

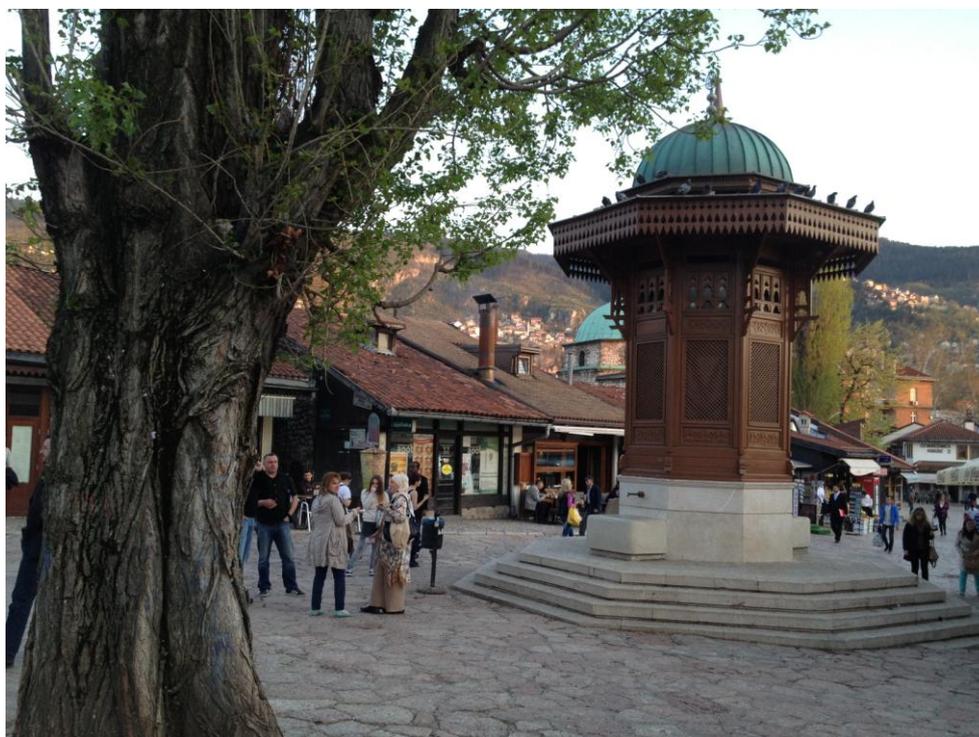


# EU should stand strong for its standards

Report on the assessment visit to Bosnia and Herzegovina

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## Stick and chevapchichi

### The transforming role of the international actors in BiH

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When talking about the role of international actors in Bosnia-Herzegovina, one of the meeting partners said: *“We have tried the carrot and the stick method. But here in Bosnia and Herzegovina people do not like vegetables.”* This quote shows clearly that currently there is a reassessment among the diverse actors in the tasks that need to be done and the methods for the democratic transition of the country. Voices claiming local ownership have strengthened in the recent years. However, it seems that the Dayton Peace Agreement (DPA) and the Constitutional framework laid down in its annex 10 are one of the obstacles of this emancipating way of democratic transition. The assessment visit conducted by FEPS and the EFDS had also as an objective to analyse these changing roles among international actors in Bosnia-Herzegovina's transition process. This article gives an overview of these trends and summarises suggestions to render international action more effective.

#### Fragmented international community

The term “international community” was often used in a cynical manner. This collective term gives the impression of representing a single position and a common interest of a broad set of countries and organisation under the umbrella of the Peace Implementation Council (PIC). Nevertheless, most of the meeting partners agreed that there is certainly no unified international community behind the current processes. This loss of vision is certainly inked with the failure of the 2006 constitutional reform proposal and 2010 Butmir process. Currently own interests prevail in many areas.

Most importantly, although there is a strong agreement that Bosnia-Herzegovina need to implement the Sejić and Finčić judgment<sup>1</sup>, the actors of the international community seem to be divided its consequences on the constitutional reform of the country. Hence, domestic disputes are reconstructed at international level. In a political culture, where compromise is still often associated with a full defeat, this factor plays an essentially deconstructive and harmful effect. Lack of trust does not only effect domestic politicians, but to a large extent also international actors. This led to the fact that the rhetoric of trusting politicians with local ownership, launched in 2006 by the High Representative is currently handled with skepticism. The perception is that it is also largely in the interest of the various international actors to remain in Bosnia-Herzegovina. However, this picture of victimisation needs to be nuanced. Contrary to the above-mentioned allegation it is a fact that the international presence is smaller and smaller, both in terms of human and financial capacity. Focus has shifted to more recent conflict zones. Nevertheless, this shift happens without fulfilling the

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1 The judgment and its summary can be downloaded from the following website:  
<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#%7B%22dmdocnumber%22:%5B%22860268%22%2C%22itemid%22:%5B%22001-96491%22%5D%7D>



obligations took on by the PIC in 1995. The possibility of a renewed violent conflict was firmly opposed by the meeting partners. It seems that stability has been achieved in a sustainable manner. However, democratic transition still remains in a preliminary status.

### **Obstacles for democratisation and the Office of High Representative**

After the DPA in 1995, it seemed that the international community took on the responsibility to steer the process to transform Bosnia-Herzegovina to a stable, democratic state. As the main actor to facilitate this process, the High Representative in Bosnia-Herzegovina was given in 1997 the so-called Bonn powers, which allowed him to dismiss any public officials obstructing the implementation of the DPA. However, this meant that instead of being a facilitator, the High Representative and its Office (OHR) were rather seen as a plenipotentiary final power applying this authority on the basis of ad hoc decisions instead of firmly defined conditions.

*The exceptional situation, in which these extraordinary powers seemed to be essential to maintain stability, is currently over.* Indeed, since 2006 there has been a change in the OHR policy and the recourse to the Bonn powers was used only in rare, very special cases to emphasise trust in elected domestic government. Yet, the possibility of exercising this authority remains. On one hand, as helpful as it was to support stability, the maintenance of this power is perceived to be one of the reasons of hindering democratic transition and the emancipation of the Bosnian state, political system and society. On the other hand, the current Constitutional frame, as defined in the DPA, makes it difficult to transfer ownership to domestic actors and at the same time keep the country governable. These elements lead to the fact that Bosnia-Herzegovina remains a state-like constitution heavily dependent on foreign actors. The conservations of the Bonn powers and therefore, the continuing presence of the OHR has become a symbol of an outdated priority. Political stability cannot be the overall objective anymore, as it cannot be achieved without creating a democratically functioning state.

Contrary to this approach, several discussants emphasised that this shift in policy in 2006 might have happened too early. Nevertheless, this does not change the fact that it largely contributed to credibility loss of the OHR and ultimately, its current ineffectiveness. Although the PIC will only decide on the closing of OHR if the five specific objectives and two conditions<sup>2</sup> are met by Bosnia-Herzegovina, the once strict, overcontrolling approach of the OHR does not seem to be an effective threat anymore to induce political change and democratic transformation.

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<sup>2</sup> The five objectives are: 1) Acceptable and Sustainable Resolution of the Issue of Apportionment of Property between State and other levels of government 2) Acceptable and Sustainable Resolution of Defence Property 3) Completion of the Brcko Final Award 4) Fiscal Sustainability (promoted through an Agreement on a Permanent ITA Co-efficient methodology and establishment of a National Fiscal Council) 5) Entrenchment of the Rule of Law (demonstrated through Adoption of National War Crimes Strategy, passage of Law on Aliens and Asylum, and adoption of National Justice Sector Reform Strategy). Additionally, the two conditions are: Signing of the SAA and a positive assessment of the situation in BiH by the PIC SB based on full compliance with the Dayton Peace Agreement. (Declaration by the Steering Board of the Peace Implementation Council, 27/2/2008: [http://www.ohr.int/pic/default.asp?content\\_id=41352](http://www.ohr.int/pic/default.asp?content_id=41352))



## The EU's potential positive influence

In this context the EU and the prospect of EU membership is seen as a possible new incentive for change. Even though the membership criteria are imposed, the concept of accession negotiations is perceived to be less intrusive than the OHR's possibility of direct involvement in domestic political life. However, this positive influence is jeopardised by some recent developments.

It was noted several times that it seems even the EU does not stand strongly for its own standards. It should strongly and openly confirm that with the current Constitution there is no possibility for Bosnia-Herzegovina to be accepted as an EU Member State. The constitutional frame of the country is based on the opposite of EU standards as stated in the Charter of Fundamental Rights. While collective rights can be derived from individual rights, deriving individual rights from collective ones is impossible.

Failing to make this standpoint clear contributes to letting domestic politicians, mainly party leaders, upholding the current status quo. In an indirect manner, with the silent approach the EU rather strengthen the position and legitimacy of party leaders. The fact that party leaders are invited to closed-door discussions by some of the EU institutions further deteriorates the situation. This empowers non-elected domestic actors far beyond their legitimacy. Party leaders might have de facto the main political power, but this irregular situation should be not acknowledged, but rather disapproved. As a good example of the publicly stated, clear and strictly applied conditions, the process of visa liberalisation was often mentioned.

The issue of financial support is crucial in inducing change. Contrary to what would be expected in a country with large economic and social challenges, several meeting partners said that under the current circumstances financial support should be completely cut and reopened only on the basis of strict transparency and conditioned on specific reforms. This could initiate a different, more constructive political dynamic.

Altogether, according to most of the discussion partners applying stronger, transparent standards and stricter conditionality on finances are the cornerstones of a more effective EU approach, which would also provide Bosnia-Herzegovina with a vision on its future.

However, some of the opinions are different from this main line. It arose a few times, that being tough as an international actor might not always be the best strategy to achieve the ultimate goals. However, this approach might lead to a serious devaluation of the democratic standards. Others were convinced that the start of EU accession negotiations will resolve the constitutional issues concerning the division of competencies in a natural manner. As the implementation of EU *acquis* is highly technical process where all competencies are clearly assigned in the integration plan, this process could then support the clarification of competencies among the different levels (state, entity, local), within Bosnia-Herzegovina. Nevertheless, instead of resolving the situation in a coherent, progressive way, this approach would merely accept the current situation as an unchangeable fact.



## **Bosnia-Herzegovina's EU integration in a regional context**

While during the integration process of Central- and Eastern European Member States friendly competition among the countries had a positive role on the candidates' development, this competitive element has been until recently missing among the countries in the South-East European region. With Croatia's accession, Serbia becoming a candidate and the perspective to start negotiations at the latest in January 2014<sup>3</sup>, this situation seems to slowly change, mainly when it comes to Bosnia-Herzegovina. There is certainly a strong feeling of being left behind, which seems to mobilise more citizens to voice their dissatisfaction towards the political leaders.

One of the concrete examples of this is failing so far to prepare the country to adapt its food standards by the time Croatia accedes the EU. A large proportion of Bosnia-Herzegovina's agricultural export, mainly dairy products is destined for the Croatian market. If the standards will not be properly applied by 1 July 2013, the country will lose a great proportion of its export revenues. Dissatisfaction is not yet strongly expressed, but there is undoubtedly growing worries among the citizens concerning these issues. Should the standards not be met, some of the discussion partners believed firmly that this will lead to social unrest in the summer 2013. It remains still unclear if this can be the initiator of a change in the domestic status quo.

## **Supporting local ownership**

Nowadays it is a widely accepted fact that the foreign actors – PIC, OHR or EU – cannot solve the problems of Bosnia-Herzegovina instead of its citizens and political leaders. This is recognised both by international and domestic actors. However, instead of passivity a stronger constructive support would still be needed from outside. From all the international actors, it is the EU that would be required to have an even stronger visibility and presence through promoting its democratic standards in a strict manner.

Indeed, the diverse actors of international community were strongly criticised for their simplistic approach, that if citizens are not satisfied with the political leaders, they should just vote for someone else. The task might seem easy, but in a country where both active and passive voting rights are seriously restricted, changing political leadership might prove to be an insurmountable challenge. Hence, the implementation of the Sejdić and Finci judgment should be seen and promoted by the international actors as an emancipating, anti-discrimination process – not as a method to strengthen the claims of one of the constituting ethnic groups.

Furthermore, as it was pointed out earlier, the most powerful figures of the political life are party leaders, whose election and/or appointment happen in a non-transparent way. Consequently, this part of the political elite cannot be changed in the suggested manner of electing a different leader.

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<sup>3</sup> Provided the agreement between Serbia and Kosovo is implemented.

<sup>4</sup> Civil society organisations in Bosnia and Herzegovina were established from top down as international actors



This simplistic argument is further weakened by the above-mentioned fact that international actors contribute to the overestimation of party leader's legitimacy.

### **Towards a unified vision?**

Fragmentation, lenient approach, non-transparent political discussions and deals – the harshest critics stated cynically that instead of transforming the political life and society, international actors might have learnt too much from domestic politicians. Nevertheless, instead of this pessimistic picture, it should be rather acknowledged that there is certainly a shift in policy which has led to inconsistencies. The importance of the OHR is decreasing, but the EU might have not yet assumed its leading role in the country's democratic transition. Hence, the possibility is there to offer again a unified vision on Bosnia-Herzegovina's future in the framework of the EU integration process. The meeting partners agreed that realistically, EU membership is still a far away objective for the country. However, the EU should definitely consider the possibility of early candidate status – late membership, in order to finally push Bosnia-Herzegovina in the transformation “machine” which is linked to the implementation of the *acquis*.

This unified vision should also go beyond the mere technicalities of accession negotiations. As one of the major challenges will be to implement rule of law, even though this criteria is part of membership requirements, the EU should repeat this clearly and apply strict criteria without granting any exceptions. It might be true that being tough may not always be the best strategy to achieve the objectives – but this is not the case when it comes to the rule of law objective. Having witnessed the recent developments in some EU Member States, this engagement should be also reconfirmed when designing a stronger political union for the future.



## Political dynamics in Bosnia and Herzegovina

Danijel Tadic, Project Manager, European Forum

### Introduction

The Dayton Peace Agreement signed in 1995 to end the war in Bosnia and Herzegovina (BiH), stipulated the constitution. The Agreement also created a political system is a complex and inefficient one. The country is composed of two political entities, Republika Srpska (49 percent of territory) and the Bosniak-Croat Federation (51 percent of the territory). In addition, the Federation is divided into ten cantonal units. BiH is a highly decentralised state with a mixture of a parliamentary, presidential and half presidential political system. Each political unit has its own governing body, accumulating to 700 elected state officials and more than 140 ministers. As a result, the state system measures approximately 60 percent of the state budget. The High Representative is working with the institutions of BiH and is the highest authority within the country. With regard to the EU integration Bosnia and Herzegovina is lagging behind compared to its neighbours. The Stabilisation and Association Agreement (SAA) has been signed and BiH is in preparations for submitting the application for EU membership. Whilst all politicians in the country strongly support EU integration of the country, they are unfortunately rarely acting to it. The reason for this is twofold. Firstly, some key political leaders are unwilling to adjust the constitution that is not in accordance with EU laws. Secondly, further steps towards the EU envisage strengthening of the rule of law and fight against corruption and organized crime that could endanger the position of some politicians. In the following the Federation of BiH will be referred to as F BiH and the Republic Srpska will be referred to as RS.

### Political dynamics

In order to understand why it is so difficult to move BiH from Dayton to the EU, we should shed a light on political dynamics in Bosnia and Herzegovina. These dynamics are strongly determined by the ethnic division set down in the constitution, political culture and the role of international actors. Underneath it will be elaborated on the first two mentioned, while the role of international actors is e discussed in depth in the first part of this paper.

#### ***Constitution in need for change***

As a consequence of the ethnic division set down in the constitution most political parties in BiH compete with each other in producing or creating nationalisms, putting thereby all issues in an ethnic jacket. As such, the system is an ideal environment for nationalist parties to manoeuvre. Another consequence of the ethnic division is that on the state level and the level of Bosniak-Croat F BiH, it is very difficult to have left wing or right wing coalition that can determine their policies based on their



ideologies and values. Parties that are less ethnically coloured always end up in opposition or in a coalition with nationalist. In 2010, for example, the Social Democratic Party (SDP) won the parliamentary elections (both on state level and in F BiH) by focussing on economy (jobs), education, justice, health care and social policy. SDP ended, however, in a coalition with parties that strongly pursue the interests of one of the three main ethnic groups. Over the years it has proven impossible, due to a lack of political will, to change the BiH constitution. All three main ethnic groups (Bosniaks, Croats and Serbs) have to agree on the constitutional changes that should improve the functionality of the state and be in accordance with European values. The incentive for the nationalist parties, however, to change the constitution that has offered them a political platform for being successful is low. It is much more likely that constitutional changes will come as a consequence of bottom-up pressure from BiH citizens and civil society<sup>4</sup> and top-down pressure from the EU. Combined pressure from BiH citizens, civil society and the EU on the political elite has proven successful in obtaining visa free travel for BiH citizens to Schengen countries in 2010. On the one hand, such tangible issues can mobilise the citizens and push the ruling elites out of their status quo comfort zone. On the other hand, as has been argued by civil society organisations we met in Sarajevo and Banja Luka, international actors should exercise pressure on local politicians by cutting on the EU financial flows that are crucial in keeping the country running. Despite this pressure, some parties we met argue that the political system as such and the constitutional framework only make it possible to solve small issues on local level. As a consequence the trust among citizens in politics is very low, they argue.

### ***Political culture***

The political culture in BiH is much more about competition and conflict and less about compromising. Moreover, as one of the experts in Sarajevo mentioned politicians tend to look for ways how to obstruct each other. Generally speaking, if politicians are not able to get a high position and accumulate wealth, they are considered as unsuccessful. Adding to that the fact that many issues are (on purpose) ethnically loaded, an inefficient political dynamics is created that is characterised by low quality of the democratic output. Another aspect of the political culture relates to party leadership and internal party democracy. Leaders of the main seven political parties are the kingmakers in BiH politics and the international actors, as argued by partners we met on the ground, support this by engaging in direct talks with party leaders behind closed doors. A member of the parliament we talked to stated that 'leaders of the parties are absolute leaders, the rest of the party is decor'. Being in their seats for too long and locked up in the constitutional framework, party leaders are much more concerned about their own position, trying to keep the status quo, instead of fighting for change. Despite the dissatisfaction with politics, the system that party members or people close to the party get the jobs is preserved due to the fact that political parties are one of the best organized interest groups in BiH society. At the roundtable discussion in Banja Luka it was argued by political analysts that the resources that help this political system to preserve could be

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<sup>4</sup> Civil society organisations in Bosnia and Herzegovina were established from top down as international actors brought in money and set up civil society. Over the years a shift has been made towards a bottom up civil society.



diminished which could bring the system in danger and pressure party leaders to strive for change. Political parties and their leaders are actors for change in the political process and should be in forefront when it comes to increasing internal party democracy. Civil society, international actors and media are of crucial importance in pressuring political leaders to do so and to hold them accountable.

## Conclusions and recommendations

During our meetings in Sarajevo and Banja Luka we heard proposals how to move BiH forward. A high level EU representative argued that BiH citizens should not vote anymore for nationalist parties as it is important to have changes in politics in order to escape from the ethnic paradigm of this country. To wait until the voters change their politicians is probably not a concrete solution we expected to hear. Especially if we keep in mind the empathy among the electorate. Turnout at elections has decreased from up to 90% after the war, to 50% in 2010 elections. Other experts argued that BiH citizens should be united on issues of their interests, such as jobs and corruption,<sup>5</sup> and that BiH should be decentralized but not set up on ethnic principles. Establishing a Bosnian citizenship could help unite people in BiH, some argue. Importantly, as civil society representatives stated, we have to change people by presenting an alternative to them which will make them start fighting for their interests. One scientist argued that most important question is which point has to be reached that will result in resistance as the only solution to move the country forward is revolution. Until now, however, fundamental social consensus for transition is absent. Only issues that are more tangible for the citizens have proved to be able to get the critical mass to the streets, such as the failure to adopt law on personal numbers. The law is vital for parents of newborns to obtain documents on their behalf such as passports and health cards.

The question remains if it is possible to move forward and improve the functionality of the state and democratic output without fundamental changes, such as changing the constitution? Some experts we talked to argued that almost all problems in Bosnia and Herzegovina are a consequence of the constitutional setup. However, some concrete steps can be taken, such as forwarding more responsibilities to BiH politicians. Local ownership, namely, will make local politicians accountable and they will not be able to point with the finger towards the international actors when things go wrong. At the same time the international actors need a more robust approach towards BiH. Resources are scarce and the economy is held together by EU money and remittances. EU conditionality should get some results in BiH too, as it did in the neighbouring countries.

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<sup>5</sup> Surveys have shown that BiH citizens consider jobs and corruption as the most important issues