

ODIHR Submission of Information about an OSCE participating State or Partner for Co-operation under consideration in the Universal Periodic Review Process

Participating/Partner State: Bosnia and Herzegovina

UPR Session and Date of Review: 34th Session, 2019

Background

Bosnia and Herzegovina (BiH) has been a participating State in the Organization for Security and Co-operation in Europe (OSCE) since 1992 and has thus undertaken and has recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE documents.¹

The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in BiH and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms in Bosnia and Herzegovina.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE participating States to assist them in implementing their human dimension commitments. ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area.

Upon request by authorities of a participating State, and OSCE field operation or another OSCE institution, ODIHR reviews draft or enacted legislation of OSCE participating States on topics relating to the human dimension. The legal reviews and opinions, often produced in co-operation with the Venice Commission of the Council of Europe, are available at www.legislationline.org.

Legislation reviewed by ODIHR

In 2014-2018, following legal review (on topics other than elections), where concerns still remain, was issued on legislation or draft legislation of BiH:

ODIHR Comments on the draft law on Public Assembly in the Federation of Bosnia and Herzegovina (Opinion No: FOA-BiH/323/2018), issued on 24 April 2018²

Although it is positive that legislation on “public assembly” is planned to be enacted in the Federation of Bosnia and Herzegovina (FBiH),³ the draft law, which is still pending in the

¹ Compendium of OSCE Human Dimension Commitments, vol 1 and 2; Astana Commemorative Declaration, 2010.

² ODIHR Comments on the draft law on Public Assembly in the Federation of Bosnia and Herzegovina, 24 April 2018 (available at <http://www.legislationline.org/documents/id/22043>)

Parliament, has, generally, a restrictive approach to Freedom of Assembly and does not facilitate the enjoyment of this fundamental human right. In this Opinion, ODIHR found that the reviewed text placed heavy burdens on organisers of assemblies.

Additionally, the draft law also contains severe restrictions on venues of assemblies, including obligations to provide a detailed request for holding an assembly, to have a clear structure of organizers, maintain an order and places strict duties on stewards.

For the draft law to be compliant with international obligations and standards, ODIHR recommended to:

- Introduce legislative amendments to include non-citizens in FBiH in order to respect the international commitments on non-discrimination;
- Employ a simpler legal definition of assemblies, in line with international standards, without listing many types of assemblies. This definition should also clearly provide for spontaneous assemblies;
- Introduce rules emphasising that prohibition of assemblies is a means of last resort, as the authorities must consider less drastic measures first and ensure that restrictions on content must be linked to a risk of imminent violence and not solely the content itself;
- Remove absolute restrictions on the duration of assemblies as an assessment on the necessary duration should be assessed individually as well as emphasise that peaceful assemblies can take place unless restrictions are absolutely necessary;
- Introduce appeals procedures to challenge negative decisions regarding assemblies.

Gender Equality in Politics

In the past and current convocation, women make up 21.4 per cent of the lower house of the Parliamentary Assembly of Bosnia and Herzegovina. This demonstrates how challenging it is to sustain progress in the area of gender equality, despite existing legislated candidate quotas in BiH of minimum 40 percent for either sex, with strict placement rules. Current women's representation in the parliament of BiH is below the OSCE average of around 28 per cent and below the UN Economic and Social Council target of 30 per cent of women's participation in parliaments. In turn, Bosnia and Herzegovina is encouraged to strengthen efforts in ensuring effective participation and influence of women in politics at all levels.

ODIHR appreciated the collaboration with political parties in BiH in advancing gender equality in their structures. In the period of 2016- 2017, in cooperation with the OSCE Mission to BiH, ODIHR has been conducting gender audits of all eight parliamentary political parties, identifying discriminatory practices that can perpetuate gender inequality and hinder women's participation in politics. These findings were recorded in individual and confidential gender audit reports of political parties. Each party report included more than twenty recommendations related to their processes, procedures, structures, culture and activities from a gender perspective. In 2017, the reports were used as a foundation to develop individual gender action plans for the period of 2018-2019 for the seven involved parties (Alliance of Independent Social Democrats (SNSD), Union for a Better Future of

³ As it is pointed out in the explanatory note to the draft law, it is problematic to have only cantonal legislation, as fragmented legislation renders it difficult for the authorities to act according to the law.

BiH (SBB BiH), Party of Democratic Progress (PDP), Serb Democratic Party (SDS), Party of Democratic Action (SDA), Croatian Democratic Union of Bosnia and Herzegovina (HDZ), and Democratic Front (DF)).

Election-related activities

ODIHR deployed an Election Observation Mission (EOM) for the 7 October 2018 general elections in Bosnia and Herzegovina. The report from this EOM noted that the elections “were genuinely competitive but characterised by continuing segmentation along ethnic lines. Voters were presented with a wide choice of candidates, who were able to campaign freely. Contestants, however, focused more on personal attacks and fearmongering than on discussing political alternatives. Dependence of media on political and business interests often caused biased coverage. Instances of pressure and undue influence on voters were not effectively addressed. Long-standing deficiencies in the legal framework remain and recent reform discussions stalled due to political disagreements, further eroding trust in public institutions. Overall, the upper levels of the election administration ran the elections efficiently. On election day, polling station commissions worked transparently but faced some difficulties with following procedures, particularly during counting”.⁴

ODIHR, within its mandate, offered 22 recommendations to improve the electoral legislation and practice, including priority recommendations related to revision of electoral legal framework, the method of formation of polling station commissions, preventing pressure on voters, strengthening transparency and accountability of campaign finances, and measures to guarantee the voters’ right to a free and secret choice.

⁴ <https://www.osce.org/odihr/elections/bih/409905?download=true>