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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, on his visit to Bosnia and Herzegovina**

**Comments by the State\***

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\* The present document is being issued without formal editing.



## **Comments of the Government of Bosnia and Herzegovina on the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association**

1. The Ministry of Human Rights and Refugees of Bosnia and Herzegovina submitted the Draft Report of the Special Rapporteur on the right to freedom of peaceful assembly and association to the relevant institutions for comments, through the letter number 01-37-1-209-3/25, dated 27 February 2025.

2. As of today's date, 21 March 2025, we have received the three comments below.

3. It is important to emphasize that all received comments pertain to the content of the Draft Report itself, but not to the Recommendations given to Bosnia and Herzegovina, who needs to implement them.

### **A. The Ministry of Internal Affairs of the Federation of Bosnia and Herzegovina**

4. The Ministry of Internal Affairs of the Federation of Bosnia and Herzegovina has submitted its comments, stating that the recommendations of the Report should also include the adoption of the Law on Public Assemblies at the level of the Federation of Bosnia and Herzegovina, in order to ensure the protection of the human rights of all citizens and other individuals living in the Federation, as defined by the Constitution of Bosnia and Herzegovina.

### **B. The Ministry of Justice of the Republika Srpska**

#### **Constitutional framework for the election of representatives in the presidency of BIH and the house of peoples of the parliamentary assembly**

5. The Ministry of Justice of the Republika Srpska believes that the election of members of the Presidency and the House of Peoples of the Parliamentary Assembly is fully in accordance with the Constitution of Bosnia and Herzegovina.

6. It is stated that this constitutional provision arises from Annex IV of the Dayton Peace Agreement, which established the constitutional and legal framework of Bosnia and Herzegovina and determined the equality of the peoples as a fundamental principle of its constitutional order.

7. In their comment, it is stated that the principle of the constitutionality of the peoples in Bosnia and Herzegovina is a fundamental principle of its constitutional order, based on the Dayton Peace Agreement. Such an arrangement allows for fair representation of Serbs, Bosniaks, and Croats in the highest institutions of government and guarantees their political equality.

8. According to the Ministry of Justice of the Republika Srpska, this institutional framework that anticipates the election of representatives of the constituent peoples to these positions is not discriminatory, but constitutionally grounded and stems from internationally recognized principles of consociational democracy, which in complex, multi-ethnic societies serve as a mechanism for preserving peace, stability, and equality.

#### **Reasons for the adoption of the law on special registers and transparency of the work of non-profit organizations**

9. In the recommendations of the Special Rapporteur under letter "(e)", it is stated that the Republika Srpska should refrain from introducing laws such as the "foreign agent/foreign influence" law, and at the time of the visit as well as while drafting the report, this law had not been adopted. However, on the date of delivering the comments, specifically on 27 February 2025, the National Assembly of the Republika Srpska adopted the Law on a Special

Register and the Transparency of the Work of Non-Profit Organizations in an urgent procedure.

10. It has been suggested that the experiences of countries have shown that non-governmental organizations can be instruments of foreign entities that influence internal political, economic, and social processes through financial support. (the examples of laws from the United States, Russia, and Hungary are provided).

11. They emphasize that this law does not abolish or limit the right to freedom of assembly, which is protected by the Constitution of the Republika Srpska and international conventions. Organizations that operate in accordance with the law and whose work does not contradict the public interest have no restrictions in their operations, but only the obligation to transparently display their financial flows and activities.

### **Criminalization of defamation in the Republika Srpska**

12. Defamation was criminalized in the Criminal Code of the Republika Srpska in August 2023, in response to the need to protect the honor and reputation of citizens. Although certain international actors have criticized this decision, the Ministry of Justice of the Republika Srpska has emphasized that to this day, not a single indictment for this criminal offense has been confirmed, thereby denying claims that its introduction will lead to abuse.

13. The Ministry of Justice of the Republika Srpska stated that criminal acts against the honor and reputation of citizens are being introduced, while taking into account various provisions of the Constitution of the Republika Srpska, the European Convention on the Protection of Human Rights and Fundamental Freedoms, and the International Covenant on Civil and Political Rights.

14. The need for the introduction of this criminal offense was emphasized by the fact that two decades of decriminalized defamation have shown that civil legal protection is not sufficient, as defamation has become increasingly frequent. They believe that by imposing criminal sanctions, the goal of prevention and protection of society will be achieved, as these sanctions will actually serve as a mechanism for deterrence and safeguarding the legal order.

15. They emphasized that the criminal offense of undermining the reputation of the court and participants in the proceedings has been amended, now encompassing the exposure to ridicule not only of the court and the judge but also of the public prosecutor and the lawyer.

### **The position of women in the institutions of the Republika Srpska**

16. In its comment, the Ministry of Justice of the Republika Srpska states that the claims about the insufficient representation of women in legislative and executive bodies of government are not based on facts, considering that women hold significant and responsible positions in the institutions of the Republika Srpska. Their presence in the roles attests to equal representation and recognition of their expertise and competence.

17. They cite examples from the Presidency of Bosnia and Herzegovina, where a woman holds the position of the member of the Presidency from Republika Srpska, as well as from the judicial system of the Republika Srpska, prosecutorial institutions, and the executive branch where women hold leading roles. The head of the highest judicial authority, the Supreme Court of the Republika Srpska is a woman and in addition, the largest courts in the Republika Srpska, such as the District Court in Banja Luka, are also led by women. The main prosecutor, who leads the Public Prosecutor's Office in Republika Srpska, is also a woman. Women also manage five ministries in the Government of the Republika Srpska.

### **Constitutional court of Bosnia and Herzegovina**

18. They also referred to Section VI, point A of the Draft Report, where the Constitutional Court of Bosnia and Herzegovina is mentioned, noting that, in their view, one of the key issues in the functioning of the Constitutional Court of Bosnia and Herzegovina relates to the fact that certain judges who have reached the legally prescribed retirement age continue to perform their duties. Furthermore, following the amendments to the rules of the Constitutional Court of Bosnia and Herzegovina, which now allow them to operate without two judges appointed by the National Assembly of the Republika Srpska, as stipulated by the

Constitution of Bosnia and Herzegovina, the legitimacy of the Constitutional Court of Bosnia and Herzegovina has been further weakened, turning it into an institution that does not act in accordance with the Constitution of Bosnia and Herzegovina, but rather according to the political interests of certain actors.

19. The main reason cited for the adoption of the Law on Non-Implementation of BiH Constitutional Court Decisions in the territory of the Republika Srpska is the perception that this court does not function as an impartial constitutional mechanism, but rather makes decisions that often encroach on the constitutional jurisdictions of the entities.

20. The Republika Srpska invokes the fundamental principles of the Dayton Peace Agreement, according to which Bosnia and Herzegovina is a complex state with a high degree of decentralization and a division of competencies between the entities and the institutions of Bosnia and Herzegovina. Decisions of the Constitutional Court that directly infringe upon the constitutional competencies of the Republika Srpska undermine that principle and serve as grounds for a legal and political response in accordance with the legislative powers of the Republika Srpska.

#### **Trade union rights and freedom of association**

21. The Ministry of Justice of the Republika Srpska consistently supports the workers' right to unionize and engage in collective negotiations as one of the fundamental mechanisms for protecting workers' rights. This right is guaranteed by the Constitution of the Republika Srpska and international conventions on human and labor rights, including the International Labour Organization Convention No. 87 on the Freedom of Association and the Protection of the Right to Organize, as well as Convention No. 98 on the Right to Organize and Collective Bargaining.

22. In that context, the Ministry of Justice of the Republika Srpska supports the legal framework that enables free trade union activity and encourages dialogue between employers, workers, and relevant institutions to achieve sustainable and fair agreements that contribute to social security and economic progress.

#### **Responsibility for attacks on journalists and civil society**

23. The Ministry of Justice of the Republika Srpska has strongly condemned all forms of violence, including attacks on journalists and representatives of civil society, and calls on all victims of criminal acts to report them to the relevant institutions. The rule of law is the foundation of a democratic society, and the judicial authorities of the Republika Srpska have the obligation to ensure impartial and efficient prosecution of all criminal offenses, regardless of who the perpetrators or victims are.

24. The Republika Srpska remains committed to the protection of civil liberties and the preservation of the rule of law, and calls on all those who consider themselves victims of any form of violence or threat to report it to the relevant institutions. Every case of endangering the safety and rights of citizens will be prosecuted in accordance with the law, ensuring fairness and legal security for all parties involved.

### **C. The Ministry of Justice of Bosnia and Herzegovina**

25. The Ministry of Justice of Bosnia and Herzegovina has provided a comment on the Law on Associations and Foundations of Bosnia and Herzegovina, stating that this Law allows complete freedom of association and activity, without any form of discrimination. The only limitation is that the goals and activities of associations and foundations cannot be aimed at overthrowing the constitutional order of Bosnia and Herzegovina, violating guaranteed human rights, or inciting and promoting inequality, hatred and intolerance based on racial, national, religious or other affiliation or orientation. They cannot also include engagement in election campaigns, fundraising for candidates or financing candidates or political parties. From all of the above, it is clear that the Ministry of Justice of Bosnia and Herzegovina fully ensures the right to freedom of association for all natural or legal persons who choose to register in Bosnia and Herzegovina.

26. In relation to the comments received from the Ministry of Justice of the Republika Srpska concerning the constitutional framework for the election of representatives to the Presidency of Bosnia and Herzegovina and the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, the Ministry of Human Rights and Refugees of Bosnia and Herzegovina emphasizes that it disagrees with the statement mentioning the "principle of the constitutionality of the peoples," as such a principle does not exist nor is it mentioned in the Constitution of Bosnia and Herzegovina. It is important to clarify that in the Constitution of Bosnia and Herzegovina there are constituent peoples, but the principle of constitutionality as such does not exist.

27. The Ministry would also like to point out that it opposes the adoption of the Law on Non-Implementation of BiH Constitutional Court Decisions, as it finds that the objection that the decisions of the Constitutional jurisdictions is unfounded upon the constitutional competencies of the entities is unfounded. Additionally, the enactment of such a law is contrary to the principle of legality. The Constitutional Court of Bosnia and Herzegovina is a constitutional category and operates in accordance with the constitutional competencies prescribed by the General Framework Agreement for Peace. It is noted that the comments we received from the Ministry of Justice of the Republika Srpska refer to events and activities that are not covered by the Draft Special Rapporteur's report on the right to peaceful assembly, who visited Bosnia and Herzegovina in April 2024.

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