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The honouring of obligations and commitments by Bosnia and Herzegovina

Report¹

Co-rapporteurs: Sir Roger GALE, United Kingdom, European Conservatives Group, and Mr Tiny KOX, Netherlands, Group of the Unified European Left

Summary

After almost 16 years of membership in the Council of Europe, Bosnia and Herzegovina should step up efforts to implement the country's obligations and remaining commitments to the Organisation. While respecting the Entities' and the Brčko District's autonomy, the necessary reforms should be implemented on the basis of a shared vision of the development of the country's institutions. This requires a fully fledged constitutional reform, without which the country's democratic institutions cannot function properly and Bosnia and Herzegovina cannot become a genuinely civic State of all its citizens.

The Monitoring Committee is concerned about the increase in nationalist and ethnic rhetoric, especially in the context of the election campaign for the October 2018 general elections.

It is also concerned about the growing disrespect for the rule of law and urges the authorities to implement, ahead of the 2018 elections, final and binding decisions of the Constitutional Court, notably as regards election reform for the city of Mostar and the completion of the Federation House of Peoples. To fulfil the membership obligations and commitments, the committee expects Bosnia and Herzegovina to take a number of concrete actions, in accordance with the recommendations contained in the present report. Pending their implementation, it proposes that the Assembly continues the monitoring procedure with respect to Bosnia and Herzegovina.

1. Reference to committee: [Resolution 1115 \(1997\)](#).



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A. Draft resolution²

1. Bosnia and Herzegovina joined the Council of Europe on 24 April 2002. Since then, the authorities have implemented all the formal commitments entered into upon accession. To date, Bosnia and Herzegovina has signed and ratified 90 Council of Europe conventions.
2. The Parliamentary Assembly congratulates the authorities of Bosnia and Herzegovina on the adoption of an ambitious reform agenda in July 2015 and on officially submitting in February 2016 its application for membership of the European Union.
3. The Assembly also welcomes the long-awaited publication in 2016 of the 2013 population and household census, and the progress made in the implementation of the revised strategy for the implementation of Annex VII to the Dayton Peace Agreement on the return of refugees and internally displaced persons.
4. The Assembly considers that the issue of missing persons should remain high on the authorities' agenda and expects the Missing Persons Institute to receive the necessary budgetary means.
5. The Assembly regrets the slow pace of implementation of the 2009 National War Crime Strategy: the 2015 deadline for the most complex cases was not met, and investigations into alleged war crimes against at least 7 000 people remain to be resolved by December 2023. The Assembly urges both the Entities and the State to ensure that the judiciary is sufficiently funded.
6. The Assembly is pleased to note that the Central Election Commission organised the 2014 general elections and the 2016 local elections in a professional and efficient manner and constantly strives to promote further technical improvements to the voting procedures.
7. However, the Assembly notes that the 2014 elections were held for the second time under a legal and constitutional framework which is in violation of the European Convention on Human Rights (ETS No. 5) since the 2009 judgment in the case of *Sejdić and Finci*: once again, only Serbs, Croats and Bosniaks could run for the State Presidency or be elected/appointed to the State House of Peoples.
8. No constitutional amendments to solve this fundamental issue have been adopted to date. The Assembly urges once again all political stakeholders to shoulder their responsibilities and to adopt the necessary changes both in the Constitution and in the Election Law at the latest six months before the next general election in October 2018. The residency requirement for the election of the tripartite State Presidency should also be removed in accordance with the judgment of the European Court of Human Rights in the *Pilav* case.
9. The Assembly also urges the authorities of Bosnia and Herzegovina to adopt the changes required by the implementation of decisions by the Constitutional Court on the election system for the city of Mostar and on the composition of the Federation House of Peoples.
10. For the Assembly, it is highly problematic that the authorities cannot muster the political will to end a situation where the citizens of Mostar have been prevented for over eight years from exercising their right to choose their representatives in the City Council.
11. The Assembly considers it a matter of urgency to implement the Constitutional Court's decision of 1 December 2016 on the composition of the Federation House of Peoples (the so-called *Ljubić* case) well ahead of the next general elections in 2018, as otherwise there is a serious risk that government formation both at Federation and at State level after the elections will be blocked.
12. The Assembly urges the authorities in both Entities to adopt amendments to their Constitutions: it is highly regrettable that the Constitution of Republika Srpska still provides for the death penalty and that the Federation's Constitution still contains provisions related to an Ombudsman institution that was abolished in 2008. In four cantons of the Federation, constitutional amendments to the respective cantonal constitutions are required to guarantee the status of "constituent people" to the Serbs living there.
13. The Assembly considers that the authorities of Bosnia and Herzegovina should step up efforts to implement the country's remaining accession commitments and its membership obligations. While respecting the Entities' and the Brčko District's autonomy, the necessary reforms should be implemented in a spirit of constructive dialogue between the various levels of authority. State structures in key areas should be reinforced and not undermined.

2. Draft resolution adopted unanimously by the committee on 13 December 2017.

14. While accepting that the institutional framework of the country is a complex one, the Assembly regrets that complicated decision-making processes in the State Parliament (such as the requirement of Entity voting, a double qualified majority needed for the adoption of all decisions, or the invocation of the Vital National Interest protection clause) considerably slow down the legislative reform process.

15. The Assembly also regrets that nationalistic and ethnic rhetoric still dominates the political discourse throughout the country, particularly ahead of elections. There should be zero tolerance for hate speech or the glorification of war criminals.

16. The Assembly is very concerned about the increasing disrespect for the rule of law in Bosnia and Herzegovina and urges the competent authorities to abide by decisions of the Constitutional Court and the State Court, which are final and binding. It regrets in particular the decision of Republika Srpska not to implement a decision of the State Court on the State-level registration of defence property located on its territory, the decision to hold a referendum on the Republika Srpska national day despite a ruling by the Constitutional Court banning it and the protracted delay by the State Parliament in implementing the decision of the Constitutional Court on Mostar.

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

17.1. strengthen local self-government in Bosnia and Herzegovina in line with the 2012 recommendations of the Congress of Local and Regional authorities of the Council of Europe;

17.2. adopt a new law on the prevention of conflicts of interest at State and Entity level, in accordance with international standards, and strengthen the bodies monitoring conflicts of interest as well as the asset disclosure regime;

17.3. further improve the law on the financing of political parties and implement all outstanding recommendations contained in the Third evaluation round of the Group of States against Corruption (GRECO) concerning the transparency of party funding both at State and at Entity level;

17.4. complete the establishment of a unified public service broadcasting system with State-level management, set up the corporation of public broadcasting services and adopt legislation ensuring permanent funding of the three public broadcasters;

17.5. adopt legislation aimed at ensuring transparency is the ownership of media outlets;

17.6. ensure that the law on access to information is effectively implemented and take measures to increase the safety of journalists who have been subjected to death threats and other intimidation measures in recent years;

17.7. pursue the reform of the State-level Ombudsman institution in line with the recommendations of the European Commission for Democracy through Law (Venice Commission) and ensure sufficient funding for the institution, notably to enable it to comprehensively monitor the implementation of the 2009 law on prohibition of discrimination.

18. As regards the rule of law, the Assembly calls on the authorities to:

18.1. step up the fight against corruption within the judicial and prosecution system, the police and the administration, sanction political corruption, bribery and trading in influence both at State and Entity level and harmonise the various applicable legislations; strengthen the institutional capacity of the anti-corruption agency;

18.2. adopt without further delay the remaining laws and by-laws on anti-money laundering and counter terrorist financing in order for the country to be removed from the Financial Action Task Force's "light grey list";

18.3. adopt a new Law on Courts and set up either a Supreme Court at State level or an Appellate Court within the existing State Court, in line with the recommendations of the Venice Commission; adopt a new law on the High Judicial and Prosecutorial Council taking into account the recommendations of the Venice Commission; continue efforts to harmonise the four existing legal systems in the country.

19. As regards the protection of human rights, the Assembly calls on the authorities to:

19.1. continue with the harmonisation across the country of the legal framework for the execution of criminal sanctions and ensure better co-operation between the three existing separate prison administrations.

19.2. establish fully independent police complaint bodies to investigate allegations of inmates' ill treatment, in line with the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);

19.3. continue to implement measures to foster the integration of the Roma community in society;

19.4. continue to implement measures to deal with the phenomenon of trafficking in human beings, particularly children;

19.5. take as a matter of priority all necessary steps to implement their accession commitment to eliminate segregation in education.

20. The Assembly, while welcoming progress made in a number of areas since the adoption of its [Recommendation 2025 \(2013\)](#) on the functioning of democratic institutions in Bosnia and Herzegovina, remains concerned about the lack of progress in the field of constitutional reform and reform of the Election Law. Therefore, pending the implementation of this and previous resolutions and recommendations, it resolves to pursue its monitoring of the honouring of obligations and commitments by Bosnia and Herzegovina.

B. Explanatory memorandum by Sir Roger Gale and Mr Tiny Kox, co-rapporteurs

1. Introduction

1.1. The monitoring procedure

1. In becoming a member of the Council of Europe on 24 April 2002, Bosnia and Herzegovina consented to honour the obligations placed on all member States under Article 3 of the Organisation's Statute (ETS No. 1), together with a number of specific undertakings set out in [Opinion 234 \(2002\)](#) on Bosnia and Herzegovina's application for membership of the Council of Europe. With a view to ensuring compliance with these commitments, the Parliamentary Assembly decided, pursuant to [Resolution 1115 \(1997\)](#), to open a monitoring procedure with regard to Bosnia and Herzegovina upon its accession. The Committee of Ministers of the Council of Europe, with a view to continuously adapting the co-operation and assistance programmes for Bosnia and Herzegovina, also decided to monitor the situation closely, on the basis of regular reports by the Secretary General.

2. The last recommendation adopted by the Assembly was [Recommendation 2025 \(2013\)](#) on the functioning of democratic institutions in Bosnia and Herzegovina. The last full report on the honouring of obligations and commitments dates from 2008, because the Assembly meanwhile focused on constitutional reform (see, in particular, [Resolution 1701 \(2010\)](#) and [Resolution 1725 \(2010\)](#)) and on the political crisis affecting the country after the 2010 elections and the break-up of the ruling coalition at State level in May 2012 (see, in particular [Resolution 1855 \(2012\)](#) and [Recommendation 2025 \(2013\)](#)).

3. Mr Egidijus Vareikis (Lithuania, EPP/CD), and Sir Roger Gale (United Kingdom, EC) were appointed co-rapporteurs by the Monitoring Committee in March 2012 and December 2013 respectively. They carried out fact-finding visits in 2014 to Sarajevo and Travnik, in 2015 to Sarajevo after the meeting of the Monitoring Committee held in Sarajevo during the chairmanship of Bosnia and Herzegovina of the Council of Europe Committee of Ministers, and in 2016 to Sarajevo, Mostar and Banja Luka. A preliminary draft report on the honouring of obligations and commitments by Bosnia and Herzegovina was adopted by the Monitoring Committee in April 2017 and forwarded to the delegation of Bosnia and Herzegovina for comments within three months. No comments were received by the deadline of 28 July.

4. Mr Tiny Kox (Netherlands, UEL) was appointed co-rapporteur in May 2017, replacing Mr Egidijus Vareikis whose term of office had ended, and carried out a fact-finding visit to Sarajevo on 5 and 6 September 2017. The Monitoring Committee decided in September 2017 to extend the deadline for submitting comments to 30 October. We very much regret that the delegation did not submit comments by the extended deadline either.

1.2. Co-operation with the Council of Europe

5. In the last three years, the Bosnia and Herzegovina authorities have requested on a number of occasions the expertise of the European Commission for Democracy through Law (Venice Commission), which adopted three opinions (on the Draft Law on Courts, on the Draft Law on the High Judicial and Prosecutorial Council, on the Draft Law on the Ombudsman for Human Rights) and two amicus curiae briefs solicited by Bosnia and Herzegovina's Constitutional Court on compatibility with the non-discrimination principle of the selection of the Republic Day of Republika Srpska (RS) and on the mode of election of delegates to the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina.

6. To date, Bosnia and Herzegovina has ratified 90 Council of Europe conventions and signed another three. Bosnia and Herzegovina ratified the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (CETS No. 210), the Third Additional Protocol to the European Convention on Extradition (CETS No. 209), the European Convention on Information on Foreign Law (ETS No. 62), the European Convention relating to questions on Copyright Law and Neighbouring Rights in the Framework of Transfrontier Broadcasting by Satellite (ETS No. 153) and the Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings (ETS No. 168). In addition, during the reporting period, Bosnia and Herzegovina ratified the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) and signed the Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health (CETS No. 211).

7. In a positive and long-awaited development (more than ten years), since 2013 Bosnia and Herzegovina has nominated its representatives to the Venice Commission, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the European Commission against Racism and Intolerance (ECRI), the Advisory Committee of the Framework Convention for the Protection of National Minorities, the Committee of Experts of the European Charter for Regional or Minority Languages and the European Committee of Social Rights. An Action Plan for Bosnia and Herzegovina was adopted in March 2015 by the Committee of Ministers, providing for some 20 million euros of co-operation and assistance programmes for the country, but to date it is not wholly funded.

8. Bosnia and Herzegovina also successfully presided the Council of Europe Committee of Ministers from May to November 2015.

1.3. The economic situation

9. Bosnia and Herzegovina is what the World Bank calls an “upper middle income” country, with a gross domestic product (GDP) per capita of US\$4 616. This, however, represents barely 28% of the average European Union purchasing power per capita; it is thus one of the lowest in the region.³ Its economy is based on consumption, not production⁴ and there is a bloated and inefficient public sector. Unemployment is high, at 27.7% of the working population, with 48% living below the poverty line. The unemployment rate of the young is particularly dramatic, at around 60%. Over the last few years, there has been a significant brain drain and emigration since the young and qualified can hardly find jobs unless they pay to get one.⁵ Bosnia and Herzegovina was also hit in 2014 by the worst floods in its history, affecting around one million people and causing losses estimated at around 15% of GDP.

10. Foreign Direct Investment⁶ is hindered by the complexity of the institutional arrangements, the absence of a single unified market in the country and fragmented and excessive regulations: from 2.69% of GDP in 2014, it has plummeted to 1.67% in 2015. Despite a GDP growth forecast of around 3% in 2017, the country relies heavily on remittances, amounting to US\$1 347.93 million in 2015, according to the World Bank, extensive internal and external borrowing⁷ and continued international assistance.

11. On the monetary side, Bosnia and Herzegovina has been successful. The currency board system that has been operational since 1997 has resulted in a trusted and stable currency. Thus, the Central Bank, one of the few State-level institutions created by Dayton, is currently enjoying substantial foreign currency reserves, which could provide about six months of import cover. The Bosnia and Herzegovina currency, the KM, has enjoyed remarkable stability against the Deutsche Mark and now the euro, having remained fully convertible since its introduction, and the inflation rate in the country is low and stable, hovering in the 0.9% to 1% range.

1.4. The 2013 census

12. The final results of the 2013 census – the first to be conducted in Bosnia and Herzegovina since the war – were published only in June 2016⁸ and showed that the country had lost 19% of its pre-war population, that is to say 824 000 inhabitants. The total population is now 3 531 159, with Bosniaks representing 50.11% of the total, Serbs 30.78%, Croats 13.43% and others 2.73%. Bosnia and Herzegovina is thus the third country in the region, with Kosovo⁹ and Albania, to have a Muslim majority.

3. It is 30% in Albania, 36% in Serbia, 58% in Croatia and 83% in Slovenia.

4. In 2014, imports represented 56.9% of GDP, while exports represented only 33.9%.

5. The Secretary General of the Party of Democratic Action (SDA), for example, was arrested in February 2017 and charged with selling jobs in public companies. A job as an electrician at Elektoprivredra, the public electricity company, was apparently selling for €8 000.

6. While in Sarajevo in June 2016, we heard many Sarajevans express their concern over the spectacular increase in investment, most notably in real estate, by countries from the Gulf States. There have been a series of gated communities built to create holiday homes for citizens who wish to enjoy a cooler summer than in their country.

7. In 2017, foreign debt payments will increase by 23%, following a 26% increase in 2016.

8. Republika Srpska opposed the methodology notably with regard to the counting of people declaring their permanent residence to be in Bosnia but who were absent during the census. Republika Srpska refuses to date to recognise the census results and has published its own, despite the fact that the International Monitoring Operation (IMO) validated the methodology in May 2016. The Council of Europe, implementing the international observation of the census, deployed 30 observers, in partnership with the European Union, Eurostat and the United Nations Economic Commission for Europe (UNECE) as part of the IMO.

9. * All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.

13. The results in both Entities¹⁰ have confirmed the impact of the ethnic cleansing and forced displacement that took place during the war. In Republika Srpska, the population is now 81.51% Serb, with only 13.99% Bosniaks and 2.41% Croats. In the Federation of Bosnia and Herzegovina, 70.48% of the population is Bosniak, 22.4 % are Croats and only 2.55% are Serbs. In the Brčko District, 42% of the population is Bosniak, 34% is Serb, 20% is Croat and there are 2% of “others”.

14. The census results are important, not only for macroeconomic planning and targeted development strategies, but also in political terms. The pre-war census of 1991 is the reference for a multitude of rules and regulations concerning the ethnic distribution of posts, notably in government¹¹ and public administration. It remains to be seen whether the results of the 2016 census will change that.

2. The Dayton Peace Agreement and the role of the High Representative

2.1. The Dayton Peace Agreement

15. Bosnia and Herzegovina declared its independence from the former Yugoslav Republic on 1 March 1992,¹² the Federation of Bosnia and Herzegovina was created following the Washington Agreement in 1994 and the present State is a result of the 1995 Dayton Peace Agreement (DPA). The DPA comprises 11 Annexes, including the State Constitution (Annex IV).

16. The Peace Agreement established Bosnia and Herzegovina as a sovereign State comprising two Entities, each with a high degree of autonomy: the Republika Srpska and the Federation of Bosnia and Herzegovina. It has often been said that the DPA ended the war but froze the conflict, that it acknowledged the forceful division of the country, by referring to the three constituent people, and that the institutions it provides for are totally unsuited to the development of a functioning democracy based on the rule of law. Anyhow the institutional framework foreseen in the DPA is extremely complex.

17. In short, Bosnia and Herzegovina can be defined as an international *de facto* semi-protectorate in which the international authorities can still intervene when necessary. It is one of the most decentralised States in Europe.

18. The State of Bosnia and Herzegovina is composed of two Entities and one District:

- the Republika Srpska, whose territory is located in the north-western part and in the eastern part of the country; there is no territorial continuity between the two parts of the RS as there is the Brčko District in between;
- a Federation of 10 cantons, grouping mainly Croats and Bosniaks. This Entity is called the Federation of Bosnia and Herzegovina; five cantons have a Bosniak majority population, three have a majority Croat population (West Herzegovina, Canton 10¹³ and Posavina Canton, which is an exclave of the Federation located near the Croatian border along the Sava river) and two are mixed (Central Bosnia Canton and Herzegovina-Neretva Canton);
- the District of Brčko, which has a special statute since the 8 March 1999 arbitration award.

19. The quasi-independence of the Entities, the weakness of the State and the constitutional necessity to ensure full equality at every level between the three constituent people have led to a situation where around 60% of the GDP is spent on maintaining State and Entity apparatus: there are 14 prime ministers, over 180 ministers, 760 members of various legislative bodies, 148 municipalities, and three official languages with two alphabets.

10. The Federation has 51% of the territory and 2 219 220 inhabitants while Republika Srpska has 49% of the territory and 1 228 423 inhabitants

11. The RS government, for example, must have 8 Serb ministers, 5 Bosniaks and 3 Croats. The Federation government must have 8 Bosniaks, 5 Croats and 3 Serbs.

12. The Croats proclaimed the Republic of Herzeg-Bosna in 1991 (an unrecognised “statelet” which ceased to exist after the Washington Agreement) and the Serbs seceded from Bosnia on 9 January 1992 and refused to participate in the independence referendum held in March 1992.

13. Canton 10 does not have a name because its wartime name – Herzeg-Bosna Canton – was deemed unconstitutional by the Constitutional Court. Its capital is Livno.

20. Each Entity has its own Constitution, government and bi-cameral parliament, its own police force, its own judiciary (including supreme and constitutional courts) and legal system as well as its own education system and tax system. In the Federation, the situation is even more complicated: each canton also has its own constitution, government and cantonal assembly and exclusive competences, for example in the field of education or internal affairs.

21. The pre-war municipality of Brčko, located in the Posavina region of north-east Bosnia, owed its relative affluence in particular to its status as a commercial and transport hub providing links to the Republics of Croatia and Serbia. Brčko's Sava river port, which served the Tuzla industrial and mining basin to the south, is Bosnia and Herzegovina's most important port. Ownership of the divided and strategically vital Brčko municipality in the north-east proved too contentious to settle at Dayton in 1995. The question was left for binding, post-war arbitration. The result, in a series of three arbitral awards between 1997 and 1999, was to establish a fully-fledged international administration, separate from and more all-embracing than that of the High Representative in Sarajevo. The Final Award of March 1999 decreed that the three wartime municipalities should be unified as a neutral and de-militarised district under the direct sovereignty of the State.

22. The Final Award of the Brčko Tribunal established the Brčko District as a self-governing territory in Bosnia and Herzegovina, with administrative, legislative and judicial powers. The Award requires the Brčko Supervisor to create a body of laws that will be applicable throughout the District, replacing the existing Entity legislation which applies on one side or the other of the former inter-Entity boundary line.

23. Once seen as the most likely flashpoint for any renewed warfare in Bosnia and Herzegovina, Brčko has since prospered to such an extent that it is regularly invoked both as the shining example of international stewardship and as a model for emulation by the rest of the country. Brčko's reforms of the civil and criminal justice systems, education and municipal government have led the way. There is a multi-ethnic police force in Brčko as well as a multi-ethnic school system. The establishments of fiscal discipline, a sensible and effective tax regime, and a business-friendly environment have resulted in significant foreign investment, a promising privatisation programme, and the highest average wages in the country. Unemployment is at 25% as compared to 40% in the rest of the country.

24. Two major events have occurred since: the holding for the first time since 1999 of elections in the Brčko District in 2004 and the abolition of all Entity laws still applied in Brčko in 2007. Although both the Final Arbitration Award and the supervisory regime were intended to protect Brčko from the Entities, the district authorities came to the view that the increased competences of the State were jeopardising its unique status. In June 2007, the Arbitral Tribunal issued an Addendum to the Final Award that stipulated that: "Any two-Entity transfer to the State without an equivalent transfer by, or consent of, the Brčko District, would be contrary and illegal under the Final Award if that transfer had the effect of significantly diminishing the District's ability to function as a single, unitary, multi-ethnic, democratic government for ... Brčko." In September 2007, both Houses of the Parliamentary Assembly of Bosnia and Herzegovina adopted amendments and an addendum to the Law on the Council of Ministers that establish the Brčko District Coordinator's Office as a permanent body in the Council of Ministers.

25. In order for international supervision to end in the Brčko District, however, its unique status should be reflected in the State Constitution. It is to be noted that the ending of supervision of Brčko is one of the five objectives listed in the Peace Implementation Council (PIC) decision of February 2008 which need to be reached before contemplating closure of the Office of the High Representative (OHR). The first amendment to the Dayton Constitution concerning the Brčko District was adopted by the State-level parliament in March 2009.

26. On 31 August 2012, the supervision was suspended and the OHR office in Brčko closed down. There is still a Supervisor (since 1997, all Supervisors have been American citizens who also serve as Deputy High Representative), but he no longer actively manages the District. The President of the Arbitral Tribunal, which has its seat in Washington, died in March 2016. His successor, John Clint Williamson, was appointed by the President of the International Court of Justice in January 2017.

2.2. Function and role of the High Representative

27. The Office of the High Representative is the chief civilian peace implementation agency in Bosnia and Herzegovina. The mandate of the High Representative is set out in Annex 10 of the DPA. It declares him the final authority in theatre to interpret the agreement on the civilian implementation of the peace settlement. The High Representative has no authority over the NATO-led military Stabilization Force (SFOR) or over its successor the EUFOR-operation Althea.

28. The Steering Board of the Peace Implementation Council (PIC), a group of 55 countries and international organisations that sponsor and direct the peace implementation process, nominates the High Representative and has subsequently elaborated on his mandate. The United Nations Security Council, which approved the Dayton Peace Agreement and the deployment of international troops in Bosnia and Herzegovina, then endorses him. The OHR is funded by the PIC.

29. Among the most important milestones in the peace implementation process was the PIC Conference in Bonn in December 1997. Elaborating on Annex 10 of the Dayton Peace Agreement, the PIC requested the High Representative to remove from office public officials who violate legal commitments and the Dayton Peace Agreement, and to impose laws as he sees fit if Bosnia and Herzegovina's legislative bodies fail to do so. These are called the "Bonn" powers. They have been widely used, in particular by Paddy Ashdown.

30. Lord Paddy Ashdown, who became the High Representative and European Union Special Representative shortly after Bosnia and Herzegovina joined the Council of Europe in April 2002,¹⁴ was replaced by Christian Schwarz-Schilling (Germany) on 31 January 2006. Dr Schwarz Schilling was replaced by Miroslav Lajcak (Slovakia) on 1 July 2007, and since March 2009 to date by Valentin Inzko (Austria). The High Representative reports to the United Nations Security Council twice a year.

31. At its meeting in Brussels on 26 and 27 February 2008, the PIC Steering Board set the conditions for closure of the Office of the High Representative, which must mark the end of the country's transition process. In a unanimously adopted declaration, the PIC considered that to complete the transition process (initially foreseen in June 2008), the authorities of Bosnia and Herzegovina should meet five key objectives. These are: acceptable and sustainable resolution of the issue of apportionment of property between State and other levels of government, resolution of defence property, completion of the Brčko Final Award (administered to date by the international community), fiscal sustainability, and entrenchment of the rule of law. Two other conditions have been added to this list: positive assessment of the situation in Bosnia and Herzegovina in relation to the Dayton provisions, on the one hand, and the signing of the Stabilisation and Association Agreement (SAA) on the other.

32. Since 2008, the general agreement has been that Bosnia and Herzegovina should move from Dayton to Brussels. Consequently, the focus shifted to the concept of local ownership of the reform process, the idea being that if the country wants to become a member of the European Union, it must do its homework and should not rely on the High Representative to do the job. *De facto*, the Bonn powers are no longer in use.¹⁵ The OHR is kept, however, as a kind of insurance policy should things turn ugly again. Since March 2009, the budget of the OHR has been reduced by over 53% and staff by over 58%. The current High Representative, whom we met on several occasions, is deeply frustrated and worried about the deteriorating political climate.

33. Also, as a deterrent, the international community still maintains a military force in Bosnia. North Atlantic Treaty Organization (NATO) peacekeeping forces originally numbered 60 000 personnel (IFOR and SFOR); today's EUFOR-operation Althea, which took over in 2004, is supposed to maintain a "safe and secure environment" as prescribed by Dayton. At its current 600 troops, however, it is now less than one tenth of its original strength of over 7 000, although it retains a Chapter VII mandate (i.e. the right to use force) by virtue of annual United Nations Security Council resolutions. Some western military professionals assess EUFOR's deterrent and reaction capabilities as effectively non-existent.¹⁶

2.3. Threats to the Dayton Peace Agreement

34. Over 20 years after the end of the war, the country remains deeply divided along ethnic lines and there is no common vision for the future, even if all three main ethnic groups seemingly agree on the strategic goal of European integration. RS President Dodik has been the most vocal opponent of the role played by the High Representative and no longer recognises his authority: he refuses to abide by requests to provide information to the OHR contrary to what is stipulated in Annex 10, wants the office to be closed down immediately, and regularly announces that the RS will hold referenda on NATO accession, the competences of the State level judiciary or, worse, secession of the RS from Bosnia and Herzegovina. In addition, the RS is increasingly refusing to abide by judgments of the State level Constitutional Court, which are final and binding. The Croats, led by Dragan Čović, consider themselves to be marginalised in the country, although they are a constituent people, and have become much more vocal since 2013 in claiming a right to their own entity. The Bosniaks, for their part, want a more centralised country, and have repeatedly warned that they will not let go of

14. The "double hat" of the High Representative was removed in 2011.

15. Since 2015, the High Representative has issued no decisions whatsoever. From 2012 to 2014, he issued in total 32 individual decisions cancelling the removal of various officials from their posts.

16. See study by DPC, October 2015, on "EUFOR: the West's Potemkin Deterrent in Bosnia".

Republika Srpska without a fight. It seems that wartime objectives have become peacetime political projects: there is a very low level of trust between the three ethnic groups, with frequent recriminations, obstruction tactics and constant political crises.

3. The consequences of the 1992-95 war

35. In the region, Bosnia and Herzegovina is the country that paid the heaviest price in the violent disintegration process of former Yugoslavia. Out of a pre-war population estimated at around 4.4 million people, the 1992-95 war killed more than 100 000 people (of which 20 000 children) and displaced a total of 2.2 million people; 800 000 were internally displaced and 1.1 million fled the country. Around 30 000 people went missing.

36. The country is still infested with unexploded mines that kill or maim around 30 people a year. Around 750 000 illegal weapons remain in circulation, despite a number of "harvest" operations. There are still 18 000 tons of surplus ammunition stockpiles¹⁷ and weapons in storage sites across the country which need to be disposed of.

37. More than a third of the housing was completely destroyed as well as major parts of the infrastructure. Sarajevo was under siege, shelled and bombed for 44 months, its population victim of sniper shootings, and some of the worst massacres committed in Europe since the Second World War happened there, most notably in Srebrenica, a United Nations designated safe area.

38. In the case brought by Bosnia and Herzegovina against Serbia during the war, the International Court of Justice (ICJ) ruled in February 2007 that the massacre of 8 000 men and boys in Srebrenica in July 1995 qualified as genocide. It also held, although not unanimously, that Serbia was neither directly responsible for the genocide nor that it was complicit in it but that Serbia breached the United Nations Convention on the Prevention and Punishment of the Crime of Genocide by failing to prevent it and for not co-operating with the International Criminal Tribunal for the former Yugoslavia (ICTY) in punishing the perpetrators, notably General Ratko Mladić, who was arrested in Serbia only in 2011, after 15 years on the run.

39. In February 2017, Bakir Izetbegović, the Bosniak member of the Presidency, announced that he would seek the revision of this judgment¹⁸ and gave instructions to this effect to the agent that represented the country during the trial proceedings. This sparked a row between the members of tripartite presidency as both the Croat and Serbian members opposed the move claiming that the agent could only be allowed to act upon instructions of all three members of the Presidency. All three sent separate letters to the ICJ, which ruled in March 2017 that the agent could not act on behalf of the State. This move by Bakir Izetbegović again led to mutual accusations and to a sharp increase in ethnic tensions in the country.

3.1. Prosecution of genocide, war crimes and crimes against humanity

3.1.1. Proceedings before the ICTY and the Mechanism for International Criminal Tribunals

40. To "co-operate fully with the International Criminal Tribunal for the former Yugoslavia and to actively assist it by handing over to the tribunal persons accused of war crimes, crimes against humanity and genocide without delay and with the active co-operation of both Entities" is one of the specific accession commitments of Bosnia and Herzegovina.

41. The ICTY was the first international criminal court to be set up (in 1993) after the Second World War and its international military tribunals in Nuremberg and Tokyo. It has indicted 161 people in total, of which 83 were found guilty and 19 were acquitted; 56 people have served their sentences and proceedings were discontinued in 37 cases either because indictments were withdrawn or because the accused had died before or after their transfer to the tribunal (Slobodan Milosević, for example, died in pretrial detention in The Hague in 2006). Thirteen cases were transferred to national jurisdictions in Bosnia and Herzegovina (10 cases), Serbia and Montenegro under Rule 11*bis*.

17. The goal is to reduce them to 5 000 tons by the end of 2018.

18. Revision can be sought within a maximum deadline of 10 years on condition that new facts, unknown to the court and to the party seeking revision, are uncovered within the previous six months. We are not aware of any new facts that could have warranted a revision request.

42. The ICTY will close at the end of 2017 after completion of its last two cases: the Mladić trial and the appeal trial in the case of Prlić and others.¹⁹ The latter case is one of the most complex the ICTY has had to deal with. It concerns six high-level leaders of the Bosnian-Croat wartime Entity Croat Republic of Herceg-Bosna and the Croatian Defence Council (HVO). The trial began in 2006 and the first instance verdict finding them guilty of crimes against the Bosniak population²⁰ was delivered in May 2013.

43. On 22 November 2017, the ICTY delivered its first instance judgment in the case of Ratko Mladić, finding him guilty of genocide in Srebrenica and of war crimes and crimes against humanity in besieged Sarajevo and six other municipalities. He was sentenced to life in prison, and intends to appeal. On 29 November, the ICTY confirmed its first instance verdict in the case of Prlić and others sentencing them to a total of 111 years in prison. One of the defendants committed suicide while the verdict was being read out.

44. The remaining cases will be tried by the Mechanism for International Criminal Tribunals (MICT) which was set up by the United Nations Security Council in 2010 to deal with the cases left over from the ICTR (the International Criminal Tribunal for Rwanda, which closed in 2015) and the ICTY. The cases the MICT will deal with include the appeal trials of Ratko Mladić and Radovan Karadžić,²¹ who was sentenced by the ICTY in first instance in March 2016 to 40 years in prison for genocide, crimes against humanity and war crimes, and the case of Vojislav Seselj, the former President of the Serbian Radical Party. The prosecution lodged an appeal against his acquittal by the ICTY in March 2016. Mr Seselj has meanwhile returned to politics in Serbia and was a candidate for the presidential election in Serbia held in April 2017, where he received just under 5% of the votes.

45. For many commentators, it is clear that the judgments of the ICTY have neither contributed to attrition nor to reconciliation in the region: many convicted war criminals receive a hero's welcome when they come home after serving their sentence, some go back into active politics and Serbia, despite having adopted a resolution on Srebrenica in 2010 and sending its Prime Minister to attend the Srebrenica commemoration in 2015,²² still refuses to acknowledge that genocide was committed there.

3.1.2. Domestic prosecution of war crimes

46. From 1996 to 2004, the ICTY Office of the Prosecutor (OTP) ran a so-called "rules of the road" scheme under which local prosecutors were obliged to submit case files to the OTP for review. This meant that nobody could be arrested on suspicion of having committed war crimes unless the OTP gave its go-ahead. The OTP thus reviewed a total of 1 419 files involving 4 985 suspects and approvals for domestic prosecutors to proceed was given for 848 suspects. After the State Court was established in 2002 and its war crime chamber in 2004, prosecution of war crimes now falls under the responsibility of domestic jurisdictions.²³

47. A national strategy for war crimes processing was adopted in December 2008. By 2010, the Prosecutor's Office of Bosnia and Herzegovina was supposed to obtain an overview of cases investigated by all jurisdictions in the country in order for the State court to be able to decide whether a case should be prosecuted at State or Entity level, with the aim of processing at State level the most complex and highest priority cases within seven years and the other war crimes cases at Entity level within 15 years.

48. For years there was a lack of progress in prosecuting the so-called Category II cases (files that have been transferred from the ICTY Office of the Prosecutor to the Prosecutor's Office of Bosnia and Herzegovina). However, by the end of 2015, the Bosnia and Herzegovina Prosecutor's Office implemented its commitment to make decisions in all of these cases: by the end of December 2015, indictments had been issued in the last remaining cases, the Court of Bosnia and Herzegovina confirmed the indictments in January 2016, and in March 2016 the trials started. Two cases, for which more third-country assistance is needed, are

19. The ICTY also has still to deal with three contempt of court cases against three individuals accused of witness intimidation during the Seselj trial: since January 2015, Serbia is in violation of its obligation to co-operate with the ICTY by refusing to hand them over to The Hague Court.

20. The Court found that the accused acted in a "joint criminal enterprise" aimed at creating a greater Croatia, and that they acted with the backing and support of the Croatian Government.

21. Radovan Karadžić was the wartime Republika Srpska President and Supreme Commander of its armed forces from 1992 to 1996. He was arrested in Belgrade as late as 2008.

22. Serbia also appealed to Russia to block a British-sponsored draft resolution on the Srebrenica genocide in the United Nations Security Council. It did not pass because Russia vetoed it. In November 2017, the RS authorities erected a memorial to honour the memory of the late Vitaly Churkin, Russia's ambassador to the United Nations at the time.

23. It is to be noted however that international judges and prosecutors were working both in the war crimes chamber and in the organised crime chamber until 2009. The mandate of judges and prosecutors in the war crimes chamber was extended by decision of the High Representative in 2009 up to the end of 2012. The mandate of international judges and prosecutors in the organised crime chamber was not extended.

not yet finalised. Indeed, regional co-operation, although generally good, remains an area of concern. There are a number of cases that are not moving forward because the suspects reside abroad as citizens of a third country. There is no agreement on a regional level to extradite war crime suspects, which according to many severely hampers the war crimes prosecution efforts in the region.

49. The National War Crime Strategy also called for the harmonisation of court practices. On 18 July 2013, the European Court of Human Rights issued its judgment in the case of *Maktouf and Damjanović v. Bosnia and Herzegovina*, in which it found a violation of the European Convention on Human Rights (ETS No. 5) in the retroactive application of the 2003 Criminal Code of Bosnia and Herzegovina, which contained specific penalties for crimes against humanity and genocide which were not present in the criminal law in force at the time the war crimes were committed. Following a change of case law of the Constitutional Court, cases of war criminals were reopened and new trials took place. Milder sentences were imposed on these individuals, some of whom were released from prison because they had already served their sentences. Only one individual remains at large.

50. The 2015 deadline for the most complex cases was not met, and investigations into alleged war crimes against at least 7 000 people remain to be resolved by December 2023.

51. According to a June 2016 report commissioned by the ICTY Office of the Prosecutor and the Organization for Security and Co-operation in Europe (OSCE), the backlog was 1 210 cases in July 2013. By January 2016, the office of the prosecution still had to deal with 346 cases against 3 383 individuals. There have been accusations of mismanagement in the Prosecutor's Office, with the number of indictments artificially increased by fragmenting complex cases into several smaller cases or working on "easy" cases, later to be transferred to the Entities, to fill the annual quotas. In October 2015, the Prosecutor's Office announced that it had charged 509 people with war crimes in the last ten years, 255 of whom were indicted in the last two and a half years. The State court for its part, since it became operational in 2005, has delivered 169 judgments in first instance and 158 in second instance (figures from October 2015).

52. The European Union and other donors have been providing significant budget support in order to enable the Prosecutor's Office to hire more staff, but it is clear that as time passes it will become more and more difficult to prosecute war crimes committed on such a scale.

3.1.3. Missing persons

53. Around 30 000 persons went missing in Bosnia and Herzegovina during the conflict. The International Commission for Missing persons (ICMP) has done an unprecedented job in trying to locate, exhume and identify missing persons and to alleviate their families' grief. To date, the mortal remains of around 70% of the missing persons have been identified, through an exacting process, made possible only by advances in DNA technology and a massive database of blood samples provided by relatives. The identification process has also been hampered by the existence of so-called secondary mass graves: in an attempt to destroy evidence, bodies had been moved by construction machines to new mass graves, damaging the remains by dismembering and mixing them.

54. The process of recovery and identification of mortal remains was administered by Entity-level commissions on missing persons and co-ordinated by the ICMP, in a procedure known as the Joint Exhumation Process (JEP) until 2008. The practice in Bosnia and Herzegovina of segregating the search for the missing by ethnic, religious or national group, whereby, for example, the Federation Commission could only conduct an exhumation in RS on condition of reciprocity, has been replaced by a somewhat more co-operative approach, culminating in the adoption of a law on missing persons at State level in 2004 and the creation of the State-level Missing Persons Institute which started operating in January 2008.

55. However, more than 20 years after the end of the war more than 7 000 people remain missing, and it becomes more and more difficult to obtain accurate and reliable information on mass graves. Only 270 remains of missing persons were identified in 2016. Another problem is how to deal with the 4 000 unidentified remains scattered in the 12 mortuaries and autopsy and identification centres throughout the country. In this connection, we note with concern that the Missing Persons Institute is underfunded with its budget reduced by half since its inception.

3.1.4. Return of refugees and internally displaced persons

56. Annex VII of the Dayton Peace Agreement provided for the right for all refugees and displaced persons "freely to return to their homes of origin" and to repossess their property or be compensated if it cannot be restored to them. By 2005, ten years after the end of the war, over one million of the 2.2 million people

displaced by the war returned and/or recovered their pre-war property; more than 200 000 properties were restored to their pre-war owners through a Property Law Implementation Plan; and some 317 000 housing units were reconstructed.

57. The Office of the United Nations High Commissioner for Refugees (UNHCR) estimates that 40 000 families are still in need of assistance in order to find a sustainable solution; 84 500 people still hold internally displaced persons (IDP) status and 47 000 “minority returnees”²⁴ are still in need of support, not to mention the vulnerable households which are unable to return and need to be allowed to find a solution in their place of displacement; 8 547 residents from the remaining 156 collective centres who owned no property before the war still need to be provided with housing or other specialised types of accommodation (retirement homes, social housing, etc.).

58. Recognition of the special needs of particularly vulnerable returnees or IDPs led to the adoption of a Revised Strategy for Implementation of Annex VII, in 2010. The challenge now is to engage municipalities, reach the neediest beneficiaries with the limited resources available and provide not only housing solutions but access to services and jobs. The Sarajevo Process, a regional initiative launched by the UNHCR in 2005 to look for solutions to protracted problems of refugees and IDPs in Serbia, Bosnia and Herzegovina, Croatia and Montenegro, initially made little headway but succeeded in getting donor support and getting the four countries in 2011 to sign the Belgrade Declaration, which led to a donor conference and the adoption of the Regional Housing Programme in April 2012: a total of 300 million euros was secured for this purpose for the four countries. We are happy to note that the Council of Europe Development Bank is also contributing to the rehousing of residents in collective centres through a project which began in 2014 and aims to rehouse residents in 42 municipalities throughout Bosnia and Herzegovina.

4. Relations with the European Union, NATO and regional co-operation

4.1. Relations with the European Union

59. Since the Thessaloniki Summit in 2003, Bosnia and Herzegovina is among the “potential” candidates in the region for European integration. Originally the European Union considered that the country could not become a candidate country unless and until the OHR was closed down. This was abandoned in early 2008 because of the country’s instability and constant political bickering between the three constituent peoples, notably with regard to the planned police reform.²⁵ In June 2008, after the much watered-down laws on police reform were adopted in April, the European Union signed a Stabilisation and Association Agreement (SAA) with Bosnia and Herzegovina, together with an interim trade agreement. This SAA was ratified in 2010 by all EU member States, but did not enter into force until June 2015, notably because the census law and the law on State aid were not adopted until 2012 and, more importantly, because Bosnia and Herzegovina did not fulfil the requirement²⁶ of making “credible efforts” to adopt constitutional and electoral amendments to deal with the 2009 *Sejdić and Finci* judgment of the European Court of Human Rights. All efforts to persuade the three constituent peoples to come to an agreement on this issue failed, however (see “constitutional reform” below), and the European Union has given up on this condition – for the time being.

60. In late 2014, following violent riots throughout the country in February 2014 and catastrophic floods in May, the European Union decided²⁷ to focus instead on socio-economic and rule of law reforms and to leave the required constitutional and political reforms for a later stage in the accession process. The authorities at all levels (State, Entities, cantons and the Brčko District) formally signed an ambitious reform agenda in July 2015, and despite, again, political bickering,²⁸ the Council of Ministers of Bosnia and Herzegovina adopted in

24. Minority returnees are those displaced persons who, after the war, found their ethnicity to be in the numerical minority in their area of origin. They often faced violence, hostility from the dominant ethnic group, discrimination and had no access to basic public services.

25. The International Police Task Force (IPTF) mandated by the United Nations, was in charge of reforming the police force, notably through a certification process of all police officers, until 2003. From 2003 till 2012, the European Union Police Mission (EUPM) took over.

26. See Council of the European Union conclusions of 21 March 2011.

27. This is the so-called German–British initiative.

28. Republika Srpska withheld its consent for the adaptation protocol to the SAA and the co-ordination mechanism and made it conditional on a revision of the census methodology. In response, the Chairperson of the Council of Ministers refused to sign a letter of intent to the International Monetary Fund (IMF), thus jeopardising the conclusion of the loan agreement, which was very much needed just before the local elections.

January 2016 the co-ordination mechanism²⁹ allowing Bosnia and Herzegovina to speak with one voice (at least in theory), and in July 2016 the adaptation protocol to the SAA, which was required following Croatia's accession to the European Union in 2013.

61. In February 2016, Bosnia and Herzegovina officially submitted its application for EU membership. In December 2016, a questionnaire with more than 3 000 questions was handed to the authorities in order to allow the European Commission to prepare an opinion on the accession request. The preparation of the replies to the questionnaire has been more time-consuming than originally thought, and the authorities now plan to submit them by the end of 2017.

62. The European Union and other financial institutions³⁰ have committed themselves to assist with one billion euros over the next three years, in direct support to meet the costs of the reform, and to put aside another 500 million euros for investment. In September 2016, the IMF approved an Extended Fund Facility of over 553 million euros over the next three years, and the first tranche of around 76 million euros was disbursed just before the local elections held in the country in early October 2016. Further disbursements will be made available after quarterly reviews of progress achieved, notably significant reduction in public spending, and adoption of a law raising excise tax duties on fuel. As the latter failed to be adopted on several occasions by the State-level parliament, the IMF suspended early in 2017 the disbursement of the second tranche. This could lead the Standard and Poors rating agency to lower its current B/B long and short term foreign and local currency credit ratings on Bosnia and Herzegovina.

63. The European Union is also investing heavily in regional programmes concerning mainly infra-structure (such as the 5C road corridor linking Budapest to Croatia), transport and energy.

4.2. Regional co-operation

64. Officially, relations between Bosnia and Herzegovina and its neighbouring countries, in particular Croatia and Serbia, are good. The first visit of the new Minister of Foreign Affairs of Croatia, Mr Kovač, was to Sarajevo and the Croatian prime minister Andrej Plenković visited in early September 2017.

65. A joint session of the governments of Bosnia and Herzegovina and Serbia was held in Sarajevo on 4 November 2015. The holding of the joint session, as well as the visit of the Presidency of Bosnia and Herzegovina to Belgrade on 22 July 2015 and of President Vučić in early September 2017 (the first official visit by a President of Serbia since 2011), were all signs of improvement in the regional climate, after the previous tensions. All the relevant institutions have confirmed their commitment to reconciliation and co-operation.

66. An important regional initiative, the so-called "Berlin process" was launched through the holding of the first Conference on the Western Balkans on 28 August 2014 in Berlin, at the initiative of Germany. The Conference gathered the heads of government, foreign and economy ministers of Albania, Bosnia and Herzegovina, Croatia, "the former Yugoslav Republic of Macedonia", Montenegro, Serbia, Kosovo and Slovenia as well as representatives of the European Commission, Austria, the United Kingdom and France. The process provides a framework for a period of five years, during which its participants agreed to further their endeavours to make additional real progress in the reform process, in resolving their outstanding bilateral and internal issues and in achieving reconciliation within and between the societies in the region. They also expressed unity in the aim of enhancing regional economic co-operation and laying the foundations for sustainable growth.

67. The second conference within this framework was held in Vienna on 27 August 2015. All participants particularly welcomed the substantial progress achieved in transport connectivity, notably the agreement by the Western Balkan six prime ministers in Brussels, in April 2015, on the regional core transport network corridors.

29. Despite its formal adoption by the Council of Ministers in January 2016, we were unable to obtain precise information on the functioning of the co-ordination mechanism. In June 2016, while visiting the authorities of Republika Srpska, it seemed there were a number of disagreements to be ironed out. Another decision was taken by the Council of Ministers in August 2016.

30. The World Bank is currently funding 11 projects for US\$420 million in total, the European Bank for Reconstruction and Development (EBRD) provides 947 million euros, the European Investment Bank (EIB) 861 million euros, EU IPA funds (Instrument for Pre-Accession) amounted to 610 million euros for the period 2007-2013, but only 166 million euros for 2014-2017. There are many bilateral donors as well: (USAID, GIZ (Germany), SIDA (Sweden), TIKa (Turkey), JIPA (Japan) and the United Kingdom are among the largest, funding projects worth 12% of GDP in 2000 (worth 4% of GDP now).

68. The third conference took place in Paris, in August 2016, with energy issues as the focus. Participants reaffirmed the importance of regional co-operation and their commitment to abstain from misusing bilateral issues in the EU accession process.³¹ A Regional Youth Cooperation Office was established following the model of the Franco-German Youth Office. Three new railway projects were also agreed with EU co-financing of around 100 million euros in addition to financing from the international financial institutions and the national budgets of the Western Balkan States. The parties welcomed the launch of an energy efficiency initiative supported by EU funding of 50 million euros.

69. The fourth summit took place in Trieste in July 2017. All six western Balkan countries, with the exception of Bosnia and Herzegovina, signed a Transport Community Treaty with the European Union. This treaty aims to create a fully integrated transport network among the western Balkans themselves as well as between the region and the European Union, and to reach convergence with the transport operating standards and policies of the European Union. Bosnia and Herzegovina signed the treaty in September 2017, after Republika Srpska dropped its requirement of the country being represented in the treaty's ministerial council in rotation by the State-level minister for transport and communications and the Entity ministers. The State-level Presidency adopted a decision accepting the treaty on 18 September 2017, but it still needs to be ratified by parliament.

70. The fifth summit will be held in London in 2018.

71. On 1 January 2016, Bosnia and Herzegovina assumed the one-year presidency of the Central European Initiative (CEI). The chairmanship paid particular attention to transport and energy efficiency initiatives, as well as to the strengthening of the entrepreneurship, especially of small and medium-sized businesses. Bosnia and Herzegovina is also a member of the Regional Cooperation Council (headquartered in Sarajevo), the Southeast European Law Enforcement Centre, the Migration, Asylum, Refugees Regional Initiative, the Western Balkan Energy Community³² and the Central European Free Trade Agreement, amongst others.

4.3. Relations with NATO

72. In the region, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia" and Serbia are the only countries³³ that have not yet joined NATO. Slovenia joined in 2004, and Albania and Croatia in 2009. The accession of "the former Yugoslav Republic of Macedonia" is blocked by Greece over the naming issue. Kosovo's accession is not on the table.

73. Accession to NATO remains a contentious issue in Bosnia and Herzegovina. Republika Srpska generally aligns itself on Serbia's foreign policy (i.e. no accession to NATO, no recognition of Kosovo, co-operation with Russia, including on military and economic issues³⁴). Republika Srpska has threatened on several occasions to organise a referendum over the issue of NATO accession.

74. On 18 October 2017, the RS National Assembly adopted a (non-binding) resolution on "the protection of the constitutional order and declaration on RS military neutrality", stating that the RS will remain outside any military alliances (meaning: NATO) until a referendum is conducted in the RS, and that the RS will co-ordinate its policy with Serbia. On 27 October, the Bosniak caucus in the RS Council of Peoples invoked the protection of the Vital National Interest clause, notably because it considers that the issue of whether to join military alliances is a matter of foreign policy which is the sole competence of the State level. In reaction to the adoption of this resolution, the Bosniak member of the Presidency, Bakir Izetbegović, publicly stated that he hoped Bosnia and Herzegovina would soon recognise the independence of Kosovo. This sparked yet another political row.

31. This has not always been the case: Slovenia and Croatia are still at odds over the issue of Piran Bay: Croatia denounced in 2015 the relevant international arbitration agreement and refuses to accept the June 2017 arbitration award. Croatia also temporarily blocked the opening of some chapters (notably chapter 26 on education) for Serbia's accession process. There are also a number of open issues with regard to the implementation of the 2001 succession agreement of the former Republic of Yugoslavia. Croatia and Bosnia and Herzegovina are also at odds over the construction of the Peljesac bridge which would connect the Peljesac peninsula with mainland Croatia, thus avoiding the Bosnian border crossing in Neum.

32. Bosnia and Herzegovina faces imminent sanctions for its persistent failure to adopt a number of laws on the electricity and gas regulators at State-level.

33. Montenegro joined NATO on 5 June 2017, despite Russian opposition, including its alleged involvement in an alleged coup attempt in Montenegro during the elections in October 2016, which is currently being investigated.

34. Serbia has recently received a Russian donation of six Mig-29 fighter jets, 30 T-32 tanks and 30 BRDM-2 armoured vehicles and Republika Srpska is planning to conduct military training in Russia.

75. Bosnia and Herzegovina is the only country in the region, apart from Serbia, which has not recognised Kosovo. Consequently there is no visa-free travel and visas have to be issued on a case-by-case basis, in particular for participation in international conferences organised in Bosnia and Herzegovina.

76. The country's armed forces³⁵ currently number 10 000 active soldiers and 5 000 reservists. According to the Defence Review adopted in late 2016, this number should be further reduced. The soldiers take part in operations overseas, notably in Afghanistan, and their contribution appears to be very much appreciated.

77. In 2006, Bosnia and Herzegovina joined the NATO Partnership for Peace programme, and in 2010, in Tallinn, was invited to join the Membership Action Plan, a programme of advice, assistance and practical support. The remaining condition to activate the Action Plan is the registration at State level of immovable so-called "prospective" defence property necessary for defence purposes.

78. There are 63 such immovable defence properties located on the whole territory of Bosnia and Herzegovina; 26 immovable defence properties have so far been registered, but only in the Federation of Bosnia and Herzegovina (20 are pending). Despite the Agreement on Succession Issues and the law on defence and relevant decisions of the presidency, Republika Srpska continues to claim that all military property located on its territory cannot be registered at State level, and has opposed any attempt by the State level to do so.

79. On 27 July 2016, however, the State Court's appellate division ordered the registration of a big military property located in Han Pijesak in Republika Srpska. This judgment is in principle final and must be implemented within 30 days. The RS authorities then announced that they would file an appeal with the Constitutional Court of Bosnia and Herzegovina (which rejected it on 6 July 2017) and eventually take the case to the European Court of Human Rights. President Dodik has publicly stated that the RS authorities will not implement this decision.

5. Democratic institutions

5.1. 2014 general elections and electoral developments

80. The October 2014 elections at State, Entity and cantonal level were held for the second time under a legal and constitutional framework which is in violation of the European Convention on Human Rights: once again, only Serbs, Croats and Bosniaks could run for the State presidency or be elected/appointed to the State House of Peoples.

81. According to the official results³⁶ in the elections for the three members of the presidency, Mr Izetbegović, head of the Party of Democratic Action (SDA) obtained his second mandate³⁷ with 32.86% of the votes, Mr Čović, head of the Croatian Democratic Union (HDZ) gained 52.20% of the votes and Mr Mladen Ivanić, head of the Party of Democratic Progress (PDP) and the leading figure of the "Alliance for Change" won 48.69% of the votes. The new presidency assumed office in November 2014.

82. For the Parliamentary Assembly of Bosnia and Herzegovina, the House of Representatives, the SDA won 10 of the 42 seats; the Democratic Front³⁸ (DF) won 5; the Alliance for a Better Future (SBB), 4; the coalition around the HDZ BH, 4; the Social Democrats (SDP), 3; the HDZ 1990,1; the Bosnian-Herzegovina Patriotic Party (BPS), 1; the A-SDA 1; the Alliance of Independent Social Democrats (SNSD), 6; the Serbian Democratic Party (SDS), 5; the Democratic People's Alliance (DNS), 1; and the PDP, 1.

83. In the Republika Srpska, Mr Milorad Dodik was re-elected President,³⁹ with 45.39% of the votes. For the RS National Assembly, the SNSD won 29 of the 83 seats; the SDS gained 24; the PDP 7; the DNS 8; the Socialist Party (SP), the Democratic Peoples' Movement and the "Homeland" coalition won 5 seats each.

35. The armed forces of the Entities were merged in 2004, and a State-level Ministry of Defence was set up, as well as a unified command structure and a democratic oversight mechanism of the armed forces. Conscription was abolished.

36. Bosnia and Herzegovina, Central Electoral Commission, final results, elections 2014, www.izbori.ba/Potvrđjeni2014/Finalni/PredsjednistvoBiH/Default.aspx.

37. He will not be able to run for a third consecutive term.

38. The DF, led by Željko Komšić, who was a member of the Presidency for two mandates on the Croat ticket, is a splinter party of the SDP. A number of members left it, however, to found yet another party, the Citizen's Alliance (Gradanski Savez).

39. This will be his second and last term of office as President of the RS.

84. In the House of Representatives of the Federation of Bosnia and Herzegovina, the SDA won 29 of the 98 seats; the SDP 12 seats; the SBB and the DF won 16 and 14 seats respectively, while the coalition around the HDZ BH won 12 and the HDZ 1990 got 4 seats.

85. The Parliamentary Assembly of the Council of Europe observed the general elections within the framework of an International Elections Observation Mission alongside the OSCE/ODIHR. Assembly observers concluded that the elections were held in a competitive environment but that the interethnic divide was a key factor. They also noted that the lack of a shared vision of the country's future and of co-operation among the three constituent peoples continued to hinder the reforms necessary to ensure fully democratic elections. Fundamental shortcomings remain, including ethnicity-based restrictions on candidacy and voting rights, in particular with regard to the failure to implement the 2009 *Sejdić and Finci* judgment.⁴⁰ Assembly observers found that the Central Election Commission (CEC) generally administered the elections efficiently and enjoyed the confidence of most electoral stakeholders. More generally, the Assembly observed an ever-growing mistrust of citizens in the functioning of democratic institutions and urged all politicians and political parties to find ways to regain public trust.⁴¹

86. An issue of concern emerged again in the Brčko District, where the voters had to opt for Entity citizenship by 28 August 2014, in order to be able to exercise their right to vote. In the general elections, almost 50% of the voters in the Brčko District could not exercise their right to vote, as they did not choose their Entity citizenship. In addition, the Brčko District voters who chose Federation citizenship cannot take part in the (indirect) elections for the Federation's House of Peoples, which is exclusively formed from delegates coming from the cantonal assemblies.

87. The government at State level was the result of a coalition agreement between the SDA, the HDZ BiH, the RS coalition "Alliance for Change" (comprised of the Serb Democratic Party – SDS, the Party of Democratic Progress – PDP and the National Democratic Movement – NDP) and the DF. The SDA, the HDZ BiH and the DF decided to form a coalition also at the level of the Federation of Bosnia and Herzegovina and the cantons. The SNSD decided not to participate in the government at State level.

88. The governments at State and Federation levels were appointed on 31 March 2015. The Federation Parliament has not been formed in its full capacity to date, however, because an insufficient number of Serbian representatives were elected from the cantonal assemblies. The inauguration of the House of Peoples went ahead on 2 December 2015 with only 13 (of the prescribed 17 Serbian delegates).

89. In the Republika Srpska, the government was confirmed already on 27 December 2014. The SNSD and its coalition partners hold a narrow majority in the RS Parliament (44 of 83 delegates), while the parties which represent the opposition in the RS Parliament ("Alliance for Change") are part of the State-level majority.

90. The governing coalition in the Federation unravelled in May 2015 over a disagreement between the DF party and the HDZ about party control of public companies.⁴² On 12 June 2015, the four DF ministers submitted their resignations to the President of the Federation. On 19 October, the SDA and SBB signed a coalition agreement on joint action at all levels of government. On 28 October, the House of Representatives of the Federation of Bosnia and Herzegovina approved the appointment of four ministers from the SBB in the Federation of Bosnia and Herzegovina Government, to replace the DF ministers.

91. On 16 November 2015, representatives of the SDA and the SBB agreed that the SBB should also replace the DF in the Council of Ministers⁴³ at State level and all cantonal governments. This was done in May 2016, after the DF ministers resigned in December 2015.

92. The situation has considerably deteriorated since, to the point that a year before the next general elections in October 2018, there appears to be no longer a parliamentary majority at State level. The coalition between the SDA and the SBB has collapsed, with the SBB voting with the opposition in July 2017 to reject the Council of Ministers' 2016 annual work report. There have also been internal rifts within the main political parties: three members of the SDA were excluded from the party (including the head of the country's Delegation to the Assembly, Senad Šepić) and set up a new political party in September 2017 (the

40. Observation of the general elections in Bosnia and Herzegovina (12 October 2014), Assembly [Doc. 13640](#).

41. *Ibid.*

42. In January 2016, the Federation Constitutional Court ruled that the regulation on appointments to public companies was unconstitutional.

43. The SBB candidate for the post of Transport Minister at State level was arrested in January 2016 and charged with witness intimidation in a pending criminal case against a drug lord in Kosovo. He nevertheless maintained his candidature, withdrawing only in April 2016.

Independent Bloc); the chairperson of the SDS, our colleague Mladen Bosić, resigned from his post following catastrophic results in the October 2016 local elections and another prominent Serb politician, Ognjen Tadić, who is the current speaker of the State-level House of Peoples, quit the SDS on 26 October 2017 in order to form a new political party called the People's party. The six SNSD MPs in the House of representatives boycotted the sessions of the House until August 2017 and withdrew their delegates from parliamentary committees in both Houses of Parliament. Finally, there are growing disagreements between the SDA and the HDZ, notably over election reform and the financing of the public broadcasting system.

93. As noted in the 16 October 2017 conclusions of the EU Foreign Affairs Council, it seems that "a divisive rhetoric rooted in the past and an early electoral agenda have slowed the pace of reform". In his 52nd report to the United Nations Security Council covering the period from April to October 2017, the High Representative observed that the Parliamentary Assembly of Bosnia and Herzegovina only adopted three pieces of legislation, in the form of amendments to existing legislation, and rejected 11 laws. In the Federation, only one new law and five amendments to existing legislation were adopted. This negligible legislative output is of serious concern, given the urgent reforms that need to be addressed.

5.2. Changes to the electoral legislation

94. There is general consensus among all relevant stakeholders, including international observers, on the efficiency of the Central Election Commission in relation to the organising and conducting of the elections, as well as its level of communication with the public. The CEC is advocating for the holding of general and local elections within the same year, rather than the current two-year interval, as it would avoid almost permanent electoral campaigning and contribute to allowing politicians to focus on the reforms.

95. One of the competences of the CEC is also to implement the law on the financing of political parties, a task that the CEC carries out mostly through its Audit Department. In its Third Evaluation Round, the Group of States against Corruption (GRECO) recommended that the financial and personnel resources allocated to the CEC's Audit Department should be increased.

96. An Inter-Agency Working Group tasked with drafting amendments to the election legislation of Bosnia and Herzegovina completed its work in April 2016. It was composed of three representatives from each of the two Houses of the Parliamentary Assembly of Bosnia and Herzegovina, the Council of Ministers as well as the CEC, which is seen as a positive development. The NGOs were associate members. The Working Group sent two sets of draft amendments on the Election Law and on the Law on Political Party Financing into the legislative procedure. The amendments to the Electoral Law were adopted by both houses of the Parliamentary Assembly on 28 April. The amendments to the Law on Political Party Financing were discussed by the Parliamentary Assembly's House of Representatives, in first reading, on 11 May. According to members of the Working Group, the proposed amendments are of a technical nature. The issue of the City of Mostar was left to be resolved separately.

97. Two specific amendments to the Election Law are of concern. One, which was rejected in the final vote, aimed at introducing a more flexible gender structuring on the electoral lists, within the existing 40% quota for the under-represented gender. Various NGOs and the Gender Committee of the House of Representatives of the Parliamentary Assembly argued that such an amendment would be conducive to putting women candidates at the end of the list and in practice make it highly unlikely that they would win a legislative mandate. The second amendment aimed at increasing the threshold of individual preferential votes which an individual candidate must receive in order to claim a preferential mandate within the party list. According to civil society and experts, this could increase the control of the parties' presidencies over the distribution of mandates. The final version of the adopted amendment increases the threshold to 10% for local elections and to 20% for general elections.

98. As regards the amendments to the Law on Political Party Financing, some members of the Working Group consider that all the outstanding GRECO recommendations from its Third Evaluation Round, which required a legal change, have been addressed, whereas civil society representatives claim that the proposed changes do not resolve the issue of the need to have a detailed definition of the competencies of the CEC in terms of auditing of the parties' expenses. While some praised the introduction, through the amendments to the Election Law, of the requirement for political parties to give only one bank account number for the financing of political campaigns when registering, others said that this provision did not prevent political parties from having additional bank accounts. Some amendments introduce a regular training programme for the presidents of the polling stations, which is a positive development, as was also advocated by the CEC.

99. An additional proposal for amendments to the Election Law, introduced by the Parliament's Gender Committee, setting forth a solution by which the gender quotas would be increased to 50% while the minority gender candidates would be put as every second candidate on the party list, was rejected by the Parliamentary Assembly of Bosnia and Herzegovina on 27 April 2016, together with three proposed amendments to the Election Law relating to Mostar.

100. On 5 April 2016, the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina adopted a conclusion to extend the mandate of the Working Group so that it could continue to work on the unresolved issues that needed to be improved by the 2018 general elections, including the issue of the City of Mostar and the implementation of the *ruling of the European Court of Human Rights in Sejdić and Finci*. We have no further information on the work carried out by this Inter-Agency Working Group.

5.3. Political developments in the run-up to the 2016 local elections: the referendum on the Republika Srpska national day

101. On 26 November 2015,⁴⁴ the Constitutional Court granted the request of the Presidency member Bakir Izetbegović for review of the constitutionality of Article 3(b) of the RS Law on Holidays. In its decision, the Constitutional Court held that the designation of 9 January as the Day of the Republic and the practice of celebrating the Day of the Republic on that date, violated a number of provisions of the Constitution, in particular those related to non-discrimination.⁴⁵ The Constitutional Court ordered the Republika Srpska National Assembly to harmonise the challenged provision of the Law with the Constitution within six months.

102. Prior to that, on 17 April 2015, the Republika Srpska National Assembly had already adopted a declaration regarding the RS Law on Holidays, expressing its intent not to implement the then pending decision of the Constitutional Court if it did not support the publicly-expressed RS view, as well as its intent to review past decisions of the Constitutional Court. The declaration questioned the presence of international judges⁴⁶ on the Constitutional Court, as provided for in Article VI of the Constitution of Bosnia and Herzegovina, and the legitimacy of decisions taken by the Constitutional Court with those judges present. Also, the declaration requested the Parliamentary Assembly of Bosnia and Herzegovina to adopt a law on the Constitutional Court which would prescribe the composition,⁴⁷ election, organisation, jurisdiction and procedure, as well as other issues of relevance for the operation of the Constitutional Court.

103. On 15 July 2016, the Republika Srpska National Assembly adopted a decision to hold a referendum in the RS on 25 September 2016, a week before the countrywide local elections scheduled for 2 October. On 19 August, the Brčko District Supervisor informed the Brčko District Mayor that pursuant to a 2007 Supervisory Order that requires referenda on the Brčko District territory to be subject to the prior written consent of the Supervisor, he would not give his consent to holding the referendum within the Brčko District.

104. No such decision was issued by the High Representative in the framework of the Bonn powers. Instead, on 30 August 2016, the Steering Board of Ambassadors of the Peace Implementation Council, with the exception of the Russian Federation, issued a statement urging the RS authorities not to hold the referendum. There was no reaction from the European Union either, other than to remind the RS that Constitutional Court decisions are binding and final.

105. On 17 September 2016, the Constitutional Court issued an interim measure suspending the execution of the Republika Srpska National Assembly referendum decision. However, the RS went ahead with the referendum anyway and 99.8% of the voters voted in favour. In a special report submitted to the United Nations Security Council in October 2016, the High Representative concluded that "the RS has effectively opted-out of the judicial system of the State, and thus has fundamentally rejected the sovereignty of BH. These actions seriously call into question the durability of the implementation of the civilian aspects of the

44. In its 2013 *amicus curiae* on the issue, adopted at the request of the Constitutional Court, the Venice Commission found that the choice of 9 January "may give rise to discrimination" with regard to country's other constituent peoples.

45. 9 January is not only the day when the Serbs declared independence from Bosnia and Herzegovina, but also an orthodox religious holiday, the patron saint of the RS, St Stephen.

46. The Constitutional Court is composed of nine judges: two Bosniaks, two Serbs and two Croats elected by the Entities' parliaments and three international judges appointed by the President of the European Court of Human Rights. Decisions are taken by simple majority which means that the international judges have an important role to play in highly contentious cases.

47. The mandates of the current three international judges expire when they reach the age of 70, in 2020 and 2021 respectively. We very much doubt they could be removed before their term ends.

Dayton Peace Agreement and represent a direct threat to international peace and security". In October,⁴⁸ the National Assembly adopted amendments to the law, keeping 9 January as the national day but making it a "secular" public holiday.

106. The results of the referendum were subsequently annulled by the Constitutional Court on 1 December 2016. On 9 January 2017, however, the RS national day was celebrated in Banja Luka despite the ban, with President Ivanić and President Nikolić of Serbia in attendance. Another row erupted over the decision of President Ivanić, the Serb presiding member of the State-level tripartite Presidency, to request the presence of members of the Third Infantry Regiment of the Bosnian Army as a military honour guard, flouting the warnings issued by the Bosnian Ministry of Defence and NATO.

107. President Dodik was personally sanctioned by the United States Administration in January 2017 for anti-Dayton behaviour: he can no longer travel to the United States, Americans can no longer do business with him⁴⁹ and his assets are frozen.

108. We condemn the holding of this referendum in violation of a final and binding court decision, but we also wonder what made President Bakir Izetbegović challenge the constitutionality of the RS national day, 20 years after the war. This unnecessarily stoked ethnic tensions again and shows that the ethnic and nationalist business model continues to be misused for short-term political gain.

5.4. The 2016 local elections

109. The local elections held on 2 October 2016 took place against a background of ethnic tensions fuelled by the 25 September 2016 referendum held in Republika Srpska on the national day of the Entity. Voter turnout was 53.88%. The 2016 elections saw the highest number of candidates since 2002: 107 political parties, 309 independent candidates, 58 representatives of national minorities and 24 coalitions competed for the 78 municipalities and cities in the Federation and the 63 municipalities and cities in Republika Srpska. This very high number of political parties registering for elections is perhaps due to the absence at State level of a law regulating the registration of political parties. Political parties can register at ten cantonal courts in the Federation, five in Republika Srpska and one in the Brčko District, according to criteria that vastly differ.

110. The SNSD was the clear winner in the RS, gaining 13 additional mayoral positions (roughly a 50% increase). Given its poor election results,⁵⁰ the SDS opposition leader, our colleague Mladen Bosić, resigned shortly after the elections. In the Federation, the two main blocks, the Bosniak joint list of SDA and SBB and the Croat party HDZ, retained their dominant position over other parties, despite SDA losing six mayoral positions, notably to ex-SDA candidates who ran as independents.

111. In terms of gender equality, the elections did not improve gender distribution: out of 26 female mayoral candidates, only five were elected, i.e. 3.5% of all mayoral positions, the same as before. In Srebrenica, for the first time since the war, a Serb was elected mayor, which caused considerable bitterness among the Bosniak population.⁵¹ A convicted war criminal⁵² was elected mayor of Velika Kladusa, and, for the first time, a representative of the Roma minority was elected mayor of Zavidovići.

112. Voting was held, with the exception of a few violent incidents,⁵³ in a calm and orderly manner overall. The Council of Europe Congress of Local and Regional Authorities observed these elections and noted improvements with regard to the system of "tendered ballots" that had been reformed prior to the elections as well as to the amendment to the Election Law that provides for a 40% quota of the underrepresented gender on candidate lists for municipal councils. The Congress recommendations include the recurring issue of the

48. In October 2016, the RS authorities also decided, in a tit for tat move, to challenge the constitutionality of the national day of 1 March, when Bosnia and Herzegovina declared independence from "the former Republic of Yugoslavia". This day is a public holiday only in the Federation. This appeal was rejected by the Constitutional Court on 6 July 2017.

49. These sanctions will not prevent the RS, as a legal entity, from employing lobbying firms in the United States. According to the press, the RS spent 30 million dollars on lobbying activities in the last 10 years.

50. The SDS won only eight mayoral positions, down from 20 in 2012.

51. The 2016 local elections in Srebrenica were held without the special arrangements in force since the end of the war (renewed for the last time in 2008), whereby all those living in Srebrenica in 1991, regardless of where they live now, were able to vote in the Srebrenica local elections. This was very important for the Bosniaks, because they could not accept that the mayor of a city where genocide had been committed could be a Serb. Serbs are now a majority in Srebrenica, as opposed to the pre-war population.

52. The applicable law does not prohibit convicted war criminals from running for election, as long as they have served their sentence

53. Violence broke out in Stolac on election day and the CEC had to order a rerun, which took place on 19 February 2017.

quality of voters' lists as well as the process of updating the lists, and the need to clarify the situation of voters living *de facto* abroad. Moreover, the lack of professionalism and the politicisation of the election administration remains a matter of concern and there is a clear need to reduce the influence of political parties, avoid trading in positions, and to overhaul the conditions of appointment and dismissal of members of commissions at all levels. More generally, transparency and integrity of the process should be reinforced by implementing existing legislation on electoral fraud and violations as well as misuse of administrative resources. In May 2017, the Congress of Local and Regional Authorities organised a fact-finding mission in the framework of its post-electoral dialogue with the authorities of Bosnia and Herzegovina and its mechanism to assess local and regional democracy, focusing on the situation in the city of Mostar where no elections have been held since 2008. We note with concern that according to the report⁵⁴ published by the Congress in September 2017, no progress has been made

5.5. Situation in Mostar

113. Mostar is a divided city and its statute was imposed by the High Representative in 2004. It is, with Sarajevo and Brčko, the only city in Bosnia and Herzegovina where the mayor is indirectly elected. The 2004 statute was supposed to achieve reunification of the city. We were told that administrative and institutional reunification had been achieved, at least to some extent, but that most utilities (water, sewage, electricity, fire brigades) remained divided between Mostar East and Mostar West. No elections have been held in Mostar since 2008.

114. We visited Mostar in June 2016, a few months ahead of the local elections scheduled for 2 October. Our meetings focused on the implementation of the decision of the Constitutional Court of Bosnia and Herzegovina that had found unconstitutional in November 2010 a number of provisions specific to the election system in Mostar.⁵⁵ The Constitutional Court had set a six-month deadline to the Parliamentary Assembly of Bosnia and Herzegovina to correct the relevant provisions of the Election Law. After the deadline expired, the Constitutional Court decided, in February 2012, to repeal the provisions it had earlier deemed unconstitutional. To recall: the essence of the Constitutional Court decision of 26 November 2010 relates to the unequal "value" of each and every voter's vote, since three councillors are elected from each of the six city area constituencies regardless of the number of registered voters by constituency, as well as the fact that voters from the central zone could not vote for candidates in the other seven electoral units of the Mostar city area.

115. On 21 April 2016, the Federation's House of Peoples unanimously voted a resolution calling on members of the Parliamentary Assembly of Bosnia and Herzegovina to bring urgent changes to the Election Law, which would enable the holding of elections for the city council and the mayor of Mostar, as part of regular elections in the country in 2016. The leaders of HDZ BiH and SDA held several rounds of talks, three sets of amendments were submitted to the parliament by different political parties, they were discussed on 27 April by the House of Representatives, but none were adopted.

116. Given the existing legal vacuum, the Central Election Commission considered, as in 2012, that it could not organise elections in Mostar. We spoke to the current mayor and a number of representatives of the main political parties in June 2016, just before the local elections. The situation is very tense: the Bosniaks are unwilling to accept the Croat proposal to amend the Election Law to make the city a single electoral constituency, because the Croats would then have the majority (which was Bosniak before the war).

117. The Croat parties (HDZ and HDZ 1990) consider that the decisions of the Constitutional Court can only be implemented by giving each vote the same weight. There is no agreement in sight: the working group established by the city council has not been able to reach a consensus and the Inter-Agency Working Group at State level also failed to agree on amendments. The Office of the High Representative organised around 100 meetings with the various political parties, but to no avail.

118. In May 2017, the Croat caucus in the State-level House of Peoples tabled a legislative proposal under urgent procedure⁵⁶. The proposal provided for a 45-member City Council in Mostar, including 26 members elected in 5 city areas and 9 members elected in a city-wide constituency. Each constituent people⁵⁷ would

54. See report CPL(2017)03, adopted on 8 September 2017

55. Mostar is currently divided into six city zones and a central zone: each city zone elects three councillors, independently of the size of the constituency (which can vary from 3 000 to 38 000 voters), while the residents in the so-called central zone can only vote for the 17 councillors elected in a city-wide electoral constituency.

56. The Bosniak caucus objected to the choice of urgent procedure and invoked the Vital National Interest clause. This was rejected by the Constitutional Court on 6 July 2017.

57. According to the 2013 census, the proportion of Serbs in the city has dropped from 18.8% in 1991 to 4.2%.

have a minimum of 4 members and a maximum of 15 members in the city council. It was adopted by the House of Peoples on 19 July 2017. However, as this proposal also deals with amendments related to the election of the Croat member of the Presidency and the rules regulating the election of delegates to the Federation House of Peoples, which are highly contentious issues, it is unlikely that this proposal will also be adopted in the House of Representatives. We were told during our visit in early September 2017 that the SDA would table its own proposals after the one proposed by the HDZ had been examined by the House of Representatives.

119. The mandate of the 35 members of the city council expired on 5 November 2012. The caretaker mayor, a Croat, is running the city on the basis of temporary financing, since no budget can be adopted without a city council. No investment decision, zoning plan, construction permit or borrowing decision can be adopted without a city council either. All financial decisions taken by the mayor must be countersigned by the head of finances of the city of Mostar, a Bosniak. All in all, we had the impression that the city was functioning and that the current arrangements, though far from ideal, were such that there is no popular demand for elections: people just seem to muddle through. In any event, listening to the detailed proposals made by SDA, HDZ and SDP representatives, we cannot see how they could possibly come to an agreement in the near future.

120. We consider that the impossibility to hold elections in Mostar for the past eight years is more than regrettable: it shows the increasingly bitter ethnic power struggle in Bosnia and Herzegovina at all levels, and the utter inability of the political stakeholders to shoulder their responsibilities. It also illustrates a growing trend not to abide by judgments of the Constitutional Court, which are, according to the Constitution, final and binding.

5.6. Local self-government

121. Bosnia and Herzegovina has ratified the European Charter on Local Self-Government (ETS No. 122), and its implementation is monitored by the Congress of Local and Regional Authorities. Following the adoption of the Congress' [Recommendation 324 \(2012\)](#), its Monitoring Committee decided to carry out a post-monitoring process in order to maintain political dialogue with the authorities, with the aim of discussing a roadmap and implementing the most urgent recommendations. In its 2012 recommendation, the Congress underlined, in particular, the need to review the legislation on local self-government within the Entities, cantons and municipalities with a view to ensuring a clear apportionment of the powers of local authorities; to allocate to local authorities sufficient financial resources commensurate with their powers and responsibilities; and to revise the State Constitution in accordance with Venice Commission's opinion 308/2004 adopted in 2005, and insert a reference to the principle of local self-government in the Constitution.⁵⁸

122. In 2014, the Congress adopted [Resolution 369 \(2014\)](#) in which it observed that most of the recommendations addressed in 2012 to the national authorities had not been implemented, nor had a timeline been set to take them on board in the foreseeable future. It also expressed grave concern with regard to, in particular, the lack of clarity in the apportionment of powers between the different levels of local governance (for example Entities and lower levels of governance).⁵⁹ The Congress also adopted [Recommendation 356 \(2014\)](#), in which it recommended that the Committee of Ministers urge the authorities of Bosnia and Herzegovina to make progress on the above-mentioned issues.⁶⁰

5.7. Constitutional reform

123. Reviewing the electoral legislation within one year of accession in the light of Council of Europe standards, and revising it where necessary with the assistance of the Venice Commission was an accession commitment. It has not been fulfilled.

5.7.1. State level

124. Bosnia and Herzegovina is not a democracy but an ethocracy: it does not function on the principle of equal suffrage, which is one of the foundations of our democratic societies. The Dayton Constitution of Bosnia and Herzegovina stipulates that only citizens declaring their affiliation to one of the three constituent peoples (Bosniaks, Croats and Serbs) can stand for election for the tripartite Presidency of the country and the State level House of Peoples, which is composed of five Serbs, five Bosniaks and five Croats. Citizens living in the

58. [Recommendation 324 \(2012\)](#).

59. [Resolution 369 \(2014\)](#).

60. *Ibid.*

RS can only vote for the Serb member of the Presidency,⁶¹ directly elected from the territory of the RS, and citizens living in the Federation can only vote for the Bosniak and Croat members of the Presidency, directly elected from the territory of the Federation.

125. Equality before the law of each constituent people has led to collective rights being put before every individual's right in the country. We consider the constitutional discrimination of so-called "Others" as being unacceptable: all people other than Bosniaks, Croats or Serbs are simply called "Others" in the Constitution. They include not only minorities such as Jews or Roma but also everybody who does not wish to define him or herself as belonging to one of the three "constituent" peoples.

126. As early as 2004, the Assembly urged the authorities (see [Resolution 1383 \(2004\)](#) on the honouring of obligations and commitments by Bosnia and Herzegovina) to put an end to this constitutional discrimination. In 2009, the European Court of Human Rights delivered its judgment in the *Sejdić and Finci* case, brought by a Roma and a Jew, who complained of being unable to stand for election. Since 2009, Bosnia and Herzegovina is thus under an international legal obligation to implement this judgment.

127. In December 2014, another judgment of the Court in a similar case, the *Zornić* case, became final. It was handed down on 15 July 2014. The case concerned Ms Zornić's ineligibility to stand for election to the House of Peoples and the Presidency of Bosnia and Herzegovina because she refuses to declare affiliation to any particular ethnic group but declares herself simply a citizen of Bosnia and Herzegovina. The European Court of Human Rights indicated that the finding of a violation in this case was a direct result of the failure of the authorities to introduce measures to ensure compliance with the *Sejdić and Finci* judgment.

128. The Court held in particular that: "More than 18 years after the end of the tragic conflict, there could no longer be any reason for the maintenance of the contested constitutional provisions. The Court expects that democratic arrangements will be made without further delay. In view of the need to ensure effective political democracy, the Court considers that the time has come to introduce a political system which will provide every citizen of Bosnia and Herzegovina with the right to stand for elections to the Presidency and the House of Peoples without discrimination based on ethnic affiliation and without granting special rights for constituent people to the exclusion of minorities or citizens of Bosnia and Herzegovina."

129. Since 2004, there have been numerous attempts to amend the Constitution: from the so-called 2006 April package (which failed in parliament by two votes⁶²), the Prud agreement or the Butmir process. All these efforts, mostly led by the international community, have been documented by the Assembly in its previous resolutions on the subject and will not be described here. Let us mention however the most recent efforts.

130. On 27 June 2012, the main political parties signed a roadmap in Brussels undertaking to put constitutional amendments into parliamentary procedure by August 2012 and to adopt them by November 2012. This did not happen. On 1 October 2013, the parties then signed up to seven principles on which a solution to the stalemate would be based, again to no avail. In mid-February 2014, talks facilitated by EU Commissioner Füle between the six main political leaders in the framework of the High-Level Dialogue on the European Union Accession Process, conducted since June 2012, finally collapsed. These talks were supposed to foster a consensus on the implementation of the *Sejdić and Finci* judgment, then a pre-condition for the entry into force of the 2008 Stabilisation and Association Agreement (see above, "Relations with the European Union"). Commissioner Füle, who had personally invested a lot of time and effort into this endeavour, was deeply disappointed.

131. The authorities have reiterated on numerous occasions their strong commitment to abide fully by the Strasbourg Court's judgment: there have been countless action plans, working groups, joint parliamentary committees or task forces. The last such action plan was adopted by the Council of Ministers on 8 September 2015. It provided for the creation of a task force composed of three ministers, one member from each caucus of the House of Representatives, and one delegate from each of the three ethnic caucuses in the House of Peoples, plus a representative of the Central Election Commission. Two caucuses of the House of Peoples never appointed a representative and the task force was therefore not set up. On 30 November 2016, the Ministry of Justice forwarded a revised Action Plan to the Council of Ministers.

61. In the case of *Pilav v. Bosnia and Herzegovina*, the Court held on 9 June 2016 that the residency requirement which prohibited the applicant, a Bosniak living in the RS, from standing for the election to the Presidency amounted to discrimination.

62. The Dayton Constitution provides that the Constitution can be amended by the Parliamentary Assembly of Bosnia and Herzegovina, with a two-thirds majority, i.e. 28 votes out of 42 in the House of Representatives.

132. We have no information on the follow-up given to this latest draft action plan, or on the action taken by the Council of Ministers following an initiative adopted by the House of Representatives in December 2016 requiring the Council of Ministers to prepare constitutional amendments and forward them into parliamentary procedure within 90 days.

133. Despite three interim resolutions⁶³ adopted by the Council of Europe Committee of Ministers in the framework of the ongoing supervision of the execution of the Court's judgment in 2011, 2012 and 2013, despite the Parliamentary Assembly stating in its [Recommendation 2025 \(2013\)](#) that it "will not tolerate yet another election in blatant violation of the *Sejdić and Finci* judgment", no constitutional amendments have been adopted to date and the 2014 elections took place under the same discriminatory framework as those held in 2010.

134. The next general elections at State, Entity and cantonal level are due in 2018. We urge the authorities to finally adopt the required constitutional amendments, as otherwise the Strasbourg Court will be flooded with applications alleging ethnic or territorial discrimination at every level: in April 2015, for example, the Constitutional Court granted the appeal by former Presidency member Željko Komšić, and held that the provisions of Entity Constitutions and the Election Law that regulate the President and the Vice-President in each Entity⁶⁴ are also discriminatory as they only allow the candidacy of people who belong to the constituent peoples. In this case, however, the Constitutional Court did not order "harmonisation" of the Entity Constitutions and the Election Law within a given deadline, but simply referred to the implementation of the *Sejdić and Finci* ruling.

135. We are perfectly aware that, in such a difficult political climate, with an evident lack of trust and with repeated strident calls for secession of one part of the country, even politicians with the best intentions will have a hard time fulfilling the country's essential international obligations.

5.7.2. Entity level

5.7.2.1. Constitutional reform in the Entities

136. On 19 April 2002 a constitutional reform was imposed by the High Representative and then enacted in both Entities. The crux of the reform was to revise the constitutions of the Federation and the Republika Srpska in accordance with the landmark decision issued in 2000 by the Constitutional Court in the constituent peoples' case.

137. The constitutional amendments aimed at giving equal status to the Bosniaks, Croats and Serbs in both Entities. In other words, as of the date of this reform, the RS is no longer exclusively a Serb Entity, the same applying to the Federation in the sense that it is not solely Bosniak and Croat. This reform aimed at ensuring a fairer distribution of posts among the constituent peoples in the Entities' governments, the administration and the judiciary. At the same time it also provided for a complex mechanism to allow representatives of one constituent people to invoke the vital interests' clause, under a procedure involving the parliament's House of Peoples in each Entity.

138. Structural complexity and numerous levels of authority exist in other European States. Such systems can work as long as there is a clear agreement on who does what, when and how. Without a minimum amount of trust, a willingness to achieve consensus and, most importantly, a sense of common interest, any complex system such as the one existing in Bosnia and Herzegovina is bound to fail.

139. Constitutional reform is not only necessary at State level, it is also much needed at the Entity level. We are very concerned about the failure, on 26 April 2012, to adopt amendments to the Constitution of Republika Srpska. Work on these amendments started in 2006, the Venice Commission provided an opinion in 2008, the RS National Assembly voted in favour in 2009. But the 29 amendments ultimately failed in the RS Council of Peoples where, in order to pass, they had to get the majority of each caucus (Serb, Croat, Bosniak and Others). In the Bosniak caucus, the SDA voted against each of the 29 amendments, including the one abolishing the death penalty. We urge the RS National Assembly to restart the constitutional reform process.

140. The Federation Constitution dates back to 1994 and has been amended on a number of occasions by decisions of the High Representative. It still includes provisions on the Entity ombudsman institution, which was abolished in 2008 following the creation of a unified ombudsman institution at State level. With its 10

63. CM/ResDH(2011)291, CM/ResDH(2012)233 and CM/ResDH(2013)259.

64. The President and vice-presidents in the RS are directly elected, while in the Federation, they are indirectly elected by parliament.

cantons, each with its own parliament, its own judiciary and its own constitution, the system is far too cumbersome and expensive. We therefore welcomed in 2013 the US-sponsored initiative to make proposals for a serious overhaul of the Federation Constitution. A group of local experts, with the large participation of civil society, prepared a list of 185 recommendations and submitted them to the authorities. To date these recommendations have not been followed up.

141. We are also concerned about a possible future stalemate in the implementation of a decision of the Constitutional Court of 1 December 2016. The case was brought – and won – by Bozo Ljubić, President of the General Council of the Croatian National Congress of Bosnia and Herzegovina, an umbrella organisation for all political parties with a Croat prefix, and at the time acting Chairperson of the House of Representatives.

142. At present, under the Federation's Constitution, the Federation House of Peoples is composed of 58 delegates (17 Bosniaks, 17 Serbs, 17 Croats and 7 "Others"). Each canton must put forward delegates based on a complex calculation to reflect the proportions of the three constituent peoples living there; but each canton must also send a minimum of one delegate from each ethnic group.

143. Mr Ljubić argued that this rule was in contradiction with the principle of equality enshrined in the Constitution. He claimed that the Election Law of Bosnia and Herzegovina violates the provision on proportional representation of the Constitution of Bosnia and Herzegovina by providing that each constituent people shall be allocated one seat in every canton, even if the number of members of the respective peoples in a specific canton is very small. The application of the Constitution of the Federation should ensure the appropriate proportional representation of delegates in the Federation's House of Peoples, which corresponds to the ethnic structure of the cantons the delegates come from. According to the applicant, the Election Law distorts this proportionality with respect to all three constituent peoples.

144. At the request of the Constitutional Court, the Venice Commission adopted in October 2016 an *amicus curiae* brief on the mode of election of delegates to the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina. The Venice Commission considered that although this distortion of proportionality in the electoral system might not be consistent with principles of European electoral heritage if the election was for a directly elected part of the legislature, it can be justified that the concept of equal voting should not apply to the special parts of the legislature which are designed to ensure representation of constituent peoples and "Others".

145. The Constitutional Court also ruled that the Federation Constitution and the country's election law must be "harmonised" with the ruling within six months, i.e. by June 2017. As it was not implemented in due time, the Constitutional Court decided on 6 July 2017 to simply annul the contested provisions of the Election Law, thus creating a legal vacuum comparable to the one that has made local elections in Mostar impossible for the last eight years.

146. The consequences of this would be dire for government formation at State level after the general elections in October 2018: it is the Federation House of Peoples that appoints delegates (five Croats and five Bosniaks) to the State-level House of Peoples. If the State-level House of Peoples is missing 10 out of 15 delegates, it cannot function. There would be a complete paralysis of the State institutions: no law can be voted without the House of Peoples, and no budget can be adopted.

147. Constitutional amendments need to be adopted by the cantonal Assemblies of the Herzegovina-Neretva canton, the Posavina canton, the Western Herzegovina canton and canton 10. All four cantons have failed since 2002 to amend their constitutions in order to provide Serbs with the status of constituent people.⁶⁵

5.8. Justice reform

148. Continuing the reforms aimed at the establishment of a professional and independent judicial and prosecution system and ensuring adequate funding for the judiciary with a view to reinforcing its independence are specific accession commitments of Bosnia and Herzegovina.

149. According to the Venice Commission, the legal and judicial system of Bosnia and Herzegovina is the most complex and decentralised system in Europe today. There are four legal orders⁶⁶ (State, two Entities, Brčko District), which have developed on largely autonomous lines over the past two decades and vary in

65. In his 52nd report to the United Nations Security Council, the High Representative welcomed the fact that Sarajevo canton amended its constitution on 31 July 2017 in order to guarantee each of the constituent peoples a minimum of 20% representation in the Sarajevo City Council.

66. See the opinion of the Venice Commission of June 2012 on "Legal certainty and the independence of the Judiciary in Bosnia and Herzegovina".

many areas of substantive and procedural law. Furthermore, since each Entity, the Brčko District and the State has its own judicial system, differences also arise in the interpretation and the application of similar or even identical legal provisions. Hence there is a fragmentation of State powers, fragmentation of legislation and fragmentation of judicial bodies⁶⁷ that apply the legislation. This leads to an ever present and potential source of conflict of laws and jurisdiction compounded by the fact that there is a lack of co-operation between the country's various judicial and other organs.

150. The judiciary suffers from a lack of public trust, mainly because of the widespread polarisation along ethnic lines. Politicians routinely accuse the judiciary of ethnic bias: the RS, for example, complains often that the State Court is only dealing with war crimes committed by Serbs. Bosniak politicians, on the other hand, have frequently accused the Prosecutor's Office of not seriously investigating corruption charges levelled against high-level officials in the RS, including President Dodik himself. Not a single Chief Prosecutor since 2006 has been able to finish his mandate: all were suspended before the end of their term of office. The High Judicial and Prosecutorial Council which we met in Sarajevo in June 2016, indicated that there were around 30 disciplinary proceedings opened per year. Appointments and promotions in the judiciary are handled by this body. It does not help that ethnic quotas are also mandatory in the judiciary.

151. A recent and worrying development risks undermining even further the independence and the trust in the judiciary. On 9 October 2017, the State Court acquitted in first instance Naser Orić,⁶⁸ the Bosniak wartime commander in Srebrenica, of killing Serb prisoners of war. This acquittal sparked outrage both in Republika Srpska and in Serbia: RS president Dodik once again called on Serb staff to leave the State Court and Prosecutor's Office. Worse, authorities in the RS complained to the High Judicial and Prosecutorial Council alleging that nine judges and six prosecutors from State institutions had shown ethnic bias against Serbs, both during the war and in their current positions (this included the Bosniak judge in the Orić case). On 26 and 27 October, the High Judicial and Prosecutorial Council adopted conclusions which, *inter alia*, would allow for the dismissal of unsuitable judges or prosecutors without a disciplinary procedure by a two-thirds majority in parliament.

152. There are only two courts at the State level: the Constitutional Court, the only judicial organ mentioned in the Dayton Constitution, and the State Court. The State Court was established by a decision⁶⁹ of the High Representative in 2000, together with the Prosecutor's Office, on the basis of the implied or inherent powers of the State. The State Court is competent mainly for dealing with the most serious war crimes, and for organised crime, economic crime and corruption.

153. Republika Srpska has repeatedly called for transferral back to the Entities of the competences given to the State Court, arguing that the creation of this court was done in violation of the Dayton Constitution. It threatened to organise a referendum on this question in 2011. This was dropped only after the European Union proposed to set up a Bosnia and Herzegovina–EU Structured Dialogue on Justice as a framework for addressing Republika Srpska's concerns.

154. However, four years later, on 15 July 2015, the RS National Assembly adopted a decision to hold a referendum in the RS on the validity of the legislation on the Court and Prosecutor's Office and the applicability of these institutions' decisions on the territory of the Entity, as well as on the authorities and decisions of the High Representative. The question to be put to referendum was: "Do you support the unconstitutional and unauthorised imposition of laws by the High Representative ..., particularly the imposed laws on the Court and Prosecutor's Office in BH and the implementation of their decisions on the territory of Republika Srpska?"

155. In a special report on the issue, presented to the Secretary General of the United Nations in September 2015, the High Representative said that this decision represented one of the most serious violations of the General Framework Agreement for Peace since its signing in 1995. He considered it a continuation of the long-standing policy of the ruling party in the RS to challenge the sovereignty and territorial integrity of Bosnia and Herzegovina, including through open advocacy for the secession of the RS and the dissolution of the country.

67. Each Entity has its own Supreme Court and Constitutional Court. There is no Supreme Court at State level.

68. Naser Orić was acquitted on appeal by the ICTY in 2008 on similar charges. Unhappy with this acquittal, Serbia issued an international arrest warrant against Orić in 2014. He was arrested in Switzerland in 2015 but extradited not to Serbia but to Bosnia and Herzegovina

69. The Law on the State Court was subsequently adopted by the Parliamentary Assembly of Bosnia and Herzegovina, with the concurring votes of the SNSD and without the Entity veto mechanism being invoked by MPs from Republika Srpska. It was also upheld by the Constitutional Court in 2002 and 2009.

156. Yet, the RS National Assembly decision on the holding of the referendum was only published in the RS *Official Gazette* on 19 September 2017. On 7 November 2017, after a fierce debate, the RS National Assembly voted in favour of suspending the decision to hold a referendum.

157. During the reporting period, the EU–Bosnia and Herzegovina Structured Dialogue on Justice, launched in 2011, continued nevertheless to provide a framework for discussion. The composition of the parties involved in the dialogue was adjusted by the European Commission in July 2015, to engage, in a restricted fashion, with representatives of the executive authorities⁷⁰ (i.e. the Minister of Justice of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the RS Ministers of Justice and the President of the Brčko District Judicial Commission). Since then, they are said to play a pivotal role within the dialogue. However, no meetings of the Dialogue have been held since February 2016.

158. In the last few years, the Structured Dialogue has mostly dealt with a Draft Law on the Courts, which could entail the establishment of a separate Appellate Court. In April 2013, the Venice Commission received a request from the Ministry of Justice to provide an opinion on the draft Law on Courts, adopted in June 2013. The draft law dealt with all the courts at the level of Bosnia and Herzegovina (except for the Constitutional Court) in a single law and introduced a new High Court, which would serve as a second instance court at the State level. It would receive cases on appeal from the State Court and adjudicate on other matters set out in the draft law.

159. The Venice Commission found that provisions on the composition and number of judges and on criminal jurisdiction of this appellate court raised a number of issues that needed to be addressed by the authorities. The main issue of discussion within the parties to the Dialogue is the criminal jurisdiction of this new appellate court, with views ranging from a widely formulated extended criminal jurisdiction to its complete deletion.

160. There are also discussions on the adoption of a new Law on the High Judicial and Prosecutorial Council, taking place within the Structured Dialogue.

161. As regards the Law on the High Judicial and Prosecutorial Council, in its opinion adopted in March 2014 at the request of the Ministry of Justice, the Venice Commission found that the draft law was carefully drafted, and that it took into account international standards as well as its previous opinions. The Venice Commission welcomed, in particular, the creation of two sub-councils within the single structure of the High Judicial and Prosecutorial Council: one for judges and one for prosecutors, a system which it considered appropriate in the particular context of the country, provided that the two sub-councils were afforded a maximum amount of autonomy.

162. However, the Venice Commission made a number of important specific recommendations on the election and appointment procedures. Moreover, the Venice Commission reiterated its recommendation that the High Judicial and Prosecutorial Council be provided with an explicit constitutional basis, as a way to facilitate its role as the guarantor of the independence of the judiciary of Bosnia and Herzegovina.

163. We have received no information with regard to the state of play for these two draft laws, and, in particular, whether the recommendations of the Venice Commission were taken on board.

164. The RS has become very vocal in its criticisms of the Constitutional Court. The main political parties of the RS demanded reform of the Constitutional Court after it ruled on 26 November 2015 that the RS National Day, celebrated on 9 January, was unconstitutional and discriminatory against non-Serbs. In a reaction, the SNSD and the SDS introduced a draft law reforming the Constitutional Court in order to eliminate the foreign judges (appointed by the President of the European Court of Human Rights) and make decisions of the Constitutional Court dependent on the support of at least one judge from each constituent people. Another draft law proposed amendments to the Criminal Code decriminalising non-execution of Constitutional Court judgments.⁷¹

165. The Venice Commission had already addressed the Constitutional Court's mode of operation (and composition) in an opinion adopted in 2005, on the issue of whether decisions of the Constitutional Court should be valid only if at least one judge from each constituent people backed the decision. The Venice Commission's conclusion was that such a rule – which would confirm the option for ethnic voting within the Constitutional Court – “would run counter to European standards”.⁷²

70. This was criticised by the President of the State Court when we met her in September 2015.

71. It is a criminal offence (punishable by a maximum of five years in prison) not to execute a judgment of the Constitutional Court or the European Court of Human Rights.

166. The two draft laws received two negative opinions from the Legal and Constitutional Commission of the Parliamentary Assembly of Bosnia and Herzegovina. The 28 April 2016 session of the House of Representatives suspended the procedure of these two drafts. It was agreed that the Bureau of the House of Representatives would make a proposal on the establishment of an inter-agency working group, to be composed of MPs from both Houses of the Parliamentary Assembly of Bosnia and Herzegovina and judges from the Constitutional Court to address the negative opinions by the Legal and Constitutional Commission.

167. The initial four-month deadline given by the Serb parties for the adoption of the draft laws expired on 29 March 2016. We are not aware of any follow-up given on an the inter-agency working group (if it was ever established). We were told in September 2017 by the Minister of Justice at State level that the structured dialogue was “dead”. The Deputy Head of the European Union Delegation in Sarajevo confirmed this, saying that the European Union does not see any point in pursuing a dialogue that had brought no concrete results in years, mainly due to obstruction by Republika Srpska.

6. Rule of Law

6.1. *Fight against corruption and organised crime*

168. Increased efforts to combat corruption within the judicial and prosecution system and the police, as well as in the administration is one of the country’s accession commitments. It remains to be fulfilled. Corruption, especially political corruption, remains pervasive: according to Transparency International, Bosnia and Herzegovina dropped seven places in the 2016 Corruption Perception Index to 83rd out of 176 countries.

169. Political corruption is perhaps the most worrying: there is no credible and independent mechanism to deal with conflict of interest or to check up on asset declarations by elected or appointed officials at State level. The CEC is in charge of asset declarations, but it only receives them and stores them in a data base: nobody checks whether they are sincere, and there are no checks either on the increase – or decrease – of assets on taking office and on leaving it. The mechanism supposedly dealing with conflict of interest is completely inappropriate: this competence was taken away from the CEC, and handed over to a joint parliamentary committee of both houses of parliament at State level (with the participation of three members of the Agency for the Prevention of Corruption).

170. The new draft law on prevention of conflict of interest in the institutions of Bosnia and Herzegovina, which was sent into parliamentary procedure on 31 October 2017, might remedy the serious deficiencies in the current law in order to bring the country closer to minimum international standards, notably in accordance with recommendations made by GRECO.

171. We have heard on numerous occasions that appointment to management boards of public companies, or other jobs in the public administration, are distributed according to party affiliation rather than merit. People complain about patronage, cronyism and nepotism. Corruption is also, reportedly, widespread in the education and health sectors, as well as in procurement.

172. We are happy to note, however, that some steps have been taken towards adopting all the relevant framework documents linked to the fight against corruption. In its Third Evaluation Round concerning the criminalisation of corruption offences and the transparency of party funding, GRECO welcomed the adoption of the Anti-corruption Strategy 2015-2019 and the related Action Plan, which include a set of measures aimed at improving the effectiveness of criminal legislation on corruption. GRECO also welcomed the draft amendments to the Criminal Code of Bosnia and Herzegovina, which are in line with six pending recommendations. However, GRECO regretted that the reform only concerned the State level and does not attempt to harmonise criminal legislation between different levels of government. GRECO also noted that the recommendation to harmonise fully the existing sanctions for bribery and trading in influence offences across the national territory had not yet been addressed.

173. As GRECO had not been informed of any tangible progress in relation to the transparency of political party funding, it launched a non-compliance procedure with respect to Bosnia and Herzegovina. In its third interim compliance report of July 2016, GRECO noted that no further progress had been achieved as regards the implementation of the 15 recommendations found either not to be or only partly implemented (out of the 22 included in the Third Round Evaluation Report).

72. CDL-AD(2005)039, Opinion on proposed voting rules for the Constitutional Court of Bosnia and Herzegovina, Venice, 21-22 October 2005.

174. GRECO is deeply concerned about the complete lack of any further progress with regard to both evaluation themes. It has serious misgivings about the fact that more than five years after the adoption of the Evaluation Report, the large majority of recommendations have still not been addressed satisfactorily. GRECO strongly urges the authorities to accelerate the reform process and to take determined action to implement the pending recommendations both in the area of party funding and of the criminal law on corruption. Moreover, it is unacceptable that the authorities have not presented any update on the action taken (or difficulties encountered) in view of the current report and in response to the request to submit such information by 31 March 2016 followed by several reminders.

175. In the meantime, on 27 May 2016, the House of Peoples adopted amendments on political party financing in urgent procedure, following their adoption by the House of Representatives on 24 May. These amendments partially satisfy certain ODIHR recommendations following the 2014 elections, in particular a priority recommendation on improving the legal framework for campaign financing, which was also recommended by GRECO. The amendments create new obligations for political parties to organise internal audits of financial records and to make public the source of their financial revenues. The CEC is now under a legal obligation to report suspected criminal acts in relation to political party financing to the Prosecutor's Office. Political parties are no longer allowed to obtain funds via bank loans and financial penalties have been increased, both for individuals and political parties.

176. On 4 December 2015, GRECO adopted its report on Bosnia and Herzegovina as regards its Fourth Evaluation Round "Prevention of Corruption in respect of MPs, judges and prosecutors". The recommendations included in the report are due for a GRECO compliance assessment in the second half of 2017.

177. The report noted positive measures taken to enhance openness and public awareness regarding parliamentary work, while underlining that more steps could be taken to widen opportunities for public participation in the development, implementation and revision of legislation, as well as to provide transparency regarding the interaction of parliamentarians with third parties seeking to influence the parliamentary process. Some tools are in place to promote integrity principles in the legislature and to regulate and limit those activities that may give rise to conflict of interest. According to the report, the enactment of separate legislation on conflicts of interest at Entity/Brčko District level, and the establishment of separate oversight institutions must not lead to inconsistent standards in the respective parliaments. More importantly, the monitoring and enforcement regime for integrity and conflict of interest prevention in the legislature needs to be strengthened significantly.

178. According to GRECO, while parliamentarians have an obligation to adhere to the ethical standards laid down in the Code of Conduct and the relevant internal Rules of Procedure, it is not clear how misconduct could trigger punishment. Likewise, the existing bodies monitoring conflicts of interest have important shortcomings regarding the effectiveness of their role: they lack either the required powers or independence to ensure abidance by the rules. Finally, the asset disclosure regime suffers from crucial shortcomings as regards the transparency and the actual control of the declarations submitted. According to GRECO, the latest amendments to the Law on Conflict of Interest, which entered into force in November 2013, water down the spirit of the law and significantly weaken its deterrent function.

179. In its Fourth Evaluation Round, GRECO also stated that the complexity of the four judicial systems and threats to judicial independence are deeply affecting the efficiency of justice and fuelling a negative public perception of the judiciary. Furthermore, awareness of ethics and integrity rules needs to be strengthened and rules on conflicts of interest have to be developed for all judges and prosecutors and properly enforced.

180. Furthermore, the process of strengthening the institutional capacity of the Anti-Corruption Agency has progressed at a slow pace, as the agency is still not yet fully operational. In July 2015, the Council of Ministers adopted a rule book on the internal organisation of the agency and in January 2016 it adopted a decision allocating the Agency its own accommodation space. The exact status of the administrative staff of the agency remains to be resolved.

6.2. Money laundering and financing of terrorism

181. The last mutual evaluation report on the anti-money laundering/counter terrorist financing (AML/CFT) measures of Bosnia and Herzegovina was adopted in 2015 under MONEYVAL's 4th evaluation round. Bosnia and Herzegovina was placed in the regular follow-up procedure and asked to submit an expedited follow-up report in September 2016. The MONEYVAL plenary meeting concluded in September 2016 that the country had demonstrated serious and successful efforts over the past year to implement several of the recommended actions of the 4th round evaluation report. Important progress noted related to the terrorist

financing offence, the introduction of a national framework for targeted financial sanctions against terrorism, and the strengthening of preventive measures. However, in other fields (confiscation and supervision), progress was still limited. The plenary meeting invited Bosnia and Herzegovina to report back and request exit from regular follow-up in three years' time at the latest (by September 2019). An earlier application for exit, in 2017 or 2018, was encouraged, in light of further legislative developments that are reportedly planned for 2017.

182. It must also be recalled that in 2010, MONEYVAL placed Bosnia and Herzegovina under "Compliance Enhancing Procedures", due to insufficient progress made after the 3rd round evaluation report (adopted in 2009). This included a high-level political mission to the country (February 2014) and a public statement (June 2014).

183. In April 2015, MONEYVAL decided to apply the last step possible under compliance procedures, meaning referral of the country to the International Co-operation Review Group (ICRG) of the Financial Action Task Force (FATF). Shortly afterwards, Bosnia and Herzegovina adopted a number of key amendments to its Criminal Code, leading to the lifting of the public statement and removal of the country from compliance procedures in September 2015. Bosnia and Herzegovina is however still under the ICRG process of the FATF, pursuant to the April 2015 referral. This means that the FATF continues to closely monitor the country on progress made in addressing its identified strategic AML/CFT deficiencies for which an action plan has been developed with the FATF.

184. On 23 November 2016, in a statement, the Council of Ministers clarified that Bosnia and Herzegovina was not on FATF's black list, but confirmed that due to an only partial implementation of the FATF action plan to combat money laundering and the financing of terrorism, the country remains on its "grey list", which means that foreign banks exercise greater scrutiny in financial transfers to and from the country, thereby causing delays. The Council of Ministers further acknowledged that certain measures remain to be adopted and implemented by the end of 2016, specifically the harmonisation of Entity criminal codes and the establishment of a single registry of NGOs. The Minister of Security, Dragan Mektić (SDS), in a media interview, further clarified that MONEYVAL had handed over the matter to FATF and that FATF had decided to place the country on a "light grey list". He further noted that Bosnia and Herzegovina must fulfil its obligations towards FATF by the end of January 2017 or otherwise face blacklisting.

185. We have received no information as to whether Bosnia and Herzegovina has fulfilled its remaining obligations towards FATF, as a country heavily relying on remittances and on foreign direct investment (FDI) cannot afford to be on that list, but we have learnt that FATF delegations will visit Bosnia and Herzegovina in the coming period to verify the implementation of laws and by-laws.

6.3. Fight against terrorism

186. There have been a number of isolated terrorist attacks in the country in recent years: a bomb exploded in a police station in Bugojno in 2010, killing one person; a man was shot at the American Embassy in the middle of the day in 2011; in April 2015, another attack took place against a police station in Zvornik, killing one officer. Finally, two soldiers were shot dead by a terrorist in Sarajevo's Rajlovac suburb in November 2015. There is a small Wahhabi community in a remote village in Gornja Maoča (central Bosnia), which the authorities monitor closely.

187. Around 1 500 so-called mujahedeen, paramilitary fighters, mostly from the Middle East and North Africa, who fought alongside Bosniaks during the war, have remained in Bosnia and Herzegovina, often marrying local women and acquiring citizenship.⁷³ But in recent years, it is young and radicalised Bosniaks who have gone to fight in Iraq and Syria. A so-called "foreign fighters" law was adopted in 2014, criminalising the act of fighting in a foreign country, recruiting people for Daesh or for public incitement to terrorist activity. It is estimated that in 2015 some 200 people went to fight to Syria and Iraq. The authorities keep a tab on those who return and the courts have sentenced a number of people to heavy prison sentences under the Foreign Fighters Law.

188. The Head of the Islamic Community in Bosnia and Herzegovina, Husein Kavazović, has also invested serious efforts in condemning extremist teachings and re-affirming Bosnia's commitment to a liberal version of Islam.

73. The citizenship of 613 people was revoked in 2006-2007. See paragraphs 187-190 of [Doc. 11700](#).

189. Finally, let us mention the schools and universities operating in the country and allegedly linked to the Gülen movement, which the Turkish Government has branded a terrorist organisation. The Turkish authorities have repeatedly asked for them to be closed down, but they were recently sold to a private American company, and there is apparently little the authorities can do to accede to the request. The situation will create problems for the students since the Turkish Government has announced that it will not recognise their diplomas nor let them work in Turkey.

6.4. Fight against torture and ill-treatment

190. There are three separate prison administrations in the country, one at State level, and one in each of the two Entities.⁷⁴ The lack of harmonisation of the laws on execution of criminal sanctions continues to be a problem as different rules are applied, for example with regard to duration of solitary confinement, inmates' privileges and alternative and community sanctions.

191. In its report⁷⁵ on the last visit carried out from 29 September to 9 October 2015, CPT welcomed the 2014-2018 Justice Sector Reform Strategy, which aims at the harmonisation across the country of the legal framework for the execution of criminal sanctions, the establishment of a single training unit for prison staff and a system for the collection of prison data.

192. From the CPT report, we learnt that the prison population in the Federation stood at 1 913 inmates (including 278 on remand) for an overall capacity of 1 911 places, and in the RS there were 885 prisoners (including 91 on remand) for an overall capacity of 1 404. A new prison is planned in Mostar (400 places) and in Bijeljina (250 places).

193. For years, it has been planned to build and operate a state of the art high security prison at State level for 350 inmates. The State Court dealing with war crimes, high-level corruption and organised crime cases has only a small pretrial detention unit at its disposal which cannot accommodate all the people sentenced by the State Court. They serve their sentence either in Foca (RS) or Zenica (Federation) prisons, here again according to the ethnicity of the persons convicted.

194. This State prison, which has been substantially funded by the Council of Europe Development Bank, the European Union and other donors, will hopefully open in 2017. It will alleviate prison overcrowding, which is particularly severe in Sarajevo and Mostar. The CPT also noted that there has been a greater use of alternatives to imprisonment, such as community service, fines and house arrest with electronic monitoring. No system of probation has been established so far, however.

195. During the visit, the CPT received a considerable number of allegations of widespread physical ill-treatment of detained persons by law-enforcement officials and was, again, critical of the lack of action taken by prosecutors and judges to investigate allegations of ill-treatment. The CPT recommended that fully independent police complaints bodies be established and that, until this occurs, prosecutors should seek support from police internal control units when investigating allegations of police ill-treatment. There is no systematic access to a lawyer or a doctor, and the material conditions in most of the police holding facilities visited by the delegation were unfit for holding people overnight.

196. The CPT also found that remand prisoners still spend 22 hours or more confined to their cells and were offered no purposeful activities, and that the health-care services provided were of poor quality. It demanded an immediate end to the practice of keeping chronically psychotic psychiatric patients in remand prison and hoped that the newly opened psychiatric facility in Sokolac would put an end to this unacceptable practice.

7. Human rights

7.1. Fight against discrimination

197. In September 2015, the Ministry for Human Rights and Refugees set up a working group for the development of amendments to the Law on Prohibition of Discrimination (LPD),⁷⁶ in line with the Ministry's work plan for 2016. Amendments to the Law were considered necessary to provide clarification of definitions

74. The Brčko District had a remand prison but is now sending convicts mainly to Bijeljina or Tuzla. It is planned to shut down the remand prison.

75. Published in July 2016.

76. Law on Prohibition of Discrimination of Bosnia and Herzegovina (*Official Gazette* 59/09).

(of discrimination, sexual harassment, victimisation, indirect discrimination, etc.) and their further alignment with the European Union's *acquis* and to strengthen procedural safeguards to ensure effective protection against discrimination.

198. In what is seen as a positive development by the main stakeholders, the draft amendments aim to improve the description of the non-permissible grounds for discrimination, in particular as regards gender identity and sexual orientation but also disability and age. In addition, the amendments cover direct and indirect discrimination and harassment; include a provision on reversing the burden of proof under certain specific circumstances (for it to fall on the person accused of discrimination); provide support to plaintiffs and to victims; define unwanted harassment, more precisely define victimisation; make certain changes to the jurisdiction of courts (i.e. instead of being based on the place of residence of the defendant, it will be based on the place where the discrimination occurred) and allow an intervener to act on behalf of a victim or group of victims. The draft was adopted by the Council of Ministers in December 2015 and forwarded to the Parliamentary Assembly of Bosnia and Herzegovina, which discussed it in first reading on 5 April 2016.

199. The Ministry also developed an anti-discrimination strategy. It is based on concrete discrimination cases and the experience the Ministry had in combating discrimination. It comprises specific thematic issues and also relies on the conclusions contained in the reports of the Ombudsman for Human Rights. On 26 April 2016, the Council of Ministers adopted an action plan for the fight against discrimination. However, according to some observers from civil society, little progress has been made in practice in the fight against discrimination, with questions about the capacity of the Ombudspersons Office and other issues regarding vulnerable groups (i.e. women's rights, Roma, lesbian, gay, bisexual and transgender (LGBT) people, people with disabilities).

7.2. Protection of minorities

200. The Law on the Protection of Rights of Members of National Minorities was adopted in 2003. The law states that the State will protect the status, equality and rights of 17 national minorities present in Bosnia and Herzegovina: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks and Ukrainians. However, the overwhelming focus in the political sphere on the rights of constituent peoples has left national minorities, some of them very small, excluded from public debates.

201. The Roma are the largest and most marginalised minority group in Bosnia and Herzegovina. In order to fulfil their international obligations as well as to implement domestic law, the Ministry of Human Rights and Refugees has over the years prepared a number of strategies and action plans to cover a number of issues affecting Roma, such as access to housing, employment, health care, social security and civil registration. They aimed to promote the equality of this minority group as well as their greater participation in public life in general. In 2010, the Revised Action Plan of Bosnia and Herzegovina on Roma Educational Needs was finalised and adopted by the Council of Ministers. Bosnia and Herzegovina joined the "Decade of Roma Inclusion 2005-2015" in September 2008. A revised Roma action plan in the field of housing, employment and health was also adopted. It expired in 2016 and the Ministry is currently preparing a new one.

202. Considerable work has been done over the past several years towards ensuring that Roma do not lack identity documents and new laws on birth registration were adopted in both Entities. However many Roma continue to live in extreme poverty and the economic and financial situation of the country is not conducive to sufficient support for these communities.

203. In December 2016, Bosnia and Herzegovina submitted its [fourth report on the implementation of the Framework Convention for the Protection of National Minorities](#) (ETS No. 157). This is a very long document (113 pages), which we cannot summarise here.

204. In the field of institutional participation, there are now Councils of National Minorities operating within the parliaments in both Entities and at State level and a Roma Board was established within the Council of Ministers at State level. There were also seats reserved for minorities in municipal and city councils for the local elections in 2008 and 2012. We do not have the figures for the 2016 local elections.

7.3. Fight against the trafficking in human beings

205. Bosnia and Herzegovina ratified the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) on 11 January 2008. It submitted its first report to GRETA in May 2015.

206. The second report concerning the implementation of the Convention by Bosnia and Herzegovina was examined by GRETA in March 2017. In Recommendation CP(2017)27, the Committee of Ministers welcomed the progress made since the first round of evaluation: introduction of the criminal offence of trafficking in human beings in the Criminal Codes at Entity level and adoption of provisions on the right of victims of trafficking in the new law on foreigners; measures taken to provide training to relevant professionals and to increase awareness of the issue of trafficking among the general public and targeted groups; and adoption of legal provisions on the non-punishment of victims of trafficking for offences committed as a result of being trafficked in the Criminal Codes of the State, the Federation and the Brčko District. The Committee then made further detailed recommendations, and asked the Government of Bosnia and Herzegovina to report back to GRETA on measures taken by 15 October 2018.

7.4. Media and freedom of expression

207. Continuing reforms in the field of media, in order to guarantee freedom of expression and the independence of journalists, is a specific accession commitment.

208. Bosnia and Herzegovina has an advanced legal regime governing freedom of the media. Laws decriminalising libel and defamation have, for instance, been in force in the RS since June 2001 and in the Federation since November 2002.

209. The country has one of the most advanced self-regulatory mechanisms in Europe. The Communications Regulatory Authority is responsible for licensing and regulating broadcasting and telecommunications, while the Press Council, a voluntary and self-regulatory body, deals with complaints about the print press. Complaints about broadcasting are sent to the Authority, which has the right to consider a complaint in any case where a given programme, advertisement or broadcast appears to have been biased, incorrect, offensive or harmful; to have endangered privacy, harmed the physical, mental or moral development of children; or to have incited racial, religious or national hatred. All citizens, including officials, have the right to lodge a complaint.

210. Currently Bosnia and Herzegovina has three public broadcasters – BHRT (State level), RTFBiH (Federation), RTRS (Republika Srpska) – and four main commercial broadcasters (OBN, Pink TV, BN TV and TV Hayat). Al Jazeera Balkans also operates there.

211. The 2003 European Commission Feasibility Study outlining the conditions Bosnia and Herzegovina would have to meet in order to enter into negotiations with the European Union on a Stabilisation and Association Agreement required the country to make significant progress in a number of areas, including broadcasting legislation. In particular, one of the requirements was the establishment of a unified public service broadcasting system with State-level management. For this purpose, four laws had to be adopted but only three of them have been passed to date. The absence of the fourth continues to block the completion of this new public broadcasting system.

212. The first law on the Public Broadcasting System (or System Law) outlines the structure, governance, financing and management of the common resource base, and other responsibilities of the Public Broadcasting System as a whole. It was adopted on 5 October 2005. The law foresees the creation of the Corporation of Public Broadcasting Services (or Joint Corporation). It was conceived as an umbrella organisation over all three public broadcasters. It was supposed to set the development strategy, co-ordinate the technical and human resources of the three broadcasters, and harmonise the differing systems, policies and procedures of the current three broadcasters. Some functions currently performed separately by the three public broadcasters were to be centralised under this law. Among the most important of these are the collection of licence fees and the sale of advertising space. The new law would also have made the three public broadcasters a single legal entity, while still providing each one with a certain degree of autonomy.

213. However, the Joint Corporation was never set up, mainly because the Serbs refused to accept the setting up of a corporation of public broadcasting services at State level, and the Croats because it did not provide for a purely Croat public broadcaster.⁷⁷

214. The Public Broadcasting System continued however to face the long-standing issue of funding, with the RS openly advocating the non-payment of fees. This situation became dire in December 2015, when the system for collecting taxes via telephone bills to pay for the Radio and Television service expired. It left the nationwide Radio and Television of Bosnia and Herzegovina and the public broadcasters in the two Entities –

77. For details on the year-long obstruction to the creation of a proper public broadcasting system, see paragraphs 199-203 of the Assembly's 2008 report on Bosnia and Herzegovina, [Doc.11700](#).

Radio and Television of the Federation and Radio and Television of RS – facing financial collapse. The existing financing system was finally prolonged to June 2016, to give the Council of Ministers and the three broadcasters time to find a new financial solution. In early June 2016, Radio and Television of Bosnia and Herzegovina announced it would stop broadcasting by 30 June, in particular because it could not repay the 6 million Swiss francs it owes to the European Broadcasting Union.

215. A temporary solution was apparently found, a permanent one has still not been adopted.

216. The Public Broadcasting System's financial situation is further undermined by the tendency of the three existing public broadcasters to act as direct competitors rather than as parts of the same system. The quality of the public media programmes is negatively affected by a proliferation of small, public media, often linked to political parties. There are currently a number of proposed initiatives coming from different institutional and political actors to amend aspects of the Public Broadcasting System. Some are linked to a new model of Public Broadcasting System financing, including through Entity funds. Another has been put forward by the Ministry of Communication and Transport, calling for the introduction of three channels within Radio and Television of Bosnia and Herzegovina (the State Broadcaster). It stipulates an adjustment of programming towards the needs of a single constituent people, broadcast respectively from studios in Sarajevo (in Bosnian), Banja Luka (in Serbian) and Mostar (Croatian). The creation of a Croat language public broadcaster is a long-standing demand of the Croat parties which has re-surfaced recently.

217. Bosnia and Herzegovina has a diverse media environment: there are some 140 radio stations and over 40 TV channels, plus 80 other channels available on the cable networks. According to Freedom House 2016, "while a number of independent broadcast and print outlets operate, they tend to appeal to narrow ethnic audiences, and most neglect substantive or investigative reporting". This is possibly due to the fact that the law on free access to information is badly implemented, which prevents journalists from having access to information in a timely manner.

218. Journalists are badly paid and subject to political pressure. Transparency in media ownership is non-existent.

219. The safety of journalists also remains an issue, with an increasing number of cases of death threats or police searches of media outlets. The non-governmental "Free Media – helpline", which provides free legal assistance to threatened journalists, registered 57 attacks in 2015 alone. In most cases, the actual perpetrators remain unknown, as only some 15% of attacks against media professionals are resolved. In addition, since the decriminalisation of defamation, there is a growing tendency to file civil responsibility cases against journalists as a tool of political pressure.

220. Broadcast media are licensed and monitored by the Communications Regulatory Agency, which has executive powers to enforce regulations. It also has competencies to issue rules that are binding. The Agency is financially independent and, while it is often said to be exposed to political pressure, its decisions are generally considered as fair. Its Director General is appointed by the Agency Council, and the appointment must be approved by the Council of Ministers. This post had remained vacant for almost eight years. It is therefore a positive development that a new Director was confirmed by the Council of Ministers on 25 April 2016.

221. It should be noted that at the Entity level, the adoption, in February 2015, by the RS Parliament of a Law on Public Order and Peace in the RS raised concerns amongst civil society and professionals, as the law extends the meaning of "public space" to online social networks. Following the adoption of this law, Transparency International of Bosnia and Herzegovina and the national Association of Journalists filed a request for the review of some articles of the law before the Constitutional Court, which is still pending.

7.5. The Ombudspersons institution

222. To consider establishing, in the long term, a single, unified Human Rights Ombudsman Office at State level, which would include the ombudsman institutions at Entity level, was another accession commitment. It has been fulfilled partially.

223. The law finally adopted on 27 March 2006 is, as so often in Bosnia and Herzegovina, the result of a bad compromise: instead of providing for a one-person institution, the law stipulates that the Ombudsman institution is composed of three persons with a six-year renewable mandate. They must come from each of the three constituent people "which does not exclude the possibility of appointing an Ombudsman from the rank of 'Others'". The chairmanship of the institution will rotate every two years in alphabetical order of the

persons elected and the chairperson has a “co-ordinating” role during his term of office. The seat of the institution was set in Banja Luka (RS) with offices in Mostar, Sarajevo and the Brčko District or elsewhere, as appropriate.

224. Implementing the legislation to guarantee the independence of the Ombudspersons institution and ensuring adequate funding of the human rights institutions is another accession commitment. It has been partially fulfilled.

225. Following the expiration of the mandate of the Ombudspersons in December of 2014, the Parliamentary Assembly of Bosnia and Herzegovina, in accordance with the Law on the Human Rights Ombudsman, following a call for candidature and interviews by the ad hoc committee, appointed the three Ombudspersons from the ranks of the three constituent peoples on 10 November 2015. The three newly appointed Ombudspersons took office on 17 November 2015, for a mandate of six years. Two of them were re-elected for a second term.

226. At the same time, in July 2014, the Ministry for Human Rights and Refugees set up a working group to draft amendments to the Law on the Human Rights Ombudsman, which finalised its work in September of 2015. Mid-way through its proceedings, the working group was tasked with not only developing draft amendments to the Law on the Human Rights Ombudsman, but rather a completely new draft law, as the proposed amendments affected more than 50% of the text. The Ministry also took into consideration the inclusion of provisions regulating the National Preventing Mechanism for Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as prescribed by the obligations deriving from the United Nations Optional Protocol to the Convention against Torture.

227. Upon completion of the first draft, the Ministry, in July 2015, requested an opinion from the Venice Commission, which was adopted in October 2015.⁷⁸ The Venice Commission noted that the draft law, substantially amending the law in force, was aimed at addressing domestic and international concerns – in particular in the context of the re-evaluation, foreseen for 2015 then postponed to 2016, of the status ‘A’ granted to the Ombudsman by the International Co-ordination Council of National Institutions for Human Rights – over the lack of independence and neutrality of the institution and its failure to act as a genuinely unified institution.

228. The Venice Commission found that, in substance, the draft law proposed significant improvements, in particular as regards the composition of the institution and the appointment procedure. However, additional improvements were recommended: a longer, non-renewable mandate of the Ombudsman and less restrictive eligibility criteria; better clarifying the prerogatives of the Ombudsman in relation to courts, in the light of the principle of independence of the judiciary; providing increased guarantees for the institution’s financial independence. Moreover, it was recommended to make sure that the most important functions and organisation principles of the Ombudspersons Institution be regulated and formulated in such a way as to enhance its unified nature (by referring systematically to “the institution” and not “the institution and the Ombudspersons”).

229. In December 2015, the Ministry for Human Rights and Refugees submitted to the Council of Ministers the draft Law on the Human Rights Ombudsman. The Council deemed that the proposed draft, in particular as regards the financing clause, needed to be re-drafted. It therefore tasked the Ministry of Finance with drafting a new article on the financing of the institution. The re-drafted version was adopted by the Council of Ministers and sent to parliament on 28 January 2016.⁷⁹ Due to a negative legal opinion provided by the Legal Office of the Parliamentary Assembly of Bosnia and Herzegovina, the draft law was sent back to the Council of Ministers at the beginning of February 2016. A new draft law was sent by the Council to the Parliamentary Assembly of Bosnia and Herzegovina on 29 February 2016. On 31 March 2016, the Legal and Constitutional Committee found that the draft law was not in line with the Constitution and legal system. On 5 April 2016, the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina did not accept this negative opinion, and tasked the Legal and Constitutional Committee with producing a new one.

230. We have no information as regards the adoption of this law or whether the recommendations of the Venice Commission were taken into account. Our impression is that the draft law was shelved. We learnt during our visit to Sarajevo in September 2017 that the Council of Ministers had just adopted amendments to the law on the Bosnia and Herzegovina Ombudsman for Human Rights, in order, *inter alia*, to strengthen its financial independence. These amendments must now be adopted by parliament.

78. www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282015%29034-e#.

79. https://www.parlament.ba/sadrzaj/zakonodavstvo/u_proceduri/default.aspx?id=62137&highlight=ombudsmeni&langTag=bs-BA&pril=b.

231. The current Ombudspersons Institution still faces serious challenges. The decision-making process remains inefficient and slow because the three ombudspersons must take unanimous decisions. This means they simply do not take decisions on contentious issues.

232. For the most part, its recommendations stay unimplemented and its mandate remains unclear to the wider public. In addition, since 2010, the budget of the institution has been decreasing, also due to the overall difficult economic situation of the country. There is a high turnover of staff. The institution often relies on representatives of the international community. The strengthening of the Ombudspersons Institution remains essential, also in light of the newly adopted labour laws (in the RS and Federation), as part of the reform agenda. The implementation of these laws, which should entail a significant scaling down of the public sector, might put additional strains on the institution, due to a potentially increasing number of complaints.

233. Since the adoption of the Law on Prohibition of Discrimination in 2009, which put the Ombudsman Institution in charge of monitoring its implementation and provided for the necessary budgetary funds, no progress has been made towards the financing of the relevant department within the institution. In its latest report on Bosnia and Herzegovina, published in February 2017, ECRI requested priority implementation of its recommendation to strengthen the institutional capacity of the Ombudsman Institution in order to empower it to carry out its anti-discrimination mandate effectively, including through streamlined decision-making processes and an adequate increase in funding. ECRI also recommended that the Ombudsman Institution be given the right and the capacities to represent victims in proceedings before the Court in discrimination cases.

7.6. Education

234. Maintaining and continuing reform in the field of education and eliminating all aspects of segregation and discrimination based upon ethnic origins is a specific accession commitment. The Assembly has repeatedly urged the authorities to eliminate, as a matter of priority, all outstanding ethnic segregation issues in schools, and develop and implement policies at all relevant levels to ensure both the protection of the right to education in one's mother tongue and in a tolerant, inclusive and integrated educational environment.

235. In its latest report on Bosnia and Herzegovina published in February 2017, ECRI also requested priority implementation of its recommendation, already made in 2010, to urgently end all forms of segregation in schools, including "two schools under one roof"⁸⁰ and mono-ethnic schools,⁸¹ and the application and further development of the common core curriculum. We agree with ECRI that it is regrettable, and only understandable from the standpoint of ethno-nationalistic ideology, that the concept of mother-tongue education continues to be used to justify ethnic segregation when the three languages (Bosnian, Croatian and Serbian) are so similar that there is no objective linguistic barrier to a fully integrated education.

236. In the Federation, most notably in Central-Bosnia Canton and Herzegovina-Neretva Canton, no progress has been achieved as regards the "two schools under one roof" policy. In November 2014, the Federation Supreme Court confirmed the first-instance verdict of the Municipal Court in Mostar, which ruled in 2012 that the Herzegovina-Neretva Canton and the primary schools in Stolac and Čapljina had discriminated against students by segregating them on the basis of their ethnicity. It has established that such practices must be abolished. To date, no implementing measures have been taken by the relevant authorities.

237. In the RS the prominence of mono-ethnic schools has continued, with a number of Bosniak returnee children still attending temporary educational establishments rather than regular schools. In addition, a revision of the RS school curricula took place at the start of the new school year in September 2015 where the wording "Bosnian language" was replaced with "language of the Bosniak people", which triggered new difficulties for pupils and parents of Bosniak returnees.

238. In May 2016, the Constitutional Court dismissed a request for a review of the constitutionality of Article 7(1) of the RS Constitution providing for education in the language of the Bosniak people. On the other hand, the Court held that the constituent peoples and "Others" have the right to name the language they speak as they wish.

239. Taking into account the complex structure of the country's education system, the co-ordination of bodies for education and the harmonisation of legislation remains problematic. The Conference of Education Ministers, gathering the country's 13 education ministers, met for the first time after two years in July 2015. As

80. The "two schools under one roof" system is a single set of school facilities hosting two schools (each catering specifically to one ethnic group) teaching two different curricula, with separate teaching staff, two administrations and, very often, separate entrances.

81. Serb or Croat mono-ethnic schools follow the curricula of Serbia or Croatia and use Croatian and Serbian textbooks.

regards higher education, Bosnia and Herzegovina is part of the Bologna Process and is therefore implementing the Bologna mechanisms, albeit at a slow pace. In a positive development, the Qualifications Framework was adopted by the Council of Ministers on 11 December 2015.

7.7. Culture and cultural heritage

240. Finally, a word about culture and cultural heritage: we regret the reluctance of politicians to deal with the legal status of the seven State-level cultural institutions that existed in Sarajevo in the pre-war Republic of Bosnia and Herzegovina.

241. For the last 22 years, there has been squabbling about who should bear responsibility for the management and funding of these prestigious institutions, such as the National Museum or the National Library. RS refuses to fund them through the State budget because these institutions are located in Sarajevo, and it is not clear whether they should be funded by the Canton of Sarajevo or by the City of Sarajevo. The result was the closure of the National Museum for three years due to lack of funding, with employees continuing to work without pay to preserve the collections.