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## BOSNIA AND HERZEGOVINA AFTER THE ELECTIONS

### AN OPPORTUNITY TO SET A COURSE FOR BRUSSELS?

*Sabina Wölkner / Ivana Marić*

15 years after the end of the war in Bosnia and Herzegovina (1992 to 1995) the political situation in the country remains fragile. Centrifugal political and social forces are still strongly felt, hindering a potential rapprochement of the three “constituent peoples” of Bosnia and Herzegovina – Bosniaks, Croats and Serbs. The general elections held on 3 October 2010 have done little to change this situation.

While nationalist issues seem to have become somewhat less important to Bosniak (Muslim) voters, a hardening of the political position of Croats is clearly evident. The frustration that many Bosnian Croats feel about not being fully involved in the political decision-making process has only intensified. By comparison, the situation in Republika Srpska (RS) remains largely unchanged. The nationalist parties were successful once again. The Alliance of Independent Social Democrats (SNSD) of Milorad Dodik, former Prime Minister and now President of Republika Srpska, the country’s Serbian entity, represents the largest faction in the entity’s parliament and is virtually indispensable in terms of building a stable government coalition at national level. It remains to be seen, however, whether the political stand-off of the previous years can be overcome. In the past it was Dodik’s Independent Social Democrats more than anybody else who regularly rejected reforms and so made it more difficult for the country to establish closer ties with the EU. Any government that includes the SNSD must first prove that it is serious about being part of the country’s EU integration process.

However, the SNSD have not been the only party to create stumbling blocks along Bosnia and Herzegovina's European path. Other political players have also played their part in making sure that the country has so far made little progress in this direction. One notable exception was the lifting of the visa requirements that came into force in December 2010.

In fulfilling the requirements for this change, the politicians showed that it was possible to come to a consensus on specific issues. And yet, while the lifting of visa requirements is an important step for the people of Bosnia and Herzegovina, it does not actually bring their

long-wished-for EU candidate status any closer. Although the possibility of EU membership has been dangled in front of them since 2003, Bosnia and Herzegovina is still only considered a potential candidate. In order to give new impetus to forging closer ties with the EU it will be necessary to focus more than ever on the issue of reforms.

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People's expectations of the new Government are therefore quite clear: the political stand-off can only be overcome if they can come to an agreement on the most important reforms. This year will be particularly important as there will be council elections in 2012. Some politicians may once again rely on nationalist rhetoric to mobilize their voter base and make the search for compromises that much more difficult. The international community should therefore remind the political powers in the country yet again of the need to hasten reforms.

## **STALEMATE AFTER THE ELECTIONS**

On 3<sup>rd</sup> October 2010, 3.08 million voters were called upon to elect the Council of Ministers and the Parliament of the Republic of Bosnia and Herzegovina in both of the country's political entities<sup>1</sup> (the Federation of Bosnia and

1 | The country is divided into two parts, called entities, and one special district. The larger of the two entities is the Federation of B and H with approx. 2.3 million inhabitants, mostly Croats and Bosniaks. It covers 51 per cent of the country's total area. In the other entity, Republika Srpska (49 per cent of total area), there are approx. 1.4 million inhabitants. Here the Serbs are in the majority. In addition there is the Brčko District with 75,000 inhabitants which virtually cuts RS into two halves and which is under the direct supervision of the international community.

Herzegovina and Republika Srpska) and in the cantons of the Federation. In Republika Srpska the President and the two Vice Presidents were also elected. The turnout was 56 per cent (2006: 55).

The presidency consists of three members, who come from the three constituent peoples: the Bosniaks, the Croats and the Serbs. Each group nominates one representative for the presidency. In the race for the Bosniak seat in the presidency Bakir Izetbegović (Party of Democratic Action, SDA), son of the late President Alija Izetbegović, was a surprise winner, with 35 per cent of the vote, over the incumbent Haris Silajdžić (Party for Bosnia and Herzegovina, SBiH). His election victory can be explained by the fact that, for many Bosniak voters, finding solutions to Bosnia and Herzegovina's economic problems was the most important issue this time around. While Silajdžić preferred to play the "nationalist card" in the election, Izetbegović stressed the need for a dialogue between the constituent peoples and underlined the importance of economic reform.<sup>2</sup> In second place, with 31 per cent of the vote, was Fahrudin Radončić, a controversial businessman and owner of the most popular Bosniak tabloid newspaper, *Dnevni Avaz*.

In the race for the Croat seat, Željko Komšić was once again a clear winner against his two opponents from the middle right, Borjana Krišto of the Croatian Democratic Union of Bosnia and Herzegovina (HDZ BiH) and Martin Raguž of the Croatian Democratic Union 1990 (HDZ 1990). The Serbian seat in the presidency also went to the incumbent, Nebojša Radmanović, member of the Independent Social Democrats (SNSD). However, with only 50 per cent of the vote, he was only just able to beat his closest rival, former Foreign Minister Mladen Ivanić, the "Together for Srpska" alliance candidate and Chairman of the Party of Democratic Progress (PDP).

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2 | "Izetbegović za Vijesti.ba o iskustvu sa svojim babom Alijom, Tihicu, SDA, Silajdžiću, Radončiću," in: *Sve Vijesti*, August 2, 2010, <http://vijesti.ba/intervjui/17341-Izetbegovic-Vijestiba-iskustvu-svojim-babom-Alijom-Tihicu-SDA-Silajdzicu-Radoncicu.html> (accessed September 20, 2010).

What was striking was the high number of invalid votes that were cast in the elections for the presidency. In Republika Srpska more than 60,000 voting slips were deemed to be invalid<sup>3</sup>, almost 10 per cent of all votes cast, while in the Federation seven per cent of the votes were invalid.<sup>4</sup> While observers reported that the elections were for the most part carried out to European standards, they recommended an investigation into this issue.<sup>5</sup>

In the parliamentary elections the Social Democrats (SDP BiH) were successful in most of the cantons of the Federation ahead of the Bosniak Party for Democratic Action (SDA). During the election the SDP were the party that placed the most emphasis on economic issues. In those cantons with a predominantly Croatian population the HDZ BiH finished in front of their closest rivals the HDZ 1990.<sup>6</sup> As a result the Social Democrats (28 of the 98 seats) and the Bosniak SDA (23 seats) are the two biggest factions in the Federation Parliament. Both parties therefore set the tone for the politics of the entity. However, the party of the political newcomer, Radončić, the Alliance for a Better Future for BiH (SBB BiH) was also able to win a large number of seats (13).

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In Republika Srpska (RS) the Alliance of Independent Social Democrats (SNSD) once again showed itself to be the strongest party. With its two junior partners<sup>7</sup> it has a majority in the Parliamentary Assembly and therefore forms the government of the RS entity. Behind them came the former Karadžić party, the Serbian Democratic Party

3 | The votes were invalid because the voting slips were either empty or filled out incorrectly. Cf. "CIK: Značajan broj neoznačenih glasačkih listića," in: *Sve Vijesti*, October 6, 2010, <http://vijesti.ba/politika/21595-CIK-Znacajan-broj-neoznacjenih-glasackih-listica.html> (accessed October 6, 2010).

4 | Cf. "Potvrđeni rezultati općih izbora 2010, Predsjedništvo BiH, Bošnjački i Hrvatski član," Centralna izborna komisija Bosne i Hercegovine, November 2, 2010, in: <http://izbori.ba/Finalni2010/Finalni/PredsjednistvoBiH> (accessed October 6, 2010).

5 | Cf. "Nevažeci listići pod istragom," in: *Oslobođenje*, October 5, 2010, 6.

6 | Cf. "Potvrđeni rezultati općih izbora 2010," Centralna izborna komisija Bosne i Hercegovine, November 2, 2010, in: <http://izbori.ba/Finalni2010/Finalni/PredsjednistvoBiH> (accessed October 6, 2010).

7 | The DNS (Democratic People's Alliance) and the SP (Socialist Party).

(SDS), with four seats and the economically-liberal Party of Democratic Progress (PDP) with one seat. The former Prime Minister of Republika Srpska and Chairman of the SNSD, Milorad Dodik, was also elected President of the Republika Srpska.

In the national Parliament, the Social Democratic Party (SDP BiH), the Alliance of Independent Social Democrats of Milorad Dodik (SNSD) and the Party of Democratic Action (SDA) have the most seats (8 of 42 each). The Party for Bosnia and Herzegovina of the deselected Bosniak member of the Presidency, Haris Silajdžić, suffered significant defeats. Instead of eight they now only have two members of Parliament. Amongst the Croatian parties, the HDZ BiH with three seats beat their rivals HDZ 1990, who in alliance with the Croatian Party of the Right have only one seat. The Party of Democratic Progress (PDP) also only has one seat. The Serbian Democratic Party (SDS) won four seats, one more than at the last election. The biggest surprise was the result achieved by the Alliance for a Better Future for Bosnia and Herzegovina (SBB BiH). The party of the controversial media mogul Radončić won four seats.<sup>8</sup>

So we are starting to see the formation of three so-called “national blocs” which together could form the new government. While the two biggest Serb parties, Dodik’s SNSD and the SDS, have formed an alliance, both Croat HDZ parties are working together, and in Bosniak politics the SDA and SDP also find themselves in a de facto alliance.<sup>9</sup>

The election results made it clear that no party could secure a majority of the seats in the national Parliament and so nobody is in a position to govern alone. Building a coalition is essential. The task of building a government lies initially with the two social democratic parties that have the largest parliamentary factions. However cooperation between the SDP BiH of Zlatko Lagumdžija and Dodik’s SNSD is

8 | Cf. Centralna Izbora Komisija Bosna i Hercegovina, n. 4.

9 | Although this alliance presents itself as multi-ethnic, it is predominantly made up of Bosniaks and is therefore aligned much more with the interests of the Bosniak parties. Cf. Asim Metiljević, “Prudska trojka ponovo na okupu”, in: *Sve Vijesti*, <http://vijesti.ba/vijest-dana/24128-Prudska-trojka-ponovo-okupu.html> (accessed November 13, 2010).

not going to be easy to achieve, as both party leaders stressed before the election that they would not enter into a coalition with each other. There are other options available and Sulejman Tihić, leader of the third strongest party, the Party of Democratic Action (SDA), claimed that a coalition with the election winners would be the best option for Bosnia and Herzegovina.<sup>10</sup> In other words, if this option were pursued, Milorad Dodik's SNSD would be in Government either way. The SDA is a significant political factor here. As the third largest parliamentary faction they are in a position to form a coalition with either Lagumdžija or Dodik.

However, the deciding factor in the building of a stable coalition could well be the Croat parties. The strongest of these are the HDZ BiH of Dragan Čović and the HDZ 1990 of Božo Ljubić who entered the elections as rivals. HDZ BiH had the better results, but it agreed to cooperate with HDZ 1990 in order to "better serve the interests of the Croat peoples in Bosnia and Herzegovina".<sup>11</sup> In this way, Dragan Čović wants to avoid potentially being left out of the process of building a government.

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Milorad Dodik also wants to make sure he is not left out, so he has formed an alliance with Mladen Bosić's nationalist Serbian Democratic Party (SDS). This is remarkable, considering that the SDS stood in the elections as an opposition party and attracted a lot of attention with its constant criticism of Dodik's government. That both parties have decided to enter into an alliance shows how important it is for Milorad Dodik in particular to strengthen his position of power at a national level. However, this cooperation will, according to the party leader, only be valid at a national level and will help to serve "Serb national interests". At the entity level the SDS remains in opposition. It remains to be seen how this contradiction will be resolved.

10 | Cf. "Tihić: Odgovornost na SNSD-u i SDP-u," in: *Sve Vijesti*, <http://vijesti.ba/politika/23017-Tihic-Odgovornost-SNSD--SDP-.html> (accessed October 28, 2010).

11 | Cf. "Jurišić: Čović obmanjuje Hrvate pričom da je mogući treći entitet bez zadiranja u RS," in: *Sve Vijesti*, <http://vijesti.ba/politika/23129-Juriscic-Covic-obmanjuje-Hrvate-pricom-moguc-treci-entitet-bez-zadiranja.html> (accessed October 30, 2010).

## A TRAUMATIZED SOCIETY

The legacies of war and displacement are still evident today. Bosnia and Herzegovina has lost a considerable proportion of its population. In 1991 4.4 million people lived in the country, of which 44 per cent were Muslim Bosniaks, 31 per cent Serbs and 17 per cent Croats. 100,000 people died in the conflict, half the population was displaced and around 7,500 people still live in refugee camps today. The demographics of certain areas have been irreversibly changed. While Bosniaks and Croats who originally came from the area which is today the Republika

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Srpska now mostly live in the Federation, (many Bosnian Croats also fled into neighboring Croatia during the war), most Bosnian Serbs now live in RS. Only a small number of displaced people have actually returned home. This is not always because the poor economic situation that followed the war and the collapse of the socialist system created structural and transformation problems for many towns and areas in both entities. There is a noticeable lack of will amongst local and communal decision-makers to create the conditions necessary for refugees to return to their areas. The issues surrounding unresolved property disputes and unpunished war crimes are important factors in determining the level of support experienced by people when they return. It's not unusual for those who dare to return to be met with rejection and animosity amongst the local population.

Flight and forced eviction and the memory of massacres during the war are still breeding grounds for nationalist resentment amongst the population and make reconciliation between the various ethnic groups that much more difficult. Many people's lives in Bosnia and Herzegovina are still scarred by the events and consequences of the war but serious discussions about responsibility rarely take place. Each of the three ethnic groups in Bosnia and Herzegovina has their own version of the "truth". It is not unusual for one group's war hero to be considered a war criminal by another. This is particularly evident in various historical accounts and reports in the media, which are mostly aligned with one ethnic group or another.

## ENSHRINING THE CONFLICT IN THE CONSTITUTION

The trauma experienced by many sections of society is not the only reason why decentralizing forces are still having such an effect on the country. Another problem is Bosnia and Herzegovina's current constitution, which was laid down in Appendix IV of the Dayton Peace Agreement. It was drafted by the international community in 1995 in order to bring an end to the war and to create a stable basis for the various ethnic groups to live together.<sup>12</sup> However, the constitution does not really tackle the problem of how to overcome the differences between the ethnic groups. In fact the opposite is true, as ethnic proportional representation in nearly all areas of state institutions has actually enshrined the conflict in the constitution itself. Indeed, the constitution is proving to be largely unworkable in everyday politics. The many "checks and balances", weak national institutions and the high level of decentralization make it difficult to govern effectively. The biggest problem is the fact that politicians have so many opportunities to exercise their veto at all stages of the decision-making process. Proposed legislation can be thrown out on the say so of just one or two people.

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The frequent political stand-offs in the national Parliament show that the political powers in the country still lack a common vision for Bosnia and Herzegovina. While the Bosnian Serb factions would like the country to be a confederation, the Bosniaks favor a centralized state with wide-ranging powers. The Bosnian Serbs reject the expansion of nation state powers which would be at the expense of those of their own entity.<sup>13</sup> On this particular issue the Bosnian Serb parties are largely in agreement, but with one

12 | The Agreement was drafted on 21 November 1995 in Dayton (Ohio) under the auspices of the then President of the U.S., Bill Clinton, and with the participation of the EU. It was signed on 14 December 1995 in Paris. The signatories were the Serbian President Slobodan Milošević, the Croatian President Franjo Tuđman and the President of Bosnia-Herzegovina Alija Izetbegović. The Agreement brought the three and a half year old war in Bosnia-Herzegovina to an end.

13 | Cf. Sabina Wölkner, "Butmir 2 bringt keine Besserung," KAS-Länderbericht, October 27, 2009, <http://www.kas.de/bosnien-herzegowina/de/publications/17923> (accessed December 13, 2010).



important exception: While Milorad Dodik does not shy away from threatening the secession of RS from the nation state if the entity's powers are further eroded, this is not considered an option by more moderate Bosnian Serb groups such as the Party for Democratic Progress led by Mladen Ivanić. The country's state structure is not an issue

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for them, they are more concerned with maintaining a strong federalism. There are different views on the issue of the country's structure within the Bosniak camp too. While the Party for Bosnia and Herzegovina of Haris Silajdžić, the elected Bosniak member of the Presidency, would like to see a centralized state structure with no entities, members of the Party of Democratic Action under Sulejman Tihić might be prepared to enter into a compromise with the Bosnian Serbs on this issue under certain circumstances. As Silajdžić's party suffered significant losses in the elections, there might now be potentially more chance of finding some kind of compromise on the issue of the country's future structure. For this to happen it will be necessary to win over the relevant Croat parties to such a solution. Lately these parties have once again been insisting that a new territorial partitioning of the country is imperative to ensure that there is "genuine equality" between the constituent peoples of Bosnia and Herzegovina. This "inequality" exists, according to them, at many levels of government and makes it essential that structural constitutional reforms be carried out.<sup>14</sup>

Some of the voices being heard are quite radical. Dragan Čović, leader of the HDZ BiH, has expressed his desire to see a third entity.<sup>15</sup> This would mean dividing up the Federation. Čović was no doubt aware when he made these views public that they would reawaken memories of the war in the minds of many Bosniaks. Their suspicions are only heightened by the fact that Čović is currently in a "strategic alliance" with Milorad Dodik.<sup>16</sup>

14 | "Kreševska Deklaracija," *bitno*, in: <http://bitno.ba/vijesti/bosna-i-hercegovina/ozivljava-kreševska-deklaracija> (accessed December 13, 2010).

15 | Cf. "Dodik: Treći entitet bi ojačao poziciju Srpske," *Sve Vijesti*, in: <http://vijesti.ba/politika/23038-Dodik-Treci-entitet-ojacao-poziciju-Srpske.html> (accessed December 13, 2010).

16 | *Ibid.*

The catalyst for this hardening of views within the Croat political camp was the presidential elections. The way the elections are organized is a thorn in the side of the Croat parties as the country's election rules allow Bosniaks to also vote for a Croat candidate. As a result, the winner, Croat Social Democrat Željko Komšić, was able to nearly double his vote. He received over 316,000 votes from the Bosniak camp although it was intended that each constituent people should elect their "own" candidate.<sup>17</sup>

### THE DILEMMA FOR THE INTERNATIONAL COMMUNITY

The end result of all this is that it is largely impossible to reach even compromise solutions in order to resolve controversial legislation that could impact the nation as a whole, as there is little incentive to find such solutions, and the process of conciliation is only vaguely defined. There is also not sufficient pressure on politicians to find a solution: in most cases it is easier to simply overturn decisions or to wait for the intervention of the High Representative. The latter has wide-ranging powers, including the option of overturning decisions if they violate the Dayton Agreement and, if necessary, removing people from office. He is only accountable to the Peace Implementation Council (PIC), not to Bosnia and Herzegovina itself.<sup>18</sup> Since March 2009 the position of High Representative has been held by the Austrian diplomat Valentin Inzko. He is also the European Special Representative (EUSR). But it is precisely these interventions by the High Representative that are deepening the dilemma facing the international community and Bosnia and Herzegovina today. The political elite, encouraged to work on their own initiative by the Office of the High Representative (OHR), constantly fail to adopt any common positions.

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17 | Cf. Sabina Wölkner, Ivana Marić, Sabrina Isic, "Bosnien und Herzegowina hat gewählt: Neuer Wein in alten Schläuchen?", *KAS-Länderbericht*, October 6, 2010, [http://kas.de/wf/doc/kas\\_20748-1522-1-30.pdf?101006173332](http://kas.de/wf/doc/kas_20748-1522-1-30.pdf?101006173332) (accessed December 13, 2010).

18 | The Council is the highest international political committee in Bosnia-Herzegovina. Its 55 members include the USA, the EU and its member states, Turkey, Russia and many organizations. The PIC's remit is to monitor compliance with the Dayton Peace Accord, appointing the High Representative to carry out this task.

The result is a political stalemate which is only resolved when the OHR forces a decision upon them. This kind of practice cannot be considered a sustainable strategy for stabilizing the country, for it does nothing to strengthen the much-vaunted idea of "local ownership". Quite the opposite: In many areas politicians have become used to letting the OHR decide. It suits them in many ways, as it saves them from having to make unpopular decisions. The OHR can only carry out its stabilizing function by creating friction, and in many cases it has itself become part of the internal political factionalism.

For many years the international community has been pushing to abolish the OHR. But this will not be achieved in the near future due to the PIC's decision in February 2008 that in view of growing political tensions in Bosnia and Herzegovina the work of the OHR should only be terminated upon fulfillment of five targets and two conditions.<sup>19</sup> The lack of progress in fulfilling these prerequisites is evidence of the international community's dilemma: although the Republika Srpska's representatives clearly want the OHR to close down in the near future, they are putting up the

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strongest resistance of all against the crucial requirement to determine the level of state assets and redistribute them in accordance with an act of parliament. The same applies to military assets and arsenals.<sup>20</sup> The argument centers on the criteria which should be used to distribute Bosnia and Herzegovina's state assets at the different levels. The majority of state assets are in the hands of the entities. The RS wants to give up as little as possible to the nation state, as the leasing of state

19 | First the level of state assets has to be determined and then they should be redistributed according to a draft parliamentary act. Secondly, the same procedure must be applied to arsenals and military assets. Thirdly, the district of Brčko must be fully integrated in the state structure of Bosnia-Herzegovina.

Fourthly, progress must be made in the areas of economic stability and the rule of law. Fifthly, the National Strategy for Processing War Crimes Cases must be written into Bosnia-Herzegovina law. The two conditions are the signing of the Stabilization and Association Agreement (SAA) and subsequent positive assessment of the political situation by the PIC.

20 | After the war, the Dayton Agreement provided for a new governmental structure for Bosnia and Herzegovina. State assets must be lawfully distributed so that all entities can carry out their constitutional duties.

property guarantees their income. Transferring these assets to the state would mean financial cutbacks for the Republika Srpska. The RS government also fears that asset redistribution would set a precedent for the country's centralization.

Redistribution of military assets is critical if Bosnia and Herzegovina is to join the NATO. In April 2010 NATO ministers incorporated Bosnia and Herzegovina into the "Membership Action Plan" (MAP). The "Annual Progress Report", a critical element of the MAP, is linked to the condition that the country clarifies issues relating to its defense sector assets. Up to now the program has not been implemented because these questions have not been answered.

### STAGNATION OF THE EU INTEGRATION PROCESS

Bosnia and Herzegovina's EU integration will also be difficult to achieve under these conditions. Along with other West Balkan states, the country has been officially considered a potential candidate since the EU summit in Thessaloniki in 2003.<sup>21</sup> At the same time, Bosnia and Herzegovina agreed a "Stabilization and Association Agreement" (SAA) with the EU. The goal is to promote reforms and provide help in adopting the *acquis communautaire*. The agreement was put on the table in 2006, but it was June 2008 before Bosnia and Herzegovina finally ratified it, because of problems in fulfilling the conditions. Indeed, they only managed to introduce the police reforms required by the EU once Brussels had significantly lowered the bar.<sup>22</sup>

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21 | Along with Bosnia and Herzegovina, these include Croatia, Macedonia, Serbia, Albania and Kosovo. See also: EU website on expansion, Countries on the road to EU membership, [http://ec.europa.eu/enlargement/the-policy/countries-on-the-road-to-membership/index\\_en.htm](http://ec.europa.eu/enlargement/the-policy/countries-on-the-road-to-membership/index_en.htm) (accessed December 13, 2010).

22 | Cf. Christina C. Krause, "Bosnien-Herzegowina nimmt erste EU-Hürde," *KAS-Länderbericht*, June 20, 2008, [http://kas.de/wf/doc/kas\\_14034-1522-1-30.pdf?080624165316](http://kas.de/wf/doc/kas_14034-1522-1-30.pdf?080624165316) (accessed December 9, 2010).

This delay means that the agreement has not yet been ratified by all EU member states. For the time being, the Interim Agreement on Trade and Trade-Related Matters is in force. There are many reasons for Bosnia's difficulties in ratifying the SAA, the foremost of these being its largely inefficient governmental structures. These difficulties are intensified by its complex decision-making procedures and the lack of consensus on key issues by the political protagonists.

### **IMPROVED GOVERNMENTAL EFFICIENCY**

The country's current constitution makes it almost impossible to integrate the demanding *acquis communautaire* into its own body of law. This condition for EU membership assumes a fully-functioning state, something which is still only nascent in Bosnia and Herzegovina. The nation state wields little real power. The Ministry of Foreign Affairs and the Trade Ministry are based there, and the nation state has control over fiscal policy.<sup>23</sup> But other important areas are controlled by the two entities, which have very different structures. Below the entity

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level, the Republika Srpska is simply split into communes, whereas the Federation has ten cantons which each have their own parliament and local government. This makes it difficult to achieve coordination and consensus in the Federation. The entities themselves also need to develop closer ties and an alignment of their legal systems. The lack of harmonization between the entities' laws creates a dense network of overlapping standards and laws in Bosnia and Herzegovina. And on top of this, their different visions of government make it difficult for the entities' and the nation state's politicians to agree on how to improve their collaboration.

The "entity vote" has proved to be a serious obstacle to the functioning of parliament. This procedure means that a simple majority of representatives is required in the House of Representatives in order to pass a bill. Additionally, a majority of members from both entities is required. This

23 | The Dayton Peace Accords, Annex 4: Constitution of Bosnia and Herzegovina, [http://avalon.law.yale.edu/20th\\_century/day14.asp](http://avalon.law.yale.edu/20th_century/day14.asp) (accessed December 13, 2010).

“entity vote” has caused numerous bills to fail, causing the work of the nation state parliament to stall.<sup>24</sup> Representatives from the Republika Srpska have used this veto in recent years to block unpopular bills, which were often aimed at strengthening the nation state and cutting back the powers of the entity.

In order to speed up the EU integration process, the administrative structure of the state and above all the Federation must be cleaned up. The nation state must also be given the powers which it needs to effectively apply European law in Bosnia and Herzegovina.

### **CONSENSUS ON STRUCTURAL CHANGES TO THE CONSTITUTION**

The lack of consensus reached on the future structure of the nation state shows how little chance there has been up to now of effecting constitutional reform. But Bosnia and Herzegovina will not be able to avoid constitutional reform forever, as was proven by the verdict of the European Court of Human Rights on 22 December 2009 in the case of Finci and Sejdic vs. Bosnia and Herzegovina. In this judgment, the court stated that Bosnia and Herzegovina had breached several articles of the European Convention on Human Rights and demanded to remove the discrimination against “Others” contained in their governmental structures. This group includes members of minorities such as Jews or Roma, who do not belong to the country’s “constituent peoples”.<sup>25</sup> As the verdict is binding, Bosnia-Herzegovina has no choice but to

**Bosnia-Herzegovina has no choice but to implement the verdict of the European Court of Human Rights, which can only be done by changing the constitution and electoral law.**

24 | Shown by empirical studies carried out by Prof. Dr. Kasim Trnka. The results appeared in the KAS publication “Entscheidungsprozesse in der Parlamentarischen Versammlung von Bosnien-Herzegowina,” May 2009. The publication is currently available in Bosnian as well as in a German translation. See: <http://kas.de/bosnien-herzegowina/de/publications/17300> (accessed December 13, 2010).

25 | The verdict obliges Bosnia-Herzegovina to allow representatives of these minorities to run for presidency. At the moment this is not possible because the seats in the Presidency are reserved for representatives of the three constituent peoples. Representatives of the other minorities are also banned from the House of Peoples (lower chamber) of the nation state’s parliament. The European Court also criticized this in its verdict and called on the country to make immediate changes.

implement the court's decision, which can only be done by changing the constitution and electoral law.

These actions are also important for Bosnia and Herzegovina's potential EU integration. It is a central condition of the Stabilization and Association Agreement that the European Convention on Human Rights is adhered to. Bosnia and Herzegovina ratified the Convention in 2008 as part of the SAA and are therefore bound to abide by it.

**Bosnia and Herzegovina ratified the European Convention on Human Rights in 2008. At the present time, the country is in breach of several articles.**

At the present time, the country is in breach of several articles because of the discrimination towards "Others" which is enshrined in their constitution.<sup>26</sup>

The SAA cannot become effective until Bosnia and Herzegovina change their constitution and comply with the Convention.<sup>27</sup> The EU prompted Bosnia and Herzegovina's parliament to try to set out a structured mechanism to comply with the verdict in early 2010. This attempt foundered in the face of party-political differences. However, an agreement on the issue seems possible in principle, as lifting the discrimination against other minorities contained in the constitution would not have any real detrimental effect on the privileged position of Bosniaks, Croats and Serbs, nor would it curtail the autonomy of the entities. These two issues have always been the biggest obstacles to constitutional reform.

### **WANTED: A GOVERNMENT WITH A CLEAR AGENDA FOR REFORM**

At the moment the country's leading parties are in intensive coalition talks. Whether these parties can succeed in forming a stable government will depend on whether their leaders can find a way to overcome their differences in the long-term and pull together to create a better future for Bosnia and Herzegovina.

26 | "Stabilization and Association Agreement between the European Union and Bosnia and Herzegovina," Council Regulation (EC), № 594/2008 as of 16 June 2008, in: *Official Journal of the European Union*, L 169/1, 30.06.2008, [http://europa.ba/files/docs/publications/en/SAP\\_en.pdf](http://europa.ba/files/docs/publications/en/SAP_en.pdf) (accessed December 13, 2010).

27 | Ibid.

If a government coalition wants to revitalize the EU integration process, it needs to be united by more than just a mutual desire for power. It has to reach agreement on the most important reforms. Fulfillment of the conditions of the Stabilization and Association Agreement needs to be a focus of the government's agenda, in particular the sweeping away of constitutional discrimination against the "Others" and implementation of the European Court of Human Rights' verdict of 22<sup>nd</sup> December 2009.

Implementation of this verdict should be the starting point for further structural changes to the constitution and should address the question of how to guarantee the equality of all three constituent peoples within the constitution without adding further ethnic blocking mechanisms. The top priority of constitutional reform should be to simplify the country's decision-making processes and clean up the government's administrative structures.<sup>28</sup> This would be an important step in preparing the ground for the transfer of European law into the country's own legislation.

**The top priority of constitutional reform should be to simplify the country's decision-making processes and clean up the government's administrative structures.**

But this is still not enough to ensure Bosnia and Herzegovina's accession to the EU. Another important prerequisite is to pass a bill to carry out a new census. The composition of the population has changed drastically as a result of the war, and can only now be guessed at. The last census was held in 1991, and since then all attempts have failed to pass a new bill. This has been due to party-political wrangling regarding counting criteria which, as so often, mirror conflicts along national lines.<sup>29</sup> It is now

28 | The European Council's "Venice Commission" has offered Bosnia and Herzegovina many proposals for structural reform of the constitution. See: [http://ceis-eu.org/publications/working\\_papers/2006/ceis\\_wps\\_no1.pdf](http://ceis-eu.org/publications/working_papers/2006/ceis_wps_no1.pdf) (accessed December 13, 2010).

29 | While the Bosniak representatives insist on a census without information on ethnic or religious affiliation, the majority of RS representatives insist this information should be included. The Bosniak attitude is linked to the fact that there are probably very few Bosniaks living in the RS since the end of the war. A census would bring this to light and bring into question the ethnic code and distribution of political power within the RS governmental structures, which are still based on the 1991 population data. Cf. "EU Presses Bosnia to Conduct Census," in: *Radio Free Europe*, [http://rferl.org/content/EU\\_Presses\\_Bosnia\\_To\\_Conduct\\_Census/1942631.html](http://rferl.org/content/EU_Presses_Bosnia_To_Conduct_Census/1942631.html) (accessed December 13, 2010).



more urgent than ever to pass this bill, as up-to-date information on population structure is a prerequisite for countries wishing to apply for EU candidate status. This is the only way that the candidate country can provide the European Commission with the statistical data which it needs to create an *avis* of the country's application. In the latest progress report, the Commission criticized the lack of data and the fact that there are still no practical mechanisms in place to enable a census to be carried out this year.<sup>30</sup>

So the new government coalition has a clear task: it needs to focus its attention on the country's EU integration process. The coalition partners' success should be measured by whether they manage to forge compromises on the central political issues so that the most pressing reforms can begin to be tackled before the year is out.

Article current as at 12<sup>nd</sup> November 2010.

30 | Commission of the European Communities, *Bosnia and Herzegovina 2009 Progress Report*, COM (2009) 533, in: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/ba\\_rapport\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/ba_rapport_2009_en.pdf) (accessed December 13, 2010).