



Resolution 1626 (2008)¹

Honouring of obligations and commitments by Bosnia and Herzegovina

Parliamentary Assembly

1. Bosnia and Herzegovina joined the Council of Europe on 24 April 2002. Since then, the authorities of this country have been steadily implementing the formal commitments entered into upon accession. To date, Bosnia and Herzegovina has signed and ratified 64 Council of Europe conventions.
2. The Parliamentary Assembly congratulates the authorities of Bosnia and Herzegovina on the signing, on 16 June 2008, of the Stabilisation and Association Agreement with the European Union, together with the interim trade agreement. It also welcomes the signing, on 17 September 2007, of the visa facilitation agreement, as well as the recent launching, on 5 June 2008, of the discussions between the European Union and Bosnia and Herzegovina with a view to abolishing visa requirements. The Stabilisation and Association Agreement offers new opportunities for the country, including trade and financial benefits. It should also give a fresh impetus to the long-awaited reforms aimed at bringing the domestic legal order closer to the European acquis in the field of democracy, the rule of law and human rights.
3. The Assembly notes, however, that the effective implementation of the Stabilisation and Association Agreement requires close and efficient co-operation between various state- and entity-level structures and institutions. This has yet to be achieved, given the complex political and constitutional structures of Bosnia and Herzegovina. Without proper reforms, the country will not be able to make full use of the benefits European integration can bring.
4. In particular, the Assembly notes with concern that key reforms are not advancing as well as they should. Since the adoption of Assembly [Resolution 1513 \(2006\)](#) on constitutional reform in Bosnia and Herzegovina, no progress has been made on this front. Without a fully fledged constitutional reform, the police reform, which was one of the preconditions for the signing of the Stabilisation and Association Agreement with the European Union, will be blocked and the recently adopted legislation may become inoperative. Constitutional revision is also required to implement key reforms in areas where the distribution of competences between the entities and the state needs to be changed. The entity voting system in the House of Representatives and the excessively broad scope of the “vital national interests” clause, together with the related veto mechanism in the House of Peoples, must be reformed for Bosnia and Herzegovina to become a genuine civic state for all those living in it. Members of Parliament should act as free and democratically elected representatives of all the citizens of Bosnia and Herzegovina and not as defenders of purely ethnic interests. The so-called “Others” should be given an effective opportunity to participate fully in political life, by running in the election for members of the presidency and participating in the designation of delegates to the House of Peoples.

1. *Assembly debate* on 30 September 2008 (31st Sitting) (see [Doc. 11700](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Çavuşoğlu and Mr Sasi). *Text adopted by the Assembly* on 30 September 2008 (31st Sitting).

See also [Recommendation 1843 \(2008\)](#).



5. Equally, the Assembly is concerned by the increase in nationalist and ethnic rhetoric, especially in the context of the campaign for the October 2008 local elections and in the wake of the adoption by the Kosovo Assembly of the unilateral declaration of independence. In particular, the Assembly strongly condemns the resolution adopted by the National Assembly of the Republika Srpska on 21 February 2008, in which it referred to the possibility of holding a referendum on self-determination. Such declarations contradict the Dayton Peace Agreement, which does not give the entities the right to secede. Therefore, the Assembly strongly urges all political stakeholders to refrain from statements and actions constituting an incitement to secession or calling the existence of the state based on entities into question. The Kosovo case cannot be used as a precedent.

6. Moreover, the Assembly condemns recent initiatives by the authorities of the Republika Srpska which undermine and weaken the state institutions. This applies in particular to the adoption of the Republika Srpska law on conflict of interest; the implementation of the law is entrusted to the Republika Srpska Election Commission, which so far has not performed this function and has no real reason to exist after the codification of the electoral legislation at state level. Equally, the adoption in the first reading by the Republika Srpska National Assembly of a draft law aimed at creating the office of a Republika Srpska-specific ombudsperson for children's rights undermines the powers of the merged Bosnia and Herzegovina State Ombudsperson's Office, which is supposed to perform the very same function.

7. The Assembly considers that the authorities of Bosnia and Herzegovina should step up efforts aimed at implementing the country's remaining obligations and commitments to the Council of Europe. While respecting the entities' and the Brčko District's autonomy, the necessary reforms should be implemented on the basis of a shared vision of the development of the country's institutions. Constructive dialogue should replace obstructionism. State structures in key reform areas should be reinforced and not undermined. Entity institutions, especially in the Federation of Bosnia and Herzegovina, should be further reformed in a spirit of cost-effectiveness and with the aim of ensuring coherent policy making and enforcement of the legislation at all levels of public institutions.

8. In particular, as regards constitutional reform, the Assembly calls upon all the political stakeholders to re-launch dialogue about the various reform proposals immediately after the October 2008 local election, in close co-operation with the European Commission for Democracy through Law (Venice Commission), with a view to drafting and adopting a new constitution before October 2010, as previously recommended by the Assembly in [Resolution 1513 \(2006\)](#).

9. As regards the strengthening of democratic institutions, the Assembly:

9.1. welcomes some improvements to the Election Code, while regretting that a number of substantive recommendations of the Venice Commission and of the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) have not been taken on board;

9.2. regrets that the Parliamentary Assembly of Bosnia and Herzegovina has once again failed to appoint the state ombudspersons;

9.3. regrets that no steps forward have been made to strengthen local self-government in Bosnia and Herzegovina by harmonising the relevant entity legislation and promoting cross-entity inter-municipal co-operation;

9.4. calls upon the authorities of Bosnia and Herzegovina to:

9.4.1. further improve the electoral legislation, in line with the joint recommendations of the Venice Commission and of the OSCE/ODIHR;

9.4.2. ensure proper implementation of the legislation on conflict of interests at state and entity level, in a spirit of coherence, efficiency and cost effectiveness;

9.4.3. complete promptly the procedure of appointment of the three state ombudspersons;

9.4.4. implement a comprehensive local government reform, with a view to harmonising local government legislation at entity level and, in the Federation of Bosnia and Herzegovina, between the different cantons, with a view to effectively devolving sectoral competences to local authorities, strengthening fiscal decentralisation, building up the capacity of local authorities and promoting cross-entity inter-municipal co-operation;

9.4.5. finalise the public broadcasting reform without further delay; refrain from any attempt to weaken the independence of the Communications Regulatory Authority and take steps to protect journalists and NGOs from harassment and intimidation.

10. As regards the rule of law, the Assembly:

10.1. acknowledges the progress made in the field of judicial reform, in particular the recent adoption, at state, entity and Brčko District level, of the judicial reform strategy, while noting the remaining problems, in particular, the poor material working conditions of the courts and the lack of consistency in judicial practice, particularly between entities;

10.2. welcomes the work carried out by the war crimes chamber of the State Court of Bosnia and Herzegovina in prosecuting war crimes, while regretting the fact that inconsistencies still exist in the application of criminal law by various courts at state and entity level with respect to war crimes, which leads to inequality of treatment of citizens, in the light of the European Convention on Human Rights (the Convention – ETS No. 5);

10.3. while welcoming the good co-operation between the Bosnian authorities and the Group of States against Corruption (GRECO), regrets the perceived high degree of political corruption and organised crime in the country;

10.4. calls upon the authorities of Bosnia and Herzegovina to:

10.4.1. further pursue the judicial reform, in particular, by improving the material conditions of courts, strengthening co-operation between judges, prosecutors and the police and promoting better consistency in judicial practice at entity and state level, notably by considering the creation of a state level supreme court, as recommended by the Assembly in [Resolution 1513 \(2006\)](#);

10.4.2. ensure the uniform application of the Criminal Code of Bosnia and Herzegovina at entity and state level, in particular with respect to war crime cases; finalise, without further delay, the strategy to deal with the remaining war crimes cases;

10.4.3. further intensify efforts to eradicate and prevent political corruption by, in particular, ensuring a harmonised application of the legislation on conflict of interests;

10.4.4. take further steps to harmonise the entity-level legislation and practice in the field of prison administration, in particular with regard to execution of criminal sentences, juvenile delinquency and the mentally ill; and step up the construction of a state-level high-security prison;

10.4.5. allocate in the next four years significant funds in the state, entity and cantonal budgets to support the return of internally displaced persons, as provided for in Annex VII of the Dayton Peace Agreement.

11. As regards human rights, the Assembly:

11.1. welcomes the fact that the domestic legislative procedure relating to the ratification of the Revised European Social Charter (ETS No. 163) and of the European Convention on Nationality (ETS No. 166) has been completed and expects the authorities of Bosnia and Herzegovina to deliver promptly the instruments of ratification to the Council of Europe Secretary General. The Assembly expects the authorities of Bosnia and Herzegovina to ratify without further delay the European Charter for Regional or Minority Languages (ETS No. 148) in accordance with the commitment taken six years ago;

11.2. welcomes that finally, six years after accession, the agreement on the publication of the compatibility study of domestic legislation and the European Convention on Human Rights was finally reached;

11.3. regrets that the procedures for appointing members or candidates on behalf of Bosnia and Herzegovina to several Council of Europe monitoring mechanisms or advisory bodies, in particular the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Advisory Committee of the Framework Convention for the Protection of National Minorities, the European Commission against Racism and Intolerance (ECRI) and the Venice Commission, have yet to be completed;

11.4. takes note of the current work of the Citizenship Review Commission and of the criticism expressed by several stakeholders concerning the respect for human rights standards in the work of this commission;

11.5. regrets that, contrary to the letter of the President of the United Nations Security Council and to the recommendations of the Council of Europe Commissioner for Human Rights, the decertified police officers are still prevented from applying for vacant jobs in the police;

11.6. strongly condemns the continuing practice of “ethnic segregation” in primary and secondary schools, while welcoming the adoption of the new framework law on higher education;

11.7. condemns the discrimination and violence against lesbian, gay, bisexual and transgender people and the recent attacks against organisers and participants of the Sarajevo Queer Festival and journalists;

11.8. calls upon the authorities of Bosnia and Herzegovina to:

11.8.1. eliminate from state and entity legislation all shortcomings which, according to the compatibility study, may lead Bosnia and Herzegovina to be found in violation of the Convention;

11.8.2. nominate members for all Council of Europe monitoring mechanisms and advisory bodies without further delay;

11.8.3. ensure that the norms of the Convention and its Protocols Nos. 4 and 7, as well as the principles of the European Convention on Nationality, are fully respected in the work of the Citizenship Review Commission;

11.8.4. in parallel with the implementation of Annex VII of the Dayton Peace Agreement and of the decision of the Constitutional Court of Bosnia and Herzegovina on the constituent status of peoples, ensure that all citizens of Bosnia and Herzegovina have equal access to government structures at all levels;

11.8.5. find, at the earliest opportunity, an appropriate and final solution to the problems faced by the decertified police officers;

11.8.6. fully implement the recommendations of the CPT and adopt the necessary general measures to execute the judgments of the European Court of Human Rights finding a violation of the Convention in respect of Bosnia and Herzegovina;

11.8.7. in accordance with the recommendations of the CPT and the United Nations Human Rights Committee, move without further delay all patients held in the Zenica Prison Forensic Psychiatric Annex to another adequate facility where they would receive required treatment as agreed in the friendly settlement to the Hadžić case;

11.8.8. put an end to the practice of “ethnic segregation” in primary and secondary schools as a matter of urgency; fully implement the 2003 primary and secondary education reform, and continue the reform of higher education, in line with the recently adopted framework legislation;

11.8.9. urgently find an appropriate and country-wide solution to the problem of repayment of the funds from citizens’ foreign currency saving accounts which were frozen after the dissolution of the Federal Republic of Yugoslavia;

11.8.10. condemn discrimination and violence against lesbian, gay, bisexual and transgender people as well as others who are promoting their rights and ensure their protection; and promptly and thoroughly investigate any attacks against them and bring those responsible to justice.

12. As regards co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY), the Assembly:

12.1. welcomes the recent arrests of Radovan Karadžić and Stojan Župljanin;

12.2. calls upon the authorities to continue close co-operation with the tribunal as well as with their partners in the region in order to apprehend and bring to justice the two remaining ICTY indictees of war crimes, Ratko Mladić and Goran Hadžić.

13. The Assembly recalls its previous recommendation concerning the organisation of a population census by 2010 and considers that the census should be launched as quickly as possible, using in particular the disaggregated data collection methodology, given the particular circumstances of Bosnia and Herzegovina. The Assembly also recalls its recommendation about the setting up of a truth and reconciliation commission and expects the authorities to take appropriate steps in this respect promptly.

14. Pending the implementation of these recommendations and the achievement of substantial progress in the fields of constitutional reform, functioning of democratic institutions, rule of law and human rights, the Assembly resolves to pursue its monitoring of the honouring of obligations and commitments by Bosnia and Herzegovina.