Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 16310
19 December 2025

The functioning of democratic institutions in Bosnia and Herzegovina

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
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Contents **Page**

A. Draft resolution 2
B. Explanatory memorandum by Mr Zsolt Németh and Mr Pablo Hispán, co-rapporteurs 4
1. The monitoring procedure 4
2. Political developments 4
3. Dayton's institutions and Bosnia and Herzegovina's commitments to the Council of Europe 6
4. Improving the efficiency of the institutional structures at State-level 8
4.1. Veto powers in legislative and executive organs 9
4.2. The Office of the High Representative 10
5. State property 11
6. Concluding remarks 12

1. Reference to Committee: Resolution 1115 (1997).

A. Draft resolution[2]

1. Bosnia and Herzegovina joined the Council of Europe on 24 April 2002. Accordingly, it entered into, and agreed to honour, a number of specific commitments which are listed in Opinion 234 (2002) "Bosnia and Herzegovina's application for membership of the Council of Europe" of the Parliamentary Assembly.

2. Referring to its Resolution 2574 (2024) "The honouring of obligations and commitments by Bosnia and Herzegovina", the Assembly reiterates its full support for the State of Bosnia and Herzegovina and all its citizens, and urges all Council of Europe member States to respect the constitutional and legal order, sovereignty and territorial integrity of the country.

3. The Assembly expresses its concern about the recent developments in Bosnia and Herzegovina, marked by attacks against the State, the rule of law and the institutions established following the General Framework Agreement for Peace ("Dayton Peace Agreement"). There is cause for hope, however, in light of recent decisions that have reversed some of these concerns.

4. On 6 August 2025, following the decision by the Court of First Instance of Bosnia and Herzegovina to sentence the then President of Republika Srpska, Mr Milorad Dodik, to one year in prison (later converted to a fine) and impose a six-year ban from holding public office for failing to comply with decisions of the High Representative, the Central Election Commission revoked Mr Dodik's presidential mandate. As a consequence, an early election for the President of Republika Srpska took place on 23 November 2025.

5. The Assembly notes that according to the statement of the electoral observation mission of the Congress of Local and Regional Authorities of the Council of Europe, the early presidential election was "generally well-organised (…) despite some irregularities", particularly regarding the secrecy of the vote. The Assembly notes that the legal framework amended in March 2024 to improve the integrity and transparency of the electoral process is gradually implemented. It welcomes that these reforms should bring the electoral law in line with European standards and, in particular, the recommendations made by the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR), the Group of States against Corruption (GRECO) and the European Commission for Democracy through Law (Venice Commission). The Assembly underlines the importance of ensuring that electoral reforms also guarantee the political representation of all three constituent peoples and "Others", in accordance with the judgments of the Constitutional Court of Bosnia and Herzegovina and the European Court of Human Rights.

6. The Assembly also notes with satisfaction that the authorities of Republika Srpska have annulled the entity-level laws adopted from 2023 to 2025 that had been declared unconstitutional by the Constitutional Court, including the separate election law for Republika Srpska; laws on immovable property used for the functioning of public authorities; on non-application of decisions of the Constitutional Court of Bosnia and Herzegovina; on banning the operation of "extra-constitutional institutions of Bosnia and Herzegovina" in the Republika Srpska; amendments to the Criminal Code of Republika Srpska; and the law on a separate High Judicial and Prosecutorial Council for the entity. The Assembly calls on the authorities of Republika Srpska to promptly initiate the procedure for appointing (remaining positions of) judges to the Constitutional Court of Bosnia and Herzegovina, in accordance with the constitutional and relevant legal framework, with a view to ensuring the full functioning, institutional stability, and effective exercise of the Court's constitutional mandate.

7. The Assembly underlines, yet again, that upon accession, Bosnia and Herzegovina has committed to review, with the assistance of the Venice Commission, its electoral legislation in the light of Council of Europe standards, and to revise it where necessary. The Assembly recalls the need for a constitutional reform in Bosnia and Herzegovina to implement the judgment of *Sejdić and Finci v. Bosnia and Herzegovina* and takes note of the judgment of the Grand Chamber of the European Court of Human Rights in the case *Kovačević v. Bosnia and Herzegovina.* In this context, the Assembly welcomes the creation of a working group for the preparation of amendments to the Constitution of Bosnia and Herzegovina and the draft Law on Amendments to the Election Law of Bosnia and Herzegovina. The Assembly urges the political parties to find an agreement on these amendments to bring the constitutional and legislative framework into line with the requirements of the European Convention on Human Rights (ETS No. 5).

8. The Assembly calls on the political parties to adopt a package of reforms that would improve the functionality of the State institutions, including ensuring that the institutional architecture allows for effective participation and decision-making by representatives of all constituent peoples in line with the power-sharing model established by the Dayton Peace Agreement, and to find a sustainable solution to the issue of State property.

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2. Draft resolution adopted unanimously by the committee on 9 December 2025.

9. The Assembly urges the presidency of Bosnia and Herzegovina to complete, in conformity with the requirements of fairness and transparency, the selection procedure for the post of judge at the European Court of Human Rights in respect of Bosnia and Herzegovina, and to submit a list of three qualified candidates to the Assembly without further delay.

10. The Assembly encourages the Bosnian authorities to pursue their co-operation with the Council of Europe, in particular the Venice Commission, and make use of its expertise for the electoral and constitutional reform. It resolves to follow the ongoing developments in the framework of its monitoring procedure.

B. Explanatory memorandum by Mr Zsolt Németh and Mr Pablo Hispán, co-rapporteurs[3]

1. The monitoring procedure

1. In becoming a member of the Council of Europe on 24 April 2002, Bosnia and Herzegovina consented to honour the obligations placed on all member States under Article 3 of the Organisation's Statute (ETS N ° 1), together with a number of specific undertakings set out in Opinion 234 (2002) "Bosnia and Herzegovina's application for membership of the Council of Europe" of the Parliamentary Assembly. With a view to ensuring compliance with these commitments, the Assembly decided, pursuant to Resolution 1115 (1997), to open a monitoring procedure with regard to Bosnia and Herzegovina upon its accession. The last resolution on the honouring of obligations and commitments adopted by the Assembly is Resolution 2574 (2024).

2. In this resolution, the Assembly lamented the fact that the 2022 elections were held for the fourth time under a legal and constitutional framework which is in violation of the European Convention on Human Rights (ETS No. 5). At the same time, it welcomed the changes introduced to the electoral legislation with a view to ensuring the integrity of the electoral process. The Assembly expressed its concern regarding the failure by authorities in Republika Srpska (RS) to implement binding decisions of the Constitutional Court of Bosnia-Herzegovina and urged the competent authorities to nominate all judges to the Constitutional Court.

3. Regarding the strengthening of democratic institutions, the Assembly called to bring the electoral legislation into line with the European Convention on Human Rights; ensure the proper functioning of the Constitutional Court; adopt a new law on the High Judicial and Prosecutorial Council; improve the efficiency of the institutional framework with a view to meeting the objectives and conditions required prior to the closure of the Office of the High Representative for Bosnia and Herzegovina, *inter alia*.

4. Since the adoption of this resolution, the developments have been fast paced. According to the 67th report of the High Representative for Bosnia and Herzegovina to the United Nations Security Council, latest developments constituted "a significant rise of tensions, which inarguably amounts to an extraordinary crisis in Bosnia and Herzegovina since the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina."

5. On 3 December 2024, upon the expiry of Mr Aleksandar Nikoloski's (North Macedonia, EPP/CD) mandate, the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) decided to appoint Mr Pablo Hispán (Spain, EPP/CD) as co-rapporteur. On 20 September 2025, the mandate of Mr Zsolt Németh (Hungary, ECPA) was extended until 31 January 2026. The Monitoring Committee discussed the latest developments in March and in May 2025, and held a hearing with Mr Elmedin Konaković, the Minister for Foreign Affairs of Bosnia and Herzegovina, in September 2025.

6. In early November 2025, the co-rapporteurs conducted a country visit in Sarajevo. The delegation met with the Chair of the Council of Ministers, Ms Borjana Krišto, the Minister of Justice, Mr Davor Bunoza, the Minister of Human Rights, Mr Sevlid Hurtić, and representatives of the most prominent political parties in parliament. They also met with the acting president of RS, Ms Ana Trišić Babić. The co-rapporteurs wish to express their gratitude to the Parliament of Bosnia and Herzegovina and to the Council of Europe office in Sarajevo for the extremely useful assistance provided in the preparation of this mission.

7. Before Bosnia and Herzegovina enters the campaign for the 2026 general elections, we deemed useful, as co-rapporteurs of the Monitoring Committee, to provide the Assembly with an update of the latest developments and their consequences on the functioning of democratic institutions in the country.

2. Political developments

8. Over the last year, political developments in Bosnia and Herzegovina have unfolded as a profound constitutional and institutional crisis, challenging peace, State sovereignty, the Dayton Peace Agreement framework, and the role of international actors. This crisis largely – but not exclusively – stems from the RS entity's measures contesting the legitimacy of State institutions and the authority of the Office of the High Representative.

9. The roots of the crisis can be tracked to April 2022, when the High Representative exercised his authority to suspend the application of the RS Law on Immovable Property Used for the Functioning of Public Authority, pending review by the Constitutional Court. This law, adopted by the RS National Assembly in

3. The explanatory memorandum is drawn up under the responsibility of the co-rapporteurs.

February 2022, aimed to establish RS ownership and autonomous regulation over property previously classified as State-owned.[4] In his announcement, the High Representative Christian Schmidt emphasised: "Only the state of Bosnia and Herzegovina can dispose of state property, or regulate the ownership of state property", underlining the need to preserve the constitutional and territorial integrity established by the Dayton Peace Agreement. Schmidt's suspension was framed as a necessary step pending constitutional court review, but it was met with firm rejection by RS leadership, including Milorad Dodik, who dismissed the suspension as illegitimate and asserted that "the property of Republika Srpska is the property of Republika Srpska". On 22 September 2022, the Constitutional Court of Bosnia and Herzegovina declared the law unconstitutional. The Court held that the regulation and ownership of property used by public authorities fall exclusively under the jurisdiction of the State, reflecting the principle that the State holds constitutional supremacy over such assets.

10. As a reaction, the RS Assembly voted a series of laws explicitly rejecting the authority of both the High Representative and the Constitutional Court of Bosnia and Herzegovina. On 27 June 2023, the RS Assembly adopted laws that effectively declared the Constitutional Court's decisions non-binding within RS territory, refused to co-operate with State-level judicial and law enforcement institutions, and established parallel structures directly challenging the country's constitutional framework.

11. The High Representative responded by revoking these laws, emphasising that such actions threatened the sovereignty, territorial integrity, and constitutional order of Bosnia and Herzegovina. In his decisions, he underscored that "no entity or lower level of government has the legal competence to selectively implement or reject decisions of either the Constitutional Court or the Office of the High Representative", reaffirming the primacy of international and State-level law. To enforce compliance, the High Representative introduced amendments to the Criminal Code of Bosnia and Herzegovina, criminalising the non-execution or obstruction of binding decisions issued by State-level institutions and the High Representative.

12. This marked a transformative step in the crisis, signalling a shift from political disagreement to legal enforcement, with provisions prescribing penalties ranging from monetary fines to imprisonment for individuals, found guilty of defying the relevant decisions including for elected officials. Despite repeated annulments of laws and warnings, RS leadership persisted in their non-compliance, even re-promulgating previously annulled legislation. This ongoing resistance led to formal investigations and prosecutions against top RS officials, including President Milorad Dodik, for obstructing the constitutional order.

13. On 26 February 2025, the Court of First Instance of Bosnia and Herzegovina convicted Mr Dodik of failing to comply with High Representative decisions, sentenced him to one year in prison (later converted to a fine) and imposed a six-year ban from holding public office. Following the verdict, Mr Dodik addressed a rally in Banja Luka, where he launched severe accusations against the Court of Bosnia and Herzegovina and the judge who handed down the ruling.[5]

14. Mr Dodik appealed the decision, contesting the legitimacy of the high representative's mandate and the criminal code amendments underpinning the charges. On 1 August 2025, the Appeals Chamber of the Court of Bosnia and Herzegovina confirmed the verdict. This outcome effectively ended Mr Dodik's political mandate per the Election Law, which provides for the termination of mandate upon a final criminal conviction. As a consequence, the Central Election Commission (CEC) revoked Mr Dodik's presidential mandate on 6 August. An early presidential election in RS was called for the 23 November 2025.

15. At first, the RS leadership rejected the court ruling and the CEC's decision. On 22 August 2025, the RS National Assembly (RSNA) adopted conclusions rejecting the conviction of Mr Dodik and the call for early election, and instructed RS institutions and political stakeholders to refrain from actions related to the conduct of the election. The RSNA also decided to hold a referendum on 25 October 2025. The question to be asked was: "Do you accept the decisions of the unelected foreigner Christian Schmidt and the unconstitutional judgments of the BiH Court pronounced against the President of Republika Srpska, as well as the decision of the CEC to revoke the mandate of the President of Republika Srpska, Milorad Dodik?"

16. However, the largest opposition party, the Serb Democratic Party (SDS) supported the participation in the election. Other opposition leaders – Jelena Trivić of the People's Front and Nebojša Vukanović of For Justice and Order – announced that they would support the SDS candidate in the election. On 28 September 2025, the SDS announced the candidacy of Branko Blanuša, a university professor, for President of RS.

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4. See developments about State property in part 5.
5. "The Court of Bosnia and Herzegovina convicts Dodik, he declares that BiH no longer exists" – European Western Balkans.

17. On 29 September 2025, the Alliance of Independent Social Democrats (SNSD) party led by Milorad Dodik announced that it would eventually take part in the election and postponed the referendum initially planned for 25 October until 9 January 2026. On 30 September, Mr Dodik confirmed that SNSD would nominate Siniša Karan, the former RS Minister of Interior, as its candidate for RS President in the upcoming early presidential election. On 18 October, the RSNA appointed Ana Trišić-Babić as the acting President of Republika Srpska, in replacement of Mr Dodik until the 23 November election and annulled the entity-level laws adopted from 2023 to 2025 that had been declared unconstitutional by the Constitutional Court of the Bosnia and Herzegovina. These texts included: the separate RS election law; laws on immovable property used for the functioning of public authorities; on non-application of decisions of the Constitutional Court of Bosnia and Herzegovina; on banning the operation of "extra-constitutional institutions of Bosnia and Herzegovina" in the RS; amendments to the RS Criminal Code; and the law on a separate High Judicial and Prosecutorial council for the entity. The RSNA also took out of force an earlier text adopted on 25 December 2024 "on the undermining of the legal order in Bosnia and Herzegovina by violating the Dayton Peace Agreement".

18. In parallel, the United States Department of the Treasury announced that Milorad Dodik and his family members, all his associates and their companies had been removed from the US sanctions' list. According to the US State Department press release: "The United States welcomes today's Republika Srpska National Assembly (RSNA) action that affirms stability in Bosnia and Herzegovina."[6]

19. The decisions of the RSNA to withdraw all the laws that had been declared unconstitutional and of SNSD to take part in the early presidential election and accept the revocation of the mandate of Milorad Dodik considerably eased the tensions, as we have witnessed during our stay in Sarajevo, between 2nd and 5th of November 2025. We felt that these decisions, as well as the lifting of US sanctions against Mr Dodik and his associates, created a supportive momentum for long-awaited reforms, although short, as next statewide elections are due in September 2026. This momentum could be seized to address some of the main problems hampering Bosnia and Herzegovina today: the necessary reform of institutions and the solution to the issue of State property.

20. The official electoral campaign for the election of the President of RS lasted only two weeks. The tone of the campaign was violent in places. Mr Dodik labelled Bosniacs – one of the three constituent peoples in RS – as "enemies" and a "destructive force". "One can smell the stench coming from Sarajevo, which for centuries has prevented normal life here," said Dodik in one of his first campaign messages. The CEC launched proceedings against SNSD over this statement, after which the party was fined 30 000 convertible marks, or some 15 000 Euros.[7]

21. According to the joint observers of the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR), the Congress of Local and Regional Authorities of the Council of Europe, and the European Parliament: "candidates campaigned freely but the undue advantages enjoyed by the ruling party left contestants with unequal opportunities".[8] On election day, the turnout was very low, at 34.79% of the voters. This is not surprising knowing that the elected president will serve for less than a year, until the September 2026 general elections. The results were tight, Siniša Karan from SNSD gathered 50.41% of the votes, while Branko Blanuša, opposition candidate, gathered 48.20%. Unfortunately, the results were disputed. SDS has formally requested repeat voting at three polling stations – Doboj, Zvornik, and Laktaši – arguing that these locations recorded the most serious irregularities.

22. It is important to underline that this crisis, however serious, was a political and institutional one. It was not a security issue, and the dividing issues were not along ethnic lines. The political opposition in RS did not follow Mr Dodik's messages. And when, at the peak of the confrontation, the RSNA passed a law that threatened State-level officials from RS with prosecution if they did not resign from their positions, it is reported that only 3 officials left State-level institutions.

3. Dayton's institutions and Bosnia and Herzegovina's commitments to the Council of Europe

23. Bosnia and Herzegovina declared its independence from the former Yugoslav Republic on 1 March 1992. The tragic war that followed ended in 1995 with the "General Framework Agreement for Peace in Bosnia and Herzegovina" (GFAP) also known as the Dayton Agreement. Annex 4 to the Dayton Agreement

6. "Bosnia's Serb Republic appoints interim president, seals Dodik's departure from post", 19 October 2025, *Reuters*.
7. "Bosnian Serbs Head to Polls to Choose New President After Toxic Campaign", *Balkan Insight*.
8. "Election of Republika Srpska president saw candidates campaign freely but lacked a level playing field, international observers say", OSCE.

deals with the Constitution of Bosnia and Herzegovina. According to the Constitution, Bosnia and Herzegovina consists of two Entities – the Federation of Bosnia and Herzegovina (also referred to as "the Federation") and the Republika Srpska – and the Brčko District in the joint ownership (condominium) of the two Entities.

24. The institutional framework of the State of Bosnia and Herzegovina is renowned for its complexity. In a comprehensive and authoritative review made in 2005,[9] the European Commission for Democracy through Law (Venice Commission) found that "To sum up, the decision-making mechanisms at Bosnia and Herzegovina level are not efficient and rational but cumbersome and with too many possibilities of blocking the taking of any decision."[10] "One gets the impression that efficient and rational decision-making is entirely sacrificed to the principle of involving representatives of each constituent people in any decision."[11] "Constitutional reform is indispensable since present arrangements are neither efficient nor rational and lack democratic content."[12] We recommend the reading of this opinion to anyone who would need to delve deeper in the details of the functioning of institutions at the level of the State of Bosnia and Herzegovina, as well as at the level of both entities.

25. In this report, we shall focus on the issues that directly relate to the obligations and commitments of Bosnia and Herzegovina to the Council of Europe. One of the most contentious issues is the compatibility of the constitutional norm of "constituent peoples" with the prohibition of discrimination on the basis of ethnicity. In the preamble to the Constitution, Bosniacs, Croats and Serbs are described as "constituent peoples". A distinction is made between these "constituent peoples" and "Others" (members of ethnic minorities and persons who do not declare affiliation with any particular group because of intermarriage, mixed parenthood, or other reasons). Until 2000, constituent peoples were associated to certain entities: Serbs were the only constituent people in the Republic Srpska, and Bosniacs and Croats were the only constituent peoples in the Federation of Bosnia and Herzegovina. On 1st July 2000, the Constitutional Court of Bosnia and Herzegovina ruled that members of all three constituent peoples, and "Others", had to have equal rights throughout Bosnia and Herzegovina.

26. The protection of the interests of the constituent peoples is ensured at the State level via a number of constitutional provisions incorporating power-sharing arrangements that were designed to end the conflict and that make it impossible to adopt decisions against the will of the representatives of any constituent people.[13] Following the 2000 decision of the Constitutional Court of Bosnia and Herzegovina, power-sharing provisions were introduced in both entities and rules allocating the most important positions equally among the three constituent peoples were included in the Entities' constitutions. The representatives of the three constituent peoples now constitutionally have in these various units a strong blocking position, even where they represent only a very limited number of voters.

27. These constitutional arrangements were not part of the Agreed Basic Principles of what would later become the Dayton Agreement but reluctantly added at a later stage of the peace negotiations. Aware that such principles might conflict with human rights, the negotiators of the Dayton Agreement balanced these with Article II of the Constitution which states that: "The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law."[14]

28. The text of the Constitution therefore carried an ambiguity and a potential conflict of norms between the notion of constituent people stated in the preamble and its article II. This ambiguity might have been necessary to obtain the signature of warring parties in 1995, but it is a heavy legacy 30 years later. When Bosnia and Herzegovina joined the Council of Europe, on 24 April 2002, it took the commitment to, *inter alia*, "review within one year, with the assistance of the European Commission for Democracy through Law (Venice Commission), the electoral legislation in the light of Council of Europe standards, and to revise it where necessary;" and in April 2005, Protocol 12 to the European Convention on Human Rights (ETS No. 177), which establishes a general prohibition of discrimination, came into force in Bosnia and Herzegovina.

29. Two years after the accession of Bosnia and Herzegovina to the Council of Europe, the Assembly adopted Resolution 1384 (2004) "Strengthening of democratic institutions in Bosnia and Herzegovina" in which it asked the Venice Commission "to make a comprehensive assessment of the conformity of the

9. CDL-AD(2005)004.
10. Ibid., § 42.
11. Ibid., § 56.
12. Ibid., § 101.
13. See part 4.
14. Sejdić and Finci, § 14.

Constitution of Bosnia and Herzegovina with the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Charter of Local Self-Government (ETS No. 122), as well as of the efficiency and rationality of the present constitutional and legal arrangements in Bosnia and Herzegovina." The Venice Commission prepared the "Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative"[15] which was adopted in March 2005.

30. Following this opinion, a process of constitutional reform was initiated quickly and three different solutions for the election of the presidency were submitted to the Venice Commission a year later. The Venice Commission issued another opinion,[16] endorsing two of the three proposals, with some adjustments. In April 2006 a group of constitutional amendments,[17] the Aprilski packet, was put to the vote, but the required two-thirds majority was missed by two votes.

31. As no reform was adopted, the existing constitutional and electoral rules governing the elections to the House of Peoples and the presidency of Bosnia and Herzegovina were challenged before the European Court of Human Rights. The Court gave its judgment in the *Sejdić and Finci v. Bosnia and Herzegovina* case, in 2009. The Court found that the impossibility for candidates not belonging to a constituent people to stand for election to the House of Peoples and the presidency lacked an objective and reasonable justification. Therefore, it breached the prohibition of discrimination set out in the European Convention on Human Rights. The Court's findings in that judgment were reiterated in a series of cases.[18] These cases are still under the supervision of the Committee of Ministers pending execution of the judgments concerned.

32. Since this judgment, numerous negotiations took place, under different patronage and in different formats, to find a constitutional and electoral reform in conformity with the Convention. All these attempts failed, often due to the impossibility for the main political actors to make a politically difficult compromise.

33. The case law of the European Court of Human Rights was completed with the judgment of the Grand Chamber in the case *Kovačević v. Bosnia and Herzegovina*, in June 2025. The Sejdic and Finci case dealt with the right to stand for elections and hinted that precluding candidates to take part in elections on the basis of their ethnicity constituted a discrimination. In the *Kovačević v. Bosnia and Herzegovina* case, the Court made a clear distinction between the right to stand for elections – the passive aspect of the right to vote – and the right of voters – the active aspect of the right to vote. The Court noted that restrictions imposed on the exercise of the right to vote based on the specific constitutional set-up in a State were not all of discriminatory nature and could be justified in some situations. According to the Court, the active and passive aspects of the right to vote were intended to protect different interests, were different in their scope, entailed different requirements and might be subject to different limitations. States might choose to establish electoral units based on existing administrative boundaries, or other administrative, geographical or constitutional criteria that they may determine in view of their specific needs and conditions. In the specific case of Bosnia and Herzegovina, the separation into different electoral units along Entity lines for the purposes of the composition of the House of Peoples was a result of its highly decentralised and uniquely complex constitutional structure embedded in an international peace agreement. This judgment could prove extremely useful in the search for a solution.

34. While we were in Sarajevo, the Council of Ministers decided the creation of a "Working Group for the preparation of amendments to the Constitution of Bosnia and Herzegovina and the draft Law on Amendments to the Election Law of Bosnia and Herzegovina."

4. Improving the efficiency of the institutional structures at State-level

35. The electoral reform is not the only institutional issue that requires fixing in Bosnia and Herzegovina. As put by the Venice Commission in 2005, "BiH Constitution ensures the protection of the interests of the constituent peoples not only through territorial arrangements reflecting their interests but also through the composition of the state organs and the rules on their functioning. In such a situation, a balance has indeed to be struck between the need to protect the interests of all constituent peoples on the one hand and the need

15. CDL-AD(2005)004, op.cit.
16. CDL-AD(2006)004, "Opinion on Different Proposals for the Election of the Presidency of Bosnia and Herzegovina" endorsed by the Commission at its 66th plenary session (Venice, 17-18 March 2006).
17. CDL-AD(2006)004, op. cit., and CDL-AD(2006)019 "Opinion on the Draft Amendments to the Constitution of Bosnia and Herzegovina (sent as a preliminary Opinion to the authorities of Bosnia and Herzegovina on 7 April 2006 and endorsed by the Commission at its 67th Plenary session, Venice, 10 June 2006)".
18. See *Zornić v. Bosnia and Herzegovina*, no. 3681/06, §§ 26-43, 15 July 2014; *Šlaku v. Bosnia and Herzegovina* [Committee], no. 56666/12, §§ 24-34, 26 May 2016; Pilav v. Bosnia and Herzegovina, no. 41939/07, §§ 38-50, 9 June 2016; and *Pudarić v. Bosnia and Herzegovina* [Committee], no. 55799/18, §§ 25-29, 8 December 2020.

for effective government on the other. However, in the BiH Constitution, there are many provisions ensuring the protection of the interests of the constituent peoples, inter alia: the vital interest veto in the Parliamentary Assembly, the two chamber system and the collective Presidency on an ethnic basis. The combined effect of these provisions makes effective government extremely difficult, if not impossible. Hitherto the system has more or less functioned due to the paramount role of the High Representative. This role is however not sustainable."[19]

36. Unfortunately, the situation did not improve in the 20 years that elapsed since the Venice Commission prepared its opinion. In its 2025 report on Bosnia and Herzegovina,[20] the European Commission concluded similarly that: "Bosnia and Herzegovina needs to bring its constitutional framework in line with European standards and ensure the functionality of its institutions to be able to take on EU obligations. While a decentralised State structure is compatible with EU membership, Bosnia and Herzegovina will need to reform its institutions to be able to effectively participate in EU decision-making and to fully implement and enforce the *acquis*."[21] Functionality and efficiency remain critical in 2025.

37. The Venice Commission's opinion underlined how two institutional features of Bosnia and Herzegovina were intertwined: the numerous veto powers, and the institution of the High Representative. The system creates numerous veto points at State and entity levels. Decisions can be blocked by a minority if any of the constituent peoples oppose them, making legislative consensus difficult and causing frequent paralysis. As a counterpart, and in order to keep a minimum level of functionality in the institutions, the Office of the High Representative can intervene as a "safety valve", allowing to unblock the paralysis. Once again, the negotiated peace agreement created an ambiguity between extremely consociational institutions, based on the idea that no decision can be imposed on a constituent people without its agreement, and an international institution granted extraordinary authority to impose decisions – in some limited matters – in case of deadlocks. This ambiguity has also been the origin of bitter conflicts and also needs to find a conclusion. Both issues, the numerous blocking mechanisms and the international overseeing mechanism, are linked and should be analysed in common.

4.1. Veto powers in legislative and executive organs

38. The most important mechanism ensuring that no decisions are taken against the interest of any constituent people is the vital national interest veto. It is a protection mechanism allowing each of the three constituent peoples to block legislation or decisions they perceive as threatening their vital ethnic interests. It operates primarily in the House of Peoples of the Parliamentary Assembly and also affects decisions of the presidency.[22] Another kind of veto exists, the Entity veto. It provides for a veto by two-thirds of the delegation from either Entity. In practice, it is essentially relevant for the RS.

39. Apart from the veto systems, the composition of the bicameral parliament also contributes to the creation of deadlocks.

40. The House of Representatives is composed of 42 members, elected at party-list proportional representation on two levels. The territory is divided into multi-mandate constituencies in each of which a proportional list election is organised. This system guarantees a very high proportionality between the votes cast and the distribution of mandates and ensures the representation of all parties that receive more than 3% of the vote.

41. The second chamber is the House of Peoples. It is composed of 15 members, 5 from each constituent people. Persons who do not identify themselves as Bosniacs, Croats or Serbs are completely barred from running for the House of Peoples, which constitutes a violation of the European Convention on Human rights.[23] The House of Peoples is a chamber with full legislative powers, and the two chambers have exactly the same legislative rights. The quorum for decision making in the House of Peoples is nine delegates present, with the crucial condition that at least three Bosniac, three Croat, and three Serb delegates must be present. This ensures ethnic representation for any valid session or vote. It also means that it only takes three members to be absent to block the legislative process. As SNSD and the Croatian Democratic Union of Bosnia and Herzegovina both have three delegates each, it means they have a *de facto* veto power on legislative work. For instance, on 3 November 2025, during our visit in Sarajevo, three delegates from the Croat caucus were not present and the House of Peoples had to postpone its session.[24]

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19. CDL-AD(2005)004, op.cit., § 29.
20. SWD(2025)751 final, European Commission, Bosnia and Herzegovina 2025 Report.
21. Ibid., p. 21.
22. For details on the functioning of the vital national interest veto, see Venice Commission, CDL-AD(2005)004, op. cit.
23. See former developments on the Sejdic and Finci case.

42. For this reason, many constitutional reform proposals include a redefinition of the roles of both chambers. As the Venice Commission put it in 2005: “the House of Representatives becomes the chamber where legislative work is done and necessary compromises are made in order to achieve a majority. The role of the House of Peoples is only negative as a veto chamber, where members see as their task to exclusively defend the interests of their people without having a stake in the success of the legislative process.”[25] Improving the functionality and efficiency of the institutions of Bosnia and Herzegovina would therefore probably require to improve the legislative process by reducing the potential abuse of vital national interest vetoes and quorum rules that allow obstruction of parliamentary decision making.

43. Improving the efficiency of the legislative procedure in Bosnia and Herzegovina is also a prerequisite for the conclusion of the mandate of another Bosnian specificity, the institution of the High Representative.

4.2. The Office of the High Representative

44. Annex X of the Dayton Agreement established a High Representative of the international community to facilitate the implementation of the peace agreement. This internationally appointed political figure is vested with the power to take binding decisions regarding the implementation of the civilian aspects of the Dayton agreement. These are referred to as “Bonn powers”. Over time, the use of Bonn powers has raised controversies. In its aforementioned Resolution 1384 (2004), the Assembly asked the Venice Commission to assess the compatibility of the powers of the High Representative with the European Convention on Human Rights.

45. Regarding the power to enact legislation granted to the High Representative – the Bonn powers – the Venice Commission reminded that: “the legislative process in BiH is unduly cumbersome and provides far too many opportunities to block the adoption of legislation. (…) The power of the High Representative to enact legislation therefore provides a safety valve making it possible to adopt urgently required legal texts.” However: “The democratic principle of the sovereignty of the people requires that legislation is adopted by a body elected by the people. Art. 3 of the (first) Protocol to the ECHR requires the election of the legislature by the people, and this right is deprived of its content if legislation is adopted by another body.” Accordingly, the Venice Commission advocated that this power should be gradually abandoned, in parallel with a constitutional reform making the legislative process more efficient.

46. The persistence of the Office of the High Representative, and its use of the Bonn powers, can then be understood as a consequence and a necessary counterpart to the many blocking mechanisms existing in the Bosnian legislative process.

47. It is precisely over some decisions taken using “Bonn powers” that the political crisis culminating with the revocation of Mr Dodik’s mandate sparked. The hostility from Mr Dodik towards the institution of the High Representative is not a new feature and is concomitant with Russia’s gradual withdrawal of support for the efforts to reinforce the sovereignty and territorial integrity of Bosnia and Herzegovina. Between 2017 and 2022, Russia opposed the declaration that RS had no right to secede; questioned the legitimacy of judgments from the International Criminal Tribunal for the former Yugoslavia; objected to the statements of support for the Constitutional Court of Bosnia and Herzegovina and its judges. More recently, Russia boycotted the Peace Implementation Council in defiance of its decision to support Christian Schmidt’s appointment.[26]

48. From the viewpoint of Mr Dodik, the current High Representative would not have been legally appointed, as the Security Council of the United Nations did not endorse its nomination. This legal reasoning is not in line with international practice and the findings of the European Court of Human Rights.[27] The High Representative has been established with the authorisation of the United Nations Security Council by an informal group of States actively involved in the peace process as an enforcement measure under Chapter VII of the United Nations Charter. He or she is selected by the Peace Implementation Council, and not the UN Security Council. The expression of support by the UN Security Council is not legally necessary for the decision of the Peace Implementation Council Steering Board appointing a new High Representative to take effect.[28] In 2021, a Security Council resolution explicitly proposed to end the powers and close the Office of the High Representative for Bosnia and Herzegovina. It was rejected, proving that the Security Council did not consider the institution as illegitimate.[29]

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24. “There is No Quorum for the Continuation of the Session of the House of Peoples of the BiH Parliament” – *Sarajevo Times*.
25. CDL-AD(2005)004, op. cit., § 36.
26. “Ruska neslaganja u Vijeću za provedbu mira BiH”.
27. See Sejdić and Finci, § 16.
28. Appointment of the High Representatives – Office of the High Representative.

49. Nevertheless, all parties agree that the Office of the High Representative is a temporary solution and that Bosnia and Herzegovina should function without international oversight. As soon as 2004, the co-rapporteurs of the Monitoring Committee considered that "the time ha[d] come to define a clear strategy for transferring responsibilities from the High Representative to domestic authorities."[30] In 2006, as he took office, the then High Representative Christian Schwarz-Schilling stated that: "Bosnia and Herzegovina must be fully sovereign. That means I must step back".

50. Accordingly, in February 2008, the Peace Implementation Council set out five objectives and two conditions to put an end to the mandate of the High Representative. These are known as the "Agenda 5+2".[31] The Steering Board of the Peace Implementation Council has regularly reviewed progress on this agenda. While improvement has been made in some areas, chronic disagreement among the main political parties has led to gridlock that has prevented the full implementation of the agenda.

51. During our exchanges in Sarajevo, we heard very diverging views on the institution of the High Representative. The SNSD has made of its opposition to the High Representative a campaign argument and an electoral slogan. Several other stakeholders have expressed the view that the Office of the High Representative was still necessary for the good functioning of institutions. These two views are in fact not incompatible. The closure of the Office of the High Representative should take place in parallel with constitutional reforms that improve the efficiency of the legislative procedure and the functioning of the executive and encourage local ownership and compromise.

5. State property

52. One of the objectives set in the "Agenda 5+2" – to be satisfied prior to the closure of the Office of the High Representative – is the "Acceptable and Sustainable Resolution of the Issue of Apportionment of Property between State and other levels of government».

53. State property in Bosnia and Herzegovina is estimated over 53% of the country's territory. It covers around 2.7 million hectares of forests, pastures, rivers, mineral resources, and strategic sites. According to the Constitution of Bosnia and Herzegovina and confirmed by court rulings, this property belongs exclusively to the State of Bosnia and Herzegovina. In 2006, a State Property Disposal Ban was adopted by the Parliamentary Assembly of Bosnia and Herzegovina with the intent to temporarily prohibit the sale, transfer, or any form of disposal of State-owned property until the adoption of comprehensive State-level legislation on State property management. This legislative measure was introduced to safeguard the sovereignty and territorial integrity of Bosnia and Herzegovina by preventing any unauthorised disposal or transfer of immovable State assets, particularly amid ongoing disputes and tensions between the entities and the State regarding ownership and control of public property.

54. The issue came into sharp focus in 2010, when Bosnia and Herzegovina was conditionally granted a North Atlantic Treaty Organization (NATO) Membership Action Plan, the final step before full membership talks. For its activation, 63 prospective military sites had to be registered as State property, 23 of them located in RS. Milorad Dodik, then Prime Minister, agreed to this registration only on the condition that the rest of the country's State property be handed to the entities. This condition was rejected.

55. This issue has some geopolitical aspects. There are fears that if entities gain control over State property, foreign powers could take control of strategic locations very close to EU territory. Furthermore, given the high level of corruption and the cases of misuse of public resources, granting unilateral control over assets worth hundreds of billions of euros would require solid oversight mechanisms.

56. In February 2022, the RSNA adopted the Law on Immovable Property Used for the Functioning of Public Authority. The law effectively classified certain immovable properties as assets of the RS and subject to management and disposal by RS authorities, including property assets previously considered to be owned by the State of Bosnia and Herzegovina. The Constitutional Court of Bosnia and Herzegovina declared the law unconstitutional, which sparked the escalation that led to the current political crisis (see above). According to the Constitutional Court of Bosnia and Herzegovina, the RS does not have the constitutional competence to regulate State-level public property assets because that jurisdiction belongs to the State of Bosnia and Herzegovina.

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29. "Security Council Turns Down Resolution That Would End Powers of Bosnia and Herzegovina High Representative", Meetings Coverage and Press Releases.
30. "Honouring of obligations and commitments by Bosnia and Herzegovina", Doc. 10200, 4 June 2004, § 102.
31. Agenda 5+2 – Office of the High Representative.

57. The dispute is creating a serious barrier to the economic development of Bosnia and Herzegovina, as many investment and development projects involve State property assets, primarily agricultural and forest land. On 12 September 2025, the Prime Minister of the Federation of Bosnia and Herzegovina submitted to the Office of the High Representative an official Initiative for amendments to the State Property Disposal Ban, which would provide for exemptions that enable implementation of infrastructure projects of public interest and strategic importance for the Federation of Bosnia and Herzegovina and Bosnia and Herzegovina. And on 18 October 2025, the RSNA repealed the Law on Immovable Property adopted in 2022, that created a major hurdle.

58. Solving the issue of the apportionment of property between the State, the entities and the other local level of governance is therefore a crucial issue. On the institutional level, it is necessary for the closure of the Office of the High Representative. And on the economic and political level, it is required to allow investment projects that are much needed for the economic development and sustainability of the country.

6. Concluding remarks

59. The last resolution adopted by the Assembly in 2024 congratulated the authorities of Bosnia and Herzegovina for the pace of reforms since 2022. Since then, the governing coalition created after the 2022 elections dissolved, and political and institutional deadlocks impeded the formation of another government.

60. Over the year, a serious political crisis unfolded. As we are writing these lines, it seems that this crisis has found a solution in the respect of the rule of law, with the implementation of the decisions of the Constitutional Court and the Court of Bosnia and Herzegovina, and regular elections. In spite of their shortcomings, the institutions of Bosnia and Herzegovina have shown strong resilience.

61. During our visit in Sarajevo, we heard that the solution to this crisis could create a momentum. The fundamental issue, in our view, is the lack of confidence between political actors entrenched for many years in confrontational rhetorics. However, the shared objective of European Union integration may be a transformative factor and help shift lines.

62. The problems that we detailed in this short memorandum are all linked in one way or another, and all require a greater confidence and real dialogue between the local stakeholders. In the face of this lack of confidence, we think that the radical transformation of the institutions of Bosnia and Herzegovina remains a long-term objective. The pre-requisites for a complete overhaul of the Constitution are not present in the reality of Bosnia and Herzegovina today. Nevertheless, the institutional framework cannot stay unchanged any longer, as the *status quo* does not play in favour of an improvement of the situation. Immediate reforms are needed to restore confidence and allow dialogue between local stakeholders without the involvement of external actors.

63. In this regard, the question of the election law, especially regarding the Presidency of the Republic, has for too long been a bone of contention between the Croat and the Bosniac community in the Federation. A solution must be found to overcome the distrust. The legal formulas are known, the Council of Europe is ready to provide all the required expertise to help draft a solution in line with the European Convention on Human Rights. It is now for the political representatives to seize the opportunity and not repeat the errors committed in 2006, twenty years ago, when a reform was at hand’s reach but failed by two votes.

64. The question of State property can find a solution, now that the 2022 RS law has been withdrawn. Every level of government has an interest in finding a quick solution. This could create a positive impetus and allow for the development of local investments, providing much needed employment. It would also satisfy one of the required objectives for the closure of the Office of the High Representative.

65. The European integration process will induce changes in the architecture of State institutions. The negotiation process requires strong governance and swift decision making, in the pursuit of a shared common objective. This process could, in turn, create the required conditions allowing for the discussion and adoption of a Constitution by the Bosnians themselves, turning the page over the post-war power-sharing arrangements and opening the chapter of a Bosnia and Herzegovina integrated in the European Union, for the benefit of all its inhabitants.