup> Policing The Police In Bosnia: A Further Reform Agenda ICG Balkans Report N° 130, 10 May 2002, page i.

Bosnia's police forces suffer from several institutional weaknesses. The Dayton Peace Accords (DPA) confirmed the country's wartime division, endowing it with a dysfunctional and decentralized patchwork of authorities, including the police.

Bosnia has fourteen separate police forces. They cooperate poorly when they cooperate at all.<sup>33</sup>

Since 2002, when this report was published, there has been an improvement in cooperation between police forces in BiH, though the situation related to establishment and organization of the police system remained unchanged.

In the meantime, the State Border Service, established in 2000, became operational as border police, contributing to an extent to better supervision and control of the state border, and combating certain forms of crime, particularly trafficking in persons and illegal migration.<sup>34</sup> Data on the results of their work show that in 2002 the State Border Service arrested only 23 persons from arrest warrants issued by Interpol and other police agencies, whereas in 2005 this number grew to 507.<sup>35</sup>

The State Investigation and Protection Agency was established in 2002, as part of the international community's program to establish a state-level law enforcement agency. This agency was established as an "information and protection" agency, with no police powers to conduct criminal investigations. Only in July 2004, the legislation was changed, altering the name of the agency (instead of information and protection, it became the investigation and protection agency). At the moment, SIPA has the competence to conduct criminal investigations into organized crime and fraud, money laundering, terrorism, war crimes, as well as to conduct a witness protection program.

It is important to note that neither SIPA nor the State Border Services are in any way superior to police forces at entity levels; they are, in fact, agencies *sui generis* at state level, with clearly defined competences.

At the moment, in BiH, a country with a population of less than four million, there are police forces of 17,000 members in total, costing the country approximately 180 million euros per year.<sup>36</sup> According to information available, there is one police officer per 500 inhabitants in BiH, whereas the European standard requires one police officer per 1000 inhabitants in urban areas, and one per 2000 in rural areas.<sup>37</sup>

The issue of reforming a dysfunctional police system in BiH has gained prominence recently, particularly in relation to intensified activities related to the accession of BiH to Euro-Atlantic integration processes and, more importantly, EU membership. This reform was presented as one of the conditions of the EU for the signing of the Stabilization and Association Agreement, specifically, as condition No. 7 - combating crime, which is supposed to include structural reforms of the police system.

For that purpose, the High Representative's decision of 5 July 2004<sup>38</sup> established the Police Reform Commission, tasked to analyze the work of police forces in BiH and to propose a "unique

<sup>33</sup> *Ibid.*, p. 1.

<sup>34</sup> Financial, Organizational, and Administrative Assessment of BiH Police and State Border Service, final report, Sarajevo, 30. June 2004.

<sup>35</sup> Review of the State Border Service, EU Police Mission in BiH, <http://www.eupm.org/Clanci.asp?ID=66&lang=bos>

<sup>36</sup> Commission of the European communities, Report of the Commission to the Council on the Preparedness of Bosnia and Herzegovina to Negotiate a Stabilisation and Association Agreement with the European Union, Brussels, 18.11.2003., COM(2003)692final.

<sup>37</sup> Financial, Organizational, and Administrative Assessment of BiH Police and State Border Service, final report, Sarajevo, 30 June 2004, p. 34.

<sup>38</sup> Decision of the High Representative establishing the Police Reform Commission, Official Gazette BiH No. 36/04.

police structure with comprehensive supervision by a ministry or ministries in the Council of Ministers.” The Commission prepared its final report and submitted it to domestic authorities.<sup>39</sup> However, the truth is that activities of the Commission rendered no results, as the political authorities did not accept the proposals considered by the Commission.

This led to the recent decision of the Council of the European Union not to agree to open the stabilization and association negotiations. Police reform was cited as one of the principal decisions:

The Council expressed its deep disappointment at the decision by the National Assembly of Republika Srpska to reject the latest proposal for police reform which met the EU principles, and regretted that it would not be possible for Bosnia and Herzegovina (BiH) to start negotiations on a Stabilization and Association Agreement (SAA) with the EU by the 10th Anniversary of the Dayton Peace Agreement.<sup>40</sup>

Just a few days after this decision, under enormous political pressure by international community representatives on the political authorities of Republika Srpska, unexpectedly and contrary to its earlier views, the leadership of this entity accepted the proposed police reform compliant with EU standards. At the time of completion of this document, all the three parliaments in BiH had adopted the proposed police reform, to be completed in the next five years.

This is yet another indicator as to how important the police is to political structures and how much the ruling parties are willing to sacrifice in order to guard the positions they holds. That is why assessments like the one by the International Crisis Group do not come as a surprise:

Police throughout the country have remained highly politicized, acting at the behest of politicians to obstruct implementation of the Dayton Peace Accords, in particular refugee return, and heavily involved in organized crime. The RS force is filled with war criminals and actively supports persons indicted by the International Criminal Tribunal for the former Yugoslavia in The Hague.<sup>41</sup>

An important part in this development is played by the international community itself, which has been engaged in the area of police system reform in the past few years, first through the IPTF program of the United Nations,<sup>42</sup> and later through the EUPM - EU Police Mission. Despite the questionable results of IPTF and the depressing results of EUPM,<sup>43</sup> the real reasons are in the essential problems of Bosnia and Herzegovina, arising from the Dayton organization of the country (see more on the chapter on constitutional organization). Namely, the international community did not have the determination to take more significant steps in creating a more functional state,<sup>44</sup> and thus the conditions for a more functional police system. It should be noted that in relation to constitutional reforms, there is a significant absence of political will on the part of domestic structures, particularly in Republika Srpska.

<sup>39</sup> Final Report on the Work of the BiH Police Reform Commission, [http://www.eupm.org/Documents/Final%20PRC%20Report%20\(bos\).pdf](http://www.eupm.org/Documents/Final%20PRC%20Report%20(bos).pdf)

<sup>40</sup> Council of the European Union, Press Release No. 12515/05 (Presse 242), [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/gena/86441.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/gena/86441.pdf)

<sup>41</sup> Bosnia's Stalled Police Reform: No Progress, No EU, International Crisis Group Europe Report N°164, 6 September 2005, [www.crisisweb.org](http://www.crisisweb.org), page i.

<sup>42</sup> International Police Task Forces, established by the UN Security Council, 21.12.2005, Resolution No. 1035(1995).

<sup>43</sup> Bosnia's Stalled Police Reform: No Progress, No EU, International Crisis Group Europe Report N°164, 6 September 2005, [www.crisisweb.org](http://www.crisisweb.org), page 12.



### **8.3. How far does the composition of the army, police and security services reflect the social composition of society at large?**

#### **8.3.1. Laws**

##### Armed forces of BiH

Recruitment of professional military personnel is now regulated by entity laws on the military. Article 81 of the BiH Law on Defense,<sup>45</sup> adopted in December 2004, prescribes that the BiH Minister of Defense will adopt a plan to establish a single system for the OS BiH personnel, no later than one year following the adoption of this Law. Pursuant to that Article, the Minister appointed a joint committee, with advice and approval of the BiH Presidency, in order to assess the personnel management systems and to give recommendations on how to build a single one.

The reform states that the size of OS BiH is a total of 12,000 professional soldiers. BiH Prescribed that of that number, 4,000 remain in the VRS, and the VF maintains 8,000 soldiers and its two components - the Bosniak and the Croat one, whose ethnic ratio is 2.3:1 in favor of the Bosniaks. However, neither the BiH Law on Defense nor decisions of the BiH Presidency on the establishment of OS BiH did not deal with the issue of “other” nationalities and national minorities. The BiH Law on Defense makes no distinction between men and women in the military, and is not an obstacle for women to volunteer for service in the OS BiH. Pursuant to European human rights law and international norms and standards, Article 51 of the BiH Law on Defense recognizes the right to a conscientious objection and alternative civilian service.<sup>46</sup>

In its Article 8, Statute of the Brčko District specifies that the District is a demilitarized area. Armed forces of either entity and their auxiliary military facilities may not be located in the territory of the District.<sup>47</sup> However, this does not exclude state troops or civilian service.

##### Police structures

The BiH Law on Police Staff<sup>48</sup> regulates police powers and employment status of police officers as well as officers in the State Investigation and Protection Agency (SIPA) and State Border Service (DGS). Ethnic representation in police bodies is regulated by Article 5 of this Law, stipulating that ethnic representation is a general reflection of ethnic composition of the population of BiH according to the 1991 census.

Article 42 regulated employment and recruitment for vacancies. A police officer enters the force as: holding the rank of police officer, as the first entry level for candidates with no less than secondary education; and junior inspector, as the second entry level, with no less than a higher education degree. Recruitment for entry levels referred to in paragraph 1 of this Article is conduct-

<sup>44</sup> R. Bruce Hitchner, Testimony to the Congress of the United States, House Committee on International Relations: The Status and Future of Governing Institutions in Bosnia and Herzegovina and the Role of the International Community and United States, page 2, [http://www.house.gov/international\\_relations/109/hit040605.pdf](http://www.house.gov/international_relations/109/hit040605.pdf)

<sup>45</sup> Report by the Defense Reform Commission, *The Road to PFP*, from September 2003, p.128, edition in Serbian.

<sup>46</sup> Article 51 states that the process of confirming the conscientious objector status and alternative service administration should be prescribed by a separate law, pursuant to Article II of the Constitution of BiH. In mid-September 2005, Conscientious Objection Campaign, a NGO from Sarajevo, submitted their proposal of this law to the Council of Ministers for consideration. They received no answer until the time of this report. There is a question as to whether there will be any law, as the changes to the BiH Law on Defense of 1 January 2006 abolish compulsory military service altogether.

<sup>47</sup> Statute of the Brčko District BiH of 7 December 1999, [www.ohr.int/ohr-offices/brcko/default.asp?content\\_id=5368](http://www.ohr.int/ohr-offices/brcko/default.asp?content_id=5368)

<sup>48</sup> Official Gazette BiH No. 27/04.



ed through public competition Pursuant to Article 46, general employment conditions include a requirement that the candidate is a BiH national, between the ages of 18 and 35.

### 8.3.2. Implementation and negative indicators

Composition of OS BiH is as follows, by formation: the strike force of the VRS has been reduced to one, the 15<sup>th</sup> mounted brigade, and the 1<sup>st</sup> regiment of air force and air defense, put together following the abolishment of the Command for Air Forces and Air Defense. VRS is still led by the VRS General Staff. VF was integrated earlier, led by the VF Joint Staff. Each component has one brigade, although their names contain no ethnic denominations. The Croat one is the 1<sup>st</sup> armoured brigade, and the Bosniak is the 2<sup>nd</sup> mounted brigade. Air Forces are of joint composition, and so is the training and doctrine command, as well as the logistics command.

The Bosniak and the Croat component in the VF, and the VRS are, to a large extent, mono-ethnic.<sup>49</sup> This is probably why there have been no publicly recorded cases of ethnically based discrimination or discrimination of any minority or social groups. In the OS BiH, and in entity ministries of defense, there are no records as to which social group the soldiers belong to. However, on the basis of frequent contacts with soldiers and discussions on their social status, it is evident that a vast majority originates from working class families. An average salary in the OS BiH is between 466 convertible marks per month for an ordinary professional soldier, and approximately 1,200 convertible marks for a general.<sup>50</sup>

Although there are no legal obstacles to employment of women, their percentage in OS BiH is less than the NATO standard of approximately 10 percent. For example, in the Croat component of the VF there are 117 women, making up 5%, and in the Bosniak component there are 241, making up 4.32%.<sup>51</sup> The fact that there are so few women in the army may be interpreted by, among other things, the traditional heritage in BiH, where there was, for a very long time, a widely accepted opinion that the army is just “a man’s job” and that women are not motivated to work in the military.

As for the right to conscientious objection and civilian service, it has been in application in RS since December 2003, with some 50 servicemen having completed their service in civilian institutions until the time of this research. The rule has been in application in FBiH since May 2004, and so far 250 servicemen have completed their service in this way.<sup>52</sup> Pursuant to the decision of the BiH Presidency on the size and structure of OS BiH (No. 01-414-6/04, of 24 March 2004), the annual quota of conscripts was set at 12,600, 8,400 in VF and up to 4,200 in VRS.

Composition of the police forces in BiH was presented in the Functional Review of Police Forces in BiH, published in July 2004 by the BiH Ministry of Justice, with financial support by the EU.<sup>53</sup> Data presented in the table below refers to 2003.

<sup>49</sup> For example, according to data from FBiH MoD obtained for this research, in early 2005, in the Bosniak component of VF, there were 5,534 Bosniaks, 18 Croats, five Serbs, three Albanians, and four others, and in the Croat component, there were 2,327 Croats, seven Bosniaks, one Slovene, and one Serb.

<sup>50</sup> Official data from the FBiH MoD obtained for this research.

<sup>51</sup> *Ibid.*

<sup>52</sup> Data provided by Darko Brkan, coordinator of the Conscientious Objection Campaign.

<sup>53</sup> Functional Review of Police Forces in BiH, BiH Ministry of Justice, July 2004, p. 63.

Table 8.1: Composition of police forces in 2003<sup>54</sup>

Police forces	Bosniaks %	Serbs %	Croats %	Other %	Women %
FBiH	48.34	9.43	41.28	0.99	5.44
RS	5.02	94.11	0.66	0	2.70
Brčko D.	40	14.7	44.6	0.7	2.95

This review notes in particular that police forces with the highest level of multi-ethnicity were those in the Brčko District and Mostar, where there was no domination of a single ethnic group. Mostar had 42.7% Bosniaks, 48.4% Croats, 8.5% Serbs, and 0.37% others. Other police forces were, more or less, ethnically homogeneous. Forces with the highest level of mono-ethnicity were in Ljubuški, where personnel of Croat ethnicity was dominant with as high as 99.2%. Serbs dominate the RS police with as high as 94.11%.<sup>55</sup>

When considering these indicators, we must not lose sight of the requirement that ethnic composition of the police must reflect the 1991 ethnic structure of the population. Here is a comparison of ethnic composition of the police and the population of respective areas in 1991.<sup>56</sup>

Table 8.2.a: Composition of the police by canton in 2003 and population in 1991

Canton	Bosniaks %		Serbs %		Croats %		Others %	
	1991	2003	1991	2003	1991	2003	1991	2003
Tuzla	54	82	32	8	6	7	8	4
Zenica	56	71	18	6	16	18	10	4
Mostar	27	43	21	9	46	48	6	0.37
Bihać	66	86	28	11	3	3	3	0.20
Travnik	43	51	13	7	36	42	6	0.30
Livno	12	6	27	16	59	78	2	0.00
Ljubuški	n/a	1	n/a	0	n/a	99	n/a	0.00
Goražde	n/a	81	n/a	19	n/a	0	n/a	0.00
Orašje	n/a	14	n/a	11	n/a	75	n/a	0.00

Table 8.2.b: Composition of the police of Canton Sarajevo in 2005 and population in 1991<sup>57</sup>

Canton	Bosniaks %		Serbs %		Croats %		Others %	
	1991	2005	1991	2005	1991	2005	1991	2005
Sarajevo	48	73	29	11	7	8	6	8

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> The source of data for 1991 was OHR. Data presented to journalists on 31 January 2005, when presenting the report of the Police Restructuring Commission, including maps with nine police regions and a separate one for Sarajevo. Territories of the regions, of cantons in FBiH and RS are not identical, and data should be used as a framework.

<sup>57</sup> For unknown reasons, the cited Functional Review of Police Forces in BiH does not include data for Sarajevo for 2003. That is why data from 2005 is included here, obtained for this research from the Public Relations Office of the Canton Sarajevo Ministry of the Interior, late October 2005.

Table 8.2c: *Composition of the police in RS in 2003 and population in 1991*

Ethnicity %	1991			2003
	Banja Luka	Doboj	Foča	Rep. Srpska
Bosniaks	22	38	51	5
Serbs	60	30	46	94
Croats	9	25	0	0.66
Others	9	7	3	0

This shows that in most of the cantons in FBiH there are far fewer Serbs and “others” than there were in terms of population in 1991. In RS there is an even more drastic lack of police officers who are not of Serb ethnicity. This fails to meet the requirement that the structure of police forces should reflect the 1991 composition of population. However, it should be borne in mind that it is practically difficult to attain, as the ethnic composition of the population is far more homogenized than it was before the war. The problem is also that official data on the present structure of the population does not exist, as there has been no census after 1991.

As for women in police, Orašje comes first with 10.5% women, followed by Goražde with 9.5%. Women make up 8.3% of the total police forces in BiH, and most of the police centers should improve the percentage of women. During their mandate, the UN International Police (IPTF) instructed the FBiH and RS authorities to admit more women to their entity police academies. Just like in the Armed Forces of BiH, there are no records in the police as to which social groups their members originate from. The basic net salary varies between 340 KM in RS and 1,259 KM in the Brčko District.

According to official data from 1 June 2005,<sup>58</sup> the State Border Service had a total of 2,040 employees, of whom 1,888 were police officers, 32 civil servants, and 120 staff. Of those 846 were Bosniaks, i.e. 41.47%, 686 Serbs, i.e. 33.62%, 488 Croats, i.e. 23.29%, and 20 from other ethnicities, or 0.98%. The ethnic structure of all employees mainly reflects the structure of BiH population from the 1991 census, i.e. 41% Bosniaks, 32% Serbs, 24% Croats, and 3% others. Of the total number of employees, 175 have a full university degree, 145 college degree, 1,717 secondary education degree, and three with basic primary education. The average salary in the State Border Service is 831.49 convertible marks (KM).<sup>59</sup>

In order to analyze the data on salaries of soldiers and employees in these services within the context of general situation in BiH, it should be noted that, according to data from entity statistics bureaus,<sup>60</sup> the average net salary in FBiH is 547 KM, and 452 KM in RS. Based on this, the social status of soldiers and police officers can be said to be close to the average of the society, and slightly better in the State Border Service.

As for other aspects of the social composition of military and security structures, no comparison is possible, as there is no official data on the population, as the last census was conducted in 1991.

<sup>58</sup> Official data from the State Border Service, obtained for this research.

<sup>59</sup> SIPA and OSA were not able to supply the author with such specific numbers.

<sup>60</sup> www.fzs.ba and www.rzs.rs.ba

## **8.4. How free is the country from the operation of paramilitary units, private armies, warlordism and criminal mafias?**

### **8.4.1. Laws**

#### *Military and police forces*

Article 3 of the BiH Law on Defense from 2003 prescribes that OS BiH includes VF and VRS. Article 4 states that all the formations and units organized by state or entity institutions in BiH are to be considered as armed forces. Armed forces may not be organized, trained, equipped or mobilized in the territory of BiH in any way other than in compliance with this Law.<sup>61</sup>

As a member state of OSCE, BiH is also state signatory of the Code of Conduct for military-political aspects of security. Article 21 of the Code of Conduct specifies that each state party shall, at all times, facilitate and maintain effective management and control over its military, paramilitary and security forces by constitutionally established authorities with democratic legitimacy. According to a definition contained in this Code, paramilitary forces include internal security forces as well as intelligence services.

In relation to this, it is important that implementation of military aspects of the Dayton Agreement (Annex 1-A) was supervised by SFOR, and now by EUFOR. With its 7,000 troops, international peace forces are still present across BiH and, in compliance with Annex 1-A, they continue to monitor strictly the actions of any armed force in BiH. According to Annex 1-B, heavy weapons are monitored by OSCE, pursuant to the Sub-Regional Arms Control Treaty,<sup>62</sup> arising from Article II of this Annex. Similarly, the work of police forces in BiH was monitored by the UN International Police (IPTF), replaced by the Police Mission of the European Union (EUPMP) on 1 January 2004.<sup>63</sup>

Pursuant to Article 3 of Annex 1-A to the Dayton Agreement, all the forces in BiH not of local origin had to withdraw, together with all their equipment, from the territory of BiH within 30 days. Furthermore, all the forces remaining in BiH must act in compliance with territorial integrity, sovereignty, and political independence of BiH. All foreign troops, including individual advisors, freedom fighters, instructors, volunteers, and staff from other states, had to leave the territory of BiH.

#### *Legal framework and the judiciary*

As for combat against organized crime, BiH has undertaken numerous legal and political commitments at international and regional levels. In December 2000, BiH signed the UN Convention against Trans-national Organized Crime (the Palermo Convention) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, and Protocol Against Illicit Smuggling of Immigrants by Land, Air and Sea. It also signed the Declaration to Combat Trafficking in Persons in Southeast Europe. The Palermo Convention and its two protocols were ratified in February 2002. BiH also ratified the Council of Europe Convention on Civil and Criminal Aspects of Combating Corruption, and the adoption of new Criminal Codes in BiH, FBiH, RS and the Brčko District established a new basis for prosecution and punishment of organized crime. On 16 September 2005, BiH signed the UN Convention against Corruption, in compliance with a decision by the BiH Presidency of 1 September 2005.

<sup>61</sup> Official Gazette BiH No. 43/03.

<sup>62</sup> <http://www.oscebih.org/documents/11-cro.pdf>

<sup>63</sup> Annex 11 of the Dayton Peace Agreement.

It is interesting that there is no state-level legislation regulating possession of weapons. In FBiH, such laws are at the level of cantons, and in RS there is in force the Law on Weapons and Ammunition.<sup>64</sup> Laws prohibits “long barrel” weapons such as military-type automatic rifles, and possession of hunting weapons is limited to members of hunting clubs.

The work of private security companies in FBiH is regulated by the Law on Agencies for Protection of Persons and Property.<sup>65</sup> Licenses for security companies in FBiH are issued by cantonal ministries of the interior (ten cantons). FBiH Ministry of the Interior<sup>66</sup> has no data on how many such companies work in FBiH.<sup>67</sup>

The Police Academy of the FBiH Ministry of the Interior trains and certifies all persons to be engaged in agencies dealing with protection of persons and property in the territory of FBiH.<sup>68</sup> In RS, such companies are regulated by the Law on Agencies for Protection of Persons and Property and Private Investigation Practice.<sup>69</sup> In order to provide security for persons and property, they must register with a competent court, on the basis of an approval issued by the RS Ministry of the Interior. According to official data of this ministry, there are seven such agencies registered in RS.<sup>70</sup> Laws in both entities prescribe that persons in this line of work, inter alia, must have a clear criminal record.

As for the judiciary, a decision by the High Representative dated 6 August 2002 proclaimed the Law on Changes and Amendments to the Law on the Court of BiH, with Article 6 regulating the establishment of a special section for organized crime, fraud and corruption at the Criminal Department of the Court of BiH.<sup>71</sup> In March 2003, the High Representative imposed the BiH Criminal Code, Criminal Procedure Code, and the new Law on Witness Protection. Changes to the Criminal Procedure Code stated that investigations moved from investigating judges to prosecutors.<sup>72</sup> Accordingly, the prosecutor, who is a party to the proceedings, no longer has to seek approval from an investigating judge to conduct an investigation.

#### **8.4.2. Implementation and negative indicators**

BiH has adopted a relevant strategy for combating corruption and organized crime, by enacting its Anti-Corruption Action Plan and the National Action Plan for Combating Organized Crime.<sup>73</sup> BiH is regular at working meetings of countries of Southeast Europe in working groups of the Stability Pact Anti-Corruption Initiative (SPAI) and the Stability Pact Initiative Against Organized Crime, as well as in the Group of Countries Against Corruption (GRECO).<sup>74</sup>

<sup>64</sup> Official Gazette RS No. 25/04, Law on Changes and Amendments to the Law on Weapons and Ammunition.

<sup>65</sup> Law on Agencies for Protection of Persons and Property, [www.fbihvlada.gov.ba/bosanski/zakoni/2002/zakoni/52\\_bos.htm](http://www.fbihvlada.gov.ba/bosanski/zakoni/2002/zakoni/52_bos.htm)

<sup>66</sup> Official title: Federation Ministry of the Interior.

<sup>67</sup> Data obtained from the Public Relations Office of the Office of the Minister of FBiH Ministry of the Interior.

<sup>68</sup> According to official data from FBiH Ministry of the Interior, obtained for this research on 15 June 2005, the Police Academy issued 191 certificates for the function of “responsible persons”, 180 certificates for the function of “technical protection” and 2,975 certificates for “physical protection”.

<sup>69</sup> Official Gazette RS No. 50/02.

<sup>70</sup> Official data obtained from the RS Ministry of the Interior, obtained in July 2005, for this research.

<sup>71</sup> For more details, see [www.ohr.int/print/?content\\_id=27649](http://www.ohr.int/print/?content_id=27649)

<sup>72</sup> Trafficking in Human Beings in South-Eastern Europe, UNDP, November 2003, p. 110.

<sup>73</sup> Information on the Work of the BiH Prosecutor and Implementation of Laws in 2003, Office of the BiH Prosecutor, April 2004, p.14.

<sup>74</sup> *Ibid.*

In view of the presence of EUFOR and its constant unannounced inspections, not only of military installations, but also of private companies<sup>75</sup> (upon request of the High Representative), activities of any paramilitary units or “private armies” is highly unlikely.<sup>76</sup>

However, data by EUFOR, which conduct periodic collection of illegal weapons from citizens willing to surrender voluntarily (with amnesty from punishment for possession),<sup>77</sup> shows that a considerable amount of weapons is still held by the citizens. Thus, since the beginning of the EUFOR mission, on 1 December 2004, until the end of May 2005, citizens surrendered voluntarily to EUFOR, for example, 3,744 pieces of small arms, 7,587 hand grenades, and 432 different mines.<sup>78</sup>

The Functional Review of Police Forces in BiH, conducted in July 2004 by the BiH Ministry of Justice, with financial support by the EU, cites that systemic problems in this area include a complicated organization of the police at three levels: at the level of cantons in FBiH and centers of public security in FBiH, and at state level.

The Report also states that the salary of individual police officers is often too low to attract or retain quality staff. There is no country-wide state salary scheme, that could link basic salary with a corresponding category or rank or staff in the police or the State Border Service. There is evident disparity between salaries of different services, and the current salary structure is complicated and uneven, both for existing staff and for those who are yet to build their professional career. This Report also states that the net monthly salary varies between 340 KM in RS and 1,259 KM in the Brčko District. This creates dissatisfaction, additional duties cause stress, and all this augments the chances of corruption, concludes this Report.<sup>79</sup>

In the nature of things, the work of the mafia is not open to public, but newspaper articles often refer to “the Sarajevo Mafia”, “the Sanjak Mafia”, “the Albanian Mafia” and others.<sup>80</sup> Different mafias play the card of political, organizational, police, and media fragmentation of the entire region.<sup>81</sup>

According to some sources, the Albanian mafia organizes the “staffing policy” of the underground criminal world not only in Macedonia and Serbia, but also in BiH, Croatia and Slovenia.<sup>82</sup> Drug shipments travel from Turkey via Sanjak, northern Montenegro, towards BiH and Croatia, towards major ports, and then continue to the West. Another way of transporting drugs is via highways towards Slovenia and Western Europe.

<sup>75</sup> On 6 April 2001, SFOR and FBiH Financial Police searched the premises of Hercegovačka banka in Mostar, on the basis of “assisting parallel structures of government” and subsequently, pursuant to the decision by the High Representative, management of the bank was assumed by an international administrator. See: “SFOR Supports HR’s action on Hercegovačka banka”, SFOR Informer, at [www.nato.int/sfor/indexinf/111/s111p08a/t0104188a.htm](http://www.nato.int/sfor/indexinf/111/s111p08a/t0104188a.htm)

<sup>76</sup> A good example is the operation in late July 2005, when EUFOR conducted an unannounced inspection of the premises of several protection companies across BiH. On 28 July 2005, searches were conducted in Puma Buntić Security company in Mostar, Široki Brijeg, Čapljina, and Stolac, and Sektor Security company in Banja Luka, Prijedor and Gradiška, and Sword Security in Sarajevo, reported the next day by all the daily papers in BiH.

<sup>77</sup> Operations know under the name of “Harvest”.

<sup>78</sup> Official data from EUFOR obtained for this research.

<sup>79</sup> Functional Review of Police Forces in BiH, edition in Bosnian, p.9.

<sup>80</sup> “Albanians against Sarajevans from Sanjak”, *Slobodna Bosna* weekly, 5 May 2005, p.22.

<sup>81</sup> *Ibid.*

<sup>82</sup> Marko Nicović, member of the Board of Directors of the International Police Organization with a seat in New York, former chief of police in Belgrade, today a distinguished lawyer.



Some analysts claim that there are five lines of business for organized crime in the Balkans,<sup>83</sup> including BiH. First of all, trafficking in persons - 20,000 persons are currently being smuggled across territories of former SFRY, usually women for purposes of prostitution.

The second phenomenon is smuggling of stolen vehicles, which was particularly well developed several years ago.<sup>84</sup> Then, there is trafficking in weapons and drugs (in addition to heroin, cocaine is also transported to the Balkans via Montenegro). The fifth form of organized crime is trafficking in excise goods: where there is no manufacturing of, for example, cigarettes and whiskey, those items are smuggled.

As for field indicators, it is difficult to give an unambiguously clear assessment as to the actual extent of organized crime in BiH. The EUFOR commander (at the time, the British major-general), who started to “deploy” EUFOR troops in the border area rather frequently, to support local police, State Border Service and Indirect Taxation Authority, and who could, by the nature of things, have data from both local and international sources, stated publicly that he himself could not give such data or present an exact picture of the situation. The general also said that local police was effective in combating crime at the local level, but was not structured so as to be able to act as a coordinated front against organized crime, whose networks are active across the country.<sup>85</sup>

He underscored that organized crime was active inside parallel structures, which rob the authorities of vast amounts of money through fraud. Some of the criminal networks are the same organizations collecting funds for support and protection of persons indicted for war crimes. The general also mentioned a recent public opinion survey, which showed that eight out of ten BiH citizens believe that crime and corruption affect their everyday lives, while drug trafficking, burglaries and corruption were listed as principal criminal activities.

According to data from the State Border Service and the BiH Ministry for Human Rights and Refugees, during 2000 there were 50,000 registered cases of illegal crossing of the state border. The number was reduced by one half in 2001, and by 2003 the number had been reduced to 10,000. At first, the illegal immigrants were, most frequently, Turkish, Iranian, Iraqi and Chinese nationals, and in 2002 there were more Albanians from Serbia and Montenegro, and nationals of Romania, Moldova and the Ukraine.<sup>86</sup>

In order to illustrate the extent of organized crime in BiH, note should be made of the annual reports of the BiH Prosecutor’s Office. Experiences of the BiH Prosecutor’s Office show that along with corruption, organized crime in BiH is no less of a threat than in other parts of the world.<sup>87</sup> Methods and mechanisms of control of organized crime, whose forms are becoming highly sophisticated, are still ineffective and slow in BiH, because there is, in general, no effective coordination in the system of crime control

<sup>83</sup> From an unpublished interview by Dragan Pavlović, journalist from *Oslobodenje* daily, with Marko Lopušin, author of *Albanian Mafia*, published in June 2005.

<sup>84</sup> According to Lopušin, “This form of organized crime included considerable involvement of police forces of former republics of SFRY. A deceased Serbian general used to brag that he had imported some 1,500 stolen cars, sold at 3,000 DM each. After that, the general signed a decree that cars had to be re-registered every six months. Re-registration was priced at 500 DM. So, the annual cost of one car was 1,000 DM. When multiplied with 150,000 the result is 1,500,000 DM in cash that the car-mafia placed into the pocket of the state.”

<sup>85</sup> Journalist’s note from a press conference by General Leakey on 24 May 2004. See also the transcript of the introductory statement at [www.euforbih.org/press/p050524a.htm](http://www.euforbih.org/press/p050524a.htm)

<sup>86</sup> Trafficking in Human Beings in South-Eastern Europe, UNDP, November 2003, p. 106.

<sup>87</sup> Information on the work of the BiH Prosecutor and Implementation of Laws, Office of the BiH Prosecutor, April 2004, p.14.

Entity level communication in information exchange is minimal, but it has grown notably since the establishment of the BiH Prosecutor's Office. Experiences of this Office show that organized crime in BiH is well connected with organized crime in the neighboring and other countries. In that, certain offenses are organized and executed by groups of people whose members are nationals of BiH, mainly also nationals of the neighboring or third countries, a fact which hinders significantly the effectiveness in uncovering crime and investigating it. This problem is most evident in crimes related to trafficking in persons, illicit drug trafficking, money forgery, and other offenses. The territory of BiH is used both as the location of the crime and an area of transit en route to other states.

Data available to the BiH Prosecutor's Office indicates that organized crime in the territory of BiH is organized in such a way that members of organized groups residing in both entities and the Brčko District act in concert in different parts of BiH. At that, there are overlapping jurisdictions of competent authorities in uncovering and prosecuting such crime. Due to the evidently insufficient and inadequate cooperation among all the authorities, at the level of cantons as well as at the level of entities and the Brčko District, investigations are difficult and complex.<sup>88</sup>

According to Information on Security Situation in the First Half of 2005, submitted by the BiH Ministry of Security to the Parliamentary Assembly in September 2005, the security situation is stagnant, though in some segments better than the first half of 2004, despite the fact that "in 2005, the economic and political situation in BiH was much worse than the year before." The report noted that this was, to a large extent, due to the consolidation of security services and their intensified work. It underscored that there is better registration and monitoring of migration trends; the number and forms of illegal migration are on constant decline; there is a greater number of measures to enforce regulations in the area of border crossing and supervision of state border.

In the area of crime related to unauthorized production and circulation of drugs, and possession and facilitation of use of drugs, and in the area of general security of persons and property, there has been an increase in offenses in BiH by 38.69%, when compared with the same period of 2004. In the area of fraud, there is an evident increase in Republika Srpska, but also the level of discovery by police authorities is also improving and continues to give good results. However, prosecution for offenses is still slow and fails to render impressive results.

It is important to note that the problem of prostitution and trafficking in persons, although not of alarming proportions, is a problem worthy of special attention. The reason is that more and more women nationals of BiH and children are becoming victims of trafficking and prostitution. Some of the key reasons cited for that are drugs and unemployment, as well as the growing social vulnerability of the population... Car-related crime is evident, i.e. theft of vehicles, with a growing inter-state and inter-entity character.<sup>89</sup>

Particular weight to this problem is added by the 2005 Progress Report for BiH, published by the European Commission in early December 2005. The Report states that BiH achieved some progress in combating money laundering<sup>90</sup>. It also states that the Law on Prevention of Money Laundering, adopted in July 2004 and in force as of December of the same year, was a step forward, though not sufficient in terms of adopting relevant EU regulations, including standards of the Financial Action Task Force. For example, although combating money laundering is high on the political agenda, government transactions are exempted from the legislation. Furthermore, credit is given to SIPA for establishing a unit to monitor financial transactions, which became a

<sup>88</sup> *Ibid.*

<sup>89</sup> Information on the Security Situation in the First Six Months of 2005, version in Serbian, p. 28, which the BiH Ministry of Security submitted to the BiH Parliamentary Assembly in September 2005.

<sup>90</sup> Bosnia and Herzegovina 2005 Progress Report, published in Brussels, 9 November 2005, by the European Commission. Edition in English, p. 62.

full member of the international EGMONT group in July 2005, and started to receive reports from other member states.

In relation to combating drug trafficking, the report states that 80 percent of heroin in the Western European market travels through the Balkan route, which transits through BiH.<sup>91</sup> The Law on Prevention of Drug Abuse has not yet been adopted, and there is no office for combating drug trafficking. It states that this form of crime is on the rise and that there are indications that synthetic drugs are beginning to be manufactured in BiH. As for combating organized crime, some progress is reported.

The legal framework is in place and Bosnia and Herzegovina is a party to the main international conventions in this area. Over the reporting period, there have been some successful prosecutions of persons involved in organized crime, including high-ranking politicians. Bosnia and Herzegovina has made further progress in implementing the Action Plan against Organized Crime presented to EU ministers in November 2003. However, the possibilities of the current legal framework are not always exploited to the full. For example, the possibility of seizing assets following a conviction has not been used so far. It is also to be noted that organized crime remains the single main threat to Bosnia and Herzegovina in terms of security and stability.<sup>92</sup>

As for mafia and organized crime, it should be noted that as of several years ago the RS Ministry of the Interior has an office for citizens' complaints, and there is a similar institution in FBiH, where citizens may deposit their complaints in writing and anonymously, with special boxes supplied at entrances to police facilities. Since March 2004, the EUPM has had a "Crime-Stoppers" hot-line in its headquarters in Sarajevo, allowing citizens to make free anonymous calls in relation to potential criminal offences. According to EUPM data, in the first three months of operation of this line, local police officers received 1,734 calls, of which 675 led to action such as arrest, drug seizure, and return of stolen property. Most calls were related to offenses involving drugs and weapons, theft or fraud.<sup>93</sup>

The above indicates that it is highly unlikely that there may be any illegal paramilitary units organized in BiH. However, particularly in view of the complex legislation, supervision of private security companies should not be neglected. The elaborated development of corruption and organized crime, and shortcomings of security services, which are still under development, indicates a considerable possibility of mafia activity.

### **8.5. What measures, if any, are being taken to remedy the publicly identified problems in this field, and what degree of political priority and public support do they have?**

#### Defense reform

In the field of defense system, numerous changes have happened in the past two years, initiated by the international community, led by the Office of the High Representative (OHR). In addition to frequent periodic reductions of entity armies, in order to make them financially sustainable, in 2003 OHR established the Defense Reform Commission, led by an American expert, to finally put top responsibility for the defense system to the level of the state.<sup>94</sup> This was one of the key

<sup>91</sup> *Ibid.* p. 63.

<sup>92</sup> *Ibid.*, p. 64.

<sup>93</sup> "New Hot-Line Helps BiH Police Fight Crime", *SE Times*, 8 July 2004., [www.setimes.com/cocoon/setimes/xhtml/hr/document/setimes/features/2004/07/040708-ANTONIO-001](http://www.setimes.com/cocoon/setimes/xhtml/hr/document/setimes/features/2004/07/040708-ANTONIO-001)

<sup>94</sup> Decision of the High Representative, 9 May 2003, [www.ohr.int](http://www.ohr.int)

preconditions to be fulfilled in order to make BiH a realistic candidate for the NATO Partnership for Peace (PfP) program. In 100 days of work, the commission prepared recommendations, which resulted in the adoption of the first state-level Law on Defense of BiH at the end of the same year.

Upon request of the High Representative,<sup>95</sup> in summer 2005 the BiH Defense Reform Commission submitted its second report with recommendations for changes and amendments to the BiH Law on Defense, and for drafting the Law on Service in OS BiH.<sup>96</sup> After the entity parliaments did so, the BiH Parliamentary Assembly quickly adopted these recommendations, whose implementation as of 1 January 2006 should result in the abolishment of entity ministries of defense and separation of the chain of command into operational and administrative.

Following the incident with the oath ceremony in VRS, the BiH Minister of Defense, acting as co-chair of the Defense Reform Commission, tasked a working group with drafting regulations on military discipline in OS BiH (Article 73 of the 2003 BiH Law on Defense), within the context of drafting the Law on Service in OS BiH. Regulations on military discipline will deal with all the relevant issues, including competences of all levels of command on issues of disciplinary measures. The regulations come into force at the same time as the Law on Service in OS BiH.<sup>97</sup> Within the Commission, the Minister also initiated drafting of regulations on rules of conduct for oath ceremonies for members of OS BiH.

As of 1 January 2006, national military service will be completely abolished and a fully professional army established.<sup>98</sup> In recommending the introduction for a fully professional army in BiH and the abolishment of national military service, the Defense Reform Commission believes that it will help overcome the oath ceremony incidents cited above.<sup>99</sup>

Even before the new legislation, on 3 June 2005, on the basis of powers arising from Annex 1A of the Dayton Peace Agreement, the Commander of EUFOR and the Commander of NHQSA removed the Chief of VRS General Staff, dismissed the current class of service recruits, and gave preference to the recommendation by the state Minister of Defense that as of 2005 servicemen should no longer be recruited for national service.<sup>100</sup>

After the alleged discovery that some elements in VRS helped a person indicted by The Hague and still at large to hide in a military facility near Han-Pijesak, the state Minister of Defense ordered several measures. In order to stop further assistance to persons indicted for war crimes, he ordered a verification of military staff in VRS to confirm that persons involved in assisting fugitives are not in military service; he ordered thorough security checks to be conducted in relation to staff involved in guarding sensitive military locations, and sealing of unnecessary underground military facilities; he ordered the implementation of the military-intelligence operations concept as proposed by the Defense Reform Commission in 2004, the establishment of a financial audit of the Ministry of Defense of BiH (MoD BiH), and development of a concept of military police in the OS BiH.<sup>101</sup>

<sup>95</sup> Decision from late 2004, extending the mandate of the Defense Reform Commission, [http://www.ohr.int/decisions/statemattersdec/default.asp?content\\_id=33883](http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=33883)

<sup>96</sup> 2005 Report of the Defense Commission, "OS BiH: One Military Force for the 21st Century", September 2005.

<sup>97</sup> Additional Report on Investigation of the Event during the Oath Ceremony in Barracks in Manjača and Bileća on 16 April 2005, presented to the media by the BiH MoD on 5 May 2005.

<sup>98</sup> 2005 Report of the Defense Commission, "OS BiH: One Military Force for the 21st Century", September 2005, edition in Croatian, p.6.

<sup>99</sup> Statement by EUFOR and NHQSA of 3 June 2005, at [www.euforbih.org/press/p050603a.htm](http://www.euforbih.org/press/p050603a.htm)

<sup>100</sup> On the same day, the EUFOR Commander issued a decision prohibiting representatives of war veterans' associations from taking part at military ceremonies. The decision was to be in force until the rules of procedure, regulating such ceremonies, have been revised and re-drafted at state level. *Ibid.*

<sup>101</sup> Report on a survey of systemic weaknesses of command and control of OS BiH. BiH MoD presented it to the media on 15 February 2005, p.2.

As of 1 January 2004, there will be a single defense budget for the entire state. The new organization should be fully implemented by late summer or early autumn 2006, with three multi-ethnic brigades in BiH, whose infantry battalions are to be excluded from formal regiments, which will, in turn, continue the military traditions of the three constituent peoples and wartime formations of RBiH Army (ARBiH), Croatian Defense Council (HVO) and Army of Republika Srpska (VRS). The army will be fully professional, with troops in the range of 9,000 to 10,000.<sup>102</sup> However, in order to implement this last stage of defense reform and to establish a new organization, with better control over OS BiH, the key segment will be an adequate military budget.

The Joint Parliamentary Committee for defense and security policy and supervision over defense and security structures at the level of the state is still being educated as it works. Its members often attend international seminars on civilian control over the armed forces, supported by the OSCE Mission in BiH.<sup>103</sup>

### Police restructuring

The purpose of Police Restructuring Commission was to create a professional and political consensus on the establishment of police forces in BiH in such a way as to satisfy the three basic EU principles: full supervision of police at state level, police free from political influence, and local police areas organized on the principle of effectiveness (thus crossing the inter-entity boundary). Further development of SIPA is particularly important for combating mafia and organized crime. A final political agreement and parliamentary adoption of the Police Reform Agreement created the preconditions for a single police system in BiH, in compliance with the cited EU principles, in the next few years.

It is interesting that measures to be taken to improve security, in its Information on the Security Situation in the first half of 2005, among the first of a total of nine measures, the BiH Ministry of Security cites the following:<sup>104</sup>

1. A state-level Law on Combating the Abuse of Drugs and Precursors (the Law is in parliamentary procedure).
2. Greater engagement is necessary on the part of all law enforcement agencies and prosecutors in relation to car-related crime, as this form of crime is acquiring inter-state and inter-entity character.
3. Intensify activities on collection of evidence and investigation of offences in the area of war crimes.
4. In the work of security segments, emphasis should be placed on combating corruption and organized fraud, i.e. implement the UN Convention Against Corruption as soon as possible.

### Judicial reform

Judicial reform is aimed at elevating the judiciary to EU standards, and use better organization and better salaries for judges to decrease their being susceptible to corruption, thus making the judiciary more effective and more powerful in combating organized crime and the mafia.

As for the level of political priority, the fact remains that reforms take place under pressure from OHR and the necessity to implement the Road Map for Implementation of the Feasibility Study of EU Approximation, and they are high on the political agenda, though not due to the actu-

<sup>102</sup> Informative materials on defense reform, published by the Defense Reform Commission on 18 July 2005, p. 3.

<sup>103</sup> Author's observations from journalistic contacts with Commission members.

<sup>104</sup> Information on the Security Situation in BiH in the First Six Months of 2005, version in Serbian, p. 29, submitted by the BiH Ministry of Security to the Parliamentary Assembly in September 2005.



al will of the political stakeholders. However, due to the fact that it barely accepted the principles of police restructuring and the request that local police areas should cross the inter-entity boundary, the RS National Assembly showed that its top priorities are to preserve the Dayton-based organization of the country and continued existence of Republika Srpska.<sup>105</sup> Relative interests of the entity are thus placed above the interest of the state and all its citizens.

Public support is different in FBiH and in RS. Although there has been no comprehensive survey of public support for defense reform and entry of BiH into Partnership for Peace, the cited incidents in Manjača and Bileća may indicate that support in RS is lower than that in FBiH. The fact is that VRS conscripts had been in VRS for a very short time, so it may be said that the position they expressed at the time was “brought form home”.

### **Abbreviations:**

OS BiH - *Oružane snage BiH*; Armed Forces of BiH

MOBiH - *Ministarstvo obrane BiH*, Ministry of Defense

FMO - *Federalno ministarstvo obrane*, Federation of BiH Ministry of Defense

MORS - *Ministarstvo odbrane Republike Srpske*; RS Ministry of Defense

VF - *Vojska Federacije BiH*, Army of the Federation of BiH

VRS - *Vojska Republike Srpske*, Army of Republika Srpska

OHR - Office of the High Representative of the International Community

PIC - Peace Implementation Council

EUFOR - European Union Forces in BiH

NHQSa - NATO Headquarters Sarajevo

NATO - North-Atlantic Treaty Organization

PfP - Partnership for Peace

OSCE - Organization for Security and Cooperation in Europe

SFOR - Stabilization Forces

IFOR - Implementation Forces

IPTF - International Police Task Force, UN

EUPM - European Union Police Mission

DGS - *Državna granična služba*, BiH State Border Service BiH

SIPA - State Investigation and Protection Agency

OSA - *Obavještajno-sigurnosna služba*, BiH Intelligence and Security Service

SPAI - Stability Pact Anti-corruption Initiative

SPOC - Stability Pact Initiative against Organized Crime

GRECO - Grupe d'Etats contre la Corruption (Group of countries against corruption)

<sup>105</sup> "Hard Times Are Coming for Me and The RS Government, and Particularly for SDS", *Oslobodenje* daily, 2 June 2005, pp. 4 and 5.



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FBiH MoD

FBiH Ministry of the Interior

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Darko Brkan, coordinator of the Conscientious Objection Campaign,

Marko Lopušin, security analyst, author of the book titled *Albanska mafija* [Albanian Mafia]

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## 9. Minimizing corruption\*

### Are public officials free from corruption?

Author: Boris Divjak

#### 9.1. How effective is the separation of public office, elected and unelected, from party advantage and the personal business and family interests of office holders?

##### 9.1.1. Laws

Separation of public duty from party benefits and personal and family interests for public officials is regulated by the Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina, Civil Service Law in BiH Institutions, Civil Service Law in the Federation of Bosnia and Herzegovina, Law on Administrative Service in Administration of Republika Srpska, and Laws of Ministerial, Government and other Appointments in BiH, FBiH and RS.

The Law on Conflict of Interest in Governmental institutions of BiH (hereinafter: the LCI) provides for special obligations of elected officials, executive officeholders, and advisors in the institutions of government of BiH in exercising their duties. According to the LCI a 'conflict of interest' is created in the event that an elected official, executive officeholder or advisor has a private interest that affects or may affect the legality, transparency, objectivity and impartiality as to the exercise of the public duty. The LCI defines the following fields:

##### *Financial interest of the persons affected by the Law<sup>1</sup>*

According to Article 3 of the LCI, financial interest means 'any interest that entitles an elected official, executive officeholder or advisor to receive money in the amount of more than 1,000 KM per year, and any ownership interest held by an elected official, executive officeholder or advisor which represents a value of at least 10,000 KM of an enterprise, partnership, limited partnership, joint stock company or company with limited liability'.

Incompatibility with serving and involvement in public and private enterprises and Privatization Agencies

Article 4 of the LCI defines incompatibility as follows:

- Serving on the management board, steering board, supervisory board, executive board, or acting in the capacity of an authorized person of a public enterprise is incompatible with serving the public as an elected official, an executive officeholder or an advisor.
- Serving on the management board or directorate, or as director, of a privatization agency is incompatible with serving the public as an elected official or an executive officeholder.
- Involvement in a private enterprise under circumstances that create a conflict of interest is incompatible with serving the public as an elected official, an executive officeholder or an advisor.
- The involvement of close relatives of elected officials, executive officeholders and advisors in circumstances set out in paragraphs 1, 2 and 3 also creates situations of conflict of interest for the official, officeholder or advisor.

<sup>1</sup> For the purpose of clarity the author introduced the phrase "persons affected by the LCI" to refer to the elected officials, executive officeholders and advisors in the institutions of government BiH.

Incompatibility with serving that relates to public enterprises and privatization agencies applies six months after the persons affected by the Law leave office. The LCI obliges them to resign from any such incompatible positions before assuming the duties of their office.

#### Government Investment in Private Enterprises

This issue is defined by Article 6 of the LCI stating that persons affected by the Law shall not serve on the management board, steering board, supervisory board, executive board, or act in the capacity of an authorized person for any private enterprise in which the governmental body where the official, officeholder or advisor serves has invested capital in the four years prior to the official, executive officeholder or advisor taking office. The same applies to any private enterprise that contracts, or otherwise does business, with government authorities at any level with a difference that this provision shall only apply to private enterprises that are under contract or doing business with government authorities while the elected official, executive officeholder or advisor holds office and only when the value of the contract or the business with government exceeds 5,000 KM per year.

#### Personal Service Contracts

In accordance with Article 8 of the LCI, elected officials, executive officeholders and advisors shall not enter into a contract with any public enterprise to provide personal services or with any private enterprise that contracts, or otherwise does business, with government at any level. The provision that regulates conclusion of personal service contracts with private enterprise applies only if the time of duration of the office of the persons affected by the Law overlaps with the time of contract signing or business deal between the enterprise and the government; and only for private enterprises whose value of the contract or the business with government exceeds 5,000 KM per year.

#### Accepting Gifts

A gift, in terms of the Article 10 of this Law, shall be considered to be the gift related to the performance of a duty which includes: money, objects, rights, service without remuneration and any other benefit given or promised to the official, taking into account that any gift exceeding 100 KM shall not be accepted and must be reported to the Election Commission, while money or any other securities regardless of the amount shall not be accepted.

#### Transparency of the personal financial standing of the persons affected by the Law, government investments and financial reports of an enterprise in which the government invested

Transparency of the personal financial standing of the persons affected by the Law is defined in Article 12 which states that persons affected by the Law shall file regular financial reports as required by the LCI and by the Rules and Regulations of the Election Commission.

A government authority that makes one or more investments in an enterprise totaling more than 5,000 KM per year shall file a statement of such investment with the Election Commission and shall also publish this information in a newspaper with a general circulation within the territory falling under the jurisdiction of the government authority within 14 days of the investment. (Article 15 of the LCI). Likewise, in accordance with Article 14 of the LCI, any enterprise that receives the above mentioned investments shall file a report to the Election Commission, the court where the enterprise is registered, and the entity authorized for financial matters of the government body that made the investment, listing the full names and contacts of the members of the managing board or steering board, as well as the names of all authorized persons in the enterprise.



If the value of the contract or the business with government exceeds 5,000 KM per year, any public or private enterprise shall, when submitting a bid to provide goods or services to the government, submit a written statement together with the bid with a listing of any contributions to political parties that the enterprise has made within the preceding two years, as well as a list of all elected officials, executive officeholders and advisors who have been employed by, or served on the management board, steering board, supervisory board, executive board, or acted in the capacity of an authorized person of the enterprise within the preceding two years (Article 13 of the LCI).

Article 9 of the LCI defines preferential or privileged treatment of persons on grounds of party or other affiliation or origin, personal or family relations as one of the prohibited activities.

The Law foresees sanctions in case of violations by elected officials, executive officeholders and advisors, or their close relatives (in accordance with the definition of the LCI), including enterprises to which the Law applies. Depending on the Article that is breached, an elected official, executive officeholder or advisor can be fined in the amount of 1,000 to 10,000 KM, and declared ineligible to stand for any elected office for a period of 4 years, as well as declared ineligible for a position in the public administration or for a position of an advisor for a maximum period of four years following such breach. If a close relative of an official, executive officeholder or advisor is found in violation of Article 10, which regulates accepting gifts, the family member shall be fined in an amount of 1,000 to 10,000 KM. Enterprises that are found in violation of this Law shall be fined an amount of 1,000 to 20,000 KM and shall be ineligible to close a contract with any government authority or agency for a period up to four years following the violation. The Election Commission of BiH adopted the Rules of Procedure to the LCI in 2003 that define decisions on sanctions in detail.

Article 36 of the Rules of Procedure defines financial transparency of elected officials, executive officeholders and advisors, who are obliged to state their financial standing in a form of personal information, and deliver it to the Election Commission in the period of 30 days from the day of taking office, at least once a year during the duration of the office and 30 days after the termination of the office. It is noteworthy that there are no legal consequences if the form with personal information is not delivered; however, if possible conflict of interest is discovered, committed by an official who refused to deliver the form, it will be considered an aggravating circumstance when making a final decision on the sanction for the violation of the LCI.

It is important to emphasize that the Laws on conflict of interest at the Entity levels have not been adopted yet. The Law on Conflict of Interest in Governmental Institutions BiH sets a period of 60 days for the respective Entity laws to be adopted after the adoption of the umbrella law.

Rights and obligations of other public office holders who do not fall within the ambit of the LCI are regulated by the the Civil Service Law in Institutions BiH, Civil Service Law FBiH and the Law on Administrative Service in Administration RS. The above laws regulate the issue of separation of private from public interest determining that civil servants shall act without prejudice, or political partiality, and within their office, avoid in particular to act, or fail to act, in a manner that would be contrary to or not inherent to the performance of their professional duties, and shall restrain from expressing their political beliefs in public and shall not accept or ask for themselves or their relatives, except for those that are allowed in accordance with this Law.<sup>2</sup>

<sup>2</sup> Incompatibility of duties of civil servants is defined in Article 16 of the Civil Service Law in BiH Institutions, Article 19 of the Civil Service Law FBiH and Article 87 of the Law on Administrative Service in the Administration RS, and impartiality in exercising of duties of a civil servant is defined by Article 14 of the Civil Service Law in Institutions BiH, Article 17 of the Civil Service Law FBiH and Article 86 of the Law on Administrative Service in Administration RS.



### 9.1.2. Implementation and its indicators

According to the Second Report of the Election Commission of BiH (ECBiH) to the BiH Presidency,<sup>3</sup> in the period from May 19, 2003, when the Rules of Procedure<sup>4</sup> entered into force, until September 15, 2003 when the time limit for submission of requests for opinion without subject to sanctions expired, ECBiH received 350 requests for clarification of certain provisions from the Law on Conflict of Interest or for explanation of the status of some positions which were simultaneously held by the same person regards the conflict of interest. Based on 350 requests, ECBiH issued 245 opinions, where in 179 cases the conflict of interest was identified, and for which ECBiH issued orders according to which the officials were obliged to abandon all incompatible duties not later than five days after the receipt of the order. All public officials who received the order fulfilled their obligations.

The information media campaign by the ECBiH about the expiration of “the transitional period without sanctions”, in conjunction with the application of Article 45 of the Rules on Procedural Management, resulted in 396 cases of positions held in the conflict of interest conditions to have been resolved without application of sanctions. Concretely, out of 396 resignations, 380 were the resignations of elected officials, out of which 148 were the resignations from elected position, and 232 resignations from another, incompatible position, while 16 resignations were resignations of the people at executive positions, out of which there was one resignation from executive position, and 15 resignations from the second incompatible position.<sup>5</sup>

According to the Third Report of the ECBiH to the BiH Presidency<sup>6</sup> on the implementation of the Law on Conflict of Interest, during the reporting period, four executive officeholders or advisors resigned from the second incompatible position, while 100 elected officials offered their resignations, out of which 63 resigned from public office and 33 of them resigned from the second, incompatible position. Out of the total number of resignations, 87 of them were at the local governmental level, six of them at the cantonal level, three at the FBiH level, and two at levels of RS and BiH.

In the Fifth, and last, Report of the ECBiH to the BiH Presidency in relation to implementation of the Law on Conflict of Interest it is said: from the moment of enforcement of the Law, May 15, 2005, there were total of 785 resignations, out of which 374 resignations from elected or appointed positions, and 411 resignations to the second, incompatible position. For the stated period, ECBiH issued a total of 625 opinions upon requests by elected officials, executive officeholders and advisors, and other persons applying with the requests, where the elected officials fulfilled majority of requests from issued opinions. Concluding with May 15, 2005, ECBiH initiated a total of 66 procedures for determining the factual situation based on suspicion that there might have been a violation of provisions of the Law on Conflict of Interest. In 41 cases the procedure was suspended, in 15 cases violations were found, whereas the remaining cases are still pending. There

<sup>3</sup> Second report of ECBiH - Law on Conflict of Interest in Governmental Institutions of BiH - May 15 -November 15, 2003.

<sup>4</sup> Rules of Procedure (“Official Gazette BiH”, No. 13/03, 20/03).

<sup>5</sup> Article 45 of Rules on Procedural Management (Official Gazette BiH, No. 13/03, 20/03): If the ECBiH after receiving a request for opinion, and after an insight into all relevant facts, establishes clear and strong proof that the conflict of interest exists, the ECBiH shall order to the person submitting the request (elected official, person holding an executive or advisory position) to submit resignation from all incompatible positions not later than five working days after the receipt of the order and to inform the ECBiH in writing about it, or, if it is a company, to submit the proof that they acted in accordance to the ECBiH order, within the determined time limit. If the person or company act according to the order of ECBiH, such person or company shall not be subject to sanctions.

<sup>6</sup> Third Report of the ECBiH, [www.izbori.ba](http://www.izbori.ba)

was a total of eight sanctions issued by the ECBiH, including ineligibility for candidacy to any, directly or indirectly elected position, accompanied by additional, fines, which ranged from 1,000 KM to 10,000 KM.

When it comes to transparency of the financial situation of elected officials, i.e. completing and submitting a form with personal information, which at the same time is a financial report by a public official, and as based on the Second Report by ECBiH<sup>7</sup>, after ECBiH urged with relevant governmental bodies, and with individual public officials, 37 i.e. 7% of elected officials and 26, i.e. 12% executive officeholders and advisors had not submitted their personal information forms until the end of reporting period. The situation concerning the advisors, whose status is also regulated by the Law on Conflict of Interest in BiH, is still rather foggy, and the governmental bodies provide poor information on appointment of advisors. Activities defining the number of advisors, as well as additional contacts in order to finish completion of forms are ongoing.

An example of progress in the implementation of the LCI is certainly the fact that the ECBiH currently examines the contracts concluded by the Council of Ministers during 4 previous years and their compliance with this Law.

The representatives of the Election Commission in their second report highlight the problem of slow pace in staffing of the ECBiH, as well as insufficient budgetary funds allocated for the EC. However, there have been some changes recently in this regard. Based on the Fifth Report of the EC, some of the vacancies in the EC were filled. The Fifth Report mentions the Decision of the High Representative to BiH, No. 220/04, from June 30, 2004, ordering reallocation of the budgetary line in the amount of one third, intended for financing of SDS during fiscal year 2004, to the Election Commission of BiH.

Given that the ECBiH monitors the legality of work of 5.057 officials in relation to the conflict of interest at all governmental levels (state, entity, cantonal, District Brčko authorities, cities, municipalities in BiH), and if we add to this figure their close relatives (who, according to the definition from the LCI are subject to this Law), it is evident that the capacities of the EC have to be increased, and that passing of the laws at the Entity levels has to be accelerated in order to increase the efficiency of the implementation of the LCI as well as the efficiency in separation of public duties from party and private interests.

## **9.2. How effective are the arrangements for protecting office holders and the public from involvement in bribery?**

### **9.2.1. Laws**

Section XIX of the Criminal Code of BiH regulates criminal acts of corruption and criminal acts against official and other responsible positions<sup>8</sup>, i.e. on the basis of this Code it is punishable if officials or responsible persons in BiH institutions, including foreign official persons, demand or accept a gift or any other benefit, as well as if they demand or accept promises about gifts or benefits. It is also prohibited to give or promise gifts or benefits to official or responsible persons in BiH institutions, as well as to mediate in this kind of bribery. The foreseen punishments are very serious, including a prison sentence up to 10 years. Along with accepting and giving bribes, and illegal mediation, section XIX of the Criminal Code of BiH regulates abuse of position or competencies; committing fraud during service; cheating during service; using public assets for private

<sup>7</sup> Second report of the ECBiH, page 5.

<sup>8</sup> This Law came into force on March 1, 2003 by the Decision of the High Representative.

purposes<sup>9</sup>, fraud during service; disclosing official secrets, as well as other violations of official position in BiH institutions.

There are also Criminal Codes at the level of both Entities. They are harmonized with the Criminal Code of BiH and they, in a similar way, regulate criminal acts of corruption and criminal acts in official capacity in RS and in FBiH respectively.<sup>10</sup>

At the end of 1999, the Parliamentary Assembly of BiH adopted the Law on Financial Audit for BiH Institutions, which regulates the establishment and work of the Office for Financial Audit for BiH Institutions. The Auditor General is appointed by the Presidency, subject to a prior consent of both Houses of Parliamentary Assembly of BiH, whereas the employees of the Auditing Office are appointed according to the Rules of service agreed between the Auditor General and the Council of Ministers of BiH.

At the same time these laws were also adopted at the entity levels: the Parliament of FBiH adopted the Law on Budget Audit in the Federation of BiH, and the National Assembly of RS adopted the Law on Public Sector Audit for RS. The Auditor General for FBiH is appointed by the President of the FBiH upon proposal of the Government of FBiH, subject to prior consent of the FBiH Parliament, and the Auditor General for RS is appointed by the Assembly upon proposal of the Government.

The duties of the Auditor General at the state level, or at entity level include the following: to take all the precautionary measures for collecting and keeping the revenues of BiH institutions, i.e. the revenue of the entities, to make sure that disbursements, including extra budgetary funds, are performed according to proper authorizations and for the authorized purposes, to use all reasonable measures of precaution to secure receiving, keeping, disbursement, and utilization of public reserves and apply all the instructions thereto. Auditors General shall also conduct annual auditing of all ministries, courts, and all other public bodies, and their competencies include all public enterprises, companies and organizations which are, in total or partially, financed from state i.e. entity budget.

Besides the already mentioned duties, the Auditor General shall warn the minister and the respective responsible minister about all obvious shortcomings concerning the cost effectiveness efficiency and performance rate in collecting revenues, protection of income and expenditure or usage of income, including extra budgetary funds or public reserves.

The Auditor General for BiH submits the report to the Presidency and Parliamentary Assembly of BiH, and also sends every report to the minister competent for financial issues as well as to relevant ministries. The Auditor General for FBiH submits the report to the President and Parliament and/or institutions and competent ministers, and the Auditor General for RS submits the report to the Assembly, competent ministry and Minister of Finance.

The Auditor General for BiH can, at any time, perform a special audit upon the request of Parliamentary Assembly of BiH or upon a specific request of a relevant institution, the Auditor General for FBiH upon a request of the Parliament and/or upon request of institutions and competent ministries, and the Auditor General for RS upon request of the National Assembly of RS and on the basis of a request of other bodies and organizations.

<sup>9</sup> Using public assets for private purposes implies unauthorized use of money, securities or other movable property to the services or in general to the work in public institutions or giving these things to other people to use without authorization.

<sup>10</sup> Criminal Code of the Federation of Bosnia and Herzegovina and Criminal code of Republika Srpska, Official gazette of RS, No. 49/03.

### 9.2.2. Implementation and its indicators

Taking into consideration that the International Community invested a large amount of donor funds into the reform of the judiciary system in BiH, as well as the fact that there has been a new Criminal Code in force for two years, it is concerning that many highly positioned public servants who are suspected of taking bribes, abuse of public position or who were suspects in similar affairs in the past, are still promoted on the hierarchical scale of official positions.

Reports of the Auditors' Office (state and entity) are public and easily accessible on the Web sites of these institutions. It is very difficult to find a report in which there is no mention of the violation of the Law on Public Procurement, irresponsible expenditures of public institutions and enterprises, and a whole series of other irregularities in the work of public institutions and companies. On the other hand, only few investigations were initiated due to such reports, and it is generally believed that these reports do not attract enough attention, despite the fact that they, from one year to the next, indicate the ways on how to increase the performance and efficiency of the public institutions.

The Establishment of the special Department for Organized Crime, Crime in Economy and Corruption at the Prosecutors' Office of BiH, led by an international prosecutor, who is also Deputy to the Chief Prosecutor of BiH, led to important changes - large scale investigations were initiated in the area of organized crime, economic crime and corruption. However, this still does not solve the problem of prosecuting corruption and abuse of official positions at the level of entities and districts, i.e. cantonal prosecutors' offices.

Recently, there were some investigations initiated involving high state officials as suspects (e.g. Hercegovska banka, where one of the main suspects for major criminal activities related to bank operations is the former Minister of Defense and a member of the BiH Presidency, Ante Jelavić, as well as the recent arrest of Momčilo Mandić, former Minister of Justice of RS, suspected of organized crime). Closely connected to this there is also a problem of return of illegally acquired property. Notwithstanding the fact that this is foreseen by the Criminal Code, the expected results have not been achieved yet.

The situation in relation to the appointment of auditors at the state level shows that it is indispensable, as urgently as possible, to adopt a state level Law on Auditing Services, that would provide for, and present, a new way of appointing auditors, through public competition, which would significantly decrease the influence and interference by the institutions that are the subject to the control. In Republika Srpska, after the Auditing Report on public enterprise *Elektroprivreda* was made public, the Auditor General for RS, Boško Čeko, was exposed to verbal attacks by the management of the enterprise, criminal charges were brought against him and he was sued for compensation.<sup>11</sup> This is only an example of the threats independent auditors are exposed to that sends us a message about the pressures these services are exposed to on a daily basis.

## 9.3. How far do the rules and procedures for financing elections, candidates and elected representatives prevent their subordination to sectional interests?

### 9.3.1. Laws

The financial reports of the political parties in BiH were legally regulated for the first time prior to the elections held in 1998. The requirement for disclosure of financial reports was incor-

<sup>11</sup> Numerous press articles and TV reports, including the show "Ispod tepiha" ("Under the carpet"), RTRS September 25, 2005.

porated in the Book of Rules of the Provisional Election Commission (PEC). The requirement was for each and every candidate to fill in the candidate form and to submit it to the PEC along with the report on personal financial situation. The report on financial situation included the information on the candidate's property and the property of his/her immediate family. The candidates who won the elections had the obligation to submit to the PEC an additional report on their financial situation after the expiration of their mandate. The PEC did not have any obligation to review the truthfulness of the noted data, but the forms were published as an attachment to the daily papers and on the web site of the OSCE Mission to BiH.<sup>12</sup>

The Parliamentary Assembly of BiH adopted the Law on Financing of Political Parties in 2000. At that time the BiH Election Law was not yet adopted and the Election Commission (EC) was not established, and the PEC incorporated into the Book of Rules for the 2000 elections regulations limiting the collection and usage of the funds for pre-election campaigns in accordance with the adopted Law.<sup>13</sup>

The BiH Election Law was adopted in August 2001 and the Election Commission of BiH (ECBiH) was set up in November. The Election Commission is responsible for monitoring and application of measures related to political parties' financing pursuant to the provisions of the BiH Election Law (Chapter 15) and the Decisions of the High Representative (No. 139 of March 28; No. 148 of April 18; and No. 151 of April 19, 2002), and the provisions of the Law on Political Organizations in BiH, Law on Political Organizations in RS, Law on financing of political parties in BiH and the Law on Financing of Political Parties from the Budget of the Republic, Municipalities and Towns of RS.

The BiH Election Law strictly defines that the mandate belongs to the mandate holder and not to a political party, a coalition or a list of independent candidates which proposed the candidate. The mandate may not be terminated except in the events envisaged by the Law. However, having in mind the priceless "value" of a mandate and the benefits and profits it brings, the Election Law, as well as the Law on Financing of Political Parties stipulates a number of responsibilities on behalf of political parties and the candidates for an elected function related to the transparency of the financing of their activities, elections campaigns and the financial situation of the candidates themselves.

According to the Election Law, a political party, coalition, list of independent candidates and an independent candidate participating in the elections for BiH authorities at all levels shall be obliged to file with the ECBiH, at the time of submission of the application for certification to participate in the elections, a financial report for the period beginning three months prior to the date of submission. In addition, no later than thirty (30) days after the ECBiH publishes the election results, a financial report shall be submitted to the ECBiH for the period beginning on the day of submission of the application for certification until the certification of the results.<sup>14</sup> These reports shall include the following information:

1. All cash at hand;
2. All income and disbursements based on: memberships; contributions from abroad; contributions by natural and legal persons; contributions in the form of goods and services (hereinafter referred to as "in-kind contributions"); returns on own assets and entrepreneurial

<sup>12</sup> Guide on Financing of Political Parties, ECBiH and IFES from Washington, Sarajevo, February 2004, p.9.

<sup>13</sup> Transparency International BiH, *A Study of the System of National Integrity*, Sarajevo/Banja Luka, September 2004, p. 49.

<sup>14</sup> Article 15.1. of the Election Law in BiH.



- activities; credits; loans; donations; rebates; refunds; other operating expenditures; and other sources for the reporting period as determined by the ECBiH;
3. Identification of the person or source of any payment and in-kind contribution, as well as the identification of a person who received that payment, in excess of one hundred (100) convertible marks, together with the date and the amount of any such receipt;
  4. The total amount of all debts due, and total amount of disbursements in the following categories: direct costs for political campaign; operating expenses; costs associated with the entrepreneurial activity and other costs; and
  5. The amount and nature of outstanding debts and obligations owed by or to the person who files a report and where such debts and obligations are settled for less than their reported amount or value, a statement as to the circumstances and conditions under which such debts or obligations were written-off.<sup>15</sup>

Apart from the obligatory reports in line with Article 11 of the Law on Financing of Political Parties, each political party has the obligation to submit to the EC a financial report for each calendar/fiscal year.

Every candidate standing for elected office at the level of BiH or the entity level shall be obliged, no later than fifteen (15) days from the day of accepting candidacy for the elections, to submit to the ECBiH, on a special form, a signed statement on his/her total property situation, including: current income and sources of income, property, including money, bank accounts, other property and possessions with the value exceeding 5,000 KM, and disbursements and other liabilities, including all debts. The statement should include the property situation of the candidates and members of his/her immediate family: spouse, children and members of the family household whom it is the candidate's legal obligation to sustain. (Article 15.7 of the Election Law of BiH).

The ECBiH shall make all reports available to the public and undertakes appropriate measures to ensure that all citizens have access to the information included in the reports.<sup>16</sup>

Pursuant to the Election Law (Article 15.10), no political party, coalition, list of independent candidates or independent candidate shall, based on the number of voters announced by the ECBiH, spend more than one convertible mark per voter in each electoral run off for the purposes of the election campaign.

Pursuant to Article 15.6 of the Election Law, the ECBiH has the authority to investigate instances of non-compliance with the provisions of this Law, related to campaign financing, and has the authority to decide whether a political party, coalition, list of independent candidates or an independent candidate, or any other person has violated those provisions, and has the power to apply sanctions or adequate administrative measures.

According to the Law on Financing of Political Parties, a political party may raise funds from: membership fees, contributions made by legal and natural persons, income generated from political party's property, budget of BiH for financing of parliamentary groups, and from entity level budget and all lower levels in accordance with entities' laws, and from the income of a company owned by the political party, but the company owned by a political party may only be engaged in culture or publishing activity.

<sup>15</sup> Revised version of the BiH Election Law prepared by the Election/Implementation Department of the OSCE Mission to BiH. The text is based on the version published in the BiH Official Gazette no. 23/01 of September 19, 2001, and Amendments to the BiH Election Law published in the BiH Official Gazette no: 7/02, 9/02 and 20/02.

<sup>16</sup> The web site of the Election Commission includes database with financial reports of all political parties and candidates and the purpose of the data base is to provide information to analysts, media and BiH citizens.



The annual income from a party's property and party-owned company may not exceed 20% of the total annual income of a party, and the income exceeding the 20% the party shall give for charities, to one or two organizations involved in charitable works.

Legal and natural persons may give contributions to political parties or members of parties acting on their behalf, and the total amount of a single contribution shall not be higher than the amount of eight average salaries in line with the official data of the BiH Statistics Agency in one calendar year, and shall not be given more than once, and if the total contribution of an individual exceeds 100 KM the payment must be recorded in the financial report of the political party.

The following stakeholders shall be prohibited to give contributions to political parties: state, entity and cantonal bodies, municipal and local community bodies, public institutions, public companies, humanitarian organizations, organizations that are exclusively non-for-profit by nature, religious congregation, commercial companies in which the share of invested public capital is at least 25%, and the private companies performing public works in accordance with a contract with government.

It is important to note that the Law on Financing of Political Parties (Article 10) envisages the allocations from the state budget for financing of parliamentary groups represented in the BiH Parliamentary Assembly. Thirty percent of the funds are to be equally distributed to all parliamentary groups, while 70% of the total amount is to be distributed according to the number of delegates that each parliamentary group has at the time of distribution of funds.

The ECBiH shall establish the Service for Financial Activities Audit tasked with the review and control of financial reports of political parties. All irregularities noted by the Service shall be submitted to the EC. The EC shall be authorized to impose a fine, in line with Article 15 of the Law on Financing of Political Parties, in the event that a party does not act in accordance with the provisions of the Law. If a party received funds in the amount higher than the maximum amount determined by the Law, the EC shall impose a fine to a political party, and the amount of the fine shall not be higher than triple amount received in an illegal manner.

### **9.3.2. Implementation and its indicators**

The importance of election laws and laws on financing of political parties for democratic development in a society lies in the possibility for all citizens to participate in public decision-making and to run for elections. Without these rules the participation in the elections, the presentation of political ideas through the media, and the participation in the work of the authorities would be a privilege of financially capable and/or influential individuals and groups. The conditions for social equality in democratic processes is created through these laws, the limitations posed for financing of political parties and through the provision of equal opportunities of access to media and a share of funds from the budget serving financing of pre-election campaigns.

The election system and the rules in the western democracies developed over the decades on the basis of mistakes and experience, starting with full liberalism in the financing of political parties, through strengthening of worker's movement and parties, to the developed systems providing for balanced influence in using funds for pre-election campaigns. The Election Law was adopted for the first time in BiH at the end of 2001 when the ECBiH was established, after five decades of the rule of a single-party system. Hence, the efficiency of the Law on Political Parties will be visible only in the years to come, since the recently new EC does not have fully developed capacities for auditing financial activities of political parties.

As a result, the OHR overtook a portion of the activities related to audit of business activities and application of sanctions to political parties in BiH. BiH Election Law (Article 1.13) created an obligation for presidents of political parties to submit a statement that the activities of the political party are in compliance with the General Framework Agreement for Peace, and the Law on Financing of Political Parties introduced a concept of transparent financing of political parties in the aim of combating corruption that threatens democratic governance. Hence, by exercising powers vested in the High Representative by Article V, Annex 10 of the General Framework Agreement for Peace in BiH, the High Representative made the Decision terminating all payments from budget lines for the financing of Srpska demokratska stranka (SDS) - (Serb Democratic Party) - and giving the order to the SDS to submit a financial plan for the period from January 1, 2003 to March 31, 2004.<sup>17</sup>

Additionally, based on the financial reports submitted by the SDS and the reports of the Special Auditor in RS on the financial reports of the SDS, the OHR made the decision to block all bank accounts of the SDS and required the organization to open a single bank account.<sup>18</sup> The OHR's Report on financial audit of SDS conducted by the Special Auditor indicated the abuse, corruption and tax evasion at all levels of the party and provided substantial evidence on illegal transactions by the SDS branches in companies and public bodies. Similar sanctions were imposed by OHR to the Hrvatska demokratska zajednica (HDZ) - (Croatian Democratic Union) - however in this case the reason for sanctions was related to failure to conduct administrative unification of schools.

The citizens of Bosnia and Herzegovina are aware of the interconnectedness of the political parties and all economic aspects of the society, where political appointments to managerial positions in public companies as an award for loyalty to a party are especially striking. According to data of the Global Corruption Barometer of Transparency International (TI)<sup>19</sup> for 2004, the political parties were assessed to be the most corrupt institutions in society with 4.3 points on the scale from 1- "no corruption" to 5 -"extremely corrupt". The situation in other countries is similar, and out of 62 countries covered by the research, in 32, political parties were ranked as the most corrupt institutions, with the average grade of 4.0. These findings were confirmed by Transparency International in Bosnia and Herzegovina (TIBiH) indicating that BiH citizens are convinced that political parties are society's most corrupt institutions. In line with the findings of the aforementioned research, more than 68% of citizens believe that almost all leaders of political parties are involved in bribery and corruption.<sup>20</sup> The survey that TIBiH conducted before the 2004 elections showed that almost half of the BiH population does not have confidence in any of the parties or party leaders, but that the orientation to parties is mostly a direct consequence of national affiliation and not this lack of confidence.<sup>21</sup>

<sup>17</sup> OHR, the Decision terminating all payments from budget lines for financing of SDS and giving the order to SDS to submit financial plan for the period from January 1, 2003 to March 31, 2004, rendered on April 2, 2004, Sarajevo, [http://www.ohr.int/decisions/war-crimes-decs/default.asp?content\\_id=32218](http://www.ohr.int/decisions/war-crimes-decs/default.asp?content_id=32218)

<sup>18</sup> OHR, Decision on blocking of all accounts owned by SDS and all accounts for which the holder is SDS and requiring SDS to establish a single bank account, June 30, 2004, Sarajevo.

<sup>19</sup> TI Global Corruption Barometer based on the research conducted by Gallup International and which covered more than 50,000 respondents in 64 countries, conducted as a part of the comprehensive research *Voice of the People Survey* in the period from June to September 2004.

<sup>20</sup> Transparency International BiH, *The Corruption Perception Study in BiH 2004*, Banja Luka/Sarajevo, July 2004, pg. 71.

<sup>21</sup> Press Release of TIBiH, "Absolute Disappointment with Parties and Leaders", September 23, 2004, Sarajevo.

#### **9.4. How far is the influence of powerful corporations and business interests over public policy kept in check, and how free are they from involvement in corruption, including overseas?**

##### **9.4.1. Laws**

Regarding the legislation in the economic sector, the general opinion is that the process of enactment of necessary legislation was delayed for too long and resulted in damage to BiH in the amount of several billion. The Law on Public Companies was adopted by the end of 2004 in RS, and, at the beginning of 2005 in FBiH. The Law on Public Procurement at the state level was adopted at the end of 2004, and at the time of this report, there was ongoing capacity building in regards to the agency for implementation of this Law.

The International Community made a first step in this sector as well, indicating that there was a need for a greater responsibility and transparency in management of public companies. For example, one of the main arguments for passing the Decision on the enactment of the Law on Ministerial, Governmental and other Appointments was to increase the transparency of the process of appointment to the managerial positions in state bodies, especially in public companies.<sup>22</sup>

The objective of the Law is to define an open selection procedure for the final appointment and reappointment to the positions in the regulated bodies.<sup>23</sup>

In accordance with Article 5 of this Law, any person that holds a function in a political party cannot be finally appointed. The Law also regulates the issues of conflict of interest (Articles 2 and 6 of the Law) in the sense that a person proposed for the appointment shall not have a personal interest in the regulated body to which he/she is being proposed, since this may have influence on the legality, public nature, objectivity and impartiality in performing his/her function in a regulated body. It also regulates that the responsible public servant (a minister or other person or a body competent for the regulated body and is, in accordance with the Law, responsible to ensure an adequate appointment procedure) shall have the obligation, prior to the final appointment, to provide for the conditions for determination of the existence of any conflict of interest that could be an obstacle for the abovementioned appointment.

Any individual may lodge a complaint on the final appointment, in the event that there is evidence that the principles stipulated by Article 3 of this Law (legality, quality, independent review, openness, transparency and equal representation during employment procedure) or procedures are not respected. The complaint is to be submitted to the responsible civil servant, and a copy to Human Rights Ombudsman in the Federation or Ombudsman Office in RS. The responsible public servant shall inform the complainant about the role of the Ombudsman within seven days after

<sup>22</sup> OHR, the Decision on enactment of the Law on Ministerial, Governmental and Other Appointments in the FBiH and RS, February 27, 2003, [www.ohr.int/decisions](http://www.ohr.int/decisions)

<sup>23</sup> A regulated body in accordance with Article 2 of the Law on ministerial and other appointments shall be:

- a body in which government, cantonal, town or municipal authorities in FBiH, or Government of RS have a legal interest (including government agencies and companies disregarding whether they are fully or partially owned by the government, pension fond, and similar)
- a body which is not covered by the Law on Civil Service in FBiH, or Law on Civil Administration in RS, or is not explicitly exempted by the abovementioned laws and
- a body in which the Government or governmental bodies, Parliament of the Federation or cantonal, town or municipal authorities in FBiH, i.e. in which the Government or governmental bodies or the National Assembly of RS have legal right to conduct nomination and the appointment in accordance with existing laws, rules and regulations.

the receipt of the complaint. If the finding of the Ombudsman is final, i.e. if it is found that the appointment procedure was not conducted in compliance with the provisions of this Law, the Ombudsman may give the recommendation to the responsible civil servant to revoke the final appointment and to conduct new appointment procedure. Moreover, if the responsible civil servant fails to respond, or if the Ombudsman is not satisfied with the response or the proposal of the measures based on the recommendation, the Ombudsman may submit its findings and recommendations related to the appointment to the Parliament of the Federation or the National Assembly of Republika Srpska.

It was mentioned that only recently both Entities have the Law on Public Companies, which regulate certain aspects of responsible governance and activities in public companies, as well as the adoption of Code of Ethics for the companies. In accordance with this Law, the members to the Supervisory Board are to be appointed in line with the provisions of the Law on Ministerial and Other Appointments, while the management of the public company is to be appointed through a public vacancy and by the majority decision of the Supervisory Board. The Law on Public Companies prohibits appointment of a person with a political function to be appointed in the management.

In order to ensure lawful business management, the Law also authorizes the Auditor General to appoint the head of internal auditing department, who will be at the same time a member on the auditing board, but with no right to vote. The internal auditing board shall be established in those public enterprises that have more than 50 employees, and in those employing less than 50 people, the internal board shall be established and an independent auditor engaged. This auditor shall be responsible for annual reports that are to be published on the Internet web site of the enterprise, i.e. its majority owner.

After a number of scandals in the public procurement sector and reports by numerous public auditing institutions in BiH that continuously indicate the drawbacks in the existing legal provisions, and, at the same time, to the public companies that do not abide by those laws, the Law on Public Procurement in BiH was adopted in 2004. This was a condition in the Feasibility Study of the EU that was thus fulfilled. The Law annuls all prior legislation in this field at the entity level, i.e. Decree on the Procurement of Goods, Procedures, Providing of Service and Contract Awarding that were passed at the entity levels.

The new Law on Public Procurement was developed by the EU Program for Public Procurement and is based on European standards. The Law foresees for a Public Procurement Agency to be established at the level of the state, as well as an Office for Complaints. However, in April 2005, the Law on Amendments to the Law on Public Procurement of BiH was passed extending the deadline of the establishment of the Agency and the Office from 3 to 6 months. In the meantime, the Ministry of Finance and Treasury of BiH shall have the competence of the said Agency (Article 54. (1)), and the competence of Office for complaints shall be within the Ministry of Finance and Treasury of BiH, Ministry of Finance of FBiH and Ministry of Finance of RS, each at the respective level (Article 54 (2)).<sup>24</sup> When this period expired in October 2005, the new Law on Amendments to the Law on Public Procurement was adopted, additionally extending the deadline for the establishment of the Agency and the Office for another three months, and, consequently, the respective power vested in the Ministry of Finance and Treasury of BiH, Ministry of Finance of FBiH and Ministry of Finance of RS.

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<sup>24</sup> Law on the Amendments to the Law on Public Procurement of Bosnia and Herzegovina, Official Gazette of BiH, No. 19/05, April 05, 2005)

### 9.4.2. *Implementation and its indicators*

The finance sector was the only one in the economy of BiH that was successfully privatized in the past seven years, owing to the support of the international community (World Bank, European Bank for Reconstruction and Development, US International Agency for Development - USAID), whereas the large corporations are still in the state ownership.

Based on the EC Feasibility Study, 70% of state companies were sold in FBiH and 47% in RS in the period until 2002. The privatization of large companies (50 or more employees, or with the approximate value of 260,000 euros) is at a much slower pace: by the end of 2002 only 24% were privatized in FBiH, and 42% in RS. However, there are major difficulties in regards to large strategic companies (mines, refineries, tobacco factories, manufacturers of spare-parts for cars, etc.). Despite international assistance, only 17 out of 56 strategic companies in FBiH and four out of 52 (i.e. 80 strategic companies, including holding companies) were privatized.<sup>25</sup>

The same pace of privatization continued after the EC Feasibility Study had been developed, indicated in the Report by the Privatization Agency of FBiH, i.e. the Directorate for Privatization in RS. These Reports state that only nine strategic companies were sold in the FBiH and three in RS in 2004.

This situation in BiH has imposed another problem: how to reduce the influence politics has on the public corporations.

The slow process of privatization creates numerous problems in the functioning of the economy in BiH, and at the same time, leaves an open room for corruption, abuse of public functions, close connections between the public policy and state owned enterprises whose sole purpose is to generate sources of income for political parties, that, on the other hand, in the present distribution of powers, have the right "to appoint directors", or, in other words, the right of "disposing" these companies.

While we are still waiting for the privatization of strategic companies (which is not expected to be completed for the next three years), the three key problems in this transitional period still remain: irresponsible management of the companies, various forms of abuse of public companies, and the potential foreign investors who are discouraged.

Ultimately, public enterprises have no value, a further damage the image of BiH when a company can be purchased for one euro

Moreover, despite the fact that the Decree on the Procurement of Goods, Procedures, Providing of Service, and Contract Awarding in FBiH, i.e. the Law of the same name in RS were assessed to be deficient, the auditing institutions' reports at all the three levels (BiH, FBiH and RS) indicated there were substantial infringements of the legislation as it was. Although a great number of irregularities were documented in the findings in auditing reports on public procurement procedures, most of the responsible persons in these companies were not replaced, nor were they ever held accountable in this regard.

Nevertheless, since both the Agency for Public Procurement and the Office for Complaints are still in development, the full assessment of the effectiveness of the new law and the said institutions cannot be offered. Based on World Bank calculations from 2000, the authorities in BiH could save about 130 million KM per year by introducing an effective and transparent system in the public procurement sector, which, in turn, indicates how necessary it would be to have a fully operating and efficient Agency established as soon as possible.<sup>26</sup>

<sup>25</sup> Report from the Commission, Stabilization and Association Process for South-East Europe, March 30, 2004, Brussels.

<sup>26</sup> World Bank, Report on public procurements in BiH, June, 2002, page ii.



The reports by the auditing institutions are public and easily accessible, but, unfortunately, prosecution or sanctions against those who are responsible are very rare.

The fact that the OHR established a special auditing mechanism, and based on its findings, e.g. in public telecommunication company and electric power industry, may have as a result, a more comprehensive, though not complete, picture on management and fraud in enterprises in BiH.

One of the most notorious cases in the course of privatization was when Kristal banka was sold for 1 euro in April 2002, through a direct contract, and the sales contract signed by the then RS Finance Minister. Based on the Report by the Auditor General for RS, the activities of the RS Government and the Ministry of Finance concerning the negotiations on the sale of state owned capital in Kristal banka were not in compliance with Articles 1 and 12 of the Law on Privatization of the State Capital Funds in Banks and Article 5 of Regulations on Direct Sales Transactions.<sup>27</sup> In the opinion of the auditors, “the possible impact of the activities that were not in compliance with the existing regulations, does not relieve the Government of RS, Ministry of Finance of RS and RS Unit for Bank Privatization of material failures in the process of privatization of the state capital of Kristal banka AD Banja Luka”<sup>28</sup>

For the purposes of illustration of how the business operation and cooperation between large corporations and state owned companies can be investigated by the competent authorities, we shall provide the example of the cooperation between the British company ETF and Elektroprivreda RS. On one hand, the British company was accused of exploiting poverty-stricken countries in the Balkans. (There is a current investigation in the UK ongoing within the Office of Serious Frauds due to the alleged corruption.) This would be the first attempt of the Office to enforce the Law against bribery, introduced three years ago, which, so far, has never led to any criminal prosecution. In case any charges are raised, they would be instituted in either London or Bosnia.<sup>29</sup> On the other hand, the prosecutor of the special department within the Prosecutor’s Office of the Court of BiH confirmed she was familiar with the investigation conducted by the British Office for Serious Frauds (SFO), but also that she was not involved in the investigation conducted by the BiH Prosecutor’s Office, except that in both cases the company is one and the same. Mr. Ratel, the Prosecutor, confirmed he had all the relevant documents showing that RS Elektroprivreda sold the surplus electric energy to EFT well below market price and, due to the manipulation of sales, ensured a monopoly to this London company and a profit of 40%, despite that the usual profit in this branch varies from 1.5%.<sup>30</sup>

There is yet another example of business management and alleged liaisons of the company with the public officials which is currently in court.

At the beginning of 2005, on the ground of suspicion for participating in an organized criminal group, the Special Department for Organized Crime and Corruption of the Prosecutor’s Office

<sup>27</sup> The Decision by the Ministry of Finance of RS on the privatization procedure published both in the Official Gazette and in the media as foreseen by Article 12 of the Law on Privatization of the State Capital Share in the Banks and the Law on Amendments to the Law on Privatization of the State Capital Share was not found. The evaluation of the Kristal banka capital by the Commission for Extrajudicial Settlement, as foreseen by Article 5 of the Regulations on Direct Contract Sales was not found. Auditors do not know how the principle of openness was applied, or non-discrimination of the parties and competitiveness as foreseen by Article 1 of the Law on Privatization of State Capital Share in the Banks.

<sup>28</sup> Auditing report on the process of privatization of the state capital share in Kristal banka Banja Luka, No. PB004-003, February 10, 2003, Banja Luka.

<sup>29</sup> David Leigh and Rob Evans, «Kancelarija za prevare ispituje ulogu britanske firme EFT na Balkanu» [“Office for Frauds investigates the role of British company EFT in the Balkans”], *The Guardian*, February 15, 2005

<sup>30</sup> Online magazine - Korupcija, Vijesti, «Vlasti u BiH nastavljaju istragu o poslovanju Elektroprivrede RS i londonske kompanije», [Corruption, News, “The investigation of BiH authorities of Elektroprivreda RS and London companies business relations continues” <http://www.mans.cg.yu/korupcija/februar2005/18.htm>, February 18, 2005



of BiH raised charges against a then member of the BiH Presidency, Dragan Čović. Except for Čović, who is charged for abuse of office and court bribery, Mato Tadić, President of the Constitutional Court of BiH was indicted along with brothers Jerko, Jozo, Mladen and Slavo Ivanković, owners of the meat manufacturing firm “Lijanović”, and Law School of Sarajevo professor, Zdravko Lučić. Based on the statement by the Prosecutor’s Office of BiH, Čović is charged with having signed, in the capacity of former Finance Minister, a June 2000 document by which removed the «Lijanović» company from paying levies on the import of meat products, and consequently indemnified the BiH budget for over twelve million marks. Tadić was indicted for ruling (as a judge in the Constitutional Court of BiH) in all the cases in favor of the abovementioned company, given that he had promised full immunity to Čović.<sup>31</sup>

Since the private sector in BiH is still not sufficiently developed, it is only when the process of privatization has been completed and reviewed that it will be possible to ascertain whether the public policy was influenced by the interests of powerful business.

## **9. 5. How much confidence do people have that public officials and public services are free from corruption?**

### **9.5.1. Positive and negative indicators**

In the Fall of 2004, Transparency International BiH (a nongovernmental organization involved exclusively in combating corruption) published the Survey of the Perception of Corruption 2004.<sup>32</sup> On one hand, the information in the Study represents the opinion of the citizens and does not necessarily have to correspond to the actual situation in the society, whereas, on the other hand, it indicates what is the perception of the citizens of how the government and other public institutions work and function.

The Study proved that the citizens’ awareness of the problems with which the society is faced at present is not very much different when compared with the results of the same study conducted in 2002. The major problems with which the citizens of BiH are faced continue to fall under three main categories: economic and existential, corruption and crime, and political instability. The results of the survey from 2004 show that most citizens give, a basic cause for wide-spread corruption, general poverty, moral crisis of the society, non-existence of the rule of law and inefficient judiciary and legislature. Approximately 52 % of the interviewed citizens believe that the Presidency of BiH is corrupt, 54.9% believe the same could be said about the Council of Ministers of BiH, and the Entity governments are perceived as corrupt by 57.9% of the interviewed.<sup>33</sup> When

<sup>31</sup> It should be mentioned at this point that this case is still in the investigation stage or in the procedure before the court, and consequently the grounds for suspicion and the indictment are still to be proved at the court.

<sup>32</sup> Transparency International BiH, *Corruption Perception Study 2004*, June 2004, Sarajevo/Banja Luka. The study is based on a data base developed through an opinion survey of the citizens throughout the state, the sample of 1.640 interviewed citizens, and the results of this analysis and comparison with the 2002 results was performed by a team of seven national experts.

The Corruption Perception Study is based on the results of the opinion survey with the representative sample of the BiH population, and as such, it has good and bad sides, like any other survey of public opinion. The data presented in this Chapter represents the awareness, i.e. the perception of the citizens of BiH of the corruption in their country, and is, consequently, influenced by subjective factors like: margin of appreciation of the significance or irrelevance of a direct impact of corruption, degree of personal involvement in corruption, existing legal and social norms, media campaigns during the survey, etc. The limiting factor of the data is the fact that the citizens are faced with what some of these institutions are doing on almost daily basis (traffic police or health care institutions), whereas they create their opinion about other institutions on a basis of second-hand information, like public reports or those published in the media (e.g. the work of parliamentary assemblies or prosecutor's office, etc.)

<sup>33</sup> Transparency International BiH, *Corruption Perception Study 2004*.

asked how many public servants were, in their opinion, involved in corruption in the past year, the interviewed gave the answers as follows:

*Table 9.1: How many civil servants were involved in corruption over the last 12 months?*

Civil servants	Local governments		Entity governments		Cantonal governments		Joint institutions	
	2002	2004	2002	2004	2002	2004	2002	2004
Almost all	25.2	23.1	19.0	23.9	19.6	21.8	20.8	21.2
Most	46.1	47.6	51.9	50.3	48.3	50.2	49.5	51.9
Some	22.5	24.5	20.8	22.1	19.8	22.3	15.2	22.0
Hardly any	1.1	1.7	0.5	0.4	0.6	0.6	0.0	0.0
There is no corruption	0.3	0.1	0.3	0.0	0.2	0.0	0.0	0.0
NA/Refused to answ.	4.9	2.9	7.5	3.3	11.5	5.1	13.4	4.9
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.00	100.00

On average, about 70% of the interviewed believe that the present government invests little or no effort to eradicate corruption among businessmen, senior or junior civil servants (Table 2).<sup>34</sup>

*Table 9.2: Do the present authorities make effort to root out corruption among the above categories of population and to what extent?*

Profession	Extent	TOTAL	ENTITY	
		BiH	FBiH	RS
		2004	2004	2004
Businessmen	Very much	1.5	1.1	1.5
	Quite	5.8	5.3	5.7
	Moderate	20.1	18.9	21.9
	Little	39.0	41.7	35.3
	Not at all	30.3	28.1	34.3
	NA/Refused to answer.	3.3	4.8	1.2
	Very much/ Quite	7.3	6.4	7.2
	Little/Not at all	69.3	69.9	69.6
Senior civil servants	Very much	1.5	1.0	1.3
	Quite	5.3	5.0	5.1
	Moderate	19.3	18.2	21.0
	Little	36.3	37.2	35.2
	Not at all	34.5	33.9	36.1
	No/Refused to answer.	3.2	4.7	1.2
	Very much/ Quite	6.7	6.0	6.4
	Little/Not at all	70.8	71.1	71.3
Low-ranking civil servants who are in direct contact with citizens	Very much	1.2	0.7	0.9
	Quite	5.5	5.5	4.8
	Moderate	20.6	18.5	23.8
	Little	38.1	40.5	34.9
	Not at all	31.4	30.1	34.0
	NA/Refused to answer.	3.3	4.6	1.5
	Very much/ Quite	6.7	6.2	5.7
	Little/Not at all	69.5	70.6	68.9

<sup>34</sup> Transparency International BiH, *Corruption Perception Study 2004*.

As it can be seen from the tables above, over two thirds of the interviewed from the sample representing the population of BiH continue to believe that the civil servants are, regardless at what level, involved in corruption, and that the present government invests little or no effort to eradicate this phenomenon.

If this perception by the citizens is wrong, which is what we frequently hear from the highly-placed officials in these institutions and whom the citizens experience as being most corrupt, then we may also ask ourselves why it is so and what should be done in order to change such opinion. Indeed, it would be much “easier” if some of the scandals related to the corruption or crime had their epilogue at court that would help an individual to rebuild his/her confidence in the institutions that should, anyway, be the key proponents in combating corruption. The only pressure is, to an extent, exerted by the media. But due to a large number of cases it lasts only for a short time during which this pressure has not grown sufficiently to force the institutions to launch a criminal investigation.<sup>35</sup>

Nevertheless, in the past few years there were some positive changes concerning the corruption in BiH. Firstly, the corruption is no longer anonymous and a taboo subject. It has become a common subject, both in the media and in everyday conversation. The change in attitude towards the corruption resulted in the bribery rate to drop for about 6% in the past two years, and at the same time the citizens themselves are far less ready to offer any bribe (there are approximately 15% less citizens who would, on average, be ready to pay bribe for services granted by law). On the other hand, what is concerning is that the average value of the bribe has risen, and numerous services continue to have their set ‘tariffs’.<sup>36</sup>

It was in 2003 when BiH had been for the first time positioned on the Global Corruption Perception Index (CPI), and although the position was not flattering at all, the rating as such implied that there was a growing interest for BiH among the foreign investors, which had not been the case in previous years. Yet, the slow pace of reforms and absence of systemic solutions, which we have already discussed in this text, led to stagnation and in 2004, BiH occupied position 82-84 out of 146 countries, while in 2003 its position on the CPI list was 70-75, out of the 137 countries ranked.<sup>37</sup> In 2005 there was another drop on the corruption scale and presently BiH occupies the position 88-96 on the CPI list among 159 countries ranked.<sup>38</sup>

The above data is supported by the latest report by the World Bank (WB), *Indicators of Management* published in May 2005. This report is a comparative survey in several key areas of government in 209 countries in the period from 1996 to 2004. The areas in which BiH demonstrated positive trends, when compared to 1998, are the accountability of the government concerning political, civil and human rights; efficiency in terms of bureaucratic capacities and quality of public services; quality of market regulations, rule of law, i.e. quality standards in execution of contracts, police, judiciary and reduction of crime incidence and violation. Nevertheless, there are two areas with negative trends: political stability and control of corruption. In the control of cor-

<sup>35</sup> Transparency International BiH, *Corruption Perception Study 2004*, str. 45.

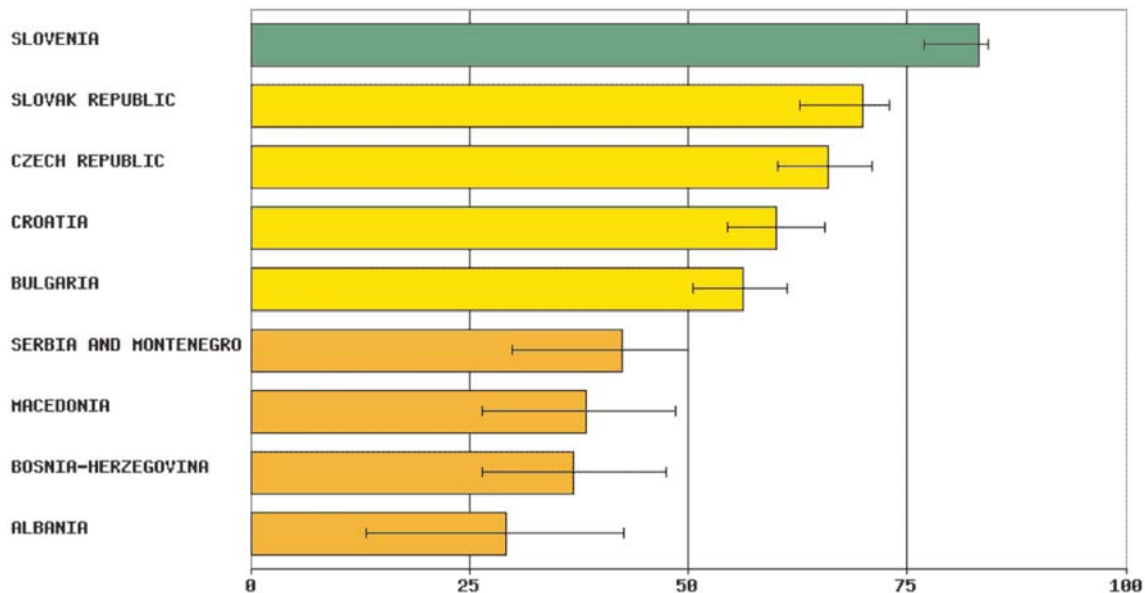
<sup>36</sup> Data from the TIBiH Press Release, «BiH Corruption in Mild Decrease», March 11, 2004.

<sup>37</sup> TI Corruption Perception Index (CPI) has existed for ten years, ranking countries by the scale of corruption - the least corrupted to the most corrupted countries, and in 2004 comprised of 146 countries by the perceived degree of corrupted public officials and politicians. It is a very complex index that uses various studies and surveys conducted by distinguished independent institutions (a minimum of three surveys per country) among businessmen and analysts, including interviews with the citizens, local or foreign.

<sup>38</sup> Transparency International BiH, Media Report «Corruption Beyond Control - New Government an Imperative», October 18, 2005.

ruption, the level of abuse of power for private purposes is taken as an indicator in measuring 'small scale corruption' and 'large scale corruption'.<sup>39</sup>

The graph below is a comparison of the success in controlling corruption among some SEE countries, clearly indicating the position of BiH.



Graph 9.1: Corruption control per country in percentage<sup>40</sup>

What is questionable is whether such strongly perceived corruption is a consequence of the true situation as it is, or whether the citizens may have totally lost their confidence in the representatives of the government and believe that 'almost all of them' or 'most of them' are corrupt (Table 1). Nevertheless the indicators are truly concerning.

Many of the representatives of public institutions claim this is a distorted image, and numerous measures were taken by these institutions to prevent and reduce corruption. If it is indeed the case, then more attention should be paid to the redefinition and creation of a new image of the institutions that have conducted reforms and that have taken concrete steps in their ranks, instead of adopting the practice of disregarding the results of public opinion surveys and labeling the institutions that conduct such surveys as irresponsible and unprofessional.

<sup>39</sup> "Small scale corruption" or "corruption in order to survive" is a type of corruption that exists in the ranks of civil servants who may be underpaid and depend on what they receive from the clients for their services thus providing for the existential needs of their families or paying the school fees. This type of corruption is in favor of those individuals and companies trying to find a loop in the law and avoid the consequences of failure to be prompt or act in compliance with the regulations or prescribed taxes. "Large scale corruption" is the corruption among high rank officials and frequently ends in international bribe and 'hidden' off shore bank accounts. Jeremy Pope, *TI Source Book 2000*, Berlin, 2000, p.22.

<sup>40</sup> Kaufmann D., A. Kraay, and M. Mastruzzi, *Governance Matters IV: Governance Indicators for 1996-2004*, 18. May 2004, [www.worldbank.org/wbi/governance/govdata/](http://www.worldbank.org/wbi/governance/govdata/)

### **9.6. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?**

It is evident that the past decade witnessed significant reforms in a number of social sectors in BiH (public administration, judiciary, fiscal system, etc.), as well as enactment of new set of laws, like the Criminal Code, the Law on Public Procurements, the Law on Financing Political Parties, etc. Nevertheless, there is still an open issue, why is it that the reforms have little or no results?

This analysis indicated that this is a result of the situation where some of the institutions have either underdeveloped capacities or, simply, are not interested in law enforcement. One of the fundamental causes, disregarding the objective one of insufficient capacities, is the elimination of conflict of interests and influences/pressure by political parties/interests on public institutions, the authorities in particular and on the work of public enterprises.

In terms of the measures, BiH has taken certain steps both at the international and national level. Signing of the Council of Europe Criminal Law Convention on Corruption and Civil Law Convention on Corruption, as well as association with the Stability Pact Anticorruption Initiative (SPAI), can certainly be considered as progress in this area.

Since the UN Convention against Corruption offers a wide spectrum of legal solutions concerning the criminal acts of corruption and provides for international cooperation and extradition of individuals breaching any of the provisions of the Convention, prescribes confiscation, return and transfer of illegally acquired property, regulates the matter of offering and receiving bribes abroad, and the private company code, Transparency International BiH (TIBiH) has undertaken a series of activities in order to convince the representatives of the authorities on the necessity to sign the Convention and at the same time to build public awareness about its significance.

The Presidency of BiH, at its session of January 1, 2005, made a decision on acceding to the UN Convention against Corruption and authorized the BiH Foreign Minister to sign the Convention at the 60<sup>th</sup> UN General Assembly in New York convened September 14-23 that year.

TIBiH expects the Convention to be ratified by the Parliamentary Assembly of BiH soon after its adoption. Given the significance of the Convention as a first globally-binding instrument that establishes new standards in prevention of corruption, return of property and international cooperation, prompt ratification and full implementation thereof could lead to a better rating of the country and higher level of the confidence in state institutions by the citizens.

The opposition parties in BiH launched the initiative for passing the law that would regulate confiscation of illegally acquired property because the absence of legal provisions prevents courts from confiscating criminal proceeds and other property “Although BiH signed the Council of Europe Convention on Money Laundering, by which it undertook to prosecute and confiscate the criminal proceeds, this obligation is very rarely observed. Likewise, the new Criminal Code of BiH prescribes the following: ‘No one shall keep illicitly acquired property’. However, in the past two years, when the new law entered into force, the value of the total confiscated property was only 500,000 KM”<sup>41</sup> The proposed reform was not adopted, twice refused by the representatives of the ruling national parties, and with no support by OHR, explaining that the adoption of such a law would have been, certainly, premature.

<sup>41</sup> Nidžara Ahmetašević, "BiH Opposition Advocating Anti-Corruption Legislation, ISN, Institut za ratne i mirovne studije, *Institute for War and Peace studies*/ Sarajevo, April 18, 2005.

The establishment of a special Department for Organized Crime and Economic Crime within the Prosecutor's Office for BiH, the head of which is an international prosecutor, is one of those more concrete measures against the corruption undertaken in the past decade, which is also pointed out by this analysis.

The development of the Mid-term Poverty Reduction Strategy Paper for BiH (PRSP)<sup>42</sup> which includes an action plan for combating corruption, is yet another measure undertaken in this regard. The Council of Ministers has undertaken to report, every six months, on the status of the implementation of the Strategy. This implies the monitoring of what has been undertaken in combating the corruption, and, also, what are the drawbacks of such undertakings.

Some of the measures contained in the PRSP Action Plan for the period December 2004-December 2005, that have to be enforced on a continuous basis, or to be left for the next period are:

- Capacity building of public auditing institutions through strengthening of the control in the collection and expenditures of public revenues;
- Re appointment of the managing boards in the state-owned enterprises through a publicly announced competition;
- Establishment of anti-fraud authorities at the Entity level with the power to conduct investigations in the cases of money laundering, corruption and other forms of financial crime;
- Speeding up of the implementation of the new criminal legislation undertaking a reform in the misdemeanor and commercial offenses field;
- Strengthening the sanctions against the persons offering a bribe, or who, in any other way compromise, the public sector;
- Establishment of the internal control systems in collection and of public revenues and the expenditure thereof in all the public authority organs, ministries included.

A concerted and consistent action in implementation of these measures, along with the implementations of the Recommendations by the European Commission, as stated in the Feasibility Study (i.e. in the Report from the Commission to the Council on the Preparedness of BiH to Negotiate a Stabilization and Association Agreement with the EU), would result in reducing the corruption in BiH within acceptable limits, which, again, would certainly bring BiH closer to European integrations.

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<sup>42</sup> Mid-term development strategy is the strategy of the development of Bosnia and Herzegovina in the 2004 -2007 period. The objectives of the Mid-term Development Strategy are the following: creation of conditions for sustainable and balanced economic development of all the parts of BiH, reduction of poverty by 20%, and speeding up the process of integration into the EU, signing and implementation of the Agreement of Stabilization and Association. The final version of the Mid-term Development Strategy was adopted by the Council of Ministers BiH, Government of FBiH and the Government RS. The Strategy was also supported by the Presidency of BiH, whereas the Parliamentary Assembly of BiH supported its implementation asking from the Council of Ministers of BiH to report on the status of the implementation of the Strategy every six months.



**Abbreviations:**

BiH - Bosnia and Herzegovina

FBiH - Federation Bosnia and Herzegovina

HDZ - Hrvatska demokratska zajednica /Croatian Democratic Union

HVO - Hrvatsko vijeće obrane /Croat Defence Council/

ECBiH - Election Commission of BiH

KM - Convertible mark

MoI - Ministry of the Interior

OHR - Office of the High Representative

PRSP - Poverty Reduction Strategy Paper

PIC - Provisional Election Commission

RS - Republika Srpska

SFO - Office for Serious Frauds (UK)

TI - Transparency International

TIBiH - Transparency International BiH

UN - United Nations

LCI - Law on conflict of Interest in the BiH Institutions

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## **Civil Society and Popular Participation**

## 10. The Media in a Democratic Society\*

### Do the media operate in a way that sustains democratic values?

Author: Tarik Jusić

#### **10.1 How independent are the media from government, how pluralistic is their ownership, and how free are they from subordination to foreign governments or multinational companies?**

##### **10.1.1. Laws**

The complex and specific situation in BiH bears crucial impact on the development of the media. Causes of the problematic situation in the media are also in the Dayton Peace Accord (hereinafter: DPA) which practically ignored the media.

The DPA contained next to no provisions about the media. Its drafters essentially chose to ignore the media problem, hoping it could be addressed along the way, or at least prevented from blocking implementation.<sup>1</sup>

Three provisions in the DPA may be linked with the media: first, that common institutions shall be competent for the establishment and management of joint and international communications structures (Article III.1.h, of the Constitution, part of the Dayton Peace Agreement). The second is in Annex 7, Article 1.3.b, prescribing that signatories of the Agreement would prevent any enticement to ethnic or religious intolerance in the media, and the third is contained in the agreement of the signatories to secure conditions for fair and free elections, politically neutral surroundings, freedom of expression and freedom of the press (Annex 3, Article 1.1). It can be said that the entire legal and regulatory framework of the media sector in BiH was built on these three provisions.

Speaking about freedom of the media, we refer to two key aspects: pluralism of thought in the media and satisfying a wide spectrum of social needs for relevant information and content. Elements of freedom and independence of the media are:

- Structural conditions (legal guarantee for freedom to broadcast and print/publish)
- Operational conditions (real independence from economic and political pressures, and relative autonomy of journalists and editors within media outlets themselves)
- Possibility for different “voices” in the society to have media access
- Quality media content for the “recipients”, i.e. the audience, on the basis of criteria of relevance, diversity, reliability, interest, originality, and personal satisfaction.<sup>2</sup>

Following the practice of western liberal democracies, freedom of expression and freedom of the media in BiH in general are guaranteed by the Constitution, the European Convention on Human Rights, Law on Protection from Defamation<sup>3</sup> (hereinafter: Defamation Law) which decriminalizes defamation, and the Law on Communications,<sup>4</sup> which establishes the Communications Regulatory Agency (CRA) at the level of BiH.

<sup>1</sup> Thompson and De Luce, 2002: 204.

<sup>2</sup> McQuail, Denis, *McQuail's Mass Communication Theory*, SAGE Publications: London-Thousand Oaks-New Delhi, 2000 (4th Edition), pp. 166-167.

<sup>3</sup> Law on Protection from Defamation, *Official Gazette RS* No. 37/01, *Official Gazette FBiH* No. 31/01.

<sup>4</sup> BiH Law on Communications, *Official Gazette BiH* No. 33/02, 12 November 2002.

As for independence from the government, we must differentiate between independence of the private, i.e. the commercial sector, and of the public media, from government influence at any level. Moreover, it is necessary to differentiate between independence of the press and independence of electronic media.

### Independence of the press

The press is not subject to regulations in terms of editorial policy and content; instead, its ethical and professional standards are incorporated into the Press Code of Conduct,<sup>5</sup> which is a self-regulatory instrument. The key self-regulation body is an independent non-governmental organization, the Press Council<sup>6</sup>, established jointly by all the associations of journalists in BiH. The Press Council tries to resolve any disputes between the readers/the public and the press using only the journalistic tools available: right to a response, publication of correction, apology and rebuttal. The Council has no power to sanction, issue or revoke licenses, or fine newspapers and magazines. So, the government has no legal mechanisms of direct influence over editorial policies of the press.

### Independence of the commercial RTV sector and the Communications Regulatory Agency

Pursuant to Article 4 of the Law on Communications, principles of regulation of the RTV sector are: protection of freedom of expression and thought, development of a professional and sustainable commercial and public RTV sector, and freedom of radio and television from political control and manipulation.

As for electronic media, and in compliance with the practice of western democracies, regulation rests with the Communications Regulatory Agency (CRA). The Law on Communications regulates the communications sector<sup>7</sup> in the country and establishes the CRA as a functionally independent, non-profit agency regulating the RTV sector, public telecommunications networks and licensing, and defining basic conditions of operation of joint and international communications structures. CRA is responsible for planning, coordination, allocation and assignment of the spectrum of radio frequencies.<sup>8</sup> In essence, this means that legal independence of the Agency guarantees also the independence of electronic media from government interference. Mechanisms guaranteeing the independence of CRA are incorporated in the Law on Communications and the Law on Financing of Institutions of Bosnia and Herzegovina.<sup>9</sup> Neither the Council of Ministers, nor individual ministers, or any other person, may interfere with the decision-making process of CRA in individual cases.<sup>10</sup> Moreover, the Law on Financing of Institutions of BiH establishes a financial independence mechanism for CRA. Namely, although the CRA submits its annual budget for approval to the Council of Ministers, Article 9 sets clearly that the Council of Ministers may not decrease its budget by more than 20 percent.

However, the key mechanism guaranteeing the independence of CRA, and thus of the entire RTV sector, is the method of appointment of the Director General and the Council of CRA, deciding on the work of the Regulatory Agency. The Director General is nominated by the CRA Council, and appointed by the Council of Ministers, for a term of office of four years, renewable

<sup>5</sup> Press Code of Conduct, available at the Press Council web page: <http://www.vzs.ba/default.asp?id=2> (as on 16 October 2005).

<sup>6</sup> Information on the Press Council available at: <http://www.vzs.ba>

<sup>7</sup> The communications sector includes radio, TV, cable TV, Internet, telecommunications, and other related areas.

<sup>8</sup> Article 3, BiH Law on Communications.

<sup>9</sup> Law on Financing of Institutions of Bosnia and Herzegovina, *Official Gazette BiH*, 29 December 2004.

<sup>10</sup> BiH Law on Communications, Article 36.

only once. The Director is responsible for key functions of the Agency pursuant to the Law on Communications, and for daily operations, including implementation of relevant laws and policies, technical supervision, relations in the communications industry, and human resources management of the Agency.<sup>11</sup> Pursuant to Article 40 of the Law on Communications, officials in executive and legislative institutions on all levels of government, as well as members of political party bodies, and persons with any kind of financial relations with telecommunications operators or electronic media, may not be nominated for the position of Director General.

The CRA Council deals with strategic and policy issues of the CRA. The Council consults the Director General and receives reports from him/her, adopts codes and rules of the electronic media and telecommunications. The Council is also the appellate body for decisions by the Director General.<sup>12</sup> The Council comprises seven members, nominated by the BiH Council of Ministers, on the basis of a list submitted by the CRA Council. The BiH Parliament appoints members of the CRA Council. Members include distinguished individuals and experts in relevant fields, and they are appointed for a term of office of four years, with a possibility of one reappointment. Members of the CRA Council may not include officials from the executive or the legislature at any level of government, or members of political party bodies. Moreover, CRA Council members may state whether they have any interests in telecommunications operators and electronic media, and they must avoid any conflict of interest.

CRA Council members are removed from office by the BiH Parliament, and the Council of Ministers may remove the Director General. These decisions are taken only in precisely defined cases: illness, judgement related to involvement in offences punishable by prison, conflict of interest, resignation, failure to fulfil duties prescribed by law, and violation of the CRA Code of Ethics.<sup>13</sup>

Laws related to media in BiH contain no provisions for state subsidies for media outlets as a form of protection of media pluralism.

#### Independence of public broadcasters

There is a public broadcasting system, made up of three broadcasters: BiH Public Broadcasting Service (hereinafter: BHRT) covering the level of the state, Public Broadcasting Service of the Federation BiH (RTFBiH)<sup>14</sup> at the level of the Federation BiH, and Public Broadcasting Service of Republika Srpska (RTRS) at the level of Republika Srpska

Independence of public broadcasters was initially guaranteed by the *Law on the Basis of the Public Broadcasting System and the Public Broadcasting Service of BiH* (hereinafter: *2002PBS Law*), proclaimed by the High Representative in mid-2002,<sup>15</sup> partly replaced in October 2005 by the *Law on the Public Broadcasting System of Bosnia and Herzegovina (Law on PBS BiH)*.<sup>16</sup>

<sup>11</sup> See the CRA web page at [www.rak.ba](http://www.rak.ba) and the BiH Law on Communications, Article 40.

<sup>12</sup> See the CRA web page at [www.rak.ba](http://www.rak.ba) and the BiH Law on Communications, Article 39.

<sup>13</sup> BiH Law on Communications, *Official Gazette BiH* No. 33/02, 12 November 2002. Article 42.

<sup>14</sup> BHRT comprises one TV program (BHT) and one radio program (BH Radio 1).

<sup>15</sup> Law on Basic Public Broadcasting System and Public Broadcasting service of BiH (the 2002 PBS Law), *Official Gazette BiH* No. 29/02.

<sup>16</sup> Law on the Public Broadcasting System in BiH, , *Official Gazette BiH* No. 78/05. Earlier Law on Basis of PBS from 2002 regulated the PBS system as a whole, but it also regulated the state broadcaster BHRT. The new Law on PBS from October 2005 regulates only the work of public broadcasters system as a whole, whereas each of the three broadcasters should adopt a separate law on public broadcasters, at the level of the state (BHRT), as well as the level of the entities (RTFBiH and RTRS). These laws on public broadcasters will be harmonized with the Law on PBS BiH. Therefore, as of October 2005, there is a new Law on the Public Broadcasting System in BiH, and until the adoption of the new law on the Public Broadcasting Service in BiH, part of the Law on Basic PBS and Public Broadcasting Service in BiH shall remain in force, in the segment relating to BHRT.



Article 4 of this Law sets that public broadcasters are independent in their work, and that they enjoy editorial independence and institutional autonomy, particularly in the following areas:

- concept development and production of programs;
- programming schedules;
- editing and presentation of current affairs programs;
- utilization and disposal of resources and property;
- procedures and practices of employment and rights and duties of employees;
- organization of activities and internal structure.

Furthermore, independence of public broadcasters is specifically guaranteed by the method of selection of their governing bodies: the Governing Board and the Director General.

The highest body of the Public Broadcasting System is the Board, comprising 12 members, made up of all the members of Governing Boards of public broadcasters (four members from each public broadcaster: BHRT, RTFBiH and RTRS).<sup>17</sup> Pursuant to this provision, laws relating to individual public broadcasters will be harmonized, so that each has a board of four members respectively.<sup>18</sup>

Pursuant to the Draft Law on the Public Broadcasting Service in BiH (Law on BHRT), which has been harmonized with the Law on the BiH Public Broadcasting System (Law on PBS BiH), these four members of the BHRT Governing Board are appointed for a term of office of four years, non-renewable.<sup>19</sup> The House of Representatives of the BiH Parliament selects and appoints members of the Governing Board, from a short-list of candidates, submitted by the Communications Regulatory Agency. CRA conducts a fair, open and transparent selection procedure, aimed at selecting the best qualified candidates.<sup>20</sup>

Pursuant to this Draft Law, members of the BHRT Governing Board may not include officials from legislative or executive bodies at any level of governance, or members of political party bodies. Additionally, members of the Governing Board may not include staff or members of governing boards of other broadcaster companies, nor can they be from any activity that may lead to a conflict of interest.<sup>21</sup> The House of Representatives of the BiH Parliament may remove members from duty, if a member requests such removal, if he/she misses three meetings with no justifiable reason, and if he/she fails to take part in the work of the Board for three months. Also, the House of Representatives may remove a member of the Governing Board on the basis of a recommendation by CRA, if the member has not honored the terms of a system license, or the BHRT license issued by CRA.<sup>22</sup>

Entity level laws regulating the work and organization of public broadcast services, RTFBiH and RTRS, are expected to be harmonized with the Law on the BiH Public Broadcast System in the same way as the Draft Law on the Public Broadcast Service (Law on BHRT).

Pursuant to current legislation on public broadcasters at entity level, as well as the Draft Law on the Public Broadcast Service (BHRT), the Director General is, in principle, appointed by the Governing Board of the given broadcaster, on the basis of a public competition. The term of office

<sup>17</sup> Law on PBS BiH, Article 7 (2).

<sup>18</sup> For example, pursuant to the Law on the Basis of PBS and Public Broadcasting Service BiH from 2002, BHRT had a governing board of nine members, as did the governing boards of entity broadcasters, RTFBiH and RTRS.

<sup>19</sup> Draft Law on the Public Broadcasting Service of BiH, Article 25.

<sup>20</sup> Draft Law on the Public Broadcasting Service of BiH, Article 26.

<sup>21</sup> Draft Law on the Public Broadcasting Service of BiH, Article 26 (2).

<sup>22</sup> Draft Law on the Public Broadcasting Service of BiH, Article 26 (3) i (4).

is four (for entity broadcasters) to five years, renewable only once. A person serving in the executive, legislative or judicial office at any level in BiH, or an owner or co-owner of a broadcast company, nor a person whose position is in breach of the Law on The Conflict of Interest, may not be appointed as Director General.<sup>23</sup>

Public broadcasters are funded by the RTV subscription fee (TV set ownership tax), advertising and sponsorship.<sup>24</sup> Editorial independence from government is guaranteed by the fact that public broadcasters may not receive any state subsidies for regular programming and production. Namely, public broadcasters may request state funds to finance transmission network construction, for programming projects of particular importance for BiH and not included in the public broadcasters' annual plan, for protection of the archives as part of cultural heritage, and to cover the cost of broadcasting via satellite. Budget financing must influence the programming independence of a public broadcaster in any way.<sup>25</sup>

Finally, as public broadcasters are also subject to the rules of CRA, independence of public broadcasters is conditioned by the independence of CRA.

#### Regulation of media ownership and competition

Since April 2004, there have been regulatory provisions in BiH against *media concentration*, imposing restrictions on ownership of the media, including provisions on multiple or mixed ownership, within the BiH Law on Communications, whereas such provisions are not contained in other legal documents, i.e. the Law on Competition. On 23 December 2003, Council of the Communications Regulatory Agency adopted Rule on Media Concentration and Cross-ownership over electronic and print media (Rule No. 21/2003, hereinafter: the Rule) which came into force on 1 April 2004, becoming an integral part of the BiH Law on Communications. BiH now has clear criteria for prevention of concentration of ownership in the media market.

First, a single legal or natural person may not be the owner of two or more radio stations, or two or more TV stations with the same population ratio<sup>26</sup> of coverage, i.e. covering the same population. In exceptional cases, CRA may issue a license based on which certain transmitters cover the same population from different locations or frequencies.<sup>27</sup> Second, this Rule also limits mixed ownership over electronic and print media, allowing for an owner of a print media outlet to be the owner of one electronic media outlet (television or radio) at the same time. Third, there is a restriction of mixed ownership over radio and TV stations, stating clearly that one natural or legal person may be the owner of one radio and one TV station for the population coverage ratio. Finally, the Rule also defines that any transfer of ownership of a broadcasting license is considered in accordance with this and other applicable rules and conditions of the broadcasting licence.

Violations of this Rule are considered individually and in compliance with provisions of the BiH Law on Communications. This means that the CRA is the key institution for implementation

<sup>23</sup> Draft Law on the Public Broadcasting Service of BiH, Article 31; see also the Law on RTV FBiH, *Official Gazette FBiH* No. 40/02; Law on RTRS, *Official Gazette RS* No. 22/03.

<sup>24</sup> Law on PBS BiH, Articles 17-24 and 30-34.

<sup>25</sup> Law on the Basis Public Broadcasting System and Public Broadcasting Service in BiH, Article 54; Law on RTVFBiH, Articles 41 and 42; Law on RTRS, Articles 42 and 43; draft Law on the Public Broadcasting System in BiH, Article 20.

<sup>26</sup> Population coverage ratio is "the population in the area of service of the signal of a radio or a TV station, in compliance with technical terms and conditions of the licence issued by the Agency."

<sup>27</sup> For example, "when necessary for reasons of technical regulation and/or operation in compliance with international liabilities related to protected areas and areas of service."

of provisions on ownership of media and media concentration. Normally, any change of ownership of a broadcaster 10% must be reported to the CRA, with Agency approval for such changes to become valid.

CRA maintains a register of all broadcasters in BiH, available to the public, excluding the information on commercial contracts of the broadcasters, as they are considered to fall under business confidentiality of those companies. Moreover, pursuant to current legislation, all the companies working in the territory of BiH must be registered with a competent court and entered into a publicly available register. Namely, laws on commercial companies both in FBiH and in Republika Srpska prescribe that any company/legal person must be entered into the court register of a court of competent jurisdiction, depending on the location of activity of the legal persons. Access to this and similar registers of public agencies and state institutions is guaranteed by laws on commercial companies in both entities, as well as by the Law on Freedom of Access to Information.<sup>28</sup> According to this Law, any information on the work of governmental and public institutions is available to the citizens, other than those classified in advance as possible exceptions according to specific criteria.

In addition to CRA rules, issues of market concentration and competition are regulated by the *Law on Competition in BiH*, adopted by the House of Representatives of the BiH Parliament on 19 April 2001, and by the House of Peoples on the 23 October 2001. Competition Law provides for the establishment of the Competition Council as an independent body at the level of the state, whereas the two entities are supposed to establish their Offices for Competition and Consumer Protection within the respective ministries of trade.

### **10.1.2. Implementation: positive and negative indicators**

In the past ten years, the media in BiH have gone through a difficult period of post-war reconstruction, which entailed an expansion of the media sector, adoption of a series of laws relating to the media, establishment of regulatory and self-regulatory bodies, and development of the media market.<sup>29</sup> The overall process has been marked and, to a large extent, determined by continuous efforts of political elites to maintain control over key media, particularly public ones, as well as constant efforts of international players (especially the High Representative, the European Commission, USAID, as well as many others) to prevent the establishment of political control over the media, to assist the development of independent media, and to establish a functional legal framework for activities and development of the media sector.<sup>30</sup> Such a polarized arena, with political elites on one side, and the international community on the other, leads to constant conflicts, delays in reforms, as well as hindrance in the implementation of laws which have been adopted, or rather, imposed by the international community and the Office of the High Representative. For example, until October 2005 and the adoption of the Law on the BiH Public Broadcasting System, in the past ten years the BiH authorities had not adopted a single law related to public broadcasting service at state or entity levels. All the decisions on these laws were imposed by the High Representative.<sup>31</sup>

<sup>28</sup> Law on Freedom of Access to Information was adopted at the level of the state in November 2000 (*Official Gazette BiH*, 28/00), followed by Republika Srpska in November 2001. (*Official Gazette RS*, 20/01), and the Federation BiH in February 2002 (*Official Gazette FBiH*, 32/01).

<sup>29</sup> For details, see: Council of Europe, 2004b; CRA, 2003, 2004; EC, 2003; Henderson *et al.*, 2003; IREX 2005; Jusić *et al.*, 2001; Jusić, 2003, 2004; Kurspahić, 2003; Thompson 2000; Thompson and De Luce, 2002.

<sup>30</sup> See in particular: Council of Europe, 2004b; Henderson *et al.*, 2003; IREX 2005; Jusić *et al.*, 2001; Jusić, 2003, 2004, 2005; Kurspahić, 2003; Thompson and De Luce, 2002.

<sup>31</sup> Decisions by the High Representative available at: <http://www.ohr.int/decisions/archive.asp>

*Positive indicators*

Today, there is a plethora of media outlets in BiH, particularly as compared with a relatively small population of some four million.<sup>32</sup> Namely, according to information from the CRA public register of the media, in 2005 there were 188 licensed RTV channels, including four radio channels and three TV channels by public broadcasters: BHRT, RTFBiH and RTRS. Of the total number of channels, 42 are television, and 146 are radio stations. There are 104 private channels: 23 TV and 81 radio channels.

*Table 10.1: Number of radio and TV channels in BiH between 1991 and 2005*

TV and radio channels in BiH in the period 1991 -2005.			
	TV	Radio	Total
1991	5	54	59
1997	52	156	208
2000	71	210	281
2005	42	146	188

*Sources: Udovicic et al., 2001; Media Task Force, 2003: 10; CRA Public Register of Broadcasters, <http://www.rak.ba>, (as on 7 January 2005.)*

The situation is similar with print media, with seven daily newspapers and almost 50 weekly and bi-weekly publications, published on regular basis.<sup>33</sup>

According to information available in relation to ownership over key media, at the moment BiH has no cases of serious media concentration which may represent any threat to fair and open market competition.<sup>34</sup>

The *Avaz* publishing company can be said to have gone further than any other in establishing a strong vertical ownership structure, as it includes the leading daily paper, the largest printing house, and the strongest distribution system, including several special publications such as *Azra*, *Sport* and *Express*. Still, all this cannot be said to have put *Avaz* in a monopolistic situation in print media, particularly in view of the versatility and number of print media in the country.

The situation with Mr. Željko Kopanja in Banja Luka is similar, as he owns a printing house, *Nezavisne novine* daily, and the NES radio station. Again, even here one cannot speak of indications of monopolization, but rather about skillfully associated elements of media industry, which secure a clearer future of this company in a situation of all kinds of pressures and unfair competition of government media.

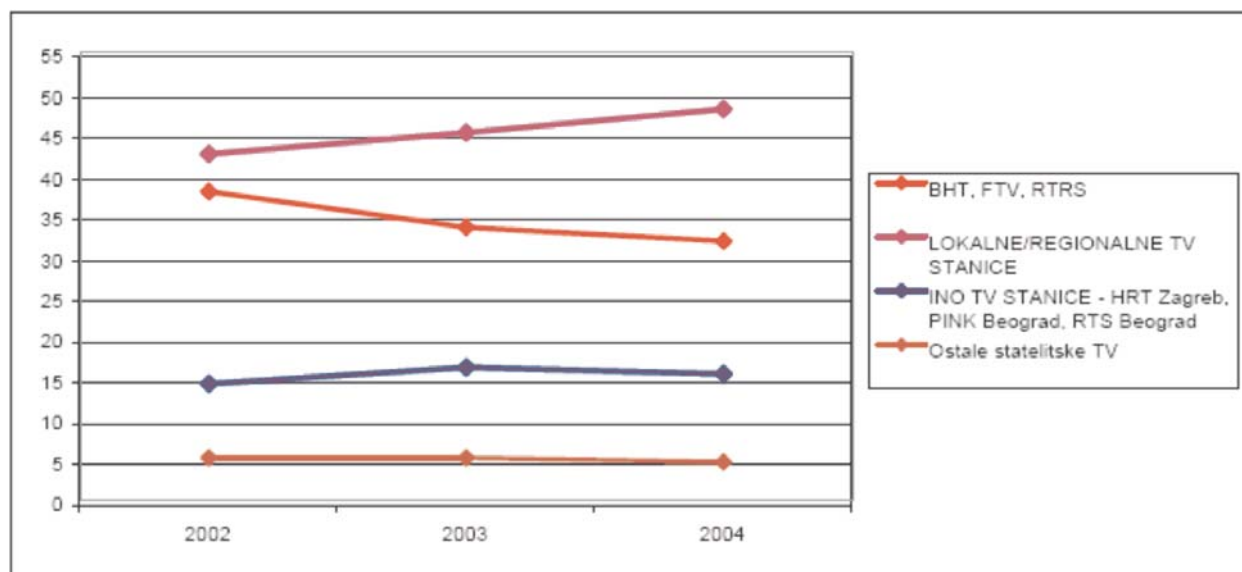
Moreover, reports on the ratings of electronic and print media in BiH do not indicate that any single media outlet dominates the market.

<sup>32</sup> Federation BiH covers 51.08% of the territory of BiH, inhabited by 63.32 % of the total population of BiH, whereas Republika Srpska covers 48.92% of the territory of BiH, inhabited by 38.68% of the population. Source: EURED, Project of the EU for Regional Economic Development in BiH: Socio-economic and SWOT analysis of economic region of north-west BiH, (2004), p.12, available at <http://www.eured-bih.org/eng/documents/SEA&SWOT/NWSEA&SWOTloc.pdf> accessed on July 12, 2005. According to the CIA assessment for 2004, there are 4,007,608 persons living in BiH. Of that number, according to local assessments, approximately 2,318,972 live in the Federation, whereas 1,490,993 live in Republika Srpska. Source: Wikipedia: [http://bs.wikipedia.org/wiki/Bosna\\_i\\_Hercegovina#Stanovni.C5.A1tvo](http://bs.wikipedia.org/wiki/Bosna_i_Hercegovina#Stanovni.C5.A1tvo) (as on 12 July 2005)

<sup>33</sup> Henderson *et al*, 2003.

<sup>34</sup> CRA/RAK, 2003: The Future of Broadcasting; Jusić, 2004.

Chart 10.1: TV ratings for BiH: 2002-2004



Source: Mareco Index Bosnia, TV Rating Survey: 2002-2004, <http://www.mib.ba>

Table 10.2: TV ratings for BiH: 2002-2004.

	Ratings (in percentage)		
	2002	2003	2004
BHT, FTV, RTRS	37.9	33.5	31.8
Local / regional TV stations	42.5	45.1	48.0
Foreign TV stations: HRT Zagreb, PINK Beograd, RTS Beograd	14.3	16.3	15.5
Other satellite TV channels	5.2	5.2	4.7

Source: Mareco Index Bosnia, TV Ratings Survey: 2002-2004, <http://www.mib.ba>

Table 10.3: TV ratings in BiH (2004)

Ratings (in percentage)					
BiH (entire)		Federation BiH		Republika Srpska	
FTV	23.8	FTV	34.8	PINK Bosnia-Herzegovina	16.2
HRT Zagreb	10.5	OBN	10.8	HRT ZAGREB	14.2
PINK BiH	10.4	NTV Hayat	10.4	RTRS	12.5
OBN	7.7	HRT Zagreb	8.4	ATV	12.4
NTV HAYAT	6.6	PINK BH	7.2	TV BN	11.8
RTRS	5.2	TVTK	5.0	PINK Serbia	6.7
ATV	4.4	BHT	3.9	RTS (Belgrade)	4.2
TVBN	4.4	TV TUZLA	2.4	FTV	4.1
TVTK	3.5	TV SA	1.9	OBN	2.1
BHT	2.8	TV ZENICA	1.9	RTV HIT	1.7
PINK Belgrade	2.4	RTRS	1.1	RTL	1.3
TV TUZLA	1.6	RTV USK	1.1	K3 Prnjavor	1.2
RTS BEOGRAD	1.5	RTV Mostar	1.0	TV BEL	0.9
TV SA	1.2	Other domestic stations	4.2	TV SIMIĆ	0.9
TV ZENICA	1.2	Other domestic stations	5.7	Other domestic stations	6.9
Other domestic stations	7.9			Other domestic stations	2.9
Other domestic stations	4.7				

Source: Mareco Index Bosnia, TV Audience Measurement: 2002-2004, <http://www.mib.ba>

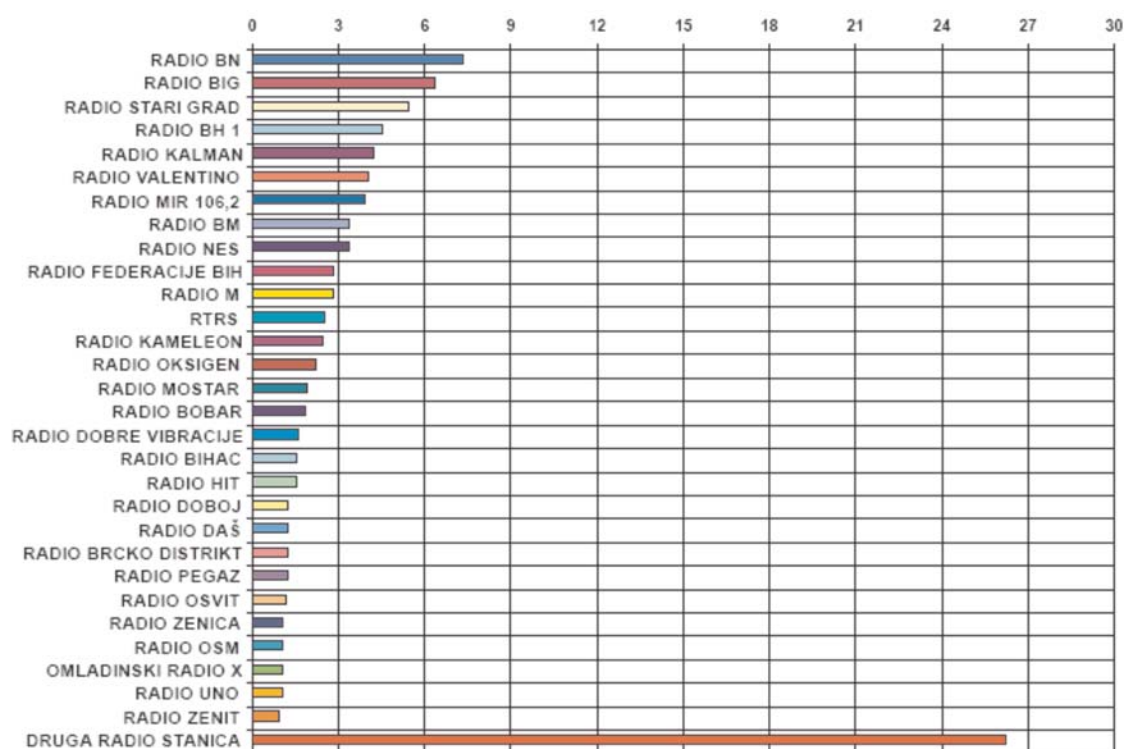
Table 10.4: Radio stations in BiH with the highest ratings in 2004

Radio station	Ratings (in percentage)
BH Radio 1 Sarajevo (public broadcaster BHRT)	8.5
RTV BN Bijeljina	6.8
Nes Radio Banja Luka	3.8
BIG Banja Luka	3.5
RTRS Banja Luka (public broadcaster RTRS)	3.3
Radio Stari grad Sarajevo	2.8
Radio Federacije BiH Sarajevo (public broadcaster RTFBiH)	2.2
RTV Bihać	2.0
Obiteljski radio Valentino Ora šje	2.0
RTV TK Tuzla	2.0
Radio M Sarajevo	2.0
Radio Kameleon Tuzla	2.0
Other	61.1

Source: Mareco Index Bosnia, Omnibus Research, August 2004, <http://www.mib.ba>



Chart 10.2: Radio station ratings in BiH (March 2005)



Source: Mareco Index Bosnia, Radio Ratings Survey, 14-20 March 2005.

According to the report on self-sustainability of the media sector in BiH, published in 2005 by IREX,<sup>35</sup> this is the data on circulation of newspapers in BiH (from no less than once a week, to daily): *Dnevni avaz* 40.2%, *Večernje novosti* (from SCG) 11.9%, *Oslobodenje* 9.8%, *Večernji list* (from Croatia) 9.3%, *Blic* (from SCG) 8.0%, *Glas srpski* 7.8%, *Nezavisne novine* 7.7%. The same report cites the following data on circulation of magazines: *Glorija* (from Croatia) 16.1%, *Azra* 12.3%, *Express* 9.2%, *Slobodna Bosna* 9.1%, *Dani* 8.1%.

The media market can be said to be entering the consolidation stage, which will lead to a decrease in the total number of media outlets, and the creation of several powerful players in the field. Only after that one may anticipate the first cases of serious media concentration, as well as cases of excessive and multiple or mixed ownership, and it remains to be seen whether the present legal provisions and the CRA will be able to respond to the challenge.

As a consequence of major administrative barriers and legal uncertainty in business,<sup>36</sup> as well as saturation and, at the same time, poverty of the media sector, with a limited advertising market, major international media corporations have shown very limited interest in investing in BiH. In fact, no major international corporation has made any serious attempts to penetrate the media market in BiH. The two major cases thus far are the Slovenian *Kmečka družba*, which bought a considerable stake in the *Oslobodenje* daily,<sup>37</sup> and the recent arrival of TV Pink from Serbia,

<sup>35</sup> IREX (2005), Media Sustainability Index 2004, according to research by Mareco Index Bosnia, 13-22 September 2004.

<sup>36</sup> Procedures for establishing a business, or for establishing or closing companies, are extremely slow and complicated, and the legal framework is too complex, and the judiciary is too slow to guarantee the right of investors.

<sup>37</sup> On the privatisation of *Oslobodenje* see texts in: *Oslobodenje*, 26 April 2000, p. 3; *Dnevni avaz*, 16 February 2002, p. 10; *Oslobodenje*, 11 July 2002, p. 3. See also: Udovičić, Radenko, "What is happening With the Oldest Bosnian-Herzegovinian Daily: *Oslobodenje* to be Sold for 4.7 Million Marks", *Media Online*, 2002 (<http://www.mediaonline.ba>).

which bought frequencies from four local TV stations and started its TV Pink BiH in 2003.<sup>38</sup> Moreover, there are speculations that the present owner of Nova TV, Mr. Ivan Čaleta, a media mogul from Croatia, now owns a majority share in OBN TV.<sup>39</sup>

### Negative indicators

BiH is obliged to implement the Competition Law, as required by the Stabilisation and Association Agreement (SAA) with the European Union. However, just like in other areas, ineffective and complicated administrative structures have prevented the implementation of the Competition Law and the establishment of the Competition Council, so that even today, in 2005, more than three years after the adoption of the Law, the Competition Council has not become truly operational.

An additional problem, which is a consequence of the above described situation and which contributes to its further exacerbation, is the lack of ownership transparency over companies in general. Namely, there is no central register of print media, nor a central register of commercial companies, either in the Federation BiH or in BiH as a whole. Furthermore, the current registers are dispersed in numerous courts at different levels of government, mainly not in an electronic format, which necessitates painstaking searches through hard-copy documents in archive basements, many of which are not available, as documents are often removed from the archives for a court procedure, re-registration, etc. The result is that, despite the fact that access to public registers is guaranteed by the Law on Freedom of Access to Information, this situation is a serious threat against real transparency of ownership over the media.

A problem of great importance for independence of radio and TV stations from the ruling structures is the fact that in addition to public broadcasters, BHRT, RTFBiH and RTRS, there are also 16 TV stations and 62 radio stations under state ownership, at municipal and cantonal levels across BiH, largely dependent on municipal and cantonal government budget financing. Although the privatization of these broadcasters was supposed to commence in 2002, there has been no major advancement in this area. Privatization of these media outlets has proven to be difficult. One of the key difficulties is the lack of harmonization of legislation on privatization at different levels of administration. For example, different cantons have different rules on media ownership: some allow only 10 percent, others 48 percent or more, of foreign ownership.

An additional source of concern is the inadequate transparency of the privatization process. A major dilemma of owners of such media outlets is the decision on the percentage of state/public capital to be privatized. There is an evident tendency that the privatization process should be - if not stopped, which is not a possibility - slowed down and postponed as far as possible. A likely reason for this is that the owners are thus trying to secure at least a minimum of security for a particular media outlet in difficult times. However, an even more likely reason, and a more dangerous one, is an attempt of cantonal and municipal authorities to maintain a certain form of control over them.

The key pillar of the overall independence of public broadcasters is, certainly, their financial independence. However, public broadcasters face enormous difficulties in the collection of the compulsory monthly RTV fee, which puts them in a particularly difficult financial situation. Namely, compared with the pre-war rate of collection of the RTV fee of some 80 to 85%, accord-

<sup>38</sup> The Pink BiH Company was established on 4 February 2003 in Bijeljina, Republika Srpska, by Dasto-Semtel, a firm based in Bijeljina, and Pink International from Belgrade. The director of Pink BiH is Jovo Stanišić, but the owner is Željko Mitrović from Belgrade, the owner of Pink International. Court registration document is deposited with the CRA registry of broadcasters.

<sup>39</sup> Čaleta is the owner of two marketing agencies in Croatia, Global Media i GRP Media, the Omnia agency in BiH, as well as TV3 in Slovenia.

ing to unofficial estimates, in 2003 it was between 20 and 30%. After the introduction of a new system of collection through fixed-line telephone bills, in 2004, the level of collection of the fee grew across BiH to 53 percent in 2005, as stated by Mr. Drago Marić, Director General of the BiH Public Broadcasting System.<sup>40</sup> However, this level of collection is far from sufficient for financial sustainability of public broadcasters.

Additionally, although the new system of collection is more effective, it has not delivered ideal results and it has often been used as a tool for pressuring public broadcasters. First of all, there is an almost systematic, politically motivated boycott of the fee, practiced by a considerable number of Croats in BiH, as the leading Croat political parties in BiH demand a different model of public broadcasters, with separate ethnic channels for each of the three constituent peoples.<sup>41</sup> That is why the level of collection depends on which telecom collects it in which part of the country. Thus, according to Jasmin Duraković, Director of RTVFBiH, “the level of collection through BH Telecom remains at 65 percent, and through HT Mostar it is just 18 percent, whereas the level of collection in Republika Srpska through Telekom Srpske amounts to 47 percent.”<sup>42</sup> Moreover, political and religious leaders of different groups have, on several occasions, called for boycotts of the RTV fee when they disagreed with the public broadcasters’ editorial policy, or were involved in other forms of conflicts with the management or the journalists of public broadcasters.<sup>43</sup> According to Jasmin Duraković, “the principal reason for the low level of collection of the fee is the attitude of the executive towards public broadcasters, because they have done nothing to implement the legal obligation of collection of the fee. Even the most senior officials in this country invite the citizens not to pay the fee, just because they have no influence over the public broadcasters’ editorial policy.”<sup>44</sup>

In addition to revenue from the fee, the law prescribes that public broadcasters have additional sources of revenue, including advertising, sponsorship, and in some cases even direct state funding (see section 10.1.1., Independence of Public Broadcasters). At the moment, public broadcasters are allowed to show advertising not exceeding 10% of the total broadcasting time, or no more than six minutes of one hour (eight minutes out of one hour of prime time, between 17:00 and 23:00), which is in compliance with provisions of the European Convention on Cross-Border Television.

Nevertheless, even these additional sources of revenue do not seem to have helped public broadcasters in conducting their business without generating losses. Namely, the public broadcasters RTFBiH and BHRT are in debt of some ten million convertible marks in unpaid salaries and unpaid benefits for their employees, whereas the situation is much more favorable at RTRS.<sup>45</sup> In addition to poor collection of RTV fees, revenue is also restricted due to a particularly low total value of the advertising market in BiH. In 2002, the net value of TV advertising in the BiH market amounted to approximately 11 million euros, of which some 50%, or 5.5 million went to FTV,

<sup>40</sup> N.K., “*Zahtjevi sindikata neprihvatljivi*” [Union Requests Unacceptable], *Oslobodenje*, 25 October 2005, p. 6.

<sup>41</sup> Text published in the *Dani* weekly gives details on boycotting the RTV license fee by leading Croat politicians in BiH, including Dragan Čović, at the time Member of the Presidency of BiH. According to this source, payment of the RTV licence fee was conditioned by RTVFBiH introducing an ethnically defined TV channel for BiH Croats, in Croatian language (Eldin Hadžović, “*Hrvatska televizija u hrvatskoj državi*” [Croat TV in a Croat state], *Dani*, 4 March 2005).

<sup>42</sup> N. Krsman, “*Ispunjavanje zahtjeva nemoguće*” [Impossible to meet the requests], *Nezavisne novine*, 25 October 2005, p. 10.

<sup>43</sup> Eldin Hadžović, “*Hrvatska televizija u hrvatskoj državi*” [Croat TV in a Croat State], *Dani*, 4 March 2005.

<sup>44</sup> Cited in N. Krsman, “*Ispunjavanje zahtjeva nemoguće*” [Impossible to meet the requests], *Nezavisne novine*, 25 October 2005, p. 10.

<sup>45</sup> N. Krsman, “*Za plate i doprinose dužni 10 miliona KM*” [10 mil. KM owed in salaries and benefits], *Nezavisne novine*, 21 October 2005, p. 5.; Z. Perišić, “*Duraković: Odliv novca od reklama nerazumna odluka*” [Duraković: unreasonable decision to give away advertising revenue], *Dnevni avaz*, 25. oktobra 2005, p.10.

and the other 42 TV stations shared the remaining 5.5 million euros.<sup>46</sup> Similar data is presented by Henderson *et al*: According to data for 2002,<sup>47</sup> the total net revenue from advertising in BiH amounted to 36 million convertible marks, as follows: TV 23 million, billboards 10 million, press 2 million, and radio 1 million convertible marks.<sup>48</sup> The advertising market is clearly limited, threatening the survival of both the commercial and the public broadcasting sectors. Compared with the neighboring countries, BiH is clearly at the very bottom of the list in this segment, indicating that the media operate in a particularly difficult financial situation (see table 10.5).

Table 10.5: Gross value of the advertising market in 2003

Gross value of the advertising market in 2003			
Country	Gross per capita spending on TV advertising (in euros)	Gross volume of the TV advertising market (in million euros)	Total gross value of the advertising market (in million euros)
Italy	164.17	9,146	25,624
Hungary	91.3	924	1,412
Germany	90.00	7,428	17,407
Great Britain	88.42	5,237	11,986
Slovenia	82.17	161	276
Croatia	53.15	235	394
Romania	51.50	1,117	1,294
Serbia&Montenegro	25.94	210	261
Bulgaria	17.28	135	193
Macedonia	16.63	33	44
BiH (2002, net)	4.69	11	18

Source: *Television across Europe*, Open Society Institute: EU Monitoring and Advocacy Program & Network Media Program, Budapest, 2005, p. 174.

Note: The table shows an estimated net value for BiH in 2002, whereas gross values are presented for other countries for 2003. Assuming that the gross value in BiH may be 100% higher than the net value, then the total advertising market may have been of gross value of some 36 million euros in 2002.

Although the independence of CRA is guaranteed legally by the BiH Law on Communications, the Agency constantly faces different political and financial pressures. In the past few years, the Agency has had several financial and political pressures from the Council of Ministers, leading, for example, to an intervention by the High Representative in 2002, who issued a Decision on changes and amendments of the structure of expenditures of the Communications Regulatory Agency in 2002, in order to protect the Agency from financial pressures by the BiH Council of Ministers.

Namely, the 2002 budget adopted by the Council of Ministers and the BiH Parliamentary Assembly (Official Gazette BiH 14/02), was [...] decreased by 25% in comparison with 2001. [...] In several instances, the Council of Ministers refused to adopt the Decision on changes and amendments of the structure of expenditures of the Communications Regulatory Agency in 2002, proposed by the Ministry of Treasury of BiH, which corrected the reduction of the budget of CRA

<sup>46</sup> Jusić, 2003.

<sup>47</sup> McCann-Erikson 01/02, cited in Henderson *et al*, 2003: 8-9.

<sup>48</sup> These are net values and they do not include direct sales of advertising nor exchanges of goods and services. That is why it is not possible to give as more exact assessment of the value of the advertising market, and it is assumed that in 2002 the gross value of the advertising market in BiH was approximately 60 million KM (see Henderson *et al*, 2003: 8-9).

by re-distributing budget items, maintaining the total amount of CRA within the limits adopted by the Parliamentary Assembly. [...] The result was that as of 1 November 2002, the CRA had no resources for effective functioning.<sup>49</sup>

Even after the intervention by the High Representative, financial and other pressures by the Council of Ministers continued in 2004, as emphasized in the report by the Council of Europe.<sup>50</sup> In mid-2004, there was fear regarding the financial status of the CRA and transformation of its staff into civil servants.<sup>51</sup> These fears were justified in late 2005, when the CRA had a conflict with the Council of Ministers. Namely, the Council of Ministers decided that 1.1 million convertible marks of surplus should be transferred from the CRA account to finance BHT and BH Radio 1 satellite channels. In a statement for daily newspapers, Mr. Kemal Huseinović, Director of CRA, accused the Council of Ministers of unlawful action against the CRA. This sudden shift ended the period of almost one year of relatively good relations between the CRA and the Council of Ministers and reinstated the issue of sustainability of independence of the Communications Regulatory Agency.<sup>52</sup>

Therefore, there are valid reasons for constant concern to preserve the independence of the CRA as the principal guarantor of independence and the overall broadcasting sector in the country. Independence of CRA is currently protected by the High Representative, the European Commission and the Council of Europe, as civil society has not yet developed the capacity to preserve the independence of CRA.

It can be said that the key problem for the media in BiH is the financial situation, which makes them particularly vulnerable to attempts of breaching their independence. It is evident that in such a situation, financial pressure is the most effective tool and is now covering the space previously covered by far less “sophisticated” methods.

## **10.2. How representative are the media of different opinions and how accessible are they to different sections of society?**

### **10.2.1. Laws**

There are no restrictive laws in BiH limiting the public or any group in their access to the media, nor are there any formal barriers to the media presenting different opinions. These freedoms are guaranteed by the Constitution, by the BiH Law on Communications, the Law on the BiH Public Broadcasting Service, rules and codes of the CRA, as well as the Election Law and rules of procedure of the Election Commission. Moreover, there are no laws in BiH restricting the establishment of new media, except in cases when there are limited resources (non-existence of available broadcasting frequencies).

#### Media and coverage of elections

Pluralism of thought in the public realm and accessibility of the media are significantly conditioned by the fixed obligations the media have during election campaigns, both in terms of the

<sup>49</sup> Decision by the High Representative on changing the structure of expenditure of the Communications Regulatory Agency for 2002, 2 December 2002.

<sup>50</sup> Council of Europe: Bosnia and Herzegovina: Compliance with obligations and commitments and implementation of the post-accession co-operation programme, document submitted by the Secretary General following a Secretariat mission to BiH (12-17 September 2004), SG/Inf (2004) 28, 13 October 2004, available at [www.coe.int/sg](http://www.coe.int/sg) (as on 30 June 2005), p. 14.

<sup>51</sup> NB Placing CRA staff under the category of civil servants would give the Council of Ministers considerable power over the Agency.

<sup>52</sup> Lazović, T., “Huseinović priprema tužbu protiv Dokića” [Huseinovic preparing to sue Dokic], *Dnevni avaz*, 25 October 2005, p. 10.



method of reporting and in the possibility for different parties and candidates to be treated equally by the media. The way in which the media in BiH cover the elections is set by the Rules on Media Presentation of Political Subjects in the Election Period (hereinafter: Rules on Election Coverage), adopted by the BiH Election Commission on 28 June 2005, in compliance with Article 16.2 of the BiH Election Law (Official Gazette BiH No. 23/2001). Pursuant to these Rules, information published by electronic media in BiH during the election period must be factually accurate, complete, honest, fair and impartial (Article 1). Furthermore, electronic media are obliged to present political subjects equally, fairly and impartially, and inform the public about the campaigns and the entire election process, in the period of 60 days prior to the date of elections. “Equal” representation means coverage of pre-election activities of all the political subjects and fair access to the media for all political subjects during the election period (Article 3). Pursuant to Article 4 of the Rules on Election Coverage, all public electronic media shall, pursuant to the Rules, for the period of 30 days prior to the date of elections, allow all the political subjects free slots for direct addresses, under the same conditions, though debates they will organize. Moreover, each electronic media outlet must secure direct addresses for all the political subjects registered in the constituency covered by the signal of the media outlet.

In addition to free air time on electronic media, paid political advertising is also permitted in the period of 60 days prior to the elections. Political advertising means airing a political clip. Pursuant to this provision (Article 5), public electronic media shall allow, under equal conditions, paid political advertising for political subjects taking part in the elections, in the duration of three minutes per week, whereas private media outlets must allow paid political advertising for political subjects taking part in the elections in the duration of five minutes per week.

Pursuant to Article 9 of the Rules on Election Coverage, and in compliance with Article 16.7 of Election Law, CRA shall apply its procedures in any case of failure to respect provisions of the Election Law or provisions of the Rules on Election Coverage.

Unlike electronic media, there are no rules related to the coverage of the election period by print media, and this area is self-regulated, through professional and ethical codes of conduct and the work of the Press Council.

#### Equal representation of different social groups and opinions

Pursuant to the Law on the BiH Public Broadcasting System, as well as laws regulating the work of entity public broadcasters, the principal task of public broadcasters is to provide accurate information to the entire BiH public and to support democratic processes, to secure adequate programs in news and current affairs, culture, art, sports, and entertainment, as well as educational and children’s programs, containing versatile and accurate information. Pursuant to these laws, programs by public broadcasters are to take into account national, regional, traditional, religious, cultural, linguistic and other specific features of the constituent peoples and of all the citizens, and to meet cultural and other needs of national minorities in BiH. Moreover, public broadcasters must support open and fair debate on issues of public concern, and respect and promote pluralism of ideas, treating equally any political, economic, educational, scientific, religious or cultural topic, in order to secure equal representation of different positions and opinions.<sup>53</sup>

The Law on the BiH Public Broadcasting System also contains certain restrictions regarding programming by public broadcasters, and they are not allowed to broadcast any materials instigating ethnic, national, or religious intolerance, hatred or discrimination against individuals or

<sup>53</sup> Article 26, Law on PBS BiH.



groups. In particular, standards of civility and decency must be respected, taking into account primarily the mental and physical development of children.<sup>54</sup>

Just like the Law on the BiH Public Broadcasting System, regulating the work of public broadcasters, rules of the Communications Regulatory Agency (CRA), particularly their Broadcasting Code of Conduct from August 1998,<sup>55</sup> contain programming standards related to commercial, i.e. private radio and TV stations, which are required to demonstrate impartiality in their reporting, professionalism and equal representation of all social groups and different positions and opinions, with no discrimination on any grounds.

Unlike electronic media, there are no regulations on the content of the press, particularly not in terms of covering different groups and opinions, absence of discrimination, and fair and impartial reporting. All this is, in fact, included in the Press Code of Conduct, wherein Article 1 prescribes the following:

Journalists and their publications have an obligation to the public, to maintain high ethical standards at any time and under any circumstances. It is the duty of journalists and publishers to respect the needs of the citizens for useful, timely and relevant information, and to defend the principles of freedom of information and the right to a fair comment and critical journalism. The press in Bosnia and Herzegovina shall uphold the generally accepted social standards of decency and respect for ethical, cultural, and religious diversity of Bosnia and Herzegovina. The press shall protect the rights of individuals, supporting, at the same time, the right to information serving the interest of the public.

Moreover, the Press Code of Conduct advises about the consequences of any deliberate or unintentional instigation of discrimination or intolerance in the media. Within that context, the press is “obliged to do its utmost not to entice or instigate hatred or inequality on the basis of ethnicity, nationality, race, religion, gender, sexual orientation, or any physical or mental illness or disability.” (Article 3.) Article 4 underscores that print media must avoid biased or offensive allusions to someone’s ethnic group, nationality, race, religion, gender, sexual orientation, physical or mental illness or disability. It specifies that any “allusion to a person’s ethnic group, nationality, race, religion, gender, sexual orientation, physical or mental illness or disability” are permitted only when directly related to the case reported. (Article 4)

The Press Code of Conduct also establishes standards of fair and impartial reporting, emphasizing that when reporting on controversies or commenting, newspapers and periodicals “shall strive to hear and present all the parties to the dispute in case” (Article 5).

### **10.2.2 Implementation: positive and negative indicators**

#### Positive indicators

As stated above (10.1), BiH is rich in different media, both electronic and print. The entire population can be said to have unhindered access to media outlets, not only from BiH but also from the neighboring countries, and that cable and satellite TV are growing in presence, so that programs from the neighboring countries are available along with satellite programs from across the world. There are, in total, 188 licensed TV channels, 7 daily publications and some 50 weekly and fortnightly ones. Moreover, there are a dozen daily newspapers printed in Serbia and Croatia, and more than sixty weekly, bi-weekly and monthly publications from abroad. Of the

<sup>54</sup> Article 28, Law on PBS BiH.

<sup>55</sup> Broadcasting Code of Conduct of 11 August 1998, as amended on 9 June and 8 September 1999 and 10 February 2000.

cited 50 weekly and monthly publications from BiH, only seven are primarily informational. Of the seven, only two are local.<sup>56</sup>

Versatility of RTV programs by public broadcasters are guaranteed by the Law on the BiH Public Broadcasting Service and laws on entity broadcasters, RTFBiH and RTRS. According to the official annual report by BHRT for 2004,<sup>57</sup> during the period from 13 August<sup>58</sup> to 31 December 2004, BHT showed a total of 102,409 minutes of programming (an average of 12 hours a day). Of that, its own production covered approximately 33%, independent production 4%, and approximately 1.5% was taken from entity public broadcasters, RTRS and RTFBiH. Within its own production, approximately 70% were premiere programs, dominated by news and current affairs (26%) and sports (22%). Looking at the overall BHT program, sport covered 30% (live coverage of the Olympic Games in Athens, Greece), news and current affairs 19.5%, films 17%, documentaries 8.5%, entertainment series and shows 5% respectively, and music programs 2%.<sup>59</sup> During 2004, RTRS aired a total of 6,942 hours and 48 minutes of programming, of which 56% was its own production, showing an average of 19 hours of program per day. Types of programs are presented in the table below.<sup>60</sup>

Generally, public broadcasters offer relatively versatile content, though still dominated by entertainment.

Table 10.6: RTRS programming information for 2004

RTRS programs in 2004		
Type of program	Minutes	Percentage (%)
News and current affairs	116,082	27.8
Culture and education	9,949	2.4
Youth	5,609	1.4
Children's programs	15,137	3.6
Religion	4,763	1.2
Music	34,116	8.2
Entertainment	28,697	6.9
Sports	32,491	7.8
Advertising	9,395	2.3
Documentaries	15,610	3.7
Other	13,350	3.2
Films	131,369	3.5
Total	416,568	100

Source: <http://www.rtrs.tv/kompanija/statistika.php>

The past five years have noted significant development of cable TV, and at the moment, there are 65 licensed cable operators in BiH.<sup>61</sup>

<sup>56</sup> Henderson *et al*, 2003, p.19.

<sup>57</sup> BHRT Management, Director General: *Izveštaj o radu i poslovanju Javnog radio-televizijskog servisa Bosne i Hercegovine za 2004. godinu* [PBS BiH Annual Report for 2004], Sarajevo, April 2005, <http://www.pbsbih.ba/onama/izvjestaj2004.html> (as on 26 June 2005).

<sup>58</sup> BHT1 started broadcasting on its own frequency on 13 August 2004.

<sup>59</sup> BHRT Management, Director General: *Izveštaj o radu i poslovanju Javnog Radio-televizijskog Servisa Bosne i Hercegovine za 2004. godinu* [PBS BiH Annual Report for 2004], Sarajevo, April 2005, <http://www.pbsbih.ba/onama/izvjestaj2004.html> (as on 26 June 2005).

<sup>60</sup> RTRS program statistics for 2004, available at: <http://www.rtrs.tv/kompanija/statistika.php> (as on 26 June 2005)

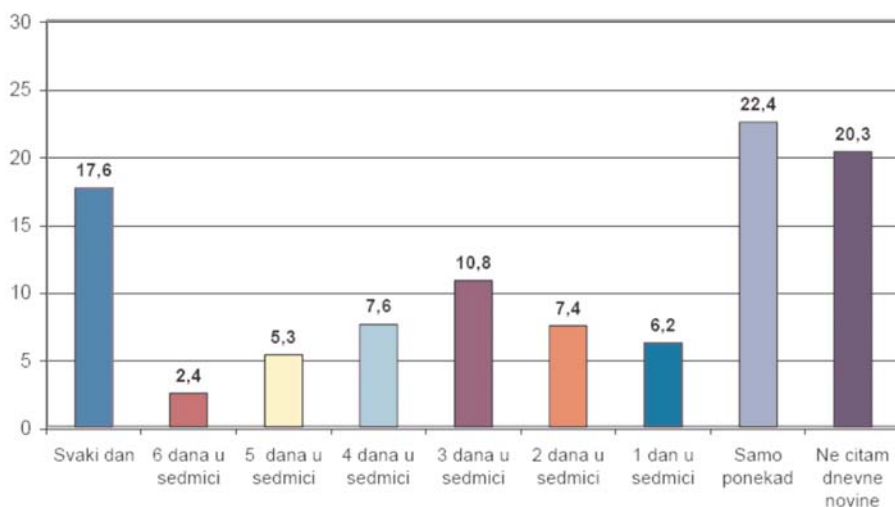
<sup>61</sup> Source: Public Register of RTV Stations maintained by CRA, available at : <http://www.rak.ba/en/telecom/db/?cid=1192> (as on 5 September 2004) Data on cable TV subscribers could not be obtained.

As for radio and television in general, using its powers, the CRA has introduced order in this segment and electronic media can be said to demonstrate general respect for the rules and decisions of the Communications Regulatory Agency. According to CRA, there is a particularly high level of respect for their decisions. Namely, the Law on Communications gives CRA a wide spectrum of powers, from warnings, to fines, and even revocation of broadcasting licences for radio and TV stations which violate laws and rules of the CRA. In the period from 1998 to 2003, the CRA issued a total of 144 fines to broadcasters in BiH on the basis of violations of rules on broadcasting and licence terms.<sup>62</sup> Due to the strong and effective regulation of the broadcasting sector, reporting in electronic media can be said to be generally fair, with no hate speech, or any cases of serious or systematic discrimination on religious, ethnic, national or any other grounds.<sup>63</sup>

### Negative indicators

Newspaper readers in BiH remain limited, partly due to poor economic conditions - newspapers and magazines are expensive, as the price of 1 convertible mark (0.5 euro), i.e. 2 convertible marks (1 euro) does not correspond to the very weak purchasing power of the population. Total readers of daily press in BiH is some 40 percent, if regular readers include those who buy newspapers no less than three times a week. Some 20% of total adult population do not read the daily press at all, and the remaining 40% read the daily press less than twice a week or only occasionally. Approximately 40% of the population do not read the weekly press at all, whereas 35% read weekly publications relatively regularly (see charts 10.4 and 10.5).

Chart 10.3: Frequency of purchase of daily newspapers in BiH, September 2004



[every day; 6 days a week; 5 days a week; 4 days a week; 3 days a week; 2 days a week; 1 day a week, only occasionally; do not read newspapers at all]

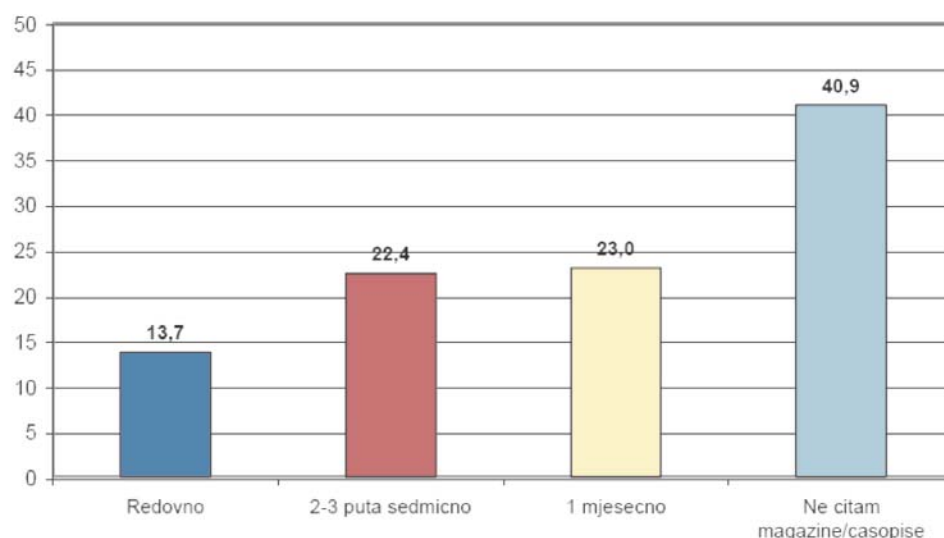
Source: MARECO INDEX BOSNIA, 2004.<sup>64</sup>

<sup>62</sup> CRA, 2004, p. 7-9.

<sup>63</sup> For a more comprehensive analysis of the TV sector in BiH, as well as a separate detailed analysis of the public broadcasting sector, see: Jusić, Tarik, Chapter on Bosnia and Herzegovina in *Television Across Europe: Regulation, Policy and Independency*, Open Society Institute, 2005, available at: [http://www.eumap.org/topics/media/television\\_europe/national/bosnia/media\\_bos1.pdf](http://www.eumap.org/topics/media/television_europe/national/bosnia/media_bos1.pdf) (as on 17 October 2005.)

<sup>64</sup> MARECO INDEX BOSNIA, BiH, member of Gallup International, 2004, available at: <http://www.mib.ba/version02/index.htm> (as on 18 October 2005.)

Chart 10.4: Frequency of purchase of weekly publications in BiH, September 2004

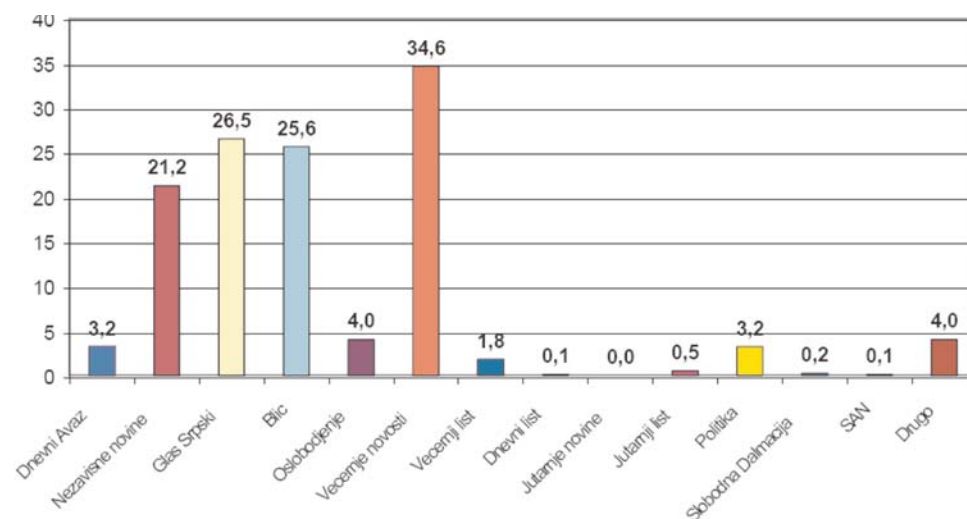


[regularly; 2-3 times a week, 1 per month; do not read magazines/periodicals]

Source: MARECO INDEX BOSNIA, 2004.<sup>65</sup>

Furthermore, purchase is conditioned by a pronounced ethnic identification of the readers. This allows the press to reach a wider audience at the level of the country, and forces them to select as their primary target group a particular ethnic community dominant in the area of circulation. This is best illustrated by data on press purchase in the entities, showing that readers in Republika Srpska do not read publications from the Federation BiH, and vice versa (see charts 10.6 and 10.7).

Chart 10.5: Purchase of daily newspapers in Republika Srpska, September 2004 (multiple choice, leading to a total exceeding 100%).

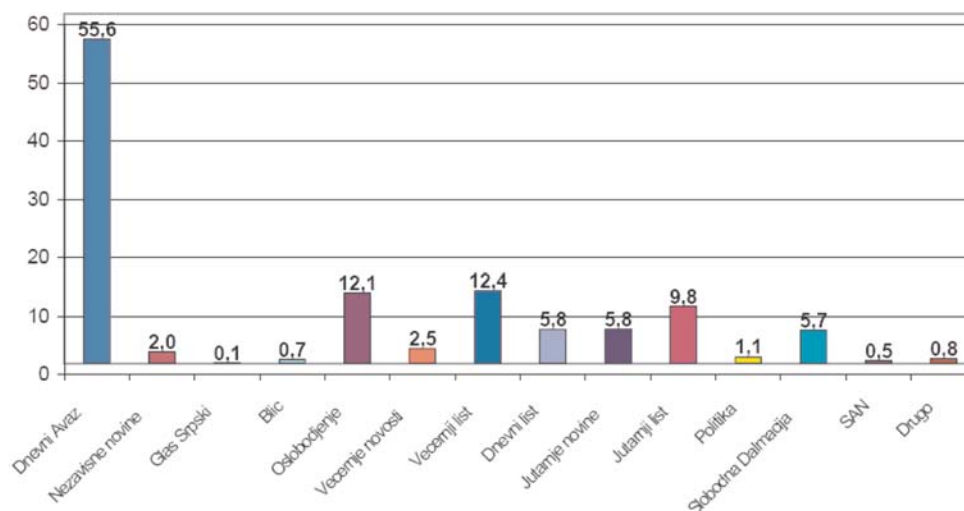


Source: MARECO INDEX BOSNIA, 2004.<sup>66</sup>

<sup>65</sup> MARECO INDEX BOSNIA, BiH, member of Gallup International, 2004, available at: <http://www.mib.ba/version02/index.htm> (as on 18 October 2005)

<sup>66</sup> MARECO INDEX BOSNIA, BiH member of Gallup International, 2004, available at: <http://www.mib.ba/version02/index.htm> (as on 18 October 2005.)

Chart 10.6: Purchase of daily newspapers in the Federation BiH, September 2004 (multiple choice, leading to a total exceeding 100%).



Source: MARECO INDEX BOSNIA, 2004.<sup>67</sup>

It is interesting to note that MIB's report for 2003 indicates that of all the types of media, the BiH population shows the least amount of confidence in the press. Thus, 53% of adult respondents claim that they do not trust any print media outlet, compared with 42% of those who do not trust radio, and 29% who do not trust television.

The number of BiH citizens with access to new media and information technologies is particularly low. According to the report by the Working Group on Digital Terrestrial Television (DTT) within the European Platform of Regulatory Authorities - EPRA, BiH falls within the category of countries lagging behind considerably in introducing digital terrestrial television (DTT).<sup>68</sup> DTT is still not commercially available, DTT penetration is zero, and there is still no state policy for introduction of DTT-a.

Also, information on the use of Internet and computer access indicate that BiH lags behind in introducing IT. Namely, in 2002, only 13.6% of adult population had computer access at home, 12.5% at work, and additional 9.5% in other ways.<sup>69</sup> Thus, Internet access is limited to a very narrow group of BiH population. There are 41 licensed Internet service providers (ISP) in BiH.<sup>70</sup> According to recent data, 55,000 private users have Internet access, some 32,000 companies and 3,000 users in the education sector (schools and universities). Internet penetration per 100 citizens is estimated at 1.5 to 2%.<sup>71</sup>

<sup>67</sup> MARECO INDEX BOSNIA, BiH, member of Gallup International, 2004, available at: <http://www.mib.ba/version02/index.htm> (as on 18 October 2005.)

<sup>68</sup> EPRA - European Platform of Regulatory Authorities, 2004 (all data related to the situation as on 31 December 2003). Other countries in this group are Israel, Latvia, Malta, Montenegro, Poland, Portugal, Macedonia, Romania, and Slovenia.

<sup>69</sup> MIB, 2003.

<sup>70</sup> Source: CRA public register, available at, <http://www.rak.ba/en/telecom/db/?cid=1191> (as on 5 September 2004).

<sup>71</sup> Mijatović, 2004, p. 59.

Table 10.7: Access to communication technologies per household

Access to communication technologies per household		
Technology	Urban (%)	Rural (%)
TV	97	89
Satellite TV	19	16
Radio	65	72
PC	10	3
Telephone	99	70-75
Internet	11	0.02

Source: UNDP, Regional Information and Communications Technologies Status and Usage Report; eSEEurope: Building an Information Society for All, 2004: 85

The CRA report on the coverage of the 2004 elections points at a lack of professional reporting and a considerable number of violations of CRA rules. Whereas the first 30 days received a positive assessment, the second half of the campaign, i.e. the remaining 30 days, were considered much worse. Still, of the total number of radio and TV stations, some 66% fulfilled their obligations prescribed by the CRA. Although they received relatively few complaints, mainly from political subjects and radio and TV stations, in their report, the CRA concludes that a large number of radio and TV stations did not cover the campaign adequately. Namely, the media mainly reported about press conferences, in an uninteresting way, they aired announcements of public rallies, most of which were based on political marketing, and there was no analytical approach to key issues of campaigns and programs by parties and candidates.<sup>72</sup>

According to a report by the Mediacentar, Sarajevo on the print media campaign coverage for the 2002 general election, the print media can be said to have focused their attention on scandals and affairs, lacking essential debate on programs by parties and candidates. Instead of a public debate on issues of vital importance for the future of the state, the public sphere transformed into a battlefield of daily-political conflicts, characterized by a sensationalist pre-election discourse, full of insults and accusations, at a very low level of general communication.<sup>73</sup> Therefore, the media dealt with general issues of the campaigns, staffing policies of the parties, and conflicts between individual politicians, ignoring the analytical and critical presentation of party programs and addresses by candidates. The objectivity of the reporting was seriously challenged by a very small number of texts based on two or more sources of information, and large parties and prominent candidates dominated the reporting, to the detriment of smaller parties. Furthermore, print media showed clear political preferences, demonstrating support for certain political options.<sup>74</sup>

Although the media do offer access to different parties and candidates during the election period, versatility of opinions made available for the citizens is largely limited by superficial debates and inter-party conflicts which dominate media reports on pre-election activities. However, elections are an extraordinary event, whose nature affects the conduct of the media, and due to a set of circumstances and legal provisions, there is more evident presentation of different political options and groups in the media. However, outside such extraordinary situations, in their everyday reporting, the media offer far less space to opinions by different political, cultural, and social groups.

<sup>72</sup> Final Report on Media Coverage of Elections in Bosnia And Herzegovina, Communications Regulatory Agency, October 2004.

<sup>73</sup> *De(kon)strukcija javnog diskursa: Štampani mediji u predizbornoj kampanji u BiH* [De(con) struction of public discourse: print media in the BiH election campaign], 5 August to 5 October 2002, Mediacentar Sarajevo, www.media.ba

<sup>74</sup> Coordination of Associations of Journalists in BiH, Monitoring of election coverage in print media (general elections, 5 October 2002.), 9 December 2002, Sarajevo, Bosna i Hercegovina.



As for accessibility of media for different groups within the society, according to the IREX report on sustainability of the media in 2004, in BiH there is no serious resistance to media reporting on issues of social and minority groups. Certain minority groups have their own programs on radio and TV, though difficult economic conditions,<sup>75</sup> as well as the lack of interest and inertness of the media and the authorities, prevent the development of such practice.

According to the 2002 Gender Media Watch report, in electronic media outlets (FTV, RTRS, BHT1, ATV, and Hayat), whose content was analysed for the period from 9 to 15 September 2002, in the prime-time slot from 19:00 to 22:00 hours, there was no program genre where women were presented or represented better than men. (...) A considerable part of the programming is dedicated to men, either as interlocutors in news and current affairs programs, or sports or entertainment programs. According to this research, men spoke in 85% of the news and current affairs programs, whereas women had an opportunity to present their opinion in merely 15% of the cases.<sup>76</sup> The situation was equally bad in late 2004:

Monitoring results have shown that women are still poorly represented in the media. There are slightly more in print media, i.e. newspapers (17%), whereas their presence in TV news and current affairs programs is merely 8 percent. Men hold clear primacy in all areas of life: politics, economy, judiciary, police, and party life.<sup>77</sup>

A recent analysis of print media in BiH, conducted by the association of BiH journalists, showed that women were completely marginalized in print media: "Women appear in just 4.4% or 230 headlines of published texts. Most frequently in incident reports, or as refugees, returnees or victims of war. Only 55 texts had women as their primary topic or a key source of information."<sup>78</sup> According to this report, key features of presentation of women in BiH media are:

- Women are marginalized in the media, both in terms of representation, and in terms of topics;
- With the exception of one paper, women are not addressed in gender correct forms;
- The media treat women as transmitters of someone else's opinion, rather than protagonists of events with personal views on the topic in question;
- The media are not sensitive to women's issues and achievements of women;
- The media reproduce a patriarchal-stereotype shaded model of women in the society;
- The way women are presented is almost identical in all the (print) media (...)<sup>79</sup>.

Generally, in terms of attitudes towards different ethnic groups, nations, women, and minorities, the situation in print media is much worse than in electronic media. Unpublished research results of Mediacentar Sarajevo, indicate that print media are particularly inclined towards negative presentations of other ethnic groups, whereas national minorities are covered only sporadically, often in connection with crime. This form of reporting is particularly related to the Roma population.<sup>80</sup>

<sup>75</sup> IREX (2005), Media Sustainability Index 2004, according to research data by Mareco Index Bosnia, 13-22 September 2004.

<sup>76</sup> Gender Media Watch 2004, Programme analysis: FTV, TVRS, BHTV1, ATV and NTV Hayat, 09-15 December 2002, Gender Centres of FBiH Government and RS Government, IBHI-BiH, 2003, p.61.

<sup>77</sup> Helsinki Citizens' Assembly of the City of Banja Luka, *Žene u medijima* [Women in the media]. Helsinki parlament građana Banjaluke and IKV (Interchurch Peace Council) - Holland, Banja Luka, October 2004. (available at <http://www.hcabl.org/pdf/publikacije/Zene%20u%20medijima.pdf>, as on 18 October 2005)

<sup>78</sup> Čengić, R., "Žene potpuno zapostavljene u tekstovima" [Women totally neglected in writing], *Nezavisne novine*, 17 September 2005, p. 11. (available at: <http://www.idoc.ba/digitalarchive/public/serve/restricted/index.cfm?fuse-action=print&elementid=68320>, as on 18 October 2005.)

<sup>79</sup> *Monitoring printanih medija u Bosni i Hercegovini: Zastupljenost i način predstavljanja žena u medijima* [Monitoring print media in BiH: Presentation and representation of women in the media]. Udruženje BH novinari, July 2005, p.1.

<sup>80</sup> Unpublished report by Mediacentar Sarajevo, not publicly available at the request of the client, cannot be quoted here in full or with full reference.

All in all, there is in BiH an evident pluralism of the media, thus also the basic preconditions for pluralism of opinions. However, pluralism of opinion is restricted to a certain extent, as it is truly exercised mainly in extraordinary circumstances, such as elections, and in reporting on daily-political events, whereas the “ordinary” everyday work of the media shows neglect and negative presentation of women and any other different group, be it minorities or members of “the other” nation.

### **10.3. How effective are the media and other independent bodies in investigating government and powerful corporations?**

#### **10.3.1. Positive and negative indicators**

As stated earlier, there are no legal restrictions in BiH that could prevent the media from investigating the work of governments or powerful corporations. All the relevant laws, the Constitution, the Law on Communications, the Law on PBS BiH, and the Law on Defamation and the Law on Freedom of Access to Information, as well as rules of the Communications Regulatory Agency - indicate the freedom of expression and the freedom and right of the media to act in the interest of development of democracy in the country, as a corrective for the authorities.

In general, the quality of journalism in BiH cannot be said to be at a satisfactory level. Journalists and the media of the focus on the exclusivity of the story, forgetting professional norms. At the same time, there is a growing dominance of the sensationalist, “tabloid” journalism, whereas there is less and less of the serious, investigative journalism. The imperative of commercialization of the media becomes the driving force of rapid expansion of sensationalism and tabloid press, to the detriment of serious journalism.<sup>81</sup>

However, there are few media outlets in BiH ready to publish investigative stories, and few journalists who practice investigative journalism. Certainly the most important media trying to practice investigative journalism in such difficult conditions are the weekly magazines *Dani* and *Slobodna Bosna* from Sarajevo, the *Nezavisne novine* daily newspaper from Banja Luka, and the “60 minuta” weekly program on Federation TV.

In addition to the domination of sensationalist journalism and market pressure, there are other reasons for such poor presence of investigative journalism in BiH. First of all, it is a matter of incompetence of journalists and editors, who have mainly not had an opportunity to practice investigative journalism, nor are they familiar with the techniques and methods of investigative journalism. Moreover, the media are faced with a lack of human, technical and, most importantly, financial resources, and they can hardly afford to assign one or more journalists to a particular story over a longer period of time. Also, there are limited public and easily available sources of basic information in BiH, as there are no digital, publicly available data bases on court decisions, campaign information, etc. Moreover, the capacity of public institutions to respond to journalistic queries is limited, as they often lack the trained staff and the technical resources to provide timely and adequate answers to questions from journalists.

An important reason for poor investigating journalism is certainly the sense of fear and uncertainty among journalists, due to threats and pressures on the media and the journalists when they are investigating, particularly in relation to organized crime and war crimes. There is a well-known case of the editor and owner of the *Nezavisne novine* daily, who barely survived an assassination attempt, having lost both his legs, after having the courage in 1999 to publish in

<sup>81</sup> IREX, 2005, p.19.

Republika Srpska, for the first time ever, a series of stories about war crimes by the army of Republika Srpska in the war in BiH. It is indicative that until today, i.e. until mid-2005, no one has been prosecuted for this crime, which certainly does not encourage journalists who want to practice investigative journalism. Of course, other journalists investigating crime and war crimes are often subject to threats and verbal assaults, whereas physical assaults are much more rare.<sup>82</sup>

#### **10.4. How free are journalists from restrictive laws, harassment and intimidation?**

##### **10.4.1. Laws**

(see also sections 10.1, 10.2. and 10.3.)

There are no legal obstacles for the journalistic profession in BiH, nor are journalists required to be registered or licensed. As stated earlier in this chapter on the media (see sections 10.1, 10.2. and 10.3.), BiH laws are in no way restricting journalists or the media in their work. The Constitution and all the relevant laws - the Law on Communications, the Law on PBS BiH, the Law on Defamation, the Law on Freedom of Access to Information, and rules of the Communications Regulatory Agency - underscore the freedom of journalists and the media to practice their profession freely.

It is important to emphasize the particularly advanced Law on Freedom of Access to Information. The essence of this Law is in the principle that information held by public institutions and the government is treated as a valuable public resource, and public access to such information promotes greater transparency and accountability of those institutions and authorities in general, which is why public institutions and the authorities are obliged to make such information publicly available. That is why any person has the right of access to such information, unless contrary to public interest.<sup>83</sup> The principle of free access to information does not apply to information which may cause serious damages to BiH, particularly in relation to foreign policy, defense, public security, monetary policy, prevention of crime, and when such information is related to confidential business interests of third-parties or privacy of third-parties.<sup>84</sup> However, access may be granted even to such information, if the best public interest can be proved.<sup>85</sup>

Moreover, the CRA's Broadcasting Code of Conduct for editing radio and television programs<sup>86</sup> guarantees electronic media freedom of access to information, freedom of expression and freedom from outside influences over editorial policies and work of the media, in compliance with Article 19 of the Universal Declaration on Human Rights, as well as the European Convention on Human Rights.

Also, the Law on PBS BiH defines, in Article 26 (7), that public broadcasters have the right to broadcast parliamentary sessions in full or in part, i.e. to inform the public about parliamentary activities in an appropriate way and in compliance with editorial guidelines. For that purpose, public broadcasters have free access to parliamentary sessions.

<sup>82</sup> See, for example, "Novinarima prijtili 62 puta" [Journalists threatened 62 times], *Nezavisne novine* 31.08.2005, p. 11. (available at: <http://www.idoc.ba/digitalarchive/public/serve/restricted/index.cfm?fuseaction=print&elementid=64406>, as on: 18 October 2005.). See also "Osuden napad policije na novinara Dnevnog lista" [Police attack on Dnevni list journalist condemned], *Oslobodenje*, 01.06.2005, p. 11 (available at: <http://www.idoc.ba/digitalarchive/public/serve/restricted/index.cfm?fuseaction=print&elementid=45113>, as on 18 October 2005)

<sup>83</sup> Article 1, Law on Freedom of Access to Information in BiH

<sup>84</sup> Articles 6, 7 and 8, Law on Freedom of Access to Information in BiH.

<sup>85</sup> Article 9, Law on Freedom of Access to Information in BiH.

<sup>86</sup> Broadcasting Code of Conduct of 1 August 1998, as amended on 9 June and 8 September 1999 and 10 February 2000.

For the past three years, there has been an almost identical Law on Protection from Defamation in force in both entities, de-criminalizing defamation and placing it outside criminal legislation and into civil law, and any trials related to it are moved from criminal to civil procedure. This means that BiH journalists have been, for the past two years, the only ones in Southeast Europe who have not faced with the threat of serving sentences or paying enormous fines for insult or defamation. Moreover, this Law guarantees the right of journalists and editors not to reveal the source of confidential information, nor a document that may reveal the identity of such a source. However, although the new law encourages free press and freedom of expression, including expression “which may offend, shock or upset”, it also means responsible press and responsible journalists. Journalists should be held accountable and bear the consequences of defamation if they “deliberately or out of recklessness, present or convey expression of an untrue fact”.<sup>87</sup>

It is important to note that the Law on Protection of Defamation, “encourages the plaintiff to first approach the media outlet which breached his/her dignity and seek protection that way, and to approach the court if he/she does not receive satisfaction that way, or if the damages caused are such that they cannot be remedied by a publication of correction”. Moreover, pursuant to this Law, bodies and institutions of government, i.e. “public authorities” cannot act as plaintiffs. This means that the government, the assembly, courts, public enterprises and institutions cannot file charges in compliance with this Law, although members of government, public officials, judges, etc. may do so as private individuals. But, these are cases of personal complaints by citizens, rather than of prime ministers, ministers or judges.<sup>88</sup>

#### **10.4.2. Implementation: positive and negative indicators**

According to the 2003 report on freedom of the press, published by *Freedom House*, BiH was assessed as partially free. This report describes the media situation in BiH as follows:

Political influence over the media is still one of the main obstacles to the development of truly free media in BiH (...) Government interventions and direct political patronage still restrict editorial independence. Journalists are often subjected to death threats and physical assaults, particularly when investigating war crimes.<sup>89</sup>

However, “the report by Reporters Without Borders for 2003 listed BiH as 37<sup>th</sup> in the world, ahead of Spain and Italy, and far ahead of its neighbours in the region, Croatia, Macedonia, and Serbia and Montenegro.”<sup>90</sup>

Despite the mainly positive situation in the country in terms of freedom of the media, the media and journalists working in them are also exposed to pressures from owners of the media outlets where they work. There is, in fact, no collective agreement at the level of the state or the entities, between journalists’ associations and media companies. Furthermore, in view of the generally very bad economic situation and a high unemployment rate, owners of media outlets have considerable possibilities of unhindered pressure on the journalists. This is most evident in the research conducted by the Independent Union of Professional Journalists in BiH, which indicates that in Bosnia and Herzegovina, 57.8% journalists work in media outlets with no contracts, whereas some 50% do not receive regular salaries and have no health insurance.<sup>91</sup>

<sup>87</sup> Halilović, 2005.

<sup>88</sup> Halilović, 2005.

<sup>89</sup> *Freedom of the Press 2003, A Global Survey of Media Independence*. Karin Deutsch Karlekar, ed., Freedom House, New York - Washington, D.D., Rowman & Littlefield Publishers, Inc., 2003, Country reports, p. 60-61.

<sup>90</sup> Media Task Force: 2003: 11.

<sup>91</sup> Report by the Independent Union of Professional Journalists in BiH, cited in Media Task Force: 2003: 11.

During 2004, some of the media showed tendencies towards identification with centers of commercial and political power, making the media an arena for conflicts between opposing blocks. Partly related to this is the still evident phenomenon of self-censorship. Self-censorship is practiced frequently, as journalists are afraid of losing their job, editors and owners are afraid of losing advertising revenues, and there are often concerns for physical security.<sup>92</sup>

During the 2004 election campaign, journalists and the media in BiH were exposed to serious pressure from political and religious leaders. According to the Helsinki Committee for Human Rights in BiH, the campaign for local elections held on 4 October 2004 was filled with strong verbal assaults on the media. Several media outlets were targeted: *Nezavisne novine* daily and RTRS in Republika Srpska were accused by nationalist parties that they "weren't Serb enough" and that they were "American satellites". The situation in the Federation of BiH was similar. For example, leading politicians of the ruling Party for Democratic Action (SDA) accused RTVFBiH of not being sufficiently supportive of SDA, and threatened to dismiss the responsible personnel from RTVFBiH.<sup>93</sup> However, despite that, the Helsinki Committee held that the election campaign was mainly in a democratic atmosphere, with no major incidents, and the media generally provided fair coverage of the elections.<sup>94</sup>

Journalists in BiH are not often victims of crime. However, if such offenses do happen, the police and the judiciary are usually not capable of responding adequately. For example, although the attack against Željko Kopanja, owner and editor of *Nezavisne novine* daily happened in 1999, no one has yet been convicted. According to some sources, journalists simply do not report attacks, as they do not believe that the police or the judiciary would provide them with assistance and protection.<sup>95</sup> Journalists' help/line, which operates as part of the BiH Journalists' Association, received 62 complaints in 2004, related to death threats, physical assaults, and defamation of journalists by other media outlets.<sup>96</sup> "Activists of the Helsinki Committee in BiH would like to give a reminder that there are still pressures on the media and physical assaults on journalists, and cites the examples of verbal assaults on *Nezavisne novine* daily, *Slobodna Bosna* weekly, RTRS, FTV, and physical assaults on a journalists from Radio Big, Banja Luka, and a cameraman with RTRS."<sup>97</sup>

Although the Law on Freedom of Access to Information is a highly advanced legal text for BiH as it is today, its practical implementation is coming across serious obstacles. Namely, a large number of state institutions are still fairly closed to the media, and most of them do not have the capacity, human or technical, to respond to requests for access to information in compliance with the Law.<sup>98</sup> According to Henderson *et al.*,

<sup>92</sup> IREX, 2005, p.19-20.

<sup>93</sup> Report on the state of human rights in BiH (analysis for the period January-December 2004.) Helsinki Committee for Human Rights in BiH, available at <http://www.bh-hchr.org/Izvjestaji/izvj2004.htm> 5 June 2005 at 20:00 h.

<sup>94</sup> Council of Europe, 2004b: 8.

<sup>95</sup> IREX, 2005, p. 17-19.

<sup>96</sup> "Novinarima prijekali 62 puta" [Journalists threatened 62 times], *Nezavisne novine*, 31.08.2005., p. 11. (available at: <http://www.idoc.ba/digitalarchive/public/serve/restricted/index.cfm?fuseaction=print&elementid=64406> 18 October 2005. See also "Osuden napad policije na novinara Dnevnog lista" [Police attack on *Dnevni list* journalist condemned], *Oslobodenje* 1 June 2005, p. 11 (available at: <http://www.idoc.ba/digitalarchive/public/serve/restricted/index.cfm?fuseaction=print&elementid=45113>, 18 October 2005.)

<sup>97</sup> Čengić, R., "Nacionalističke stranke i dalje raspiruju strah" [National parties still spread fear], *Nezavisne novine*, 11 January 2005, p. 9. (available at: <http://www.idoc.ba/digitalarchive/public/serve/restricted/index.cfm?fuseaction=print&elementid=17965>, as on 18 October 2005).

<sup>98</sup> IREX, 2005.



The Law on Freedom of Access to Information came into force in 2001. We have not been able to find evidence that it brought considerable changes in the efforts of journalists requesting information - institutions do not deny access to information - they simply do not respond to such requests.<sup>99</sup>

Unpublished preliminary results of the research conducted by Mediacentar Sarajevo in 2004 indicate that some 43% of public institutions respond to citizens' requests for access to information on the basis of the Law on Freedom of Access to Information within the time prescribed by Law, whereas as many as 57% ignore such requests.<sup>100</sup>

According to experiences thus far, the new Law on Protection from Defamation has failed the initial hopes of the journalists that there would be fewer defamation charges. Namely, it seems that the opposite has happened - the number of charges has grown. "Almost 350 charges were filed with cantonal and municipal courts in both parts of Bosnia and Herzegovina in the period of two and a half years, which is three times as many as, for example, in the previous two or three years."<sup>101</sup>

Until the end of 2003, when most of the charges were filed, the most frequently sued were *Dnevni avaz* and its other publications (30 cases), then weekly magazines *Slobodna Bosna* (22) and *Ljiljan* (15), *Oslobodenje* daily (13), Federation TV (8), *Dani* weekly (6). In the meantime, during 2004, some of them were sued again, so that the aforementioned numbers have been exceeded. In the number of charges against them, *Dnevni avaz* and *Slobodna Bosna* are "in the lead", with Federation TV among electronic media. In most cases, charges were against publishers and editors-in-chief, and when identified, authors of texts (journalists).<sup>102</sup>

Charges are usually filed by public figures, such as politicians or officials (some 60 charges), immediately followed by journalists and media outlets themselves (approximately 40 charges), suing other journalists and media outlets for defamation. The amounts requested are moderate, from 10,000 to 20,000 convertible marks (5,000 to 10,000 euros), but there are quite a few requests for higher compensations for damages, several even in excess of one million marks. Fortunately for journalists and the media, if they rule in favor of the plaintiff in such extreme cases, the courts have awarded damages not exceeding one or two percent of the requested amount, which is in the spirit of the Law on Protection from Defamation, which requires the court that "amounts awarded for damages may lead to serious financial difficulties or bankruptcy of the defendant," i.e. the media outlet being sued. Therefore, even when the judgement was against the media outlet, it would not be financially ruined by it. However, due to high cost of court proceedings for both the plaintiff and the defendant, it is basically not profitable to pursue court proceedings, and the number of such cases has dropped considerably.<sup>103</sup>

An additional problem is that neither lawyers nor judges have adequate knowledge of the new legislation, or the professional standards of journalism in general. This is reflected in the fact that during such trials, they do not resort to utilisation of media experts, for example, from the Office of the Ombudsman, or journalists' associations,<sup>104</sup> but the media are equally to blame, as quite a few cases would have ended with mediation, with no court case, if the media were to respect the right of the reader/listener/viewer to a rebuttal, which is done only rarely.

<sup>99</sup> Henderson *et al.*, 2003.

<sup>100</sup> Preliminary research reports, "Public institutions openness index" conducted by Mediacentar Sarajevo in 2005. Official report to be published in late 2005 or early 2006. For more information, contact Mediacentar Sarajevo (<http://www.media.ba>).

<sup>101</sup> Halilović, 2005.

<sup>102</sup> Halilović, 2005.

<sup>103</sup> Halilović, 2005.

<sup>104</sup> IREX, 2005.



## **10.5. How free are private citizens from intrusion and harassment by the media?**

### **10.5.1. Laws**

(see also 10.1.1-10.4.1.)

As for print media, respect for privacy is regulated by the Press Code of Conduct, which prescribes that the press shall “avoid interference with anyone’s private life, other than cases when such interference is necessary in public interest. Reports involving personal tragedies shall be processed with full consideration, and persons affected by it will be dealt with discretely and compassionately.”<sup>105</sup> However, the Code is a self-regulatory instrument and as such it is not binding, and there are no legally prescribed sanctions for violations of its provisions.

Additionally, the Press Code of Conduct also establishes standards for protection of children and minors. Namely, Article 11 sets the following:

Journalists shall not interview or photograph children younger than 15 on issues related to the family of the child, unless the parents are present or parents or guardians have granted their permission. Newspapers and periodicals may identify children under the age of 15 carefully and responsibly, in cases when they are victims of offenses. Newspapers and periodicals shall under no circumstances identify children younger than the age of 15 involved in criminal cases, either as witnesses or as defendants.

As for electronic media, the Broadcasting Code of Conduct establishes an obligation for broadcasters to uphold general standards of decency and civility, protecting in particular the interest and sensitivity of children. Particular care is required when reporting on consequences of accidents or violence. When reporting on such subjects, the broadcaster must take into account not to enter the citizens’ privacy unnecessarily.<sup>106</sup> The Law on PBS BiH also prescribes an obligation for broadcasters to respect “privacy, dignity, and honour of any person, as well as fundamental rights of others, particularly children and youth.”<sup>107</sup>

The Law on Freedom of Access to Information (at the BiH level) also guarantees the right to protection of privacy, with a possible exception if the requested information involves personal interest related to privacy of third parties.<sup>108</sup>

Moreover, citizens are protected from aggressive advertising, by CRA rules as well as the Press Code of Conduct, and by the Law on PBS BiH. Pursuant to obligations arising from broadcasting licence contracts,<sup>109</sup> electronic media are obliged to respect the CRA rules related to advertising. Namely, the rules on advertising in electronic media programs requires advertising to be decent, true and accurate, and to be clearly distinguishable from other programs.<sup>110</sup>

The Press Code of Conduct indicates the necessity to distinguish advertising from other programs in the same way:

<sup>105</sup> Article 9, Press Code of Conduct.

<sup>106</sup> Broadcasting Code of Conduct of 1 August 1998, as amended on 9 June and 8 September 1999 and 10 February 2000.

<sup>107</sup> Law on PBS BiH, Article 27 (g).

<sup>108</sup> Article 8, Law on Freedom of Access to Information in BiH.

<sup>109</sup> Terrestrial broadcasting licence pursuant to Article 3.3 (a) of the BiH Law on Communications, Official Gazette Bosne i Hercegovine No. 33/02, 12 November 2002, <http://www.rak.ba/en/broadcast/?cid=3065>, as on 5 September 2004.

<sup>110</sup> Code of Conduct for Advertising and Sponsorship on Radio and TV (adopted on 9 March 2000, amended on 12 March 2001 and 6 December 2001.), CRA; Law on PBS BiH, Article 30.

Advertisements, political advertising and sponsored materials (texts and supplements) must be separated from editorial content and marked clearly as such. Sponsored material must contain a clear indication of the source of sponsorship.<sup>111</sup>

### **10.5.2. Implementation: Positive and negative indicators**

As for electronic media, first of all due to the strong position held by the Communications Regulatory Agency (CRA), reporting can be said to be generally considerate in relation to privacy protection of children and minors, and clear separation of advertising from other content.

The situation in print media is much worse. Namely, according to the 2004 report by the Press Council, daily newspapers were in the lead in violations of the Press Code of Conduct in reference to its Article 9 - Protection of Privacy.

(...) violations of Article 9 of the Code (privacy) come first in the number of violations in daily newspapers (136 cases) and ninth in both weekly and periodical editions (a total of 5 cases) (...) Daily newspapers are, in most cases, violating Article 9 of the Code on pages generally titled "black chronicle" (though not just there), where there are interferences with other persons' lives, even when it is not in the public interest, or there are stories about personal tragedies not made with due consideration, and persons affected by such tragedies are not approached discretely and compassionately.<sup>112</sup>

The same report by the Press Council indicates serious violations and manipulations with children in the newspapers, which is almost a daily occurrence.

The most frequent cases of violations of the Code are contained in texts revealing the identity of children victims of crime, as well as the identity of children under the age of 15 involved in offenses, or accused of offenses, as well as photographs of children (abandoned babies, child beggars) etc.<sup>113</sup>

Recent research on ways of media reporting about minors breaking laws, conducted by Mediacentar Sarajevo and commissioned by *Save the Children UK*, reached the following conclusions:

In general, the media construct a simplified picture of minors breaking laws, presenting them particularly negatively and outside the social or family context (...) The media point at juvenile delinquents as a particular menace to the society, completely neglecting the social causes and responsibility for the occurrence of juvenile delinquency. (...) In most cases, the media do not act in the best interest of minors.<sup>114</sup>

### **10.6. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?**

In the past ten years since the signing of the Dayton Peace Agreement, the media scene in BiH has progressed significantly in terms of its independence from government, as well as in developing pluralism of the media and sources of information in general, pluralism of opinions and, to an extent, the quality of reporting. Moreover, important advances have been made in developing a

<sup>111</sup> Article 12, Press Code of Conduct.

<sup>112</sup> Press Council, Report No. 2 on permanent monitoring of print media in BiH (April-May 2004), Vijeće za štampu, 2004, p. 10. ([http://www.vzs.ba/docs/izvjestaj\\_2.pdf](http://www.vzs.ba/docs/izvjestaj_2.pdf))

<sup>113</sup> Press Council, Report No. 2 on permanent monitoring of print media in BiH (April-May 2004), Vijeće za štampu, 2004, p. 12. ([http://www.vzs.ba/docs/izvjestaj\\_2.pdf](http://www.vzs.ba/docs/izvjestaj_2.pdf), as on 19 October 2005).

<sup>114</sup> *Analiza praćenja slučajeva maloljetničkog sukobljavanja sa zakonom u štampanim medijima u BiH* [Analysis of reporting on juvenile crime in print media in BiH], Mediacentar Sarajevo/Save the Children UK, 2005., p. 36.

legal and regulatory framework creating the basic preconditions for a gradual development of independent, pluralist and professional media sphere. However, we have identified numerous problems standing in the way of development of a self-sustainable, pluralist and professional media sector in BiH.

The most serious problem the media are facing in this country is certainly the financially extremely weak media market, whose development is hindered by poor economy, unfair local competition, and strong competition from the neighboring countries. This situation affects both private and public media, and it is particularly evident in the very difficult state of the public broadcasting system, as well as in print media and radio. In formal terms, relevant laws have been adopted allowing for this situation to be improved, particularly in relation to eliminating unfair competition and dumping of advertising prices. However, in practice, the authorities have not shown any serious interest in implementing laws, as evident in the case of the Competition Council and the implementation of the Competition Law, which should be dealing with these issues, but have not shown any practical results even three years following adoption.

Certain improvements have been made through efforts of media companies themselves, particularly in commercial television, whose pressure has forced the CRA to undertake activities in eliminating unlawful broadcasting of certain programs by TV stations from neighboring countries via cable operators, when such stations do not hold licences for broadcasting such programs in BiH as well. This was a case of protection of rights and interests of local TV stations which have purchased the rights to broadcast those programs in the territory of BiH.

It is also important to note the initiative by newspaper publishers, associations of journalists, printers, and other organizations, who put considerable pressure on the BiH Council of Ministers, so that they could spare print media and books the additional financial burden arising from the introduction of value-added tax as of January 2006. At the moment it seems that their efforts will bear fruit and that, despite the introduction of VAT, press and books will be subject to zero tax rate in 2006.

After almost two years of negotiations, on 5 October 2005, the Law on the Public Broadcasting System of BiH was finally adopted, aimed at creating conditions for a financially sustainable and efficient system of public broadcasters, able to meet the interests and win the support of all three constituent peoples. Adoption of this Law was one of the last preconditions by the European Commission for BiH to be able to commence its negotiations on stabilization and association with the European Union. The Law on the Public Broadcasting Service in BiH is being drafted and prepared, aimed at regulating the status and functioning of the Radio-Television Bosnia and Herzegovina (BHRT) which broadcasts across the state and which comprises one TV channel, BHT1, and one radio program, BH Radio 1. It is to be followed by harmonization of legislation on the entity broadcasters, RTVFBiH and RTRS, with the new Law on the Public Broadcasting Service in BiH. Although this Law on the Public Broadcasting System was adopted by BiH institutions, it is quite clear that it would hardly have been adopted without constant pressure from OHR and the European Commission, and without the conditions BiH had to fulfil to start negotiations on stabilization and association with the EU. Its real implementation remains to be seen.

Current research and daily examples indicate the particularly questionable reporting in print media, with regular breaches of the Press Code of Conduct in relation to issues of privacy, utilization of more than one source of information, presentation of minorities, women and children in the media, etc. In order to improve this situation, efforts are being made on several levels, aimed at full implementation of ethical and professional standards in BiH journalism. It should be noted

that there are efforts to transform the Press Council into an organization truly accepted by the entire media community, particularly by publishers and key print media outlets, which have thus far not truly participated in the work of the Press Council .

Moreover, international and local organizations offer considerable training opportunities for journalists, editors, and other media staff, and work on advancement of knowledge, skills, and ethical and professional standards in the media sector in general. In the past ten years, there have been hundreds of training programs for journalists from across BiH. More recently, particular focus has been placed on education and support in investigative journalism.

Considerable efforts have been invested in building the capacity of public institutions to apply the Law on Freedom of Access to Information, training staff to develop an appropriate relationship with the citizens, along with investments in the necessary technical resources. Numerous international donors and organizations are involved in projects aimed at reforming public institutions and local administrations, and they are the driving force of changes in the implementation of the Law on Freedom of Access to Information. Considerable effort are also invested in judicial and police reforms, and these processes are expected to reflect positively on the overall protection of journalists and the media from physical assaults and threats. So far, the police and the courts have not demonstrated the ability to deal with serious threats against freedom of expression.

There is also intense engagement of non-governmental organizations in the area of media monitoring, analysis of development of the media and media policies. One should also note the establishment of the Association of the Media Industry, whose primary task is to elevate the standard of rating surveys, which is an important element of improvement of managerial capacities of media outlets themselves, and indirectly a serious incentive for the overall growth of value of the advertising market in BiH.

Unfortunately, certain burning issues have still not been dealt with adequately. There are thus no serious activities aimed at developing and implementing a systematic policy of informatization and digitalization of society. A consequence of that is that BiH seriously lags behind in introducing IT and digital TV, in comparison with current European trends.

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## II. Political participation\*

### Is there full citizen participation in public life?

*Authors: Reima Ana Maglajlić<sup>1</sup> and Edin Hodžić<sup>2</sup>*

#### **II.1. How extensive is the range of voluntary associations, citizen groups, social movements, etc, and how independent are they from government?**

##### **II.1.1. Laws**

(See also 3.2. on freedom of association and assembly, 4.5. on legislative framework for trade union activity, and 6.1. on legislative framework for party activity.)

The Constitution of Bosnia and Herzegovina,<sup>3</sup> as well as constitutions of entities and cantons, provide for the citizens of BiH the freedom of peaceful assembly and association.<sup>4</sup> The Constitution also provides that BiH guarantees “the highest level of internationally recognized human rights and fundamental freedoms”<sup>5</sup> with legal force “above all other law”.<sup>6</sup> The only restriction is contained in Article 11, paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental freedoms,<sup>7</sup> prescribing that “no restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interest of national security or public safety, for the prevention of disorder or crime, or for the protection of health or morals or for the protection of the rights and freedoms of others”.<sup>8</sup> Interpretations of this Article have been incorporated in all the current state and entity Laws on Associations and Foundations, with an emphasis on the fact that programs and activities of associations and foundations may not be contrary to the constitutional order of BiH, aimed at its violent destruction, instigation of national, racial, or religious hatred, nor may they promote discrimination, prohibited by law.<sup>9</sup>

The procedure for registration of citizen associations at the level of the state did not exist until the adoption of the Law on Associations and Foundations in 2001.<sup>10</sup> This area was only regulated by entity laws, as the Constitution of BiH did not provide for state institutions to be competent to regulate the issue of non-governmental organizations.<sup>11</sup> Still, Article X/2 of the Constitution of BiH provides that rights and freedoms set by Article II of the Constitution of BiH, which include

<sup>1</sup> Sections 11.1, 11.2, 11.4 i 11.5 by Reima Maglajlić.

<sup>2</sup> Section 11.3 by Edin Hodžić.

<sup>3</sup> Point i) paragraph 3, Article II, <http://www.ustavnisud.ba/?lang=bs&page=texts/constitution/article02> (page search in June 2005).

<sup>4</sup> Freedom House, 2004b; ERRC, 2004; Sali-Terzić, 2001; CPCD, 2001.

<sup>5</sup> Paragraph 1, Article II, from Sali-Terzić, 2001: 179; CPCD: 2001: 1.

<sup>6</sup> IBHI, 1998: 6.

<sup>7</sup> One of a total of sixteen international documents incorporated in the BiH Constitution. Provisions of these documents are in direct application with legal force superseding law, although the overall legal system in BiH after the Dayton Agreement relied on it insufficiently, and despite the fact that local layers do not know this law well enough (IBHI, 1998: 4).

<sup>8</sup> IBHI, 1998: 6; CPCD, 2001: 2.

<sup>9</sup> Para 2, Article 5. Law on Associations and Foundations BiH, Official Gazette BiH, No 32/01, Article 3, Law on Associations and Foundations FBiH, Official Gazette FBiH No. 45/02, and Article 3, Law on Associations and Foundations RS, Official Gazette RS No. 52/01.

<sup>10</sup> Law on Associations and Foundations BiH, Official Gazette BiH No. 32/01.

<sup>11</sup> As it is not cited under items a)-j), paragraph 1, Article III, Constitution BiH, from IBHI, 1998.

the freedom of association, may not be abolished or diminished even by amendments to the Constitution, which was taken as the constitutional basis for regulating associations and foundations by a law adopted by the legislature of Bosnia and Herzegovina.<sup>12</sup>

The Parliamentary Assembly of BiH adopted the Law on Associations and Foundations<sup>13</sup> which came into effect on the 5 January 2002.<sup>14</sup> Registration of associations and foundations in BiH, foreign and international associations and foundations and other non-profit organizations was originally assigned to the Ministry of Civil Affairs and Communications in the Council of Ministers of BiH, and later to the Ministry of Justice.<sup>15</sup> During 2001<sup>16</sup> and 2002,<sup>17</sup> new entity legislation was adopted in this area. These regulations unified the registration of associations and foundations, abolished separate regulations for humanitarian organizations (in the Federation of BiH - FBiH), and introduced substantive legal novelties: in addition to these forms of association (citizen association and foundation), the new legislation provides for informal associations or citizen groups, requiring fewer number of founders than that prescribed by earlier legislation,<sup>18</sup> and regulates the status of property in case of termination of an association.<sup>19</sup> However, some authors<sup>20</sup> believe that this law contains numerous shortcomings, such as the absence of regulation of an issue related to tax dues and/or deductions for NGOs and a framework for securing funds for the work of citizen initiatives and volunteer groups.

Both state and entity laws allow non-governmental organizations to be directly involved in related economic activities (i.e. those which are necessary for the fulfillment of their basic statutory aims).<sup>21</sup> They may be involved in unrelated economic activities only through separate commercial units. According to current state Law on Associations and Foundations, they may generate income from membership fees (citizen associations only), and provision of goods and services.<sup>22</sup>

Framework laws secure protection from possible abuse arising from economic activities of NGOs: income generated through such economic activities may be used only for their basic statutory (non-profit) aims and, just like any other income or property of NGOs, is subject to restrictions prohibiting its distribution.<sup>23</sup>

The state-level Law on Associations and Foundations provides for a set of criteria based on which there is a distinction of organizations for public benefit and organizations for joint/private benefit,<sup>24</sup> and allows for more favorable tax treatment of the former,<sup>25</sup> although the acquisition of such a status is still rare.<sup>26</sup>

<sup>12</sup> CPCD, 2001.

<sup>13</sup> Official Gazette No. 32/01,

<sup>14</sup> Document 7: Opinion of FBiH Practitioners, in FOS, BHAS, and RSIS, 2005

<sup>15</sup> Official Gazette BiH No. 42/03.

<sup>16</sup> Law on Associations and Foundations RS, Official Gazette RS No. 52/01.

<sup>17</sup> Law on Associations and Foundations FBiH, Official Gazette FBiH No. 45/02.

<sup>18</sup> Three instead of twenty founders.

<sup>19</sup> CPCD, 2001,

<sup>20</sup> See, for example, Document 8: Links between entity reports on the NGO sector in the EU and in BiH and an overview, in FOS, BHAS, and RSIS, 2005; USAID BiH, 2004; CPCD, 2001.

<sup>21</sup> ICLN, 2002.

<sup>22</sup> CPCD, 2002: 3.

<sup>23</sup> I.e. an organization cannot distribute or use it for personal gain of individuals linked with the organization itself. (ibid.)

<sup>24</sup> Article 6, Law on Associations and Foundations BiH, Official Gazette BiH No. 32/01.

<sup>25</sup> Articles 13(5) and 21(5) Law on Associations and Foundations BiH.

<sup>26</sup> CPCD, 2001.

In 2004, at the initiative of youth organizations, the Law on Youth Organization<sup>27</sup> was proclaimed in the Republika Srpska (RS), which is a novelty and an incentive for preparation of similar laws in FBiH as well at state level. This Law sets “general interests and programs in the field of youth, establishment, association of youth organizations, activity, property, and financing, rights and duties, professional work and development, youth events, international youth cooperation, information, and bodies for development of youth policy”.<sup>28</sup>

### **II.1.2. Implementation: positive and negative indicators**

(see 4.5. on the work of trade unions)

Depending on the sources consulted, the data on numbers, areas and scope of work of associations, foundations, and citizen groups are sometimes contradictory, and mainly refer to the non-governmental organizations (i.e. the NGO ‘sector’) and/or include under that term other organizations which may only be registered pursuant to the abovementioned laws in BiH (e.g. professional associations, cultural or recreation societies, etc.). Research recently conducted by the FOS, BHAS, and RSIS,<sup>29</sup> shows that there are 9,095 organizations in BiH according to the NACE classification<sup>30</sup> and records of statistics bureaus of both entities and the Brčko District. Further verification of the data during the study showed that almost one-half of the registered organizations were no longer active,<sup>31</sup> while it was estimated that the population of ‘non-governmental’ organizations active in BiH was 4,629.<sup>32</sup> It is difficult to estimate whether this indicates a growth or decline of this form of association, due to a lack of earlier studies of the entire NGO population. The entire NGO population is difficult to estimate: some research indicates that the available registration lists with competent state authorities have not been updated.<sup>33</sup>

In BiH and in the world, the terms “civil society groups and organizations” and “NGOs” are used as if they have the same meaning,<sup>34</sup> which causes both terms to be considered unclear.<sup>35</sup> At the same time, “although the term ‘non-governmental organization’ is widely adopted, it does not exist as such in the process of registration with relevant bodies in BiH”.

Non-governmental organizations may be registered either as a ‘citizen association’ or as a ‘foundation’... Within citizen associations, there is no division to those associations/organizations established for the purpose of satisfying interests of a limited number of its members (professional associations, trade unions, sports clubs) and those established for the needs of beneficiaries (organizations with humanitarian social, educational programs) or those which contribute in some way, through projects and activities, to the development of either their local community, or the society as a whole. The latter, often called development organizations, mainly include donor funds for implementation of their projects and activities, unlike the former.<sup>36</sup>

Other than the most recent research,<sup>37</sup> most of the available documents treat the NGO sector in BiH as representative of the entire civil society. Data on the increase of the number of organizations are interpreted in that light. Thus, for example, the data available indicate that 16% of NGOs established new organizations, of which 73% are other NGOs, and 7% are business organ-

<sup>27</sup> Official Gazette RS No 98/04.

<sup>28</sup> Article 1, Law on Youth Organization, Official Gazette RS NO 98/04.

<sup>29</sup> The state and entity level Statistics Agencies Document 3: Report on a telephone survey of NGOs, in FOS, BHAS, and RSIS, 2005.

<sup>30</sup> Statistical classification of economic activities in the European Community.

<sup>31</sup> Document 2: Economic theory and background, in FOS, BHAS, and RSIS, 2005: 23.

<sup>32</sup> Document 3: Report on a telephone survey of NGOs, in FOS, BHAS, and RSIS, 2005: 6.

<sup>33</sup> Kotlo, 2005.

<sup>34</sup> Kaldor, 2003.

<sup>35</sup> UNDP, 2003.

<sup>36</sup> ICVA, 2005.:1

<sup>37</sup> FOS, BHAS, and RSIS, 2005; ICVA, 2005.



izations.<sup>38</sup> One of the ideas requiring further attention is the differentiation between the NGO sector and the wider term and practice of civil society.

In early 2000, the 'non-governmental' sector, as the most frequently cited segment of civil society,

[was] still non-profit, rather weak, with insufficient respect or understanding of its significance and role. It is unregulated, not only in terms of legal norms, but also in terms of structure and organization, which [nonetheless] gives it the strength for independence, wealth of action and versatile ideas.<sup>39</sup>

In other words, "we are only at the beginning of development of the NGO sector, with a clear awareness of only how things should not be done."<sup>40</sup>

*Table 11.1. Number of organizations under NACE classification at statistics bureaus of RS, FBiH, and the Brčko District.*

NACE code	NACE description	FBiH	RS*	BiH
85.3	Social services which are not state or private (with and without accommodation)	961	93	1054
91.11	Business associations and employers' associations	157	25	182
91.12	Professional associations	220	179	399
91.20	Trade unions	1270	25	1295
91.31	Religious organizations	138	10	148
91.32	Political organizations	722	39	761
91.33	Other membership organization. Including: Activities of organizations directly linked with a political party, supporting public issues through public education, fund-raising, etc. <u>Special interest groups</u> , e.g. touring clubs or automobile associations and consumer associations Associations aimed at social cohesion, such as 'Rotary clubs', etc. <u>Youth associations</u> , clubs and societies, etc. Culture and recreation associations (excluding sports) Animal protection associations	2039	1381	3420
92.62	Other sports activities	1151	685	1836
<b>TOTAL</b>		<b>6658</b>	<b>2437</b>	<b>9095</b>

*Source:* Document 3: Report on a telephone survey of NGOs, in FOS, BHAS, and RSIS (2005:3)

### **II.1.2.1. Citizen associations and initiatives and the NGO sector**

#### Positive indicators

As mentioned earlier, some organizations, such as trade unions, have a century-old tradition of activity in this region. In the socialist period, the work of different citizen organizations was quite well-developed, acting in different areas of public, societal, and political life.<sup>41</sup> There were also some organizations whose program activities were of humanitarian nature, but only the work

<sup>38</sup> Document 3: Report on a telephone survey of NGOs, in FOS, BHAS, and RSIS, 2005.

<sup>39</sup> Fočo, 2002: 8.

<sup>40</sup> Document 7: Opinions by practitioners in FBiH, in FOS, BHAS, and RSIS, 2005:1.

\* including 121 organizations registered in Brčko.

<sup>41</sup> Sali-Terzić, 2001; IBHI, 1998.

of the Red Cross was considered of greater significance, particularly during natural disasters.<sup>42</sup> Available data indicates that, for example, in 1989 there were approximately 5,000 citizen organizations in BiH.<sup>43</sup> However, these organizations were considered to be “an urban and elitist phenomenon, just like state policy... mainly concentrated in the capital.”<sup>44</sup>

In late 1980s, the economic crisis bore an impact on the weakening of control of the regime, and the creation of space for action of new civil initiatives.<sup>45</sup> These initiatives were related to, for example, conditions of study, development of independent media, human rights, and environmental protection.<sup>46</sup> In the early 1990s, in addition to these, there were also, for example, anti-war demonstrations, as a reaction to the onset of war in the neighboring Croatia and announcements of war in BiH.

Analysis of NGO development in early 1990s indicates their poor definition and the lack of a clear role for NGOs in BiH.<sup>47</sup> As there was no experience in methods or content of work, NGOs first established themselves as charity and humanitarian organizations, and only later they appeared with various other interests, content, method, and nature of ideas and activities.<sup>48</sup>

With the onset of the war in 1992, a large number of different international organizations came to the country, primarily humanitarian, dealing with humanitarian assistance for the population and social and health care.<sup>49</sup> Of the 123 countries across the world which had recognized BiH, 34 took part in humanitarian cooperation with BiH, through non-governmental organizations.<sup>50</sup> Germany had the largest number of active organizations (54), followed by the US (47 active organizations), Great Britain (41), Italy (26), and France (24). NGOs assumed almost entirely all the forms of humanitarian work and became an important factor in overcoming the difficult situation.<sup>51</sup> From that period onwards, different forms of activity and actions of civil society have been observed and researched almost exclusively through the existence and work of non-governmental organizations.

The first local NGOs were established during 1993.<sup>52</sup> Many of them grew out of projects initiated by international NGOs, trying to secure continuity of certain activities after the end of their projects, or at the initiative of local staff of those organizations.<sup>53</sup> Considerable contribution to the development of BiH non-governmental organizations came from the European Community Humanitarian Office, as well as many states, mainly Canada, France, and Germany, who initiated financial donations for local NGOs through their respective embassies. In 1996 and 1997, these countries were joined by the US.<sup>54</sup>

The number of NGOs started to grow considerably after 1995 and the signing of the Dayton Peace Agreement, which ended the war in BiH.<sup>55</sup> According to recent research by FOS, BHAS,

<sup>42</sup> IBHI, 1998.

<sup>43</sup> *ibid.*

<sup>44</sup> Andelić, 2005:111.

<sup>45</sup> Andelić, 2005.

<sup>46</sup> *ibid.*

<sup>47</sup> Document 7: Opinions by practitioners in FBiH, in FOS, BHAS, and RSIS, 2005.

<sup>48</sup> Fočo, 2002.

<sup>49</sup> IBHI, 1998: 25.

<sup>50</sup> Omerović, unpublished.

<sup>51</sup> CPCD, 2001: 5.

<sup>52</sup> Sali-Terzić, 2001: 177.

<sup>53</sup> Helms, 2003.

<sup>54</sup> IBHI, 1998.

<sup>55</sup> Sali-Terzić, 2001: 178.

and RSIS,<sup>56</sup> most of the international NGOs (43%) were first registered in the period 1996-2000, whereas most of the local organizations were first registered in the period 2001-2004 (40%). Authors of the research underscore that these indicators show that the generally accepted claim that the NGO sector was the phenomenon which developed during and after the war is, in fact, unsubstantiated. Authors do not present data on reasons for the growing number of international NGOs in the post-war period.

Several research reports cite children and youth as the largest beneficiary group in the NGO sector.<sup>57</sup> OIA data from 2003 show that there are 250 NGOs across BiH initiated and ran by youth themselves.<sup>58</sup>

Minority groups are part of the sphere of interest of international NGOs, which have shown considerable willingness to work with members of, for example, minority ethnic groups in certain parts of BiH,<sup>59</sup> although donors focus on the development of the so-called multi-ethnic groups, rather than those interested in or promoting their own ethnic identity.<sup>60</sup> In recent times, there has been growing interest in working on the protection of interests of, for example, the Roma community in BiH.

*Table: 11.2 Beneficiary groups receiving services from NGOs*

Beneficiary groups	% of the cited
1. Youth	60
2. Poor	44
3. Displaced persons	39
4. Refugees	37
5. Elderly persons	35
6. Women	34
7. Persons with disabilities	33
8. Other*	30
9. Single mothers	29
10. Children without parental care	28
11. Persons with mental problems	27
12. Roma	25

*Source:* Document 4: Report on a detailed survey of NGOs, in FOS, BHAS, and RSIS (2005:6)

In view of their sphere of responsibility, most organizations<sup>61</sup> focus their activities on a specific region or canton, so that detailed data indicates that activities are mainly conducted at the level of individual municipalities.<sup>62</sup> Most organizations are based in large BiH cities<sup>63</sup> (Banja Luka, Sarajevo, Zenica, Tuzla).

Research has shown that 40% of NGOs believe that they have no competition in those municipalities, i.e. that there are no other NGOs or public agencies providing the same service.<sup>64</sup> This is

<sup>56</sup> Document 3: Report on a telephone survey of NGOs, in FOS, BHAS i RSIS, 2005.

<sup>57</sup> E.g., CIP, in IBHI, 1998; ICVA, 2002a; Document 4: Report on a detailed survey of NGOs, in FOS, BHAS, and RSIS, 2005.

<sup>58</sup> OIA, 2003a.

<sup>59</sup> Helms, 2003; World Bank, 2002.

<sup>60</sup> Helms, 2003.

\* Others include employed persons, demobilized soldiers, students, teachers, children of single mothers, and 'all the above categories'

<sup>61</sup> 60% according to data in Document 3: Report on a telephone survey of NGOs, in FOS, BHAS, and RSIS, 2005:9.

<sup>62</sup> CIP, in IBHI, 1998: 45; Document 3: Report on a telephone survey of NGOs, in FOS, BHAS, and RSIS, 2005.

<sup>63</sup> Document 3: Report on a telephone survey of NGOs, in FOS, BHAS, and RSIS, 2005; Dialogue Development, in IBHI, 1998.

<sup>64</sup> Document 1: Reader's manual and summary of conclusions and recommendations, in FOS, BHAS, and RSIS, 2005.

open to the following interpretations: that certain services or support for the population would not exist if those organizations were not there to provide them,<sup>65</sup> that NGOs are not sufficiently informed about services provided by other (governmental and non-governmental) organizations, or that organizations are forced to describe their work in this way in order to fight for their own survival.

Other than the area of activity linked directly with consequences of the war, there are few, if any, differences in the fields of work of the NGO sector in BiH, in comparison with developed countries.<sup>66</sup> Key areas of activity of NGOs include: culture and recreation, economic and social services, and civic services and advocacy.<sup>67</sup> According to current research, the situation was similar some ten years ago (e.g. in 1997) - 35-40% of all organizations were involved in human rights, social issues and culture, sports activities and organization of free-time activities for specific groups of population, although the time the dominant activities were reconstruction, repatriation, distribution of humanitarian aid, and other activities related to overcoming the war-time destruction.<sup>68</sup> Similar data for 2002 came from research among youth organizations. Most of them state they work on education (72.8%), culture and arts (64.9%), human rights (58.5%) and health (55.8%)<sup>69</sup>. In late 1990s, NGOs dealing with economic development and work support began to appear, as did the first NGO networks.<sup>70</sup>

NGOs also allowed for the appearance of the first alternative political and other views, different from those promoted by the ruling political elites.<sup>71</sup> These organizations assumed certain duties which should normally be performed by state institutions, such as activities related to refugee return, legal aid services, etc.<sup>72</sup> It should be noted that NGOs are the ones insisting that elected politicians should be accountable to the citizens for the duties assigned to them, and they play an important role in creating an appropriate democratic climate for elections in BiH. These organizations also organized numerous public debates on election law during all the stages of its adoption, and influenced the final adoption of the text of this document.<sup>73</sup> Moreover, since 1998, a coalition of NGOs has been organizing and monitoring the voting process, and the election process as a whole.<sup>74</sup>

FOS, BHAS, and RSIS<sup>75</sup> estimate that the annual revenue of the NGO sector is 552,709,876 KM (4.5% of GDP), and their annual expenditure is 300,673,358 KM (2.4% of GDP), indicating that the NGO sector has considerable impact on the economy in BiH.

It is necessary to note that there is, in budgets of NGOs, a noted increase in the share of funds from government budgets on any level of government,<sup>76</sup> and a decrease of share of funds from international donations.<sup>77</sup> According to the study by FOS, BHAS, and RSIS<sup>78</sup>, 27% of the total sources

<sup>65</sup> Document 1: Reader's manual and summary of conclusions and recommendations, in FOS, BHAS, and RSIS, 2005.

<sup>66</sup> Document 7: Opinions by practitioners in FBiH, u FOS, BHAS and RSIS, 2005

<sup>67</sup> Document 1: Reader's manual and summary of conclusions and recommendations, in FOS, BHAS and RSIS, 2005.

<sup>68</sup> CIP, in IBHI, 1998: 28. At the same time, specific key activities, such as mine clearance, have continuously not been covered enough (IBHI, 1998).

<sup>69</sup> OIA, 2003a.

<sup>70</sup> Document 7: Opinions by practitioners in FBiH, in FOS, BHAS and RSIS, 2005.

<sup>71</sup> Document 7: Opinions by practitioners in FBiH, in FOS, BHAS and RSIS, 2005: 6.

<sup>72</sup> Document 7: Opinions by practitioners in FBiH, in FOS, BHAS and RSIS, 2005: 6; which may be interpreted as development of a parallel system, as opposed to the possibility of lobbying for the state to take its own commitments.

<sup>73</sup> Živanović, 2002.

<sup>74</sup> CCI, 1998; 2000a; 2000b; 2002.

<sup>75</sup> See Document 1 and Document 2 in FOS, BHAS and RSIS, 2005.

<sup>76</sup> Document 3: Report on a telephone survey of NGOs, in FOS, BHAS i RSIS, 2005

<sup>77</sup> Document 3: Report on a telephone survey of NGOs, in FOS, BHAS i RSIS, 2005; CPCD, 2001

<sup>78</sup> *ibid.*

of revenue of surveyed NGOs was from membership fees, 21% each from government and international donations respectively, 18% from domestic donations, 9% from contract-commissioned services, 2% from municipal funds, and 2% from other sources. BiH NGOs still have a very low level of revenue from state authorities (23%), and the highest level of revenue from charitable activities.<sup>79</sup>

### Negative indicators

International donors have focused entirely on the NGO sector when selecting civil society representatives to support,<sup>80</sup> with an emphasis on the size and distribution of groups, indicating a mutual link between the number of (formal) organizations and the size of civil society. Western strategies of civil society development (particularly the US) were so focused on “overpowering” the nationalist power in BiH, that they never focused on the development of civic representation - as the case was in other post-socialist countries of Central and Eastern Europe, where the aim was to prevent the return of communism.<sup>81</sup> Because of the over-emphasis on inter-ethnic cooperation and inter-ethnic activities, it became difficult to see if a given organization accept multi-ethnicity only publicly, in order to secure funds for its work, or it accepts it because of its own beliefs. This became a superficially understood and practiced political correctness of the nationalists in BiH, the international community, and the NGOs themselves (though for different reasons), thus only silencing, rather than resolving the mutual conflict,<sup>82</sup> while pushing the BiH context into the Western model of liberal multi-culturalism.<sup>83</sup>

At the same time, the syndrome of dependence on the international ‘industry of power’ was developing.<sup>84</sup> Almost all the financing of NGOs came through foreign donations, irrespective of the nature of certain organizations.<sup>85</sup> A study by ICVA<sup>86</sup> shows that in the period 2001-2002, financial support for the work of the NGO sector was provided by seventeen donor organizations,<sup>87</sup> 22 international institutions and bilateral governmental organizations, 11 embassies in BiH, and 34 international non-governmental organizations.<sup>88</sup>

Financial support, just like all other forms of support, has from the beginning been available only for the development of certain initiatives, resulting in a lack of certain services important for the exercise of rights and needs of BiH citizens. The number of organizations which in 1998 stated they were dealing with human rights is surprising, as there were, for example, only two organizations registered in FBiH as working on these issues.<sup>89</sup> According to some sources,<sup>90</sup> in 2004 almost one-third of the registered NGOs were dealing with human rights either directly or indirectly, although very few were dealing with promotion and right awareness education for the respect for human rights (most organizations were providing information and education for certain target groups). Data is similar for 2005: research by FOS, BHAS, and RSIS<sup>91</sup> shows that more

<sup>79</sup> Document 3: Report on a telephone survey of NGOs, in FOS, BHAS i RSIS, 2005:19

<sup>80</sup> Helms, 2003: 38.

<sup>81</sup> Helms, 2003.

<sup>82</sup> Helms, 2003: 102

<sup>83</sup> Gagnon, u Helms, 2003: 111

<sup>84</sup> Papić, 2001

<sup>85</sup> Document 1: Reader’s manual and summary of conclusions and recommendations, in FOS, BHAS and RSIS, 2005; OIA, 2003a; Fočo, 2002; CPCD, 2001; IBHI, 1998; see 14.2. on government relations with foreign donors

<sup>86</sup> 2002.

<sup>87</sup> Of which only two organizations were local ones.

<sup>88</sup> ICVA, 2002a: 26,

<sup>89</sup> IBHI, 1998,

<sup>90</sup> For example, UNDP et al., 2004.

<sup>91</sup> Document 3: Report on a telephone survey of NGOs, in FOS, BHAS and RSIS, 2005; N=200 organizations.



than 25% surveyed NGOs believe that their organization has some kind of advocacy role, although it seems that many organizations do not even understand the actual meaning of the term.<sup>92</sup>

The example of numerous NGOs which dealt with psycho-social problems during the war, and reconstruction following the signing of the Dayton Peace Agreement,<sup>93</sup> shows that the problem of NGOs in BiH is the adaptation of their work and re-orientation in relation to donors, rather than to the needs of their beneficiaries. In view of the influential role of the international community and donors on the development of this sector, NGOs are often perceived as an extended arm of international organizations, rather than the axis of civil society.<sup>94</sup> It is important to note that in most cases, representatives of the local NGOs did not lobby or provide comments for donors as to which needs and interests of the citizens were not included in donor missions, aims and tasks.<sup>95</sup> This indicates a certain level of conformist behavior of staff of local NGOs, i.e. their giving in to donor interests.

According to the opinion of, for example, certain representatives of local governance, this kind of conformism is present, perhaps, because in 1990s the NGO sector was also the “employment” sector, i.e. the security of subsistence of the “owner” (founders and staff of NGOs).<sup>96</sup> This was also a loss for political participation of citizens with “small p or capital P”, as quite a number of the intelligentsia found “sanctuary” in the non-governmental sector, rather than in government, politics, or power.<sup>97</sup>

On the other hand, organizations which were based primarily on the national identity of its members, remained outside the scope of western financing and other forms of support of the international community (and were also not interested in these funds).<sup>98</sup> At the same time, work of these organizations was not taken into any particular consideration in research conducted thus far on the quality and quantity of different forms of citizen association. As for “external” funds, these groups received funds from the religious associations of similar denomination, although they also often worked with no financial support - but with considerable influence among their members.

These organizations are not the only ones often with no financial support. Research from 2002 shows that almost 10% of the total number of NGOs had no projects, which some sources<sup>99</sup> interpret as the lack of any financing for their activities. Such data can, on the other hand, indicate a lack of human resources or civil society initiatives with no “professional NGO capacities” but with interest in promoting or protecting interests and/or rights of their members, irrespective of the absence or the lack of funds for their more comprehensive activity.

It is sometimes difficult to discern which agencies are donors, and which are implementers, whereas some only present their donations through international NGOs.<sup>100</sup> NGOs charge for very few of their services (9%), meaning that NGOs not only provide services, but also take part in transferring funds from donors to beneficiaries.<sup>101</sup> This indicates that there is a “long chain of

<sup>92</sup> E.g. in the same research, only 7% of business and professional associations identified advocacy as one of their services, whereas the main aim of such organizations in other countries is, in fact, advocacy. (Document 3: Report on a telephone survey of NGOs, in FOS, BHAS and RSIS, 2005:5). In the 2002 ICVA research, only 0.72% of the organizations stated they were active in public advocacy (ICVA, 2002a: 24).

<sup>93</sup> Document 7: Opinions by practitioners in FBiH, u FOS, BHAS and RSIS, 2005:4

<sup>94</sup> USAID BiH, 2004.

<sup>95</sup> Fadil Šero, Executive Director, CPCD, personal communication, October 2005.

<sup>96</sup> Ljubiša Marković, former Head of the Sarajevo Centre Municipality, personal communication, October 2005.

<sup>97</sup> Jasmin Imamović, Head of Tuzla Municipality, personal communication, September 2005.

<sup>98</sup> Helms, 2003: 149.

<sup>99</sup> ICVA, 2002a; IBHI, 1998.

<sup>100</sup> Sali-Terzić, 2001: 180.

<sup>101</sup> Document 3: Report on a telephone survey of NGOs, in FOS, BHAS and RSIS, 2005:2.



expenditure” from the donor to the ultimate beneficiary. At the same time, there is a considerable dose of insecurity regarding the continuity of provision of certain services, as most of the so-called project costs are secured only for the period of no more than one year.<sup>102</sup>

Certain authors have noted that there is a lack of transparency in placement, as well as in disbursement, of funds earmarked for BiH, and within the NGO sector itself.<sup>103</sup> Only very few NGOs are willing to publish their annual financial reports, annual income taxes, number of registered employees, and number of staff hired on temporary contracts,<sup>104</sup> which begs the question of transparency of work of the BiH non-governmental sector.

Available assessments of cost of international support for BiH in the period 1995-2000 show that there may be a question of success and efficiency of funds invested thus far.<sup>105</sup> There is a noted decrease of interest, and a decrease in the number of international donors and organizations.<sup>106</sup> In early 2000s, international academic (as well as donor) institutions began to show more interest in assessing the impact of foreign investments (donations, transfers of knowledge and other resources) in developing and countries in transition, for example, by introducing ethnography of assistance and development.<sup>107</sup> Such assessments, research and overviews are initiated and implemented mainly with no active participation of “local beneficiaries”.<sup>108</sup>

At the same time, procedures for receiving and using funds from state instructions are considered non-transparent and politicized<sup>109</sup> - accessible only to those NGOs which serve as “ideological façades of the existing system of values”.<sup>110</sup> Budget financing of NGOs is not transparent enough and it takes place under uneven conditions.<sup>111</sup> Certain authors believe that decisions on allocation of those funds take into account the character of the applicant organizations (i.e. an assessment of their political suitability) much more than their achievements in their basic mission, or the quality of programs and projects they offer.<sup>112</sup>

Through publications or on the basis of research results, NGOs have often criticized government representatives for the lack of willingness for partnership and support to their work, and the lack of support for public participation.<sup>113</sup> The authorities are believed to have preserved “the old, uniform attitude towards all NGOs as citizen associations, including in that group the most different associations and activities.”<sup>114</sup> Most NGO activities aimed at promoting cooperation with the government sector (be it at local, entity or state level) were considered as “association ‘against’ rather than ‘for’.”<sup>115</sup>

According to OIA research,<sup>116</sup> youth organizations are only partly satisfied with cooperation with government representatives (55.1%). It is often sporadic and temporary (68.7%). Still, the

<sup>102</sup> Document 1: Reader’s manual and summary of conclusions and recommendations, in FOS, BHAS and RSIS, 2005; ICVA, 2002a.

<sup>103</sup> Sali-Terzić, 2001.

<sup>104</sup> Document 7: Opinions by practitioners in FBiH, in FOS, BHAS and RSIS, 2005: 18.

<sup>105</sup> See Papić, 2001.

<sup>106</sup> Document 2: Economic theory and background, in FOS, BHAS i RSIS.

<sup>107</sup> See, for example, [http://www.iuc.hr/c\\_detail.php?kursID=198](http://www.iuc.hr/c_detail.php?kursID=198).

<sup>108</sup> See, for example, <http://staff.bath.ac.uk/mlssaw/autonomy.htm>.

<sup>109</sup> Document 7: Opinions by practitioners in FBiH, in FOS, BHAS and RSIS, 2005: 19; Sali-Terzić, 2001: 191.

<sup>110</sup> Helms, 2003:39; see also [www.fbihvlada.gov.ba/bosanski/zakoni/2004/odluke/312bos.htm](http://www.fbihvlada.gov.ba/bosanski/zakoni/2004/odluke/312bos.htm) for an overview of budget allocations for citizen associations and other organizations for the 2004 budget of the Federation BiH. The allocated amount was 348,000.00 KM, distributed among 33 organizations, with a minimum of 3,000 KM and a maximum of 20,000 KM.

<sup>111</sup> UNDP et al., 2004.

<sup>112</sup> CPCD, 2001: 7.

<sup>113</sup> Document 7: Opinions by practitioners in FBiH, in FOS, BHAS and RSIS, 2005; OIA, 2003a; ICVA, 2003.

<sup>114</sup> CPCD, 2001: 7.

<sup>115</sup> CPCD, 2001:9; Helms, 2003: 108, Document 7: Opinions by practitioners in FBiH, in FOS, BHAS and RSIS, 2005: 6.

<sup>116</sup> 2003a.

research states that 20% of youth organizations are satisfied with cooperation, whereas 21.8% are in constant contact with government institutions. Among the total NGO population, in research conducted in 2002,<sup>117</sup> 79.6% stated they had regular contact with local authorities, and 57.4% with entity and state authorities. These activities were in relation to:

- work in joint working groups (gender equality, combating trafficking in persons),
- work on joint projects, mainly financed by foreign donors,
- environmental protection activities,
- education of staff (of government institutions, by NGOs),
- alerts on human rights abuses in local communities,
- legislation for NGOs and beneficiaries,
- exchange of information.<sup>118</sup>

Still, 70.4% of surveyed subjects stated that the authorities were cooperative only occasionally, and 16.7% that the authorities were generally cooperative. Contacts between youth and government are often reduced to sporadic and irregular meetings, often established through personal contacts or party affiliation, with no coordination or procedure for such contacts.<sup>119</sup>

Low institutional and financial capacities of NGOs, on one hand,<sup>120</sup> and a large number of state institutions on the other, weaken the possibility of NGOs to participate more actively in public policy design.<sup>121</sup>

According to recent research by FOS, BHAS, and RSIS,<sup>122</sup> 55% of the surveyed NGOs stated that the level of support by government organizations improved in the past year (2004). Most NGOs (72%) cited different government organizations (such as municipalities and ministries) as principal partners.<sup>123</sup> Still, most NGOs, for example, in FBiH, believe that they lack the capacity (e.g. professional staff or lobbying skills) to develop a more serious partnership with government institutions at any level.<sup>124</sup> At the same time, the government sector lacks the knowledge and understanding of the NGO sector: these organizations are often seen as the extended arm of the international community, this directly “interfering” with “their” (the government’s) area of work.<sup>125</sup>

### **II.1.2.2. Political parties**

(see 5.1., 5.3., 6. and 7.1. on political parties)

(see 6.3.2. on collaboration of NGOs and political parties with opposition organizations and non-ruling parties (e.g. on organization of shadow government))

For the purpose of this research, data on numbers of membership of political parties were not available to us, despite requests for information forwarded to all the registered political parties in BiH (at [www.izbori.ba](http://www.izbori.ba)).<sup>126</sup>

<sup>117</sup> ICVA, 2002a: 29.

<sup>118</sup> *ibid.*

<sup>119</sup> OIA, 2002a: 5.

<sup>120</sup> CPCD, 2001: 7.

<sup>121</sup> Document 9: Importance of the BiH NGO conference: Inter-entity cooperation in BiH, in FOS, BHAS and RSIS, 2005:2.

<sup>122</sup> Document 3: Report on a telephone survey of NGOs, in FOS, BHAS and RSIS, 2005.

<sup>123</sup> Document 4: Report on a detailed survey of NGOs, in FOS, BHAS and RSIS, 2005: 5.

<sup>124</sup> Document 7: Opinions by practitioners in FBiH, in FOS, BHAS and RSIS, 2005: 6.

<sup>125</sup> Document 7: Opinions by practitioners in FBiH, in FOS, BHAS and RSIS, 2005: 8.

<sup>126</sup> Requests for information were sent in mid-May 2005, and no responses were received by mid-September 2005.

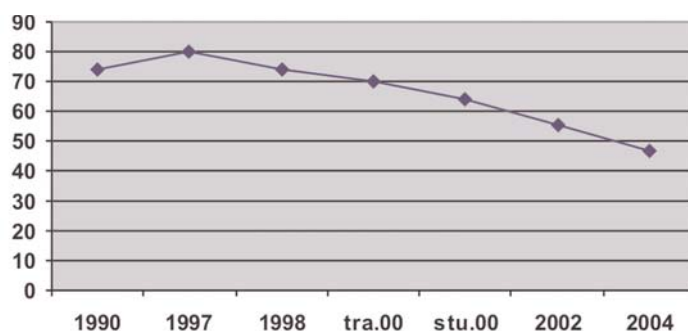
#### 11.1.2.4. Citizens and elections

(see 7.2. on public confidence in the government)

##### Negative indicators

The past ten years have seen a noted decline in voter turnout of more than 30% (see Chart 11.1.), explained in several ways. High turnout at the first parliamentary elections in 1990 is interpreted as turnout at elections which were “against” rather than “for”, i.e. elections aimed at effecting a fundamental redistribution of political power in BiH in favor of parties with dominantly mono-ethnic constituency and platforms, and at the expense of the party, i.e. “the order hypertrophied by negative communist heritage.”<sup>127</sup>

Chart 11.1. BiH voter turnout



Sources: Arnautović 1996, for 1990

Association of Election Officers in BiH 2003, for 1997-2002<sup>128</sup>

Election Commission 2004, for local elections 2004

More recently, low voter turnout is partly explained as the lack of any political alternative to the nationalist concept of most parties at the BiH scene since the beginning of democratic rule in BiH.<sup>129</sup> The very frequency of elections in the post-war period and frustration with weak changes brought by the elections are also cited as a possible explanation of low voter turnout.<sup>130</sup> In addition to this, politicization of all key issues in the society (accompanied by blockage of societal changes), economic situation in the country, growing crime and corruption, as well as the fact that BiH is organized as a kind of protectorate, lead to personal resignation and voter abstention.<sup>131</sup> Among the youth, who are a considerable part of the electorate, the principal reason for low turnout is believed to be the lack of awareness of the significance of the election process, fatigue by politicians and elections, and the view that there is no one to vote for.<sup>132</sup> According to an analysis of youth participation in the election process, conducted in 2004 by the Youth Information Agency, at the last parliamentary elections in BiH, the turn-out of BiH nationals between the ages of 18 and 30 was merely 25%.<sup>133</sup> Recent research into the value orientation of youth in Republika Srpska shows that values linked with social activism rank very low, which is interpreted as the

<sup>127</sup> Arnautović, 1996: 13.

<sup>128</sup> Data for 1996 elections missing. The cited publication of the Association states that there is no reliable data on voter turnout at the 1996 elections.

<sup>129</sup> CAI, 2005.

<sup>130</sup> OHR, 2002.

<sup>131</sup> Miodrag Živanović, professor, Faculty of Philosophy, University of Banja Luka, personal communication, October 2005.

<sup>132</sup> OIA, 2002a: 5.

<sup>133</sup> Jan Zlatan Kulenovic, Executive Director of the BiH Youth Information Agency, personal communication, October 2005.

“lack of faith in the possibility of developing or changing things in the society”- reflected, inter alia, in low election turnout of youth.<sup>134</sup>

It is important to note that BiH citizens do not have the possibility to elect the most powerful political figure in their country, the High Representative for Bosnia and Herzegovina, which confirms the limited scope of democracy:<sup>135</sup> namely, all four High Representatives have been elected by representatives of the international community, rather than citizens of BiH.

### **11.1.2.5. Unconventional forms of citizen association and action**

There are no official statistics on the frequency of unconventional forms of citizen association and action (strikes, protests, etc.) at the level of BiH. Informal data of the Association of Trade Unions in both entities note almost daily strikes of workers protesting the lack of respect of their rights, and regular protests of, for example, pensioners, as one of the most vulnerable marginalized groups.<sup>136</sup> Workers often resort to hunger strikes to protect their rights.<sup>137</sup> In the report of the Association of Trade Unions of Republika Srpska (SSRS) for the period July 2001 - July 2005,<sup>138</sup> it was stated that during that period, the 14 branches of the SSRS organized some 200 different strikes and workers' protests. Similar data was not available for FBiH. Strikes happen in relation to the unresolved legal and employment status of workers. Some groups of workers have not received salaries or had benefits paid for several years,<sup>139</sup> whereas, according to the Association of Trade Unions of BiH, approximately 150,000 employed, out of a total of 600,000, do not receive salaries on regular basis.<sup>140</sup> Research conducted during 2002<sup>141</sup> in RS (N=850) and FBiH (N=1000) show that more than one-half of RS citizens (57.2%) and more than two thirds of FBiH citizens (67.1%) believe that strikes are the only way for workers to win their rights. There were no statistics available on other unconventional forms of citizen association and action.

## **11.2. How extensive is citizen participation in voluntary associations and self-management organizations, and in other voluntary public activity?**

### **11.2.1. Laws**

(see also 11.1.1.)

Citizen participation is reflected through membership or voluntary work. Until the adoption of laws in the early 2000s, it was necessary to bring together 30 members of legal age to register a non-governmental organization.<sup>142</sup> Article 2 of the 2001 Law on Associations and Foundations in BiH<sup>143</sup> allows for an association to be initiated by three or more natural or legal persons. Pursuant to the same Law, associations and foundations should have an assembly as the principal governing body, comprising total membership of the organization, with an option to initiate a governing board.<sup>144</sup>

Despite its social significance, charity work has not been recognized in BiH as a legal category. The only recognized category of “volunteers” are “*stagieres*” - interns whose work is regulat-

<sup>134</sup> Čekrilija et al., 2004: 54.

<sup>135</sup> Freedom House, 2004b; see also 2.1. and 14.1. on the powers of the High Representative.

<sup>136</sup> See 4. on the right to work and to receive a pension.

<sup>137</sup> See, for example, Babaja, 2005; Mujkić, 2005; Grgić, 2004a; Grgić, 2004b; Šarac, 2004.

<sup>138</sup> Association of Trade Unions of RS, personal communication, September 2005.

<sup>139</sup> See, for example, Reiner, 2005; Spajić, 2005; Kaliman, 2004.

<sup>140</sup> Biber, in B.I.G., 2005.

<sup>141</sup> PARTNER Marketing Agency, unpublished.

<sup>142</sup> E.g. Article 9 of the Law on Citizen Association in FBiH, Official Gazette FBiH No. 6/95.

<sup>143</sup> Official Gazette BiH, 32/01.

<sup>144</sup> Article 16, Law on Associations and Foundations, Official Gazette BiH, 32/01

ed by laws on employment. At the same time, as an internship is the precondition for taking the state certification exam (e.g. in law or medicine), interns cannot be considered volunteers.<sup>145</sup>

### **II.2.2. Implementation: positive and negative indicators**

People in the street do not know what an NGO is. They think that it is an opposition to the authorities, or something humanitarian. They don't know the possibilities and they don't understand the potential of NGOs. All these people don't know that they could also initiate their activities, which would be linked with their problems. Citizens don't see themselves as actors. And the problem is that the government doesn't understand either. They think that NGOs jeopardize their rule.

(leader of a women's NGO in Helms, 2003: 40).

#### **II.2.2.1. Membership in associations and volunteer work**

There is a long tradition of voluntary work in BiH, particularly in local communities, and through activities of religious organizations and institutions.<sup>146</sup> More recently, in relation to NGO work, there are contradictory results related to the number of organizations which have volunteers - from 55%<sup>147</sup> to 84%.<sup>148</sup> Part of the explanation is related to the fact that some of the research was only among developmental or humanitarian organizations<sup>149</sup>

According to recent research by FOS, BHAS, and RSIS,<sup>150</sup> total membership in the non-governmental sector is 1,755,258, whereas organizations have an average of 2,256 members (men and women). According to this, approximately one half of the BiH population are members of the NGO sector, although this is more likely an indication of the fact that some individuals are members of several organizations.

Data for 2000<sup>151</sup> shows that 83% of all organizations had 3 - 350 volunteers. In 1997 research,<sup>152</sup> organizations had an average of 37 volunteers, whereas in 2004 the average was 44 volunteers per organization. Volunteers have potential added benefits, such as gaining work-related experience and training.<sup>153</sup> In the 2002 research,<sup>154</sup> 72.3% of the volunteers approached organizations themselves, in order to become part of their activities.

#### Positive indicators

Some examples of current practice may be the basis for regulation of voluntary work at the level of BiH. One such example is the initiative for alternative military service.<sup>155</sup> Such initiatives have generated considerable interest among the target population, the youth - according to official data of the Commission for Alternative/Civilian Service, in the period from 3 March to 12 July, they received 556 applications for alternative service.<sup>156</sup> In late July 2005, there were more than 3,000 conscientious objectors in FBiH who had the possibility to enter alternative service in one of 72 non-governmental organizations who signed an agreement on alternative service.<sup>157</sup>

<sup>145</sup> Information from Justification accompanying the Pre-Draft of the Law on Voluntary Work (UNV, July 2005).

<sup>146</sup> UNV, 2002.

<sup>147</sup> ICVA, 2002a.

<sup>148</sup> Document 3: Report on a telephone survey of NGOs, in FOS, BHAS and RSIS, 2005.

<sup>149</sup> For example, ICVA, 2002a, Vesna Vukmanić, personal communication, September 2005.

<sup>150</sup> Document 3: Report on a telephone survey of NGOs, in FOS, BHAS and RSIS, 2005.

<sup>151</sup> CPCD, 2001.

<sup>152</sup> CIP, in IBHI, 1998: 46.

<sup>153</sup> Document 2: Economic theory and background, in FOS, BHAS and RSIS, 2005.

<sup>154</sup> UNV, 2002.

<sup>155</sup> Svetlana Đurković, personal communication, October 2005.

<sup>156</sup> From <http://www.prigovorbih.org/> (page search on 3 October 2005)

<sup>157</sup> *ibid.*



### Negative indicators

In most NGOs, governing boards or assemblies, as the highest governing bodies prescribed by law, are merely names required for entry into registration forms during the process of establishing an NGO, whereas their real function, which should be to manage the organization, is neglected.<sup>158</sup> This is illustrated by research by FOS, BHAS, and RSIS.<sup>159</sup> According to this research, the average level of membership participation in decision-making is only about 45%.

Difficulties in recruiting new members and volunteers are noted as one of the key difficulties of the NGO sector in the second half of 1990s.<sup>160</sup> Data from research in the early 2000s offers possible explanations for these difficulties. In the 2002 research,<sup>161</sup> almost one-half of organizations surveyed did not have a clear policy of including volunteers in their work. Membership is often purely formal and is no real driving force that would decide on the method and direction of work of the organization.<sup>162</sup> From the “outside”, some organizations seem to be closed to membership.<sup>163</sup> Donor emphasis on multi-culturalism, which is seen as one of the features of the NGO sector, may have distanced some NGOs from the real opinions and views of local communities.<sup>164</sup> In the early 2000s, youth organizations engaged less than 5% of the total number of youth in BiH.<sup>165</sup>

Membership is also affected by the so-called “phenomenon of waiting” for someone else to take care of our problems, and the lack of public perception and understanding of the role of NGOs in a democratic society<sup>166</sup>

### **11.2.2 2.. Membership in political parties**

(see also 6. on political parties)

There is a large number of political parties in BiH, but most of them do not have a well-developed party infrastructure or a stable organization (political marketing, party media, endowments and funds, research and analysis professional groups, etc.).<sup>167</sup>

Despite a request for information on party membership numbers, none of the parties registered for the last election (see [www.izbori.ba](http://www.izbori.ba)) submitted the data. Additional secondary sources indicate that in the early 1900s some parties had memberships from 70,000<sup>168</sup> to as many as 600,000 - 700,000.<sup>169</sup> This was explained by the fact that at the time, parties functioned as national movements, rather than as political parties.<sup>170</sup> According to research conducted among 1,200 inhabitants of Banja Luka, Mostar, and Sarajevo in 2002,<sup>171</sup> between 21-28% of the subjects surveyed were members of political parties. On the other hand, in the BiH-level research conducted by the World Bank,<sup>172</sup> only 4.7% stated to be members of political parties.

<sup>158</sup> Document 3: Report on a telephone survey of NGOs, in FOS, BHAS and RSIS, 2005.

<sup>159</sup> Document 3: Report on a telephone survey of NGOs, in FOS, BHAS and RSIS, 2005:11.

<sup>160</sup> IBHI, 1998: 30.

<sup>161</sup> UNV, 2002.

<sup>162</sup> Research conducted recently by FOS, BHAS and RSIS (2005) indicated that many organizations seem to make no distinction between beneficiaries of services of the organization, volunteers, and members. Results indicate that 21% of the subject could not discern the term “member” from the term “volunteer”.

<sup>163</sup> Helms, 2003.

<sup>164</sup> *ibid.*

<sup>165</sup> OIA, 2003a.

<sup>166</sup> Document 6: Opinions by practitioners in RS, in FOS, BHAS and RSIS, 2005: 17.

<sup>167</sup> Džajić, unpublished.

<sup>168</sup> Arnautović, 1996.

<sup>169</sup> At the present time, in Andelić, 2005: 209; Džajić, unpublished.

<sup>170</sup> Andelić, 2005: 217.

<sup>171</sup> Tomić, unpublished; between 4 and 8% of the surveyed subjects are from rural areas, and 16-19% from suburban areas.

<sup>172</sup> N = 675, World Bank and ECSSD, 2002.



Table 11.3. - Research results: Are you member of a political party?

Location	Mostar (n=400)	Sarajevo (n=400)	Banja Luka (n=400)
Members of political parties	21%	28%	23%
Not members of political parties	73%	50%	60%
No response			17%

Source: Tomić (unpublished, 2004)

According to data from the UNDP,<sup>173</sup> 8% of the youth are members of political parties, but only a dozen political parties in BiH have party youth sections.

### II.2.2.3. Membership in trade unions

(see 4.5. on trade union work)

According to data from Prism Research, membership in trade unions is 120,000-180,000. According to data from the Association of Trade Unions of BiH, their membership is approximately 267; the number varies on monthly basis, depending on the payment of membership fees.<sup>174</sup> The Association of Trade Unions of RS includes 14 branch trade unions, with a total number of 157,130 individual members.<sup>175</sup>

## II.3. How far do women participate in political life and public office at all levels?\*\*\*

### II.3.1. Laws

#### International standards

Bosnia and Herzegovina signed the Convention on Elimination of All forms of Discrimination Against Women (CEDAW) on 1 September 1993. Annex I to the Constitution of Bosnia and Herzegovina, which cites international human rights agreements to be applied in BiH, incorporates this Convention directly into the Constitution. Adopted by the UN General Assembly Resolution 34/180 and having come into force on 3 September 1981, the Convention contains provisions related to elimination of discrimination against women in all walks of life, with no exclusive focus on the public sphere, but rather trying to achieve a change in the position of women in the private sphere as well. As one of seven fundamental human rights treaties, CEDAW is particularly important in that it recognizes the specific nature of systemic discrimination against women, and it develops a unique, comprehensive approach to the aim of its elimination. Namely, the Preamble (paragraph 14) of the Convention states that a *change in the traditional roles of men and women* in society and in the family is the necessary precondition which needs to be fulfilled in order to effect full gender equality. To that end, CEDAW sets a whole series of affirmative measures aimed at achieving substantial equality of women in politics, economy, society, culture, civic life, or any other area. The collective approach is particularly important in this Convention: namely, it notes that it is not enough merely to focus on improving the individual position of women by effecting their rights through legal remedies, but rather to transform conditions in the society determining the position of women as a group.<sup>176</sup> With the signing of the Convention,

<sup>173</sup> In OIA, 2002a: 4.

<sup>174</sup> Association of Trade Unions of BiH, personal communication, June 2005.

<sup>175</sup> Association of Trade Unions of RS, personal communication, June 2005.

<sup>176</sup> See, for example: Brad R. Roth, "The CEDAW as a Collective Approach to Women's Rights", Michigan Journal of International Law vol. 24, pp. 187-225.

states accept the responsibility to take appropriate action in order to achieve the aims of cultural transformation and to change the structural imbalance of social power between men and women.

Article 7 of CEDAW (Political and Public Life) sets an obligation of state parties to take all the necessary measures to eliminate discrimination of women in political and public life and, as particularly important aspects of that task, to secure for all women equal active and passive election rights, the right to participate in designing official policies and in any public office, and the possibility to work in non-governmental organizations and associations taking part in political life in a wider sense. According to the CEDAW Committee General Recommendation No. 23 (1997), reports by state parties to the Convention indicate that full and equal participation of women in public life and decision-making bears a positive impact on the implementation of their rights and on the implementation of Convention provisions on the whole.

In 2004, Bosnia and Herzegovina submitted its first report to the CEDAW Committee for Implementation of the Convention. It was a combined initial report and second and third periodic report, to be considered at the 35<sup>th</sup> session of the Committee, scheduled for summer 2006.<sup>177</sup>

In September 2000, Bosnia and Herzegovina signed the CEDAW Optional Protocol. As of 2002, which is when this Protocol came into force in BiH,<sup>178</sup> female citizens who believe that their rights protected by the Convention have been violated, and following the exhaustion of domestic legal remedies, have the possibility of approaching the CEDAW Committee as the last level of legal protection.

By accepting the 1995 Beijing Declaration and the Action Plan, Bosnia and Herzegovina committed itself to taking all the necessary measures to secure a favorable ambience and to create conditions for true elimination of gender-based discrimination in all areas of social life.

#### Institutional-legal framework

In addition to being part of the Constitution of BiH, the Convention on Elimination of all forms of Discrimination against Women was also incorporated in the Constitution of the Federation BiH (through Annex). As this Convention is not an integral part of the Constitution of Republika Srpska, CEDAW is applied in this entity on the basis of the principle of constitutionality and legality.

Both the Constitution of BiH and entity constitutions contain provisions on prohibition of discrimination, inter alia, on the basis of gender.<sup>179</sup> Moreover, according to Article 2 (2) of the Constitution of Bosnia and Herzegovina, the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto are in direct application in BiH and take priority over all other laws.

The Law on Gender Equality in BiH<sup>180</sup> guarantees “equal opportunities for all citizens... and prevents direct and indirect discrimination based on gender.”<sup>181</sup> This Law also sets a definition of discrimination, and provides for clear obligations of authorities on all levels related to harmonization of all other regulations with provisions of this Law, as well as the creation of appropriate infrastructure to allow its effective implementation. Article 3 of this Law gives a wide, though precise

<sup>177</sup> <http://www.un.org/womenwatch/daw/cedaw/> (22 May 2005)

<sup>178</sup> <http://www.un.org/womenwatch/daw/cedaw/protocol/sigop.htm> (June 2005)

<sup>179</sup> Provisions on non-discrimination in the enjoyment of constitutionally guaranteed rights and freedoms are in Article 2, point 4 of the BiH Constitution, Section II (Human Rights and Fundamental Freedoms), Article 2, point 1 (d) of the FBiH Constitution, and Article 10 of the RS Constitution.

<sup>180</sup> Official Gazette BiH, 16/03.

<sup>181</sup> BiH Gender Equality Law, Article 1.

definition of discrimination, classifying it as direct and indirect, whereby indirect gender-based discrimination is “present when apparently neutral legal norm, criterion, or practice equal for all, brings a person of one sex into a situation less favorable in comparison with a person of the other sex.” This legal definition is a clear elaboration of the meaning of discrimination set by Article 1 of CEDAW, whereby discrimination against women entails “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women... on a basis of equality of men and women...”<sup>182</sup>

Article 15, Chapter IX (Public Life) of the Gender Equality Law is particularly important, as it prescribes equal gender representation in state bodies, managing bodies of companies, political parties and NGOs, and an obligation of relevant bodies to prepare special programs of measures aimed at improving equal gender representation in public life. Paragraph 3 of this Article sets:

For the purpose of equal gender representation, the percentage of gender participation in bodies of power, including the judiciary and the executive, as well as all other public offices, committees and boards, including participation in bodies representing the state internationally, shall, as a rule (...) reflect equal gender representation.

The current Election Law of Bosnia and Herzegovina<sup>183</sup> contains a provision introducing affirmative action into the election process. This Law obliges political parties to ensure that at least one third of the candidates of the “less-represented sex” are present at party lists for elections for all levels of government. Although a neutral wording was used, this provision practically refers to women, as they are, as a rule, less represented in all levels of government.<sup>184</sup> Article 4.19 of this Law sets an obligatory formula whereby political parties are obliged to establish gender structure of election lists:

Any candidate list shall include male and female candidates . Candidates of the less-represented sex shall be distributed in the candidate list as follows: no less than one (1) candidate of the less-represented sex among the first two (2) candidates, two (2) candidates of the less-represented sex among the first five (5) candidates, and three (3) candidates of the less-represented sex among the first eight (8) candidates, etc.

Article 15 (2), of the Law on Civil Service in BiH<sup>185</sup> contains a nondiscrimination provision related to the treatment of civil servants, inter alia, on the basis of sex, whereas Article 23 of the same Law prescribes that discrimination, as defined by Article 15, shall not be present neither in selection of civil servants. The right to equal treatment of civil servants in all aspects of personnel policy is also set by entity legislation in this area: the Law on Civil Service in the Federation BiH,<sup>186</sup> and the Law on Administrative Service in Republika Srpska Administration.<sup>187</sup>

Regulations in this area of labor law also provide a contribution to the development of a complex legal mosaic of non-discrimination. Namely, Article 5 of the Labor Law of Republika Srpska<sup>188</sup> states that:

<sup>182</sup> Convention on the Elimination of All Forms of Discrimination against Women, in David Weissbrodt et al., *Selected International Human Rights Instruments and Bibliography for Research on International Human Rights Law*, Anderson Publishing, 2001, pp. 68-77. (quote transl. by E.H.).

<sup>183</sup> Official Gazette BiH 23/01

<sup>184</sup> Jasna Bakšić-Muftić, *Učešće žena u političkom i javnom životu Bosne i Hercegovine* [Participation of women in political and public life in BiH], Patchwork 1-2 (2003): 27-60, 37.

<sup>185</sup> Official Gazette BiH 19/02.

<sup>186</sup> Official Gazette FBiH 29/03 (Article 18, paragraph 2 of this Law sets the principles of non-discrimination in the treatment of civil servants, whereas Article 26 prescribes that principles of equality set by Article 18 are to be respected in public competition procedures).

<sup>187</sup> Official Gazette RS 16/02 and 38/03 (obligation of fair and equal treatment of civil servants in personnel policies is set by Article 85, paragraph 2, of this Law).

<sup>188</sup> Official Gazette RS 38/00.

A worker, or any person seeking employment, may not be placed at a disadvantage when exercising rights on the basis of work and the right to employment, on the basis of race, ethnic origin, color, sex, language, ... and other features not directly related to employment.

The Law on Changes and Amendments to the Labor Law of the Federation BiH<sup>189</sup> expanded considerably the non-discrimination provision of the original wording of Article 5,<sup>190</sup> which was almost identical to the cited provision from the RS Labor Law. Pursuant to the current amendment, in the procedure for finding discrimination, the burden of proof rests with the defendant (the employer) if the person claiming to be discriminated against presents clear evidence to that effect.

Moreover, both entity laws prescribe a fine for an employer found to be in breach of the equality principle in employment and treatment.

In case of violation of constitutionally guaranteed rights, caused by act or action of a person in an official capacity, proceedings may be initiated before a court of competent jurisdiction. Furthermore, Article 19 of the Gender Equality Law defines judicial protection of rights set by that Law.

Pursuant to criminal legislation in BiH, discrimination is a crime against human rights, i.e. against freedoms of a person and a citizen. Namely, criminal legislation of BiH and its entities provides for a prison sentence from six months to five years (BiH Criminal Code and RS Criminal Code), or one to eight years (FBiH Criminal Code) for officials or responsible persons discriminating against citizens on different grounds, including gender-based discrimination.<sup>191</sup>

The BiH Gender Equality Agency, whose establishment was provided for by the Gender Equality Law, was established by a decision of the BiH Council of Ministers, dated 19 February 2004. Its competences are set by Article 23 of the Gender Equality Law and include periodic State Action Plans for promotion of gender equality, and monitoring and coordination of measures and actions of all the relevant bodies aimed at promoting and effecting equality and equal gender representation. The Agency communicates with the international and national organizations dealing with gender issues, and coordinates the work of entity gender centers.

The FBiH Gender Center and the RS Gender Center were established in 2000 and 2001 respectively, and have the status of standing expert bodies of respective entity governments. Their activities are complementary with those of the Agency. The Centers monitor the implementation of the Gender Equality Law and report to the BiH Ministry for Human Rights and Refugees. Pursuant to Article 25 of the cited legal instrument, these institutions take part in the process of initiating and drafting laws and other regulations, and examine cases of violation of the Law. A particularly important obligation is to prepare annual reports, and to secure balanced gender equality policies on all levels of government in BiH; they cooperate with the NGO sector, particularly with organizations dealing with protection of human rights.

There are gender equality committees in the legislature of BiH and its entities, functioning as working bodies of the parliaments. At cantonal and municipal levels, activities are still under way in establishing committees with such tasks. At the time of drafting of this report, eight cantons in FBiH which had already adopted Rules of Procedure of cantonal assemblies, established gender equality committees/boards. Only the assemblies of the Posavina and the Herzegovina-Neretva cantons have not yet adopted such arrangements. Moreover, in nine cantons (except, again, the Herzegovina-Neretva canton) gender coordination boards have been established as periodic work-

<sup>189</sup> Official Gazette FBiH 32/00.

<sup>190</sup> FBiH Labor Law, Official Gazette FBiH 43/99.

<sup>191</sup> Article 145, BiH Criminal Code (Official Gazette BiH 37/03), Article 177, FBiH Criminal Code (Official Gazette FBiH 36/03), and Article 162, RS Criminal Code (Official Gazette RS 49/03).

ing bodies of cantonal governments. In 45 (of a total of 79) municipalities in the Federation BiH, gender equality committees have been established, functioning as permanent working bodies of municipal councils.<sup>192</sup>

According to the Draft Report of the RS Gender Center, until the end of 2004, gender equality committees were established in 21 (of a total of 62) municipalities in Republika Srpska. All these committees have similar competences: their principal obligation is to follow up on adoption of regulations and to define specific policies at relevant levels of legislature, in order to influence decisions of those bodies in terms of achieving a balanced effect of the specific policy for both women and men.

### 11.3.2. Implementation: positive and negative indicators

Despite a fairly well developed legal framework and certain measures of affirmative action and promotion of women's rights taken by the state, results of all the multi-party elections in BiH indicate that not enough has been done to change the stereotyped understanding of the social role of women and to promote their more prominent role in politics and in public life in general.

Namely, in the BiH legislature, women have never attained the "critical mass" of 30% participation which is, according to the UN CEDAW Committee General Recommendation No. 23, necessary to effect full influence on the content of decisions and the way they are reached.<sup>193</sup>

Table 11.4: Data on participation and success of women at elections for the House of Representatives of the BiH Parliamentary Assembly (i.e. 1990 Assembly of Bosnia and Herzegovina).

Year	Number of candidates					Number of elected representatives (men/women)				
	Total	Women		Men		Total	Women		Men	
		No.	%	No.	%		No.	%	No.	%
1990	-	-	-	-	-	240	7	2.92	233	98.08
1996	267	25	9.4	242	90.6	42	1	2.4	41	97.6
1998	452	130	28.8	322	71.2	42	13	31	29	69
2000	371	105	28.3	266	71.7	42	3	7.1	39	92.9
2002	663	234	35.3	429	64.7	42	6	14.3	36	85.7

Sources: Report of the Gender Center of the FBiH Government (2004); except for data for 1990, from: Jasna Bakšić-Muftić (2003).

Table 11.5: Data on participation and success of women at elections for the House of Representatives of the Federation BiH.

Year	Number of candidates					Number of elected representatives (men/women)				
	Total	Women		Men		Total	Women		Men	
		No.	%	No.	%		No.	%	No.	%
1996	720	76	10.6	644	89.4	140	7	5	133	95
1998	930	225	24.2	705	75.8	140	21	15	119	85
2000	1020	368	36.1	652	63.9	140	24	17.1	116	82.9
2002	1288	448	34.8	840	65.2	98	21	21.4	77	78.6

Source: Report of the Gender Center of the FBiH Government (2004).

<sup>192</sup> Interview with Ana Jakšić, Director of the Gender Center of the FBiH Government, June 2005.

<sup>193</sup> CEDAW Committee General Recommendation No. 23, paragraph 16, available on-line at <http://www.un.org/womenwatch/daw/ccdaw/recommendations/recomm.htm#recom23>



Table 11.6: Data on participation and success of women at elections for the National Assembly of Republika Srpska.

Year	Number of candidates					Number of elected representatives (men/women)				
	Total	Women		Men		Total	Women		Men	
		No.	%	No.	%		No.	%	No.	%
1996	592	45	7.6	547	92.4	83	2	2.4	81	97.6
1997 (extraord. election)	1443	169	11.7	1274	88.3	83	2	2.4	81	97.6
1998	1095	213	19.45	882	80.35	83	19	22.89	64	77.11
2000	1154	368	31.88	786	68.12	83	15	18.07	68	81.93
2002	-	-	-	-	-	83	14	16.9	69	83.1

Source: Gender Center of the RS Government, CEDAW Report (working draft), January 2005.

In general, only the 1998 election, organized on the basis of proportional representation with closed lists, though with the first application of the mandatory quota of 30% of women on party candidate lists,<sup>194</sup> came closer to the desired percentage in the election results, i.e. the composition of the representative bodies themselves. However, the open list system, which has been in application in BiH since the 2000 election, and by which voters may opt for a political party and also express their preference regarding the order of candidates offered, brought a significant decline in the presence of women in the legislature. Still, indicators for 2002, particularly at the level of cantons in the Federation BiH (a total of 22% women in cantonal parliaments<sup>195</sup>) indicate a general trend of moving closer to a more significant presence of women in legislature in BiH.

Seen from the vantage point of gender equality, the composition of the second chamber of the BiH Parliament and its entities shows a much bleaker picture. Namely, in the House of Peoples of the Parliamentary Assembly of BiH, there have been no women whatsoever in any of its terms. In the term 2002-2004, there were 10 women in the House of Peoples of the FBiH Parliament, i.e. 19.6%,<sup>196</sup> whereas out of 28 delegates in the Council of Peoples of Republika Srpska, only five are women.<sup>197</sup>

Although affirmative action at elections for all levels of legislature can be said to have generated some results, executive authority in BiH has not been included in this positive trend. So far, no women have been appointed to the BiH Presidency, nor have they served as President or Vice-President of the Federation BiH or of Republika Srpska, or the Prime Minister at state, entity, or cantonal level. The only exception is the President of Republika Srpska in the period 1996-1998. Data for the term 2002-2006 is self-explanatory: there are two women ministers in the Council of Ministers of BiH (of a total of nine ministries); FBiH Government has only one woman minister (6.26%), whereas the current RS Government has no women ministers;<sup>198</sup> according to information from the Gender Center of the FBiH Government, the percentage of women heading ministries at cantonal level is approximately 9%.

<sup>194</sup> OSCE thus applied the principle of positive discrimination (Rule 7.50, Provisional Election Commission), in: Nada Ler-Sofronić, *Gender analiza Izbornog zakona BiH* [Gender analysis of the BiH Election Law], Helsinki Citizens' Assembly Banja Luka, May 2003, p. 9.

<sup>195</sup> Report on the Implementation of the Convention on Elimination of All Forms of Discrimination Against Women in the Federation BiH, Gender Center of the FBiH Government, March 2004, p. 61.

<sup>196</sup> Ibid, p. 61.

<sup>197</sup> Data from the official web page of the National Assembly of Republika Srpska, available at <http://www.narodnaskupstinars.net/lat/delegati/delegati.php> (page search in June 2005).

<sup>198</sup> In all the mandates so far, the Government of Republika Srpska has been comprised of men almost 100%. The only exception is a woman minister in the Government elected in 2001.



At municipal elections held in 2004, out of a total of 140 posts of mayors, only three were won by women (one in the Federation BiH and two in Republika Srpska).

As for municipal councils, 2556 men (83%) were elected in total, and 540 women (17%). In the Federation BiH, women make up 18.36%, and in Republika Srpska 16.26% of the total number of municipal councilors. Only one woman (3.5%) was elected to the Assembly of the Brčko District, whereas the situation in the Mostar City Council is considerably more favorable (28.57% women).<sup>199</sup>

A comprehensive gender analysis of the recent municipal elections, conducted by the *Women and Society Centre*, reveals some very indicative tendencies. In comparison with the situation in 2000, when a total of 2686 men (82%) and 580 women (18%) were elected to municipal councils, indicates that in terms of participation of women in political and public life, if it is to be judged by the situation at the local level, no true positive changes have taken place in the past four years. This report states that this is indeed a piece of information necessitating careful analysis and concern, particularly in view of the fact that there are even fewer women at higher levels of the executive and the legislative branches.

Data on the gender structure of the judiciary in BiH indicates that the judiciary is a notable example in the general pattern of inadequate representation of women in all levels of government in BiH. According to recent data by the BiH High Judicial and Prosecutorial Council, in terms of percentage, the presence of women judges and prosecutors in the BiH judiciary is as follows: state level - 30.56%; entity level (Federation BiH) - 48.39%; entity level (Republika Srpska) - 30%; cantonal level (Federation BiH) - 53.55%; county level (Republika Srpska) - 43.41%; municipal level (Federation BiH) - 67%; basic court level (Republika Srpska) - 62.32%; and Brčko District BiH - 50%.<sup>200</sup> Comparing this with relevant data contained in reports by Gender Centers of entity governments in relation to the implementation of CEDAW in BiH, there can be said to be some continuity in greater presence of women in the judiciary in BiH. Still, a considerable improvement in this has been achieved through the recent practice of the BiH High Judicial and Prosecutorial Council, and the legal basis for such an improvement should be sought in the key provision of Article 43, paragraph 2 of the new Law on the High Judicial and Prosecutorial Council, which prescribes that "appointments at all levels of the judiciary are also to be aimed at attaining gender equality."<sup>201</sup> It is, however, important to note that the distribution of positions and power *within* the judiciary does follow the general trend to a considerable degree, moving further towards upper levels of the structures.

Presence of women in military and intelligence structures of BiH is not in compliance with NATO standards, which set a minimum level of 6% female personnel. According to a 2004 report by the Helsinki Committee,<sup>202</sup> there were no women at all in key functions at the Ministry of Defense and state intelligence service.

Women are insufficiently represented in BiH diplomacy as well. Namely, nine women (23%) serve in the rank of ambassador, and two were appointed as consuls general (29%). As for other diplomatic and consular functions, as well as administrative jobs, of a total of 261 staff, 82 are women (31%).<sup>203</sup>

In view of the position and significance of political parties in the election process, the even representation of women at relevant levels of in-house party hierarchy is the key pre-condition for

<sup>199</sup> Gender Analysis of Local Elections in BiH, Women and Society Centre, Sarajevo, 2005 (to be published).

<sup>200</sup> Secretariat of the BiH High Judicial and Prosecutorial Council, personal communication, 4 October 2005.

<sup>201</sup> Law on the High Judicial and Prosecutorial Council, Official Gazette of Bosnia and Herzegovina, No. 25/04.

<sup>202</sup> Cited in: Helsinki Human Rights Committee in BiH, Report on the State of Human Rights in BiH 2004, available on-line at: <http://www.bh-hchr.org/Izvjestaji/izvj2004.htm> (10 May 2005)

<sup>203</sup> Report by the Gender Center of the FBiH Government (2004), p. 87.

their success in political and public life. Although most parties generally advocate gender equality, in practice women are marginalized and positioned far from the centers of power and decision-making. Internal acts of these organizations indicate that gender equality is not one of their priorities of action. Namely, only one political party (BiH Social-Democratic Party) has a provision in its statute that its Main Board must have at least 30% women members.<sup>204</sup> Due to in-party marginalization, women do not have the experience of key candidates during election campaigns. On the contrary, most parties include women in their candidate lists at the last minute, merely to satisfy the legally prescribed quota of 30% of the “less represented sex,”<sup>205</sup> whereas very little is invested into promoting and profiling female candidates at elections, thus considerably reducing their chances of success with open lists. This treatment of women in political parties can be seen as the main cause of their insufficient presence in political life in BiH.

The situation is considerably different in the NGO sector. According to data from the Gender Centre of the FBiH Government for 2003, there were 1700 registered NGOs in BiH, of which, according to estimates at the time, approximately 75% were those dealing with women’s issues and whose membership was dominantly female. The creation of such a large number of women’s organizations can be explained by greater openness of the NGO sector for women’s activism, and the still evident marginalization of women in official politics, resulting in the fact that women find their space to work in the public sphere mainly through the non-governmental sector. Still, these organizations effect considerable influence over official policies, which is illustrated by the fact that the BiH Gender Equality Law was adopted following the years of intensive pressure from a network of women’s organizations across BiH.

All the data cited here indicates that not enough has been done to eliminate gender stereotypes and cultural biases, and to promote gender equality, which is an important, even an essential obligation arising from CEDAW. An aspect that certainly makes harder the inclusion of gender equality into public discourse and into official BiH politics is, certainly, the domination of ethnic identity and the “national key” in articulating laws and policies, leaving relatively limited space for achieving gender balance in the distribution of social power and in public office.<sup>206</sup>

Bosnia and Herzegovina expressed its willingness to implement key provisions of CEDAW by incorporating Convention provisions into texts of relevant state and entity level laws, but stereotypes and biases remain the principal factors inhibiting the anticipated positive changes initiated by the relatively favorable institutional-legal framework. Still, even the legal framework for non-discrimination is not complete yet, Namely, although the adoption of the Gender Equality Law is an important step towards achieving goals set by relevant international agreements, some of the fundamental laws in BiH have still not been harmonized with provisions of this Law. Adoption of relevant legal acts in order to effect gender equality on all levels and in all the bodies of legislative, executive, and judicial power, is yet to come to the agenda of the authorities in Bosnia and Herzegovina.

<sup>204</sup> Jasna Bakšić-Muftić (2003), p. 39.

<sup>205</sup> Shadow Report for the UN CEDAW Committee, Global Rights: Partners for Justice and the BiH NGO Coalition, January 2004, available on-line at [http://www.globalrights.org/site/DocServer/BiH\\_izvjestaj\\_u\\_sjeni\\_CEDAW.pdf?docID=142](http://www.globalrights.org/site/DocServer/BiH_izvjestaj_u_sjeni_CEDAW.pdf?docID=142) (June 2005), p. 25.

<sup>206</sup> See more in: Nada Ler-Sofronić, *Gender analiza Izbornog zakona BiH* [Gender analysis of the BiH Election Law], Helsinki Citizens’ Assembly Banja Luka, May 2003.

## **II.4. How equal is access for all social groups to public office, and how fairly are they represented within it?**

### **II.4.1. Laws**

*See Introduction on administrative structure of governance in BiH*

*See 1.1. and 1.4. on domination of the ethno-national element in the constitutional and legislative framework regulating the organization of governance*

*See 6.7.1. on the protection and equality of constituent peoples in the executive*

*See 1.2. on the rights of minorities and representation of national minorities in the executive*

*See 11.3. on participation of women in public office*

*See 13.1. on the administrative structure of governance in BiH*

*See 14.3. on international regulations and government support related to UN human rights treaties*

Article 19 on the Protection of Rights of Members of National Minorities<sup>207</sup> allows national minorities the “right to be represented in government bodies and other public offices on all levels, proportional to the percentage of their participation in the population on the basis of the last census in BiH.” Still, BiH is the only country in Europe where minorities and all who are defined as “other” are prevented by law from assuming high political positions, including the Presidency,<sup>208</sup> because those are reserved exclusively for members of the three constituent peoples - Bosniaks, Croats, and Serbs.

In April 2003, the House of Representatives adopted the BiH Gender Equality Law.<sup>209</sup> Article 15 of this Law indicates that state bodies and bodies of local self-governance shall secure and promote equal gender representation in governance and decision-making, and that the percentage of gender participation in those bodies at all levels of power, including legislative, judicial, and executive, “shall, as a rule... reflect balanced gender representation.” It is important to note that this Law secure gender equality, and not equality of the sexes.<sup>210</sup> The legal definition of “sex” contained in this Law indicates, in fact, the socially established roles of women and men (gender), rather than the biological determination (sex)<sup>211</sup>.

Laws determining employment in state civil service exist at state and entity levels. Article 2 of the Law on Civil Service in Institutions of Bosnia and Herzegovina<sup>212</sup> underscores that employment and promotion of professional careers of civil servants shall be based on public competition and professional competence, and that the structure of civil servants in state civil service “shall generally reflect the national structure of the population of Bosnia and Herzegovina according to the last census.”

### **II.4.2. Implementation: positive and negative indicators**

*See 5.1. on citizen representation in government structures and in legislature*

*See 5.4. on election alternatives available to citizens through the party-election system*

*See 5.5.1. on maintaining the social composition of the electorate in legislature*

The legal context of access of social groups to public office, which primarily defines the interests and protect the rights of constituent peoples in BiH, neglects to a considerable degree the

<sup>207</sup> Official Gazette BiH, 12/03.

<sup>208</sup> ERRC, 2004, see also 11.4.1.

<sup>209</sup> Official Gazette BiH, 16/03.

<sup>210</sup> Svetlana Đurković, Coordinator, Q BiH, personal communication, October 2005.

<sup>211</sup> Article 4 of the Gender Equality Law, Official Gazette BiH, 16/03.

<sup>212</sup> Official Gazette BiH, 19/02.

rights of non-national minorities (such as sexual minorities<sup>213</sup>) and other minority social groups, which have considerable presence in the world, as well as in BiH.

Although the BiH Civil Service Agency completed the process of appointment of individual civil servants, the process itself is more than 3-4 months long,<sup>214</sup> as is the process of removal of officials appointed contrary to current legislation.<sup>215</sup> During 2004, the Director of the Agency requested the BiH Council of Ministers to adopt changes to the Law on Civil Service, in order to allow recruitment of interns and to improve the age structure of civil service on all levels, to accelerate the process of recruitment of civil servants, and to change the composition of appointment commissions, dominated by representatives of state institutions, over representatives of the Agency (in the ratio of 3:2).<sup>216</sup>

The Roma population in BiH is some 70,000 and is practically the largest national minority. However, most of them, though BiH citizens, live abroad or are internally displaced.<sup>217</sup> According to data from representatives of the Roma community, 70% of the Roma in BiH are unemployed,<sup>218</sup> and no Roma are employed in civil service.<sup>219</sup>

Regulation and increase of representation of women and youth in parliaments of all levels was effected primarily due to NGO initiatives, such as initiation of open lists, which was a new indicator of significant steps in building a democratic society.<sup>220</sup>

Among the youth in BiH, only 1% believe that they may bear any influence over official political events.<sup>221</sup> Although they make up some 20% of the electorate, the youth have almost no representatives in government institutions.<sup>222</sup> At state, entity, and cantonal levels, there was in 2002 only one person younger than 30 serving as a minister, and several deputy or assistant ministers. In the legislature (16 parliamentary assemblies and councils I BiH, with more than 670 representatives), 97% of all BiH parliamentarians are older than 30.<sup>223</sup> Of a total of 45 delegates in both houses of the Parliamentary Assembly of BiH, in 2004 there were no delegates of either sex younger than 29, and just one was in the 29-39 age group.<sup>224</sup>

## **II.5. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?**

### **II.5.1. Activities undertaken at the initiative of NGOs**

Most of the activities and measures undertaken in order to remedy the problems identified in this field have been initiated by non-governmental organizations. Activities related to participation

<sup>213</sup> Finci, in Tuzla Citizens' Forum and Centre for Protection of Minority Rights, 1998: 7.

<sup>214</sup> See, for example Krsman, 2004; Sekulić, 2005.

<sup>215</sup> See, for example, Mijatović, 2005.

<sup>216</sup> Ibid.

<sup>217</sup> SAFAX, 2000.

<sup>218</sup> Osmanovic, in Renner, 2005b.

<sup>219</sup> The only Roma employed in civil service, Mr. Redžo Seferović (employed as security guard at the building of the OSA intelligence and security agency, in Zenica) was dismissed on 31 December 2004 (Bećirbašić, 2005: 51). The public was alarmed in relation to this case through the European Cultural Centre and the Helsinki Committee, and on 21 March Mr. Seferovic started a hunger strike. Until mid-May 2005, this case attracted the interest of international organizations in BiH and numerous human rights institutions, as well as the media (see P.PR., 2005). A petition was signed in Zavidovici, in support of Mr. Seferovic, in order to accelerate his return to work.

<sup>220</sup> Živanović, 2002: 12-13.

<sup>221</sup> UNDP in OIA, 2002a: 4.

<sup>222</sup> OIA, 2002a: 4.

<sup>223</sup> OIA, 2002a: 5.

<sup>224</sup> BiH Statistics Agency, 2005: 78.

of the non-governmental sector in decision-making processes gained significance in early 2000s,<sup>225</sup> when requests to develop the capacities necessary for this type of work also grew.<sup>226</sup>

The project titled “Gender Equality and Equity in BiH” (GEEB), co-financed by the Government of Finland, and implemented by the Gender Center FBiH, Gender Center RS, and the Independent Bureau for Humanitarian Issues (IBHI), is aimed at integrating the principle of gender equality into policies, programs and laws on all levels, strengthening the capacities of institutions responsible for gender mainstreaming in BiH, and quality improvement of participation and influence of women in centers of political power and decision-making. The implementation of this project includes organizations from RS and from FBiH, and their role is important from the point of view of the gender concept in both entities, and of raising awareness of BiH citizens on the importance of introducing the notion and the practice of gender equality into the patriarchal culture of BiH.<sup>227</sup>

It is important to mention the implementation of the BiH Gender Equality Law, whose main actors are the entity Gender Centers, the BiH Ministry for Refugees and Displaced Persons, and the BiH Directorate for European Integration, was conducted with considerable technical and financial support of the UN, led by the UNDP. This long-term project, to be implemented in several stages and in collaboration with NGOs, is aimed at creating all the necessary institutional and personnel capacities for full attainment of the principle of gender equality in legislation, and a comprehensive influence to that effect in social life, particularly aided by the planned integration of the gender concept into the education system, and a targeted media campaign. Moreover, pursuant to the Beijing Declaration commitments, entity Gender Centers have prepared the Draft National Action Plan which is “aimed at determining obligations of all the subjects and deadlines for certain activities aimed at eliminating discrimination against women in all areas of social life.”<sup>228</sup>

In addition to this, the establishment of the BiH Gender Equality Agency completed the institutional framework for promotion of principles of gender equality in public discourse, and its inclusion into official policies on all levels in BiH.

Drafting of the Law on Voluntary work was launched at the initiative of NGOs during 2004. This Law will regulate entry into contracts on voluntary work, rights and duties of providers of voluntary work, rights and duties of organizers of voluntary work, legal status of volunteers and other issues of importance for organized voluntary work. The Draft has been submitted to the BiH Ministry for Civil Affairs, and it is expected to enter the parliamentary procedure in autumn 2005.<sup>229</sup>

An NGO conference was held in December 2004, which adopted the following documents:<sup>230</sup>

- Agreement on Cooperation between the BiH Council of Ministers and the Non-Governmental sector in BiH,
- Quality Service Standards between the Government and the Non-Governmental Sector in BiH,
- Code of Conduct of the Non-Governmental Sector in BiH,
- Strategic Lines of Development of the Non-Governmental Sector in BiH.

The Agreement is currently being assessed by the Ministry of Civil Affairs and the Ministry of Justice of BiH.<sup>231</sup> The BiH Council of Ministers is the body competent to sign it, upon recom-

<sup>225</sup> ICVA, 2002a: 31.

<sup>226</sup> ICVA, 2005.

<sup>227</sup> Nuna Zvizdić, Women for Women, personal communication, October 2005.

<sup>228</sup> Report of the Gender Center of the FBiH Government, p. 12.

<sup>229</sup> Nicola Tiezzi, UNV, personal communication, 20 July 2005.

<sup>230</sup> CPCD, 2004.

<sup>231</sup> Document 9: Importance of the BiH NGO Conference: Inter-entity cooperation in BiH, in FOS, BHAS and RSIS, 2005.



mentation of the Ministry of Justice.<sup>232</sup> This process is led by the NGO Coalition “Joint Work, Joint Success”. The Coalition has been developing since early 2001,<sup>233</sup> with the aim of creating conditions for sustainable development, and drafting a development strategy for the NGO sector in BiH.<sup>234</sup> In 2004, the Coalition had 300 members from across BiH, organized through 15 regional reference groups.<sup>235</sup>

A network of NGOs has been established in BiH, through coordination of work of the regional reference groups, linking the work of NGOs in both entities.<sup>236</sup> Adoption of institutional cooperation between the government and NGOs proved to be a priority issue for its future, for the following reasons:<sup>237</sup>

- resolving issues of their status in BiH legislation, in compliance with policies of member states of the Council of Europe, and establishing specific cooperation from the local community to the level of the state, thus allowing greater NGO impact on public policy design;
- establishing an NGO cooperation office within the BiH Council of Ministers.

A Resource Center is planned to be established at the level of BiH as an institution serving the purpose of NGO development and providing resources for regular communication and coordination of NGO activities. A basic document is being prepared for developing a five-year development strategy of the NGO sector in BiH.<sup>238</sup>

The Youth Council of Republika Srpska (OSRS)<sup>239</sup> was established in May 2002, bringing together 13 local Youth Councils.<sup>240</sup> OSRS has successfully completed an advocacy campaign for the introduction of a youth observer mission at the National Assembly of RS, and advocated and took part in drafting of the Law on Youth Organization in RS<sup>241</sup> OSRS is defined as the highest level of youth organization in RS and is the partner of RS Government in designing and implementing youth policies.<sup>242</sup>

The Law came into force in November 2004 and is the most important document in the area of youth policy in RS as well as in BiH. The Law Defines key notions in the area of youth policy, to be included in short-term and mid-term strategy for solving youth problems in different walks of life. OSRS is planning to enter the governing committee, to be established for the purpose of adopting, implementing, and monitoring youth policy documents.<sup>243</sup> The document titled “RS Youth Policy” is in the final stage of drafting. OSRS representatives have taken part in the preparation of this document within different working groups, and were the leaders (coordinators) of some of them.

The BiH Youth Parliament was organized by the Youth Information Agency (OIA). This body is not an official institution or a formal network, but rather a group of individual representatives of youth organizations from across BiH, aimed at creating possibilities of dialogue of youth rep-

<sup>232</sup> Fadil Šero, personal communication, October 2005.

<sup>233</sup> NGO Coalition “Joint Work, Joint Success”, 2004e.

<sup>234</sup> CPCD, 2004

<sup>235</sup> *ibid.*

<sup>236</sup> Banja Luka, Bihać, Brčko, Čapljina, Doboј, Goražde, Livno, Mostar, Prijedor, Sarajevo, Trebinje, Travnik, Tuzla, Zenica, and Zvornik

<sup>237</sup> Document 9: Importance of the BiH NGO Conference: Inter-entity cooperation in BiH, in FOS, BHAS and RSIS, 2005:1.

<sup>238</sup> During 2005; Document 9: Importance of the BiH NGO Conference: Inter-entity cooperation in BiH, in FOS, BHAS i RSIS, 2005: 2.

<sup>239</sup> OIA, 2003.

<sup>240</sup> OIA, 2002b.

<sup>241</sup> Official Gazette RS, 98/04.

<sup>242</sup> OSRS, personal communication, June 2005.

<sup>243</sup> OSRS, personal communication, June 2005.



representatives with key decision-makers in governmental and international organizations.<sup>244</sup> The first meeting of the Youth Parliament was held on 11 June 2002, at the Parliamentary Assembly of BiH, with participation of 30 youth representatives from across BiH and 12 representatives of the Parliamentary Assembly. The meeting initiated the “Resolution on Youth in BiH”, which the House of Representatives adopted on 16 July 2002. Subsequent meetings of the Youth Parliament were held in July 2002 and February 2003. At the second meeting, the Youth Parliament initiated the establishment of a Youth Policy Working Group. There are in FBiH individual examples of establishment of youth committees or youth advisers, within the City Councils (Sarajevo, Tuzla), or the establishment of a position of youth officer.<sup>245</sup>

In 2005, in collaboration with the Centre for Promotion of Civil Society, the Centre for Civil Initiatives initiated a project titled “Minority Rights in Practice in BiH”, to be implemented in the entire territory of BiH, with a particular focus on the Prijedor municipality, where there are more than 15 national minorities, in order to allow minority groups to bear greater impact on their own position in society, to improve the legislative framework defining the position of national minorities in BiH, and to increase the level of understanding of minority rights among majority groups in BiH. Despite the existence of the Law on National Minorities, improvements in the Law itself are necessary, as is the harmonization of other relevant laws (e.g. the Election Law with this Law).

Through NGOs, citizens were able to participate in the preparation and monitoring of the BiH Mid-Term Development Strategy,<sup>246</sup> although the civil society was only included because key international interest groups stated that as their precondition to support the Government.<sup>247</sup> The purpose of preparation of this document was to create an environment attractive for foreign investments.<sup>248</sup> Within the BiH Coordinator for PRSP,<sup>249</sup> an NGO fund was planned, taking applications for project financing within implementation and monitoring of the Development Strategy.<sup>250</sup> Calls for submission of projects were to be announced in September and October 2004, but this has not happened as late as October 2005.<sup>251</sup>

Irrespective of all these activities, recent research indicates that more than 80% of different groups (adult citizens, school children, university students) were not aware of the existence of the BiH Development Strategy.<sup>252</sup> Organizations monitoring the implementation of the Mid-Term Development Strategy believe that the unit for monitoring and evaluation of the Development Strategy “should, in the forthcoming period of strategy implementation, afford greater attention to the real cooperation with development sectors of civil society, in order to ensure that evaluation of strategy implementation is based on the real impact of the implemented measures and activities on BiH citizens.”<sup>253</sup>

Independent monitoring of government work is more and more present in the sphere of interest of non-governmental organizations, in order to follow any progress and to guide government activities in concord with expectations and needs of the citizens, as well as requirements of regional integration processes.<sup>254</sup>

<sup>244</sup> OIA, 2003a: 5.

<sup>245</sup> OIA, 2002b: 8-9.

<sup>246</sup> CCI, 2004c; ICVA, 2004; UNDP et al., 2004; ICVA, 2002b.

<sup>247</sup> Young, 2002: 20.

<sup>248</sup> ICVA, 2002b: 39.

<sup>249</sup> In May 2004, this Office changed its name to the Office for Monitoring and Implementation of the Mid-Term Development Strategy, working within the Unit for Economic Planning and Implementation of the BiH Mid-Term Development Strategy - see <http://www.eppu.ba/#ojedinici>

<sup>250</sup> Ejupović, in ICVA, 2004: 14.

<sup>251</sup> See [www.eppu.ba](http://www.eppu.ba)

<sup>252</sup> CCI, 2004c: 6.

<sup>253</sup> ICVA, 2005: 1.

<sup>254</sup> See, for example, CPCD, 2003.

### **11.5.2. Reforms at the lowest level of governance**

*See also 13.3. and 13.4. on local level cooperation of government with relevant partners, associations, and communities*

Current research results indicate that cooperation of the non-governmental and the governmental sectors weakens as one moves to a higher level of governance (e.g. cantonal, entity, and state levels).<sup>255</sup> Many local communities (municipalities) in BiH have initiated different forms of cooperation at the local level, and politicians in local administrations believe that cooperation with the NGO sector is both positive and necessary.<sup>256</sup> During 2004, the Open Society Fund BiH and the BiH Municipal Development Program (Intercooperation - IC) awarded prizes for the best examples of citizen participation in local governance in BiH.<sup>257</sup> In nine selected municipalities<sup>258</sup> citizen participation mechanisms were improved in key public works (such as building asphalt road networks), legal aid programs were initiated, as well as an office to receive citizen complaints, and mechanisms were improved in citizen participation in decision-making.

The first prize was awarded to the Centre Municipality, Sarajevo.

Despite the legally incomplete system, it is possible to reform a body of local self-governance to the level of a functional model of quality management system, as verified by international certification.<sup>259</sup> Starting from the assumption that current laws should be fully implemented, and not just criticized, the Centre Municipality developed an enviable model of direct citizen participation in decision-making through local assemblies, and a model of interest-based, rather than a purely territorial principle for local initiatives.<sup>260</sup>

As early as in 2001 and 2002, through different mechanisms, citizens of this municipality influenced the drafting of the new municipal statute, adopted in March 2002.<sup>261</sup> Final text of the Statute included 27 suggestions and proposals which resulted from the public debate. In the Domaljevac-Šamac Municipality, innovations were introduced into preparations of the municipal budget, through a system of decision-making with citizen participation on the basis of a “down-to-top” system.<sup>262</sup>

Some municipalities introduced consultation within cooperation between NGOs and the local authorities as a tool to formalize citizen participation in public works (e.g. Monitoring Group of the NGO Forum in Odžak and cooperation with the Municipal Council, as well as a similar example of cooperation between the municipality and the NGO Forum in Sanski Most).<sup>263</sup> The Sanski Most Municipality appointed an NGO Coordinator, acting as the government contact person, and the Municipality also provided premises for the NGO Resource Centre. There are examples of similar initiatives in many other municipalities (such as Gradiška, Goražde, Mostar), but they are still not represented in official publications.<sup>264</sup>

In early 2000s, different levels of governance began to act as co-funders or participants in the implementation of projects funded by international donors.<sup>265</sup> Local authorities in RS and in FBiH

<sup>255</sup> USAID BiH, 2004; OIA, 2003a: 9.

<sup>256</sup> Kotlo, 2005.

<sup>257</sup> CCI, 2004b.

<sup>258</sup> Brčko, Usora, Petrovo, Istočno Novo Sarajevo, Domaljevac-Šamac, Bugojno, Sarajevo Novi Grad, Sarajevo Centar, and Prnjavor.

<sup>259</sup> Certification by ISO (International Organization for Standardization)

<sup>260</sup> Ljubiša Marković, former Head of Centre Municipality, in FES and FGT, 2004.

<sup>261</sup> CCI, 2004b

<sup>262</sup> Ibid.

<sup>263</sup> UNDP et al., 2004: 30.

<sup>264</sup> Fadil Šero, personal communication, October 2005.

<sup>265</sup> ICVA, 2002a: 28.

are slowly improving not only the tools for support to NGOs, but also the processes that NGOs are to respect in order to have access to those funds. The development of those processes (clearer procedures, application forms, criteria for awarding funds) with clear requests from NGOs, are an additional contribution to the development of NGO accountability.<sup>266</sup> Such examples are still not the result of a planned policy of changing the relationship between the governmental and the non-governmental sectors at state level,<sup>267</sup> despite the existence of the BiH Mid-Term Development Strategy and the role the two sectors, as well as the profit sector, had in the preparation of this strategy.

It is important to note that, despite these activities, there are still insufficient initiatives that would allow wider and more versatile political participation of citizens through personal, non-institutional engagement, i.e. those that would truly allow greater mobilization and development of a real civil society.<sup>268</sup>

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<sup>266</sup> Document 6: Opinions by practitioners in RS, in FOS, BHAS i RSIS, 2005: 15.

<sup>267</sup> CPCD, 2001: 14

<sup>268</sup> Darko Brkan and Miodrag Živanović, personal communication, October 2005.

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## 12. Government Responsiveness\*

### Is government responsive to the concerns of its citizens?

Authors: *Rebeka Kotlo*<sup>1</sup> i *Edin Hodžić*<sup>2</sup>

#### **12.1. How open and systematic are the procedures for public consultation on policy and legislation, and how equal is the access for relevant interests to government?**

##### **12.1.1. Laws**

The normative part of the Constitution of BiH itself does not explicitly include a provision on forms of direct democracy. The right and capacity of each citizen to participate, directly or through his/her elected representatives and without any discrimination or unreasonable restrictions, are regulated by the International Covenant on Civil and Political Rights and its Optional Protocol, which are integral parts of the Constitution<sup>3</sup>. Consequently, the constitutional system of BiH indirectly determines the grounds for legislative regulation of the forms of direct democracy at the level of the state of BiH. The Constitution of FBiH neither provides for the forms of direct democracy, but the above mentioned Covenant applies to this level of the of the structure of power, since it is incorporated into the Constitution of FBiH as well. Following the principles of constitutionality and lawfulness, this international instrument on human rights is applied in Republika Srpska, despite the fact that it is not a part of the Constitution. The Constitution of Republika Srpska foresees for the Parliamentary Assembly to rule on individual issues within its competence once the citizens have voted on a referendum.<sup>4</sup>

The forms of direct democracy - immediate participation of citizens in local self-governance - are regulated by the new Law on Local Self-Governance in Republika Srpska<sup>5</sup>, (earlier) the Law on Bases of Local Self-Governance in the Federation Bosnia and Herzegovina<sup>6</sup> and the Law on Principles of Local Self-Governance in the Federation Bosnia and Herzegovina,<sup>7</sup> whereas public debates, public consultations, and/or the right to initiate enactment of a law are regulated by: Rules of Procedure of the House of Peoples of the Parliament of Federation Bosnia and Herzegovina<sup>8</sup>, Rules of Procedure of National Assembly of Republika Srpska<sup>9</sup>, the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina,<sup>10</sup> and Rules of Procedure of the House of Representatives of Parliamentary Assembly of BiH<sup>11</sup>.

<sup>1</sup> Rebeka Kotlo is the author of sections 12.1, 12.3, 12.4 and 12.5

<sup>2</sup> Edin Hodžić is the author of section 12.2, and assisted in writing section 12.5

<sup>3</sup> International Covenant on Civil and Political Rights (1966.), Article 25, paragraph. 1.

<sup>4</sup> For more information see: Nurko Pobrić, *Ustavno pravo, [Constitutional Law] «SLOVO»*, Mostar, 2000.

<sup>5</sup> Law on Local Self-Governance in Republika Srpska, Official Gazette of Republika Srpska, No. 35/99, 101/04 i 42/05, (entered into force on 1.1.2005.), Articles 98 and 99.

<sup>6</sup> Law on Bases of Local Self-Governance in FBiH, Official Gazette of FBiH No. 6/95.

<sup>7</sup> Draft Law on Principles of Local Self-Governance in FBiH was adopted by the House of Representatives on January 17 and by the House of Peoples of the Parliament of FBiH on March 15, 2005. The public hearing on the Draft Law has been completed and the Law is in further procedure

<sup>8</sup> Rules of Procedure of the House of Peoples of the Parliament of FBiH (of May 28, 2003.), Article 151 and 152, Parliament of Federation BiH, House of Peoples, Sarajevo, October 2003, [http://www.parlamentfbih.gov.ba/bos/dom\\_naroda/poslovnik/pdf/1.pdf](http://www.parlamentfbih.gov.ba/bos/dom_naroda/poslovnik/pdf/1.pdf), July 25, 2005.

<sup>9</sup> Rules of Procedure of the National Assembly of Republika Srpska (Revised text), Official Gazette of Republika Srpska, No 50/01 and 108/04, Articles 182, 183, 199, 200 and 201.

<sup>10</sup> Rules of Procedure of the House of Peoples of the Parliamentary Assembly of BiH, Official Gazette of BiH, No. 53/00, Article 76, 77, 85 and 86.

<sup>11</sup> Rules of Procedure of the House of Representative of Parliamentary Assembly of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina No. 48/00, Article 82.



The Law on Local Self-Governance in Republika Srpska regulates that, in the interest of the local population, the local self-governance units shall develop appropriate forms of direct participation of the citizens, such as referendums, local citizen's meetings, civil incentives, local community, citizens' panels, proposals by citizens as items on the municipality assembly's agendas, and other forms that are not expressly prohibited by law.

Moreover, pursuant to the Constitution of Republika Srpska,<sup>12</sup> the citizens have right to express in public their opinion about the work of state authorities and other bodies and organizations, to file submissions, petitions and proposals and to have responses to them. No one shall be held responsible or be subject to any detrimental consequences due to publicly expressed opinion on the work of the state bodies or attitudes expressed in an application, petition or proposal, provided that no criminal offense is entailed in doing so.

The Rules of Procedure of the House of Peoples of Parliamentary Assembly of BiH prescribes that, the proposal of the draft law that can be made by any representative, committee, House of Representatives, the Presidency of BiH and the Council of Ministers, each within its own competence, shall have an explanation attached thereto. This explanation includes, *inter alia*, information on public hearing procedure, given that such public hearing has been foreseen and conducted in that particular case. Public hearings on a proposed law may involve various entities: interested bodies, expert institutions and individuals. The invited stake holders may express their opinion on issues concerning the proposed law, and support it by relevant material and documents.<sup>13</sup>

The Rules of Procedure of the House of Representatives of Parliamentary Assembly of BiH reads that the explanation that is submitted together with the draft legislation shall include, *inter alia*, the opinion of the institutions and organizations consulted in drafting of that particular legislation.<sup>14</sup>

The Rules of Procedure of the House of Peoples of the Parliament of FBiH prescribes that the incentive for the adoption of a law can be made by, corporations, chambers of commerce and general associations and communities, political organizations, associations of citizens and citizens. The incentive is lodged with the Speaker of the House of Peoples, given a prior consideration by the Legislative-legal committee and relevant working body of the House of Peoples, after which the Conclusion on admissibility of the incentive is made and the submitter informed thereof.<sup>15</sup>

The Rules of Procedure of the National Assembly of Republika Srpska regulates the right to propose legislation and other general acts vested in delegates, the President of Republika Srpska, the Government and at least three thousand of the constituents. The incentive for adoption of laws and other document within the competence of National Assembly may be submitted by a municipal assembly, a company or other organization, political organization, association or citizens. The original submitter of the proposal shall be informed about the position taken by the relevant legislative body in regards the incentive. The National Assembly may decide to hold a public hearing, once the draft law has been considered and if it is of particular interest of the citizens and if the relevant interested bodies, organizations or scientific or technical institutions should be con-

<sup>12</sup> Constitution of Republika Srpska, Article 32.

<sup>13</sup> Rules of Procedure of the House of Peoples of Parliamentary Assembly of BiH, Official Gazette of Bosnia and Herzegovina, No. 53/00, Articles 76, 77, 85 and 86.

<sup>14</sup> The Rules of Procedure of the House of Representatives of Parliamentary Assembly of BiH, Official Gazette of Bosnia and Herzegovina, No. 48/00, Article 82.

<sup>15</sup> Rules of Procedure of the House of Peoples of Parliament of F BiH, (of May 28 2003.), Articles 151 and 152, Parliament of F Bosnia and Herzegovina, House of Peoples, Sarajevo, October 2003, [http://www.parlamentfbih.gov.ba/bos/dom\\_naroda/poslovnik/pdf/1.pdf](http://www.parlamentfbih.gov.ba/bos/dom_naroda/poslovnik/pdf/1.pdf), 25. July 2005.

sulted. Consequently, such a conclusion includes the procedure for making draft legislation public and determining the term for holding a public hearing. The latter two are made public together with the draft law. The report on the results of public hearing, including the opinions and proposals presented at the hearing, shall be submitted to the National Assembly together with the draft law.<sup>16</sup>

### **12.1.2 Implementation: positive and negative indicators**

#### Positive indicators

A positive example would certainly be the conclusion reached by the Parliament of the Federation of BiH to hold a public hearing on the Draft Law on Principles of Local Self-Governance in the Federation of BiH. The hearing is to be organized in cooperation with the Department for Democratization of the OSCE Mission in BiH and will last 90 days. This will give chance to the citizens to express their views, opinions, ideas and positions concerning the presented solutions and following the democratic principles. The Draft Law was also published in all the daily papers with the largest circulation on the territory of FBiH in order to timely inform the citizens and other entities about the content of this Law.

It is worth mentioning at this point that the Committee for Local Self-Governance of the House of Representatives of the Parliament of FBiH, as a proponent of the Law, cooperated in its development both with the international organizations (OHR, OSCE, USAID, Council of Europe) and the nongovernmental organizations, (CCI - Centres for Civil Initiatives and the Centre for Promotion of Civil Society), who, in preliminary discussions, collected opinions, proposals and stanzas by the citizens, a number of which has been integrated into the proposed Draft Law.<sup>17</sup>

The role of the NGO sector in the development of the Poverty Reduction Strategy Program in BiH should be mentioned, as well as in the campaign for direct elections of municipality mayors in FBiH and in the incentive for setting up Parents' Councils in schools. This sector also participated in the process of adoption of the Gender Equality Law and in other activities in designing and enforcement of policies in various domains<sup>18</sup>.

One of the positive examples of involvement of citizens through associations of citizens (nongovernmental organizations) in the design and implementation of public policies is the participation of NGOs in the development and monitoring of the Development Strategy for BiH, in the field of education, environmental and social protection in particular. The report by the NGOs involved in monitoring of implementation of agreed measures and commitments arising from the Development Strategy for BiH<sup>19</sup> offers, *inter alia*, assessments, criticisms and recommendations for improvement of the state of the art in the mentioned fields.

At the session of the Government of BiH (Council of Ministers, author's note) where the issue of poverty and unemployment was discussed, it was agreed to set up the Economic and Social Council at the level of the state. The Council is to be set up by the Confederation of Trade Unions of BiH<sup>20</sup>, Council of Ministers and Association of Employers of BiH. These organizations ave

<sup>16</sup> Rule of Procedure of National Assembly of Republika Srpska (Revised text), Official Gazette of Republika Srpska, No. 50/01 and 108/04, Articles 182, 183, 199, 200 and 201.

<sup>17</sup> <http://www.parlamentfbih.gov.ba/bos/parlament/info/saopcenja.html>, 25 July 2005.

<sup>18</sup> For more information see: Section 11.1. - 11.5.

<sup>19</sup> NGO Report on the Course of the Implementation of the Development Strategy for BiH in the Field of Education, Social Protection and Environment, March 2004 - December 2004, ICVA, [www.icva-bh.org/bos/publications\\_wbsp](http://www.icva-bh.org/bos/publications_wbsp), 20 July 2005.

<sup>20</sup> Confederation of trade unions in BiH was created by merger of Federation of independent unions of BiH and Federation of unions of RS in 2005.

invited the Association of the Unemployed, Association of Farmers and all other organizations who want to take concrete steps in order to achieve a better socio-economic condition in the state. A team of experts coming from these organizations will, based on the economic platform of the Council of Ministers, develop a work program of this Council.<sup>21</sup>

### Negative indicators

Despite all the endeavors to promote the role of citizens in civil society in BiH taken by both domestic authorities and the international community, the citizens still have very few opportunities to present their opinion and views, and it is almost certain that they shall receive no feedback from the representatives of the authorities.<sup>22</sup>

In order to have the citizens involved at all in discussion and creation and implementation of the governmental policy and legislation, they must be, first of all, sufficiently informed. In this regard the situation in BiH is far from being a good one:

The Government of Bosnia and Herzegovina operates without a solid information base on what is going on in society. Policy makers, however, must have information about the society in order to be capable of choosing effective policies. At the same time the citizens need information on what the Government is doing to be able to hold them responsible for the moves they make... The absence of information in BiH is, first of all, the sign of a passive attitude of the authorities and weakness of the policies of the interest groups.<sup>23</sup>

This study by Transparency International<sup>24</sup> was conducted in 2004 relating to the implementation of the Law on Free Access to Information in BiH which sets forth precise obligations for the authorities in BiH. However, the Study indicated that there was no major progress in comparison to the situation in 2003. The requests for information were responded by only 54 percent of public authorities within the legally prescribed term of 15 days, which is 2 percent less than in 2003. Another 11 percent of public bodies responded after repeated application, a total of 65 percent.

The issue to what extent do the citizens really follow what the Government is doing and what is their share in designing and implementing of the policies and legislation was the subject dealt within the study conducted by Transparency International, "Study of the System of National Integrity in Bosnia and Herzegovina for 2004"<sup>25</sup> where it is said that certain groups of citizens, i.e. nongovernmental organizations, do attend Parliamentary sessions. However, the citizens are informed about the executive branch only subsequently through press conferences. When it comes to the monitoring of the results, i.e. the outcomes of what the executive and the legislative branch does, only the individuals or groups with specific interests are those who are actively involved (e.g. trade unions in case of collective agreements or other budget users).

The Study also states that "the described cases can be interpreted as a certain shift, i.e. an effort made by persons who are more interested in the final results, in other words, the scale of revenue rather than the quality of the decision making process". It should be pointed out that there

<sup>21</sup> <http://www.ntvhayat.com/home/vijesti/index.php?sta=3&pid=22326>, 30 September 2005.

<sup>22</sup> Statement given at the press conference by Centre of Civil Initiatives (CCI) held in Sarajevo at the public presentation of the Report on the participation of the citizens in decision making processes in BiH during the week of civil participation, 30.09.2005., <http://www.ccibh.org/main.php>, 30.9.2005.

<sup>23</sup> Governance Evaluation in Bosnia and Herzegovina, European Stability Initiative, Berlin Sarajevo, 2004, [http://www.esiweb.org/pdf/esi\\_documnett\\_id\\_64.pdf](http://www.esiweb.org/pdf/esi_documnett_id_64.pdf), page. 7-8.

<sup>24</sup> Transparency International Coalition Against Corruption, Press release for 2004 page 3.

<sup>25</sup> For more information see: Transparency International, Study of the National Integrity System for Bosnia and Herzegovina for 2004, page 182-183.

are no or very few organizations or civic groups who would systemically monitor the work of the authorities both from the perspective of procedures and the quality of offered solutions.

In brief, there is a certain level of monitoring of the work of the authorities that is presently more focused on the final results, rather than analysis, improvement and adoption of good governance options, i.e. processes that would in a long term perspective and clearly articulated sense lead to increased efficiency of the authorities and decreased level of corruption.<sup>26</sup>

In practice, civic groups or individuals do not often exercise their right to give comments or proposals concerning the draft law, despite the fact that such right is foreseen in the legislation. Based on the data at the level of municipalities, this has become somewhat of a regular practice. However it is still very rare at the higher levels of power.<sup>27</sup> Many important social groups, in particular the poor and rural populations, do not have many chances to influence the designing of public policies and practices of the government.<sup>28</sup>

Within the same context it should be highlighted that in BiH:

...the signs of active political participation by new groups like small business owners, or traditionally marginal group, like private farmers, or other tax payers or users of public services, are still insignificant. It is only public pressure exercised by such groups onto political processes that can put an end to the passive attitude of public institutions.<sup>29</sup>

The public in Bosnia and Herzegovina holds the use of strike to be the generally dominant, if not the only instrument in fighting for workers' rights. Based on the results of the Survey<sup>30</sup> the citizens of Republika Srpska, somewhat above one-half of them (57.2 percent), agree that strike is the only way for the workers to get their rights, whereas in the Federation the same opinion is shared by two-thirds of the (67.1 percent). This is the reason why various protests against those in rule and various forms of manifesting "civil disobedience" are so popular: strikes, occupation of facilities, blocking roads, etc.<sup>31</sup>

The workers in BiH are faced with practical obstacles preventing them from filing claims against their employers; these obstacles include a high unemployment rate, a large back log of cases at courts, and a large number of those working in the grey economy. This has led to rather weak protection against revenge directed towards workers due to their union activities.<sup>32</sup>

Collective bargaining is ensured by the Law on Labor Relations in RS and a comprehensive agreement on collective bargaining in the Federation; however, collective bargaining is not a form of direct, voluntary bargaining. Agreements on collective bargaining are mainly applied as agreements between the Government and employees in public sector. In the Federation there is no agreement on collective bargaining between private employers and unions. In RS, the general framework agreement on collective bargaining refers to all workers and it is bargained with unions, government and employers. This framework agreement refers to private enterprises disregarding whether the workers are union members or not. The Labor Law in the Brčko District fore-

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Governance Evaluation in Bosnia and Herzegovina, European Stability Initiative, Berlin Sarajevo, 2004., [http://www.esiweb.org/pdf/esi\\_documnett\\_id\\_64.pdf](http://www.esiweb.org/pdf/esi_documnett_id_64.pdf), p .5

<sup>29</sup> Ibid. p.9

<sup>30</sup> Public opinion survey, Agencija PARTNER Marketing from Banja Luka, September 2002, not published.

<sup>31</sup> For more information see: Section 11.2.4.

<sup>32</sup> See: Embassy of the United States of America, Highlights, "Report on the Status of Human Rights in Individual Countries- 2004, ed. by Bureau for Democracy, Human Rights and Labor, February 28, 2005, p. 24. [www.usembassy.ba/highlights/2005/bh/050307b0.htm](http://www.usembassy.ba/highlights/2005/bh/050307b0.htm), August 18, 2005.

sees for a special law on collective bargaining to be passed; however it has not been adopted yet and the workers have no right to collective bargaining.<sup>33</sup>

## **12.2 How accessible are elected representatives to their constituents?**

### **12.2.1. Laws**

According to the model developed by the OECD, there are three levels of communication between the representatives of the authorities and the citizens: the information model (characterized by one-way communication government-citizens, and which is reduced to simple seeking for information about the activities of the state bodies and institutions); the consultation model (two-way communication between the citizens and elected representatives characterized by the techniques like public opinion research or opening room to citizens to give their comments on the draft legislation); and the model of active participation (which implies a significant role of citizens in the stages of initiating and making decisions and which is based on a true partnership between the citizens and the elected representatives at various levels ).<sup>34</sup>

Nevertheless, despite rather open institutional and legislative framework, the practice in communication of the authorities in BiH with the citizens is still at a rudimentary stage, and some progress has been achieved at the first two mentioned levels. This indicates the general ambience in which the relationship between the elected representative and those who elected them is being built. Namely, the general structural-procedural framework for communication of the representative bodies in BiH with its citizens, as described in preceding section (12.1), indeed, determines essentially the conditions in which the direct communication between the elected representatives and the constituents is conducted. Therefore it is not surprising that the obligations of the elected representatives to ensure necessary mechanisms for direct communication and the communication itself are not regulated by legislation in Bosnia and Herzegovina. In other words, neither the relevant laws, nor the rules of procedure of representative bodies at all the levels do contain provisions regulating this matter.

The Law on local self-governance in Republika Srpska<sup>35</sup> that entered into force recently is the only act that specifically regulates the issue of providing for a minimum of infrastructure for the communication with citizens. Article 24 of this Law prescribes that “a municipality shall provide facilities and conditions for the operation of the Representatives’ Office for all the representatives in National Assembly of Republika Srpska and Parliamentary Assembly of Bosnia and Herzegovina who are elected from its territory.” This provision, though formalistic by nature, and with no clear guidelines about responsibilities of the delegates at all levels to be truly available to those who elected them, is still significant progress in creating systemic interaction between the elected representatives and the citizens.

The Draft Law on the principles of local self governance in F BiH, which is currently in parliamentary procedure, does not, unfortunately, foresee for a similar solution.

<sup>33</sup> Embassy of the United States of America, Highlights, “Report on the Status of Human Rights in Individual Countries- 2004., ed. by Bureau for Democracy, Human Rights and Labor, February 28, 2005, [www.usembassy.ba/highlights/2005/bh/050307b0.htm](http://www.usembassy.ba/highlights/2005/bh/050307b0.htm), August 18, 2005.

<sup>34</sup> See Stephen Coleman and John Götze, “Bowling Together: Online Public Engagement in Policy Deliberation”, Hansard Society, <http://bowlingtogether.net/bowlingtogether.pdf> (May 15, 2005.)

<sup>35</sup> Official Gazette of Republika Srpska, No. 35/99, 101/04 and 42/05



### 12.2.2. Implementation and main indicators

Generally speaking, the practice in communication between the citizens and elected representatives in Bosnia and Herzegovina has not been institutionalized. There are numerous reasons for such a situation, but what deserves to be especially highlighted are the insufficiently regulated systemic procedures and the absence of a respective infrastructure in representative bodies, insufficiently developed participatory culture (see Section 12.1) and significant absence of interest of citizens in public affairs during the period between the elections<sup>36</sup>, the absence of greater pressure by the public in terms of solving of the problem at the institutional level, and certainly, the low level of confidence of the citizens in the political institutions (see Section 12.4).

Representatives in Parliamentary Assembly of BiH, even those with the status of professional representatives, do not have their own offices. According to the Rules of Procedure of the House of Representatives of Parliamentary Assembly of BiH<sup>37</sup>, the Commission for Administrative Matters decides on the distribution of capacities available and on creation of administrative, technical and other conditions for the work of caucuses in this House<sup>38</sup>. The Rules determine that a caucus may be set up by minimum three representatives, and the so-called mixed caucuses and those composed of representative from one electoral slate have the same rights and obligations. The caucuses have their own premises where the administrative secretaries and professional representatives work. However, the communication with citizens is not foreseen as one of the activities of the caucuses' offices and such contacts with the citizens are realized at the party facilities in respective communities<sup>39</sup>.

The situation is the same in the House of Peoples of Parliamentary Assembly of BiH, where the delegates are organized in Parliamentary Clubs of Peoples (three clubs with five delegates each).

The Parliamentary Assembly of BiH has a well-developed web page with information about all the representatives, i.e. delegates, including their CVs. It is only at this level of the legislature that each representative/delegate has his/her official e-mail address on which he/she can be directly contacted.

The Rules of Procedure of the House of Representatives of the Parliament of FBiH<sup>40</sup> specifies in Article 25 that the caucuses shall be allocated facilities and other office material necessary for their work based on the capacities of the House. However, in practice, the flexible formulation of this provision led to the situation that only those parties with a larger number of representatives have their offices, where most of the communications with citizens and other interested parties take place. The situation in the House of Peoples of the Parliament of FBiH is somewhat better, since the members of this House are elected, based on the Constitution, from Cantonal Assemblies where the infrastructure and facilities for external communication are generally better<sup>41</sup>. The Parliament of the Federation has its web page, but the representatives/delegates do not have individual e-mail addresses.

<sup>36</sup> Interview with the CCI representative, May 20, 2005.

<sup>37</sup> Official Gazette of Bosnia and Herzegovina No. 48/00.

<sup>38</sup> Rules of Procedure of the House of Representatives of Parliamentary Assembly of BiH, Art. 17.

<sup>39</sup> Public Relations Office of the Parliamentary Assembly of BiH, personal communication, May 2005.

<sup>40</sup> Rules of Procedure of the House of Representatives of Parliament of Federation BiH (April 2003), revised text; amendments to the Rules published in Official Gazette of Federation BiH, No. 2/98, 26/98, i 6/03, available on Internet at: [http://www.parlamentfbih.gov.ba/bos/predstavnicki\\_dom/poslovnik/index.html](http://www.parlamentfbih.gov.ba/bos/predstavnicki_dom/poslovnik/index.html).

<sup>41</sup> Secretariat of the Parliament FBiH, personal communication, May 2005

The delegates in the National Assembly of Republika Srpska do not have offices either. Pursuant to Article 87 of the Rules of Procedure of the National Assembly of RS<sup>42</sup>, each caucus<sup>43</sup> has its office with all the facilities for external communication. However, in the absence of regulations at the level of National Assembly, the issue of communication with citizens is entirely left to the Caucuses and their work plans. The National Assembly of RS has its web site, but the communication goes through the offices of the Caucuses, because the delegates do not have individual e-mail addresses.<sup>44</sup>

There is no information about official incentives at the level of legislative bodies of Bosnia and Herzegovina and its Entities aiming at development of good practices of communication between the citizens and elected representatives. It can be consequently concluded that this matter has not been systemically resolved either at the level of legislation or in the domain of practice of the representative bodies. The communication of the representatives with the citizens is almost entirely left to the organizational structures and the programs of political parties from which the elected representatives come.

The absence of adequate technical infrastructure for communication is still a major technical hindrance to the development of communication between elected representatives and citizens. However, against the background of present reforms, funds allocated for such a purpose would be considered an additional burden in terms of investing in an already excessively large administrative apparatus. The situation becomes even more complex given the prevailing traditional forms of communication (personal contacts and communication via postal mail), because in Bosnia and Herzegovina, a country with still a small number of internet users (see Section 10.2), the perspectives offered by electronic communication will not play a major role for quite long in improving of the conditions in this field.

Insufficiently developed political culture of both the constituents and the elected is certainly a fundamental problem in Bosnia and Herzegovina within the context of this significant issue. On the other hand, the absence of serious studies and research projects dealing with these issues is, indeed, one of the indicators that a systemic improvement of fundamental relations within a parliamentary democracy, the relationship between the elected representatives and the citizens, does not yet not occupy an important position on the list of priorities of the transitional democracy in Bosnia and Herzegovina.

### ***12.3. How accessible and reliable are public services for those who need them, and how systematic is consultation with users over service delivery?***

#### ***12.3.1. Legal framework***

The institutions with public authority (public services) are, by virtue of their competencies, in most direct contact with the citizens regards providing services to citizens/ service users, and therefore their work, consequently, has the most direct impact on the rights that the citizens enjoy.

<sup>42</sup> Rules of Procedure of National Assembly of Republika Srpska (Revised text), Official Gazette of Republika Srpska, No. 50/01 and 108/04.

<sup>43</sup> Pursuant to Art. 19 of the Rules of Procedure of National Assembly of RS, a caucus may be set up by delegated elected from one electoral slate with minimum of four members, i.e. association of representatives from more slates, with minimum four members.

<sup>44</sup> Secretariat of National Assembly of RS, personal communication, May 2005

Pursuant to the Law on Administration of BiH,<sup>45</sup> public services are institutions with public competencies, i.e. public corporations<sup>46</sup>, chambers, public enterprises (associations)<sup>47</sup>, agencies and other legal persons in Bosnia and Herzegovina, when such public authority is vested in them by law, when they may perform certain tasks within the public administration.

Pursuant to the Law on Administration of the Federation of BiH<sup>48</sup>, institutions with public competences are those enterprises (associations), institutions<sup>49</sup> and other legal persons who are vested by law with certain administrative and professional tasks within the scope of administrative organs, i.e. to make decisions in individual cases, within the scope of their respective activities, concerning the rights and obligations of citizens, enterprises and other legal persons.

The Law on Administrative Service in Republika Srpska<sup>50</sup> prescribes that the state administration tasks may also be conducted by enterprises, institutions and other non-state entities, when they are by law entrusted with such administrative powers.

Pursuant to the Law on Ministries of Republika Srpska<sup>51</sup> the administrative affairs of the republic may be conducted by other bodies of the republic (President of the Republic, Government, etc.), as well as non state entities (local self-governance units, enterprises and institutions with public authority), if prescribed by law.

One category of the institutions with public authority are associations of citizens and foundations, when such authority is foreseen by relevant laws on associations of citizens and foundations<sup>52</sup>, at the state or Entity level.

Although the public powers are similarly regulated by the state and entity laws, the major difference between the Law on Administration of BiH and the Entity Law on Administration of FBiH arises from the fact that the Law on Administration of BiH regulates this matter in BiH as a political and territorial unit, and consequently cannot contain a provision regulating the issue on delegating public powers at the level of a municipality or a town being the units within local self-governance and administration.<sup>53</sup>

<sup>45</sup> The Law on Administration of BiH, Off. Gazette of BiH, No. 32/02, Art.2.par.1.

<sup>46</sup> The Law on Public Corporations, according to Annex 9 of General Framework Agreement for Peace in Bosnia and Herzegovina, defines public corporations as established for the common benefit of Federation Bosnia and Herzegovina and Republika Srpska.

<sup>47</sup> The Decree promulgating the Law on Public Enterprises, (Decree promulgating the Law on Public Enterprises, Off. Gazette of RBiH No. 4/92), determines a public enterprise as: 1. an enterprise engaged in production and providing services as an indispensable living and working condition of individual citizens or other enterprises in a certain area, or 2. an enterprise of special social interest, if so required for the functioning of a political and territorial unit.

<sup>48</sup> The Law on Administration in Federation BiH, Official Gazette FBiH BiH, No. 28/97 and 26/02, is a new Draft Law.

<sup>49</sup> The Decree promulgating Law on Institutions, (Decree promulgating Law on Institutions, Off. Gazette RBiH No. 6/92), defines institutions as legal persons engaged in the fields of science, culture, physical culture, health, child care, social welfare and other activities as prescribed by law, and which do not gain profit for the aim of their activities. Such institutions may be public and private. Public institutions are founded with the aim of carrying public service, and public service implies continuous and unobstructed activities in the public interest of Federation BiH

<sup>50</sup> Pursuant to the Law on Administration in Republika Srpska, Off. Gazette of RS, No. 187/02, Article 3

<sup>51</sup> The Law on Ministries of Republika Srpska, Off. Gazette of RS, No. /02, Article 2.

<sup>52</sup> The Law on Associations and Foundations, Official Gazette of Republika Srpska, No. 52/01 and 42/05, Article 6; The Law on Associations and Foundations, Official Gazette of Federation BiH, No. 45/02, Article 6; The Law on Associations and Foundations in BiH, Official Gazette of BiH, No. 32/01, Article 6.

<sup>53</sup> For more information see: Prof.dr Mustafa Kamarić, Prof.dr Ibrahim Festić, *Upravno pravo, Opšti dio [Administrative Law, General Part]*, Sarajevo, 2004, p. 148.

The institutions with public competencies, in deciding on the rights, obligations and interests of citizens, legal persons or other parties, shall act in compliance with the Law on Administrative Procedure of Bosnia and Herzegovina<sup>54</sup>, Law on Administrative Procedure of the Brčko District<sup>55</sup>, Law on Administrative Procedure of the Federation of BiH<sup>56</sup> and the Law on General Administrative Procedure of Republika Srpska<sup>57</sup>.

Pursuant to the Law on Administration of BiH<sup>58</sup> (and other relevant laws regulation public administrations), the basic principles governing their work are rule of law, independence, efficiency, transparency, co operation, and equal usage of languages and alphabets, and appropriate national representation of employees.

Consequently, public services shall, *inter alia*, provide to the citizens - service users, effectively and promptly, opportunity to enjoy their rights and carry out their obligations and shall decide on the requests made by the parties in terms as prescribed by the law, consider applications and proposals by the parties and respond to them. The civil servants shall comply with the rules pertaining to the office of a civil servant, application of laws and regulations.

The Law of Free Access to Information,<sup>59</sup> both at the state and Entity level, regulates access to information that may be made available by the public authorities (public administration included). Based on the Laws, any public organ shall designate an information officer who processes requests for information filed by parties, publish guidelines on procedures summarizing what steps should be taken by citizens in order to have access to requested information.

The Law on administration of BiH<sup>60</sup> also foresees for fines from 2.000 to 8.000 KM for failures made by public administration services.

### **12.3.2. Implementation: positive and negative indicators**

The citizens of Bosnia and Herzegovina are dissatisfied with both the quality of services provided and the treatment by the civil servants. This is illustrated by the results of the study conducted the UNDP whereby only 23 percent of the population has a positive opinion about the public administration services.<sup>61</sup>

Against this background, it would be worth pointing out that more than 30 percent of the complaints made by the citizens to the Transparency International BiH Centre for Legal Assistance referred to the administrative bodies, local governance organs and other public services. Transparency International BiH received serious complaints about abuse of office by responsible persons in public enterprises.<sup>62</sup>

It is evident that the quality of performance in public administration does not correspond to the number of the employed in this sector. Namely, “there are approximately 50,000 administra-

<sup>54</sup> Law on Administrative Procedure of Bosnia and Herzegovina, Off. Gazette of BiH, No. 29/02 and 12/04

<sup>55</sup> Law on Administrative Procedure of Brčko District, Off. Gazette of Brčko District, No. 3/00, 9/02 and 8/03

<sup>56</sup> Law on Administrative Procedure of Federation BiH, Off. Gazette of FBiH, No. 1/98 and 48/99

<sup>57</sup> Law on General Administrative Procedure in Republika Srpska, Off. Gazette of RS, No. 13/02

<sup>58</sup> Law on Administration of BiH, Off. Gazette of BiH, No. 32/02, Articles 2-7.

<sup>59</sup> Law on Free Access to Information in Bosnia and Herzegovina, Off. Gazette of BiH, No. 57/00; Law on Free Access to Information in Federation Bosnia and Herzegovina, Off. Gazette of FBiH, No. 32/01; Law on Free Access to Information, Off. Gazette of Republika Srpska, No. 20/01

<sup>60</sup> Law on Administration of BiH, Off. Gazette of BiH, No. 32/02, Article 102.

<sup>61</sup> Snježana Mulić-Bušatlija, “Cijena građanskog dostojanstva: 4 KM” [Price for Civil Dignity: 4KM], Dani, 3.9.2004, page 22.

<sup>62</sup> A.S., “Najveći broj pritužbi na račun inspeksijskih službi” [Most of the Claims Against the Inspection], Nezavisne novine, 18.6.2004, page 5.

tive clerks in Bosnia and Herzegovina who are allocated for their “work” 55 percent of gross national revenue per year, which, again, is almost 30 percent more than in other countries of the region.<sup>63</sup> (See Section 7.1)

Moreover, the major problem is inappropriate communication between the public services at higher and lower levels, nepotism in employing new servants, non-professional staff and insufficient involvement in keeping updated records and statistical data. A low level of self-assessment and internal control and supervision has also been identified. This is illustrated by the fact that the Ombudsmen of the Federation in their Report on the Status of Human Rights in FBiH in 2003, highlighted, among other issues, that the citizens are treated in an arrogant manner by civil servants.<sup>64</sup>

Based on the Annual Report by the Ombudsmen for Human Rights of Bosnia and Herzegovina for 2004, most of the cases dealt with by this institution concerned the citizens’ complaints against irregular treatment by the public administration<sup>65</sup>.

Violation of civil rights arises also from “slow and inefficient administration, incorrect application of regulations and incorrect treatment of citizens. Looking at the general situation in public administration it can be concluded that it is not yet “good administration in service of its citizens”. Many of the civil servants still treat citizens from the position of those in power. Identical individual cases are given different treatment. There are individuals who are still given preference over others, which undermines the Constitutional right of all citizens to be equal before law. Prescribed procedures, criteria and terms are frequently violated (...).”<sup>66</sup>

The results of the public opinion survey conducted for the purposes of this analysis indicate extremely low level of confidence in the institutions of public services, education and health. The level of confidence in these three sectors is a prevailingly “some” (between 40 and 50 percent), whereas a large number of citizens have no confidence at all (between 10 and 20 percent).

*Table 12.1. Level of confidence by citizens of BiH in public services*

How much confidence do you have in public services?	BiH	FBiH	RS	Brčko District
No	20.4 %	20.6 %	20.3 %	18.1 %
Some	51.1 %	50.6 %	51.8 %	52.8 %
Much	20.3 %	19 %	22.3 %	18.3 %
Very much	3 %	3 %	3 %	2.7 %
I don't know/No answer	5.2 %	6.9 %	2.9 %	1.9 %

*Source:* Survey of public opinion, Level of Confidence of the Citizens of BiH in Public Services, Agency “Prism Research”, April 2005.

<sup>63</sup> Snježana Mulić-Bušatlija, “Cijena građanskog dostojanstva: 4 KM” [Price for Civil Dignity: 4KM], Dani, 3.9.2004, page.22.

<sup>64</sup> Ibid.

<sup>65</sup> One of the fundamental functions of the Ombudsmen is to monitor the activities of the executive and other bodies of the state by considering citizens complaints against the authorities and civil servants who violated human and civil rights and freedoms. The Ombudsmen for Human Rights in Bosnia and Herzegovina, Annual Report for 2004, page 79. Some of the complaints, that were redressed after the intervention by the Ombudsmen, referred to failure to act by Municipality Srpsko Goražde upon the request for the rehabilitation of access road; inadequate medical treatment in Banja Luka prison of the convict infected by HIV; refusal by « Elektroprivreda RS » to provide connection of an apartment building in Kijevo, Trnovo municipality to power supply; failure by Public enterprise «Water Supply and Sewage» Sarajevo to act upon the appeal in case of insufficient water in-flow in an apartment. Ibid., page 103-105.

<sup>66</sup> Annual Report by Republika Srpska Ombudsmen - Protection of human rights in 2004, Banja Luka, May 2005, page 36 <http://www.ombudsmen.rs.ba/izvjestaji/godisnji.html>, 30.9.2005.



Table 12.2. Level of confidence of citizens of BiH in the educational system

How much confidence do you have in public services?	BiH	FBiH	RS	Brčko District
No	8.3 %	8.7 %	20.3 %	18.1%
Some	41.5 %	39.7 %	43.2 %	57.8 %
Much	35.4 %	34.6 %	37.6 %	18.4 %
Very much	10.7 %	10.8 %	11.1 %	/
I don't know/No answer	4.1 %	6.1 %	1.4 %	1.9 %

Source: Survey of public opinion, Level of Confidence of the Citizens of BiH in Public Services, Agency “Prism Research”, April 2005.

Table 12.3: Level of confidence of the citizens of BiH in health care system

How much confidence do you have in public services?	BiH	FBiH	RS	Brčko District
No	14.3 %	14.3 %	13.9 %	21.9 %
Some	42.8 %	40 %	47.9 %	27.2 %
Much	30.4 %	29.8 %	30.7 %	41.3 %
Very much	8.4 %	10 %	6.2 %	7.6 %
I don't know/No answer	4 %	5.9 %	1.3 %	1.9 %

Source: Survey of public opinion, Level of Confidence of the Citizens of BiH in public services, Agency “Prism Research”, April 2005.

Officially, there 40 percent unemployment rate in BiH. About 20 percent of the people live below the poverty line, while 30 percent are at the poverty line. This partly reflects the incapacity of the social security system to satisfy the economically most vulnerable categories of the population. The health sector in both Entities is rather underdeveloped<sup>67</sup> and inadequately financed. Many citizens do not have health insurance, and those who have, cannot rely on it. Many rural areas have no efficient health care system.<sup>68</sup>

The health care system is not at an adequate level due to the generally known situation where many physicians work simultaneously in a public institution and in private practice.<sup>69</sup> There is a

<sup>67</sup> Republika Srpska has a centralized fund with seven branches. In FBiH, the system is decentralized. There are ten independent Cantonal funds and one federal fund, which includes the Solidarity Fund that provides financing in special circumstances, like medical treatment of children abroad, and treatment of patients from poor Cantons. “There is no health care system at the level of BiH. There are only the systems at the Entity levels, Brčko District and the Cantonal systems that function as an ill tuned orchestra without a conductor” Bakir Nakaš, M.D., Director of the Cantonal Hospital in Sarajevo. BH Health Care System: Orchestra without a Conductor, «Nezavisne novine», August 21, 2005. <http://www.nezavisne.com/revija/tekst3-041225.php>, 8.10.2005.

<sup>68</sup> Report by the EC Commission to the Council on Readiness of BH for Negotiations on the Stabilization and Association Agreement with the EU (November 2003.), [www.ohr.int](http://www.ohr.int), July 25, 2005.

<sup>69</sup> There are numerous cases where the medical workers who are employed at the same time in public and private health care institutions avoid rendering services in public institutions and use these institutions rather as “commercial” polygons attracting and referring patients to private institutions where they render the same type of services as in public institutions. This practice substantially reduces the quality of health care services offered by public institutions. See: Special Report by RS Ombudsmen on the Situation in the Health and Social Care Sector in Republika Srpska referred to the Ministry of Health and Social Protection of RS and the Health Insurance Funds of RS, Banja Luka, 19.12.2003, pages 1,2, 4 i 6., <http://www.ombudsmen.rs.ba/izvjestaji/posebni.html>, 9.10.2005.

Special Report by the RS Ombudsmen regarding this issue<sup>70</sup> recommending steps to be taken by the Ministry of Health and Social Protection. However this is still an open issue.

There are also a significant number of complaints to the RS Ombudsmen due to the violation of employment rights, and the rights that fall within the protection of social, health, and pension and disability rights. The minimum existential rights of pensioners and invalids are threatened due to extremely low old age and disability retirement rates.<sup>71</sup>

The Ombudsmen of the Federation of BiH highlighted that, besides the obstruction of their recommendations for better functioning of the public sector, the laws on protection of consumers, conflict of interest and public procurement are not implemented either.<sup>72</sup>

All the major systems of public services in BiH are fragmented along the Entity, i.e. ethnic lines, following the fundamental principle of tripartite division of power among the constituent peoples. The telecommunications sector<sup>73</sup> fully observes this matrix, whereas in the electric power industry<sup>74</sup> there is yet the other entity, a fourth - the independent power supply and distribution company for Brčko District. The Public Broadcasting Service<sup>75</sup> includes three broadcasting services, the model reflecting the state structure rather than ultimately ethnic principle: one at the level of the state and one at each Entity level.

The public sector being a highly complex and fragmented one nevertheless manifests similar problems and deficiencies throughout BiH. The most outstanding ones would be high and arbitrary costs of services<sup>76</sup>, low quality services, and absence of a regular system of consultations with service users<sup>77</sup>. Some of the public administration bodies have, however, undergone a thor-

<sup>70</sup> Special Report by RS Ombudsmen on the Situation in the Health and Social Care Sector in Republika Srpska referred to the Ministry of Health and Social Protection of RS and the Health Insurance Funds of RS, Banja Luka, 19.12.2003,

<sup>71</sup> Godišnji izvještaj RS Ombudsmen - Annual Report- Protection of Human Rights in 2004, Banja Luka, May 2005, p. 35- 36., <http://www.ombudsmen.rs.ba/izvjestaji/godisnji.html>, 30.9.2005.

<sup>72</sup> Ombudsmen of FBiH, Report on the status of human rights in the Federation BiH in 2004, <http://6www.bihfedomb.org/bos/reports/2004/rpt2004intro.htm>, July 25, 2005.

<sup>73</sup> The telecommunication system in BiH is composed of: BH Telecom, Hrvatske telekomunikacije d.o.o. (HT d.o.o. Mostar) and Telekom Srpske.

<sup>74</sup> In Bosnia and Herzegovina there are four public electric power industries: Elektroprivreda BiH, Elektroprivreda HZ Herceg-Bosne, d.d. Mostar, Elektroprivreda Republike Srpske, Elektrodistribucija Distrikta Brčko, rendering services to the consumers in the territory of Brčko District. There is also an independent and non profit institution Državna elektroenergetska regulatorna komisija [State Regulatory Commission in Power Supply Sector] (DERK).

<sup>75</sup> The Public Broadcasting Service In BiH includes: Public Broadcasting Service of BiH ("JS BiH"), Radio-televizija Federacije Bosne i Hercegovine ("RTV FBiH") and Radio-televizija Republike Srpske ("RT RS"). All the three broadcasting services are public.

<sup>76</sup> In the electrical industry in BiH "The infrastructure is about to collapse, the prices are arbitrary, the network is inefficient, and the level of corruption and thriftlessness is alarming. There should be some progress in the telecommunications as well. The citizens and companies in BiH are not given the quality of services in the conditions as they are in the field of telecommunications. A company using fixed telephone lines in Banja Luka pays more than 6 km/min for a minute for a call to the USA, ten times more than when you are making a call from the States. The telecom sector in BiH requires privatization and better regulation to keep pace with other sectors of the economy." Clifford Bond, US Ambassador speaking before the members of American Chamber of Commerce and representatives of business community in RS, Banja Luka, February 2003.

<sup>77</sup> General public debates on the tariffs and tariff methodology were organized by DERK as one of the aspect of consultations with consumers, which is not a frequent practice. This was an opportunity for direct participation of the citizens, i.e. the consumers of services in one of public sectors. The objective was to obtain and exchange expert comments and additional information on these matters. The activities of the DERK: General public debates <http://www.elektroprivreda.ba/informacije/index.htm>; June 15, 2005.

Another example of consultations with service users is recently organized public consultations of the RAK draft rules of the rebalance model of the costs of telephone calls. The Agency took into consideration costs of living, the services in both urban and rural areas, number of telephones per 100 citizens, with the comments to be referred to the Agency. H.H., «Costs of domestic and international telephone services - How to establish a balance?» Dnevni avaz, May17, 2005, p.13.

ough reform. One of the positive examples is certainly Municipality Centre in Sarajevo that has adopted a Code of Conduct. A few other municipalities in BiH are also involved in similar activities. The Government of Republika Srpska passed Code of Conduct for Civil Servants in RS on December 3, 2002<sup>78</sup>.

The Report by NGOs involved in the monitoring of implementation of the measures and commitments arising from the Development Strategy for BiH, in particular in the field of education, environment and social protection, highlights the following issues:

- unequal access to education for all (especially vulnerable are marginalized groups and national minorities, and children with special needs);
- need (and absence of capacities) for continuous education after graduating;
- stagnation in the reform of higher school education;
- failure to adopt law on environmental protection at the level of BiH;
- inadequate solutions and neglected environmental protection issues in BiH;
- civil participation in decision making concerning the environmental issues not systematic and not institutionalized;
- insufficient information of the citizens about the concept of public health;
- violation of the citizens' rights in the field of social protection arising from inappropriate legislation;
- the above mentioned laws at the Cantonal level are not harmonized with the legislation at FBiH level; moreover, in some of the Cantons the laws have not been passed yet, resulting in discrimination against beneficiaries at regional level;
- certain degree of progress in the protection of persons with disabilities, despite the problems asking for additional attention. The progress has been achieved by adoption of legislation and through improved dialogue between relevant ministries and organizations/associations of disabled persons and by bringing the legislation in BiH close to European and international standards;
- unequal technical capacities and service quality in social work centers in BiH (subjective and objective problems), resulting in dissatisfying quality of services that varies throughout the territory;
- corruption, both financial and non-financial - a problem existing in all the three sectors.<sup>79</sup>

The governments in BiH recognized in the Agenda of the "Public Administration Reform" of March 2003 that the public administration had not met the expectations of all the citizens, because it is too slow, unpredictable and spends a large amount of public funds. It has a multilayer structure, with (sometimes opposing) bureaucracies at the state, Entity, Cantonal and municipal levels. The system of remuneration should be clear and standardized. The employed are not professional and incapable of responding to new challenges posed the Agreement on Stabilization and Accession. In the administration, as in the government, the capacity for strategic planning and coordination is limited. The concept of professional non-political state service, employment and promotion that would be based on experience and professional qualities is difficult to be adopted and established. There is no protection against political interference in public administration: At the same time, there should be a balance between the independence and responsibilities.

<sup>78</sup> Snježana Mulić-Bušatlija, "The price of civil dignity: 4 KM", Dani, 3.9.2004, p.22.

<sup>79</sup> See: Report by NGOs on the Course of Implementation of the Development Strategy in BiH in the Field of Education, Social Protection and Environment, March 2004 - December 2004, ICVA, [www.icva-bh.org/bos/publications.wbsp](http://www.icva-bh.org/bos/publications.wbsp), July 20, 2005

The Report, in a format of an assessment of the progress achieved by Bosnia and Herzegovina in the process of stabilization and association, states that the “Administrative capacities as required by the Agreement on Stabilization and Association are smaller than those (...) expected by an EU member State, or a country negotiating its membership. Nevertheless, if BiH wants to make any progress it must develop a stable, professional and independent public administration that would be based on rule of law, efficient and independent”.<sup>80</sup>

#### **12.4. How much confidence do people have in the ability of government to solve the main problems confronting society, and in their own ability to influence it?**

##### **12.4.1. Negative and positive indicators**

The multifaceted structure of governance in BiH<sup>81</sup>, and numerous problems arising from a low rate of consensus in the implementation of mechanisms of distribution of powers<sup>82</sup>, are the two most outstanding and most frequently cited causes of the incapacity and inefficiency of the BiH government.

The citizens can complain to the Ombudsmen about what the government is doing at any of the levels, with whom all the institutions, pursuant to the law, must cooperate. However, the percentage of the cases and applications to the Ombudsmen offices to which the official authorities never responded in 2003 was 34.8 percent.<sup>83</sup>

The level of confidence in the government institutions at the level of the state and its Entities is very low.

Less than 50 percent of the citizens have confidence in either state or Entity institutions. The percentage of confidence in the institutions in “the other” Entity, i.e. the one where the citizens does not live, is even smaller.<sup>84</sup> In the survey from March 2002, less than 25 percent of the citizens of BiH believed that their government is going “in the right direction”.<sup>85</sup>

Only 20 percent of the citizens of BiH believe that the present situation in BiH is more stable than it was a year ago. Almost 40 percent of the interviewed expect the situation to improve in a year. Compared with the results of the previous survey, the percentage of the interviewed who hold that the situation regards the stability does not change increased. The percentage of the interviewed who think that the situation will remain unchanged increased as well.<sup>86</sup>

Only 17 percent of citizens of BiH (15 percent in FBiH, 22 percent in RS+ Brčko District) think that the current political leadership in BiH is capable of dealing with the economical problems with which BiH is faced, 78 percent of the BiH citizens (79 percent in FBiH, 75 percent in RS + Brčko District) believe that the government in BiH is not capable of responding to these challenges.<sup>87</sup>

<sup>80</sup> Report by the EC Commission to the Council on the readiness of Bosnia and Herzegovina to negotiate the Stabilization and Association Agreement with the EU (November 2003), [www.ohr.int](http://www.ohr.int), July 25, 2005.

<sup>81</sup> See, e.g., Ibid

<sup>82</sup> See, e.g. European Commission for Democracy through Law (the Venice Commission), CDL-AD (2005) 004, Venice, March 11, 2005.

<sup>83</sup> For more information see: Transparency International, Study of National Integrity in BiH, p. 170.

<sup>84</sup> Miroslav Živanović, «Socijalni kapital u BiH»[ Social Capital in BiH], *Nezavisne novine*, from UNDP Report “System of Early Warning”, <http://www.nezavisne.com/dnevne/stav/st06232005-03.php>, July 25, 2005.

<sup>85</sup> SEEDS&IDEA, SEE Srvey of the Public Agenda for January-February 2002, March 14, 2002.

<sup>86</sup> Survey of Public Opinion, Agency «Prizma istraživanja», March 2005.

<sup>87</sup> Survey of public opinion, Agency Puls, made public on BHT April 1, 2005.

A great majority of citizens in BiH have no confidence (29.1 percent), or they have “some” confidence (52.8 percent) in the Parliament; the percentage of absence of confidence is similar when the judiciary is at issue (23.6 percent have no confidence at all, whereas 51.5 percent have “some” confidence in the judiciary), in the army (13.4 percent have “no”, 42 percent have “some” confidence), and in the police (14.3 percent have no confidence, and 45.9 percent have “some”).

Table 12.4: Level of confidence by the citizens of BiH in Parliament<sup>88</sup>

How much confidence do you have in Parliament?	BiH	FBiH	RS	Brčko District
No	29.1 %	39.7 %	28.5 %	24.1 %
Some	52.8 %	51.8 %	54.3 %	52.9 %
Much	11.5 %	9.8 %	14.0 %	13.4 %
Very much	1.8 %	2.0 %	1.2 %	7.6 %
I don't know/No answer	4.7 %	6.8 %	1.9 %	1.9 %

Source: Survey of public opinion. Level of Confidence of the Citizens of BiH in Parliament, Agency “Prism Research”, March 2005.

Table 12.5: Level of confidence by the citizens of FBiH and RS in the Government of FBiH/RS, Ombudsmen of FBiH/RS, army and police

How much confidence do you have in the following institutions? (From 1-no confidence to 5-full confidence)	Federation BiH	Republika Srpska
Government	2.3	2.51
Ombudsmen	2.76	2.54
Army	2.83	3.01
Police	2.60	2.84

Source: Survey of public opinion, Level of Confidence of the Citizens of FBiH and RS in the FBiH/RS Government, Ombudsmen of FBiH/RS, army and police, Agency Partner Marketing from Banja Luka, November 2002.

Table 12.6: Level of confidence of the citizens of BiH in the judiciary<sup>89</sup>

How much confidence do you have in judiciary?	BiH	FBiH	RS	Brčko District
No	23.6 %	24.7 %	22.3 %	17.0 %
Some	51.5 %	50.6 %	52.5 %	58.5 %
Much	16.5 %	15.0 %	18.9 %	14.2 %
Very much	3.6 %	3.1 %	4.0 %	8.5 %
I don't know/No answer	4.8 %	6.6 %	2.2 %	1.9 %

Source: Survey of public opinion. Level of Confidence of the citizens of BiH in the Judiciary, Agency “Prism Research”, March 2005.

<sup>88</sup> Survey of public opinion. Level of Confidence of the Citizens of BiH in the Parliament, Agency «Prizma istraživanja», March 2005.

<sup>89</sup> Survey of public opinion. Level of Confidence of the Citizens of BiH in the Judiciary, Agency «Prizma istraživanja», March 2005.



Table 12.7: Level of confidence by the citizens of BiH in the Army

How much confidence do you have in the Army?	BiH	FBiH	RS	Brčko District
No	13.4 %	12.8 %	14.3 %	12.4 %
Some	42.0 %	36.5 %	49.3 %	56.0 %
Much	29.6 %	29.5 %	29.8 %	29.8 %
Very much	10.7 %	14.8 %	5.4 %	/
I don't know/No answer	4.3 %	6.5 %	1.2 %	1.9 %

Source: Survey of public opinion. Level of Confidence of the citizens of BiH in the Army, Agency “Prism Research”, March 2005.

Table 12.8: Level of confidence of the citizens of BiH in the police

How much confidence do you have in police	BiH	FBiH	RS	Brčko District
No	14.3 %	14.2 %	14.6 %	9.1 %
Some	45.9 %	42.3 %	51.4 %	44.2 %
Much	28.1 %	26.9 %	29.0 %	44.8 %
Very much	7.8 %	10.7 %	3.8 %	/
I don't know/No answer	4.0 %	5.9 %	1.2 %	1.9 %

Source: Survey of public opinion, Level of Confidence of the Citizens of BiH in the Police, Agency “Prism Research”, March 2005.

Based on the results of the survey of public opinion by the “Prism Research” Agency conducted in April 2005, 60 percent of the interviewed citizens in BiH (63.2 percent in FBiH, 55.5 percent in RS and 54.1 percent in Brčko District) hold that the citizens opinion should be considered more when the governments are deciding on priority issues in BiH, along with “maintaining order” (which is priority No.1: 79.1 percent), “fighting against increase in prices” (47.1 percent) and “protection of freedom of speech” (11 percent of the interviewed).

The authorities in BiH have not understood yet that that a citizen who is a partner is power rather than an obstacle in local governance. The existing legislation is not in favor of such civic partnership in governance, and, civil servants see citizen participation as an obstacle to what the governments are doing at the local level. On the other hand, it is not surprising that the citizens do not think they have true capacity to influence the government. There are numerous reasons for such belief: to start with that citizens see corruption prevailing in almost all spheres of their life and work, to numerous failures in attempting to change something, which, ultimately results in the feeling of absolute exclusion and absence of any power.<sup>90</sup>

### **12.5. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?**

The legal framework and relevant recent legislation, as well at its application in practice, highlights clearly, with substantial support by the public, the following:

<sup>90</sup> Statements at the Press conference by Centre of Civil Initiatives (CCI) in Sarajevo, at the public presentation of the Report on the Participation of Citizens in Decision Making Processes in BiH, within a Week of Participation of Citizens, Sarajevo, 28.09.2005.g, <http://www.ccibh.org/main.php>, 30.9.2005.

- reform of the public administration and requirements for the respect of the principles of the practice of “good governance”
- strengthening of direct participation by citizens in decision making and governance,
- need to motivate citizens to participate in debates on governmental policy and legislation through public calls and media,
- efforts to satisfy the requirements for ISO standards certificate, to maintain and further upgrade the quality level of public administration services, in order to renew the certification of public administration bodies and services,
- campaigns on participation of citizens in designing public policies individual fields and incitement of joint involvement of citizens, their associations/interest groups and government.

The absence of adequate legislation in this field could be resolved by passing the new Law on Principles of Local Self-Governance in FBiH, which is supported by the fact that the Draft Law was in a public debate.

The Law foresees the following forms of direct involvement of the citizens in making decisions that fall within the competence of the local self governance units: referendum, local citizens’ meeting and other forms of direct participation in decision making processes. It also determines that citizens may submit their proposals through the citizens’ incentive forum, association of citizens, nongovernmental organizations and in other ways provided by the statute. Citizens and legal persons may file submissions and complaints against a local self-governance unit, the work of its administrative bodies, and incorrect treatment in cases of requests referring to the rights and interests, or civil obligations, which must be responded by a competent authority within 30 days from the day when such a submission or a complaint is filed.

The Draft Law is inspired by European Charter on Self-Governance, to which BiH is a signatory and which calls for an efficient and well organized local self governance units that would be close to the citizens. A positive innovation is that a possibility to establish local communities upon the initiative of the citizens, association of citizens, and a representative or executive body of a local self governance unit. The Draft Law also regulates transparency of the work of local self-governance.

The Law on Local Self-Governance in Republika Srpska also provides that, in the interest of local population, appropriate forms of direct participation of the citizens should be developed by local self-governance units: referendum, local citizens’ meetings, citizens’ incentives, panels, proposal procedures, “citizens’ hour” in municipality assembly, and other forms that are not in direct conflict with law.

It should also be pointed out that the incentives directed at setting up and strengthening of the communication between the citizens and their elected representatives, which are of special significance in still initial phase of developing democratic practice in BiH and which are developed within the NGO project focusing on forms of direct communication. The activities of NGOs, in particular the projects by Centre of Civil Initiatives (CCI), deserve our special attention and are primarily focused on the municipality level having as its main goal to inform, first of all, the citizens of their rights and of the work of representative bodies, to increase the interest of citizens in governmental affairs and to create appropriate ambience to exercise pressure on the elected representatives to be able to have regular communication with the electorates. As a result, the citizens, in ever larger numbers, attend municipality council meetings, since the number of municipalities that open additional channels for communication through web sites grow with each day.

The BiH authorities committed themselves, before the Peace Implementation Council in Brussels in 2003, to reform the public administration at all levels. In that aim, in 2003, the EC Mission in BiH, donated two million euros within the CARDS program for the reform of public administration, and three and a half million euros in 2004. In 2004, the European Commission allocated in 2004 an amount of 21.5 million euros for the “Building Administrative Capacities” project.<sup>91</sup>

The OSCE Mission in BiH has been involved in improving the situation in the domain of public administration ever since 1999, when they started financing the project of developing municipality infrastructure. Based on the statement by Richard Medić, OSCE spokesman, “OSCE carried out the “initial assessment program”, in almost all the municipalities and it is now working on the development and implementation of the program of successful management of civil servants and how to develop a realistic budget and budget management. Besides, OSCE, by building awareness of the Law on free access to information is also building “the level of the communication culture”.<sup>92</sup>

In the aim of achieving progress in the future, the following steps were made. The Law on Conflict of Interest was passed, the administration capacities are being developed, and the Law on Civil Service was adopted both at the state and Entity level, thus establishing a detailed legal framework for public administration.

Moreover, both at the state and Entity level, the Civil Service Agencies have been set up stating who is responsible for the appointment, training, discipline, etc. of civil servants. Structural reform is under way, expected to lead to the efficient, non discriminatory and cost-effective administration.

The new Draft Law on protection of consumers in BiH (which is in Parliamentary procedure), replacing the Law on protection of consumers (Off. Gazette of BiH, No. 17/02), foresees for establishment of a new institution - Ombudsman for Consumer Protection in BiH. The Ombudsman for Consumer Protection, as an independent institution, with the aim of promoting good and effective implementation of the consumer protection policy, shall, pursuant to the Law, have the following powers:

- giving instructions to stop practices that are in conflict with legislation in the field of consumption, as well as bringing the cases of malpractice before justice,
- instituting procedures before a competent court,
- Instituting procedures before a competent court in compensation cases incurred to the collective and pursuant to the Law provisions.<sup>93</sup>

Both in the Federation of BiH and Republika Srpska there are Offices for Competitiveness and Consumer Protection (UKZP). The basic competences of the Offices are:

- proposing an Annual National Plan for Consumer Protection to the Council Ministers of BiH and follow-up on its implementation,
- determining of basic consumer protection policy,
- guidelines in the scope of activities financed, i.e. co-financed from the budget.<sup>94</sup>

<sup>91</sup> Snježana Mulić-Bušatlija, “The Price of Civil Dignity: 4 KM”, Dani, 3.9.2004, p.22.

<sup>92</sup> Ibid.

<sup>93</sup> EU-CTF Consulting Working Body, Documents for Discussion, Bosnia and Herzegovina, Council of Ministers, Directorate for European Integrations, Sarajevo, 10-11, March 2005, p. 24.

<sup>94</sup> EU-CTF Consulting Working Body, Documents for Discussion, Bosnia and Herzegovina, Council of Ministers, Directorate for European Integrations, Sarajevo, 10-11, March 2005, p. 24. [http://www.dei.gov.ba/pdf/CRT5\\_Dokumenti.pdf](http://www.dei.gov.ba/pdf/CRT5_Dokumenti.pdf), July 25, 2005.

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- Uredba sa zakonskom snagom o ustanovama *Off. gazette of R BiH* No. 6/92
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- Rules of Procedure of the House of Representatives of the Parliamentary Assembly of BiH. *Official Gazette of BiH*, No. 48/00

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### 13. Decentralization\*

#### Are decisions made at the level of government which is most appropriate for the people affected?

Author: Zdravko Miović

#### 13.1 How independent are the sub-central tiers of government from the center, and how far do they have the powers and resources to carry out their responsibilities?

##### 13.1.1. Laws

The Dayton Peace Agreement established BiH as a sovereign state with a decentralized administrative structure: the state of BiH as a community of three equal and constituent peoples, made up of two constituent entities (Federation of BiH and Republika Srpska). The already multi-layered and complex (and complicated) administrative structure was further expanded in March 2000, with the establishment of the Brčko District as an autonomous unit.<sup>1</sup> The administrative structure of BiH is presented in the table below:

Table 13.1 Administrative structure of BiH

Table 13.1 Administrative structure of BiH					
Administrative levels	Jurisdiction				
	State	Federation	RS	Brčko	Total
Central	1				<b>1</b>
Entity		1	1		<b>2</b>
Cantonal		10			<b>10</b>
Municipal		79	62	1	<b>142</b>
District				1	<b>1</b>
<b>Total</b>	<b>1</b>	<b>90</b>	<b>63</b>	<b>2</b>	<b>156</b>

The Office of the High Representative (OHR) is an integral part of the present structures, with the ultimate power in all key decisions in BiH. Special interim supervision arrangements by OHR are applicable in the Brčko District.

Internal administrative structures of the entities differ considerably and are uneven: the Federation of BiH is complex (with mid-level administration in the form of ten cantons, with considerable functional and fiscal autonomy, and a lower level of 79 municipalities), whereas Republika Srpska is simple (there is no middle level, competence and fiscal powers are concentrated at entity level, and lower level is made up of 62 municipalities).

Distribution of powers and relations between levels of governance are regulated by constitutions (Constitution of BiH, Constitution of RS, Constitution of FBiH, and constitutions of the can-

<sup>1</sup> Brčko District is formally defined as a unit of local self-governance.

tons). Pursuant to the Constitution of BiH, ten areas of competence are kept at the central level.<sup>2</sup> All other powers are assigned to the entities, by a general provision (general clause on powers) of the Constitution of BiH. A short description of the constitutional distribution of powers by levels of governance in BiH is as follows:

- weak position of the municipalities (too many responsibilities with no adequate powers or sources of funding);
- strong position of the cantons in FBiH (too many powers and too few responsibilities);
- high level of responsibility and wide powers of Republika Srpska;
- weak position of the state of BiH (limited responsibilities and powers).

Therefore, mid-level of governance is to a large extent independent from the centre and in relation to the central power it enjoys far greater power and resources in the discharge of its functions. In the Federation of BiH, competences, power and resources are divided among three levels (federal, cantonal, and municipal) and in Republika Srpska, only between the entity and the municipal levels.

Mutually contradictory assessments may be equally applicable for BiH: that it is neither centralized nor decentralized. Namely, in comparison with central and local authorities, mid-levels of governance enjoy considerable powers and dispose of most of the resources. Seen from the central level, BiH is excessively decentralized; seen from the local level, it is a matter of unbearable centralization of competence, power and resources. The ratio of forces between the central and the mid-level of governance has been changing considerably in the past few years, i.e. the entities have been transferring powers to the state.<sup>3</sup> It is part of an effort to make BiH a functional state and a serious political partner, capable of entering the process of stabilization and association with the European Union.

The essential question of decentralization, however, is about units of local self-governance:<sup>4</sup> what competences and powers do local authorities exercise and what kind of resources do they enjoy.

On 12 July 2002, BiH ratified the European Charter on Local Self-Government, as part of the commitments entered into through accession to the Council of Europe in April 2002. The Charter provides that the local authorities “*regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population*”, starting from the principle of subsidiary, according to which, public responsibilities “*shall generally be exercised, in preference, by those authorities which are closest to the citizen*”. Powers given to local authorities should “*normally be full and exclusive...*”<sup>5</sup>, including the right to “*adequate financial resources of their own, of which they may dispose freely within the framework of their powers*”.<sup>6</sup> Thus, the European Charter provides for a high level of real functional and fiscal decentralization.

<sup>2</sup> Namely foreign policy, foreign trade, customs, and monetary policy, financing of institutions and international obligations of BiH, policies and regulations on issues of immigration, refugees and asylum, implementation of international and inter-entity criminal legislation, including relations with Interpol, establishment and functioning of common and international communications, regulations on inter-entity transportation, and air traffic control.

<sup>3</sup> E.g. competences in relation to state border service, economy (indirect taxation authority), judiciary, defense, etc. There will soon be a transfer of division of relevant competences in areas of police, health, education, agriculture, refugee return, environment, etc., on the basis of recommendations of the so-called functional reviews of these sectors (for more on functional reviews, see: [www.delbih.cec.eu/en/eu\\_assistants/assistance421.htm](http://www.delbih.cec.eu/en/eu_assistants/assistance421.htm))

<sup>4</sup> Municipalities and cities are units of local self-governance in BiH.

<sup>5</sup> European Charter of Local Self-Government, published by the Council of Europe and the OSCE Mission in BiH, 2003, p. 14.

<sup>6</sup> Ibid., p. 16

It is important to note that BiH is one of the few countries which accepted obligations arising from the Charter with no reservations, with no consideration for the actual level of preparedness or capacity to fulfill them.

The Constitution of BiH does not make any reference whatsoever to local self-governance. Local self-governance is outside the competence of the central, state authority. From the point of view of constitutional definitions, local self-governance in BiH is independent from the central level (the state), but highly dependant on the regional levels (the entity authorities in RS, and the cantonal authorities in the Federation of BiH). Constitutions of both entities contain provisions on local self-governance, though different. The essence is, however, similar: in both cases, the local level of governance is substantially not independent, with very few autonomous (original) competences, and too dependent on the hierarchically higher levels of governance (entity in the case of RS, and cantonal in the case of FBiH).

Although local self-governance is part of the very foundation of a democratic society, the Constitution of RS deprives municipalities of the originally assigned right to propose laws and narrows their competences considerably, assigning them only local and communal utility responsibilities, with an obligation to execute the assigned tasks. It arises from the Constitution of FBiH that “*regulation of local self-governance falls also within the joint competence of FBiH and the cantons (as well as the right to ‘set policies and adopt laws’), as well as within the competence of the cantons (as the competence ‘not explicitly assigned to Federal authorities’*”. However, cantons have the sole competence over a series of duties which are normally defined as those of local self-governance (culture, tourism, communal utility, local land management,...), with a proviso (and in some cases an obligation<sup>7</sup>) to transfer those duties to municipalities. Thus, paradoxically, municipalities in FBiH dispose of most of their self-governance (original) responsibilities as transferred, i.e. under full and strict control from the level of cantons.<sup>8</sup> Moreover, cantons have a regulatory role as well (to adopt laws and regulations), which is far stronger than the supervisory one. Constitutions of cantons bring nothing new in relation to the Constitution of the Federation BiH - they mainly contain “copied relevant provisions of the Constitution of the Federation BiH”.

By narrowing down the area of original responsibilities and by expanding the volume of transferred responsibilities, higher levels jeopardize the autonomy of the local level, guarding for themselves a strong supervisory function, though with a right to remove from municipalities, at any time, the assigned duties and bring the back within its own competence. In this way, local self-governance is merely a phrase, and the local level of governance becomes the “extended arm” of upper levels of governance.

The area of local self-governance is regulated in detail by laws on local self-governance.<sup>9</sup> Both the Law on Local Self-Governance of RS and the Draft Law on Principles of Local Self-Governance in FBiH guarantee the autonomy of units of local self-governance in the area of autonomous duties, limiting government supervision only to the legality of actions taken. As for transferred responsibilities, in addition to legality, the supervision includes efficiency of decisions made. In RS, the ministry responsible for supervision of work of units of local self-governance is

<sup>7</sup> A level of obligation is introduced if the majority population of a municipality is, in terms of ethnic structure, different from the majority population of the given canton.

<sup>8</sup> Zdravko Zlokapa: *Pravni okvir lokalne samouprave* [Legal Framework of Local Self-Governance] (in: *Analysis of Local Governance and Self-Governance in BiH*, EDA, Banja Luka, May 2005, pp. 21-22.

<sup>9</sup> Law on Local Self-Governance in RS (Official Gazette RS, No. 101/04), Law on Basic Local Self-Governance in FBiH (Official Gazette FBiH, No. 6/95), and special laws in cantons. At the time of writing, the new Law on Principles of Local Self-Governance is on public debate.



the Ministry of Administration and Local Self-Governance of RS, whereas the Draft Law in FBiH assigns this competence to federal and cantonal authorities, with no specific wording.

### **13.1.2. Implementation: positive and negative indicators**

There are no visible systemic and organized efforts to implement the European Charter of Local Self-Government consistently and fully, or to effect functional and fiscal decentralization. Current processes are often in the opposite direction. On one hand, entity and cantonal authorities take upon themselves the financially more attractive competences, such as collection and control of revenue, real-estate cadastre and property related legal affairs (in RS), etc. Centralization of these duties (with simultaneous de-concentration - performance via branch units of entity and cantonal authorities) does not provide for their more economic or better quality performance, and competences of municipalities are narrowed down, with a breach of the basic principles of administrative procedure - there is no possibility of two-instance decisions in dealing with requests of the citizens, so that at the moment, the same authority decides in the first and the second instance. On the other hand, because of the difficult social situation, and the passivity of the competent upper levels of governance, local authorities often deal with a number of social problems, for which they have neither the competence, nor the resources. Thus, there have been cases of municipalities which spend some 8% of the municipal budget for benefits for veterans' and disability social protection, because the entity or the canton does not effect its own responsibilities adequately.

A special problem is the monotype structure of competences of the local level. Irrespective of considerable differences in terms of population, size and level of development, all the municipalities have the same legal status and uniformly defined competences.<sup>10</sup> Thus the large, economically powerful municipalities (mainly in developed urban areas), whose current level of competences is insufficient, are at the same level as the small, economically weak, mainly rural municipalities, often lacking the capacity to perform the assigned competences.

Distribution of functions is not based on the principle of subsidiarity, and property ownership does not follow the distribution of functions. That is why absurd situations happen in practice, as the case is with ownership and management of communal utility companies in Republika Srpska. The local level of governance is responsible for communal utilities (collective heating, water and sewage, etc.) and to that end the local authorities established public utility companies, the local community has invested into maintenance and development of those companies, so it would indeed be natural for them to be owned and managed at the local level. However, using the current privatization process as an excuse, entity authorities in Republika Srpska have simply taken over the ownership and management, diminishing considerably the quality of utility services and the functioning of the communal utility companies. There have been almost incredible cases of a municipal water supply system being privatized with no consultation with the given municipality, i.e. with no municipal approval and with no compensation for the municipality (in Modrica and in Zvornik, RS). Municipal administration is responsible for the provision of clean water and for setting the price for it, but it cannot influence activities of the new, private owner. The situation whereby municipalities are responsible for services, and are not the owners of the property necessary for the provision of those services, is unsustainable.

<sup>10</sup> There are municipalities in BiH with a surface no greater than ten square kilometers, and municipalities with more than one thousand square kilometers. Or, the same competences and the same legal status are assigned to municipalities with a population of less than one thousand (there are five such municipalities in BiH) and municipalities with a population of more than one hundred thousand (six municipalities in BiH).

Laws in both entities guarantee, in principle, the availability of funds adequate for the discharge of duties and responsibilities at the local level. The real problem is that these principles are not adequately elaborated in legal norms. Analyses<sup>11</sup> have shown that there is no essential respect for any principle of the European Charter of Local Self-Government related to financing. The principle of adequate revenue is threatened by a considerable lack of vertical and horizontal balance, and there are no adequate mechanisms of vertical and horizontal fiscal balancing.<sup>12</sup> Although they are the level closest to the citizen, municipalities receive only 8% of total public revenue of both entities. These funds are not even closely adequate for satisfying the growing needs of local communities, particularly in relation to communal infrastructure investment. Local community revenue in BiH is very modest, and their original revenue is particularly low. The dominant segment is joint revenue and revenue controlled by upper levels of governance. In both entities, municipalities cannot influence the volume or the quality of the taxation bases, used for shared taxes (sales tax and income tax), or local taxes (property tax and real trade tax). Assignment of resources to municipalities by higher levels of governance is not sufficiently transparent or predictable, so that municipalities cannot effect reliable financial planning. With these and other limitations set by upper levels of governance, capital market access is quite difficult for municipalities.

Thus, the local level of governance in BiH is faced with “mission impossible”: municipalities cannot (with very limited original revenue and inadequate and insufficient assigned revenue) provide adequate financing for the provision of services they are responsible for, they cannot refuse tasks transferred to them by the cantons or the entities, and at that, they cannot influence the collection of revenue, management of public communal utility companies, etc.

### **13.2 How far are these levels of government subject to free and fair electoral authorization, and to the criteria of openness, accountability and responsiveness in their operation?**

#### **13.2.1. Laws**

The Constitution of BiH (Article I, Point 2), Annex III of the General Framework Agreement for Peace in BiH (Agreement on Elections) proclaimed democratic, fair, and free elections as the basic precondition for the creation of representative governance. Issues related to elections are regulated by different state and entity laws. The most important are the Election Law of BiH, Election Law of RS, and the Law on Direct Election of Mayors in the Federation of BiH. Issues related to elections in the Brčko District are regulated separately (by the Election Law of the Brčko District) as is the system of municipal elections in Mostar (by an amendment to the Election Law of BiH).

Delegates at cantonal assemblies are elected directly by the citizens, from political party lists, coalitions or independent candidates, for a term of office of four years. Cantonal assemblies elect presidents of cantons by a majority vote of the delegates (a special election system for the office of president is provided for in cantons No. 6 and 7). There is also direct election for members of city councils, i.e. city assemblies. They are elected by municipal councils, i.e. municipal assemblies making up the given city.

<sup>11</sup> More on this in *Analysis of Local Governance and Self-Governance in BiH*, pp. 38-51.

<sup>12</sup> A system of fiscal adjustment means balancing of revenue received by different levels of government (vertical adjustment, which secures that each level of government has the resources proportionate to its competences) and the revenue of local communities (horizontal adjustment, securing solidarity with local communities developing slowly).

The legal framework for municipal elections is rather complex, as it includes different election systems and procedures:

- proportional representation system for elections for municipal assemblies/councils;
- majority system for direct elections of mayors in RS;
- reduced preferential system for direct elections of mayors in FBiH;
- proportional representation system for elections of members of the Brčko District Assembly, with minimum representation of the three constituent peoples of BiH and others, with additional indirect election of the mayor by the Assembly;
- proportional representation system with constituencies and with the city constituency in Mostar, minimum and maximum representation of the three constituent peoples and others, with additional indirect election of the mayor by the Assembly.

Pursuant to legislation on local self-governance, there are only two municipal bodies: municipal assembly (municipal council) and mayor of the municipality. In both entities, these bodies are elected directly. The practice of direct elections for municipal mayors was introduced at the 2004 municipal elections.<sup>13</sup> This harmonized the basic structure of municipal bodies, as well as legitimacy, in both entities.

New legislative provisions set stable and clear relations among municipal bodies. Each body has clearly outlined competences and must not interfere with competences of other bodies. Municipal assemblies (councils) have the role of political coordination, and the mayor is the executive authority.

In RS, the mayor and the assembly are, to a large extent, autonomous and equal, elected directly, and one cannot remove the other, nor can a higher level of governance. They are equal in the right to request the relevant ministry to control the legality of acts of the other body. Although the assembly has the right to initiate removal of the mayor (if so requested by one third of the members), this right can rarely be exercised, as the initiative has to be approved by a simple majority of registered voters.

In FBiH, there is a slightly different balance: the mayor has the right to dismiss the council, and the council has the right to initiate the procedure for removal of the mayor. The mayor's request cannot be revoked, and the outcome of the procedure initiated by the council is determined by a majority vote of the electorate who turn out.

Issues of election and responsibility of public officials at the local level are partly regulated by entity laws on civil service.<sup>14</sup> These laws prohibit any action on instruction from political parties, or membership in party leadership. The problem is that such regulations refer to local administrations only in part. Thus, the Law on Civil Service of the Federation BiH<sup>15</sup> covers, in addition to staff at the levels of the Federation and the cantons, all the staff of municipal administrations with the required qualifications (university degree). As for the remaining more than 80% of the staff in municipal administration (with no university degree), they are still subject to the 1998 Law

<sup>13</sup> In order to do so in both entities, the Law on Direct Election of Mayors in the Federation BiH was adopted at the last minute, with strong public advocacy by the NGO sector. The issue of direct election of mayors in RS was regulated earlier, through the RS Election Law.

<sup>14</sup> Law on Civil Service in FBiH (Official Gazette FBiH, No. 29/03), Law on Changes and Amendments to the Law on Civil Service in FBiH (Official Gazette FBiH, No. 23/04, 39/04 and 54/04), in full application only as of 31. 01. 2005; Law on Administrative Service in RS Administration (Official Gazette RS, No. 16/02)

<sup>15</sup> Law on Civil Service in FBiH (Official Gazette FBiH, No. 29/03) Law on Changes and Amendments to the Law on Civil Service in FBiH (Official Gazette FBiH, No. 23/04, 39/04 and 54/04), in full application only as of 31. 1. 2005.

on Employment and Salaries for Administration Staff in the Federation BiH.<sup>16</sup> On the other hand, municipal administration staff are not covered at all by the 2002 Law on Administration Service in RS.<sup>17</sup> That is why the RS Law on Local Self-Governance dedicated its entire Chapter XI (Articles 111-161) to employees of administration services of units of local self-governance, regulating in detail procedures for employment, appraisal, promotion, assignment, etc. There are detailed provisions on responsibilities of public servants, in two basic categories, substantive and disciplinary. Part of the text regulating disciplinary responsibility also contains provisions aimed at preventing any politicization of work of municipal staff.

According to the “European Principles of Local Administration” (SIGMA document No. 27) openness and transparency include availability of administration for external review, control, and supervision, and responsibility requires administration to give specific and legally defined explanations and justifications for its decisions and actions, before other bodies or levels of administration, pursuant to the law and set procedures.

Constitutions of the cantons contain just one provision that may be linked with openness of cantonal bodies - a provision on public sessions of the cantonal assembly (other than under exceptional circumstances defined by rules of procedure) and publication on reports on sessions and decisions.

Both the RS Law on Local Self-Governance and the FBiH (draft) Law on Principles of Local Self-Governance regulate in great detail the publicity of work of bodies of local self-governance, including a definition of the notion of publicity of work and principles of openness and transparency. The RS Law on Local Self-Governance regulates the publicity of work of bodies of local self-governance in Articles 76-82, and the Draft FBiH Law on Principles of Local Self-Governance does so in Articles 30-33. There is also a detailed elaboration of issues related to administrative supervision over the work of units of local self-governance.

In addition to regulations on local self-governance, principles of openness, transparency, and accountability are also promoted by other legislation, basically totally new to BiH (such as the Law on Freedom of Access to Information of BiH, FBiH, and RS, Law on Prevention of Conflicts of Interest, Law on Public Procurement in BiH, etc.). These are relatively new laws, with insufficient reliable information on the quality and consequences of their application, particularly at the local level.

### **13.2.2. Implementation: positive and negative indicators**

The 2004 municipal elections were held prior to the adoption of new entity laws on local self-governance. Thus the voters turned out with no clear idea of competences and duties of the bodies they were electing. These were also the first post-war elections in BiH fully organized and implemented by local election commissions: the BiH Election Commission and municipal election commissions.<sup>18</sup>

<sup>16</sup> In the period of writing, instead of the Law on Employment and Salaries of Employees of Administration Bodies in FBiH, a new law came into force, the Law on Employees of Civil Service Bodies in FBiH (published in the Official Gazette FBiH No. 49, of 08. 08. 2005). It contains no major differences or different provisions, in comparison with the earlier law.

<sup>17</sup> Systemic Review of Public Administration in BiH (p. 52) recommends harmonization, so that the Law on Civil Service in FBiH should include staff with no university degree, and the Law on Administrative Service in RS Administration should include the municipal level.

<sup>18</sup> Organization and conduct of earlier local elections was within the responsibility of SOCE, in form of the Provisional Election Commission.

According to assessments by international and local observers, embassies in BiH, and the European Monitoring Mission, the 2004 municipal elections were fair and democratic, with minor occasional shortcomings, which led to a repetition of elections in one constituency and in several polling stations in three other constituencies.

An important feature of these elections was a large number of abstaining voters. Practically, for the very first time, less than one-half of the electorate turned out. An evident trend of further decline in voter turnout is particularly concerning.

Table 13.2: Percentage of voter turn-out at elections in BiH (2000-2004.)

Level	Local elections 2000 <sup>19</sup>	General elections 2000 <sup>20</sup>	General elections 2002 <sup>21</sup>	Local elections 2004 <sup>22</sup>
BiH	66%	64.4%	55.5%	46.8%
Federation	65%	67.8%	53.1%	45%
RS	71%	64%	49.8%	46.8%

There is an evident decrease in voter turn-out in the period of no more than four years - voter turn-out in 2004 was some 30% lower than in 2000. This percentage seriously questioned the legitimacy of elected representatives. This trend is particularly concerning: should it progress in the same way, the full gravity of the issue of legitimacy will appear during the next election.

Direct election for municipal mayors by the citizens established direct accountability of elected officials to the citizens of the given municipality. In practice, this should contribute to a decrease of dependency of mayors from the centers of the political parties to which they belong. However, there is still an unresolved issue of accountability of elected councilors/assembly members towards leadership of their political parties (the centers of political power which nominated them) and the lack of accountability towards the citizens who elected them. In a number of communities, citizens have no direct contact with their representatives, and thus no influence over them, so that municipal policies are often designed away from the municipality and with no consideration for local problems and needs.

Public officials in municipal bodies (secretaries, heads of departments/services, heads of sections, advisors and associates...) are employed through public competitions. This ended the negative war-time and post-war practice of employment based on nepotism, with no public insight, on the basis of criteria of party, family, and clan relations.

As for the application of criteria of *openness, accountability and responsiveness to problems of the community*, municipalities differ considerably. In practice, there is a spontaneous and autonomous transformation of local authorities, sometimes supported by international donors, from bureaucracy towards a service for the citizens, and partnership with the private and the non-governmental sectors. Unfortunately, these are still individual initiatives, rather than systemic and institutional changes.

<sup>19</sup> According to the OSCE press report dated 20. 4. 2000 ("OSCE publishes technically confirmed results of the BiH municipal election, April 2000")

<sup>20</sup> According to the OSCE press report dated 27. 11. 2000 ("OSCE publishes technically confirmed results of the BiH general election, November 2000")

<sup>21</sup> According to: CAI, *Election Result Trends 2000-2004*, Bosnia Report On-Line, 23. 12. 2004. ([www.cai.ba/art-man/publish/trendovi](http://www.cai.ba/art-man/publish/trendovi))

<sup>22</sup> According to the BiH Election Commission ([www.izbori.ba](http://www.izbori.ba))



Municipalities further advanced in the application of principles and mechanisms of good governance<sup>23</sup> (some 10% of all municipalities) are elaborating the application of criteria of efficiency, transparency, participation, and accountability, in their own codes of good local governance, trying to create a value system that would promote local administration as a true service for the citizens and the business community. One part of municipal administrations (again some 10%) have introduced or are in the process of introducing a complex quality management system.

There is still a large gap between the growing group of municipal administrations applying the principles of good governance and others, still pronouncedly bureaucratic authorities. Some analyses observe a “division into first-class and second-class municipalities”.<sup>24</sup> Key weaknesses of the bureaucratic, still unreformed municipal administrations across BiH are reflected in the lack of key management plans and programs, low level of quality of administrative and public services, negligible application of IT, low or no participation of the public in the budget design process, and insufficient transparency in its disbursement, etc.<sup>25</sup>

A relatively low level of transparency and accountability in those municipalities results in negative perceptions of municipal officials by the public, so that in the 2004 statistics, these officials came in third<sup>26</sup> (following doctors and medical staff, and police officers) in assumed corruption, although there was a statistically significant decrease in comparison with 2002 (-9.14%). As for corruption in municipal administrations, a particular conclusion was presented in the 2004 Corruption Perceptions Study, which states:

“Slightly more than one half of the citizens believe that corruption is present in municipal administrations. Although the percentage is indeed high and concerning, it is 12% lower in comparison with research in 2002. However, this does not mean that corruption is more present in municipal authorities than at other levels of governance, it means that this is how the citizens perceive it, which can only be justified by a larger number of operations conducted at the municipal level...”<sup>27</sup>

This negative perception is partly the result of the still indecisive field fight between professionalism and politicization of municipal administration. Insistence on strict application of public competitions is giving positive results. Still, “despite notable progress in the past period, municipalities are, to a large extent, still the hotbeds of party politicking and the generators of employment along party lines, and thus still receive bad assessments by the citizens, because of the present of corruption in them.”<sup>28</sup>

### **13.3 How extensive is the co-operation of government at the most local level with relevant partners, associations and communities in the formation and implementation of policy, and in service provision?**

#### **13.3.1. Laws**

Current entity and cantonal legislation on local self-governance regulate issues of cooperation of bodies of local self-governance with relevant partners, associations, and communities (at local level) in policy implementation and service provision only in part, including direct citizen participation and local self-governance, i.e. town communities. Consequently, statutes of municipalities elaborate these issues in a similar way.

<sup>23</sup> *Analysis of Local Governance and Self-Governance in BiH*, EDA, Banja Luka, May 2005, pp. 69-70.

<sup>24</sup> *National Integrity System*, Transparency International BiH, 2004, p. 105

<sup>25</sup> *Analysis of Local Governance and Self-Governance in BiH*, op. cit., pp. 72-73.

<sup>26</sup> *Corruption Perceptions Study 2004*, Transparency International BiH, 2004, pp. 24-25.

<sup>27</sup> *Ibid*, pr. 125

<sup>28</sup> *National Integrity System*, op. cit., p. 105

The RS Law on Local Self-Governance<sup>29</sup> has been in application since January 2005, and it contains key positive provisions on direct citizen participation. First, the Law provides a provision of principle whereby towns and municipalities are obliged by an imperative norm to develop mechanisms of direct citizen participation, in the interest of local population. Additionally, there is an elaboration of the term “mechanisms” so as to include any mechanism not prohibited by law, and with specific mention of some of them (referenda, citizen assemblies, civic initiatives, town communities, civic panels, “citizens’ hours”). In addition to this, the Law (Article 104) provides that municipal/city assemblies are obliged to consider any initiative they receive from the citizens, provided the initiative is submitted in the form and procedure prescribed by the statute, and signed by a specified number of voters. Other articles (106-109) regulate the establishment and operation of town communities.

Provisions of the FBiH Law on Basic Local Self-Governance<sup>30</sup> on direct citizen participation in decision-making are very modest. Namely, the Law contains a provision stating that “*citizens may decide directly on local affairs of the municipality*” and that “*forms of direct decision-making of the citizens are: referenda, citizen assemblies, etc.*”(Article 15), with no further elaboration of these norms. The evident need for local self-governance to be regulated in more adequate detail by federal legislation resulted in the fact that the Law on Principles of Local Self-Governance is currently under adoption procedure. The new draft provides for direct citizen decision-making through referenda, citizen assemblies, and other forms of direct expression. Also, the law provides for submission of proposals by citizens, through civic initiatives, civic associations, non-governmental organizations, etc. Issues of community self-governance/town communities are regulated by Articles 20-26. There is also an important novelty in relation to the corresponding RS law: the possibility of transferring original local self-governance responsibilities to the town community.

All the cantonal laws on local self-governance contain provisions on citizen participation in decision-making. They are, in essence, of the same or similar content, and they are all divided into three separate chapters which include: direct citizen participation in decision-making, community self-governance effected by town communities, and protection of the right of citizens to local self-governance. Effecting direct citizen participation in decision-making is provided for in the form of referenda, citizen assemblies, and civic initiatives.

All the municipal statutes understand the town community as a special form of citizen participation in local self-governance, which may be established following the fulfillment of conditions prescribed by the statute. Municipal statutes provide very detailed procedures for the establishment of town communities, obviously leaving the content of their work to them. At that, the criteria for establishment of town communities are such that the municipal assembly, as the only authority competent to decide on the justification for establishment of new town communities, may always find a reason to reject any new initiative.

Municipal statutes also cite referenda, citizen assembly and civic initiatives as principal forms of citizen participation. A difference is evident in statutes of different municipalities, with considerable deviations, from strictly formal options to truly functional procedures (considerably more advanced than the laws on local self-governance) which, in addition to the three options, also provide for the so-called free forms of association (Article 58, Statute of the Centre Municipality, Sarajevo).

<sup>29</sup> Official Gazette RS, No. 101/04.

<sup>30</sup> Official Gazette FBiH, No. 6/95.

The Statute of the Brčko District copied provisions on citizen participation directly from relevant international instruments, adapting them to our legal terminology. The Statute guarantees for all the inhabitants of the District equal participation in public affairs, freedom of association, an obligation for officials to secure public insight into activities of the District, public documents, decisions and official meetings, and sets an obligation of the District to “respond to any request by natural and legal persons and to take timely and appropriate measures in ways provided for by law” (Article 19). Despite these very democratic provisions, it is astonishing that there is a restrictive possibility for submission of proposals for laws. Namely, this possibility is not provided for the citizens (irrespective of the number) and granted only to the mayor and each member of the assembly. In addition to this, the Brčko District also has a Law on Town Communities.

### **13.3.2. Implementation: positive and negative indicators**

However, the application of this normative framework (in relation to direct citizen participation and community self-governance) is far from satisfactory. Key mechanisms which are to secure direct citizen participation, as defined by the present legislative framework, in most cases simply do not function.<sup>31</sup>

With few exceptions, town communities are inactive and barely functional. As most of them have poor financial support of their municipalities, town communities usually barely survive and only appear nominally as a possible method of citizen participation.

A referendum as one of the forms of citizen participation in local decision-making is used very rarely, if at all.

Public debates are the most frequently cited form of expression of citizen opinions/views in local decision-making. However, there are significant practical shortcomings, reflected in three key segments:

- absence of clear criteria for issues which may be the subject of a public debate,
- lack of transparency in preparing and conducting public debates,
- inadequate status of conclusions of public debates and poor feedback to the public.

On the other hand, citizens are often poorly informed, passive and unwilling to take initiative. Instead of the desired pro-active approach, the dominant one is reactive, which fails to deliver the necessary effects, especially as most decisions have already been reached by that stage, so that possibilities for change are next to none.<sup>32</sup>

With numerous problems in application, there are two principal shortcomings in the current legislation on all levels: first, there is no regulation of cooperation with the non-governmental and the private sectors, as the key partners of the public sector, while the influence of the citizens on service provision is mainly of reactive nature (only the possibility of submitting complaints and objections is regulated). The latter shortcoming is caused by the absence of any policy in service provision, customer-orientation, and quality, in laws on local self-governance. Laws prescribe competences in relation to regulatory activity and management of the municipality, as well as in relation to services, but they do not insist at all on being user-focused, on efficiency and effectiveness, or on quality management and service provision. In such a situation, regulation of cooperation with relevant partners and their influence over policy-making or provision of services by the

<sup>31</sup> *Analysis of Local Governance and Self-Governance in BiH*, op. cit., pp. 81-82.

<sup>32</sup> This practice is evident even in the adoption of spatial, urban development, and zoning plans, which the citizens should certainly be interested in, and whose preparation they should be involved in from the onset, rather than only when a draft has been adopted.

municipality cannot be expected either. A number of aspects of promotion and application of the concept of good governance (which entails cooperation with local partners) are left to the initiative of municipal administrations and international organizations. Therefore, the analysis of relevant laws and programs, and the lack of secondary legislation or recommendations, lead to a conclusion that official policy in local administration simply does not know the principles of good governance contained in the partnership of the public, private and non-governmental sectors, user-orientation, and quality service.

Still, there are in practice, though spontaneously and autonomously (and often with the support of international donors and implementers) patterns of cooperation of local administration with other local actors.

Non-governmental, non-profit and non-political organizations working on representing citizen interests are particularly active. The legal status of non-governmental organizations is defined by laws on non-governmental organizations at state and entity levels.<sup>33</sup> According to 2004 research results,<sup>34</sup> almost one half of the 73 surveyed non-governmental organizations in BiH see their cooperation with local authorities as good or very good. Nonetheless, good cooperation varies from one municipality to the next, and is mainly based on short-term efforts and understanding by local representatives. There are rare examples of developed and organized procedures of cooperation between non-governmental organizations and local authorities. Municipal officials mainly see non-governmental organizations as “service providers” rather than partners in local policy-making.

Cooperation with local business community is even weaker. One of the reasons is the low level of self-organization of the business sector, particularly at the local level. Another is mutual distrust, typical of relations between public and private sectors. Still, there are examples of successful partnerships, so far mainly in participatory planning of local economic development, based on the concept of partnership of the public, the private, and the non-governmental sectors.

The practice of socio-economic dialogue between the government, employers and trade unions has been established partially at entity level, with no attempts to introduce it at regional or local levels.

#### ***13.4 What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?***

There are four key areas of organized efforts to improve the situation regarding decentralization and quality of local governance and self-governance in BiH:

- new laws on local self-governance in both entities;
- current local administration reform process;
- projects by the most influential international players;
- self-organization of key local actors (at the local level) in order to change the current relations in terms of accountability and powers between different levels of governance in BiH and for the purpose of developing local governance and self-governance.

<sup>33</sup> Official Gazette BiH, No. 32/01; Official Gazette RS, No. 52/01; Official Gazette FBiH, No.45/02.

<sup>34</sup> USAID Report BiH *Civil Society Survey* - June 2004.

New laws on local self-governance are trying to expand the powers of local authorities. But it is a matter of formal expansion of competence, with no real instruments to effect them. This can be best illustrated by the application of the RS Law on Local Self-Governance, which came into force on 1 January 2005. Article 12 of this Law assigned to municipalities the competence to “conduct cadastral, geodesic and legal-property affairs, in compliance with law”, but the law regulating this area has not been implemented (competence remains with the entity). Furthermore, the Law on Local Self-Governance grants the municipalities the right to “collect, control collection and enforce collection of original revenue of the municipality”, but the law regulating this area prescribes that competence in this matter rests with the entity. Finally, the Law on Local Self-Governance gives municipalities the sole competence in issues of legal representation, and the RS Law on Public Attorney’s Office, adopted after the adoption of the Law on Local Self-Governance, maintains the competence of the Office of the Public Attorney of RS in legal representation of municipalities.

However, the real problem is deeper than the poorly articulated or contradictory regulations and difficulties in their implementation: local self-governance is at the very bottom of the list of priorities with both domestic and international reformers in BiH. This is best seen in the concept, as well as the implementation of the BiH public administration reform program. The reform of public administration in BiH formally started with the acceptance of the “Public Administration Reform - Our Agenda”<sup>35</sup> document, created by prime ministers of the state and its entities on 28 March 2003<sup>36</sup> in Brussels. The document sets guidelines for preparation of the required strategy of public administration reform in BiH. The concept of good governance is set as the key aim of the reform: “*Our principal aim is the creation of high quality public administration in all of Bosnia and Herzegovina, which entails professional civil service on all levels. Public administration must be effective and provide reliable management of public funds, it must be accountable, transparent and efficient, transparent and efficient in providing services*”.<sup>37</sup> According to this document, public administration reform in BiH has five basic goals:

- in terms of organization - efficient and better organized public administration,
- in terms of financing - efficient and transparent disbursement of taxpayers’ money,
- in terms of staff - professional civil servants serving the public,
- in terms of procedures - functional public administration in compliance with best EU practices,
- in terms of services - quality public services, adapted to citizens’ needs.

Although explicitly cited only in the elaboration of the last goal, local governance is of pronounced interest for a more rapid and more complete implementation of each of these goals. However, the problem is that the reform process is top-down, putting centralization first, and decentralization last, with an almost negligible role for representatives of local governance in the reform process. Current reform priorities are:<sup>38</sup>

- to end the functional analysis of administration on all levels (all the functional analyses were supposed to end by October 2004 - *this has not happened as late as early March 2005*);

<sup>35</sup> *Our Agenda* is, in fact, a kind of agreement between governments in BiH and the international community (presented to members of the Steering Committee of the Peace Implementation Council), prepared earlier by OHR with no major involvement of domestic governments (*Job and Justice - Our Agenda*).

<sup>36</sup> The RS government prepared and verified the public administration reform program as early as in 2000.

<sup>37</sup> *Public Administration Reform - Our Agenda*, Peace Implementation Council, Steering Board, Brussels, 28 March 2003 ([www.mpr.gov.ba](http://www.mpr.gov.ba)), p. 4.

<sup>38</sup> According to *BiH Mid-Term Development Strategy - PRSP (2004-2007)*, April 2004, pp. 148-150.



- to adopt the public administration reform strategy and action plan (the strategy was supposed to be designed on the basis of recommendations from functional reviews, and adopted by the end of 2004 - *by early March 2005, however, this was delayed still without public explanation or any indication of a new deadline*);
- to continue activities in implementing civil service laws;
- to continue activities in defense and police reforms;
- to strengthen administrative capacities for European integration.

As set and as implemented, public administration reform will change considerably the relations between central and entity levels, by centralizing competences and resources in order to create mechanisms of a normal state capable of managing the process of entry into European integration. However, there has been no indication that there would be any significant changes in the essence of any democratization and citizen-oriented public administration reform, in the real functional and fiscal decentralization, based on the utmost respect for the principle of subsidiarity and principles of the European Charter of Local Self-Government. Thus, it seems, the authorities will be closer to Europe, but further from the citizens, instead of being closer to them, as required by European standards.

The USAID project titled GAP (Government Accountability Project), launched in September 2004, is aimed at balancing, within the policy segment, the responsibilities and the powers of entity, cantonal and local levels, and to ensure distribution of resources more appropriate for the responsibilities and the powers of the local level. The first, urgent effort of the project team in this segment is focused on preventing the anticipated negative impact of VAT distribution on local government financing (municipalities “come in last” in the distribution and no one knows yet what they may expect). With its other segments, the GAP project is aimed at contributing to the creation of a more accountable, more effective and more transparent local government, focused on the needs of the citizens and the local community, in some forty municipalities across BiH.

The project titled “BiH Local -Governance and Self-Governance Strategy Design by Local Actors”, launched in November 2004, brought together the “critical mass” of leading municipalities and non-governmental organizations, as well as experts and practitioners, as an active response to the neglect of the local level by official public administration reformers<sup>39</sup> in BiH. So far, the situation in the local governance and self-governance has been analyzed,<sup>40</sup> including a SWOT analysis, and a definition of several key strategic issues, ranging from appropriate territorial organization (with a clear legal status and an appropriate structure of competences of units of local self-governance), through harmonized functional and fiscal decentralization, harmonized development of democratic and professional components in governing local communities and managing local administrations, civil society development by building mechanisms of active citizen participation and public-private-NGO partnership, to productive horizontal and vertical interaction of levels and units of governance.

The strategic document (with responses to these key questions) should be completed in 2005, with the ultimate goal of the overall strategy being accepted as the official strategy of BiH in the area of development of local governance and self-governance, by relevant local and international decision-makers, prior to the election scheduled for the autumn of 2005..

<sup>39</sup> “Official reformers” include the Council of Ministers, OHR and the European Commission Delegation to BiH.

<sup>40</sup> Team of experts: *Analysis of Local Governance and Self-Governance in BiH*, EDA, Banja Luka, May 2005. (Project supported by Open Society Fund BiH and SDC/Intercooperation)

Similar in nature (self-organization of key local actors, in this case from the non-governmental sector) is the undertaking of some 300 local non-governmental organizations, gathered around the NGO Coalition,<sup>41</sup> trying to compensate for the normative shortcomings identified in relation to regulation of government-NGO cooperation. Thus, in February 2005, the BiH Council of Ministers received a proposal for *Agreement on Cooperation between the Council of Ministers of BiH and Non-Governmental Organizations*.<sup>42</sup> At the local level, where cooperation is intensive, the process of discussion of the proposed *Agreement between Municipal Mayors and Non-Governmental/Non-Profit Organizations in Municipalities* has already begun.<sup>43</sup> With the basic text of the Agreement, there is also an elaboration of principal procedures related to public invitations for financing projects from municipal budgets, as well as steps, responsibilities, and powers in the process, and criteria for quality assessment of services provided by suppliers (non-governmental organizations).

Although the process of implementation of the European Charter of Local Self-Government is slow and often inconsistent, the fact that key actors from the local level in BiH often meet in the joint operation of creating local self-governance in compliance with European standards and to the measure of the citizens, who effect by far the largest part of their rights and needs through their local community, is indeed encouraging.

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<sup>41</sup> At the 1<sup>st</sup> Conference of NGOs, held in December 2004 in Sarajevo, the following documents were adopted: *Code of Conduct for the NGO sector in BiH*, *Quality Standards of Cooperation between Government and the NGO Sector in BiH*, and *Basic Future Development Paths for the NGO Sector*.

<sup>42</sup> As of September 2005, there is still no response from the BiH Council of Ministers in relation to this NGO initiative.

<sup>43</sup> Text of the Agreement and its annexes was published in *Lokalna samouprava* [Local Self-Governance] magazine, vol. 7-8, 2005, pp. 81-89 (published by the Centre for Promotion of Civil Society, Sarajevo)

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\* In relation to the specific topic of decentralization, in the preparation of this text, valuable contribution in comments and suggestions came from a group of experts and practitioners. They are very successful municipal mayors in the Sarajevo Centre and Laktasi municipalities, Ljubiša Marković and Ranko Karapetrović, superb practitioners from Sarajevo Centre and Tešanj municipalities, Željko Varunek and Elmir Srkalović, as well as Fadil Šero, civil society promoter in BiH, Snežana Mišić-Mihajlović and Bogdan Popović, coordinators of key projects of support to local administration, and Milenko Krajišnik, Aleksandar Draganić, and Stevo Pucar, experts who are providing active contribution to the promotion of new ideas in the development of public administration in BiH.

# **International Dimensions of Democracy**





## 14. International dimensions of democracy\*

### Are the country's external relations conducted in accordance with democratic norms, and is it itself from external subordination?

Authors: *Žarko Papić, Lada Sadiković*

#### 14.1. How free is the governance of the country from subordination to external agencies, economic, cultural or political?

Ten years after the war, the governance of the country, both in an economical and political sense, is entirely dependent on the external factor. The genesis of the situation is specific; nevertheless the negative consequences are too large to be explained by any specific characteristic at all.

##### 14.1.1. The international and legal grounds of subordination to external institutions and organizations

The Constitution of BiH is found in Annex 4 of the Dayton Peace Agreement (DPA). Annex 10 of the DPA, however, regulates the internal role of the international factor in the form of the Office of the High Representative (OHR), vested with the authority to implement the peace agreement. The original mandate of the OHR is determined by Resolution 1031 (December 15, 1995) that sets forth the grounds for its establishment. The role of the High Representative is to monitor the implementation of the Peace Agreement and to mobilize, steer and coordinate the activities of civil organizations and agencies involved in the implementation of the Peace Agreement in BiH.

The ten years following the implementation of the Dayton Peace Agreement has proven that incorrect foundations and no-functionality of the Constitution of BiH, along with changing character and strengthening of the role, mandate and practice of OHR, create a vicious circle of mutual incapacitation.

The constitution of BiH is a constitution of a peace agreement, not that of a democratic country. It is an attempt to provide an internal framework for the administrative and territorial division of BiH and to build an institutional structure on ethnic grounds. Based on ethnic representation, the Constitution of BiH, through its internal logic, favors political parties with the same ethnic principle. They, constituting the state authority in mutual coalition, cannot mobilize institutions to function efficiently, and thus the non-functioning becomes the natural way of 'functioning'.

Such a situation led to the change in the character and strengthening of the role of OHR and other international organizations.

It can hardly be said that immediately after the war, in 1996 and 1997, BiH was in a normal state. The political stake holders from the war were still dominant in the political life of the country, the war criminals enjoyed their protection, national tensions were strong and conflicts present. The institutions, in particular those at the level of the state, were weak. Strengthening the powers of the OHR at the Peace Implementation Conference held in Bonn on December 10, 1997, derive, first of all from the situation in the country. On that occasion the "importance of the role of the High Representative in creating conditions for sustainable peace in Bosnia and Herzegovina and his responsibility for the coordination of the activities of civil organizations and agencies in Bosnia and Herzegovina, and that the Steering Board of the Peace Implementation Council designates the High Representative as a political leader in the peace implementation process," was underlined. Thus the High Representative was vested with power to "use his ultimate authority

concerning the interpretation of the Agreement on the Implementation of Civil Aspects of the Peace Agreement in order to facilitate solving of the problems by passing binding decisions when he judges it is necessary. The decisions would concern the following areas: a) dynamics, venue and chairing of the joint institutions meetings; b) interim measures to be enforced when the parties cannot reach agreement and that shall stay in force if the Presidency or the Council of Ministers has decided on a particular issue that would be in compliance with the Peace Agreement, c) other measures to ensure the implementation of the Peace Agreement, both in the entire territory of Bosnia and Herzegovina and in its Entities, as well as unimpeded functioning of the joint institutions. These measures can be targeted against individuals with public term of office, or officials, who are, without a valid reason, absent from the meetings, or against those, for whom the High Representatives believe violate legal commitments taken on the basis of the Peace Agreement or later, concerning its implementation”.<sup>1</sup> (*Translated by the author*)

This mandate by the OHR was extended even after the situation in BiH had become substantially much more normal. New grounds for it were found in the lack of capacity of the institutions to function properly, i.e. in the Constitution of Bosnia and Herzegovina.

#### **14.1.2. Negative indicators**

Use of the “Bonn Powers” grew from one year to the next. Each High Representative used them more frequently than his predecessor: Westendorp (1997-1999) passed four decrees per month; Petritch (1999-2002) twelve, and Ashdown (since 2002), fourteen.<sup>2</sup> In 2005 such power were used more moderately.

In April 2002, the OHR suspended all the judges and public prosecutors in the country, under the explanation of “reconstruction of the judiciary”. On the other hand, all the nominations for high ranking officials (ministers, etc.) must pass the eligibility test with OHR, which is crucial for their official election or appointment.

Such a ‘system’, naturally, left room for “invisible influences” - direct, informal pressures on the local authorities in the decision making process.

The real problem is that such a mandate by OHR (imposing laws, removal of the officials, etc.) creates an appearance of a functioning system, and thus maintaining it *de facto*. This vicious circle, logically, produced with time an evident symbiosis between the interests of the national parties and the OHR. The present High Representative clearly supported the national parties at the 2002 Elections, and even more clearly, before the Election, undermining the authority of the Alliance for Changes, which was a loose coalition of non-national parties in power in the 2000-2002 period.

Therefore, the assessment quoted in the text below is quite correct:

Despite the unprecedented largest financial investments into the democratization of one country, the international mission in BiH found itself in a paradoxical situation: what Bosnia and Herzegovina needs are not democratic domestic policies, but rather the rule of international experts. In Bosnia and Herzegovina, the foreigners work more than what mere involvement in the creation of political agenda is - something that has already become a norm in East Europe, due to the efforts made by the governments to join European Union. In BiH, however, the foreigners are those who create this agenda, impose it and punish by sanctions on those who refuse to implement

<sup>1</sup> Peace Implementation Conference, December 10, 1997, p. 25.

<sup>2</sup> G Knaus, F. Martin, “Lekcije iz Bosne i Hercegovine -Putovanja evropskog maharadže”[ *Lessons from Bosnia and Herzegovina- Travels of a European Maharaja* ], Žurnal o demokratiji, No. 14, 3. November 2003, p. 68.

that agenda. OHR is in the center of such system, interpreting its own mandate, and accordingly, has unlimited legal powers...as a matter of fact, OHR is not held accountable by any elected institution at all. The Office of the High Representative reports at the meetings of Foreign Ministers held twice and to the PIC chaired by OHR who drafts reports from these meetings. The OHR mandate is unlimited. Nothing changed this situation, neither the recently held elections in BiH, characterized by all the observers as “free and fair”, nor Bosnia and Herzegovina becoming a Member state in the Council of Europe.<sup>3</sup>

If the Bonn Powers were to be a remedy for the unstable and ‘ailing’ situation, they changed, with time, into a self-generating illness, because they maintain the unstable situation and make the country a political hostage.

However, it is important to understand that the extension of powers of the High Representative, and, quite clearly, the negative consequences thereof, were caused by internal reasons, the poor concept of the Constitution of BiH and the ethnic structure of the dominant political parties. The Constitution as it is objectively requires such a mandate by the High Representative. However, the functioning of BiH as a state and its democratization will be possible only if the Constitutions were reformed and the role of the High Representative redesigned, two mutually dependent processes.

The announced process of transformation of the mandate of the OHR is associated with the beginning of the negotiations on stabilization and association between EU and BiH. The only ‘result’ of this transformation, for the time being, is additional title for the High Representative - he has become now a special EU representative as well.

#### **14.1.3. Level of dependence on foreign assistance and foreign debt**

The basic term of reference of the institutional, economic and social reconstruction of the country from 1995 to 2005 clearly indicates the crucial influence of the international policies of support. The assessment of the effectiveness of the “ten years later” reconstruction process itself, given the invested funds and the present situation in the country, can hardly be said to be a positive one.

It is estimated that the total expenditures of the international community in humanitarian aid, peace implementation and economic reconstruction from 1999 - 2000 were US\$71-81- billion. This also includes the costs of international activities: i.e. the amount of money ‘invested’ into BiH as a beneficiary.

Based on the quoted estimates, in the period 1995 - 2000, the following amounts ‘invested’ in BiH that came from different international sources:

- US\$7-8 billion for humanitarian aid in the country;
- US\$10-12 billion the economic recovery and reconstruction. including US\$5.1 billion within the Priority Reconstruction Program coordinated by the World Bank (WB);
- US\$5-6 billion for other types of assistance (democratization, development of civil society, media, local communities, etc.).

To conclude, BiH as a beneficiary received a total of US\$22-24 billion in assistance of various kinds. The costs that are financed by international organizations or bilateral donor for the peace implementation, or the funds designated for the BiH refugees abroad are not calculated in this amount.<sup>4</sup>

<sup>3</sup> G. Knaus, F. Martin, *Ibidem*, p. 61.

<sup>4</sup> For more information see «Međunarodne politike podrške zemljama jugoistočne Evrope - Lekcije (ne) naučene u BiH, [International Policy of Support to the SEE countries - Lessons (not) learned in BiH] FOD/Muller, Sarajevo, 2001.

The estimates according to which the total assistance for 2000-2005 is significantly smaller but still substantial. Based on the IMF data, the share of international assistance in the GDP decreased from 6.9% in 2002 to 3.8% in 2004. When calculated in monetary terms in regards of the GDP rate, it would be 2 million KM, US\$1.3 billion for the 2002-2004 period. However, these data are to be taken with a reserve, due to the insufficient records and absence of coordination among foreign donors, and, also, due to different forms of foreign aid that is not registered. It would be realistic to say that the assistance for the 2000-2005 period, coming directly into the country or on the basis of non-commercial loans, was substantially bigger than it could be concluded from the IMF Report.<sup>5</sup>

The ratio between the external debt and the GDP places BiH into the category of moderately indebted countries. Looking at the external debt as a percentage of GDP, we shall see that there is a decreasing trend. In 2000, the external debt was 40.33% of GDP; in 2001, 40.33%; in 2002, 36.89%; in 2003, 32.9%, and in 2004, it was 30.6% of GDP. The share of external debts in the GDP of BiH in 2004 was smaller than in Bulgaria (65.6%), Croatia (81.8%), Czech Republic (33.4%), Macedonia (38.7%), Serbia Montenegro (68.9%) and Slovenia (53%).<sup>6</sup> Consequently, the external debt has no major influence onto the subordination of the country to foreign organizations. Naturally, the direct influence, criteria conditioning the IMF and WB agreements and credits are present as in other countries with great economic problems.

On the other hand, the relatively low level of foreign investments implies that, generally speaking, the economy is not dominated by foreign companies. However, their influence is present in individual segments of the economy (e.g. import and oil trade, consumer goods trade).

The abovementioned clearly indicates that the basic characteristics of Bosnia and Herzegovina is its dependence on international assistance. Parallel to this, after ten years the level of the international assistance has dropped drastically, and the country is faced with a defeating economic reality. The national political leaders are those who are to be held accountable for a large extent for such a situation. However, the international community can be blamed as well. The question that has to be answered is: What is the cause of the situation in which our country ten years after enormous international assistance, is still dependent on it? In other words, the assistance has not prepared the country for sustainable development. Having said this, we must not forget the fact that we are speaking about a European country with developed local capacities, which ranked as one of the medium developed countries before the war.

Dependence is inevitable in emergency situations, as it was the case in the war. However, to prolong the condition of dependence means to consolidate that condition into an informal but real 'system'. The dependence begins influencing the changes in social structure, with significant social and psychological consequences, thus creating its own social structure prone to self-reproduction.

The foreign assistance in development, which was more than substantial BiH, proved to have small cost-effective value. It seems that the weaknesses of the concept of development assistance in BiH were far more present in this country than in other countries, first of all because of underestimating local capacities and, consequently, because of neglecting sustainability as a goal of that assistance. Disregard of the social sector development is a major part of the situation, as well as total absence of connecting economic with social reconstruction. Ultimately, the consequence is that the post-war poverty in BiH has not been substantially reduced. The international organiza-

<sup>5</sup> IMF, Staff Report for 2005, Article IV, Discussion Paper.

<sup>6</sup> EPPU, «Bosna i Hercegovina - ekonomski izvještaj za 2004. godinu», [Bosnia and Herzegovina-Economic report for 2004] May 2005.



tions, active in BiH, are a part of the problem rather than the solution. Along with their non-coordination and absence of a clear strategy, the “culture of dominance” was, in particular, strongly present. This was even more clearly perceived in BiH because it is a country with great domestic capacities. The condition of relying on international economic assistance, created in several ways, extended to all social structures and institutions.

#### **14.2. How far are government relations with international organizations based on principles of partnership and transparency?**

The relations of the government of BiH with international donors are not based on a partnership<sup>7</sup>, and the transparency of the relationships is very poor. The absence of partnership is not reduced exclusively to bad practice in project implementation. The membership of donors in the World Bank or United Nations is even less an indicator of such a situation. The true problem, the cause of the ‘absence of partnership,’ lies in the global system of domination, with such a practice only a part of that system.

Because of such a ‘system’ in BiH, there is no relevant data on diversion of funds/non-earmarked funds; on deferred money transfers on unjustified grounds; excessive wages and honorariums not recorded in the original documentation; irrational expenditures and inappropriate interference of fund providers with the process of implementation.

The problem rests with the other party. In original project documents, the honorarium for a foreign consultant is, as a rule, approximately 1,000 US\$ per day (of which the implementing organization/consulting company would take 50% for ‘overhead costs’.<sup>8</sup> Therefore, it is not a problem of a honorarium that deviates from the original documentation, but rather the practice that has been adopted and become so-called ‘code of conduct’ in the aid industry. To speak about ‘inappropriate’ interference of donors into the process of implementation would be equally inappropriate, because most of the projects were designed (developed and implemented, as well) by donors (see statement by Adnan Terzić).

Insufficient transparency is also reflected in the fact that the list or survey of total funds donated to BiH is not available. Sporadic data that is released to the public is not complete and does not match the actual situation. For example, the UNDP - Newsletter Special Edition for 2005 stated that the total of UK donations in BiH for 2001-2005 was US\$1,726,500. Fortunately, the amounts were substantially larger. The ground for such assessment was based on the information that only two UK projects (DFID), in the social sector, were financed by 6 million GBP, which is US\$8,200,000.<sup>9</sup>

##### **14.2.3. Positive and negative indicators**

The prevailing initiatives in BiH after the war were those in reconstruction and humanitarian aid. Ten years after signing of the Dayton Peace Agreement, the process of stabilization and association has become an important aspect of the new situation in BiH, which is a requirement for gradual integration into the EU. This is the process that requires sustainability and accountability for the development of the country, of all the institutions at the state and entity level, civil society, and the society in all of its aspects and with all the capacities.

<sup>7</sup> A good illustration of the true situation was made by the Chairman of the Council of Ministers, Mr. Adnan Terzić, at the occasion of signing the Agreement with EU on the CARDS Program for 2005: «We are signing this Agreement that has been offered to us following the principle «Take it or Leave it», *Nezavisne novine*, 26.07.2005.

<sup>8</sup> Original documentation of several donor projects in BiH made available to the author.

<sup>9</sup> *Ibidem*, author.

The support policies by the international organizations (WB, UN agencies, *et al.*), donor countries, UN and OECD member states, are formally and legally based on the codes of best practices; however, such codes do not foresee for partnership, nor do they prevent subordination. Even the donations, or project financing on the basis of international treaties or agreements with international organizations, place domestic authorities in the «take it, or leave it» position.

The true question is what name to give to a system according to which only 40%-50% of the funds reach the final beneficiary, and the remaining is spent on «implementation costs» and administrative costs of the international organizations, and, on top, the profit of consulting companies. It should also be said that from the donations, 25% of the labor and services are purchased in donor countries<sup>10</sup>.

This part of donations, therefore 'go back' to the donor country. It is only logical that within such a system there are no cumulative records on donations and support to BiH, and the data that is recorded at the level of the state are only a small slice of a large 'cake', that remains unrevealed and is, consequently, open to all sorts of abuses.

#### Partnership, sustainability, ownership

Partnership between donor and the receiving country (in determining goals, criteria, implementation, and, in particular, project management) is a condition for sustainability (feasible results that can be reproduced without international assistance i.e. that can turn into domestic practice) without which there is no domestic ownership (full responsibility for one's own development).<sup>11</sup>

Partnership and transparency ask for a change in approach and in policies of the proponents of the international support in BiH, including an understanding of their role by local stakeholders, as well as by themselves as well. This is reflected, first of all, in the following:

- International organizations, in particular those that were created exclusively for BiH for some special reasons, have been, and still are, the internal factor of the political, economical and social development of the country.
- There is evident absence of specific mechanisms of realization of accountability of international organizations before the citizens of BiH as well. This a very important presupposition in order to make BiH citizens feel responsible for the overall situation and development in the country.
- Partnership with local public institutions and civil society, participation of domestic players in designing of the reform policy, is the only way of developing their responsibility for their own situation and development.
- Civil society organizations, politically independent, should be organized in such a manner to be able to monitor and assess policies of both domestic and international stakeholders, thus strengthening the responsibility of all groups.

If it is true that the reforms are necessity for BiH, it is likewise true then that the character of the reform and their policies must be adapted to its specific features. A doctrine or universal models cannot give proper results.

In the case of BiH, the support of the development does not have for its objective and criterion strengthening of domestic capacities. It is also neither realized in cooperation with domestic

<sup>10</sup> Vidi DFID, «Eliminating World Poverty: Making Globalization Work for the Poor», 2000, [www.globalisation.gov.uk](http://www.globalisation.gov.uk)

<sup>11</sup> Žarko Papić, «The Bosnian case: Lessons can be Learned for South-Eastern Europe», GASSP Conference *Globalisation, Regionalisation and Making of Social Policy in South-Eastern Europe*, Thessalonica, September 2003.

authorities. The policy of 'conditioning' has not proved itself to be efficient anywhere. It must be replaced by the policy of local accountability. This is a condition for creating economic and social sustainability in the countries that are being supported.<sup>12</sup> It is evident that cost effectiveness of the international support policies should be enhanced. To achieve this, it would be necessary, such policy must be based on an integrated approach, they must be co coordinated, transparent, and be relevant for the beneficiaries.

### **14.3. How far does the government support UN human rights treaties and respect international law?**

#### **14.3.1. Laws**

Based on record of the Office of United Nations High Commissioner for Human Rights, the state of Bosnia and Herzegovina ratified the following UN international treaties, which entail a binding commitment to report to the competent bodies:

1. International Convention on the Elimination of All Forms of Racial Discrimination, adopted in 1966, entered into force in 1969, 162 State Parties (ratified by BiH July, 1993);
2. International Covenant on Civil and Political Rights, adopted in 1966, entered into force in 1976, 148 State Parties (ratified by BiH March 6, 1992);
  - Optional Protocol to the International Covenant on Civil and Political Rights, adopted in 1966, in force since 1976, 102 State Parties (ratified by BiH June 1, 1995);
  - Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted in 1989, entered into force in 1991, 47 State Parties (ratified by BiH June 16, 2001);
3. International Covenant on Economic, Social and Cultural Rights, adopted in 1966, entered into force in 1976, 145 State Parties (ratified by BiH March 5, 1992);
4. Convention on the Elimination of All Forms of Discrimination against Women, adopted on December 18, 1979, entered into force in 1981, 170 State Parties (ratified by BiH on October 1, 1993);
  - Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, adopted in 1999, entered into force in 2000, 40 State Parties (ratified by BiH on December 4, 2002);
5. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in 1984, entered into force in 1987, 129 State Parties (ratified by BiH on March 6, 1992.);
  - Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in 2002;
6. Convention on the Rights of the Child, adopted in 1989, entered into force in 1990, 191 State Parties (ratified by BiH on March 6, 1992);
  - Optional Protocol to the Convention on the Rights of the Child, on trafficking in children, child prostitution and child pornography, adopted in 2000, entered into force on January 18, 2002, 33 State Parties (ratified by BiH on November 10, 2003);

<sup>12</sup> For more information see: Achieving Sustainability, Poverty Elimination and the Environment, DFID, October 2000.

- Optional Protocol to the Convention on the Rights of the Child, on the involvement of children in armed conflicts, adopted in 2000, in force since 2002, 33 State Parties (ratified by BiH on October 4, 2002);

7. International Convention on the Protection of all Migrant Workers and Members of Their Families, adopted in 1990, entered into force on July 1, 2003. (Ratified by BiH on July 1, 2003)<sup>13</sup>

The Constitution of Bosnia and Herzegovina, determines that the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 (ratified by BiH July 12, 2002) and its Protocols shall directly apply. It refers to all rights and freedoms guaranteed by other international instruments for the protection of human rights listed in the Appendix to Annex 6 of the General Framework Agreement for Peace in Bosnia and Herzegovina, where there are, *inter alia*:

Convention on the Prevention and Punishment of the Crime of Genocide, 1948;

Geneva Conventions I-IV on the Protection of the Victims of War, and the Geneva Protocols I-II thereto;

Convention relating to the Status of Refugees and the 1966 Protocol thereto;

Convention on the Nationality of Married Women, 1957;

Convention on the Reduction of Statelessness, 1961;

European Charter for Minority Languages;

Framework Convention for the Protection of National Minorities, 1994.<sup>14</sup>

Moreover, Bosnia and Herzegovina, adopted a series of conventions in many other domains of social life significant for the implementation of human rights, such as the following:

*European Convention on Local Self Governance (ratified on July 12, 2002);*

*European Convention on Protection Against Torture and Inhuman or Degrading Treatment or Punishment (ratified on July 12, 2002);*

*European Convention on the Protection of National Minorities (ratified on February 24, 2000);*

*Convention on Slavery, 1926 and protocol to the Convention on Slavery, 1953. (Ratified on September 1, 1993.);*

*Additional Convention on Abolition of Slavery, Slave Trade and Institutes and Practices Similar to Slavery, 1956. (Ratified on September 1, 1993);*

*Convention on Consent to Marriage, Minimum Age for Concluding Marriage and Registration of Marriage, 1962 (ratified September 1, 1993);*

*International Convention on Suppression and Punishment of the Crime of Apartheid 1973; (ratified on September 1, 1993);*

*International Convention against Apartheid in Sport, 1895 (ratified on September, 1993);*

*Convention on the Status of Refugees, 1951, Protocol on the Status of Refugees, 1967 (Ratified on September 1993)<sup>15</sup>*

The state Bosnia and Herzegovina is a member of all the most important agencies and organizations of the United Nations, including the following:

<sup>13</sup> <http://untreaty.un.org/English/treaty.asp> Office of the United Nations High Commissioner for Human rights, Status of Ratifications of the Principal International Human Rights Treaties as of 09 June 2004

<sup>14</sup> Bosnia and Herzegovina also ratified a great number of other conventions of the Council of Europe. See: <http://conventions.coe.int>

<sup>15</sup> Other international documents are available at: <http://www.bh-hchr.org/dokumenti.htm> and <http://www.mhrr.gov.ba>

UN High Commissioner for Human Rights in Geneva (UNHCHR), UN High Commissioner for Refugees in Geneva (UNHCR), UN Development Program in New York (UNDP), International Court of Justice in Den Haag (ICJ), International Labor Organization in Switzerland (ILO), International Monetary Fund in Washington (IMF), UN Fund for Children in New York (UNICEF), UN Program UN Environment Protection in Nairobi (UNEP), UN Program UN for Drugs Control and Protection in Vienna (UNDCP), UN Organization for Education, Science and Culture in Paris (UNESCO), UN Organization for Industrial development in Vienna (UNIDO), Un Food and Agriculture Organization in Rome (FAO), UN Development Fund for Women in New York (UNIFEM), UN Office in Geneva (UNOG), UN Office in Vienna (UNOV), World Health Organization in Geneva (WHO), World Food Program in Rome (WFP), World Trade Organization in Madrid (WTO), World Intellectual Property Organization in Geneva (WIPO), World Meteorological Organization in Geneva (WMO), UN Population Fund in New York (UNFPA), International Bureau for Education in Geneva (IBE), International telecommunication Union in Geneva (ITU), International Postal Union in Bern (UPU), International Civil Aviation Organization in Montreal (ICAO), International Fund for Agricultural Development in Rome (IFAD), International Centre for Science and High Technology in Trieste (ICS), UN Conference on Trade and Development in Geneva (UNCTAD), UN Commission for International Trade Law in Vienna (UNCITRAL), UN Compensation Commission in Geneva (UNCC), UN Research Institute for Social Development in Geneva (UNRISD), UN Institute for Training and Research in Geneva (UNITAR), UN Institute for interregional crime and judiciary in Roma (UNICRI).

#### **14.3.2. Implementation: positive and negative indicators**

In the Report from the Commission to the Council on the Preparedness of BiH to negotiate a Stabilization and Association Agreement with the European Union from 2003, it is stated that “Bosnia and Herzegovina ratified a series of international conventions on human rights - but that it was not regular with its reports to the international supervising bodies”.<sup>16</sup> Two years afterwards, Bosnia and Herzegovina submitted most of the requested reports to the competent institutions including, the following:

Initial Report on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination in BiH;

Initial Report on the Implementation of the International Covenant on Civil and Political Rights in Bosnia and Herzegovina for 1994-2004;

Initial Report of Bosnia and Herzegovina on Article 19 (UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment) to the UN Committee Against Torture. The Report comprises the period from 1992 to June 30, 2003;

Initial Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights in Bosnia and Herzegovina for the period 1993-2003;

First Initial Report on the Elimination of Discrimination Against Women (CEDAW);

First Report by BiH to the Committee for the Rights of the Child;

BiH Report on Legislative and Other Measures in the Implementation of the Principles Determined by the Framework Convention for the Protection of National Minorities;

<sup>16</sup> Report from the Commission to the Council on the Preparedness of BiH to Negotiate a Stabilization and Association Agreement with the European Union of 2003, 18.11.200, p. 12.



Report on the Implementation of the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The Initial Report on the Implementation of the International Covenant on Civil and Political Rights in Bosnia and Herzegovina for 1994-2004, in compliance with the UN Commission for Human Rights Guidelines, presents the current situation in the domain of civil and political rights in Bosnia and Herzegovina. The Report deals with certain difficulties in the protection of the right to self-determination, gender equality, prevention of discrimination in the appeals procedures, prohibition of inhuman punishment, freedom of movement and residence, freedom and security of persons, rights of foreign nationals, right to privacy, freedom of thought, public expression and opinion, right to peaceful assembly and freedom of association, right to political and trade union association, right to family and marry, protection of minor persons, rights of national minorities, etc.<sup>17</sup> The Initial Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights in Bosnia and Herzegovina for the period 1993-2003 says that it is necessary to make further progress in the field of the right to work and employment, the right to non-discrimination in employment relations, right to health care and social insurance, rights of elderly persons and persons with disabilities, the right to adequate education, and the right to participate in cultural achievements, etc.<sup>18</sup>

Based on the Initial Report on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination in Bosnia and Herzegovina, there is no problem concerning the racial discrimination in BiH on racial grounds. However, the problem that exists in BiH is the one on the grounds of gender, national, ethnic or religious belonging.<sup>19</sup> The first Initial Report against Torture states that, in the post-war period there has been a positive shift in this field. However, the Report also mentions that there are a number of cases of maltreatment by civil servants. This primarily refers to law enforcement officers - policemen in uniforms and crime inspectors.<sup>20</sup>

The first Initial Report on Elimination of Discrimination Against Women (CEDAW) presents an assessment of the status of women in all the areas covered by the Convention, such as discrimination against women, and the measures to eliminate this discrimination, promotion of gender equality, elimination of stereotypes and prejudices, women trafficking and exploitation of women through prostitution, women in political and public life, diplomacy and international organizations, citizenship issues, education, employment, pension and social welfare, equality in the access to health care, and other fields of social and economic life, equality before the law, marital and family rights. The Report also gives conclusions indicating what measures should be taken in individual areas in order to improve the position of women (amendments of the existing regulations and adoption of the new one in certain fields).<sup>21</sup> The Report, in particular, highlights that:

... pursuant to one of the Recommendations by the UN Committee for Elimination of Discrimination Against Women, the Election Law in BiH, adopted by the Parliamentary Assembly of BiH in 2001, introduced a provision binding all the political entities participating in the election process for legislative bodies at all levels in BiH, to have on their lists of candidates at least 1/3.<sup>22</sup>

<sup>17</sup> See: Initial Report on the Implementation of the International Covenant on Civil and Political Rights in Bosnia and Herzegovina for 1994-2004

<sup>18</sup> See: The Initial Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights in Bosnia and Herzegovina for 1993-2003

<sup>19</sup> See: Initial Report on the Elimination of All Forms of Racial Discrimination, January 2005

<sup>20</sup> See: First Initial Report Against Torture for 1992 to June 30, 2003. p. 132

<sup>21</sup> See: First Initial Report on Elimination of Discrimination Against Women (CEDAW)

<sup>22</sup> Report on the work of the Ministry for Human Rights and Refugees of BiH, 31.01.2005, p. 12

After the First Report by BiH was presented to the UN Committee for the Rights of the Child<sup>23</sup>, the Committee gave recommendations concerning the rights of the child, committing the authorities in BiH to take 60 measures in different areas. The Committee criticized « the extent to which children’s opinions are recognized, insufficient monitoring of the rights of the child and high percentage of children without adequate access to health and social care. ».<sup>24</sup>

The Ministry for Human Rights and Refugees believes that there are still violations of human rights that are protected by the UN documents. Even more so, because some of the cases are the consequence of the violation perpetrated by those who should be protecting them *ex officio*. Evidently, there is still no adequate legislation, and the competent institutions for the protection of human rights in the labor relations, employment, health care and social welfare, pensions, disabled workers, and other persons with disabilities. There are still problems with Roma children and education, sustainable return of refugees and displaced persons, sporadic discrimination etc.<sup>25</sup>

Bosnia and Herzegovina has not yet ratified certain documents, and the Report on Compliance with Obligations and Implementation of the Post-Accession Cooperation Program of Bosnia and Herzegovina and the Council of Europe, April 2005 mentions that the “European Framework Convention on Cross Border Cooperation and the Protocols thereto have been signed but not ratified...and that the amended European Charter, signed in May 2004, has not been ratified yet”.<sup>26</sup> The European Charter on Regional and Minority Languages is not signed either, although it should have been signed and ratified before the end of the second year of the membership of Bosnia and Herzegovina in the Council of Europe.<sup>27</sup>

As of yet, Bosnia and Herzegovina is not a member of the World Trade Organization. It applied for membership on May 11, 1999, and the Working Group was set up on July 15, 1999. In October 2002, Bosnia and Herzegovina presented a Memorandum on foreign trade regime, in October 2004, the bilateral negotiation on the access to the market started, and in December the same year, the second meeting of the Working group was held.<sup>28</sup> “Notwithstanding the fact that Bosnia and Herzegovina is not yet a member of the World Trade organization (WTO), the export and import activities in BiH are adjusted, to a great extent, to the existing principles of WTO”.<sup>29</sup>

Based on the Statute of the Council of Europe the acceding country “shall recognize the rule of law and principle on the basis of which every person under its jurisdiction shall enjoy human rights and fundamental freedoms, and undertakes to cooperate sincerely and effectively in achieving the goal determined in Chapter I”.<sup>30</sup> In contradiction with the commitments accepted by Bosnia and Herzegovina, the constitution of Republika Srpska, in Article 11, foresees for death penalty for “most serious crimes”.<sup>31</sup> However, the Criminal Code of Republika Srpska does not include a provision on death sentence.

<sup>23</sup> See: First report by Bosnia and Herzegovina presented to the UN Committee for the Rights of the Child

<sup>24</sup> *Oslobodenje*, 12. 10. 2005, p. 64

<sup>25</sup> Report by the Ministry for Human Rights and Refugees of BiH, 31.01.2005, p. 18.

<sup>26</sup> Report on Compliance with obligations and Implementation of the Post Accession Cooperation Program of Bosnia and Herzegovina and the Council of Europe, Tenth Report (February-April 2005), April 15, 2005, p. 6-8.

<sup>27</sup> *Ibidem*, str. 8-9.

<sup>28</sup> <http://www.wto.org>,

<sup>29</sup> <http://www.mvp.gov.ba>,

<sup>30</sup> Statute of the Council of Europe, Article 3.

<sup>31</sup> Report from the Commission to the Council on the Preparedness of BiH to Negotiate a Stabilization and Association Agreement with the European Union, 18.11.2003, p. 12.

Furthermore, the Report from the Commission to the Council on the Preparedness of BiH to Negotiate a Stabilization and Association Agreement with the European Union from 2003, also states that:

... Neither Entity has adopted all the requested amendments, nor the provisions on proportional representation in public bodies are frequently disregarded. It can be interpreted as insufficient dedication of the regional authorities to civil and political rights guaranteed by them.<sup>32</sup>

Considering the fulfillment of conditions and international obligations - as mentioned in the Report of BiH Stabilization and Association from 2004 - the cooperation with the International Criminal Tribunal for Former Yugoslavia (ICTY) is still not adequate:

The law enforcement officers from RS did take part in recent actions undertaken by the International Stabilization Forces (SFOR), but their participation was only a nominal one. While the local capacities of law enforcement may have even deteriorated, and it is still not clear whether such operations could be organized, would be organized, realized and continued without the international engagement. In December 2003 there was a commission established. Its establishment was originally postponed because RS was not ready, but eventually, under the pressure from the families of the victims and the international community the commission to seek the truth about the tragic events that took place in Srebrenica in July 1995 was set up. The Commission shall meet on a regular basis, but there are allegations that the methodology of its work and the findings are politically colored.<sup>33</sup>

The Council of Europe is still encountering problems in reviewing domestic legislation and its compatibility with the European Convention on Human rights and the respective case law. Once the national working group had been set up (February -April 2005) - as it is stated in the tenth Report - it did not take any steps or show its commitment to this process. Highlighting on how urgent this issue is, the Secretariat of the Council of Europe declared in its regular reports that it was not willing to continue investing financial and organizational resources into the activity for which the Member State has not provided necessary cooperation and its own contribution.

The European Commission for Democracy through Law, in its opinion from March 2005, underlined that the constitutional provisions on the composition and election of the members of the Presidency and the House of Peoples are considered to be incompatible with the Convention. A whole set of state functions is reserved exclusively for the members of the three, so called, constituent peoples (Bosniaks, Serbs and Croats). This is a hindrance for the individuals belonging to any of other peoples in Bosnia and Herzegovina to be elected to that position, which is discrimination on an ethnic basis. The abovementioned election clauses are also segregational, again on an ethnic basis; the Election law, for the purposes of election to positions in certain state bodies, classifies all the citizens of Bosnia and Herzegovina into three separate groups: Serbs within Republika Srpska, and Bosniaks and Croats within the Federation Bosnia and Herzegovina. The same could be said for the provisions pursuant to which only Bosniaks, Serbs and Croats may be members of the Presidency of Bosnia and Herzegovina, House of Peoples of the Parliamentary Assembly or Speakers and deputy Speakers in both Houses of the Parliamentary Assembly of Bosnia and Herzegovina. These provisions as in direct contradiction with Article 3 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>34</sup> and Article 14 of the Convention,<sup>35</sup> Copenhagen Principles, that constitute Annex 3

<sup>32</sup> *Ibidem*, p. 12.

<sup>33</sup> Report on Stabilization and Association of Bosnia and Herzegovina, 2004, p. 6.

<sup>34</sup> «The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the free opinion of the people in the choice of the legislature».

<sup>35</sup> «Enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.»

of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement),<sup>36</sup> Article 25 of the UN International Covenant on Protection of Civil and Political Rights,<sup>37</sup> and Protocol 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, that entered into force on April 1, 2005 and ensures that all the rights foreseen by law shall be enjoyed without any discrimination.<sup>38</sup>

Violations of individual provisions of the international conventions on human rights are still present in Bosnia and Herzegovina. The report, Supporting Human Rights and Democracy: US Record, Bureau for Democracy, Human Rights and Labor states:

The records on human rights are very poor; the situation has improved in few sectors, but the major issues have not been resolved yet. The police continue violating the rights and subjects to maltreatment persons in custody and other citizens; the accountability of the police officers has improved though, overcrowded and outdated facilities continue to be a problem. There are violations of private rights, in particular of the returnees from minority groups...The authorities at the Entity level and private groups continue with restricting religious freedoms of the population in those areas where they are a minority; discrimination on religious grounds continues to be a problem.<sup>39</sup>

#### **14.4. How far does the government respect its international obligations in its treatment of refugees and asylum seekers, and how free from arbitrary discrimination is its immigration policy?**

##### **14.4.1. Laws**

The general legal framework for the elimination of all the forms of discrimination in the legislation of Bosnia and Herzegovina is, first of all, in the Constitution of Bosnia and Herzegovina, Article II.4, and the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 14, and its Protocols, in the standards of the UN conventions (International Covenant on Civil and Political Rights and International Convention on the Elimination of All Forms of Racial Discrimination), and in the following laws: Law on Movement and Residence of Aliens and Asylum in BiH (Official Gazette of BiH, No. 29/03), Law on Displaced Persons and Refugees, and the Law on the Amendments to the Law on Refugees and Displaced Persons in Bosnia and Herzegovina (Official Gazette of BiH, No. 23/99), Law on Gender Equality (Official Gazette of BiH, No. 16/03), Law on Human Rights Ombudsman for Bosnia and Herzegovina (Official Gazette of BiH, No. 19/02), Criminal Code of Bosnia and Herzegovina (Official Gazette of BiH, No. 3/03), Framework Law on Primary and Secondary School Education in Bosnia and Herzegovina (Official Gazette of BiH, No. 18/03) and the Law on Associations and Foundations in BiH (Official Gazette of BiH, No. 32/01).

<sup>36</sup> Appendix to Annex 3 of General Framework Agreement for Peace in Bosnia and Herzegovina, Document from the second meeting of the Conference on Human Dimension of the Conference on European Security and Cooperation, Copenhagen, 1990, paragraphs 7 and 8

<sup>37</sup> Article 25 of the International Covenant on Civil and Political Rights, 1966: «Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

- a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
- b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage held by secret ballot, guaranteeing the free expression of the will of the electors;
- c) to have access, on general terms of equality, to public service in his country.

<sup>38</sup> Opinion on the Constitutional situation in Bosnia and Herzegovina and the powers of the High Representative, CDL-AD (2005) 004 of March 11, 2005, p. 15.

<sup>39</sup> Supporting human rights and democracy: US Record, Bureau of Democracy, Human Rights and Labor, 08.04.2005. <http://www.usembassy.ba>, p. 2.

In Bosnia and Herzegovina, as it is stated in the Report on the Implementation of the International Covenant on Civil and Political Rights in Bosnia and Herzegovina for the period 1994 to 2004 - there is no explicit discrimination between its citizens and foreign nationals. The safeguard for such non-discrimination is based on Article 2 of the Covenant and applied both to foreign citizens and the citizens of Bosnia and Herzegovina. This issue is regulated by the Constitution of Bosnia and Herzegovina and the Law on Movement and Residence of Aliens and Asylum in BiH, adopted in 2003.<sup>40</sup> The Law regulates

the conditions and the procedure for the entry and residence of foreign citizens/aliens in Bosnia and Herzegovina, the reasons for revoking the residence permit and eviction of foreign citizens from the territory of Bosnia and Herzegovina, the asylum seeking procedure, approval of asylum and cessation of asylum status, the competencies of the respective authorities in the application of this law and other issues concerning the asylum, residence and movement of foreign citizens in Bosnia and Herzegovina.<sup>41</sup>

Accordingly, pursuant to Article 6 of the Law on Movement and Residence of Aliens and Asylum in BiH, discrimination on any grounds against foreign citizens is forbidden, including sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, age, mental or physical disability, birth or any other status.

Foreign citizens in Bosnia and Herzegovina, based on the existing regulations, have full rights to liberty and personal security. In case of illegal deprivation of liberty, they must be treated in a humane manner with and with full respect for personal inherent dignity.

Foreign citizens shall not be detained due to the failure to fulfill their contractual obligations. They have the right to move freely, to choose the place of their residence, and to leave the country. They have equal obligations and, in case of any criminal charges against them or rights and obligations deriving there from, the right to equal and fair treatment before a competent, independent and unprejudiced tribunal, established by law. They cannot be subject to any retrospective criminal legislation and have the right to be lawfully recognized. They are protected against any arbitrary or unlawful interference into their privacy, family, home or correspondence. They have the right to freedom of thought, consciousness or religion, the right to freedom of opinion and expression of the same. Foreign citizens enjoy the right to peaceful assembly and freedom of association. In cases where foreign citizens represent a minority in terms of Article 27 of the Covenant, they shall not be deprived of their right to enjoy, with other members of their group, their own culture, practice and promote their own religion and use their own language, or the right to conclude marriage, etc. The children of foreign citizens enjoy the same safeguards as is required by their status of juvenile persons. According to the legislation of Bosnia and Herzegovina, the above rights of the foreign citizens are limited only in a manner that is foreseen by the Covenant on civil and political rights.<sup>42</sup>

Pursuant to the Law on Movement and Residence of Aliens and Asylum in (Articles 47-50), a foreign citizen may have his residence permit revoked if the conditions prescribed by the Law have not been fulfilled. The foreign citizen has right to appeal against such decision to the competent ministry within 15 days after the decision is served. Final decision on expulsion is made by the same competent ministry that issued the original ruling.

<sup>40</sup> Initial Report on the Implementation of the International Covenant on Civil and Political Rights in Bosnia and Herzegovina for 1994-2004 period, March 2005, p. 10

<sup>41</sup> Law on Movement and Residence of Aliens and Asylum in BiH, October 2003, Year VII - No. 29, Article 1

<sup>42</sup> Initial Report on the Implementation of the International Covenant on Civil and Political Rights in Bosnia and Herzegovina for 1994-2004 period, March 2005, p. 11



Expulsion is a measure ordering a foreign citizen/alien to leave Bosnia and Herzegovina, at the same time prohibiting him/her from entering again or to reside in BiH for a period of time that may not be shorter than one year, or longer than ten years.<sup>43</sup> Based on Article 59 of the Law on Movement and Residence of Aliens and Asylum, the Council of Ministers of Bosnia and Herzegovina may, in extraordinary cases, decide in individual cases on the basis of the proposal, with reasons adduced, by the competent ministry or competent ministry of security in Bosnia and Herzegovina, and Rule on Expulsion of Aliens from Bosnia and Herzegovina, if such expulsion is indispensable in the interest of public order or if it is based on national security reasons as foreseen by Article 1, Protocol 2 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>44</sup>

However, “aliens shall not be returned or expelled to the border of the territory where their lives or liberty would be threatened because of their race, religion, nationality, association with a social group, or because of their political opinion, regardless of whether they have been granted officially granted asylum. Prohibition of returning or expulsion also refers to persons with whom there are reasonable grounds to believe that they would be subject to torture or other inhuman or degrading treatment or punishment. Aliens shall not be sent to a country where they would not be protected from being sent to the earlier mentioned territory.”<sup>45</sup>

Based on Article 72 of the Law on Movement and Residence of Aliens and Asylum in BiH,<sup>46</sup> asylum shall be granted to an alien who, in accordance with the definition of a refugee from Article 1. A (2) of the Convention on the Status of Refugees, 1951, and Article 1 of the Protocol from 1967, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself to the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>47</sup>

Pursuant to Article 75 of the above Law, no sanctions shall be taken against an asylum seeker who is coming directly from the territory where his life or freedom were threatened and who illegally entered or intends to enter the territory of that country, provided that such person registers, without any delay, with the authorities from Article 74 paragraph 1 of the Law<sup>48</sup> and presents valid reason for such illegal entry into the country or presence. In asylum matters, the public shall be excluded and all the information concerning this procedure shall be considered confidential.<sup>49</sup> Based on Article 80, the Ministry shall ensure appropriate conditions for the reception of aliens who are asylum seekers, in particular concerning their accommodation, food, health care and education.

Decision on the termination of the asylum status shall be made, *ex officio*, by the basic organizational unit with the authority in asylum matters determined by Article 76 of the Law on Movement and Residence of Aliens and Asylum, upon the request by the organizational unit of

<sup>43</sup> Article 56 of the Law on Movement and Residence of Aliens and Asylum

<sup>44</sup> «An alien may be expelled before he has exhausted his rights from paragraph 1.a, b, and c of this Article, if such expulsion is necessary in the interest of public order or if it is in the interest of national security.»

<sup>45</sup> Article 34. Law on Immigration and Asylum in BiH, Official Gazette of BiH, No. 23/99.

<sup>46</sup> Law on Movement and Residence of Aliens and Asylum, October 6, 2003, Year VII - No 29, Article 72 (a)

<sup>47</sup> *Ibidem*, Article 72 (b)

<sup>48</sup> *Ibidem*, Article 74, paragraph 1, «an alien may apply with a request for asylum to the competent organizational unit in the Ministry or to the Ministry of the Interior.»

<sup>49</sup> *Ibidem*, Article 77

the competent ministry or Ministry of the Interior. No appeals against such a decision shall be admissible, but action with the competent court shall stay a decision on enforcement. It is important to underline that, based on the legislation in Bosnia and Herzegovina, an alien may not be expelled, or forcefully removed from the territory of Bosnia and Herzegovina before the effectiveness of the decision from paragraph 1 of the above mentioned Article.<sup>50</sup>

Bosnia and Herzegovina gives special treatment to alien refugees, who are asylum seekers according to Articles 3 to 34 of the Convention on Legal Status of Refugees from 1951.<sup>51</sup> Against the background of international obligations in the treatment of refugees and asylum seekers, it is underlined that «the provisions of this and other special domestic laws or international documents, which are in force, to which BiH is a party, shall be superior in comparison with the provisions of the Convention relating to the status of refugees from 1951, if they are more favorable concerning the aliens with a recognized status of a refugee».<sup>52</sup> An alien with refugee status shall have right to reside in the territory of Bosnia and Herzegovina during the asylum period, for what there will be a refugee residence permit issued.<sup>53</sup> Travel documents for an alien with a refugee status shall be issued for the period not shorter than two years which can be extended.<sup>54</sup> Refugee status is, in principle, granted to a spouse and minor children, and to other members of immediate family living in the same household in the territory of Bosnia and Herzegovina. An alien with refugee status has, *de iure*, the right to work, education, health care and social protection, under the same conditions that apply to the citizens of Bosnia and Herzegovina.

#### **14.4.2. Implementation: positive and negative indicators**

The Initial Report on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination states that:

After the war, Bosnia and Herzegovina encountered totally new challenges like legal and illegal immigration, asylum seekers, applications for BiH citizenship ... and, as a consequence, most of the laws include a standard on the prohibition of discrimination on any grounds, as it enshrined not only in the European convention for the protection of human rights and fundamental freedoms, but also in the CERD standards (International Convention on Elimination of All Forms of Racial Discrimination) ... and, since the rights of the aliens are covered by a number of the conventions ratified by BiH (...) the standards enshrined in these instruments apply as well.<sup>55</sup>

Furthermore, the Report points to:

The issue of illegal immigrants, and legal residence as well, implied building of new institutional mechanisms to deal exclusively with immigration issues. The system that exists in Bosnia and Herzegovina, that is undergoing a reform at present, was not capable of responding to problems concerning the growing migration to Bosnia and Herzegovina and, in particular, with the increased number of transits through BiH. The country still lacks receiving centers for illegal alien immigrants (related to the lack of funds), and, as a consequence, immigrants live in inade-

<sup>50</sup> «The asylum unit within the Ministry, with full capacities for asylum and refugee rights, shall consider applications by asylum seekers and make a decision in a form of a ruling», Article 76.1 of the Law on Movement and Residence of Aliens and Asylum

<sup>51</sup> Convention adopted on July 28, 1951, entered into force on April 22, 1954 pursuant to Article 43 of the Convention on Legal Status of Refugees

<sup>52</sup> Law on Movement and Residence of Aliens and Asylum of October 6, 2003, year VII - No. 29, Article 81, paragraph (2).

<sup>53</sup> *Ibidem*, Article 81, paragraph 3.

<sup>54</sup> *Ibidem*, Article 82, paragraph (3).

<sup>55</sup> Initial Report on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, Sarajevo, January 2005, p. 4-5.

quate conditions. It must be admitted that most of the activities concerning this particular problem, were conducted with the support by of the UNHCR. Until 2004, UNHCR directly participated in the asylum granting procedure. UNHCR also monitored the work of the competent BiH institutions and the ministry.<sup>56</sup>

The Initial Report illustrates the issue of illegal immigrants by the following example:

In the light of growing number of illegal immigrants of Chinese nationality and granting citizenship to individuals of Afro-Asian origin (Algeria, Egypt), and the persons that were with the citizenship of one of the former Soviet Republics (e.g. Ukraine), with the objective to clarify the conditions under which the naturalization was conducted, the state established a commission to review all the rulings on granting BiH citizenship through naturalization and registration into the Birth Register (with explanation : citizenship acquired on the basis of residence in the territory 06.04.1992).<sup>57</sup>

The Helsinki Committee for Human Rights in BiH in the Analysis of the Asylum Seekers' Position in BiH describes these situations in a very similar way:

There is not yet a specialized institution in BiH for the reception of asylum seekers. The reception center in Rakovica, nearby Sarajevo, also accommodates persons in transit and refugees. The camp was opened in 1988 to shelter refugees from Serbia and Montenegro, and under the authority of the Ministry for Human Rights and Refugees. After opening, the shelter accommodated 1,562 people in, mainly Albanian refugees from Kosovo. After the NATO intervention in Serbia and Montenegro, the Egyptians from Kosovo also arrived at the Camp, afterwards to be moved to the refugee camps in Breza, Bosanski Petrovac and Salakovac.<sup>58</sup>

By July 1, 2004, when the asylum seekers submitted their requests to UNHCR, according to the Analysis of the Asylum Seekers' Position in Bosnia and Herzegovina:

321 applications, comprising of 855 people (one person may apply with a request for several asylum seekers, e.g. family members), were made. Out of this number, the UNHCR approved 70 requests that comprised 236 people, and denied 191 requests, 445 people. There are requests for 174 persons that are still pending with UNHCR. The cases that will not be completed by the end of 2005 will be transferred to the Ministry of security.<sup>59</sup>

In the Ministry of Security, as of July 1, 2004, there were:

95 requests including 159 persons. Twenty-nine of those requests, i.e. 56 persons, were refused as of June 14, 2005. Among those who were not granted asylum status were 27 persons from Serbia and Montenegro (8 requests - mainly Roma from Kosovo), 15 persons from Macedonia (7 requests), 4 from Pakistan (4 requests), 3 from Moldova (3), 3 from Ukraine (3), 2 from Bangladesh (2), 1 from Romania and 1 person from Algeria.<sup>60</sup>

According to the Initial Report of Bosnia and Herzegovina on Article 19 (Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) to the UN Committee Against Torture, in the period from November 2000 to the first half of 2003, there were 199 cases where the measure of expulsion was ordered, with 66 appeals filed with the Appellation Council, and in 52 appellation procedures, the first instance rulings were confirmed ( The Immigration and Asylum Sector is within the Ministry for Human Rights and Refugees, and one of its competences is to rule on expulsion measures).<sup>61</sup>

<sup>56</sup> *Ibidem*, p. 5

<sup>57</sup> *Ibidem*, p.5

<sup>58</sup> Analysis: Asylum Seekers' Position in Bosnia and Herzegovina, July, 2005, p. 3

<sup>59</sup> *Ibidem*, p. 2

<sup>60</sup> *Ibidem*, p. 2

<sup>61</sup> Initial report by Bosnia and Herzegovina on Article 19 of the Convention to the UN Committee Against Torture, 30.06.2003, p.54

The Helsinki Committee for Human Rights in BiH in its Analysis states that:

Actually, there is no coordination between the competent authorities from the moment the expulsion is ruled to the final decision on appeal and the moment these persons have to leave the country. Namely, those persons to whom asylum is not granted, i.e. when they received a warrant on expulsion, in most cases there is no monitoring on their future fate, or movement.<sup>62</sup>

It is also evident that there is a frequent disharmony between the normative regulation of the treatment of refugees and asylum seekers and actual treatment by the state authorities in individual cases. The Report on the application of the International Convention on Elimination of All Forms of Racial Discrimination, states, among other things, the following:

In case of extradition of a group of naturalized citizens of BiH, because of the alleged terrorist activities, the Human Rights Chamber ruled on compensation to their family members, taking into account that the court procedure on review of the citizenship status of the extradited group had not been completed. At present, there is a procedure of repatriation of the extradited group underway, since they still have BiH citizenship.<sup>63</sup>

After the war, Bosnia and Herzegovina has encountered problems regarding trafficking in people. In the report on the human right situation in BiH by the Helsinki Committee for Human Rights for BiH that there is no relevant statistical data on the number of the victims of trafficking, and that all assessments are based on partial reports from court trials and from the State Border Service records on border crossings by foreign citizens (women) at the airports in BiH:

Women, victims of trafficking are almost exclusively the concern of the local nongovernmental organizations and the International Organization for Migration, who give shelter to these women, take care of their rehabilitation and provide for the return to their countries of origin. However, if the court proceedings refer to BiH nationals who are involved in trafficking of women, such cases would be mainly monitored by the UN Office of the Commissioner for Human Rights (UNO-HCHR). In the Federation of BiH, there were seven criminal charges brought against 10 persons for being involved in prostitution. In Republika Srpska there are five pending cases before the court where nine persons are accused and another 30 persons who are under investigation or indicted. All these procedures are very long and the results are satisfying.<sup>64</sup>

Bosnia and Herzegovina, despite its very difficult situation concerning refugees and displaced persons, has received a great number of refugees from Federal Republic of Yugoslavia and the Republic of Croatia. Based on recent records, “as of September 30, 2004, there are 22.534 refugees in Bosnia and Herzegovina: 3,057 from Serbia and Montenegro and 19,477 from the Republic of Croatia. These refugees enjoy all the rights as foreseen by law”.<sup>65</sup>

The European Commission Against Racism and Intolerance in its Report on Bosnia and Herzegovina, speaking about the great number of registered, but also unregistered, refugees from Croatia, and Serbia and Montenegro, states that ECRI is deeply concerned with the situation of serious legal uncertainty in which these persons live, and urges BiH authorities to clarify how many such persons there are and to ensure them, in cooperation with the UNHCR, a clearly defined legal status.

<sup>62</sup> Analysis: Asylum Seekers' Position in Bosnia and Herzegovina, July, 2005, p. 5

<sup>63</sup> Initial Report on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, Sarajevo, January 2005, p. 5.

<sup>64</sup> <http://www.bh-hchr.org/Izvjestaji/izvj2004.htm>

<sup>65</sup> Initial Report on the Implementation of the International Covenant on Civil and Political Rights in Bosnia and Herzegovina for 1994-2004 period, March 2005, p. 50

One of the challenges which Bosnia and Herzegovina also faces, based on the Report by the European Commission Against Racism and Intolerance, is the treatment of approximately 3,000 persons, mainly Roma from Kosovo, although there are also members of other ethnic minorities. It has been noticed that the people living in the refugee camps are not treated in a friendly manner by either the authorities or the local population. The Report mentions “resistance in providing access to local schools for Roma children.” In this regard, it is reiterated that:

The authorities at all levels should avoid a discourse that might incite intolerance and animosity against the refugees and build public awareness how important it is that they observe their international obligations.<sup>66</sup>

In 2003, the Council of Ministers, upon the proposal by the Ministry for Human Rights and Refugees, adopted the “Strategy of Bosnia and Herzegovina for the Implementation of Annex VIII of the Dayton Peace Agreement”, which is the first joint framework document at the level of BiH aiming at ensuring effective return of refugees and displaced persons. The basic strategic goals are to complete the reconstruction of housing facilities necessary for their return. The repossession of property and occupancy rights are a basic precondition for the sustainable return and the process of reintegration in Bosnia and Herzegovina.<sup>67</sup>

#### **14.5. How consistent is the government in its support for human rights and democracy abroad?**

##### **14.5.1. Laws (Documents)**

The Presidency of Bosnia and Herzegovina defined the support of the Government of Bosnia and Herzegovina of human rights and democracy in other countries in the document “General Streamings and Priorities in the Implementation of the Foreign Policy of Bosnia and Herzegovina”:

Bosnia and Herzegovina, a sovereign and internationally recognized state, shall cooperate in the international, bilateral, regional, and global frameworks, and it shall make arrangements and develop other relations with all countries and international organizations on the principles enshrined in the UN Charter, Final Document from Helsinki and other documents of the Organization for Security and Cooperation in Europe, and the generally accepted principles of international law. The foreign policy of Bosnia and Herzegovina towards its international partners shall be based on openness and equality, mutual respect of sovereignty and territorial integrity, principle of peaceful cooperation and recognition of mutual interests. At the same time, Bosnia and Herzegovina shall act in accordance with its commitments deriving from the concluded and agreed treaties and other international instruments, and its membership in the international organizations and associations. Bosnia and Herzegovina reiterates its commitment to resolve inter-state dispute in a peaceful manner, respecting the principles that are integral parts of the international law. Moreover, Bosnia and Herzegovina advocates constructive dialogue in the pursuit of solutions to all open issues.<sup>68</sup>

<sup>66</sup> ECRI, European Commission Against Racism and Intolerance, Report on Bosnia and Herzegovina, Strasbourg, February 15, 2005, p. 14.

<sup>67</sup> Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of Dayton Peace Agreement, Sarajevo, December 2002, p.10

<sup>68</sup> General Streamings and Priorities in the Implementation of the Foreign Policy of Bosnia and Herzegovina, March 31, 2003, <http://www.predsjednistvo.ba>, p. 1.



### 14.5.2 Implementation: Positive and negative indicators

At the 59<sup>th</sup> Session of UN Assembly in New York in 2004, it was pointed out that “Bosnia and Herzegovina, instead of being a beneficiary of international assistance, is turning more and into an assistance provider, i.e. a participant in peace missions, like those in the Congo, Sierra Leone, Ethiopia, Liberia, East Timor and Haiti.”<sup>69</sup> Presently, Bosnia and Herzegovina is taking part in UN peace missions: civil servants are present in the capacity of civil police in the UN Stabilization Mission on Haiti (MINUSTAH) and the UN Mission in Liberia (UNMIL), and as military observers in the UN Mission in Democratic Republic of Congo (MONUC), and the UN Mission in Ethiopia and Eritrea (UNMEE).<sup>70</sup>

With a view to official policy of Bosnia and Herzegovina concerning the launching of military attacks against Iraq, the Presidency of Bosnia and Herzegovina gave a public statement for public, declaring, among other things that :

The Presidency of Bosnia and Herzegovina wishes to express its regrets that the disarmament of Iraq was not resolved in a peaceful manner within the framework of the United Nations. We believe that we are not at the eve of a long crisis and that United Nations will not lose their own incentive in resolving this situation.<sup>71</sup>

At the 59<sup>th</sup> Session of UN Assembly in New York in 2004, Bosnia and Herzegovina, concerning the crisis in Iraq, expressed its satisfaction with the consensus that the members of the Security Council reached in view of the Resolution on the transfer of the sovereignty of the coalition forces to the legitimately elected legislative and executive authority, and that it believes that:

The United Nations should take the leading role in designing the future of Iraq. The people of Iraq should rule the country, and the military forces controlling the territory must adhere to the Geneva Conventions on Humanitarian law. The territorial integrity and sovereignty of Iraq must be preserved, as well as the sovereignty over the natural resources.<sup>72</sup>

With the intention to assist the people of Iraq and contribute to peace-making, Bosnia and Herzegovina, as it was also highlighted at the 59<sup>th</sup> Session, made a decision to send a unit (36 professional soldiers who volunteered to go there) for the destruction of explosive devices to Iraq. When asked to review its decision, and after numerous media wrote about it, the Presidency gave a statement, explaining this decision by the desire to assist the Iraqi people:

... (It is) time for Bosnia and Herzegovina to take up its international commitments by participating in peace-making missions in territories like Iraq, since Bosnia itself has been a beneficiary of such an international assistance, and thus willingness to actively in the international coalition for combating terrorism.<sup>73</sup>

The statement also points out that the decision is made in accordance with Article V/5a of the Constitution of Bosnia and Herzegovina and Article 13 of the Law on Defense of Bosnia and Herzegovina, and that, in the meantime, the UN Security Council adopted resolutions setting an international-legal framework for such a decision.<sup>74</sup>

<sup>69</sup> Address by the President of the Presidency, Tihić at the 59th UN Assembly, New York, September 22, 2004, <http://www.predsjednistvobih.ba> , released on September 22, 2004, p. 1-2.

<sup>70</sup> <http://www.un.org/Depts/dpko/missions/unmil/facts.html>, August 2005

<sup>71</sup> <http://www.predsjednistvobih.ba>, Sarajevo, March 20, 2003

<sup>72</sup> Address by the President of the Presidency, Tihić at the 59th UN Assembly, New York, September 22, 2004), <http://www.predsjednistvobih.ba> , released on September 22, 2004, p. 3

<sup>73</sup> Statement concerning the request to review the decision of the Presidency to send BiH demining team to Iraq, <http://www.predsjednistvobih.ba> , of 17.08.2004

<sup>74</sup> *Ibidem*, <http://www.predsjednistvobih.ba> , of 17.08.2004

The Ministry of Foreign Affairs of Bosnia and Herzegovina gave a statement concerning the terrorist attack on New York in 2001, condemning the series of terrorist attacks on New York and Washington, saying the acts were “cowardly terrorist actions against a civilian population, which deserve to be condemned by the civilized world. Not only condemnation, also a joint action by all the international community in the campaign against terrorist groups.”<sup>75</sup> Bosnia and Herzegovina is, as it is stated in General Streamings and Priorities in the Implementation of the Foreign Policy of Bosnia and Herzegovina “committed to continue to fight terrorism and organized crime in accordance with the UN resolutions, within the Committee for Combating Terrorism, along with strengthening global co operation in this field.”<sup>76</sup> The Report developed by the experts of the (US) Congressional Research Center includes the following:

The Research Center of the US Congress recognizes on the basis of statements by the American Government that Bosnia and Herzegovina has made progress in the combat against terrorism in its own area, but is still faced with the same problems as other countries in the region - poverty, corruption and underdeveloped institutions.<sup>77</sup>

At the 3<sup>rd</sup> Summit of the Heads of States and Governments of the Council of Europe, in Warsaw on May 16-17, 2005, Bosnia and Herzegovina was recognized for “supporting three conventions on preventing of terrorism, actions against trafficking in people, money laundering and financing terrorism.” At the Summit it was highlighted that Bosnia and Herzegovina needs Council of Europe to be able to build a democracy and sustainable society, rule of law and observation of human rights, in the years ahead of us and at the level necessary for the membership in the Union :

This implies promotion of the implementation of human rights, developing of legal instruments and improvement of intergovernmental cooperation, to assist in the establishment and maintenance of the stability of the continent, in pursuit of lasting peace and to the benefit of our citizens.<sup>78</sup>

Bosnia and Herzegovina, as a Member State in the Council of Europe since April 24, 2002, is represented in expert committees on individual conventions of the Council of Europe, partial agreements (including European Commission for Democracy through Law - Venice Commission) and the European Human Rights Court.<sup>79</sup> The delegation of Bosnia and Herzegovina in the Parliamentary Assembly of the CoE has ten members.<sup>80</sup> The Council of Europe budget for 2005 is 186,012,700 euros, with 243,676 euros (0.1310 %) as the BiH share.<sup>81</sup>

Bosnia and Herzegovina participates in the work of many international and regional organizations. It obtained the observer status in the Organization of Islamic Conference (OIC) at the VII Islamic Summit in December 1994 in Morocco. The Conference of the Foreign Ministers of the

<sup>75</sup> <http://www.mvp.gov.ba>, Sarajevo, 11. 09. 2001

<sup>76</sup> General Streamings and Priorities in the Implementation of the Foreign Policy of Bosnia and Herzegovina, March 31, 2003, <http://www.predsjednistvo.ba> , p. 1.

<sup>77</sup> *Oslobodenje*, September 1, 2005, p.2

<sup>78</sup> 3<sup>rd</sup> Summit of the Heads of States and Government of the Council of Europe, Warsaw, May 16-17, 2005, Address by Borislav Paravac, President of the Presidency of Bosnia and Herzegovina, <http://www.predsjednistvobih.ba>

<sup>79</sup> Bosnia and Herzegovina has its representatives in the Expert Committee for Human Rights which includes protection of human rights (CDDH), development of human rights (DH-DEV) and the issue of protection of national minorities; media and communications, gender equality, racism and intolerance; local and regional democracy; legal co operation and rule of law; bioethics; terrorism, trafficking in people; education, culture, heritage and sport; environment; social cohesion and social rights; migrations; health; transversal project. It is also represented in the working bodies of the Council of Europe: European Commission Against Racism and Intolerance (ECRI), European Committee for the Prevention of Torture (CPT) and European Coordination Forum for the International Anti-doping agency ECF), as well as in expert committees on individual CoE conventions

<sup>80</sup> <http://assembly.coe.int/Members/Countries/BiH-en.html>

<sup>81</sup> [http://www.coe.int/T/E/Com/About\\_Coe/Member\\_states/e\\_bo.asp](http://www.coe.int/T/E/Com/About_Coe/Member_states/e_bo.asp), 13. 07. 2005

OIC is held once a year to examine the reports on the progress achieved in the implementation of the decisions adopted within the policies defined at the Islamic Summits.<sup>82</sup>

Our country is also present in the International Committee for Missing Persons (ICMP) but it does not participate in its financing,<sup>83</sup> and since December 14, 1992 it has been a member of the International Monetary Fund (IMF), the last consultations held on May 27, 2005.<sup>84</sup> The State of Bosnia and Herzegovina has been a member in three organizations since February 25, 1993, the International Bank for Reconstruction and Development (IBRD), the International Finance Corporation (IFC), and International Development Association (IDA). On March 19, 1993, Bosnia and Herzegovina acceded to the Multilateral Investment Guarantee Agency and to The International Centre for Settlement of Investment Disputes (ICSID) on June 13, 1997.<sup>85</sup>

Participation of Bosnia and Herzegovina in international organizations entails financial commitments. Due to the inadequate financial situation in diplomatic and consular missions, and “auditing that is not yet fully developed”,<sup>86</sup> compliance of BiH with its financial obligations can be identified only on the basis of the records of the above mentioned organizations.

Bosnia and Herzegovina became a Member State in the Organization for Security and Cooperation in Europe (OSCE) on April 30, 1992, and on July 8, 1992 it signed the Helsinki Document. The OSCE institutions are the Council of Ministers, Standing Committee and Security Cooperation Forum and Economic Forum. The Delegation of Bosnia and Herzegovina in the OSCE Parliamentary Assembly in Copenhagen has three members.<sup>87</sup> Based on the latest financial report for 2003/2004, Bosnia and Herzegovina has fulfilled all its obligations in the PA OSCE based on 0.19% of participation rate in the amount of 4,219 euros.<sup>88</sup> The planned percentage of the participation of Bosnia and Herzegovina for 2005 is 0.19% and given that the report is still being developed, the current settlement of obligations is 0.02 %.<sup>89</sup>

Bosnia and Herzegovina is a member of the International Committee of the Red Cross (ICRC), that is co-financed by governments and organizations, although there is no financial obligation,<sup>90</sup> and the International Federation of the Red Cross and Crescent (IFRC), but it is, presently, not a member of the Main Board elected in 2000.<sup>91</sup>

There are two still pending issues very important for the state Bosnia and Herzegovina: membership in Partnership for Peace (PfP) and NATO, and the beginning of negotiations on Stabilization and Association Agreement with the European Union (SAA). The Tenth Report on Compliance with Obligations and Commitments and Implementation of the Post Accession Cooperation Program states that most of the collocutors were “optimists concerning the fulfillment of the conditions within the foreseen deadline, i.e. till the end of 2005” in regards to the Partnership for Peace program, but that the situation concerning the Stabilization and Association Agreement is somewhat different because the «police reform continues to be the key reform expected from BiH by EU».<sup>92</sup>

<sup>82</sup> <http://www.mvp.gov.ba>, Press release, 27. 07. 2005

<sup>83</sup> <http://www.ic-mp.org>,

<sup>84</sup> <http://www.imf.org>,

<sup>85</sup> <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0..content>

<sup>86</sup> <http://www.mvp.gov.ba>, Statement, 2. 08. 2005

<sup>87</sup> <http://www.oscepa.org/admin/getbinary.asp?fileid=997>

<sup>88</sup> [File://C:/Documents%20and%20Settings/ntchs/Local%20Settings/Temp/Rar\\$EX26.732/](File://C:/Documents%20and%20Settings/ntchs/Local%20Settings/Temp/Rar$EX26.732/) Report of 26. 04. 2004

<sup>89</sup> [File://C:/Documents%20and%20Settings/ntchs/Local%20Settings/Temp/Rar\\$EX00.671/](File://C:/Documents%20and%20Settings/ntchs/Local%20Settings/Temp/Rar$EX00.671/) , 12. 05. 2005.

<sup>90</sup> [http://www.icrc.org/web/eng/siteeng0.nsf/iwpList2/About the ICRC:](http://www.icrc.org/web/eng/siteeng0.nsf/iwpList2/About%20the%20ICRC)

<sup>91</sup> <http://www.ifrc.org/who/index.asp>

<sup>92</sup> Bosnia and Herzegovina: Compliance with Obligations and Commitments and Implementation of the Post-Accession Cooperation Program, 10th Report, (February-April 2005), 15. 04. 2005 p. 4.

**14.6. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?**

Comprehensive activities are undertaken in Bosnia and Herzegovina that result in significant improvement of the situation in the field of human rights. Based on the report on the work of the Ministry for Human Rights and Refugees in BiH, it can be concluded that, according to the evidence by international institutions, organizations and monitoring teams, visible progress has been achieved in the area of promotion and protection of human rights, in particular when compared with the period immediately after the war. This refers especially to the legislature, institutional and analytic and reporting spheres.

A few new laws were passed, the amendments to the old laws were completed, and both the former and the latter are harmonized with the European Convention for the Protection of Human Rights and Fundamental Freedoms. A Fund for Returnees was established, while the Agency for Gender Equality, the Commission for Refugees and Displaced Persons has been reconstructed, etc. Concerning the analytical and reporting sphere, the reports on the implementation of individual conventions in the field of human rights were developed and presented to the relevant UN bodies and to the CoE. The cooperation with numerous nongovernmental organizations in this sector continues and the number of refugees and displaced persons is substantially reduced, etc.<sup>93</sup>

In order to meet the requirements on the basis of UN documents on human rights, the Ministry for Human Rights and Refugees set up a number of working groups. The working groups worked on developing of the respective reports that Bosnia and Herzegovina presented the competent UN committees and institutions of the Council of Europe, observing the standards, recommendations and guidelines of the mentioned institutions. They also participated actively in responding to the questions concerning the already mentioned international documents and their protocols. Owing to the financial support by a number of international organizations for the procurement of the equipment, there were working and consultation meetings held in a few towns in BiH, as well as seminars, roundtables and other events, with the invitations publicized in daily papers.<sup>94</sup>

In terms of priorities concerning the above matter, it is evident that Bosnia and Herzegovina, indeed “pays more attention to human rights, there are institutions at the state level, the authorities and numerous nongovernmental organizations involved in one of the aspects of human rights. Consequently, today the citizens of Bosnia and Herzegovina have places to go and ask for the protection of their rights.”<sup>95</sup>

In 2003, the Council of Ministers passed a Decision on procedures and methods in coordination of activities in prevention of human trafficking and illegal migration in Bosnia and Herzegovina and the function of a national Co-Coordinator for BiH.<sup>96</sup> During 2004, all the activities arising from the contract with the UNHCR concerning the shelter and reception and refugee camps in BiH were implemented. In July 2004, a tripartite protocol between the Ministry for Human Rights and Refugees in BiH, Ministry of Security and the UNHCR was concluded concerning the future functioning of the reception centers. The Protocol includes the transfer of the reception center in Rakovica, Sarajevo to the authority of the Ministry of Security.<sup>97</sup> The Asylum

<sup>93</sup> Report on the work of the Ministry for Human Rights and Refugees BiH, 31.01.2005, p. 18.

<sup>94</sup> *Ibidem*, p. 15

<sup>95</sup> *Ibidem*, p. 18

<sup>96</sup> Official Gazette of BiH, No.24/03.

<sup>97</sup> «In reception centers on 31.12.2005 there were 815 beneficiaries, out of which 573 were on provisional basis, 191 asylum seekers and 51 refugees. «Report on the work of the Ministry for human rights and refugees in BiH, 31.01.2005, str. 22.

Sector in the Ministry of Security claims Rakovica to be the only center for asylum seekers in BiH at present, saying that there are plans by which all other categories will be moved to other centers by the end of 2005.<sup>98</sup>

Within the scope of building new institutional mechanisms, the state of Bosnia and Herzegovina “reformed legislative framework and harmonized it with the international conventions, and started a comprehensive reform of the institutions and law enforcement agencies.”<sup>99</sup> The law reform, then the reform of the judiciary, provided, *inter alia*, for better protection and treatment of refugees and asylum seekers. In the aim of successful implementation of the passed laws, there are respective national plans and programs adopted in order to improve the conditions of the already mentioned population and cooperation among the competent institutions, and especially with nongovernmental organizations. The latter gave a special contribution to the overall efforts through their activities, lobbying and identifying of the problems present.<sup>100</sup>

Given the limited financial resources in Bosnia and Herzegovina, substantial support and assistance in providing for basic protection were offered by nongovernmental and international organizations that operate in BiH, such as UNHCR, UNICEF, OHCHR, IOM, and OSCE. In 2003, the UNHCR, within CARDS program and with financial support by the European Commission and in cooperation with the Ministry of Security, launched a project with the name “Support in capacity building in asylum granting procedures and treatment of asylum seekers in BiH,” aiming at capacity building of the authorities in BiH to provide fair and efficient treatment of asylum seekers, to ensure that they enjoy all the rights prescribed by domestic laws and in compliance with international standards.<sup>101</sup>

Likewise, the International Organization for Migration (IOM) launched the TOKTEN project in the aim of an information campaign. The implementation of this project in Bosnia and Herzegovina started last year and it already contributed greatly to the development of many states. Within the Project, information material was distributed to institutions, organizations and business companies in BiH, while, and abroad, to the diplomatic and consular missions, BiH associations and IOM missions in the countries where a large number of BiH citizens live. However, the implementation of the Project was interrupted, because there were no funds provided for the second stage.<sup>102</sup>

Concerning the cooperation of the state institutions of Bosnia and Herzegovina with international organizations and institutions, it is worth mentioning that contacts with a great number of international organizations were established, such as UN Committees, CoE organizations and institutions, in order to obtain support for the return of refugees and displaced persons, exchange of opinions, monitoring and support in the field of human rights and implementation of programs and projects. There are more frequent contacts of working nature with the representatives of OHR, UNHCR, OHCHR, OSCE, UNICEF, ICMP, ICRC, OHRO, etc.<sup>103</sup>

<sup>98</sup> Analysis: Asylum Seekers' position in Bosnia and Herzegovina, Helsinki Committee for Human Rights in Bosnia and Herzegovina, July, 2005, p. 3

<sup>99</sup> Initial Report on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, Sarajevo, January 2005, p. 5.

<sup>100</sup> *Ibidem*, p. 9

<sup>101</sup> *Ibidem*, p. 5

<sup>102</sup> Report on the work of the Ministry for human rights and refugees in BiH, 31.01.2005, p.27

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**Expert Panel on Democratic Progress  
in Bosnia and Herzegovina**





## I. Introduction

Commissioned by the *Open Society Fund BiH*, *Prism Research*<sup>1</sup> conducted research on 'Expert Panel on Democracy Assessment in BiH'.

In the first stage of research, the authors - members of research teams, proposed a list of more than 100 experts in different areas. All the experts were then contacted and requested to answer questions in a tailor-made questionnaire, to be submitted within a particular time. Few of them were contacted personally, and the questionnaire was filled with the assistance of *Prism Research* interviewers.

We ensured that the sample be equally representative of different national groups and that it includes experts from both entities in BiH. It is important to note that experts from different areas, with different education and experience, gave their contribution to the research. For that reason, the sample included participants from different professions, mainly lawyers and experts in economics. Approximately one fifth of the sample were university professors. A large part of the sample are employed in different bodies of executive and legislative branches - from municipal to state level. Approximately one fifth of the sample are employed by different organisations working on improving and promoting human rights - rights in general, as well as rights of minorities and other groups considered to be vulnerable. Part of the sample were representatives of the media.

Research was conducted from 15 August to 30 September 2005. This Report contains an overview of results obtained from analyses of experts' responses.

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<sup>1</sup> *Prism Research* is an independent professional organisation for market, media and social research, located in Sarajevo, BiH.



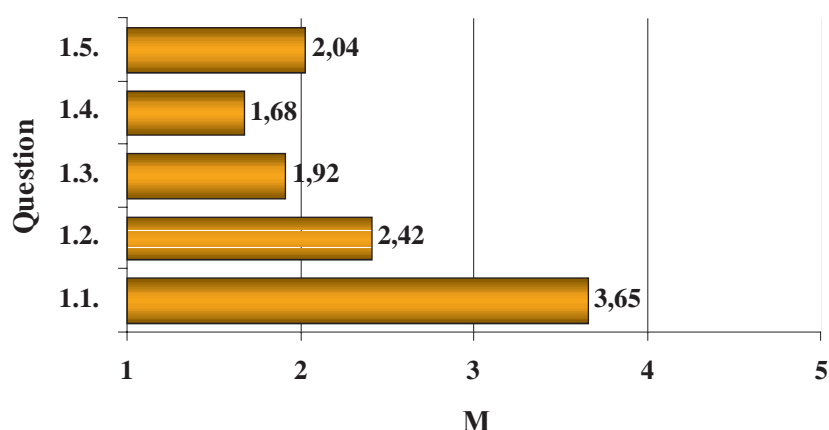
## Results

### I. Citizenship, law and rights

#### 1.0. Nationhood and citizenship

The first section of the questionnaire was related to nationhood and citizenship. Research findings are graphically presented. (See Graph1.)

Graph1. Nationhood and citizenship



#### 1.1. How inclusive is the political nation and state citizenship of all who live within the territory?

With regard to state citizenship accessibility for B&H residents, more than half of respondents mostly positively rated this aspect of democratic progress. Eighteen percent of respondents stated that the political nation and state citizenship is very much inclusive, and 39% that it is very inclusive for all who live within the territory. Only 12% of respondents gave a more or less negative estimation for accessibility of state citizenship in Bosnia and Herzegovina. These results are compatible with a rather high average value for this indicator for democratic progress - 3.65.

#### 1.2. How far are cultural differences acknowledged, and how well are minorities protected?

Speaking further about the position of different minority groups and acknowledgement of cultural differences, only 8% of respondents believe that cultural differences are acknowledged, and minorities well protected. Although every fourth respondent gave middling or ambiguous answer to this question, still 67% of respondents gave negative estimation for the position of minority groups in Bosnia and Herzegovina. The average value for this question indicates a middling rating (M=2.42).

#### 1.3. How much consensus is there on state boundaries and constitutional arrangements?

With regard to valuation of presence of consensus on state boundaries and constitutional arrangements, almost three-quarters of respondents gave adverse valuation of this indicator for democratic progress. On the other hand, only 8% of respondents stated that this matter is properly solved with positive outcome. The average value given by respondents is 1.92 and this confirms the negative attitude and valorisation toward this aspect of democratic progress in Bosnia and Herzegovina.

#### **1.4. How far do constitutional and political arrangements enable major societal divisions to be moderated and reconciled??**

The following question posed related to assessment of influence of constitutional and political arrangements in enabling major societal divisions to be moderated and reconciled. As illustrated in the graphical presentation, respondents mostly gave uniform responses to this question. They generally agreed (86%) that constitutional and political arrangements do not enable the moderation and reconciliation of (more or less) major societal divisions. The average value for this question ( $M=1.68$ ) is the lowest in the section of questions related to nationhood and citizenship issues.

#### **1.5. How impartial and inclusive are the procedures for amending the constitution?**

In the continuation of this section, we elaborate procedures for amending the constitution. Every tenth respondent estimated that procedures for amending the constitution are highly impartial and inclusive. On the other hand, approximately three-quarters of respondents believe that impartiality and involvement are at a low or very low level in relation to procedures for amending the constitution. The average value ( $M=2.04$ ) again indicates negative assessment of this indicator.

##### Best feature

"Accessibility of state citizenship at this moment seems like the best feature in this area, although we had some "interesting" corruption cases related to giving passports to foreign citizens"

"It is hard to tell which is the best resolved issue because there are a lot of problems in all areas. Maybe the best feature is B&H citizenship, especially in view of initiative undertaken in to resolve problems related to dual citizenship and agreement with other countries."

"Accessibility of state citizenship is clearly defined, although it is limited to a small number of categories that have access to citizenship. However, even in this defined framework there are aberrations, for example, procedure for giving citizenship to remarkable individuals."

"Even though there are a lot of problems in this area, the best feature in this area is the accessibility of state citizenship."

##### Most serious problem

"Constitutional issues cause divisions and serve the rising and sustaining of differences and hindering reconciliation."

"The most serious problem in this area certainly is the state system and constitutional arrangement that is based on ethnicity and emphasizes differences between people based on their national background."

"The constitution is discriminatory because it does not allow active and passive right to all who live within the territory."

"The most serious problem in this area is change of constitution and citizens' and civil society's access to this process. Also, only a small number of organizations and alliances are systematically involved in the reform of the constitution."

##### Suggested improvements

"Creation of a favourable political climate for institutional resolving of constitutional issues, to be concrete parts of the constitution and political system that currently inhibit the further development of Bosnia and Herzegovina and promotion of democratic values."



"Constitutional changes that could strengthen the state create a functional system, decrease administration..."

"More consistent implementation of existing constitutional solutions in order to protect constitutive ethnic groups. Additional changes of state constitution in order to protect individual rights relative to collective rights, especially those based on ethnic identity."

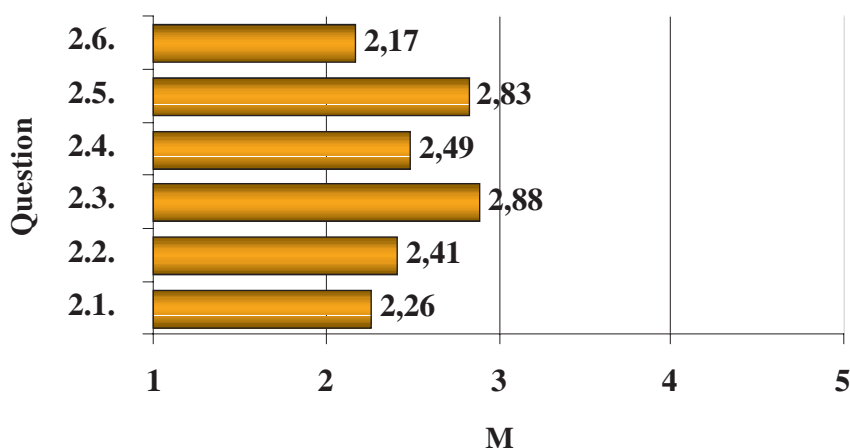
"There is a need to perform broad consultations and public debates about constitutional reforms. These consultations and debates should include representatives of civil society and experts."

"Bring the B&H constitution in line with the European Convention on Human Rights and increase the awareness of B&H citizens of the need to change the constitution that inhibits B&H on its road to Euro-Atlantic integrations."

## 2. The rule of law and access to justice

The next section of questions related to assessment for one of the indicators for democratic progress in B&H connected to the rule of law and access to justice. (See Graph2)

Graph2. The rule of law and access to justice



### 2.1. How far is the rule of law operative throughout the territory?

The first question in this section related to assessment of the presence of rule of law throughout the territory. As can be seen from the graphical presentation, over three-quarters of respondents (77%) think that rule of law operative to a very low or low level throughout the territory. There are no respondents who gave a completely positive assessment of this aspect of democratic progress, while only 4% of respondents believe that the rule of law is somewhat present throughout the territory. The average value indicates a slightly negative assessment of presence of rule of law throughout the territory (2.26).

### 2.2. To what extent are public officials subject to the rule of law and to transparent rules in the performance of their functions?

In relation to assessment of public officials' position related to the rule of law and transparency in the performance of their functions, over half of respondents (63%) think that, although there are transparent rules in the performance of their functions, all public officials do not perform their duties according to those rules. On the other hand, only 8% of respondents estimate that this issue is somewhat positively resolved. The average value indicates a middling to negative assessment (M=2.41).

### 2.3. How independent are the courts and judiciary from the executive, and how free are they from all kinds of interference?

The next question posed to respondents related to independence of the court and judiciary from the executive, and from all other influences. Every tenth respondent thinks that the independence of the court and judiciary from the executive and from all other influences is very high or high. Forty one percent of respondents gave a middling or ambiguous response to this question, while 37% of respondents assessed the work of the court and judiciary as very low or low, regarding the independence from the executive and from all other influences. Average value - 2.88 confirms indifferent attitude toward this issue.

#### **2.4. How equal and secure is the access of citizens to justice, to due process and to redress in the event of maladministration?**

In terms of the evaluation of equality in the access of citizens to justice, 59% of respondents said the access of citizens to justice, fair court procedure and possibility to redress in the event of maladministration was very low or low, or secure in the same measure for all citizens of B&H. On the other side, 14% of respondents thought the access of citizens to justice was equally high or very high for all citizens, which means that the legal system was established in such way that it treats all citizens equally. On average, respondents gave only a fairly negative estimation of this question (M=2.49).

#### **2.5. How far do the criminal and penal systems observe due rules of impartial and equitable treatment in their operations?**

Speaking of the criminal and penal system, less than half of respondents (43%) thought that its application was low or very low in accordance with due rules that oblige the impartial and equitable treatment of all citizens. Almost every fourth respondent (24%) thought the resolving of this issue was high or very high, whereas the average estimate of respondents varied around the middle response (M=2.83).

#### **2.6. How much confidence do people have in the legal system to deliver fair and effective justice?**

Respondents were then asked to evaluate how much confidence citizens have in the legal system and a fair and effective judiciary. As we can see, more than three-quarters of respondents (79%) believed the confidence in the legal system in B&H was low or very low and only 6% said the confidence was high. An average value of responses given by respondents (M=2.17) confirmed the already described negative attitude on this issue.

##### Best feature

*“The best feature in this area is arrangement of the court system, and impartiality and independence models of the court system, although this system does have some problems.”*

*“The best features in this area are related to court accessibility for citizens and their equal treatment in legal proceedings, due to comprehensive and efficient reform.”*

*“Legal system reform in Bosnia and Herzegovina and legal system separation from executive and legislative power, and other influences that could threaten court independence.”*

*“It seems courts and judges are independent. On the other hand, it seems that citizens do not have confidence in the court system.”*

*“Legal solutions in terms of court independence. Practice has not shown full implementation.”*

##### Most serious problem

*“Citizens, and a large number of legal professionals, especially from the economy, feel legal insecurity.”*

*“The most serious problem is citizen lack of confidence in court system. Confidence is very low and people mostly do not feel or believe in the presence of a functioning legal state in their lives.”*

*“The most serious problem in this area is lack of discipline among public officials, ensuring transparency and responsibility for their work and results.”*

*“‘Ordinary’ people’s distrust and lack of belief that they can change the conditions in which they live or that they can influence important decisions making.”*

*“Citizens’ access to justice, to be concrete, access to the court system is almost impossible for poor and marginalized group of citizens due to the absence of a legal aid system and complicated legislation.”*

*“Corruption of courts on the lower levels.”*

*“Bribe, corruption and insufficient protection of judges.”*

*“Corruption, local influence and certain international representatives influence on system of justice. Low material position of prosecutors and members of internal affairs bodies.”*

#### Suggested improvements

*“Developing citizens’ confidence in legal system and justice.”*

*“Strengthening transparency.”*

*“To make judges’ work more transparent.”*

*“It is critical to make the court system more efficient and transparent, which will increase people’s trust in the legal state.”*

*“Insisting on legality, professionalism and transparency in all domains of state organization.”*

*“Basically - depoliticisation that is actual reform of legal system.”*

*“Transparency of authorities’ work and constant reminding that they are public officers and must serve citizens. On the other hand, we should insist on decisions making by citizens.”*

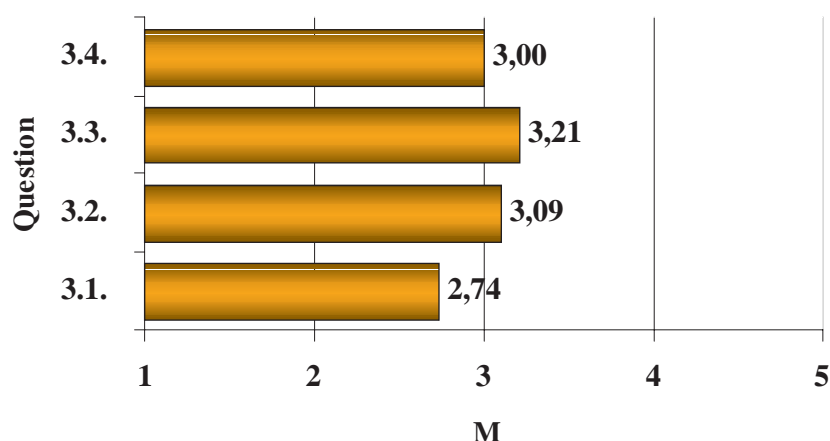
*“Organize campaign for familiarizing public with courts’ work and instrument used in the frame of Anglo-Saxon legal system, which is already applied in our judiciary.”*

*“Legal subject’ responsibility regarding the jurisdiction, removing from incompetent and corrupted judges and prosecutors. Taking strong legal measures against politicians who are interfering work of courts.”*

### 3. Civil and political rights

The next section debates questions related to civil and political rights in Bosnia and Herzegovina. Results are presented graphically (See Graph3.).

Graph3. Civil and political rights



#### 3.1. How free are all people from physical violation of their person, and from fear of it?

The first question in this section related to evaluation of the level of protection of citizens against physical violation of their person and fear of it. The experts who took part in this research gave varying responses, which because of the size of the sample hinder a simple conclusion on this issue. In any case, we can see that over one-third of respondents (37%) chose the middle response, thinking the protection of citizens was middling or ambiguous. Also, 41% of respondents thought the citizens were from physical violation of their person and from fear of it to a very low or low degree. Somewhat more than one-fifth of respondents (22%) gave positive estimates of this indicator of the development of democracy in B&H. An average estimate of the protection of citizens from physical violation of their person and fear from it showed a middle attitude ( $M=2.74$ ).

#### 3.2. How effective and equal is the protection of the freedom of movement, expression, association and assembly?

Speaking of the freedom of movement, expression, association and assembly, a significant number of respondents gave the middle response, which concurs with an average value of 3.09. Some one-third of respondents (33%) gave a positive estimate of this aspect of the development of democracy in Bosnia and Herzegovina, and somewhat less than that or (29% of respondents) gave a low or very low estimate of the protection of the freedoms of movement, expression, association and assembly.

#### 3.3. How secure is the freedom for all to practice their own religion, language or culture?

In terms of evaluation of civil and political rights, respondents were asked to estimate how secure is the freedom of citizens to practice their own religion, language and culture. Although again more citizens (37%) gave the middle response, 34% of respondents consider that the freedom to practice own religion, language and culture was high or very high. An average value of 3.31 can be observed as a tendency towards the positive attitude about this indicator of the development of democracy in B&H.

### 3.4. How free from harassment and intimidation are individuals and groups working to improve human rights?

Speaking of the organisations dealing with the improvement of human rights, the opinions of the respondents were again split. In fact, the same number of respondents (29%) expressed a negative and positive estimate of this indicator of the development of democracy in B&H. Such diverse attitudes resulted finally in an average value of (M=3.00)

#### Best feature

*“The best feature in this area is freedom of movement, expressing and association and assembly, although those rights are not used enough.”*

*“Political organizing and acting.”*

*“Legally and in practice - freedom of movement, expressing, association and assembly. “*

*“Legal and constitutional solutions which regulate this area. Existence of institutions for human rights protection.”*

*“Everything is well solved with constitution and laws.”*

*“Practicing religion, use of language, although this is mainly just pronouncedly.”*

*“Freedoms of expressing, religion and use of language.”*

*“Civil society organizations that work on promoting human rights are free in their activities in almost all societal domains.”*

#### Most serious problem

*“Segregations in schools based on religious and ethnic background.”*

*“The most serious problem in this area is political instrumentalisation and resulting misuse of human rights.”*

*“Discrimination against minority groups.”*

*“Alliances are not always built on real citizens interests. Contrary, they are built on national, personal and profit related interests.”*

*“Slow restitution, compensation, rehabilitation.”*

*“Misuse of freedom of opinion and expression that result in insults and misuse of religion.*

*“Still existing religious and national intolerance.”*

*“Misuse and instrumentalisation of religious and national feelings of citizens.”*

#### Suggested improvements

*“Through the educational system we need to build interethnic understanding and tolerance (for example, common curriculum, history textbooks, obligatory tours to all religious groups for all pupils). Media should be more sensitive with these issues.”*

*“Education through media and rigorous financial penalties for each verbal violation. Work with police and police education related to behaviour toward citizens.”*

*“Civil society from this sector needs to be united in one joint action to promote citizens’ and political rights.”*



*“Establishing an organized system that will work and provide security to citizens regarding their physical and economic integrity.”*

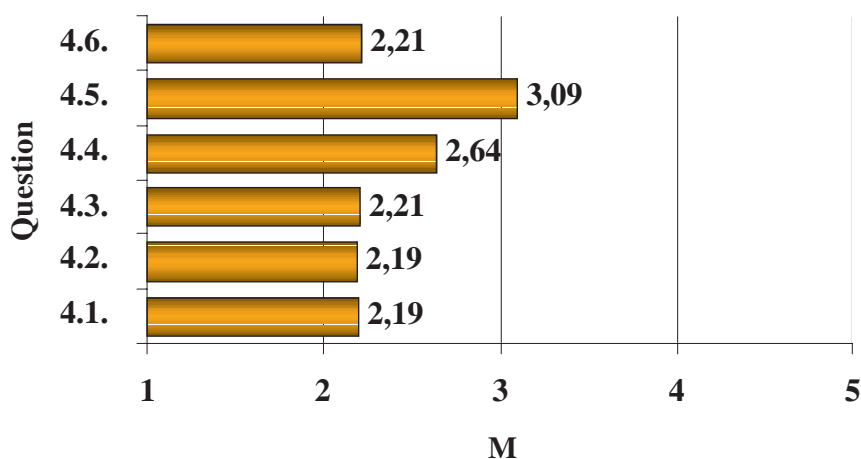
*“Active participation of all relevant factors and institutions in promoting and protecting fundamental human rights and citizens rights.”*

*“Create more rigorous sanctions for expressing religious and cultural intolerance, especially if it is politically motivated.”*

#### 4. Economic and social rights

In the next section we elaborated questions of economic and social rights and the results are graphically presented (See Graph4.).

Graph4. Economic and social rights



##### 4.1. How far is access to work or social security available to all, without discrimination?

The first question posed to respondents in this section was about impartiality in the employment procedures and social security of all citizens of B&H. Over half of respondents (61%) responded to this question with a middle response, thinking that the access to work or social security without discrimination was middling or ambiguous to all citizens. Some one-third of respondents (26%) believed these issues were resolved to a high or very high level. 14% of respondents said the access of citizens to work and social security was low or very low, indicating the existence of discrimination in this sphere, which can be concluded based on the average value of (M=2.19).

##### 4.2. How effectively are the basic necessities of life guaranteed, including adequate food, shelter and clean water?

In terms of meeting the basic life necessities, such as adequate food, shelter and clean water, only 8% of respondents said such basic necessities were effectively guaranteed but only partially. A large three-quarters of respondents said this issue was not dealt with in an adequate measure, and this is reflected in the low average estimate of this indicator of the development of democracy in B&H (M=2.19).

##### 4.3. To what extent is the health of the population protected, in all spheres and stages of life?

Speaking of the efficiency of the health system in B&H, 69% of respondents thought the protection of health of the population in all spheres and stages of life were low or very low, and only 2% of respondents said the issue of health protection in B&H was dealt with adequately. An average estimate of 2.21 confirms the negative evaluation of the efficiency of the health system.

#### **4.4. How extensive and inclusive is the right to education, including education in the rights and responsibilities of citizenship?**

In terms of the evaluation of access of all citizens of B&H to education, including the education in the rights and responsibilities of citizenship, almost a half of respondents (49%) consider that the extent and inclusion to the right to education was very low or low, while only 12% of respondents gave a positive evaluation of this aspect democratic progress in B&H. An average estimate of 2.64 confirms the abovementioned.

#### **4.5. How free are trade unions and other work-related associations to organize and represent member interests?**

We asked the respondents to evaluate to what measure trade unions and other work-related associations are free to organise and represent the rights of their members. While somewhat less than one-third of respondents (29%) gave the middle answer to this question, 36% of respondents said that trade unions and other work-related organisations are free or very free to organise and represent their members' interests. On the other hand, 35% of respondents gave a more or less negative evaluation of the freedom of organisation and work of such organisations. Although a significant number of respondents evaluated this issue positively, ambivalent attitudes about this issue at the level of the overall sample have resulted in an average estimate of M=3.09.

#### **4.6. How rigorous and transparent are the rules of corporate governance, and how effectively are corporations regulated in the public interest?**

In terms of the rules of corporate governance, 69% of respondents thought these rules were low or very low in terms of rigor and transparency and that the business sector was insufficiently regulated in the public interest, which is confirmed by an average estimate of M=2.21. In line with the abovementioned, only 8% of respondents said the rules of corporate governance were highly rigorous and transparent and that the business sector was regulated in the public interest.

##### Best feature

*“Although there are some problems in the educational system, access to education and right to education is allowed to all citizens.”*

*“The best feature in this area is related to right to education. It is, at least in one of education phases obligatory and universal, although it is sometimes threatened by political interruption.”*

*“Access to primary education and primary health protection. Generally, a legal framework based on international standards (UN, European documents).”*

*“Education, although it is not good as it should be.”*

*“Right to education, with all its defects (ethnic and political).”*

*“The education system that is obligatory and accessible to all citizens. Reform activities in this area are positive, although there are obstructions.”*

##### Most serious problem

*“Right to health care in general and accomplishing right to health care beyond entity or cantonal boundaries.”*

*“The most serious problem in this area is total lack of a social protection concept on the state level.”*

*“Change of the state system, transition from one system to another, bad and partial solution and misuses...”*

*“Bad conditions for employees and bad social care for vulnerable categories of the population.”*

*“The most serious problem is the employment issue and social protection. Access to employment is discriminating, especially for persons older than 35 years.”*

*“Legal ambiguity in the area of employment, and also in housing and educational areas. Trade unions are rather liberal, but authorities aren’t taking them seriously.”*

*“Social security, access to the labour market, legality of proceedings taken by employers.”*

#### Suggested improvements

*“Unified health care system, law on higher education, inclusion of Roma children in the educational system.”*

*“Create a social protection concept and start implementation in line with available financial resources.”*

*“Impose high penalties for black market, for domestic and international corporations.”*

*“Development and implementation of relevant programs for employment and creation of umbrella social programs.”*

*“It seems that authorities do not have any serious employment policy that would correspond to existing needs. They aren’t doing enough in order to impose tax relief for major investments that will lead to the opening of new jobs.”*

*“In the framework of health care reform, take into account extremely impoverished citizens. The current system is not adequate.”*

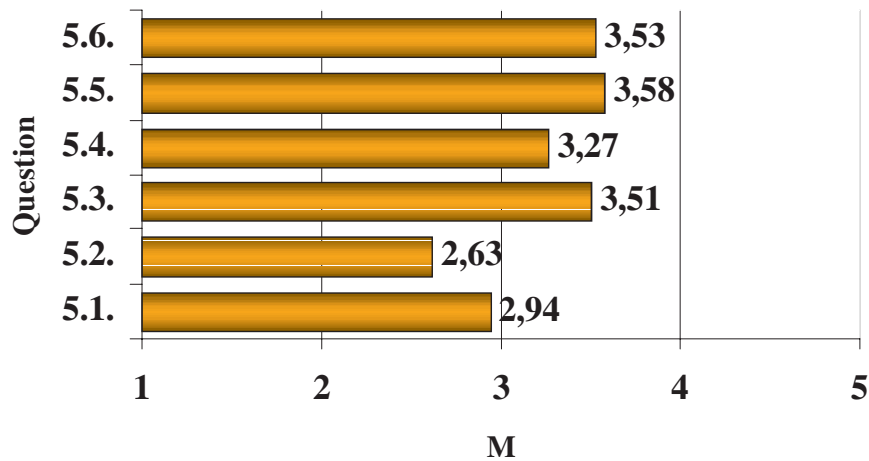
*“Employment - ensuring social rights according to European standards. Free and comprehensive education.”*

## II. REPRESENTATIVE AND ACCOUNTABLE GOVERNMENT

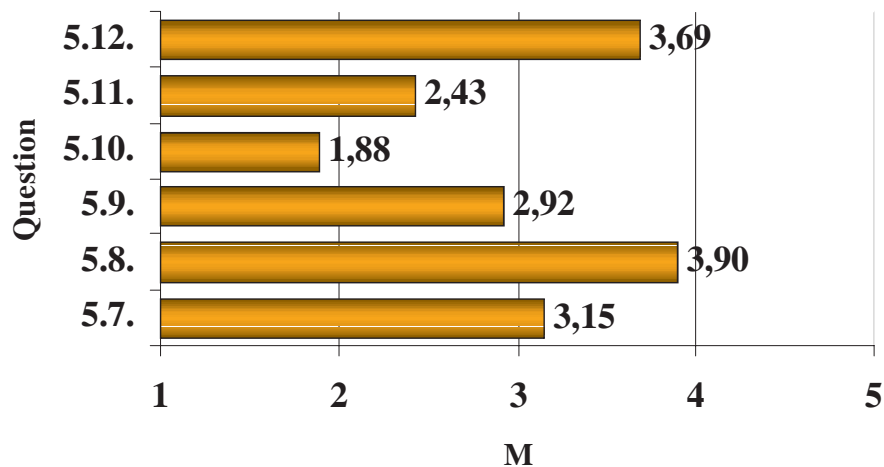
### 5. Free and fair elections

The following section is related to elections, and results are graphically presented (See Graph5a. and Graph5b.).

Graph5a. Free and fair elections (first part)



Graph5b. Free and fair elections (second part)



#### 5.1. How far is appointment to governmental and legislative office determined by popular competitive election?

The first question we asked the respondents in this section was about the evaluation of the relation between the appointment to governmental and legislative office and election results. Some one-third of respondents (34%) consider that the appointment of officials to governmental and legislative offices is highly or very highly determined by the results of popular and competitive election. Somewhat more respondents (37%) still gave a negative evaluation of this aspect of the development of democracy in B&H. An average estimate of 2.94 shows a middle attitude about this issue.

### **5.2. How frequently do elections lead to change in the governing parties or personnel?**

In relation to the link between the elections and the change in the governing parties or personnel, 51% of the respondents said the link between the election and the change in the governing parties or personnel was low or very low, which was confirmed by a relatively low average estimate of 2.63. While one-quarter of respondents gave the middle response to this question, every fifth respondent said the link between the election and the change in the governing parties and personnel was high or very high, which means that the elections lead to a change in the government.

### **5.3. How inclusive and accessible for all citizens are the registration and voting procedures?**

Speaking of the access of all citizens to electoral registration and voting procedures, slightly under half of respondents (49%) said access and inclusiveness for all citizens to the registration and voting procedures was high or very high. As evident from the chart, this is one of the rare indicators of the development of democracy in B&H rated relatively highly by the experts who took part in this research (M=3.51).

### **5.4. How independent are registration and voting procedures from government and party control, and how free from intimidation and abuse?**

The respondents who took part in this research were then asked to evaluate the influence of government and political parties on registration and voting procedures. While 43% of the respondents gave the middle response to this question, 18% said the independence and freedom of the registration and voting procedures of government and party control and intimidation and abuse was low or very low. On the other hand, 37% of respondents gave a positive evaluation of this aspect of the development of democracy in B&H. The average value of responses given by respondents amounted to 3.27.

### **5.5. How fair are the procedures for the registration of candidates and parties?**

In terms of the registration procedures of candidates and parties for the elections, 59% of respondents said the fairness of these procedures was high or very high, which is one of the rare aspects of the development of democracy in B&H rated mainly positively by the respondents. The abovementioned can be concluded based on the relatively high average rate of (M=3.58).

### **5.6. How fair are access of candidates to the media and other means of communication with voters?**

We asked respondents to evaluate to what measure do candidates and parties have fair access to media and other means of communications with voters. Somewhat over half of respondents (53%) said the access of parties and candidates to media and other means of communication with the voters are high or very high, which is in accordance with the average estimate of (M=3.53). On the other hand, almost one-fifth of respondents (18%) said the access to media and other means of communication with the voters was insufficient.

### **5.7. How effective a range of choices does the electoral and party systems allow voters?**

In terms of the choice offered to the voters, somewhat over one-third of respondents (35%) said the range of political candidates the electoral and party system allow voters was insufficient, while 36% of respondents gave a more or less positive evaluation of this issue. The average rate of M=3.15 showed the middle evaluation of this indicator of the development of democracy in B&H.



### **5.8. How equally do voters' votes count?**

We asked the respondents to evaluate to what measure are voters' votes treated equally. While 64% of respondents said the votes are treated equally or very equally, only 14% of the respondents said the treatment of voters' votes was biased. The relatively high average rate of (M=3.90) demonstrates the positive evaluation of this aspect of the development of democracy in B&H.

### **5.9. How closely do the composition of the legislature and the selections of the executive reflect the choices they make?**

The opinions of the respondents varied in terms of their attitude about the relation between the voters' choice and the composition of the legislative bodies and the selection of the executive bodies. So, 31% of the respondents said the composition of legislative bodies and the selection of the executive bodies highly or very highly reflects voters' choices, while the number of those who thought this relation was inadequate, or that the composition of the legislative bodies and the selection of the executive bodies was not based on the election results was higher (37%). This polarized evaluation at the level of overall sample gave an average rate of (M=2.92).

### **5.10. How far does the legislature reflect the social composition of the electorate?**

Speaking of the relation between the social composition of the electorate and legislative bodies, the respondents mainly agreed (79%) that the composition of the legislative bodies reflects to a low or very low degree the social composition of the electorate, and this is confirmed by the very low average rate of (M=1.88).

### **5.11. What proportion of the electorate votes?**

Respondents were asked to evaluate to what degree does the electorate vote. Respondents gave mainly a negative evaluation of this aspect of the development of democracy related to elections in B&H (61%) and this is reflected in the average rate of M=2.43.

### **5.12. How far are election results accepted by all political forces in the country and outside?**

In terms of the acceptance of the election results by the political parties active in Bosnia and Herzegovina, 59% of respondents said the acceptance of the results by the political parties was high or very high, while only a fifth of the respondents gave a negative evaluation of this aspect, saying the political parties insufficiently accept the election results. The abovementioned is in accordance with a relatively high average rate, which demonstrates positive evaluation of this indicator of the development of democracy in B&H (M=3.69).

#### Best feature

*"Voter registration."*

*"The best feature in this area is voters and political party registration."*

*"The electoral process is formally very stable."*

*"Organization of domestic elections without presence of international community."*

*"Existence of an electoral law."*

*"The best feature is that the will of voters is more or less respected (5.9) and that political parties accept election results. (5.12.)"*

*“The biggest achievement in this area is fair and democratic elections independently organized by domestic institutions.”*

*“Openness for political pluralism.”*

#### Most serious problem

*“Voter apathy.”*

*“Insufficient voters’ response. Complicated electoral and institutional system.”*

*“The most serious problem in this area is insufficient voters’ response, which causes perpetuation of political parties and individuals.”*

*“Distrust of voters in governance and politics in general, which leads to abstinence of approximately 50% of voters. Appointing executive authorities.”*

*“Civil irresponsibility - election abstinence, lack of reactions on inappropriate work of elected (political alternations, early elections)*

*“Absence of voters’ awareness - they can create political power with their choices, and influence the environment in which they live.”*

*“Voter apathy and lack of interest, and absence of public debate on these topics.”*

#### Suggested improvements

*“Political education, increased turnout of voters, voters’ education with an accent on economy and social issues.”*

*“Stimulate citizen participation in the political process, with an emphasis on the value of each vote.”*

*“Raise public competencies in governance function monitoring. Especially, the pressure must be intensified in order to ensure fulfilment of pre-election promises.”*

*“Constant campaign on raising citizen awareness and possible influence on the constitution of governance.”*

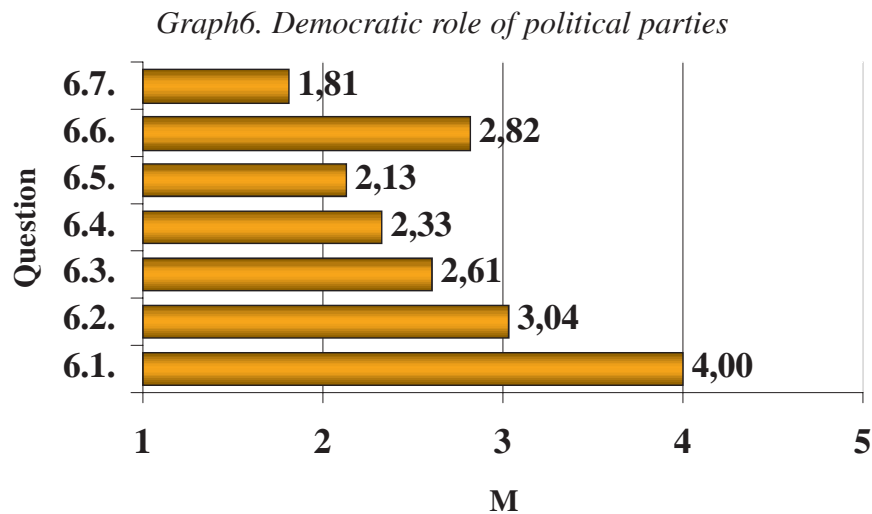
*“Building mechanisms that would gradually influence citizen awareness that they are the ones who create political power in the country.”*

*“Qualification and activation of civil society, insisting on accountability of public officials.”*

*“Regular contacts between elected representative and voters.”*

## 6. Democratic role of political parties

The following section was related to estimation for democratic role of political parties (See Graph6.).



### 6.1. How freely are parties able to form and recruit members, engage with the public and campaign for office?

The first question we asked the respondents in this section was about the freedom of parties to form and recruit new members, engage with the public and campaign for office. The majority of respondents (72%) agreed the freedom political parties enjoy was high or very high. It is important to emphasize that only 4% of respondents gave a negative evaluation of this aspect of the development of democracy in B&H, which is confirmed by a high average rate of (M=4.00).

### 6.2. How effective is the party system in forming and sustaining governments in office?

Furthermore, 37% of respondents said the efficiency of the party system in forming and sustaining governments in office was low or very low, while the number of the respondents who rated this aspect positively was equal. Not surprisingly, the average rate of this indicator of the development of democracy in B&H varied around the (M=3.04).

### 6.3. How free are opposition or non-governing parties to organize within the legislature, and how effectively do they contribute to government accountability?

Speaking of position of opposition parties and non-governing parties that are not represented in legislative bodies, more than half of respondents (53%) said the freedom of opposition parties or non-governing parties to organise within legislative bodies and to contribute to government accountability was low or very low, and this is reflected in the low average rate of M=2.61.

### 6.4. How fair and effective are the rules governing party discipline in the legislature?

In terms of the rules governing party discipline in legislative bodies, more than half of respondents (59%) believe that the fairness and efficiency of the rules governing party discipline in the legislative bodies are very low or low. On the other side, only 16% of respondents said this issue was only partially dealt with in an adequate way. The low average rate confirms the abovementioned (M=2.33).

### **6.5. How far are parties effective membership organizations, and how far are members able to influence party policy and candidate selection?**

Respondents were then asked about the set up of parties as organisations. Three-quarters of respondents believe that the parties are efficient membership organisations to a low or very low degree, and that the influence of their members on party policy and candidate selection is very low or low, which is in line with a low average rate of (M=2.13).

### **6.6. How far the system of party financing prevent the subordination of parties to special interests?**

In terms of the system of party financing, the opinions of respondents varied widely, which resulted in the average rate of (M=2.88). One-third of respondents gave the middling response to this question, while 43% of the respondents believed that the system of party financing has a very low or low factor of prevention of the subordination of parties to special interests.

### **6.7. To what extent is there support for party cross ethnic, religious and linguistic divisions?**

In terms of support for political parties, the respondents opinions were largely uniform and 94% of respondents agreed that there was low or very low support for parties cross ethnic, religious and linguistic divisions, which is confirmed by the very low average rate of (M=1.81).

#### Best feature

*“Political acting freedom.”*

*“The best features in this area are parties’ freedom to communicate with their members and recruitment of new members.”*

*“Political parties have good possibility to communicate with the public during campaigns.”*

*“Legal potentials for political parties’ forming and acting.”*

*“Parties ability to form and recruit members, engage with the public and campaign for office.”*

*“The base of every democratic society is the freedom of expressing any political options.”*

#### Most serious problem

*“Rigorous distinction between ethnically homogeneous political parties, with few exceptions.”*

*“The most serious problem in this area is the lack of possibility to have any influence inside political parties, even by individuals in significant party functions.”*

*“The most serious problem is established political elites inside ruling political parties.”*

*“Problems are the nationalist parties that represent themselves as the only and exclusive representative of their ethnic group, producing fear from others.”*

*“National and religious frames for political parties and options.”*

*“Lack of unity between opposition political parties.”*

Suggested improvements

*“Stimulate modernization of political parties in order to improve rights and responsibilities of their members.”*

*“Internal reorganization of political parties as a precondition for establishing democratic standards on the societal level and establishing principles for creating program coalitions.”*

*“Greater role of civil society and public opinion education in order to create and promote political attitudes towards concrete issues, and insisting on bigger turnout of voters.”*

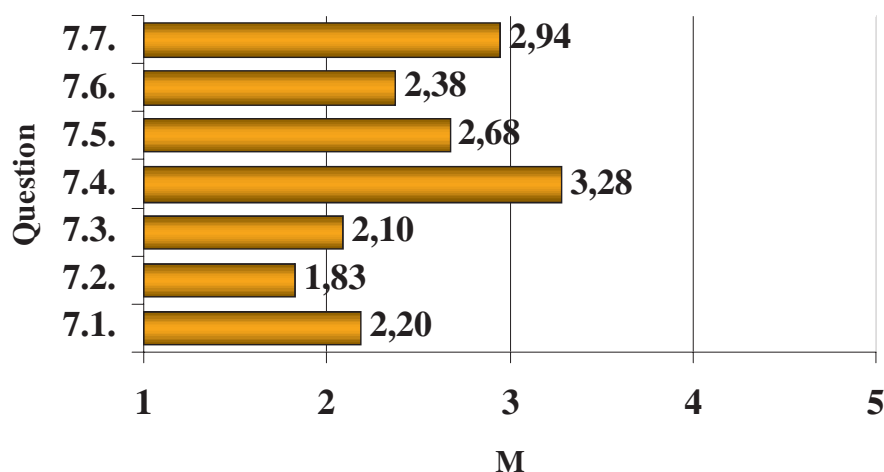
*“Political parties should be more civic in nature, and less ethnic.”*

*“De-ethnicise political parties; for a start, with the renaming of all parties with ethnic identities and give absolute priority to citizens.”*

## 7. Government effectiveness and accountability

The next section refers to questions of Government effectiveness and accountability (See Graph7.).

Graph7. Government effectiveness and accountability



### 7.1. How far is the elected government able to influence or control those matters that are important to the lives of its citizens, and how well is it informed, organized and resourced to do so?

The first question related to the government influence on matters that are important to the lives of people and evaluation of its capacity to successfully deal with these problems. Most respondents (71%) agreed the ability of the government to influence and control those matters that are important to the lives of its people was very low or low, while only 4% of the respondents said this issue was only partially dealt with in an adequate manner. This is in line with the low average rate of (M=2.20).

### 7.2. How much public confidence is there in the effectiveness of government and its political leadership?

In terms of the public confidence in the effectiveness of governments and its political leadership, the attitudes of respondents were again uniform. In fact, 94% of respondents said public confidence in the effectiveness of governments and its political leadership was low or very low, which is confirmed by the very low average rate of (1.83).

### 7.3. How effective and open to scrutiny is the control exercised by elected leaders and their ministers over their administrative staff and other executive agencies?

Speaking of the effectiveness and openness to scrutiny of the government over administrative staff and other executive agencies, less than three-quarters of respondents said the effectiveness and openness of government to scrutiny and the control exercised by elected leaders and their ministers over their administrative staff and other executive agencies were very low or low. An average rate of M= 2.10 reflects the negative evaluation of this aspect of the development of democracy in B&H.



#### **7.4. How extensive and effective are the powers of the legislature to initiate, scrutinize and amend legislation?**

In terms of powers of legislative bodies to initiate, scrutinize and amend legislation, somewhat more than one-third of respondents (37%) were unable to choose between a positive or negative evaluation of this issue. On the other side, 22% of respondents said the extent and effectiveness of powers of the legislative bodies to initiate, scrutinise and amend legislation were very low or low. Still, 41% of the respondents believed the extent and effectiveness of powers of legislative bodies were high or very high, which is reflected in the relatively high average rate (M=3.28).

#### **7.5. How extensive and effective are the powers of the legislature to scrutinize the executive and hold it to account?**

Speaking of the powers of the legislative bodies to scrutinize the executive bodies and hold them to account to the public, more than a half of respondents (58%) believed the extent and effectiveness powers of legislative bodies were very low or low. Somewhat over one-quarter of respondents (26%) believed this issue is dealt with in a more or less positive manner. The average rate for this aspect was 2.68.

#### **7.6. How rigorous are the procedures for approval and supervision of taxation and public expenditure?**

The next question we asked respondents was to evaluate the taxation system in B&H. As we can see, 57% of the respondents said the strictness of the procedures for approval and supervision of taxation and expenditure was low or very low, and only 2% percent of respondents were middling or ambiguous. Such a negative evaluation was confirmed by the average rate of M=2.38.

#### **7.7. How comprehensive and effective is legislation giving citizens the right of access to government information?**

The opinions of respondents were split in relation to legislation giving citizens the right of access to government information. Approximately the same number of respondents believed that this issue was dealt with adequately, and on the other side that the legislation giving citizens the right of access to government information were insufficiently comprehensive and effective. Ambiguous attitudes at the level of overall sample resulted in an average rate of M=2.94.

#### Best feature

*“Law on freedom of access to information.”*

*“Right of access to information is available to public and there are mechanisms for their usage. State officials sometimes do not adhere to these rules.”*

*“The best feature in this area is freedom of access to information. The problem is in their efficiency, because it has been used by a small number of individuals.”*

*“Openness for revision.”*

*“Governance is efficient and open for revision (by officials and their ministries) over their administrative staff and executives.”*

Most serious problem

*“The most serious problem is general irresponsibility and lack of accountability toward citizens and toward institutions and organizations which represent public.”*

*“Governance’s irresponsibility toward their obligations.”*

*“Complete lack of rule of law and governance’s irresponsibility.”*

*“Lack of codex, procedures, sanctions, political will and public pressure.”*

*“Incompetent public officials, weak influence of citizens - non-governmental associations, weak protection from disinformation and public accountability.”*

*“Closed groups of individuals that interchange different functions on different levels of governance, with poor involvement of women and youth.”*

*“Big variance between legislative and executive power. Party discipline and belonging of officials and elected executive completely nullify the control function of legislative power.”*

Suggested improvements

*“The best solution in this area is transformation of state system with establishing a system of accountability and without international moderators’ involvement.”*

*“Developing efficient mechanisms for real power control.”*

*“Executive power must act expertly and ensure transparency and efficiency of legislative power.”*

*“Reform in the public sector area and clear constitutional position of executive and legislative power and their public responsibility and transparency.”*

*“Education of legislative power representatives. Stimulate legislative power representatives.”*

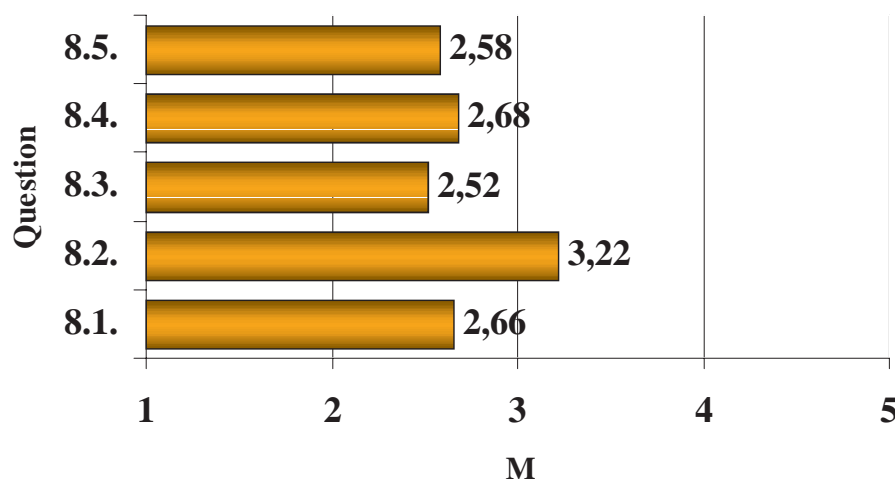
*“Additional education of legislative power representatives regarding their authorisations and their role in keeping executive power responsible, accountable, and transparent.”*

*“Strengthening government responsibility toward legislative power, which already has great public trust (through the system of parliamentary democracy).”*

## 8. Civilian control of the military and police

The following section covers questions related to civilian control of the military and police (See Graph 8.)

Graph8. Civilian control of the military and police



### 8.1. How effective is civil control over the armed forces?

The first question we asked the respondents related to their evaluation of the efficiency of the civil control over the armed forces. Somewhat less than half of respondents (46%) thought the civil control over the armed forces was insufficient, while one-third of respondents thought the efficiency of civil control over the armed forces was either full or partial. The evaluation of this indicator of the development of the democracy in B&H was average to mildly negative (M=2.66).

### 8.2. How free is political life from military involvement?

Speaking of the evaluation of the relation between politics and the military, almost half of respondents believed the independence of military from politics was high or very high. On the other side, something over one-quarter of respondents (28%) believed politics had an influence on the military to a greater or lesser degree. The average rate was M=3.22, which is mild with a fair positive evaluation tendency.

### 8.3. How publicly accountable are the police and security services for their activities?

Speaking of the public accountability of the police and security services, every second respondent (51%) believed the public accountability of the police and security services was low or very low, which is confirmed by an average rate of 2.52. One-third of respondents went for the middle response, while 12% of respondents believe that public accountability of the police and security services does exist but not to a sufficient measure.

### 8.4. How far does the composition of the army, police and security services reflect the social composition of society at large?

The respondents were then asked to evaluate if the composition of the army, police and security services reflects the social composition of society in general. Every fifth respondent believed the composition of the military, police and security services fully or partially reflects the social

composition of society in general, while 45% of the respondents expressed a negative opinion. On average respondents gave a middle rate (M=2.68).

### **8.5. How free is the country from the operation of paramilitary units, private armies, warlordism and criminal mafias?**

Respondents then evaluated the influence of paramilitary units, private armies, warlordism and criminal mafias on the country in general. Over half of respondents (57%) believed there is a significant influence of paramilitary units, private armies, warlords and criminal mafias on the country, while 24% of respondents consider this not to be the case. On average, respondents rated this question mainly with a middle rate (M=2.58).

#### Best feature

*“Unitary Ministry of Defence. Exclusion of military officials from processes of political decision making.”*

*“Significant political independence from military - Presidency and Ministries of Defence make all decisions and there are no obstacles for legislative implementation and decisions in military orders.”*

*“New defence law on the state level, abatement of entity ministries of defence and indirect abatement of three components of B&H army.”*

*“The most progressive sector in B&H is the security sector.”*

*“Joint military structures on the state level and army professionalisation.”*

#### Most serious problem

*“Organized crime involvement in all societal areas and in politics on all levels.”*

*“The most serious problem is existence of a large number of illegal arms and danger from illegal military structures in B&H, which could represent a problem for state and citizens security.”*

*“Inability to implement reforms due to constitutional arrangement.”*

*“Existence of three ethnic armies; army financing from abroad; huge number of pending issues in military sector.”*

*“Correlation between state and party structures and crime.”*

#### Suggested improvements

*“Police reform and demilitarization.”*

*“Police reform according to EU principles, straightening prosecutors regarding organized crime.”*

*“Construction of police system on the state level.”*

*“Absolute depoliticisation of all security structures on all levels.”*

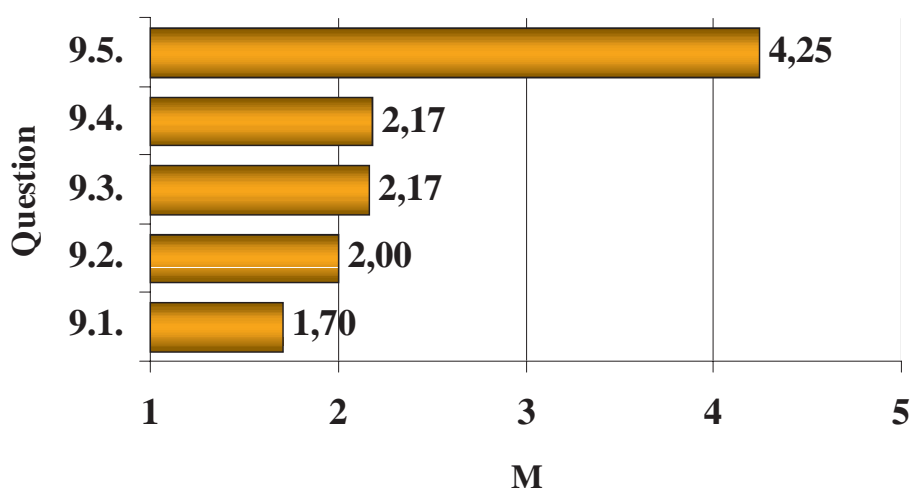
*“Rationalization of departments, professionalisation, education and control of all sorts of demands.”*

*“High level of professionalisation and police structures motivation, upgrade legal framework for fight against crime and make conditions for more efficient work of courts.”*

## 9. Minimizing corruption

This section is related to estimation of the level of corruption in Bosnia and Herzegovina, and measures being undertaken in order to minimize level of corruption. (See Graph 9.)

Graph9. Minimizing corruption



### 9.1. How effective is the separation of public office, elected and unelected, from party advantage and the personal businesses and family interests of office holders?

The first question we asked the respondents was to evaluate the influence of personal interests on the holding of office. Respondents agreed on this issue where 90% of respondents said the effectiveness of the separation of public office, elected and unelected, from party advantage and the personal business and family interests of office holders was low or very low. This is reflected in the very low average rate of  $M=1.70$ .

### 9.2. How effective are arrangements for protecting office holders and the public from involvement in bribery?

There is a similar situation in the evaluation of measures undertaken to protect office holders and public from involvement in bribery. In fact, 83% of respondents said efficiency of arrangements for protecting office holders and the public from involvement in bribery was very low or low ( $M=2.00$ ).

### 9.3. How far do the rules and procedures for financing elections, candidates and elected representatives prevent their subordination to sectional interests?

In terms of rules and procedures for financing elections, candidates and elected representatives aimed at preventing their subordination to sectional interests, 72% of respondents thought these rules and procedures were insufficiently efficient, which is confirmed by the low average rate of this aspect of the development of democracy in B&H ( $M=2.17$ ).

### 9.4. How far is influence of powerful corporations and business interests over public policy kept in check, and how free are they from involvement in corruption, including overseas?

Speaking of the control over influence of powerful corporations and business interests on public policy and protection from the corruption in the country and overseas, somewhat less than

three-quarters of respondents (73%) believed this control and protection is insufficient, which is confirmed by the low average rate (M=2.17).

### **9.5. How much confidence do people have that public officials and public services are free from corruption?**

We asked respondents to evaluate the public attitude about presence of the corruption in B&H. The vast majority of respondents (86%) said the public more or less believed that officials, companies and public services were involved in corruption. In this case, the very high average rate of M=4.25 confirms the consensus of respondent opinion to this issue.

#### Best feature

*“Best features in this area are rules and procedures for elections, and financing of candidates and elected officials.”*

*“Regulative for suppression and enabling of corruption. Existence of a separate department for this type of crime.”*

*“There is no best feature, because it seems that corruption is widespread and that it has become a part of the culture and custom.”*

*“Conflict of interest law and political party financing law, regulation of issues of misuse of position in public enterprises.”*

*“Control of powerful companies and business interests influence on public politics.”*

#### Most serious problem

*“Lack of control mechanism and low efficiency, especially in health care and education areas.”*

*“The most serious problem is general society corruption and attitude toward corruption. Corruption is almost common knowledge. “*

*“Lack of systematic reaction to corruption - sanctions, public judgment.”*

*“Lack of mechanisms - control procedures, judiciary’s inefficiency, minimal sanctions.*

*“Corruption is evident, but there are no measures for its repression. Some government officials are also involved in corruption.”*

*“Corruption has become common on all levels. Executive and legislative powers are responsible, courts are inefficient and dependent, and the OHR is indolent.”*

#### Suggested improvements

*“Rigorous sanctions for corruption. Change citizen attitudes in order to remove corruption from their lives.”*

*“General and special prevention against corruption should be applied.”*

*“Consistent implementation of laws.”*

*“Taking responsibility and court measures.*

*“Establishing clear and precise procedures that will include public principles and transparency, true media freedom, stronger investigative journalism.”*

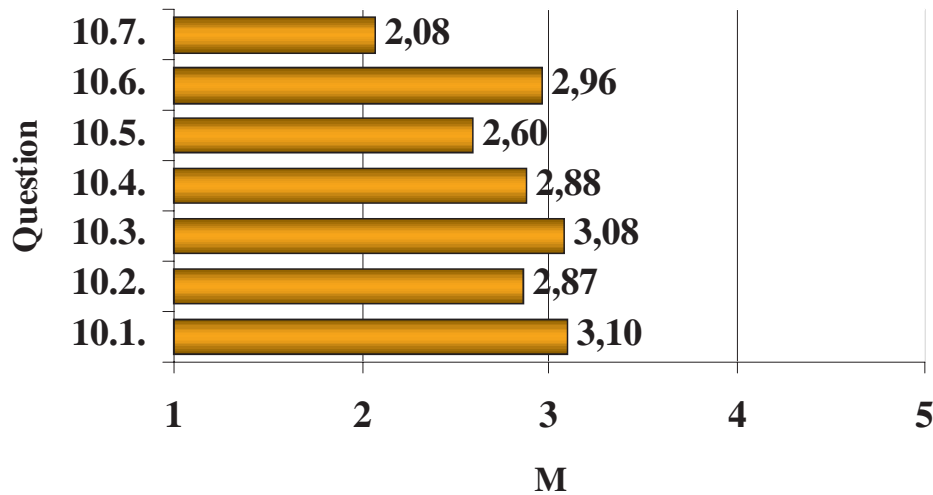


### III. CIVIL SOCIETY AND POPULAR PARTICIPATION

#### 10. The media in democratic society

This section is related to position and role of media in democratic society (See Graph10.).

Graph10. The media in democratic society



##### 10.1. How independent are the media from government?

The first question treated the independence of the media in B&H from the government. The opinions of respondents in relation to this issue varied a lot. In fact, as few as one-third of respondents (31%) gave the middling response to this question, 29% of respondents believed the independence of the media from the government is low or very low. On the other side, 37% of the respondents believe the media do their job freely from government. The abovementioned resulted with an average rate of (M=3.10) which represents middle evaluation of this issue.

##### 10.2. How pluralistic is media ownership?

Respondents were then asked if media ownership was pluralistic. 27% of respondents gave the middle response to this question, while 39% consider that media ownership was little or not at all pluralistic. The average rate is in line with the above mentioned (M=2.87).

##### 10.3. How free are media from subordination to foreign governments or multinational companies?

In terms of evaluation of influence of foreign governments or multinational companies on the media, somewhat less than one-quarter of respondents believed the media are free from subordination to foreign governments and multinational companies. A significant number of respondents or (39%) gave the middle response, somewhat over one-third (35%) of respondents thought media are more or less subordinated to foreign governments and multinational companies. The polarized attitude at the level of total sample resulted in an average middle rate of M=3.08.

#### **10.4. How representative are the media of different opinions and how accessible are they to different sections of society?**

Speaking about how representative the media are of different opinions and how accessible they are to different sections of society, 41% of respondents thought the contents the media present little or not at all reflect different opinions, and are unequally accessible to different sections of the society. Somewhat less than one-third of respondents (28%) believe the media are fully or somewhat representative of different opinions and accessible to different sections of the society. An average rate of  $M=2.88$  was a consequence of split opinions about this issue.

#### **10.5. How effective are the media and other independent bodies in investigating government and powerful corporations?**

Respondents were then asked to evaluate to what measure the media are engaged in investigative journalism. About half of respondents (51%) believed the effectiveness of the media and other independent bodies in investigating government and powerful companies was very low or low. Only 16% of respondents thought that media were somewhat engaged in investigative work. The abovementioned mildly negative evaluation is in line with a low average rate ( $M=2.60$ ).

#### **10.6. How free are journalists from restrictive laws, harassment and intimidation?**

Respondents were asked to evaluate the position of journalists. The attitudes presented by respondents varied with 32% of respondents considering that the freedom of journalists from restrictive laws, harassment and intimidation was very low or low. On the other side, 35% of respondents said that journalists are able to freely carry out their professional tasks. The above-mentioned, at the level of the overall sample, resulted in an average middling rate of  $M=2.96$ .

#### **10.7. How free are private citizens from intrusion and harassment from media?**

Respondents were asked to evaluate how free private citizens are from intrusion and harassment from the media. A high 73% of respondents consider that the freedom of private citizens from the negative media influence was low or very low, while only 6% of respondents hold the opposite opinion. This is reflected in the low average rate the respondents gave to this aspect of the development of democracy in B&H ( $M=2.01$ ).

##### Best feature

*“The best feature in this area is existence of a number of independent media that aren’t under political and financial influence by anyone.”*

*“The best feature in this area is ownership over media (Legally defined).”*

*“The Communications Regulatory Agency, as an independent state agency.”*

*“Certain freedom that media have from political power and elite.”*

*“Law about freedom of access to information.”*

*“Freedom of the media is at a high level. Associations for media protection are well organized.”*

##### Most serious problem

*“Correlations between media, organized crime, corruption and power representatives.”*

*“The quality of journalism has declined. There are a few editors and journalists that are able to work to a high level of professionalism.”*

*“Incompetence of media regarding investigative journalism, insufficient media influence on public opinion.”*

*“Leading media are under direct influence of ruling political structures.”*

*“Insufficient independence of media, insufficient ethical and professional codex, lack of criticism toward all negative aspects of society.”*

*“Lack of investigative journalism in most of the media. Political bonding between different media and political elite.”*

*“Incompetent staff in media, and individual’s and party’s influence on the work of media.”*

#### Suggested improvements

*“Establish criteria for work in this area; provide help to professional agencies; and provide help to media.”*

*“Professionalisation of media, laws that will regulate work of media.”*

*“Transparent financing, independence, journalists’ security, journalists’ accountability.”*

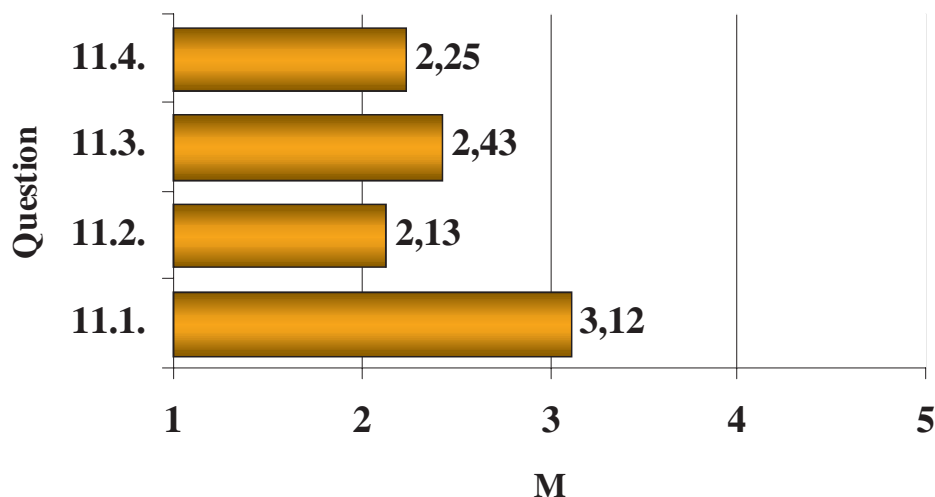
*“Insisting on professionalisation of media and obeying ethical codex.”*

*“Encourage media independence and emphasize importance of independence in creating and maintaining democratic environment in society.”*

## II. Political participation

The next section refers to assessment of political participation, through different forms of alliances, and through engagement of diverse categories of citizens. (See Graph11.)

Graph11. Political participation



### II.1. How extensive is the range of voluntary associations, citizen groups, social movements, etc and how independent are they from government?

The first question we asked respondents in this section was to evaluate the position of citizen groups, social movements, etc. in B&H. While something less than one-quarter of respondents said the independence of voluntary associations, citizen groups, social movements and other forms of associations was low or very low, around one-third of respondents expressed the opinion that their work is fully or somewhat independent from the government. On average ( $M=3.12$ ), the respondents expressed a middling attitude.

### II.2. How extensive is citizen participation in voluntary associations and self-management organizations, and in other voluntary public activity?

In terms of the extent of the level of engagement of citizens in different forms of voluntary work, most respondents (84%) thought the extent of citizen participation in voluntary and self-management organisations was low or very low, which is in accordance with a low average rate of  $M=2.13$ .

### II.3. How far do woman participate in political life and public office at all levels?

Respondents were then asked to evaluate the position of women in political life at all levels of government. The respondents (63%) mainly thought that women were insufficiently engaged in political life and public positions at all levels of government. Only 8% of respondents thought the women were engaged in the society to a certain degree, which is confirmed by the low average rate of this aspect of the development of democracy in B&H ( $M=2.43$ ).

### II.4. How equal is access for all social groups to public office, and how fairly are they represent within it?

Respondents were then asked to evaluate to what measure is the access to public office equal for all social groups. Somewhat less than three-quarters of respondents (71%) thought the access of all social groups to public office and their representation in the public life was insufficient ( $M=2.25$ ).

Best feature

*“Legal solutions that enable free association of citizens.”*

*“Electoral law that guarantee women’s’ position on the electoral list.”*

*“Legal possibility to form associations.”*

*“Laws on citizens associations and gender equality.”*

*“Openness and freedom to create different types of associations and organizations.”*

Most serious problem

*“Lack of citizen’s interest in active engagement through associations that could represent their social groups and influence power.”*

*“Lack of citizens’ awareness about importance of their participation in society.”*

*“Citizens apathy caused by failure in former actions and activities taken by civil society. Lack of education in this area.”*

*“Manipulations in Non-governmental organizations.”*

*“Lack of citizens’ awareness about importance of civil sector and potential power.”*

Suggested improvements

*“Greater individual engagement and greater non-governmental engagement in order to strengthen civil society.”*

*“Include more capable women in political life and political parties.”*

*“Raising awareness about definition, importance and role of civil society in democratic societies.”*

*“Redefine current associations’ status and affirm independent associations.”*

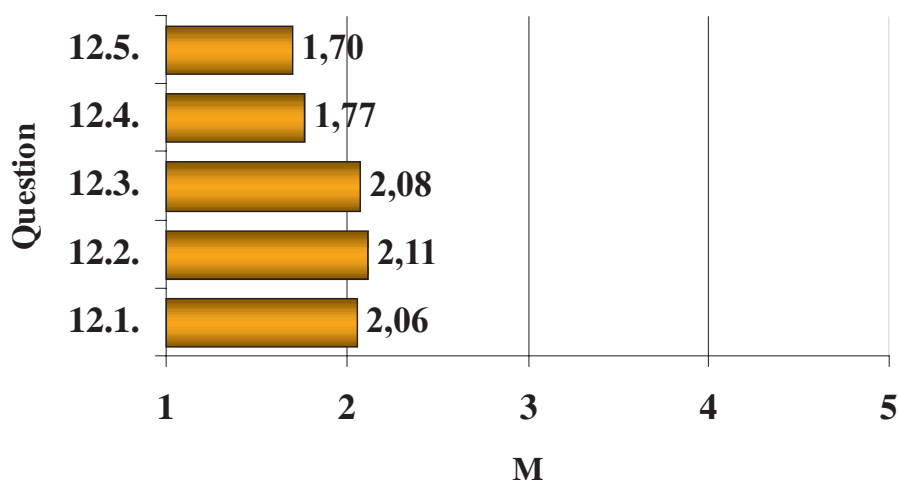
*“Strengthening civic responsibility - through media and educational system, starting form primary schools.”*

*“Citizen education, support to citizens’ associations and increasing motivation for political engagement.”*

## 12. Government responsiveness

Following section is direct to detection of respondents' attitudes toward government responsiveness. (See Graph12.)

Graph12. Government responsiveness



### 12.1. How open and systematic are the procedures for public consultation on government policy and legislation, and how equal is the access for relevant interests to government?

The first question for respondents related to access of relevant interest groups to the government. The respondents (72%) mainly agreed the equality in the access for relevant interest groups to the government was low or very low. Only 4% of respondents rated positively this indicator of the development of democracy in B&H. The average rate of (M=2.06) is in accordance with the abovementioned.

### 12.2. How accessible are elected representatives to their constituents?

In terms of the access of citizens to their elected representatives, most respondents (81%) thought the accessibility of elected representatives to their constituents was low or very low, which is confirmed by the average value of responses (M=2.11). Somewhat over one-tenth of respondents (12%) believed elected representatives are accessible to their constituents.

### 12.3. How accessible and reliable are public services for those who need them, and how systematic is consultation with users over service delivery?

Speaking of the treatment of the citizens by the public services, three-quarters of respondents thought the accessibility and reliability of public services for those who need them are low or very low and that systematic consultation with users about service delivery was low or very low (M=2.08).

### 12.4. How much confidence do people have in the ability of government to solve the main problems confronting society, and in their

In terms of the evaluation of confidence the citizens have in the ability of government, great majority of respondents (94%) thought there is widespread distrust in the ability of government to solve the main problems confronting society. In line with that, the average rate of this issue is very low (M=1.77).



## **12.5. How much confidence do people have in their ability to influence government?**

There is a similar situation with the evaluation of the confidence of citizens in their own ability to influence the government. In fact, nine out of ten respondents said the confidence in the ability of citizens to influence the government was low or very low (M=1.70).

### Best feature

*“Accessibility of state departments to citizens.”*

*“State departments are more or less open for public.”*

*“Created foundation for citizens’ participation in the policy development process.”*

*“Citizens’ right to approach elected representatives.”*

*“Direct election of Municipal Mayor.”*

### Most serious problem

*“Insufficient citizen access to their elected representatives.”*

*“Lack of mechanism for citizens’ participations in making decisions process, with the exception of the municipal level.”*

*“Lack of communication between citizens and government representatives, ignoring citizens’ needs and wishes.”*

*“Low level of citizens’ awareness that they have to participate and work if they want to improve their lives.”*

*“Question of direct contacts between governance and relevant interest group.”*

*“Lack of mechanism for accomplishing permanent and efficient contacts between governance and citizens. “*

*“Irresponsibility of governance and citizens’ indoctrination.”*

### Suggested improvements

*“Support to public campaigns for citizens inclusion in governance.”*

*“Develop accessibility of governance to citizens through consultations.”*

*“Make changes that will empower representatives to be more open toward citizens.”*

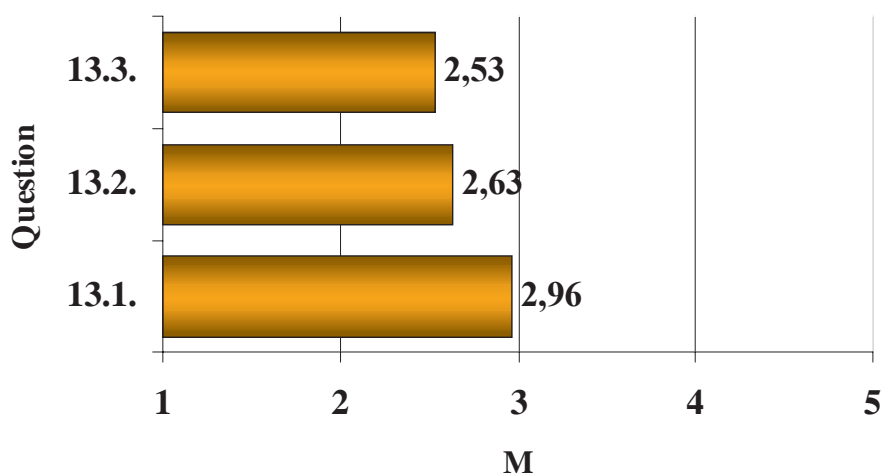
*“Citizen education, establishing a codex of personal and collective responsibility, procedural reform.”*

*“Educate citizens to be aware of their rights and be ready to accomplish them.”*

### 13. Decentralization

Next section is related to assessment of decentralization process in Bosnia and Herzegovina. (See Graph13.)

Graph13. Decentralization



#### **13.1. How independent are the sub-central tiers of government from the centre, and how far do they have the powers and recourses to carry out their responsibilities?**

The first question we asked the respondents in this section was to evaluate the position of the sub-central tiers of the government. The opinions of the respondents regarding this issue varied a lot. While one-quarter of respondents chose the middling response, something over one-third of respondents (37%) said the independence of the sub-central tiers of government from the centre was low or very low. On the other side, one third of respondents (33.3%) said the sub-central tiers of government are free from the centre. Different attitudes at the level of overall sample gave an average rate of  $M=2.96$ .

#### **13.2. How far are these levels of government subject to free and fair electoral authorization, and to the criteria of openness, accountability and responsiveness in their operation?**

Around one half of the respondents (49%) believed the acceptance of these levels of government by the electorate was low or very low and the criteria of openness, accountability and responsiveness in their operation with citizens was low or very low ( $M=2.63$ ).

#### **13.3. How extensive is the co-operation of government at the most local level with relevant partners, associations and communities in the formation and implementation of policy, and in service provision?**

In terms of cooperation between the government at the most local level with relevant partners associations and communities, more than half of respondents (55%) believed the cooperation at the most local level with relevant partners, associations and communities in the formation and implementation of policy is low or very low, while 12% of respondents rated positively this aspect of the development of democracy in B&H ( $M=2.53$ ).

Best feature

*“Cooperation between municipal power and relevant partners, associations and communities in determining services politics.”*

*“Direct election of Municipal Mayor. “*

*“Legal framework for local administration and self-administration.”*

*“Local level freedom to organize and work.”*

*“Law on Direct Election of Municipal Mayor - it strengthens individual responsibility.*

Most serious problem

*“Lack of interest to improve position of local self-government.”*

*“Lower levels of power’s independence from higher levels of power, insufficient authorization and insufficient means.”*

*“Large number of power levels with unclear authorization and responsibilities. In general, system of power is not functioning as it should.”*

*“Complicated power structure with several levels.”*

*“There is no vertical responsibility between different levels of power, especially state level power.”*

*“Lack of coordination between carriers of power on different levels, sometimes also on the same level.”*

*“Unclear relation between lower and higher levels of power, which causes numerous misunderstandings, conflicts about authorities and system obstruction.*

Suggested improvements

*“Foster local level of power. All decisions made on local level should be used as guideline for higher level. Also, authorities, decisions and directions made by higher level should be used as an order and executive.”*

*“Establish stable and firm verticals of executive power with full subordination and regular verification of impact on parliamentary structures.”*

*“Change of power structure - introduce two levels and give advantage to local or regional community.”*

*“Reduce number of levels of power.”*

*“Establish and develop local administration.”*

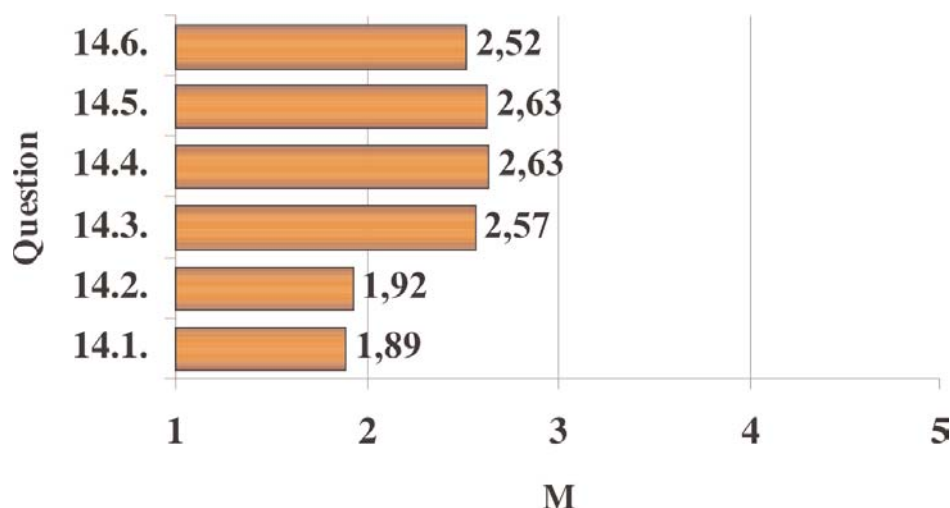
*“Give greater rights to local administration and municipalities, even to neighbourhood committees.”*

## IV. INTERNATIONAL DIMENSION OF DEMOCRACY

### 14. International dimension of democracy

The last section in this report refers to international dimension of democracy. As in previous sections, results are graphically presented. (See Graph14.)

Graph14. International dimension of democracy



#### 14.1. How free is the governance of the country from subordination to external agencies, economic, cultural or political?

The first question the respondents were asked in this section was to evaluate the influence of external economic, cultural or political organisations on the governance of the country. We can see that majority of respondents (82%) agreed the freedom of the governance of the country from subordination to external economic, cultural or political organisations was low or very low (M=1.89).

#### 14.2. How far are government relations with international organizations based on principles of partnership and transparency?

In terms of the evaluation of basic principles of cooperation between the government and international organisations, the respondents agreed (82%) that the cooperation on principles of partnership and transparency was low or very low. (M=1.92).

#### 14.3. How far does the government support UN human rights treaties and respect international law?

Speaking of the basic government work principles that should be based upon international law and conventions, somewhat over a half of respondents (53%) believed the government support to U.N. human rights treaties and the respect of international law were low or very low. Still, 14% of the respondents thought the government work is in accordance with these international standards. At the level of total sample, the average rate of M=2.57 shows the middling tendency.

#### **14.4. How far does the government respect its international obligations in its treatment of refugees and asylum seekers?**

In terms of the respect of the international obligations in the treatment of refugees and asylum seekers, the attitudes of the respondents varied a lot ( $M=2.63$ ). While something less than one-third of respondents (31%) chose the middling response, about a half of respondents (47%) believed the government respect of its international obligations in its treatment of refugees and asylum seekers was low or very low. On the other side, 14% of respondents rated positively this aspect of the development of democracy in B&H.

#### **14.5. How free is immigration policy from arbitrary discrimination?**

The next question related to evaluation of independence of the government immigration policy from arbitrary discrimination. About one-third of respondents (35%) thought this influence is of medium intensity, while something less than a half of respondents (47%) said the independence of the government immigration policy from arbitrary discrimination was low or very low ( $M=2.63$ ).

#### **14.6. How consistent is the government in its support for human rights and democracy abroad?**

With regard to the evaluation of the government support for human rights and democracy abroad, more than half of respondents (55%) believed the government is consistent in the support for human rights and democracy in other countries was low or very low ( $M=2.52$ ).

##### Best feature

*“Greater role of international community.”*

*“Full cooperation with EU in order to achieve implementation of European regulation in our country.”*

*“Adjust domestic legal framework with international standards.”*

*“Existence of numerous international organizations in B&H with mission to supervise and educate.”*

*“Basically acceptances of standards and principals which are contained in UN conventions.”*

*“Legal framework for respect of human rights in accordance with international conventions.”*

*“The best feature in this area is the issue of refugees and asylums seekers.”*

##### Most serious problem

*“International community’s influence on political processes in the country.”*

*“Getting used to the fact that there is always someone (international community) that will take over responsibility.”*

*“Political structures are still not capable and responsible enough to make decisions on their own.”*

*“The most serious problem in this area is question of internal sovereignty of B&H.”*

*“Negative influence of international organizations and bias.”*

*“Inadmissibly high level of influence from international organizations on governance functioning.”*

Suggested improvements

*“Planned and gradual authority transfer from international community to domestic institutions.”*

*“Increase domestic institutions authority and include citizens in all spheres of political and social life.”*

*“Implementation of international standards, fostering trust and human relations through appreciation of norms of democratic relations in society.”*

*“Speeding up of the process of restructuring the system of power.”*

*“Greater cohesion of civil society, international organizations and progressive power segments needs to be accomplished. Decrease governance dependence from international organizations and institutions.”*

*“Establish the state; accomplish legal state goals, acceptance of European standards and development of civil society.”*

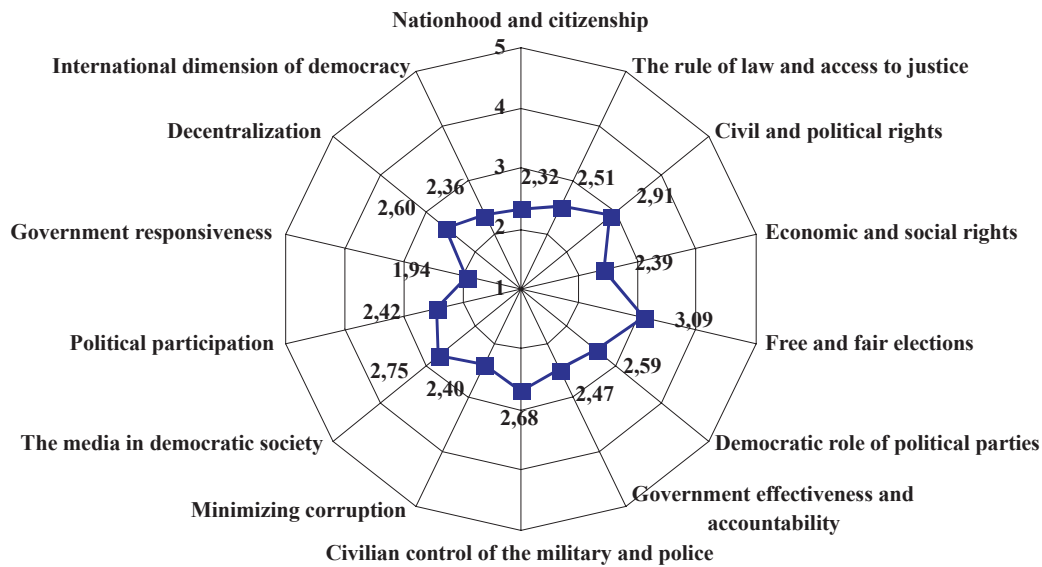
*“Fostering cooperation between organizations and institutions on UN conventions implementations.”*



## Appendix

### Review of major indicators for democratic progress in Bosnia and Herzegovina<sup>2</sup>

Graph15. Review of major indicators for democratic progress in Bosnia and Herzegovina



<sup>2</sup> Graph shows average values for each indicator for democratic progress in Bosnia and Herzegovina that are presented in the questionnaire through 14 sections - areas. Average values are gained in following way: descriptive answers given by respondents were turned into numeric values (Very high - 5, High - 4, Midling or ambiguous - 3, Low - 2 i Very low - 1). For each section - area we calculated average values - common means.

## ABOUT THE AUTHORS

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