



Comparative overview of the 2014 Progress Report for Bosnia and Herzegovina by the European Commission and the 2014 Alternative Progress Report for Bosnia and Herzegovina by the Initiative for monitoring EU integration of Bosnia and Herzegovina

In July 2014, the Initiative for Monitoring European Integration of Bosnia and Herzegovina (BiH) published its *2014 Alternative Progress Report: Political Criteria*, created through a joint effort of several dozens of individuals and organizations from all over Bosnia and Herzegovina and based on their concrete experiences and recommendations. The Report focused on the political criteria for European integrations, i.e. issues concerning human rights, the functioning of the state apparatus, the judicial system, anti-corruption measures and transitional justice. It was referred to the EU Delegation in BiH in July of this year with the aim of presenting civil society’s take on political issues, and thereby contributing to a more accurate and more complete overview of the state of things in those areas which are of importance for the European integration of BiH. Considering that three months have passed between the referral of the Alternative Report and the publishing of the official report, it is safe to say that the EU Delegation in BiH has had enough time to inform the European Commission about the conclusions presented by civil society organizations in the Alternative Report.

Upon the publication of the official Report by the European Commission, the Initiative for monitoring EU integration made a comparative overview of the official and the alternative reports in order to ascertain the extent to which the European Commission acknowledged the findings and recommendations of civil society organizations in the making of its Progress Report. Unfortunately, it has become obvious that the Report of the European Commission contains only a few findings of the Alternative Report and has omitted comments related to key legal domains and burning issues in Bosnia and Herzegovina. In some cases, the Report of the European Commission not only disregarded the findings of the Alternative Report but included views diametrically opposite to those presented by the civil society. This is especially concerning since the findings in question relate to cases of human rights violation which should be a priority in the process of European integration.

Besides the disregard for the point of view presented by the civil society the European Commission also failed to include the gender perspective in the conclusions of all sections except the ones directly related to these issues. The European Commission has also shown other disturbing tendencies in this year's Progress Report. The Report displays a contradictory attitude to one of the key problems for the European integration of BiH - the non-existence of a coordination mechanism. State institutions have been criticized for their failure to create common strategies and policies on state level, while the establishment of such mechanisms in Republika Srpska, especially in those areas dealing with the approximation of legislation with *acquis*, has been met with approval. It is hard to explain such an approach from the European Commission, especially when considering a statement found in the Report that “ the continued use of divisive rhetoric by some political representatives and questioning of Bosnia and Herzegovina’s capacity to function as a country had a negative impact on cooperation between the Entities and the functioning of the State.” However, although the primary reason for the country's lack of a coordination mechanism (and many other common policies) is Republika Srpska's insistence that the entities should go their “separate ways“ in joining the EU, its responsibility for the constant obstruction of progress and the its establishing of coordination mechanisms on entity level as well as between country and entity has not been recognized. Instead, the institutions of Republika Srpska have been openly lauded several times for carrying out exactly those types of policies which are otherwise criticized in the Report.

In the forthcoming part, we give a brief overview and compare key points that deal with political criteria in both reports, whilst determining the extent to which the findings from the Alternative Report are present in the European Commission's official 2014 Progress Report for Bosnia and Herzegovina.

The inclusion of findings and recommendations from the Alternative Report in the official Report of the European Commission

Findings and recommendations omitted from European Commission's 2014 Progress Report for Bosnia and Herzegovina

1. Democracy and the rule of law: the Constitution

The Report states that the European Union has intensified its efforts in spearheading the dialogue between political leaders on issues of constitutional reform and election laws, with the aim of implementing the judgment of the European Court of Human Rights (ECHR) in the case of „Sejdic and Finci“. Negotiations were led by Stefan Füle through a so called “high level dialogue” and the Report states that although the negotiations brought about significant progress, ultimately they did not lead to an agreement and were therefore abandoned in February 2014.

Comment: The Alternative Report states that the process of negotiating the implementation of the „Sejdic and Finci“ judgment was conducted outside the legal institutions and placed in the hands of party leaders, in addition to being continuously misused for the promotion of various political agendas such as solving „the Croatian question“. The Report of the European Commission completely ignored these facts as well as the recommendations of civil society organizations claiming that negotiations should be carried out within an institutional framework and not in closed meetings between party leaders and European Union officials. The European Commission Report presents non-institutional negotiations on constitutional reform as a positive, though ultimately unsuccessful, step forward. The need to ensure that these processes take place within institutions was not highlighted as a necessary step to be undertaken once new structures assume power. Also, no attention was given to the remark that the negotiations themselves focused primarily on solving the „Croatian question“ instead of ensuring political equality for those citizens who are not members of constituent peoples, which is the real issue of the ECHR's judgment in „Sejdic and Finci“ and one of the main prerequisites in the process of European integration.

2. Elections

The section of the Progress Report for BiH dealing with elections states the need to adopt amendments to the Law on Domicile and Residency, since the 2012 local elections in the municipality of Srebrenica brought to the surface some legal issue which need addressing. These issues, as the Report explains, pertain to the fact that the local elections were preceded by a campaign inviting voters to register and vote in Srebrenica, although this was not the place of their residence. The Report also suggests these amendments to the Law on Domicile and Residency need to be adopted for security reasons as well.

Comment: The Alternative Report offered a very detailed overview of returnee rights violations in Republika Srpska which are connected to the Law on Domicile and Residency and the issue of exercising voting rights. Representatives of the Alliance of Independent Social Democrats (SNSD) in state and RS institutions claimed that the registering of voters in Berenice was electoral fraud and began the process of amending the Law in order to legalize the currently illegal practice of canceling domicile status of returnees in RS. Although security issues were used as pretext for changing the law, it is quite clear that the process was aimed at denying voting rights to returnees from the very beginning. It is concerning that the European Commission failed to acknowledge any of the facts presented in the Alternative Report pertaining to the formerly described situation, although the activities in question violate Annex VII of the Dayton Peace Agreement which states that legal regulations in BiH must not have discriminatory intentions or consequences for the returnees. The European Commission has also ignored messages coming from the entity of RS that its government will continue with attempts to regulate domicile/residency rights on entity level despite the decision of the Constitutional Court deeming such legal acts unconstitutional.

It is extremely disturbing that the European Commission chose to completely ignore the findings from the Alternative Report, while at the same time accepting the arguments and the rhetoric of the government of RS and its parliamentary parties by stating that the registration of voters in Srebrenica presents a „legal challenge“ and that amendments to the law are necessary for security reasons. In reality, attempts to change the law were preceded by illegal police raids which were contested even by the courts in RS. It is hard to understand European Commission's ignoring of recorded rights violations of returnees and its simultaneous support for attempts to legalize discriminatory practices.

The section of the Report dealing with refugees and internally displaced people does not mention this problem either, although it was these exactly these people that suffered direct discrimination for reasons stated above.

3. Parliaments and governments

Analyzing the work of the Council of Ministers and the Parliamentary Assembly of BiH, the Report states that the composition of the Council of Ministers changed in December 2013, as a new Minister of Foreign Trade and Economic Relations was elected alongside two deputies by a majority vote in the Parliamentary Assembly of BiH. Following street protests, the Minister of Security was also dismissed by the majority vote in the Parliamentary Assembly of BiH.

Comment: The Alternative Report highlights the dismissal of the two ministers on state level as worrying examples of law violation committed by the Parliamentary Assembly of BiH and the Council of Ministers as the highest legislative and executive powers. The Report features legal arguments supporting the claim that these dismissals breached the Law on the Council of Ministers as well as the Rules of Procedure of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina. The European Commission did not acknowledge these findings but merely stated that dismissals did in fact occur.

4. Civil society

Speaking of the work of the civil society in Bosnia and Herzegovina, the European Commission notes that the efforts of the civil society have been directed mostly at asking governments to provide protection as well as social and economic justice. The so called plenums, formed after the February protests in several cities, put forth very concrete demands referred to the cantonal and entity governments, but achieved very limited success. From the point of view of the European Commission, the civil society in Bosnia and Herzegovina is recognized as a crucial and unavoidable element which is present in all democratic societies.

Comment: The Alternative Report contains information on police brutality against the protesters, but also records the disturbing efforts of the ruling parties to portray the protests as a coup, an ethnic clash, and even as an attempt of igniting an „armed conflict“ which was clearly a tactic used with the aim of scaring the citizens. Such verbal and physical attacks on the freedom of

assembly should have been recognized as problematic by the European Commission, but the Progress Report on BiH did not feature them at all. Moreover, the violence that erupted during the February protests was mentioned only in passing, when claiming that the lack of coordination and cooperation between police forces was the reason for the inefficient police response to the protests. This implies that protesters were solely responsible for the material damage and the hundreds of wounded, while completely ignoring police brutality and unjustified random arrests.

Also, the section on civil society does not include information found in the Alternative Report about the attempts of introducing restrictive legislature for civil society organizations in the Federation of BiH (FBiH), as well as continued threats to non-government organizations in Republika Srpska. Although it was rejected, the draft of the Law on Associations and Foundations shows the intent of the government of FBiH to directly control the work of civil society organizations by circumventing courts and introducing repressive stipulations in the proposed law. On the other side, non-government organizations in RS found themselves under increased pressure manifested, among other things, in the publication of a „black list“ issued by the ruling party in this entity. Publishing this list was, in a way, an open call to lynch individuals and organizations that are supposedly „undermining the constitutional order of RS“. None of these disturbing tendencies were mentioned in the Report by the European Commission.

5. Refugees and internally displaced people

In the section dealing with the refugees and displaced people, the European Commission states that not all collective centers have yet been closed and lists data on how many people are still waiting to return, what are the activities of the institutions when it comes to the social rights of this population and what is the current situation with removing minefields left over from the war. It also states that there is no mechanism in place to ensure a transparent distribution of help and no coordination necessary to handle this issue. Furthermore, the Report states that the Parliament of FBiH has passed a law enabling returnees from RS to exercise their social rights (pension and health care) in FBiH.

Comment: The Alternative Report mentions problems that arose with the adoption of new legislation in RS, namely the Law on Land Survey and Cadastre and the Property Tax Law which complicate the legalization of property of returnees in RS and put citizens who live abroad in an especially precarious position by making them liable to paying fines when registering their property once they decide to return to their former places of residence. None of these findings were taken acknowledged in the official Report of the European Commission.

Information on the violation of political and citizen rights of returnees in RS have also been completely omitted from the official Progress Report, and this has been mentioned in detailed in the section on elections.

6. Protection of personal data

The 2013 census, the first census after 1991, has been deemed successful by the European Commission. The Report states that the census will contribute to better socio-economic planning

and concludes that the cooperation between the Agency for Statistics (BHAS) and the entity institutes for statistics has improved during the carrying out of the census.

Comment: All recorded irregularities during the 2013 census have been omitted from the Report. The Alternative Report especially emphasized the well-known violation of the article in the Law on Census concerning the protection of personal data which was widespread in municipal committees during the census. Furthermore, data obtained through the census have been contested by other statistical data, but this fact is also not mentioned in the Report. The official Report still claims that the census was carried out successfully in spite of numerous recorded irregularities.

Besides failing to take into account information on census irregularities, the European Commission has also ignored violations of the right to protection of personal data recorded in Brčko District, as well as the discriminatory practice of the this city government against those people who refused to declare their entity citizenship. All of these cases were presented in detail in the Alternative Report but have not included in the report of the European Commission.

7. The Rule of Law

When it comes to the reform of the judicial system, the European Commission believes modest progress has been made. The Structured Dialogue on Justice yielded some positive results in terms of regional cooperation, processing war crimes, professional and efficient work of the judiciary and should be used for all issues related to the rule of law. The Report continuously highlights the need to carry out judicial reforms on state level and to adopt a strategy and a plan of action for the following time period (which have still not been agreed upon). Speaking of transitional justice, more precisely the processing of war crimes, the Report states that the country continued with its strategy of processing war crimes but did so at an unsatisfactory pace. The work of the Prosecutor's Office has been enhanced by hiring additional staff member but still remains insufficiently effective and is in need of further enhancement.

Comment: In those sections dealing with the functioning of the judiciary, the European Commission did not acknowledge comments related to the backlog of cases where the enforcer is the municipality, the canton or the entity. Comments on the non-enforcement of decisions made by the Constitutional Court have also been ignored. The Alternative Report also featured several remarks on the lack of transparency in the process of appointing judges, such as criticizing the way in which appointment decisions are made, i.e. the fact that they usually come with no justification and that there is no possibility for appealing the decision. Criticism of the priorities determined by the Structured Dialogue on Justice has also been omitted.

In the section dealing with processing war crimes none of the priorities defined in the Alternative Report were acknowledged. Discrimination resulting from inadequate legislation in RS and affecting male and female victims of sexual war crimes was not even mentioned, nor was the analysis of inconsistent definitions of war rape, torture and enforced disappearance in legislation

on entity and state levels. Failure to adopt the Law on Rights of Torture Victims, which BiH is obliged to adopt under international law, was also ignored.

Findings and recommendations included in European Commission's 2014 Progress Report

Sections dealing with women and LGBTIQ rights are positive examples in this year's Progress Report. The Commission's reporting on these issues was as appropriate, detailed and all-encompassing as the scope of the report would allow. Taking into consideration comments on the rights of pregnant women and the non-existence of either statistical data or an adjusted methodology for collecting data on women who were victims of violence is especially commendable. The overview of the state of LGBTIQ rights provided by the European Commission includes all findings of the Alternative Report and provides new information not present in the Alternative Report. However, insufficient integration of women rights into different aspects of the Progress Report, i.e. the lack of mainstreaming women's human rights is cause for concern. Also concerning is the fact that the report focuses more on formal activities related to policy and legislation adoption, and less on the all-pervading discriminatory practices. Therefore, a stronger involvement of the European Commission is necessary in this respect.

Also, it is important to note that the Progress Report on Bosnia and Herzegovina mentions the Association of BH Journalists as a leading association in the fight for freedom of media and acknowledges some of the recommendations related to the media and freedom of expression (e.g. The Communications Regulatory Agency, slander, public broadcasting, etc.) However, certain issues have been disregarded even in this domain, such as the issue of media financing in FBiH, or more precisely, the financing of the media by the cantonal governments which was awarded without any criteria or concrete programs.

ABOUT THE INITIATIVE

The Initiative for the monitoring of European Union Integration of Bosnia and Herzegovina is an informal coalition of civil society organizations, which contributes to monitoring of the reforms and overviews the application of EU policies, laws and standards.

Active member organizations:

BH Journalists, Sarajevo
ACIPS, Sarajevo
Association for Democratic Initiatives, Sarajevo
Centre for Political Studies, Sarajevo
Center for Youth Kwart, Prijedor
Cure Foundation, Sarajevo
Helsinki Citizens Parliament, Banja Luka
Human Rights Center of the University of Sarajevo
Rights for all, Sarajevo
Sarajevo Open Centre
TRIAL Sarajevo
Why not, Sarajevo
World of Children, Tuzla
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Green Council, Sarajevo
Green Neretva, Konjic
Center for Socio-Ecological Development, Banja Luka
Perpetuum Mobile, Banja Luka
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Learn more about the Initiative: www.eu-monitoring.ba