

An examination of human rights conditions in Bosnia and Herzegovina: a case study approach

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Abstract

It will soon be 30 years since the end of the war in Bosnia and Herzegovina (BiH). Despite the establishment of the International Criminal Tribunal for the former Yugoslavia, Bosnia and Herzegovina's membership in the UN and the Council of Europe, and recently obtaining the status of EU candidate country, the human rights situation in BiH remains unsatisfactory. The aim of this article is to analyse the situation of human rights in Bosnia and Herzegovina over the last few years, however, in a slightly broader historical context, taking into account the role of the International Tribunal for the former Yugoslavia. This article is divided into three parts. The first part presents the role of the Tribunal, the second part analyses documents and institutions for the protection of human rights, and the third part demonstrates how the state implements human rights.

Keywords: Europe, Bosnia and Herzegovina, human rights, International Criminal Tribunal for the former Yugoslavia, International Day of Reflection and Commemoration of the 1995 Genocide in Srebrenica

Analiza przestrzegania praw człowieka w Bośni i Hercegowinie: podejście oparte na studium przypadku

Streszczenie

Niebawem minie 30 lat od zakończenia wojny w Bośni i Hercegowinie (BiH). Mimo utworzenia Międzynarodowego Trybunału Karnego ds. byłej Jugosławii, członkostwa Bośni i Hercegowiny w ONZ, Radzie Europy, a ostatnio uzyskanie statusu państwa kandydującego do UE, sytuacja poszanowania praw człowieka w BiH wciąż pozostaje niezadowolająca. Celem artykułu jest analiza sytuacji z przestrzeganiem praw człowieka w Bośni i Hercegowinie na przestrzeni ostatnich kilku lat, jednakże w nieco szerszym kontekście historycznym i z uwzględnieniem roli Międzynarodowego Trybunału

Karnego ds. byłej Jugosławii. Niniejszy artykuł podzielony jest na trzy części. W pierwszej przedstawiono rolę Trybunału, w drugiej – dokumenty oraz instytucje ochrony praw człowieka, w trzeciej – pokazano jak państwo realizuje prawa człowieka.

Słowa kluczowe: Europa, Bośnia i Hercegowina, prawa człowieka, Międzynarodowy Trybunał Karny ds. byłej Jugosławii, Międzynarodowy Dzień Refleksji i Upamiętnienia Ludobójstwa w Srebrenicy w 1995 roku

"Hundreds of men buried alive, men and women mutilated and slaughtered, children killed before their mothers' eyes, a grandfather forced to eat the liver of his own grandson. These are truly scenes from hell, written on the darkest pages of human history" (UN ICTY 1995) – this is how the Srebrenica genocide was described by Riad, a judge at the International Criminal Tribunal for the former Yugoslavia in The Hague, in November 1995, just months after the worst crime in Europe since the Second World War.

In 2025 will be 30 years since the end of the war in Bosnia and Herzegovina (BiH). In May 2024, the UN adopted a resolution to establish 11 July as *International Day of Reflection and Commemoration of the 1995 Genocide in Srebrenica* (United Nations 2024), which triggered a series of tensions in the Western Balkans region. This document was initiated by BiH, Germany and Rwanda, and such a long-term goal is supposed to be reconciliation between the peoples of BiH. While the Bosnian side argued that the adoption of the resolution would end the infamous practice of genocide denial, the Serbian political elite felt that the document targeted the Serbs and labelled them as a 'genocide' nation. However, contrary to the Serbian narrative, the resolution does not address the issue of the collective responsibility of the nation, but condemns the denial of genocide and the glorification of war criminals, and calls on member states to develop appropriate educational programmes with due regard to historical facts.

Since 1992, BiH has been a member of the United Nations (see more: UN Bosnia and Herzegovina WWW), and since 2002 – of the Council of Europe (see more: Council of Europe Office in Sarajevo WWW). In 2016, BiH applied to join the European Union. In 2022, it was granted EU candidate status on the assumption that the country takes the steps set out in the Commission's Communication of 12 October 2022 on *EU Enlargement Policy* to strengthen the rule of law, the fight against corruption and organised crime, migration management and fundamental rights (European Commission 2022). Unfortunately, the human rights situation in BiH continues to be of concern for many international human rights organisations.

The aim, hypothesis and research methods

The aim of this article is to analyse the situation of human rights in Bosnia and Herzegovina over the last few years, however, in a slightly broader historical context, taking into account the role of the International Tribunal for the former Yugoslavia.

The hypothesis: despite BiH's accession to international human rights organisations such as the UN or the Council of Europe, as well as its application for membership of the European

Union, the authorities continue to fail to comply with international human rights standards and do not take sufficiently effective measures to eliminate human rights violations.

The following **research methods** will be used to achieve the intended purpose and verify the hypothesis: historical, comparative, document analysis. In addition, the author will use normative, realist, institutional, functional, behavioural and system approaches.

The International Criminal Tribunal for the former Yugoslavia – its role and the path to justice

The immediate reason for the establishment of the International Criminal Tribunal for the former Yugoslavia was the need to try and punish those guilty of crimes of genocide, crimes against humanity, and war crimes committed between 1992 and 1995 in Bosnia and Herzegovina. The warring parties were the Bosnian Serbs fighting for autonomy and the Bosniaks together with the Croats, who had been confederated with them for some time. As a result of hostilities, and above all ethnic cleansing, between 97,000 and 110,000 people died (some sources even claim that up to 200,000) and more than 1.8 million were forced to leave their homes. All parties of the conflict committed numerous ethnic cleansings, looting and rape of civilians. The conflict included the Srebrenica massacre, now considered as the largest genocide in Europe since World War II. In July 1995, the Armed Forces of the Republika Srpska (VRS) murdered over 8,000 Bosnian Muslims – men and boys. Until now, the remains of all the victims have not been identified, and some of them have still not been found. Women and children were also victims of ethnic cleansing carried out by the Serbs. The war and ethnic cleansing, which lasted almost four years, ended with the *Dayton Agreement* enforced by the North Atlantic Alliance NATO (Ośrodek Informacji ONZ w Warszawie 2005).

The International Criminal Tribunal for the former Yugoslavia was established by UN Security Council's resolution of 25 May 1993 (S/RES/827 (1993)). The Tribunal operated on the basis of a Statute of the same date but amended nine times.¹ The procedure for the internal workings of the Tribunal is set out in the *Rules of Procedure and Evidence* of 11 February 1994² (UN ICTY 2015). In addition, other regulations also deserve attention, such as the *Practice Directions*, which "contain policies defining certain practical aspects of judicial proceedings and other legal procedures related to the Tribunal's work" (UN ICTY WWW). We are referring in particular to the provisions on issues such as access to confidential material, appeals, contempt, rules of procedure and evidence, sentences and miscellaneous (see: UN ICTY WWW).

It is worth looking at the jurisdiction of the Tribunal (see: UN ICTY 2009). Its jurisdiction *ratione materiae*, included the prosecution of those guilty of: grave breaches of the *Ge-*

¹ In 1998 by Resolution 1166, 30 November 2000 by Resolution 1329, 17 May 2002 by Resolution 1411, 14 August 2002 by Resolution 1431, 19 May 2003 by Resolution 1481, 20 April 2005 by Resolution 1597, 28 February 2006 by Resolution 1660, 29 September 2008 by Resolution 1837, 7 July 2009 by Resolution 1877.

² As amended several times, the last time on 10 February 2015.

Geneva Conventions of 12 August 1949, violations of the laws and customs of war, genocide and crimes against humanity.

Grave breaches of the *Geneva Conventions* include the following acts, directed against persons or property protected under the provisions of these documents: willful murder; torture or inhuman treatment, including biological experiments; willful infliction of great suffering or grievous bodily or health harm; destruction and appropriation of property, not justified by military necessity and done on a large scale in an unlawful and arbitrary manner; forcing a prisoner of war or civilian to serve in the armed forces of an enemy power; intentionally depriving a prisoner of war or civilian of the right to a fair trial conducted in the normal course; unlawful deportation, resettlement or unlawful deprivation of liberty of a civilian or taking civilians hostage (UN ICTY 2009: art. 2). Violations of the laws and customs of war include, *inter alia*, acts such as the use of poisoned weapons or other weapons intended to inflict excessive suffering; arbitrary destruction of towns and villages or their devastation not justified by military necessity; attacking or bombarding by any means undefended towns, villages, dwellings and buildings; seizure, destruction or willful devastation of religious, charitable, educational, artistic, scientific institutions, monuments, works of art and science; looting of public or private property (UN ICTY 2009: art. 3). Genocide, on the other hand, according to Article 4 of the Statute of the International Tribunal, "means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group", namely: the murder of members of such group; causing serious bodily or health damage to members of the group; deliberately creating "conditions of life for the group calculated to bring about its physical destruction in whole or in part"; using measures to stop births within the group; forcibly transferring children of members of the group to another group (UN ICTY 2009: art. 4, par. 2). At the same time, it was emphasised that the following acts are punishable: "genocide; conspiracy to commit genocide; direct and public incitement to commit genocide; attempt to commit genocide; complicity in genocide" (UN ICTY 2009: art. 4, par. 3). Finally, crimes against humanity, which are crimes against civilian population committed during an international or internal armed conflict, such as: "murder; extermination; enslavement; deportation; imprisonment; torture; rape; persecutions on political, racial and religious grounds; and other inhumane acts" (UN ICTY 2009: art. 5).

Jurisdiction *ratione personae* applies to persons committing or ordering the acts referred to in *ratione materiae* (UN ICTY 2009: art. 1). Any natural person regardless of nationality, "who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution" of the aforementioned crimes in the territory, over which the Tribunal's jurisdiction extends, was to be responsible to the International Tribunal (UN ICTY 2009: art. 7, par. 1). It is worth noting that the official position of any accused person, whether as head of state, head or member of government, did not absolve them from individual criminal responsibility for the crimes committed (UN ICTY 2009: art. 7, par. 2). In addition – the failure to prevent the crime or the failure to punish the guilty by superiors, who knew or could have known of the crime committed, was also punishable by the ICTY (UN ICTY 2009: art. 7, par. 3). Finally, acting on orders also did not

exempt one from criminal responsibility, with a certain exception. Well, it could be a basis for exemption from criminal responsibility if the Tribunal found that justice required it (UN ICTY 2009: art. 7, par. 4).

Speaking about the competence *ratione loci*, it should be noted that the territorial jurisdiction of the International Tribunal for the former Yugoslavia covers "the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters". On the other hand, when considering *ratione temporare*, it should be noted that the ICTY can exercise jurisdiction over crimes listed in the Statute committed since 1 January 1991 (UN ICTY 2009: art. 8).

During 24 years of activity, the International Criminal Tribunal for the former Yugoslavia has indicted 161 people from BiH, Serbia, Croatia, Montenegro and Kosovo, while convicting 83. The ICTY tried, among others, former president of the self-proclaimed Serb Republic of Bosnia and Herzegovina Radovan Karadžić, former Serbian and Yugoslav president Slobodan Milošević, and Bosnian Serb commander Ratko Mladić (Bowcott 2017). To handle appeals following the closure of the ICTY, the UN established in 2010 the so-called *United Nations Mechanism for International Criminal Tribunals* (MICT) – the international tribunal that will take over the jurisdiction and core functions of the Yugoslavia and Rwanda tribunals once their mandates end.

The International Criminal Tribunal for the former Yugoslavia is seen as a „key step towards the establishment“ of the International Criminal Court (ICC). Over the past two decades, the Court has irreversibly changed the landscape of international criminal and humanitarian law. However, there is no shortage of criticisms, such as the procedure itself, the high costs, the length of the proceedings, and the fact that around two-thirds of the accused are Serbs (Bowcott 2017).

Documents, institutions and implementation mechanisms on human rights in Bosnia and Herzegovina

Respect for human rights and personal dignity, freedom, equality, peace, justice, tolerance and reconciliation (preamble of the Constitution) is guaranteed by the *Constitution of Bosnia and Herzegovina* from 1995. In Article II par. 1, Bosnia and Herzegovina "ensure the highest level of internationally recognized human rights and fundamental freedoms". At the same time, in par. 2, it is ensured that all rights and freedoms indicated in the *European Convention for the Protection of Human Rights and Fundamental Freedoms* and its Additional Protocols are guaranteed and respected. Furthermore, it was emphasised that these documents „shall have priority over all other law“ (*Constitution of Bosnia and Herzegovina* 1995: art. II, par. 3).

These rights and freedoms, as indicated in the aforementioned Convention and Additional Protocols, as mentioned in paragraph 3 of the Constitution, are guaranteed not only to citizens, but also to all persons residing in the territory of BiH. This point lists such rights and freedoms as the right to life, the prohibition of torture and inhuman treatment or punishment, the prohibition of slavery, the right to liberty and security of

person, the right to a fair trial, the right to respect for private and family life and secrecy of correspondence, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, the prohibition of discrimination, the right to marry and to found a family, the right to property, the right to education, and the right to freedom of movement and residence. It is also prohibited to discriminate against anyone on the grounds of „sex, race, colour, language, religion, political or other opinion, national origin or national or social origin, association with a national minority, property, birth or other status" (*Constitution of Bosnia and Herzegovina* 1995: art. II, par. 4). Special attention has been given to refugees and displaced persons, who „have the right freely to return to their homes of origin", as well as the right „to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void" (*Constitution of Bosnia and Herzegovina* 1995: art. II, par. 5).

BiH is also party to a number of international human rights documents. It is worth pointing out here, for example: *International Covenant on Civil and Political Rights* (1966) together with two Optional Protocols (1966, 1989) aiming to the abolition of the death penalty, *International Covenant on Economic, Social and Cultural Rights* (1966), *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1987) together with Optional Protocol, *International Convention for the Protection of All Persons from Enforced Disappearance* (2006), *Convention on the Elimination of All Forms of Discrimination against Women* (1979), *International Convention on the Elimination of All Forms of Racial Discrimination* (1965), *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990), *Convention on the Rights of the Child* (1989) with two Additional Protocols, *Convention on the Rights of Persons with Disabilities* (2006), *European Convention on Human Rights* (1950) and others.

In principle, according to Article II, par. 6 of the Constitution, all bodies and institutions are responsible for respecting human rights in BiH. However, the courts and the ombudsman have a special role in this regard. At the same time, readiness has been expressed to cooperate with the International Criminal Tribunal for the former Yugoslavia and international organisations dealing with the protection of human rights and humanitarian assistance, authorised by the United Nations Security Council.

Originally, under Annex VI to the *Dayton Agreement*, the institution set up to protect human rights in BiH was to be the Human Rights Commission, consisting of the Office of the Ombudsman and the Human Rights Chamber (Sloan 1996).

The Human Rights Chamber, composed of 14 members (eight of whom were from outside of BiH) constituted a quasi-international judicial body. It had a mandate to hear cases of human rights violations identified in the ECHR and other international human rights documents to which it was a party. The Chamber could be reached indirectly – through the Ombudsman, or directly. This could be done by interested parties, NGOs and civic groups. If the Chamber considered a complaint to be potentially justified (and in accordance with the rules), then proceedings were initiated. Such proceedings could

end in an amicable settlement (which happened only once in the institution's history) or in an obligation to remedy the damage or pay compensation. The majority of cases heard by the Chamber were related to the right to property. These involved situations, in which property rights had been violated in connection with war and forced displacement.

The Chamber operated from 1996 to 2003. It was originally intended to operate only until 2000, but due to the unstable political situation, a duration was extended until 2003. However, the Chamber did not manage to deal with all the cases that came to it. Almost 9,000 cases were referred to a newly created body, the Human Rights Commission of the Constitutional Court. The Commission consisted of five former judges of the Human Rights Chamber (two of them, until the end of 2004, were foreign judges). The Commission gradually dealt with the backlog of cases, and by the time it was disbanded (i.e. 2006) there were only 595 cases left. These cases were already being considered by the Constitutional Court, which had completed all proceedings by mid-2007 (Steiner, Ademović 2010).

It is worthwhile at this point to look at the institution of Ombudsman, which is still in place today. The first Ombudsman law³ was imposed by Wolfgang Petritsch (the High Representative) in 2000, when attempts by the state to enact such a law failed (see: OHR 2002). The current legal basis for the institution of Ombudsman is the *Law on the Human Rights Ombudsman of Bosnia and Herzegovina* (2002), amended in 2004 and 2006 (see: Law amending... 2004; Law on amendments... 2006).

According to Article 8 of the amended Ombudsman law, the institution of Ombudsman is composed of three members. The term of office is six years, and members are elected by both houses of Parliament (the House of Representatives and the House of Peoples) by majority vote. In order to be eligible for a seat in this institution, one has to document his/her origin of one of the three constituent nations (Serb, Bosniac, and Croat), „which shall not preclude the possibility of appointing the Ombudsmen from among the Others” (art. 8, par 7). In addition, candidates must have: at least ten years of experience in any of the legal professions, a distinguished professional record and experience in topics related to the protection of human rights (art. 11). The coordination of the work of this collegial body is handled by all members on a rotating basis. Each of them serves as chair for two years and the order is determined by alphabetical order (art. 8, par. 6). Ombudsmen, in the performance of their duties, are independent and autonomous. They must act in accordance with the laws in force in Bosnia and Herzegovina, including those arising from international obligations (art. 15). They have full immunity, and possible indictment and arrest is only possible with the consent of both houses of parliament and only for offences punishable by imprisonment of at least five years (art. 16). Article 17, in turn, introduces a prohibition on combining the position of ombudsman with any professional activity or political activity.

³ *Law on the Human Rights Ombudsman of Bosnia and Herzegovina* of 12 December 2000, published in "Official Gazette of BiH" no. 32/00, "Official Gazette of the FBiH" no. 54/00, and "Official Gazette of the Republika Srpska" no. 45/00. This law has been adopted by Parliamentary Assembly of BiH and published in "Official Gazette of BiH" no. 19/02.

The primary object of the Human Rights Ombudsman institution is to deal with cases of malfunctioning or violation of human rights and freedoms by any authority at any of its many levels (art. 2). Ombudsmen may act on the basis of a complaint or *ex officio*. Proceedings may be conducted not only against administrative bodies, but also against the armed forces (art. 3) and the judiciary (art. 4), although in the latter case it concerns procedures but not judgments. A complaint may be lodged by any natural or legal person who has a legal interest (art. 18). It should be in writing and signed. Complaints submitted in a less formal manner may be considered, but this is decided by the ombudsman (art. 19). All authorities in BiH are obliged to co-operate with the Human Rights Ombudsman (art. 25), including in particular the provision of information, including occluded information (art. 28). When an abuse, arbitrariness of a procedure, discrimination, error, negligence committed by a representative of an administrative body is demonstrated during an investigation, the Ombudsman presents the findings to that person and at the same time forwards the information to his/her superior, attaching relevant conclusions (art. 29).

It is worth emphasising that the institution of the Human Rights Ombudsman is not a sovereign body. It can make recommendations to individual authorities (art. 32), but it cannot force action (e.g. to change laws). An important tool that can improve the situation of human rights protection is the annual reports (art. 34), which are submitted to the members of the BiH Presidium, the Parliamentary Assembly and the parliaments of both entities.

Implementation of human rights and freedoms in Bosnia and Herzegovina

Despite the adoption of many documents on human rights, the creation of institutions and monitoring mechanisms, the human rights situation in Bosnia and Herzegovina is of concern to many international human rights organisations. Among the most frequently violated rights and freedoms are: freedom of expression, freedom of assembly and association, freedom of thought, conscience and religion, torture and inhuman or cruel treatment or punishment, the right to a fair trial, political rights and labour rights. There is racial and ethnic discrimination, as well as discrimination against LGBTI people and persons with disabilities. In addition, there have been reports of ill-treatment of migrants, refugees, stateless persons or asylum seekers. Other serious problems include domestic violence, corruption, serious air pollution, but also impunity and delays in the prosecution and punishment of persons who have committed serious human rights violations. Poor conditions in prisons and detention centres are also mentioned.

Discrimination and intolerance, mainly on the basis of ethnicity, religion, gender or against persons belonging to the LGBTI community, is a serious problem in Bosnia and Herzegovina. According to the OSCE, 91 hate crimes on ethnic or religious grounds were committed between January and June 2023, four of which involved physical violence. By the end of 2023, "13 hate crime trials were ongoing and 1 person was convicted in 2022" (Human Rights Watch 2023: p. 86). UN High Commissioner for Human Rights

Michelle Bachelet highlighted discrimination based on ethnicity, gender and sexual orientation, and raised concerns about access to education, social protection and the rights of Roma people and persons with disabilities (see: UN High Commissioner for Human Rights 2022). In addition, it is worth noting that there is "long-standing political discrimination against Jews, Roma and other minorities" in BiH, who are not allowed to stand as candidates in presidential elections, despite a slight "increase in the number of seats for such minorities in the upper house of the Federation Parliament" (Human Rights Watch 2023: p. 86). According to UNICEF and UNDP, the COVID-19 pandemic has increased poverty and food shortages in Bosnia and Herzegovina, as well as exacerbated social and economic inequalities, especially among already disadvantaged groups and those at risk of deprivation, or groups considered as "vulnerable" (UNDP 2021).

Discrimination also affects representatives of the LGBTI community. In *Gallup World Poll* conducted in 175 countries, BiH was ranked as one of the most hostile places in the world for LGBTI people, scoring 144th in *LGBT Acceptance Index* (Flores 2021: p. 33). According to human rights organisations, threats, such as physical attacks, are directed against members of this community. LGBTI activists face "widespread discriminatory speech on social media platforms, including from public officials" (Amnesty International 2023).

In Bosnia and Herzegovina, racial, ethnic and other hate speech is prohibited. Unfortunately, state authorities have sporadically enforced regulations concerning hate speech (U.S. Department of State 2023).

According to the *Press Freedom Index*, BiH was ranked 81st (out of 180 countries) in 2024 (see: Reporters without Borders 2024). The year before, it was in 64th place (see: Reporters without Borders 2023), and in 67th place in 2022 (see: Reporters without Borders 2022).⁴ The realisation of freedom of expression, including the media and the quality of journalism, is quite varied across the country (Human Rights Watch 2023). It can be said that the media operate in a rather unfavourable political and economic climate. It is not uncommon for politicians to exert pressure on the media, especially the public media, and persecute investigative journalists in particular. Journalists are sometimes intimidated, prosecuted for alleged violations of their freedom of expression, their homes are broken into, their computers are stolen, other journalistic equipment is also destroyed, and they are hindered in their work by, for example, obstructing access to public information or preventing them from attending press conferences convened by political representatives (U.S. Department of State 2023). According to the BiH Journalists' Association, more than 70 such cases were reported in 2023, of which less than 25% were investigated (Amnesty International 2023).

According to *Reporters Without Borders*, however, there was no murder of a journalist or media worker between 2000 and 2024. The functioning of the media is further hampered by uneasy economic situation, as well as numerous ethnic, racial and cultural divisions (U.S. Department of State 2023). However, experts claim that the situation of the media

⁴ Both rankings also included 180 countries.

is slightly better in Sarajevo or the Federation of Bosnia and Herzegovina (Human Rights Watch 2023). In Republika Srpska, on 20 July 2023, the RS National Assembly recognised defamation as an offence punishable by a fine of up to BAM 3,000 (EUR 1,500). At the same time, defamation itself was rather vaguely defined, and as a consequence, this will mean that journalists will self-censor for fear of the consequences lurking in front of them (ENCL 2024). The UN, the Council of Europe and the EU have condemned the move, saying that BiH violates international human rights standards (Amnesty International 2023).

Although BiH guarantees the freedom of assembly and association, the authorities have infrequently restricted this freedom. The country has as many as 12 laws regulating the freedoms of assembly and association in different parts of the country. Most of them, according to NGOs and the OSCE, contain very restrictive provisions. For example: in Republika Srpska, assemblies near numerous public institutions are prohibited, while some cantonal laws in the Federation (e.g. in the canton of Central Bosnia) provided for criminal liability for failure to comply with administrative procedures related to the organisation of peaceful assemblies.⁵ The only law that fully complied with international human rights standards was the *Law on Public Assembly* in Brcko District (OSCE 2021: p. 29, 31; OSCE 2023: p. 1). For years, the authorities made no effort to amend any of the other 11 laws to bring them in line with European standards. Only in 2023 Bosnia and Herzegovina, with OSCE support, committed to harmonise the legal norms in the country with international standards (OSCE 2023). On the other hand, as far as respect for freedom of association is concerned, it can be said that it was generally respected by the authorities. Nevertheless, some NGOs complained that the government only granted funds to groups that were established, fully controlled or affiliated with the ruling political parties and that carried out activities in support of the government (U.S. Department of State 2023: p. 26).

A worrying measure, targeting the activities of human rights organisations, is the adoption by the National Assembly of Republika Srpska of the *Law on the Special Registry and Transparency of the Work of Nonprofit Organisations* in 2023. Under this document, a register of foreign-funded NGOs classified as "agents of foreign influence" was created, and a number of obligations were imposed on NGOs to report their activities. Severe penalties were introduced for non-compliance (ENCL, ICNL 2024). This document has been criticised by international organisations, including the Council of Europe Commissioner for Human Rights, according to whom such a law would further restrict the rights of NGOs and human rights defenders (COE 2023a), and the EU has called for its withdrawal (EEAS 2023).

Respect for workers' rights is also worth mentioning at this point. While workers have the freedom to form and join independent trade unions, to bargain collectively and to strike legally, in practice this freedom has not always been respected, and the authorities have seemed to do little about it. Employers, who prevent workers from associating, threatened with dismissal or even fired union leaders or supporters have gone essentially unpunished (U.S. Department of State 2023: p. 66–71).

⁵ LGBTIQ+ minorities were prevented from organising peaceful assemblies.

Although BiH guarantees the right to a fair trial and mentions the independence of the judiciary in the Constitution, it should be noted that, according to human rights organisations, it is not uncommon for politicians to influence the judiciary, especially in corruption cases. Furthermore, the authorities have not always respected judicial rulings, especially those of the Constitutional Court (U.S. Department of State 2023).

At this point, it is also worth mentioning respect for the right to truth, justice and reparation. The pace of prosecution of war crimes is unfortunately too slow, and the perpetrators continue to go unpunished⁶ (U.S. Department of State 2023; p. 3).

In 2023, the Council of Ministers extended the original deadline for the consideration of the remaining complex war crimes cases from December 2023 to 2025. In turn, the *International Residual Mechanism for Criminal Tribunals* "confirmed the original guilty verdicts for former Serbian state security officials Jovica Stanišić and Franko Simatović, increasing their prison sentences from 12 to 15 years for war crimes and crimes against humanity in six municipalities of BiH" (Amnesty International 2023).

However, the glorification by high officials of Republika Srpska at the highest levels, of war criminals and the feeling of absolute impunity is cause for concern (U.S. Department of State 2023). According to the *Srebrenica 2023 Genocide Denial Report*, published by the Srebrenica Memorial Center, there were 90 cases of genocide denial between May 2022 and May 2023 alone. A year earlier, 693 such cases were reported (Džananović et al. 2023).

BiH is a religiously diverse country. Approximately 50.7% are Muslim, 30.7% – Orthodox, 15.2% – Roman Catholic, atheist – 0.8%, agnostic – 0.3%, other – 1.2%, undeclared 1.1% (CIA 2024). Tensions between adherents of different religions led to conflict in the 1990s and, despite the end of the conflict, continue to occur (see: USIP W/W/W). Although the European Commission's *Bosnia and Herzegovina 2022 Report* (see: European Commission 2022), as well as *Bosnia and Herzegovina 2023 Report* (see: European Commission 2023) emphasised that freedom of thought, conscience and religion is generally respected, the BiH Interreligious Council registered many acts of vandalism in religious buildings, cemeteries, as well as aggression against religious officials (U.S. Department of State 2024). Organization for Security and Co-operation in Europe (OSCE) has reported dozens of incidents targeting Muslims, Christians, Orthodox Christians and Jews. The actual number of such religiously motivated incidents was much higher, but members of religious groups were afraid to report them (see: USIP W/W/W).

According to Muslim, Catholic and Serbian Orthodox religious communities, authorities discriminate against them in regions, where they are religious minorities, including by selectively enforcing their rights regarding access to education, language integration, employment, healthcare and other social services (U.S. Department of State 2024).

According to *UN Women*, "In Bosnia and Herzegovina (BiH) every second woman experienced some form of violence since the age of 15. This violence is often seen

⁶ Especially "those responsible for the approximately 8,000 people killed in the Srebrenica genocide and for approximately 7,600 other individuals who remained missing and presumed killed". In addition, "authorities also failed to prosecute most of the more than 20,000 instances of sexual violence alleged to have occurred during the war" (U.S. Department of State 2023; p. 3).

as socially acceptable behavior justified by traditional patriarchal norms and gender stereotypes" (UN Women 2020). The crime of rape (regardless of gender), domestic violence and violence against a partner is criminalised by law (Criminal Code of Bosnia and Herzegovina 2003: art. 203). The current legislation unfortunately does not adequately protect victims of violence, as evidenced e.g. by allowing the perpetrator to return home in less than 24 hours. Despite the existence of provisions for the removal of the perpetrator from the home, in practice officials rarely did so, even when the perpetrator was a repeat offender (U.S. Department of State 2023, 2024). Although the authorities in BiH have taken numerous measures to combat violence against women and domestic violence, as highlighted in the report of the *Group of Experts on Action against Violence against Women and Domestic Violence* (GREVIO), there is still a lack of effective action, support and legal solutions for women who have experienced sexual violence, rape, female genital mutilation, forced marriage, forced abortion, forced sterilisation and stalking (COE 2022).

On 28 July 2022, the UN General Assembly adopted a resolution stating that everyone has the right to live in a clean, healthy and environmentally sustainable environment. While this resolution does not yet impose binding obligations on states, it is a first step towards the creation of legislation with standards that can be directly and effectively enforced (UNDP 2023). Polluted air is a huge problem in BiH, especially in Sarajevo and Banja Luka. According to World Bank's data, 3300 people in Bosnia and Herzegovina die annually because of it. Despite commitments under the *Sofia Declaration on the Green Agenda for the Western Balkans* from 2020, the authorities have made limited progress in reducing carbon emissions.

In May 2023, *The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (CPT) published a report on the 2021 *ad hoc* visit, noting the failure of the BiH's authorities to follow the CPT's recommendations from the 2019 visit and to take action to stop inhuman treatment and punishment by police and gendarmerie officers. During the visit in 2021, the CPT found further violations of Article 3 of the *European Convention on Human Rights*. Police and gendarmerie officers (mainly from Sarajevo) were alleged to have committed acts of violence against detainees and prisoners such as: slapping, kicking, hitting them with batons, gun butts, handcuffing them to furniture for many hours, depriving them of food and drink, psychological abuse in order to force confessions, putting pressure on doctors in order for them to falsify medical records so that alleged injuries are either not disclosed or appear to have occurred under unclear circumstances (COE 2023b). In 2022, the Human Rights Ombudsman in BiH received 77 complaints from prisoners regarding inadequate health care, conditional release, conditions in prisons and detention centres (e.g. lack of daylight, ventilation, cleanliness, etc.). Unfortunately, the CPT has not noted that the Human Rights Ombudsman has initiated any proceedings on these cases at all (U.S. Department of State 2023).

An extremely serious problem with a huge impact on human rights is corruption. Experts say that BiH is downright devastated by corruption and the situation is getting

worse. Bosnia and Herzegovina once again ranked very low in the *Corruption Perceptions Index* (CPI) published by Transparency International, i.e. ranked 108th⁷ in 2023 (see: Transparency International 2023a). It is noted that BiH is unable to suppress organised crime due to the deterioration of the rule of law and an enslaved judiciary. Ethnic divisions hamper the functioning of democratic institutions set up to fight corruption, among other things. We could mention, for example, the illegal election of the Attorney General in 2022, in which three of the four candidates resigned or were forced to resign. Numerous corruption scandals and the improper manner, in which the new prosecutor was selected, undermined the integrity of the prosecutor's office and the public's trust (U.S. Department of Treasury 2022). The same is true of other organised crime and corruption cases, including those involving senior officials, which have gone unaddressed by the judiciary for years (U.S. Department of State 2023). One recent example is the trial of those responsible for a crime in Bobar Bank worth more than BAM 8 million, which, after a lengthy trial, ended with the acquittal of one of the first defendants in the case (OSCE 2018: p. 32, 68). Other cases ended similarly.

We can take the opportunity to look at the 2022 general election, which was accompanied by a series of scandals related to vote theft, electoral committee trafficking and misuse of public funds. Changes to the electoral law did not solve this problem, but rather deepened the political crisis (U.S. Department of State 2023).

According to Srđan Blagovčanin, Chairman of the Board of Directors of Transparency International in Bosnia and Herzegovina, Transparency International's report underlines "that corruption has led to serious consequences for global peace because it causes decline of democracy and strengthening of authoritarian leaders, while peace and stability become endangered in countries with a lower index. These tendencies have been present in BiH for years and, as stated in the TI report, an additional reason for concern is the leader of Republika Srpska and his recent mention of the Criminal Dafamation Law which could be used to silence independent critics" (Transparency International 2023b).

Conclusions

Some authors argue that BiH is the "bastard child" of Dayton and that it is impossible to move forward without a revision of the peace agreement (Wilczak 2005). The Serbian reaction to the UN resolution establishing the *International Day of Reflection and Commemoration of the 1995 Genocide in Srebrenica* seems to confirm that there are still tensions and unresolved issues from the war between the people. The International Criminal Tribunal for the former Yugoslavia, established after the war, is viewed positively and considered as a key step towards justice. The criticism concerns the fact that the vast majority of the accused are Serbs, as well as the cost of the proceedings, the procedure itself and the length of the proceedings.

⁷ Out of 180 countries surveyed.

It should be noted that over the years, BiH has done a tremendous amount of work for the respect of human rights – by joining international human rights organisations (such as the UN or the Council of Europe), ratifying numerous international human rights documents, establishing national human rights standards, national human rights institutions and implementation mechanisms. However, contemporary Bosnia and Herzegovina is plagued by serious problems that have a huge impact on the respect for human rights in the country. These problems include: ethnic and religious disputes that have been unresolved for years, organised crime, high level of corruption, political and economic instability, serious problems in the judiciary, and the low effectiveness of implementation mechanisms. This means that perpetrators of human rights violations often go unpunished, and there is a growing tendency among some group even glorify former war criminals.

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