

HUMAN RIGHTS ISSUES IN THE EU ACCESSION NEGOTIATIONS: THE CASE OF BOSNIA AND HERZEGOVINA

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ABSTRACT

Only a few years after the conclusion of armed conflict in Bosnia and Herzegovina (BiH), the country embarked on its path toward European Union (EU) accession (a process deemed essential by political elites and one of the few issues with broad consensus among its citizens). However, progress has been slow, and the reforms required to meet the Copenhagen criteria have not produced satisfactory results yet. In 2016, BiH applied for EU membership, prompting the European Commission to issue its Opinion on the Application for Membership in 2019. This document outlined 14 key priorities, covering areas, such as democracy, government functionality, the rule of law, fundamental rights, and public administration reform. The European Commission's Opinion was accompanied by an Analytical Report, a comprehensive document identifying 115 specific priorities aligned with the political and economic criteria and the chapters of the *Acquis Communautaire*. This study examines the implementation of the priorities outlined in the European Commission's Opinion, with a particular emphasis on human rights protection, the rule of law strengthening, and judicial reform. Special attention is given to the provisions introduced by the Law on Amendments to the Law on the High Judicial and Prosecutorial Council of BiH, aimed at enhancing the accountability of both Council members and judicial office holders.

KEYWORDS

European Union
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1. Bosnia and Herzegovina's EU Accession Negotiations Process: A Long and Rocky Journey

Bosnia and Herzegovina (BiH) has long pursued the goal of attaining full membership in the European Union (EU), with this aspiration formally articulated in the late 1990s (only a few years after the armed conflict in the country ended). In 1998, the Council of the EU issued a Declaration on Special Relations between the EU and BiH, expressing its commitment to strengthen relations with BiH, provided that the conditions outlined in the Regional Approach are fulfilled.² On 28 January 1999, the BiH Council of Ministers adopted the 'Decision on Launching the Initiative for BiH's EU Accession'³, followed by the Parliamentary Assembly of BiH's adoption of the 'Resolution on European Integration and the Stability Pact for South-East Europe'⁴ on 27 July 1999. These documents established the framework for BiH's EU accession and affirmed its commitment to the EU integration process. The 'Decision on Launching the Initiative for BiH's EU Accession' assigned the BiH Ministry of Foreign Affairs and the BiH Ministry of Foreign Trade and Economic Relations the responsibility to lead political and economic efforts related to EU integration.

The 'General Directions and Priorities for the Implementation of the Foreign Policy of BiH'⁵, adopted by the BiH Presidency in 2003, identified EU membership as the country's principal foreign policy objective, aligning its efforts with the Stabilization and Association Process (SAP) to strengthen institutional relations with the EU. On 29 January 2015, the BiH Presidency issued the 'Statement on the Commitment of Government Institutions at All Levels to Implement Necessary Reforms within the EU Accession Process' (subsequently endorsed by the Parliamentary Assembly of BiH later that year)⁶. The Statement emphasised the need for comprehensive reforms across all levels of government and addressed both shared and exclusive competences.⁷ This marked a shift toward an integrated approach to EU integration involving all levels of government in the enlargement process and domestic reforms.

2 | Hansen, 1999, p. 16.

3 | 'Decision on Launching the Initiative for BiH's EU Accession', Council of Ministers of BiH (1999), *Official Gazette of BiH*, No. 3/99.

4 | 'Resolution on European Integration and Stability Pact for South-East Europe', Parliamentary Assembly of BiH (1999), *Official Gazette of BiH*, No. 12/99.

5 | 'General Directions and Priorities for Implementation of Foreign Policy of Bosnia and Herzegovina', BiH Presidency (2003), No. 01-645-30/03.

6 | 'Declaration on the Commitment of Government Institutions in Bosnia and Herzegovina at All Levels to Implement the Necessary Reforms in the Framework of the EU Accession Process', 2015, *Official Gazette of BiH*, No. 16/15.

7 | One of the key factors influencing BiH's progress in fulfilling the conditions for EU accession is the country's complex state structure. The country is a complex state, often described in the literature as a federation with distinct confederal elements (Stanković, 2019, p. 4). It consists of two entities (federal units): the Republic of Srpska (RS), which is a unitary entity, and the Federation of Bosnia and Herzegovina (FBiH), which is organized as a federation comprising ten cantons. The third subnational unit in BiH is the Brčko District (BD) of BiH, a special administrative unit of local self-government, as defined in Article 1.1 of the BD Statute, which possesses extensive legislative autonomy.

The 'Foreign Policy Strategy 2018–2023'⁸, adopted by the BiH Presidency on 13 March 2018, further outlined the country's strategic priorities for the EU integration process. This document provided a comprehensive framework focusing on security, economic prosperity, protection of citizens abroad, and the global promotion of BiH. However, the core of this strategy was the explicit prioritisation of EU membership, reaffirming it as a core element of BiH's long-term foreign policy objectives.

On 23 July 2015, the BiH Presidency adopted the 'Master Plan for the Process of Integrating BiH into the EU'. This document outlined a time-bound framework specifying key activities for advancing EU integration, with responsibilities distributed across all levels of government and accompanied by specific deadlines. The Master Plan identified 11 priority activities, including the adoption of a declaration on the EU by the BiH Parliamentary Assembly, the establishment of a coordination mechanism among government institutions, and the submission of a credible EU membership application. Although the plan aimed for BiH to obtain EU candidate status by 31 December 2017, only seven activities were fully implemented, whereas four experienced delays or were only partially completed. A notable example of these delays was the late submission of 'BiH's Responses to the European Commission's Questionnaire', which was submitted on 28 February 2018 instead of the scheduled 31 May 2017.⁹

Complementing the Master Plan, the 'Reform Agenda for 2015–2018'¹⁰ was adopted by the BiH Council of Ministers, as well as entity and cantonal governments on 10 June 2015. The agenda outlined reforms in six key areas: 1. public finance, taxation, and fiscal sustainability; 2. business climate and competitiveness; 3. labour market policies; 4. social welfare and pension reform; 5. rule of law and good governance; and 6. public administration reform. The Agenda stipulated that the Council of Ministers, entity governments, cantonal governments, and the Brčko District (BD) government would maintain close consultations with the EU throughout the Agenda's implementation. Regular progress reports on its implementation were submitted to the EU Delegation in Sarajevo. These reports were required to be factual, concise, and technical, while also providing detailed information on all adopted measures and offering explanations for any delays or modifications to the original plans. Action plans for the Agenda's implementation were adopted by different levels of government, with the FBiH and its ten cantons adopting 61 measures, the Republic of Srpska (RS) adopting 78 measures, and the BiH-level plan comprising 33 measures.

In 2005, negotiations to sign the Stabilisation and Association Agreement (SAA) between the EU and the BiH were initiated. At that point, the European Commission recognised BiH's significant progress in implementing the required reforms. The negotiations were successfully finalised in 2006, and the SAA was officially signed in

8 | 'Foreign Policy Strategy of Bosnia and Herzegovina 2018–2023', Presidency of BiH (2018), No. 01-50-1-936-27-1/18. [Online]. Available at: <https://www.predsjednistvobih.ba/van/default.aspx?id=79555&langTag=en-US> (Accessed: 7 April 2026).

9 | 'BiH's Responses to the European Commission's Questionnaire', Directorate for European Integration (DEI) (2018) [Online]. Available at: <https://www.dei.gov.ba/en/odgovori-na-upitnik-ek> (Accessed: 7 April 2026).

10 | 'Reformska agenda za Bosnu i Hercegovinu za period 2015-2018. godine' ('Reform Agenda for Bosnia and Herzegovina 2015 – 2018'), Council of Ministers of BiH, 2015 [Online]. Available at: https://fbihvlada.gov.ba/uploads/documents/reformska-agenda_1644324760.pdf (Accessed: 11 September 2024).

2008, accompanied by the Interim Agreement on Trade and Trade-Related Affairs. The SAA included a free trade agreement and provided support for comprehensive legal, administrative, institutional, and economic reforms aimed at bringing BiH closer to the EU and preparing it for eventual membership negotiations. Although the agreement was provisionally applied upon signing, it did not enter into full force until 2015, as the EU suspended its implementation, pending significant political reforms in BiH.¹¹

On 28 January 2016, the BiH Presidency ratified the 'Decision on the Submission of BiH's EU Membership Application', authorising the Chairman of the Presidency to submit the application. The application was officially presented to the EU on 15 February 2016, eight years after signing the SAA, reaffirming BiH's commitment to implement the necessary reforms in accordance with Article 49 of the EU Treaty.

Following the submission, the Council of the EU acknowledged the application, and on 9 December 2016, the European Commission issued a questionnaire with 3,242 questions to the BiH authorities. After a 14-month review, BiH submitted its responses on 28 February 2018. In response, the European Commission issued 655 additional questions on 20 June 2018 to which BiH replied on 4 March 2019. These submissions enabled the EU to prepare its formal opinion, or *Avis*, on BiH's membership application, which was presented to the BiH authorities on 29 May 2019.

In its Opinion on Bosnia and Herzegovina's application for EU membership, the European Commission identified 14 key priorities that BiH must address. Among these priorities, the European Commission's Opinion highlighted issues necessitating constitutional amendments, indicating that EU accession will not be achievable without changes to the Dayton Constitution (rendering the fulfilment of these requirements particularly challenging). Constitutional changes were essential in at least six areas:

1. Establishing legal certainty regarding the distribution of competences across all levels of government;
2. Introducing a substitution clause that allows the state, upon accession, to temporarily assume the competences of other government levels to prevent or address breaches of EU law;
3. Ensuring the independence of the judiciary, including the self-governance of the High Judicial and Prosecutorial Council (HJPC) of BiH;
4. Reforming the BiH Constitutional Court, particularly by addressing the presence of international judges and ensuring the enforcement of its decisions;
5. Ensuring legal certainty by establishing a judicial body responsible for the consistent interpretation of laws across BiH;
6. Ensuring equality and non-discrimination of citizens, particularly by addressing the ECtHR case law.¹²

Several additional priorities outlined in the European Commission's Opinion related specifically to the functioning of judicial self-governance and the judiciary in BiH. These

11 | Nielsen, 2022, p. 7. The EU delayed the entry into force of the SAA due to BiH's failure to comply with the Sejdić-Finci ruling of the European Court of Human Rights (ECtHR). One of the factors contributing to the final entry into force of the SAA was the German-British initiative, which prioritized the implementation of the Reform Agenda without requiring the execution of the Sejdić-Finci ruling (Galić, Barbarić and Bošnjak, 2022, p. 267).

12 | Woelk, Galić and Sekulić, 2023. p. 460.

include the requirement to adopt new legislation governing the organisation and operations of the High HJPC and strengthening measures to combat corruption.

Accompanying this Opinion was an Analytical Report¹³ – a comprehensive document outlining 115 specific priorities aligned with the political and economic criteria and chapters of the *Acquis Communautaire*. In response, the Council of Ministers of BiH adopted the ‘Action Plan for the Implementation of Priorities from the Analytical Report of the European Commission’¹⁴ on 15 October 2019. Formulated by the BiH Directorate for European Integration (DEI), the Action Plan established deadlines for implementing various measures, ranging from July 2019 to May 2020.

The Action Plan included 691 measures designed to meet the 115 priorities outlined in the Analytical Report, distributed across different levels of government: 230 measures at the state level, 391 at lower levels of government, and 70 spanning multiple government tiers. The measures were categorised as follows:

1. Laws - 115;
2. By-laws - 92;
3. Strategic, planning, and program documents – 94;
4. Strengthening administrative capacities – 79;
5. Other measures (e.g. coordination improvements, IT solutions, international agreements, memoranda of cooperation, and operational activities) – 311.

A total of 231 institutions across all government levels participated in the development and implementation of the Action Plan, including 47 at the BiH level, 31 at the FBiH entity level, 31 from the RS, 17 from the BD, and 105 at the cantonal level in the FBiH.

Despite these efforts, the Action Plan yielded limited results. According to the ‘Final Report on the Action Plan for Implementing Measures from the Analytical Report’¹⁵, endorsed by the Council of Ministers on 22 October 2020, only 288 out of the 691 planned measures (42%) were successfully implemented, while 403 measures (58%) remained unfulfilled. The implementation breakdown is as follows:

1. Laws: 26 of 115 measures (23%);
2. Bylaws: 26 of 92 measures (28%);
3. Strategic, planning, and program documents: 28 of 94 measures (30%);
4. Strengthening administrative capacity: 40 of 79 measures (51%);

13 | Analytical Report accompanying European Commission’s Opinion on BiH’s application for membership of the EU, European Commission (2019). Available at: https://neighbourhood-enlargement.ec.europa.eu/document/download/b6ce79f2-cde7-429f-aa06-a0e1a8860072_en?filename=20190529-bosnia-and-herzegovina-analytical-report.pdf (Accessed: 7 April 2026).

14 | ‘Akcioni plan za realizaciju prioriteta iz Analitičkog izvještaja Evropske komisije’ (‘Action Plan for the Implementation of Priorities from the Analytical Report of the European Commission’), Council of Ministers of BiH (2019) [Online]. Available at: https://www.dei.gov.ba/uploads/documents/akcioni-plan-za-realizaciju-prioriteta-iz-analitickog-izvjestaja-ek_1604657034.pdf (Accessed: 12 September 2024).

15 | ‘Finalni izvještaj o realizaciji Akcionog plana za realizaciju prioriteta iz Analitičkog izvještaja Evropske Komisije’ (‘Final Report on the Action Plan for Implementing Measures from the European Commission’s Analytical Report’), DEI (2020) [Online]. Available at: https://www.dei.gov.ba/uploads/documents/finalni-izvjestaj-o-realizaciji-akcionog-plana-za-realizaciju-prioriteta-iz-analitickog-izvjestaja-evropske-komisije_1604657038.pdf (Accessed: 1 September 2024).

5. Other measures (e.g. IT solutions, international agreements, and operational activities): 168 of 311 measures (54%).

These outcomes reflect significant challenges in aligning institutional efforts and governance structures to effectively meet the accession requirements of the EU.

2. EU Conditionality and Judicial Reform: Advancing Judicial Self-governance

The Treaty on the EU, in its Article 49, stated that any European country may apply for membership if it respects the democratic values of the EU and is committed to promoting them. The EU assesses the readiness of applicant countries according to three accession criteria defined by the European Council in Copenhagen in 1993 ('Copenhagen criteria'). These criteria are: 1. political criteria: stable institutions guaranteeing democracy, rule of law, human rights, and respect for and protection of minorities; 2. economic criteria: existence of a functioning market economy and capacity to cope with competition and market forces in the EU; and 3. EU *acquis* criteria: the ability to effectively take on and implement the obligations of membership, including adherence to the aims of political, economic, and monetary unions. One of the conditions, constituting an element of the Copenhagen Criteria, is the strengthening of judicial self-governance through the introduction of judicial councils. Over time, the initial flexibility of the judicial organisation models was abandoned. Moreover, the introduction of judicial councils had become a component of the pre-accession conditionality due to the 2004 enlargement of the EU. Romania and Bulgaria, whose accession to EU membership was postponed until 2007, faced explicit demands from the European Commission to organise their judicial councils in alignment with European standards. However, some authors argue that the pressure to introduce or restructure judicial councils has not been based on a clearly defined 'European model' of such institutions.¹⁶ Instead, the requirements focused on the application of the existing normative framework, which primarily consists of 'soft law' instruments developed by advisory bodies, such as the Consultative Council of European Judges (CCJE), the European Network of Judicial Councils, and the Venice Commission.

The 2003 Feasibility Study adopted by the European Commission identified the establishment of the HJPC of BiH as a key condition for initiating negotiations on the SAA between the EU and BiH. The establishment of this institution was recognised as a significant step toward strengthening the rule of law and enhancing the independence and efficiency of the judiciary. The BiH HJPC was established in 2004 following the adoption of the Law on HJPC of BiH by the Parliamentary Assembly of BiH. This legislative act was preceded by an agreement that transferred certain competencies from the entity to the state level. The agreement provided for the creation of a unified HJPC of BiH, tasked with ensuring the independence, impartiality, professionalism, and effectiveness of judiciary and prosecution services across the FBiH, RS, and state levels. With the formation of the

16 | Bobek and Kosař, 2014, p. 1262.

HJPC of BiH, the existing high judicial and prosecutorial councils at the entity and state levels, established in 2002, ceased to operate.¹⁷

The HJPC of BiH is composed of 15 members: 11 judges and prosecutors representing various jurisdictions, including two members from the state level, four from each entity, and one elected by the Judicial Commission of the BD. Additionally, the membership includes two lawyers, one selected by the Bar Association of the FBiH and the other by the RS Bar Association. The remaining two members are appointed by non-judicial bodies: one by the House of Representatives of the Parliamentary Assembly of BiH, who does not hold a judicial position or membership in the Assembly, and the other by the Council of Ministers of BiH, upon the recommendation of the Minister of Justice, who also holds no judicial role and is not a member of the Council (Article 4, paragraph 1 of the Law on the HJPC of BiH).¹⁸

A key question concerns the extent to which the composition of the HJPC of BiH aligns with European standards for judicial councils. Although the Council's structure formally meets the requirements of the majority of judicial office holders, including prosecutors as representatives of the judiciary, concerns remain. A criticism of the Council's structure is that decisions regarding judicial appointments are made collectively, allowing prosecutors to participate in the process. This arrangement reduces the influence of judges in the decision-making process, as judicial office holders constitute only one-third of the Council's total membership. This issue can be addressed by creating two sub-councils within the HJPC, one for judges and the other for prosecutors. This model was included in earlier drafts of the new Law on HJPC of BiH and received support from the Venice Commission. The Venice Commission regarded this model as a 'balanced solution' that would prevent excessive interference by one legal profession in the affairs of the other while maintaining the current structure as a joint body of judges and prosecutors.¹⁹ An alternative solution would involve restructuring the current institution by establishing two separate bodies: High Judicial Council and High Prosecutorial Council.²⁰

However, the structure of the Council remained unchanged under the 2023 Law on Amendments to the Law on the HJPC of BiH. Despite prior announcements, the law does not provide for the establishment of separate sub-councils for judges and prosecutors.²¹

Article 17, paragraph 1, of the Law on HJPC of BiH stipulates that the Council is responsible for appointing judges, including court presidents, lay judges, and additional judges, at all levels of the judiciary. This includes courts at the state, entity, cantonal, district, and municipal levels, as well as in BD, with the exception of the constitutional courts of the entities. To facilitate the appointment process, four sub-councils were established to nominate candidates, reflecting the complex state structure of BiH and its judiciary:

17 | Milinković, 2021, p. 60 fn. 147.

18 | *Ibid.*, pp. 61–62.

19 | 'Opinion no. 712/2013 on the draft Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (paragraph 61)', Venice Commission (2014) [Online]. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)008-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)008-e) (Accessed: 1 September 2024); 'Opinion no. 648/2011 on Legal Certainty and the Independence of the Judiciary in Bosnia and Herzegovina (paragraph 93)', Venice Commission (2012) [Online]. Available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)014-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)014-e) (Accessed: 11 September 2024).

20 | Milinković, 2021, p. 62.

21 | Law on Amendments to the Law on the HJPC, *Official Gazette of BiH*, no. 68/23.

the Sub-council at the state level, the BD Sub-council, the RS Sub-council, and the FBiH Sub-council.²²

The Sub-council at the state level, appointed by the President of the Council, consists of at least three HJPC members, including, if possible, at least one judge or prosecutor from the BiH level, one from the RS, and one from the FBiH. The Sub-council conducts interviews with candidates for vacant positions at the BiH level and submits a ranked list of candidates to the Council, which makes appointment decisions (Article 37 of the Law on HJPC BiH). The Sub-councils responsible for proposing candidates for judicial and prosecutorial positions at the entity level are composed of five Council members from the respective entity. These sub-councils appoint commissions of three council members to conduct interviews with candidates and rank them based on their ability, suitability, and expertise.²³ Where possible, the majority of commission members should be members of the relevant entity sub-council, and a commission member who is a judge or prosecutor from the same institution as the candidate being interviewed cannot participate in the composition of the commission (Article 41 paras 2 and 3 of the Rules of Procedure of HJPC BiH). Based on the ranking performed by the commission, the entity sub-council submits a ranked list of candidates to the council, which makes the final decision regarding all appointments (Article 38, paragraph 5 of the Law on HJPC BiH). The Sub-council for BD BiH, appointed by the President of the Council, consists of at least three Council members, including, if possible, at least one judge or prosecutor from BD, from the BiH level, and one from the entity level. This Sub-council conducts interviews with candidates for vacant positions in BD, and the final decision on appointments to judicial office, as in the previous cases, is made by the Council (Article 37 of the Law on HJPC BiH). According to the Law, a decision on appointment constitutes a final administrative act of an institution of BiH within the meaning of Article 4 of the Law on Administrative Disputes of BiH²⁴ (Official Gazette of BiH, no. 19/02, 88/07, 83/08, and 74/10) and therefore, may be challenged by an administrative dispute before the Court of BiH.

The lawsuits referred to above must be filed within eight days of the date of publication of the appointment decision on the Council's official website. In such proceedings, the Court of BiH reviews the legality of the appointment procedure and decides under an expedited procedure no later than eight days from the submission of the response to the lawsuit, which the defendant is required to submit within eight days of receipt of the claim.²⁵

The HJPC of BiH also holds jurisdiction over the implementation of procedures to determine the disciplinary responsibility of judicial office holders. Disciplinary proceedings are initiated by the Office of the Disciplinary Prosecutor before the First Instance Disciplinary Commission, which begins by filing a formal complaint (Article 67, paragraph 1 of the Law on the HJPC of BiH). The First Instance Commission consists of three members, at least two of whom must be Council members. If the proceedings concern a judge, the majority of the Commission members must also be judges (Article 60, paras

22 | Milinković, 2021, p. 60.

23 | Article 38 of the Law on HJPC BiH; Article 41, paragraph 1. of the Rules of Procedure of HJPC BiH [Online]. Available at: <https://vstv.pravosudje.ba/vstvfo/Sc/141/kategorije-vijesti/1172/1180/4570> (Accessed: 7 April 2026).

24 | *Official Gazette of BiH*, no. 19/02, 88/07, 83/08 and 74/10.

25 | Article 9 of the Law on Amendments to the Law on the HJPC.

3 and 5). Appeals against the decisions of the First Instance Commission are permitted before the Second Instance Disciplinary Commission. If a disciplinary measure is imposed by the Second Instance Commission, an appeal may be submitted to the Council. If the Council does not uphold a dismissal, it may impose another disciplinary measure provided by law (Article 60, paragraph 6).

If the Council confirm dismissal, the affected judge has the right to appeal to the Court of BiH if there is reason to believe that (a) the Council committed a substantial violation of procedural rules during the proceedings, or (b) the Council misapplied the law (Article 60, paragraph 7). Beyond these remedies, the Constitution of BiH grants the Constitutional Court appellate jurisdiction over constitutional matters arising from court decisions. The Constitutional Court of BiH has held that its jurisdiction extends not only to decisions issued by the Court of BiH but also to those made by the HJPC of BiH. The Court has further clarified that the HJPC of BiH, although not a traditional court, functions as an ‘independent and impartial tribunal established by law’, within the meaning of Article 6, paragraph 1 of the European Convention on Human Rights. As such, its decisions in disciplinary proceedings qualify as judgments under Article VI/3(b) of the BiH Constitution and Article 15, paragraph 3, of the Rules of Procedure of the Constitutional Court.²⁶

Furthermore, BiH has implemented a relatively complex framework for determining the disciplinary responsibility of judges, which can be regarded as a safeguard for judicial independence. However, an expert analysis commissioned by the European Commission recommended simplifying this procedure by reducing it to two stages: an initial decision followed by an appeal with judicial oversight of first-instance commission decisions. While maintaining a complex disciplinary procedure protects judicial independence by minimising the risk of abuse, an overly complicated system may hinder the effective sanctioning of disciplinary offences. To enhance efficiency, the literature suggests classifying disciplinary offences into categories based on severity. This model, applied in countries such as Spain, Slovakia, Montenegro, and Albania, promotes both legal certainty, especially regarding dismissal, and procedural efficiency by allowing for less complex procedures for minor offences.²⁷

The European Commission also recommended a clearer definition of disciplinary offences for judicial office holders. Although the 2023 amendments to the Law on the HJPC of BiH revised provisions related to judicial disciplinary offences, they did not introduce a classification based on severity, as suggested by the Commission. This omission leaves room for further improvement in the disciplinary framework to align it with comparative best practices and ensure a balance between judicial independence and accountability.²⁸

The extensive powers vested in the HJPC of BiH raise the question of establishing an adequate legal framework to ensure the accountability of its members. It is unrealistic to expect judicial councils to effectively promote responsibility and integrity in the exercise of judicial power if their members are not subject to clear rules that guarantee adherence to the aforementioned principles. The need for appropriate procedures to hold judicial council members accountable is particularly acute in countries where public trust in the

26 | Milinković, 2021, p. 108 fn. 251.

27 | *Ibid.*, pp. 106–107.

28 | *Ibid.*, p. 107.

judiciary, including judicial self-governance bodies, is relatively low—a condition prevalent in BiH.

The situation in BiH was further exacerbated by several scandals involving HJPC members, including the Council's president. In 2019, public attention focused on the 'Horseshoeing' affair following the release of a recorded conversation involving the then-President of the HJPC, M.T. In the recording, M.T. engages with N.A., a private party expressing interest in the status of a specific criminal case, to which the president responded by promising to discuss the matter with the chief prosecutor of Sarajevo Canton, D.B. The conversation later continued without M.T.'s presence, during which an acquaintance of the private party, a member of the State Investigation and Protection Agency (SIPA), solicited money from N.A. under the pretext of 'bribery'. In response to the scandal, the Office of the Disciplinary Prosecutor initiated proceedings against the HJPC president for the disciplinary offence of 'any behavior that constitutes a serious breach of official duty or undermines public trust in the impartiality and credibility of the judiciary' (Article 56, point 23 of the Law on the HJPC of BiH).²⁹ However, the First Instance Disciplinary Commission dismissed the case, ruling that the disciplinary provisions applicable to judges did not extend to members of the HJPC. Subsequently, the Second Instance Disciplinary Commission upheld the decision.³⁰

During that period, Article 54 of the Law on the HJPC of BiH addressed the disciplinary responsibility of judges, prosecutors, additional judges, and lay judges, including court presidents and chief prosecutors, but made no explicit reference to the accountability of Council members. Although the Law on the HJPC of BiH provided the possibility of removing a Council member by a two-thirds majority vote of the Council's present members, such a proposal had to be initiated by either the disciplinary commission or at least one-third of the Council's members. In this framework, Council members could be dismissed for: (1) failing to perform their duties in a proper, effective, or impartial manner; (2) being unable to fulfil their responsibilities due to illness or other reasons; or (3) committing acts disqualifying them from Council service (Article 6, points d), e), and f) of the Law).

Despite the legal grounds for dismissal, Council members supported the president, and the removal mechanism was not employed. This exposed a significant weakness in the legal framework, as accountability for Council members could be obstructed by internal resistance, allowing members to block any attempt to hold each other accountable. In the absence of an action from the Council, the House of Representatives of the Parliamentary Assembly of BiH established a Temporary Commission of Inquiry to investigate the situation within the judicial institutions of BiH, focusing on the Council's operations. However, the formation of the commission raised concerns about potential political interference in the judiciary. The president of the HJPC deemed the enquiry unconstitutional and illegal, whereas the Council condemned the commission as an impermissible encroachment on judicial independence. Although the Parliamentary Assembly's actions were driven by

29 | *Tegeltija goes on vacation due to disciplinary action* (2019) *Radio Slobodna Europa*, 31 May [Online]. Available at: <https://www.slobodnaevropa.org/a/29974875.html> (Accessed: 7 April 2026).

30 | *The second-instance commission rejected the appeal against Milan Tegeltija* (2019) *Radio Slobodna Europa*, 31 May [Online]. Available at: <https://www.slobodnaevropa.org/a/29999615.html> (Accessed: 7 April 2026).

limitations of the existing legal framework, they highlighted the tension between safeguarding judicial independence and ensuring accountability in the judiciary.

The weaknesses in the legal framework for determining the accountability of members of the HJPC of BiH were highlighted in the 'Expert Report on Rule of Law Issues in Bosnia and Herzegovina' ('Priebe Report') (2019)³¹. The Report emphasised the need to enhance responsibility and transparency in the operations of the HJPC of BiH and establish appropriate oversight mechanisms for its members, along with clear procedures for determining their accountability.

The Law on Amendments to the Law on the HJPC³² of BiH allocated significant attention to the issue of Council member accountability. Article 5 of this Act introduces Article 6a, following Article 6 of the Law, which outlines the procedure for dismissing Council members. Under the new Article 6a, a Council member may be removed from office if, through a violation of the law or other actions, they seriously damage the Council's reputation, if they hold an incompatible position, if they are absent from office for more than three consecutive months or for more than six consecutive months in cases of illness. In such cases, the HJPC establishes a special five-member commission tasked with investigating relevant facts and recommending decisions. Dismissal requires a two-thirds majority vote from the present Council members.

It was previously noted that the disciplinary provisions applicable to judges under the Law on the HJPC of BiH could not be applied analogously to Council members. In response, Article 13 of the Law on Amendments to the Law on the HJPC of BiH amends the Law by introducing Article 57a, which defines disciplinary offences applicable to Council members. These offences follow the same framework as those governing the disciplinary responsibilities of judges. Article 57a enumerates disciplinary offences across 13 points, with the final provision stating that 'behavior that damages the reputation and integrity of the Council and the judiciary as a whole, which is not specifically prescribed as a separate offense in this article', shall also constitute a violation.

Furthermore, Article 15 of the Law on Amendments to the Law on the HJPC of BiH introduces new Articles 61a and 61b, which regulate the procedures for conducting disciplinary proceedings against Council members. These provisions establish that disciplinary proceedings are handled by the first and second instance disciplinary commissions. Appeals against decisions made by the first-instance commission will be reviewed by the second-instance commission, whose decisions constitute the final administrative acts subject to review through administrative litigation before the Court of BiH (Article 61a, paragraph 7).

The first- and second-instance commissions each consisted of three members (Article 61a, paras. 4 - 5). In proceedings against a Council member who is a judge, both the first- and second-instance commissions comprise judges, whereas proceedings involving a Council member who is a prosecutor are adjudicated by commissions composed entirely of prosecutors. For cases involving Council members who are neither judges

31 | *Expert Report on Rule of Law Issues in Bosnia and Herzegovina* (2019) *The European External Action Service*, 5 December [Online]. Available at: <https://www.eeas.europa.eu/sites/default/files/documents/2024/ExpertReportonRuleofLawissuesinBosniaandHerzegovina.pdf> (Accessed: 11 September 2024).

32 | Law on Amendments to the Law on the HJPC, *Official Gazette of BiH*, no. 68/23.

nor prosecutors, the commission will include one judge, one prosecutor, and one Council member who holds no judicial or prosecutorial office (Article 61a, paragraph 3).

Due to the importance of ensuring legal and professional accountability in the HJPC, the introduction of disciplinary responsibility provisions for Council members is a necessary and justified reform. These measures reinforce accountability and trust in the judiciary by addressing gaps in the previous legal framework.

Furthermore, one of the changes foreseen in the Law on Amendments to the Law on the HJPC of BiH refers to the obligation of judges and prosecutors (as well as members of the HJPC of BiH) to declare property. It is a controversial measure that, on the one hand, raises the question of adequately balancing the right to privacy of the holders of judicial office, or members of their families, and on the other hand, the public interest, whose protection requires the implementation of measures aimed at suppressing corruption and strengthening the integrity of the judiciary. The justification for the introduction of this measure was also pointed out in CCJE Opinion no. 21 on the prevention of corruption among judges³³, from 2018. In the Opinion, it was stated that

a strong property reporting system can contribute to the recognition and then avoidance of conflicts of interest, if all relevant steps are taken, and thus lead to greater transparency in the judiciary and contribute to fostering a climate of judicial integrity.

However, in the aforementioned Opinion, the CCJE also warned of the necessity of respecting the principle of proportionality when balancing the obligation to declare assets and the right to the privacy of judges and their family members. This opinion suggests that the disclosure of information to which the reporting obligation applies should be made possible only on the basis of a request and only if the requester proves that there is a justified interest in it, whereas the privacy of third parties, such as members of the judge's family, should enjoy a higher level of protection.

Opinion No. 21 of the CCJE references the recommendations of the Group of States against Corruption (GRECO) presented in its fourth evaluation round titled 'Prevention of Corruption among Members of Parliament, Judges, and Prosecutors'. In the Evaluation Report for BiH from 2016³⁴, GRECO recommended the establishment of an efficient system for controlling the annual financial reports of judges and prosecutors, with the prescription of appropriate sanctions for cases of noncompliance with rules or false reporting. In the Report, GRECO suggested considering the provision of publication and easy access to the mentioned financial information while respecting the privacy and security of judges, prosecutors, and their close relatives. The obligation to declare the assets of judges and their family members is not unknown in comparative legislation. For example, in Bulgaria, Article 175b of the Law on the Court System³⁵ stipulates the obligation of judges, prosecutors, and investigative judges to provide information on

33 | Council of Europe (2018) 'Opinion no. 21 on preventing corruption among judges' CCJE, 9 November. [Online]. Available at: <https://rm.coe.int/ccje-2018-3e-avis-21-ccje-2018-prevent-corruption-amongst-judges/native/16808fd8dd> (Accessed: 23 August 2024).

34 | 'Evaluation Report: Bosnia and Herzegovina', GRECO – Group of States against Corruption (2016), p. 36.

35 | Council of Europe (2018) 'Judiciary System Act of the Republic of Bulgaria' CDL, 10 August. [Online]. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2017\)034-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2017)034-e) (Accessed: 27 November 2023).

financial interests in Bulgaria and abroad (including information on ownership of real estate, motor vehicles, and other means of transport that are subject to registration; all monetary amounts, including deposits, bank accounts, and receivables, with a total value of more than BGN 10,000, including those in foreign currency; etc.).

Attempts to introduce the obligation to submit financial reports by the holders of judicial office, with the aim of suppressing corruption and investigating the origin of property, were made even before the adoption of the Law on Amendments to the Law on the HJPC of BiH. In 2018, the HJPC of BiH adopted the Rulebook on submission, verification, and processing of financial reports of judges and prosecutors, number: 08-02-2-3186/2018, which prescribed the rules and procedures for submitting financial reports of judges and prosecutors in BiH, as well as the method of checking, processing, publication, storage, and access to financial reports. However, the Agency for the Protection of Personal Data in BiH issued an *ex officio* decision prohibiting the HJPC of BiH from processing the personal data of judges and prosecutors in the manner prescribed by the Ordinance, since this act imposed obligations and interfered with the right to privacy of judges and prosecutors and their relatives, contrary to the provisions of the Law on the HJPC of BiH, the Law on the Unique Identification Number, and the provisions of the Convention against Corruption. The HJPC of BiH filed a lawsuit with the Court of BiH, requesting that the decision be annulled. The Court of BiH rejected the lawsuit as unfounded, concluding that, contrary to the claims of the lawsuit, the contested decision of the Agency was based on a properly established factual situation and the proper application of the rules of the procedure that preceded the adoption of the final administrative act and the proper application of the law.³⁶

Article 21 of the Law on Amendments to the Law on the HJPC of BiH, which amended Article 86 of the Law on the HJPC of BiH, prescribes the obligation of judges and prosecutors to submit to the Council “initial and annual reports on assets and interests, including the method and time of acquisition and purchase value, on income, interests, obligations, expenses and guarantees for themselves, marital and common-law partners, parents and children and other persons with whom they live in a joint household” (Article 86, paragraph 1). The Law stipulates the obligation of judges to state in the report, in addition to data on their own incomes, data on all incomes of marital and non-marital partners, parents, children, and other persons with whom they live in a joint household (Article 86, paragraph 2.b). The Law also prescribes the obligation to report data on income from other paid activities; on the right of ownership of real estate, including the method and time of their acquisition and purchase value; and data on the right of ownership of vehicles and other movables of individual value over BAM 5000. Judges are also obliged to include financial assets in banks or other financial institutions in the report data, including electronic currencies and cash worth of more than BAM 5,000. In the context of efforts to combat corruption, provisions on the obligation to report gifts and donations are particularly important. The law establishes the obligation to report data on gifts and donations received in connection with the performance of judicial functions in the value of more than BAM 25 and data on gifts and donations received in a private capacity if their

36 | Decision of the Agency for the Protection of Personal Data in BiH (dated March 5, 2019) [Online]. Available at: http://www.azlp.ba/rjesenja/Archive.aspx?langTag=sr-SP-Cyrl&template_id=149&pageIndex=4 (Accessed: 24 September 2024).

individual value exceeds BAM 500 or BAM 1000 on an annual basis (Article 86, paragraph 2 points i and j).

Article 22 of the Law on Amendments to the Law on the HJPC of BiH introduces new Articles 86a to 86k, that govern access to data from asset and interest reports, their verification and analysis, and the creation of a register for these reports. Article 86a, paragraph 1 mandates that reports on assets and interests be published on the HJPC's official website to enhance integrity, transparency, and public trust in the judiciary and prevent conflicts of interest and other forms of undue influence in judicial functions.

However, paragraph 2 of Article 86a specifies information from reports that will not be publicly accessible, including the full names of minors (only initials will be displayed), unique identification numbers, and residential addresses of judges or prosecutors, along with those of other individuals mentioned in the reports. Additionally, the exact location of properties; bank account and financial identification numbers; individual amounts of cash owned by judges, prosecutors, or their household members; vehicle registration numbers; annual income tax returns; and any other attachments submitted to the reports will remain confidential. This Law established a special Department in the Secretariat of the Council to oversee the implementation of procedures related to asset and interest reports. This Department operates independently, without external instructions or interference in individual cases (Article 86f, paragraph 1). Furthermore, Article 86k stipulates that the legal provisions governing asset and interest reporting apply equally to all Council members. This equal application is justified given that corrupt actions by Council members pose a significant threat to the judiciary's independence than those committed by individual judicial office holders. Thus, ensuring the accountability and transparency of Council members is essential to maintain public trust and safeguard judicial integrity.

The legislative changes discussed above align with the priorities outlined in the European Commission's Opinion, as they strengthen the accountability of HJPC members and, given the scope of the HJPC's authority, promote the effective implementation of the principle of judicial independence alongside the accountability of judicial office holders. Furthermore, these reforms contributed to combating corruption, as identified in the European Commission's Opinion as a crucial prerequisite for ensuring the rule of law in BiH.

3. Anticorruption Measures in BiH: Challenges and Gradual Progress

In the framework of the European Union's enlargement policy, the fight against corruption constitutes a fundamental pillar and is explicitly embedded in Chapter 23 of the EU Acquis Communautaire (Judiciary and Fundamental Rights). Accordingly, alignment with EU law, respect for the rule of law, and effective implementation of anti-corruption reforms represents decisive criteria shaping both the dynamics and pace of accession for candidate countries. In the case of BiH, although the effective fight against corruption is explicitly identified as a priority in the European Commission's Opinion,

significant deficiencies continue to characterise the legal framework across various levels of government.

In the context of BiH's EU accession process, the establishment of an adequate and effective framework for the protection of persons who report corruption (whistleblowers) represents one of the key components of a credible anti-corruption policy. In its Opinion, the European Commission explicitly emphasised the adoption and effective implementation of whistleblower protection legislation as a relevant and necessary element of the broader fight against corruption. However, the legal system of BiH is characterised by an uneven regulatory framework governing whistleblower protection across different levels of government. The law regulating the status of whistleblowers has not yet been adopted in the FBiH (although a legal framework for whistleblower protection has been established in Sarajevo Canton, one of the cantons within the FBiH)³⁷, while the implementation of the Law on the Protection of Persons Who Report Corruption in the RS³⁸ and at the state level³⁹ is insufficiently effective. In BD, the Law on the Protection of Persons Reporting Corruption was adopted in 2018.⁴⁰

The state-level Law on the Protection of Persons Reporting Corruption in the Institutions of BiH primarily focuses on protecting whistleblowers in state institutions. As such, it provides a narrow scope of protection, limited exclusively to BiH institutions. This restrictive approach excludes both the private sector and individuals who are not formally employed in the institutions related to the reported corruption. Consequently, a significant number of potential whistleblowers, particularly those operating in mixed public-private contexts or external collaborators, remain outside the protective reach of the law, contrary to contemporary European standards that increasingly emphasise broad, functional definitions of whistleblowing.

The Law on the Protection of Persons Who Report Corruption in the RS provides considerably broader protection than state-level regulations. In addition to extending the scope of protected persons, the RS law clearly articulates fundamental principles governing whistleblower protection, such as confidentiality, prohibition of retaliation, and the right to effective legal remedies.⁴¹ Moreover, it explicitly defines the forms of protection that must be made available to whistleblowers, including preventive, procedural, and compensatory measures. In this context, the RS framework represents a comprehensive and coherent approach that aligns closely with international and European standards. Similar to the law adopted in the RS, the 2018 BD Law on the Protection of Persons Reporting Corruption provides a broader framework of protection that extends beyond the public sector to encompass the private sector.

37 | *Bosnia and Herzegovina Report 2024*, European Commission [Online]. Available at: https://enlargement.ec.europa.eu/document/download/451db011-6779-40ea-b34b-a0eeda451746_en?filename=Bosnia%20and%20Herzegovina%20Report%202024.pdf (Accessed: 17 April 2025).

38 | *Official Gazette of the Republic of Srpska*, no. 62/2017.

39 | Law on the Protection of Persons Reporting Corruption in the Institutions of Bosnia and Herzegovina, *Official Gazette of BiH*, no. 100/2013.

40 | Law on the Protection of Persons Reporting Corruption [Online]. Available at: <https://skupstinabd.ba/3-zakon/ba/Zakon%20o%20zastiti%20lica%20koja%20prijavljuju%20korupciju/000%2025-18%20Zakon%20o%20zas--titi%20lica%20koja%20prijavljuju%20korupciju.pdf> (Accessed: 12 April 2025).

41 | Kazic, 2018, p. 112.

Several preventive bodies have been established to address corruption, including the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (APIK). The Council of Ministers of BiH, following a proposal from APIK, adopted the 'Strategy for the Fight against Corruption 2024–2028'⁴² and the accompanying Action Plan for its implementation. The adoption of these documents aligns with the 14 key priorities. As noted above, the fight against corruption is a critical challenge in strengthening the rule of law, achieving sustainable economic development, and improving the quality of life for citizens. The Strategy and Action Plans were developed with input from representatives of all levels of government, international organisations, and civil society, demonstrating BiH's commitment to combating corruption through systemic solutions and fostering effective anti-corruption efforts.

A relevant dimension of anti-corruption reform in BiH, the importance of which was also emphasised in the European Commission's Opinion, is the development and implementation of conflicts of interest legislation and associated protection mechanisms. The first law regulating conflicts of interest in BiH entered into force in 2002. Drafted under significant influence of the international community, this law introduced a broad set of restrictions applicable to public office holders and entrusted its implementation to the Central Election Commission, which exercised jurisdiction over all office holders in BiH until the subsequent adoption of entity-level legislation.⁴³

Following the adoption of entity laws and the Law on Conflict of Interest in the BD in 2008, the regulatory framework governing conflicts of interest in BiH became formally decentralised. Since then, four separate legal instruments have directly regulated this area: the Law on Conflict of Interest in the Institutions of the BiH, the Law on Conflict of Interest in the Government Bodies of the FBiH⁴⁴, the Law on Prevention of Conflict of Interest in the Government Bodies of the RS⁴⁵, and the Law on Conflict of Interest in the Institutions of the BD of BiH⁴⁶. During the period between the adoption of entity-level legislation in 2008 and the adoption of amendments to the Law on Conflict of Interest in the Institutions of BiH in 2013, the Central Election Commission exercised its competence to implement conflict of interest regulations at the BiH, FBiH, and BD levels. The Commission for the Determination of Conflict of Interest in the Government Institutions of the RS was, and continues to be, responsible for the application of conflict of interest legislation in the RS. Then, the established legal framework was subject to sustained criticism owing to inherent deficiencies and the evident need for harmonisation with relevant international

42 | 'Strategija za borbu protiv korupcije 2024-2028' ('Strategy for the Fight against Corruption 2024–2028'), Agency for Prevention of Corruption and Coordination of the Fight against Corruption (2024) [Online]. Available at: https://www.apik.ba/zakoni-i-drugi-akti/strategije/Archive.aspx?langTag=bs-BA&template_id=196&pageIndex=1 (Accessed: 1 September 2024).

43 | Korajlić, 2021, p. 4.

44 | Zakon, O Sukobu Interesa, U Organima Vlasti U Federaciji Bosne I Hercegovine [Online]. Available at: <https://www.fbihvlada.gov.ba/bosanski/zakoni/2008/zakoni/28hrv.htm> (Accessed: 17 April 2025).

45 | *Official Gazette of the Republic of Srpska*, no. 73/08, 52/14, and 90/23.

46 | Zakono, Sprečavanju Sukoba Interesa U Institucijama Brčko Distrikta Bosne I Hercegovine [Online]. Available at: <https://skupstinabd.ba/3-zakon/ba/Zakon%20o%20sprec--avanju%20sukoba%20interesa%20u%20institucijama%20Brc--ko%20Distrikta%20BiH/01B04%20Zakon%20o%20sprec--avanju%20sukoba%20interesa%20u%20institucijama%20Brc--ko%20Distrikta.pdf> (Accessed: 11 March 2025).

standards. These criticisms primarily concerned the lack of coherence across different levels of regulation and the limited personal scope of the legislation, which failed to encompass all categories of public office holders, including directors of public enterprises and public institutions. Additional shortcomings relate to the fragmented regulation of financial disclosure and asset declaration obligations, the absence of effective mechanisms for verifying the accuracy of such declarations, and insufficiently defined restrictions on the ownership of private companies engaged in business relations with public authorities. Finally, the sanctioning regime was widely regarded as inadequate, as the penalties prescribed were disproportionate to potential illicit gains or institutional harm, and the legal framework lacked mechanisms for annulling or reversing acts and decisions adopted in situations involving conflicts of interest.

The 2013 amendments to the state-level Law on Conflict of Interest resulted in a profound restructuring of the existing system to prevent conflicts of interest. These amendments transferred competence for the application of conflict of interest regulations concerning office holders at the level of BiH from the Central Election Commission to the newly established Commission for Deciding on Conflict of Interest. The reconstituted body was designed as a nine-member commission composed of three members from the House of Representatives of the Parliamentary Assembly of BiH and three members from the House of Peoples, with at least one-third of these parliamentary members drawn from opposition parties and their mandates linked to their parliamentary terms. The remaining three members were appointed from the management of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APIK), thereby creating a mixed institutional structure that combines political and administrative representatives. Under the amended framework, decisions of the Commission required affirmative votes from at least two members of each of the constituent peoples, thereby introducing a qualified majority and national consensus requirement into the decision-making process. The 2013 amendments also abolished the sanction of ineligibility to stand for public office, invoking the Venice Commission's opinion and the protection of the right to candidacy, and replaced it with non-binding measures, such as proposals for compulsory retirement and calls for resignation. Together, these changes substantially weakened the deterrent effect of the sanctioning regime and further reduced the overall effectiveness of conflict of interest prevention mechanisms.⁴⁷

In 2024, the Parliamentary Assembly of BiH adopted a new state-level Law on the Prevention of Conflict of Interest in the Institutions of BiH⁴⁸, addressing the requirements identified by the European Commission. The 2024 Law established a Commission for the Prevention of Conflict of Interest as an independent and specialised body responsible for the application and enforcement of conflict of interest regulations at the level of BiH. The Commission is composed of seven members appointed by the Parliamentary Assembly of BiH through a public and transparent selection procedure based on professional qualifications, integrity, and relevant experience. Members are appointed for a fixed term and subject to strict incompatibility rules intended to limit political influence and ensure functional independence. The Commission elects its chairperson from among its members. While the European Commission, in its Bosnia and Herzegovina Report 2024, welcomed the adoption of the state-level Law on the Prevention of Conflict of

47 | Ibid, pp. 5–6.

48 | *Official Gazette of BiH*, no. 18/2024.

Interest, it also observed that the legislation has not yet been fully aligned with European standards.

4. Operation and Challenges of the Prison System in BiH

The European Commission Analytical Report also addressed the issue of prison system reforms and identified several weaknesses. According to the Report, the legislation governing the prison system remains insufficiently harmonised across the country and is not fully aligned with European standards. The execution of criminal sentences is undermined by the lack of coordination and harmonisation of procedures across countries. However, BiH started implementing some of the recommendations of the 2016 report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Prisons and detention facilities have seen improvements in conditions and management, with positive effects on living conditions. Overcrowding in detention facilities has decreased, partly because of the introduction of alternatives to detention in the FBiH. Investments are required to replace outdated facilities which do not provide adequate detention conditions. Despite some improvements, healthcare services in prisons lack resources, particularly for medical staff. Furthermore, no structured programmes support the reintegration of former prisoners into society. The forensic psychiatry institution in Sokolac is operational but remains underutilised, and the state prison in East Sarajevo is still not functional. Police holding facilities are often in poor condition and lack natural light, adequate ventilation, and proper hygiene. Further efforts are required to meet international and European standards for the treatment of persons deprived of their liberty. Moreover, BiH should strengthen its efforts to improve detention conditions in prisons and police-holding facilities, and ensure that they conform to the ECHR standards and the United Nations Standard Minimum Rules for the Treatment of Prisoners.

The 2023 Report⁴⁹ raised similar concerns, highlighting the persistent absence of a comprehensive countrywide strategy for the prison system and the lack of substantial progress in improving detention conditions. The report emphasises the need to harmonise legislation across the country and align it with European and international standards. Notably, the FBiH has not taken steps to adopt legislation enabling the transfer of prisoners between entities, professionalisation of prison staff, or implementation of a parole system. Key areas that require further development include digitalisation, reintegration programs, and coordination with healthcare and social services. The report also recommended expanding the use of alternatives to detention, particularly in RS. Although the new state prison now operates at full capacity, many detention facilities across the country still require significant infrastructure upgrades. In addition, prison regimes must undergo modernisation to align with contemporary standards. The Report

49 | European Commission (2023) 'Bosnia and Herzegovina 2023 Report', *European Commission*, 8 November. [Online]. Available at: https://neighbourhood-enlargement.ec.europa.eu/document/download/e3045ec9-f2fc-45c8-a97f-58a2d9b9945a_en?filename=SWD_2023_691%20Bosnia%20and%20Herzegovina%20report.pdf (Accessed: 11 September 2024).

indicates ongoing concerns regarding the treatment of persons deprived of their liberty, as reflected in the 77 complaints submitted to the Ombudsman in 2022, following 91 complaints in 2021.

These concerns were reiterated in the European Commission's BiH Report 2024, which highlighted the continued absence of a countrywide strategy for the execution of criminal sanctions and the lack of reliable statistical data. The Report stressed the need to harmonise the relevant legal framework across all levels of government and align it with European and international standards. It also underlines the importance of appointing prison directors based on merit, improving detention facilities and prison regimes, strengthening reintegration programmes, and introducing an effective probation system.

5. Conclusion

The prospect of the BiH's accession to the EU is one of the few issues that enjoy broad consensus among its citizens, with political elites expressing at least declarative support for this objective. The granting of candidate status to BiH in 2022, although largely influenced by current geopolitical circumstances, represented a significant step toward EU membership. However, the reforms outlined in the European Commission's Opinion require both time and political will, particularly in relation to constitutional amendments that remain difficult to achieve.

As discussed in this study, several important steps have been taken to meet the requirements for enhancing the independence and accountability of the judiciary, including reforms targeting the HJPC of BiH as the central body of judicial self-governance. Nevertheless, the legal framework for combating corruption remains incomplete, and the enforcement of existing laws has not yet been characterised as effective. As a result, despite the progress made through various reform initiatives, BiH's path to EU membership remains uncertain, as does the timeframe for achieving this goal.

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