

# Twenty five years of the Dayton Agreement: peace project or difficult journey towards a functional state

## Abstract

*Twenty-five years since the establishment of peace in BiH as a result of the Dayton Agreement is the opportunity not only to remind ourselves of the socio-political context, but also to review the development of BiH within the framework set out under Dayton. This article deals with concerns such as whether Dayton has created the possibility for the development of BiH as a functional state or only the assumptions needed for peace; it also deals with the problems of BiH citizens in a post-Dayton BiH, with a particular reflection on those experienced by workers and their trade unions. Meeting the requirements for joining the European Union is an imperative for BiH. Responsibility on this path to the EU, however, lies equally with the political leaders of this country who, unfortunately, do not work towards strengthening the state of BiH; with the Peace Implementation Council, which is insufficiently decisive about fulfilling its commitments; and finally also with BiH citizens who have allowed their domination by ethnic parties and who would rather leave the country than oppose the growing hopelessness.*

**Keywords:** agreement, peace, institution building, constitutional change, EU accession, reform, democracy

## Introduction

The Dayton Agreement, officially entitled the General Framework Agreement for Peace in Bosnia and Herzegovina (BiH), was agreed in Dayton, USA, on 21 November 1995, following one month of long negotiations, and it came into force on 15 December 1995 after being signed in Paris.

Even now, some twenty-five years after the Dayton Peace Agreement, BiH is still searching for its route to a stable and harmonious life for its men and women citizens. Citizens are having to cope with the unstable political situation which stems from the unresolved form of the state of BiH, including a lack of readiness on the part of ethno-national leaders and all other actors reasonably and peacefully to conduct dialogue that would result in a modern and prosperous state, beneficial to all its citizens and nations. As Nerzuk Ćurak commented in his contribution to the Friedrich-Ebert-Stiftung publication on Dayton's twentieth anniversary:<sup>1</sup>

- 1 All translations of Bosnian language texts in this article made by the author in conjunction with interpretation colleagues.

Two decades after the end of war, which does not cease to provoke various, almost insurmountable disputes over its causes and character, but manages to evoke a shared consciousness of it being the most frightening and most tragic inter-nationality conflict in Europe since World War II, Bosnia and Herzegovina still seeks the achievement of political stability, internal legitimacy and balance and harmony between and among ethnic communities, as well as the building and strengthening of civil society and a democratic political culture. (Ćurak 2015)

In the course of the last 25 years in Bosnia and Herzegovina, we have faced several important processes all of which influence at an essential level the country's development and path towards the European Union and NATO.

Peace in BiH is a fundamental requirement for all these other processes. One of the most difficult, however, and which is still pending, is the transition of a society that has grown out of such elemental changes towards a market economy; as well as political pluralism, parliamentary democracy and the protection of human rights in line with European and international standards. It might be expected that the integration of BiH in EU and NATO could result in the addition of capacity concerning the state and the full operation of the rule of law, neither of which currently functions in the precise meaning of the word. The process of building institutions at state level in BiH, with all the prerogatives that a state should have, has not yet been completed due to the entities and/or the ethno-national parties in power reaching no agreement on this most fundamental issue: the strengthening of the state.

With the engagement and support of the representatives of the international community, Bosnia and Herzegovina has been able to introduce several reforms which has made it possible for the state to be a few steps away from reaching the status of EU candidate country.

The result of these processes is the fact that BiH, even 25 years later, has more than 40 per cent registered unemployment, low average wages, among the lowest GDPs in Europe, an unattractive business sector burdened with high taxes, and a low level of investment activities. (Hadžić 2018)

One of the biggest problems that BiH faces nowadays is widespread corruption, openly reported also by international officials, which acts as a barrier to its development. According to the Corruption Perceptions Index (CPI), Bosnia and Herzegovina scored 36 on a scale of 0-100 for 2019, its poorest performance since 2012 when Transparency International introduced the current methodology, thus being among those countries that has continued to slide backwards (Transparency International 2020). The 2019 performance put it in 101<sup>st</sup> place, a drop of 12 places on 2018.

It is clear today that the Dayton constitutional arrangement has become one of the basic problems in the functioning of modern BiH, as well as an obstacle on its path to Euro-Atlantic integration. The arrangement prevents the proper internal functioning of the state which is, instead, the subject of continual dispute between the political parties as to what BiH should look like in the future and what its constitutional settlement should be. There has been no consensus reached in the past years in terms of any proposed constitutional changes. Furthermore, the political differences be-

tween representatives in relation to changes in BiH's constitutional settlement are, sadly, reflected in all spheres of the life of the state and of its citizens.

What did the Dayton Agreement bring?

Following the dissolution of the former state of Yugoslavia, BiH citizens voted in a referendum in February/March 1992 on a sovereign and independent BiH. The United States and the EU recognised Bosnia and Herzegovina in early April, while other members of the international community shortly followed suit. BiH was admitted as a member of the United Nations in May. Unfortunately, this was not accepted by the Serb Democratic Party (SDS), headed by Radovan Karadžić, or the regime of Slobodan Milošević in Serbia, whose strategic objective was a greater Serbia on the territories of BiH and Croatia. The following years were marked by suffering and genocide, which was finally brought to a halt by the Dayton Peace Agreement.

The basic goal of the Agreement was to stop the armed conflict and secure peace, and allow the return of all refugees and internally displaced persons. A simple assessment of its implementation over the next few years would show that the Agreement, given the deficiencies with which it is packed, had turned into an instrument slowing the more rapid development of BiH. Indeed, it is openly suggested nowadays that the Agreement should be amended to allow the establishment of a functional state and in terms of meeting EU accession requirements.

At the time of negotiations on the peace agreement, the BiH wartime Presidency, which preserved its multi-ethnic character, had a single position, according to Mirko Pejanović, formerly a member of the Presidency:

As its leading condition for peace, the Presidency of the Republic of Bosnia and Herzegovina considered the preservation of the territorial integrity of Bosnia and Herzegovina in its internationally-recognised borders and international legal subjectivity. Among its other principal conditions for peace, the Presidency of the Republic of Bosnia and Herzegovina considered the return of refugees to their pre-war addresses and bringing war criminals to justice. A special condition insisted on by the Presidency of the Republic of BiH was the preservation of the institutions of the state of Bosnia and Herzegovina. (Pejanović, forthcoming 2021)

The United States of America took the lead role in the peace talks, substantially in the person of Richard Holbrooke. The Agreement is considered a major foreign policy success of the Clinton Administration.

The chief actors in the peace talks were, ultimately, among the signatories to the Dayton Agreement: the President of the RBiH Presidency, Alija Izetbegović, on behalf of the Republic of Bosnia and Herzegovina; the President of the Republic of Croatia, Franjo Tuđman; and the President of Serbia, Slobodan Milošević, on behalf of the then Federal Republic of Yugoslavia.

The Dayton Peace Agreement consists of 11 annexes, including Annex 4 on the constitution of Bosnia and Herzegovina. This is still valid, although it has never been ratified by the BiH Parliament. It is precisely this Annex, which verifies the sovereignty, territorial integrity and independence of Bosnia and Herzegovina as a

state, that has been the subject of the most intensive discussions in the course of the years since the Agreement was signed. Some political leaders (chiefly, Milorad Dodik, a member of the BiH Presidency) have used this to contest the existence of the state of BiH.

It was decided that BiH would have two entities, namely the Federation of Bosnia and Herzegovina with ten cantons (FBiH) and Republika Srpska (RS); and also ‘constituent peoples’, namely Bosniaks, Croats and Serbs (along, confusingly, with Others). The constitution prescribes the competencies of BiH and its entities and the relations between the institutions of BiH, but also the manner in which the constitution could be amended. Later, the District of Brčko was established as a unit of local self-government.

Annex 9 concerns the establishment of public companies at the level of BiH and has never been operational; while Annex 10 concerns civil administration and the inauguration of the High Representative as the most senior authority in the interpretation of the Dayton Agreement. These annexes have also been the subject of intense discussions. The powers of the High Representative have undergone a significant transformation but, in the course of the last few years, Valentin Inzko, the current High Representative, has contented himself with ‘expressing his concern’ about the increased number of breaches of Dayton Agreement provisions although without taking any specific action in response. This is in contrast to his predecessors, who delivered around 800 different decisions in the period up to 2009 when the current incumbent took office. Consequently the public often raises questions about the purpose of the Office.

Other annexes include the military aspects of the peace settlement; regional stabilisation; elections; arbitration; human rights; refugees and internally displaced persons; the commission for the preservation of national monuments; and the international police task force.

Along with the High Representative of the international community, there is also a functioning Peace Implementation Council. The responsibility of the Steering Board of the Peace Implementation Council is to consider the Reports of the High Representative on the status of the implementation of the Dayton Peace Agreement. According to Valentin Inzko, however, it is the Council that has restricted his use of the substantial ‘Bonn powers’ – put originally in place to avoid the Dayton Agreement being delayed or obstructed by local nationalist politicians and which, among other things, allow the Office to impose laws and fire officials in Bosnia – thus limiting him to a role as observer (FACE TV 2020).

It may be argued, looking at the situation from the current perspective, that a huge omission lies in the Dayton Peace Agreement having never been approved or verified in the parliaments at the level of the entities or in the BiH parliament. Thus, BiH is left with its imposed constitution, which is used even today, 25 years later, by Dodik as one of the legal arguments with which to deny the existing legal order in BiH.

In denying the historic continuity of BiH, Dodik argues that Bosnian Serbs are entitled to have a referendum and secede from BiH. On the other hand, invoking the state’s historic continuity, some Bosniak leaders point out that departure from the

Agreement would mean a return to *ex-ante* status, i.e. a return to the legal situation of the Republic of Bosnia and Herzegovina which applied prior to the Dayton Agreement (Latal 2015).

Professor Florian Bieber from the University of Graz (Austria) highlights that the Dayton institutions are not, for all their difficulties and expense, the core of the problem; but that, instead, the Dayton Agreement ‘pits two entities (and the two dominant nations) in a binary zero-sum game against one another’ (Bieber 2009), i.e. that the Dayton Agreement is not directed towards the building of joint life and the integration of BiH as a single state.

In the Dayton Agreement, the entities have a broader scope of competencies in relation to the institutions of Bosnia and Herzegovina than the state itself, whose competencies are simply insufficient. Moreover, there is entity voting and entity approval in the process of the adoption of laws within the Parliamentary Assembly of Bosnia and Herzegovina. This leads to blockades on decision-making in the Parliamentary Assembly. As Mirko Pejanović points out, the two-entity approach to the territorial and political establishment of BiH prevents the parties from coming together on political-interest lines and that consequently:

Instead of political pluralism, ethnic pluralism was established in Bosnia and Herzegovina which in itself (territorialisation of the powers of the ethnic parties) is the source of [the] unstable political development of Bosnia and Herzegovina. (Pejanović, undated)

### BiH's post-Dayton path

The establishment of democratic processes in the post-war development of Bosnia and Herzegovina, the restoration of the economy and the return of refugees would, however, be nearly impossible without the role of the High Representative of the international community. Many reforms aimed at the post-war development of Bosnia and Herzegovina have been taken under the mediation, and with the influence, of the High Representative who has, based on the ‘Bonn powers’ held by the Office, put in place many laws which have contributed to the development of state capacity. These include laws on the border service; the expansion of the Council of Ministers; the establishment of joint armed forces; the return of property to the citizens of Bosnia and Herzegovina; and the equality of the nations across the whole territory of the state.

However, all the interests of the citizens are articulated through ethnic interests and on an ethnic basis. This contributes to the strengthening of ethnic political parties which, with some exceptions, have tended to gain the trust of voters in parliamentary elections in BiH. As a rule, these ethnic parties form coalition governments, reflected in a distribution of ministries and functions instead of joint programmes mandating them to address particular problems. This has been going on for years, resulting in the ethnic parties dominating the parliaments, reflected in their inability to adopt laws which would lead the country towards prosperity. Such a way of functioning further deepens the differences and has brought the country to stalemate. The response of the citizens has, unfortunately, been such that migration from BiH is frequently seen as the only realistic path (Pisker 2020).

The Dayton reality is such that Bosnia and Herzegovina is a state with 13 ‘constitutions’ in which 13 parliaments adopt laws while 13 ‘governments’, with around 200 ‘ministries’, adopt regulations and decisions. The consequence of this is one rather unnecessary and extremely expensive administration, as well as a bureaucratic and inefficient system of governance.

The present situation in BiH attests to this, particularly now during the fight against the Covid-19 pandemic. There is no crisis staff at the level of BiH or common measures applicable to all citizens. The Council of Ministers of BiH, being the highest executive authority in BiH – the government – has not adopted a single measure aimed at combating the pandemic. This is, instead, the responsibility of the 12 local governments, all of them deciding what they will do in their own ‘backyards’, considering that public health is the competence of the entities, cantons and the District of Brčko.

### *Social picture*

Inevitably, the war had terrible consequences for the social picture in Bosnia and Herzegovina:

At the moment of affixing signatures on the Dayton Peace Agreement, GDP per capita had fallen below \$500, which was approximately 20 per cent of the pre-war figure, while unemployment was around 80-90 per cent with the same percentage of the population dependent on international humanitarian aid. The World Bank has estimated the value of destroyed infrastructure at around \$25-30bn, with an additional burden being the debt inherited from the former state. (Cenić 2015)

The consequence of suffering and damage through the war and the processes of transition in BiH has been that around 80 per cent of the population finds itself in one or other category of vulnerability, among them: the disabled; minorities; unemployed; pensioners; refugees; displaced persons; returnees; civilian war victims; war-related disabilities; demobilised combatants.

Social inequality is growing in BiH society, which contributes to the level of social insecurity. Reforms in economic and social sectors have not been fully completed; the country is reliant on the International Monetary Fund and the World Bank and, in the course of the last few years, also on funds from the EU.

Furthermore, statistical data suggest that, in the recent past, around one-fifth of the population lived below the general poverty line while around 50 per cent of the population was socially excluded in one way or another (UNDP 2007). Updated methodologies and statistics mean that it is impossible to provide a meaningful comparable update of these figures but, while the country’s Human Development Index has increased since then (to 0.769 from 0.7 in 2005),<sup>2</sup> this is still well below the European average and large swathes of the population remain at-risk of poverty and exclusion. Indeed:

2 Figures available online at: [http://hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/BIH.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/BIH.pdf).

After 1995, the focus of the political actors in Bosnia and Herzegovina, and of the international community, was to disregard completely the reform and development of social policy that would be adapted to the context of Bosnia and Herzegovina. (Radovanović 2015)

The roots of the poor economic and social situation in BiH have been influenced by several important factors: the transition from the destruction of the war and the partly-postponed economic transition; the tragic level of suffering among the victims of war and their relatives; war profiteering; emigration; and the neoliberalism which has underpinned the country's post-war development. Furthermore, privatisation has not yielded the expected results but, rather, its effect has been to deepen the social differences.

Right from the start, the stumbling block in this area of policy, as any other, has been the unresolved matter of the final form of the state. This has continued to provide an excellent excuse for the ruling parties and their leaders not to deal with fundamental economic and social matters while allowing them to raise the issue of the 'endangered national interests' of their respective nations whenever they need to do so prior to an election – an endeavour in which they have, in contrast, been very successful. This matter of frustration has effectively turned into a block on progressive development.

The role of the international actors might also be highlighted here – the international community, whose participation in one way diminishes state sovereignty, serves also as an excellent excuse for local actors not to do anything while, nevertheless, permanently relying on the assistance of the international community. This is how, with the aid of *ad hoc* actions, local actors have 'patched' the social problems reported by critical groups of people instead of taking the state towards sustainable social and economic reforms.

### *Return to pre-war place of residence and new migrations*

After the Dayton Agreement had been signed, it was believed that the return of people to their pre-war place of residence would serve as the key to the reintegration of BiH. There are no precise data today on the results of that process, partly because those who had returned to Republika Srpska are now coming back to places in the Federation of Bosnia and Herzegovina; while many people from the state of BiH have gone abroad as a result either of the political or the economic situation.

Much time has lapsed since the first returns. Following the initial enthusiasm and huge desire to return, the following years were marked by the dawning of cruel reality among returnees who had to face an inability to survive, insufficient security, an inability to find employment or obtain health protection, and many other similar issues.

In particular, the political authorities in Republika Srpska did not create a positive environment for returnees. Continuing denial on the part of the RS authorities of the genocide in Srebrenica as adjudicated in the Hague Tribunal, followed by the decoration of war criminals and the naming of primary schools after them, next to the zero employment of other ethnicities or citizens who declared as 'other', and similar matters, are not an environment to which expelled citizens wish to return.



Even today, Bosniak children in the education system of Republika Srpska are not allowed to call their mother tongue ‘Bosnian’ despite this being one of the three official languages spoken in BiH.

Of the 2.2 million people who were ejected during the war from their pre-war place of residence, it is believed that more than one million still live abroad. Official data shows that there are 1.8m people born in BiH but who are living in 52 countries around the world, with 60% being in the EU-28 plus Switzerland and Norway (Ministry of Security 2020: Table 34). Around one million people had returned to the country by 2004, with their property almost completely reinstated, including a resolution of tenancy rights. However, it is believed that interest in return is now declining. It is also a major question as to how much these returns are real, given that a part of the returnee population visit their pre-war residences only during vacations.

According to the latest data, there are still around 33,000 families (approximately 96,500 individuals) with the status of being internally displaced, with many living in some 121 so-called ‘collective centres’ that are still open (HRW 2020); while UNHCR reports that around 16,500 people with refugee status live outside the country under the UNHCR mandate, with a further 1,500 currently seeking asylum. Additionally, a further 49,000 people are ‘of concern’.<sup>3</sup>

Efforts have recently been made to close these collective centres, but it is substantially the case that those living in such accommodation did not have property before the war to which to return or are those who, for various reasons, have been unable to return to their pre-war residences. There is a government project – ‘Closure of Collective Centres and Alternative Accommodation Locations’ CEB II – which is targeting the building of new homes, but progress has been slow (MHRR 2019) and dogged by the complex political system which muddles questions of accountability (Mitrović 2020).

A vast number of people have thus begun new lives at their new addresses, whether in BiH or abroad. In other words, they have made the decision simply not to return.

It should be highlighted that the international organisations and different donors have largely supported the process of return, particularly in terms of the restoration of demolished houses and infrastructure. They have also contributed significantly to the creation of the other conditions which would facilitate people’s sustainable return. Without such assistance, this entire process would have almost certainly failed given that the national authorities have continued to obstruct the process and make it difficult.

Today, however, we again face a new wave of the departure of people based on economic migration. Unconfirmed rumours report at least 20,000 young and educated people leaving BiH every year to go abroad; while official data shows that the Bosnian diaspora worldwide totals 2-2.2 million people (Ministry of Security 2020: 72). Citizens are finding solutions to their problems in economic migration and employment in EU member states, predominantly Germany, Austria, Croatia and Slove-

3 Data extracted on 11 November 2020 using the UNHCR’s ‘Refugee Data Finder’ tool, with the figures for BiH at: <https://www.unhcr.org/refugee-statistics/download/?url=91bB>.



nia. According to the Union for Sustainable Return of BiH, nearly 200,000 citizens of all ethnicities have left BiH since it started keeping records, coincident with the date of the last census, in 2013 (*Sarajevo Times* 2020). The population figure as recorded by the UN has fallen by nearly 150,000 (4.3 per cent), to 3.28 million, since 2015.<sup>4</sup> The reasons for their departure cannot be reduced only to the need for economic survival: people are also leaving, and increasingly so, as a result of the social and political instability and the general sense of insecurity (Balkan Diskurs 2020).

In the course of the last three years, Una-Sana Canton (in the north-west of BiH), in particular, has had to struggle with the new wave of migration; that is, the intensified problem of the arrival of migrants from worldwide countries at risk who wish to settle in the EU. Jadranka Polović, the Croatian political scientist, commented thus in an analysis by *Global Analitika* about the new migration situation:

I think that countries in the region, such as Serbia and Greece, are transferring their migrants to BiH. There is a very porous border on the Drina. There is a clear discrepancy between the number of migrants entering Serbia and the official number of those currently in the territory. Using different routes, they later cross the entities in BiH and arrive at the Croatian border. Migrants are also allowed from Greece, via Montenegro, so that they arrive in BiH using this corridor. So, BiH is actually a key point where I think that, in some way, this situation will come to a boil. (Global Analitika 2018)

At the same time, being a FRONTEX member and charged with protecting the external border of the European Union (i.e. here with BiH), the Republic of Croatia does not allow migrants to enter Croatia from BiH nor to continue their journey towards other EU member states. According to allegations from migrants and some non-governmental human rights organisations, Croatia often violates the human rights of migrants and there have been some particularly high profile cases which have attracted significant media attention, with criticisms also being voiced by Amnesty International and other NGOs. Dunja Mijatović, Commissioner for Human Rights at the Council of Europe, sent out this Statement in autumn 2020 (Commissioner for Human Rights 2020):

... In this respect, I note that the alarm has also been raised by the independent national human rights institution of Croatia, and by international bodies, most recently two UN Special Rapporteurs. In addition to my own work, various organs of the Council of Europe have relayed these concerns, such as the Special Representative of the Secretary General on Migration and Refugees in his fact-finding report of April 2019, and the Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly.

I reiterate my call on the Croatian authorities to stop pushbacks and border violence and eradicate impunity for serious human rights violations committed against migrants by law enforcement officers...

Addressing this issue within BiH has also gained a 'nationalist' colour in that the RS authorities do not want to participate in the provision of care for migrants on the

4 UN Data for total population, with filters of 'Bosnia and Herzegovina', '2020' and '2015' applied, obtained from: <http://data.un.org/Data.aspx?d=PopDiv&f=variableID%3a12>.

grounds that ‘they come from Muslim countries’. In the meantime, BiH (and Una-Sana Canton) cannot any longer deal with the burden since it does not have the capacity to provide adequate accommodation for refugees.

### *Impact of transition and the privatisation process*

The period of transition, which has been underway throughout these years and whose main feature is privatisation, has resulted in the devastation of economic wealth and capacities and the unbearable impoverishment of workers, a loss of jobs and unresolved matters concerning payments for healthcare and pensions insurance whose consequences have not yet been completely bottomed-out. The transition towards the market economy has, like with privatisation, not produced the anticipated results in the form of new jobs or social security.

The entire post-war development of BiH has been characterised by its inability to ensure for its citizens social security, jobs and decent work, including adequate protection for those who cannot make their living based on employment. The social policy arena has not been pursued consistently in the context of all citizens being able to exercise universal rights to healthcare, social and family protection and education, although some individual laws have been drafted mainly in relation to individual social groups and with the substantive aim of preserving the social peace. Such an approach has resulted in the unfair distribution of resources and to the detriment of all those particularly in need. Moreover, the laws related to labour and social affairs have not been synchronised between the entities or at the level of the state, frequently resulting in discrimination in terms of social protection.

As a state, BiH has ratified important international social policy documents, including the European Social Charter and the International Covenant on Economic, Social and Cultural Rights, and, following incorporation into national legislation, is committed to their implementation, particularly concerning monitoring. Unfortunately, studies show that the biggest problem lies in the area of implementation, with perpetrators remaining mainly unsanctioned while workers and other relevant categories suffer the worst consequences.

Consequently, the labour picture has been marked for years by the drastic violation of workers’ rights, often with numerous forms of discrimination. In particular, collective bargaining, or negotiations on working conditions and the execution of collective agreements, has been endangered for years even though trade unions have tried to insist on them. Actual practice in BiH has, therefore, not seen the adequate and efficient protection of workers’ rights based on international conventions and national legislation. In the ITUC’s 2020 Global Rights Index, Bosnia and Herzegovina is rated ‘4’, meaning that workers can expect ‘systematic violations of rights’ (ITUC 2020).

The level of trust in trade unions is rather low, with unemployment playing a big role in this. Public sector trade unions dominate within the trade union confederations, both in terms of density and in terms of financial power. Meanwhile, the level of organisation in the private sector is rather low (density stands at around 10 per cent).

Even so, neither do workers trust their employers or the institutions which have shown little interest in workers' problems or in proposing models of how to resolve them.

There is a huge number of unemployed people in BiH – more than half a million – alongside a significant number of unregistered workers, numbering around 200,000; these figures are accompanied by a majority of the population (55 per cent) being inactive, representing the loss of a major amount of potential and creating an appalling social picture in BiH.

Closely related is the number of pensioners living in BiH at or below the poverty line – in 2017, around two-thirds were on the minimum pension of BAM 326 (€166) while the average pension was just BAM 370 (Jelenek 2017). The ratio of employed people: pensioners amounts to 1:1.1, which does not promise any quick resolution of the problem.

The problem, so characteristic of the social situation in BiH, is the growth of 'new poverty' and/or the disappearance of the middle class which used to have a comparatively high standard of living before the war but which is now facing poverty. These are the social consequences of privatisation, carried out through an organised system of corruption; namely, they are the 'transitional losers'. We have, since recently, a category of the working poor (those paid minimum and low wages): the minimum wage in the Federation of BiH is €207.58 (unchanged in the last five years); while in RS it is €265.87.

According to global standards, if a four-member family lives on €250 a month, it is on the verge of poverty, which implies a majority of households in BiH. At the same time, according to World Bank (WB) data, BiH has around 100 multimillionaires with a total wealth of some BAM 10bn.

A sizable number of unemployed people, problems with the slow creation of new jobs and an inadequate education system that does not produce the requisite profile of people needed in the labour market has pushed workers into an unfavourable position where they can be abused by employers. It is even worse as regards dignity at work that workers too often concede by working in minimum conditions, for a minimum wage, often without a labour contract, and in insecurity, just to keep a job.

This is one of the reasons why trade unions have objected to the adoption of new labour legislation in both entities: the difficulties in achieving improvements to rights, in the context of unproductive social dialogue and the flexibilisation of labour relations, based on the easier dismissal of workers, part-time work and only limited application of collective agreements, is understood as a neoliberal attack on workers' rights. On the other hand, the authorities have exaggerated their arguments that new labour legislation would resolve these problems.

As Elma Demir pointed out as far back as 2011:

It is difficult to be an optimist in terms of a more active role for trade unions in BiH, due also to the number of organisations, the entity-based divisions, the inherited level of inactivity and political influence, which altogether weakens the power of trade unions in social dialogue. A particular problem is the impeded tripartite dialogue at state level, which has never

been established, also for political reasons, despite ILO recommendations and EU conditions to establish a Socio-Economic Council at this level.<sup>5</sup> (Demir 2011)

Despite these unsatisfactory living conditions, there have been no major protests of workers in the course of all these years, only sporadic ones. The only serious protest – social unrest, even – was noted in 2014 substantially on the territory of the FBiH entity. Marko Radovanović recorded that this was:

... a series of social protests which have been the most significant civic mobilisations since the end of the war. While disaffected citizens set fire to the buildings belonging to the government and political parties in Tuzla, Sarajevo, Zenica, Mostar, at least four cantonal governments resigned. By Bosnian standards, this was an unprecedented wave of accountability, even if the resignations in question mainly came about due to the politicians' vested interest in political survival. For the first time in a generation, the political discourse of BiH was marked by a growing recognition on the part of the political elites of the possibility of widespread civil unrest as a result of their policies. In short, the people had finally decided directly to intervene in the political process. (Radovanović 2015)

### Attempts to amend the Dayton constitution

The issue of the constitution is a major one in BiH. It is clearly a serious political question which, in turn, is most probably the fundamental reason why all the serious attempts to amend the BiH constitution have failed during the last 25 years. And there have been several such attempts and initiatives by the international community, primarily the USA, including individual initiatives by NGOs, as well as by some of the political parties.

The ample shortcomings of BiH's Dayton-based constitution, in so many aspects both incomplete and limiting, had already surfaced by the early 2000s with the need for change and the amendment of its clauses beginning to appear in discussions. The most serious attempt at constitutional reform in BiH was reinforced by a December 2009 decision of the European Court of Human Rights in Strasbourg in the case of Sejdić and Finci v. BiH. In the years following this case, these discussions intensified and continued. The outcome of the case established the presence of systemic constitutional discrimination against individuals who did not declare themselves to be members of one of the three constituent nations of BiH.<sup>6</sup> This obliged the state of Bosnia and Herzegovina to seek to insert provisions into the BiH Constitution that would allow political participation to people from outside the constituent nations in BiH, including allowing them to be nominated for a position in the BiH Presidency or as delegates in the House of Peoples of the BiH Parliamentary Assembly.

- 5 Editor's Note: It is worth pointing out that the European Commission's 2020 Progress Report regarding BiH refers to the poor social dialogue at entity level, particularly in FBiH, and to the – continuing, given the time interval of no less than nine years – lack of a Socio-Economic Council at state level. (See also Allen 2020 [elsewhere in this issue]).
- 6 Dervo Sejdić was Roma and Jakob Finci Jewish; both were notified by the Central Electoral Commission that they were thus ineligible to stand for elected office.

Other court cases followed this Decision, namely in the Zornić, Pilav and Šlaku cases. However, the ruling structures in BiH have, ever since Sejdić and Finčić, been unable to reach a constitutional compromise in relation to this case or any of the others. Indeed, the only change in the constitution was made in 2009, after the adoption of an amendment under which the District of Brčko was re-defined as a unit of self-government under the sovereignty of the state.

The first significant approach to constitutional change in BiH took place after the Venice Commission Report in 2005, which highlighted the problems within the constitutional and legal framework. Following this Report, the US Ambassador in BiH and the American administration opened talks with political leaders in BiH on the amendment of the constitution. This is how a succession of proposals were made, known as the 'April Package', the 'Butmir Package' and then the 'Prud Agreement'. Of these three attempts, the most successful was the April Package which even got as far as a parliamentary procedure although it was not successful. Neither the Butmir Package nor the Prud Agreement, which were also specific attempts to amend the constitution, reached parliament.

In the course of preparations for the April Package of amendments in 2006, the American Institute for Peace intensified talks with the leaders of seven political parties – five from the ruling coalition (SDA (Party of Democratic Action); SBiH (Party for Bosnia and Herzegovina); SDS (Serb Democratic Party); HDZ BiH (Croat Democratic Union of BiH); and PDP (the Party of Democratic Progress); and two from the opposition (SDP BiH (Social Democratic Party of BiH); and SNSD (Party of New Social Democrats)) – about a programme of amendments to the Dayton constitution. By exerting intensified pressure, the Institute reached approval with these parties to support a minimal programme of constitutional reforms.

The proposed amendments to the BiH constitution applied to human rights and freedoms (amendments here were not submitted to the parliamentary procedure); the competencies of and relations between the institutions of Bosnia and Herzegovina and the entities (extended state-level competence); the Parliamentary Assembly (an increase in the number of representatives); the Council of Ministers of BiH (an increase in the number of ministries at the level of the state); and the BiH Presidency (the appointment of members from among delegates in the BiH Parliament).

Unfortunately, however, the April Package of amendments did not get the necessary two-thirds majority in the BiH parliament: it was two votes short (26 votes in favour whereas a requirement for a two-thirds majority set a bar of 28 based on the 42 votes in the Assembly).

In both content and reach, the proposed amendments were important as they created the conditions for strengthening the state and facilitating its more effective and efficient functioning. It is worth noting that this was the first time that political parties from both entities – ruling coalition and from the opposition – had managed to reach consensus on constitutional changes. By failing to adopt the April Package, however, primarily thanks to the Party for BiH and its leader, major changes followed in the political attitude and activities of the parties from RS. Such consensus has never again been attained and, furthermore, all political processes went after this

in the opposite direction, raising a question mark over whether the possibility for reaching consensus on changes to the BiH constitution has been lost forever.

The question of amendments to the constitution is no longer explicitly on the agenda, although there is an awareness that the implementation of the Strasbourg Court decisions, primarily that in the case of Sejdić and Finci, is a requirement for BiH to obtain EU candidate status. Implementation of these decisions would mean that constitutional changes are back on the agenda.

A new turn in the attitude of the international community followed as of 2009, including in terms of the influence of the OHR and the High Representative, which placed increasing emphasis on national forces and politicians taking the responsibility for processes within BiH. The last decade has, however, been marked by an instability in which the national authorities, led by the ethno-national parties and their leaders, have continually produced fresh conflicts. This has created an environment of political insecurity in which the ethno-national elites of Serbs and Croats have turned respectively towards Serbia and Croatia, as if these were their 'mother countries'. In this way, they have started to depart from any attempt to make BiH a functional state.

The analyst Srećko Latal concludes pessimistically about the implications of this development in the approach of the international community:

This further insistence on total ownership of the processes, in a situation where all three ethnic-political blocs play by different rules and have different visions of the country's past, present and future, threatens to lead further to destabilisation or even a break-up of the country, which would almost certainly result in new ethnic conflicts. This leads to the conclusion that, without stronger and more concrete international engagement, it cannot be expected that a further escalation of the crisis will be stopped or that there will be a gradual stabilisation of the situation in BiH. (Latal 2015)

After another failed attempt in 2012 to resolve the matter of the implementation of the outcome in Sejdić and Finci, the international community decided to abandon attempts to make changes in the political sphere and turned instead towards economic reforms. This resulted in the British-German Initiative in November 2014 and the adoption of the 'Compact for Growth and Employment', which offered measures aimed at initiating and modernising the BiH economy. Soon after, the so-called 'Reform Agenda' was adopted in 2015 and the national parties committed themselves to implement reforms without delay. However, it became clear a long while ago that the goals set in the Reform Agenda have failed to produce the expected results given that the implementation of all the reforms has been delayed due to the visibly complicated nature of political relations within BiH.

### Journey towards the European Union

One of the rare questions that has gained consensus among both citizens and political parties is the determination that BiH should join the EU. Such a determination has never been at risk. Thus, the question as to why the meeting of the accession requirements set before BiH has become rather slow gains ever greater relevance.

The journey of BiH towards the EU began in 2002, once the country became a member of the Council of Europe, itself a particularly significant event. And then in 2003, the European Council announced at Thessaloniki that the future of this region was in the EU, based on the framework set out by the Stabilisation and Accession Process, and that BiH too had the possibility to become a member.

The Stabilisation and Association Agreement (SAA) for BiH, signed on 16 June 2008 in Luxembourg, established the framework for the implementation of the legal, administrative, institutional and economic reforms which would bring the country closer to the EU. Two weeks later, the Interim Agreement on Trade and Trade-Related Matters came into force creating a free trade zone between BiH and the EU, its main trading partner. However, the SAA did not become a reality until 1 June 2015, stalled by a number of failed obligations on the part of BiH, including over the outcome of Sejdić and Finci. Now it is in place, the Agreement has significantly increased the level of BiH's responsibilities in the area of European integration given that the reform task has been expanded to include not only trade-related matters but also EU legislation in general.

Bosnia and Herzegovina filed its application to join the European Union on 15 February 2016 and, in December of that year, the European Commission sent a detailed questionnaire, consisting of 399 pages, to BiH (Delegation of the European Union 2016).

The benefits from meeting the conditions of EU membership are not only in the dimension of financial and material support to BiH, which is indeed quite significant; it is also in that:

EU pre-accession funds ... help the beneficiaries make political and economic reforms, preparing them for the rights and obligations that come with EU membership. Those reforms should provide ... citizens with better opportunities and allow for development of standards equal to [those enjoyed by] citizens of the EU.<sup>7</sup>

Between 2007 and 2013, Bosnia and Herzegovina received €615m from the EU's Instrument for Pre-Accession Assistance (IPA), provided to EU candidate and potential candidate countries in the form of financial assistance. The second phase of IPA, between 2014 and 2020, provided a total of €552m in assistance. IPA III, in the context of the continuing negotiations and controversy on the Multi-annual Financial Framework, will seek to support the EU's Economic and Investment Plan for the western Balkans.

Two years after it had filed its application, BiH submitted its answers to the questionnaire, following up by filing the missing answers early in 2019. Yet, in May 2019, instead of gaining the status of candidate county, BiH received a set of new conditions, contained in 14 key priorities identified in the Commission's Opinion in response (European Commission 2019) which BiH has to meet to become a member of the European family.

7 Taken from the IPA – Overview page of the Delegation of the EU to BiH website, at: [http://europa.ba/?page\\_id=41933](http://europa.ba/?page_id=41933).



The recent EU Progress Report from October 2020 (see also Allen 2020) made clear that BiH is behind schedule; that it is actually at the bottom of this process among the states included in the process of stabilisation and association; and that there is much to do to ensure a satisfactory level of implementation of the conditions following the publication of the European Commission's Opinion.

Such a negative assessment can, in the main, be attributed to two important elements. First, the lack of readiness on the part of the political elites to carry on with the necessary reforms within the declared European integration process; and second, that the intentions of those same political elites are reflected by their permanent blockade of the functioning of the institutions of the state which, in point of fact, prevents Bosnia and Herzegovina from advancing towards the European Union.

It is necessary to highlight that the BiH Constitution still contains the elements of systemic discrimination which were the subject of the court cases, so the Progress Report also points out that the four decisions of the European Court for Human Rights, namely in *Sejdić and Finci*, *Zorić*, *Pilav* and *Šlaku* have not yet been implemented. Consequently, the Progress Report instructs the institutions of Bosnia and Herzegovina to complete the necessary constitutional reforms which would allow all the citizens of this country to exercise the same political rights. The term 'constituent nations', used most commonly by the national political leaders, is not mentioned but BiH is requested to take steps to secure and guarantee equality to all citizens in all matters referring to their rights.

Thus, even the Commission's own Progress Report suggests that the Dayton Agreement is a blockade on the path of BiH to the EU, as well as on the development and transformation of this country into a modern European state.

The 2020 Progress Report nevertheless offers the hope that the problems in BiH can be solved.

The same is also true in respect of the Communiqué published following the meeting of the Steering Board of the Peace Implementation Council in June 2020. This provided a serious warning to the local political actors in BiH that it was their obligation to abide by the Peace Agreement, and all its Annexes, including respect for all the decisions adopted by the High Representative.

The PIC SB reminded all parties of their obligation to comply fully with the GFAP, all its annexes, and decisions of the High Representative. It reaffirmed its unequivocal commitment to the territorial integrity and fundamental structure of BiH as a single, sovereign state comprising two entities. The PIC SB restated that the entities have no right to secede from BiH and only exist legally by virtue of the BiH Constitution. The PIC SB reminded authorities in BiH that the BiH Constitution is an integral part of the GFAP and that the decisions of the BiH Constitutional Court are final and binding and must be implemented. (OHR 2020)

The future will tell us whether this warning is sufficient as regards those who often challenge the unity and sovereignty of BiH as a state. It might be expected from this that the international community re-intensifies its interest in BiH and assists BiH to expedite meeting the requirements for EU membership which would, finally, serve as a guarantee of its survival as a state.

The insistence of the Steering Board on the need to fulfil the 14 key priorities set out in the European Commission's Opinion – that an action plan on this should be prepared and adopted, alongside the delivery of a methodology for a programme of EU integration, was identified as the lead priority to have come out of the meeting – should particularly be welcomed. The Steering Board also expressly welcomed the initiative of:

[T]he BiH Presidency to lead reforms aimed at fulfilling the European Commission's Opinion 14 key priorities [and] expressed appreciation for the Collegium for European Integration to take forward the initiative. In this regard, the PIC SB also called on all actors to cooperate with the aim to move forward on BiH's EU path... (OHR 2020)

Highlighted in particular were the need for reforms related to the rule of law and fighting corruption, with an emphasis on reform in the area of the judiciary. The commitment of the international community has thus, once again, been expressed in terms of supporting the authorities in BiH to achieve these goals.

The national authorities have already prepared an EU integration plan for BiH, with the deadline for its completion being late 2021.

### The way forward

The pluralisation of the political system in BiH, established following the first multiparty elections in 1990, was predominantly based on ethnic lines and considerations. The result of this 'ethnicised grouping' among the political parties was that the political elites missed out on seeking the necessary broader civic support for their policies.

The elements that determine the constitution of Bosnia and Herzegovina, contained in Annex 4 to the Dayton Peace Agreement, are based on the supremacy of collective rights and the related proportional representation of the three constituent nations as a fundamental principle in the process of political decision-making. In its opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative, the Venice Commission assessed that the decision-making mechanisms at the level of BiH as a whole are not efficient and rational, but rather difficult and with excessive possibilities for blocking any decision. Similar assessments are also contained in the European Commission's Progress Report for BiH, the conclusions of the European Parliament and the resolution of the Parliamentary Assembly of the Council of Europe (see also Dedić 2015).

It is particularly obvious that BiH has now become a hotspot for the different influences and aspirations of neighbouring countries – Serbia and Croatia, on the one hand; and the broader geopolitical picture, dominated by the Russian aspiration to increase its influence in the western Balkans, on the other.

It should not be disregarded that these different aspirations, being striven for within BiH, have also found local supporters among the ethnic leaders of Serbs and Croats in BiH. This is also significantly supported by the ever-louder insistence of HDZ BiH, led by Dragan Čović and assisted intensively by SNSD leader Milorad Dodik, on the amendment of the BiH electoral law in favour of the so-called 'legiti-

mate representation of the nations'. This is actually a path towards the division of BiH. The 'legitimate representation of the nations' does not exist in any electoral system in the world and neither is it part of the original Dayton Agreement. Nevertheless, this matter has become the subject of blackmail and a block on all processes in BiH. It is also the reason why, no less than two years after the 2018 general elections, there has been no new government for the Federation of BiH.

According to Dayton, the whole of Bosnia and Bosnian identity is constantly reduced to the three 'constituent nations'. Nowhere in the European political world today exists in such a primitive way.

Ethno-territorial nationalism directly denies the state, sovereignty, identity and any idea of Bosnian-ness. It undermines in detail the entire state of Bosnia and Herzegovina. (Lavić 2019)

One idea that has been circulating recently is that BiH should join the so-called 'mini Schengen' set up between Serbia, North Macedonia and Albania. Some analysts have commented that the:

Bold and visionary idea of a '*Mini Schengen*' project is the most important project ever since the fall of the Socialist Federal Republic of Yugoslavia (SFRY). The project evokes optimism and instils hope that a better and more prosperous future can be secured in this part of the world. Implementation of the '*Mini Schengen*' project would contribute to [the] homogenization of the European area and provide for [the] practical realization of European freedoms of movement of people, goods, capital and services. This would render senseless the Balkan nationalisms and at the same time strengthen the EU... (IFIMES 2020)

However, there is also an opinion that BiH does not need a 'Mini Schengen' given that the international agreements signed by BiH already secure the unimpeded movement of people, goods, capital and services.

## Conclusion

Two and half decades since the war, BiH leaders and citizens are not yet able fully to overcome the ethnic, ideological and political divisions. The country has been unable to reach consensus in terms of its past and on the way forward. The result of these differences has been that citizens, leaders and civil society in BiH have not managed to resolve the multiple challenges that endanger the process of the development of the country and its realisation of political, social and economic stability.

We hear so often that it is necessary to build a model for the equality of citizens in the entire territory of BiH – but this should be in the specific context that a:

Bosnian civic state is the only secure framework for the protection of citizens from the organised ethno-clerical oligarchies that plunder state resources and abuse citizens at all levels of government and in all structures of social life. (Lavić 2020)

Of course, it is not possible to build a joint identity based on giving up Bosniak, Serb and Croat identity without incorporating a genuine affirmation of civic identity.

At the same time, the incorporation of European standards based on the *acquis communautaire* into the laws of Bosnia and Herzegovina will be the goal of future reforms. Among the most necessary reforms is constitutional reform. We know that, as long as Bosnia and Herzegovina is not invited to join the European Union, the engagement of the international community will continue to be necessary, including the use in practice of the High Representative's 'Bonn powers'.

Thus, the historic outcome of the implementation of the Dayton Peace Agreement is a Bosnia and Herzegovina in the European Union and in NATO. There is no other option for the future of BiH.

Therefore:

The question of all questions 25 years since the Dayton Peace Agreement is the question of the necessity for expediting the integration of the state of Bosnia and Herzegovina in the Euro-Atlantic institutions. There is a need that the institutions of the European Union and European Commission, due to the geopolitical changes in Europe and the world, and for the purpose of strengthening the peace, provide bigger political, economic, and technical assistance for the faster integration of Bosnia and Herzegovina in the European Union, so that Bosnia and Herzegovina could fulfil the conditions to join the European Union by 2030 (Pejanović, forthcoming 2021).

Furthermore:

All the actors in BiH, including political elites, universities, academia, cultural and artistic societies, freelance intellectuals, associations of writers and journalists, trade unions and veteran organisations, the non-governmental sector and, in particular, the younger generation have to do their utmost that competency, responsibility and innovation must take the place of what has, over the last two decades, been flooded by pure amateurism, utter unconcern and demagoguery. (Vuković 2015).

Unless ethnicity, or affiliation to a single nation or party which 'on behalf of its nation' 'protects' only its own national group in Bosnia and Herzegovina, stops being the basic condition for conducting office in government or in the public institutions, there is little chance of progress other than at the pace of a snail. Thus, a civic state is the only option under which BiH may make progress and realise a stable and harmonious life for its citizens.

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