

Opinion No. 234 (2002)¹

Bosnia and Herzegovina's application for membership of the Council of Europe

1. The Parliament of Bosnia and Herzegovina applied for Special Guest status with the Parliamentary Assembly on 5 May 1992 which it was granted on 28 January 1994. Since then, its Special Guest delegation has taken part in the work of the Parliamentary Assembly and its committees.
2. Bosnia and Herzegovina applied for membership of the Council of Europe on 10 April 1995. Four years later, in a decision taken on 12 and 13 January 1999, the Committee of Ministers asked the Parliamentary Assembly to give an opinion on this application, in accordance with Statutory Resolution (51) 30.
3. The Dayton Agreements, signed in Paris on 14 December 1995, set out the conditions for peace. Annex 4 to these agreements, dealing with the Constitution of Bosnia and Herzegovina, recognises its existence as a state under international law, composed of two Entities: the Federation of Bosnia and Herzegovina and the Republika Srpska. Article 2, paragraph 2, of the constitution incorporates the European Convention on Human Rights (ECHR) and its protocols, which are directly applicable in Bosnia and Herzegovina.
4. The Assembly stresses, however, that the state institutions should be strengthened at the expense of the institutions at Entity level, if need be by a revision of the constitution.
5. According to Annex 10 of the Dayton Agreements, a High Representative is responsible for monitoring the implementation of the civilian aspects of the peace agreements. The High Representative is nominated by the Steering Board of the Peace Implementation Council (PIC) and endorsed by the United Nations Security Council.
6. Several elections have taken place since the Dayton Agreements were signed. *Ad hoc* committees of the Parliamentary Assembly observed the municipal elections held in Bosnia and Herzegovina on 13 and 14 September 1997, the elections to the National Assembly of the Republika Srpska on 22 and 23 November 1997, the general elections on 12 and 13 September 1998 and the general elections held on 11 November 2000. The Assembly's observer delegation found that there had been a significant improvement in the latest election compared to the previous ones.
7. Bosnia and Herzegovina has ratified several Council of Europe conventions, including the European Cultural Convention and the Framework Convention for the Protection of National Minorities.
8. The Assembly appreciates the action of the Council of Europe Secretariat office in Sarajevo, which opened in April 1996, and believes that it must be given the fullest political and material support in order to effectively contribute to the implementation of activities aimed at developing and consolidating democratic stability.
9. The Assembly takes note of the progress which has already been achieved by Bosnia and Herzegovina in building state institutions, both at state and Entity levels. It especially takes note that the results of the last general elections in November 2000 have meanwhile been respected and that the central institutions at state level – the Parliamentary Assembly, the Council of Ministers and the presidency – have been fully constituted.

10. The Assembly welcomes the adoption of the Electoral Law by the Parliament of Bosnia and Herzegovina. It considers this an important step in the state-building process and in opening the way towards future constitutional arrangements based on the will of the country's people.

11. The Assembly also considers that despite many shortcomings, which still exist as regards the full respect for human rights, important progress has been accomplished in this field, in particular the functioning of the ombudsman institutions at state as well as Entities level, the return of refugees and displaced persons and freedom of movement.

12. The Assembly considers education to be one of the most critical factors both for establishing democratic stability in Bosnia and Herzegovina and for bringing about the return of refugees and displaced persons. It is pleased to note that some progress has been made in this sector, in particular through the agreement of the ministers to remove offensive terms from school textbooks, to design jointly syllabuses for the teaching of so-called "national" subjects, to replace civil defence lessons by education for democratic citizenship and in human rights and to set up a conference of education ministers. The Assembly insists that it is essential to refrain from any remark in children's education, especially in schoolbooks, which reinforces hatred or mistrust.

13. The Assembly considers that Bosnia and Herzegovina recognises the principle of the rule of law and guarantees the respect for human rights, and that it is able and willing, in the sense of Article 4 of the Statute of the Council of Europe, to continue the democratic reforms embarked upon in order that its legislation and practice globally conform with the principles and standards of the Council of Europe.

14. The Assembly believes that the specific co-operation and assistance programmes currently in place to assist Bosnia and Herzegovina in complying with this obligations and commitments must remain in place after Bosnia and Herzegovina's accession to the Council of Europe.

15. The Parliamentary Assembly takes note of the letters from the Presidency of Bosnia and Herzegovina, the Speakers of the Parliament and the Prime Minister and notes that Bosnia and Herzegovina undertakes to honour the following commitments:

i. to co-operate fully and effectively in the implementation of the Dayton Peace Agreements, which notably require the settlement of internal and international disputes by peaceful means;

ii. to co-operate with the International Criminal Tribunal for the Former Yugoslavia and to actively assist it by handing over to the tribunal persons accused of war crimes, crimes against humanity and genocide without delay and with the active co-operation of both Entities;

iii. with regard to conventions:

a. when it becomes a member, to sign the European Convention on Human Rights and its Protocols Nos. 1, 4, 6, 7 and 12;

b. to ratify as soon as possible and not later than within one year the ECHR and its Protocols Nos. 1, 4, 6, 7 and 12;

c. to examine continuously the compatibility of all legislation with the ECHR;

d. to sign and ratify, within one year after its accession, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its protocols;

e. to sign and ratify, within one year after its accession, the General Agreement on Privileges and Immunities of the Council of Europe and its protocols;

f. to sign and ratify, within one year after its accession, the Geneva Convention relating to the Status of Refugees and its 1967 Protocol;

g. to sign and ratify, within two years after its accession, the European Charter for Regional or Minority Languages;

h. to sign and ratify within two years after its accession, the European Charter of Local Self-Government;

i. to sign and ratify, within two years after its accession, the Council of Europe's European Outline Convention on Transfrontier Co-operation between Territorial Communities and Authorities and its protocols, the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and the Convention on the Transfer of Sentenced Persons and, in the meantime, to apply their fundamental principles;

j. to sign, within two years after its accession, the Council of Europe's Social Charter, to ratify it as soon as possible, and to endeavour to implement a policy in accordance with the principles it contains immediately;

k. to sign and ratify, within two years after its accession, the following conventions:

- the European Convention on the Suppression of Terrorism;
- the European Convention on the Transfer of Proceedings in Criminal Matters;
- the European Convention on the Compensation of Victims of Violent Crimes;

and, within three years after its accession:

- the European Convention on Cyber crime;

iv. with regard to domestic legislation:

a. to adopt and to implement, within one year after its accession, constitutional and legislative amendments necessary to comply with the decision of the Constitutional Court on the “constituent peoples of Bosnia and Herzegovina” of June-July 2000;

b. to review within one year, with the assistance of the European Commission for Democracy through Law (Venice Commission), the electoral legislation in the light of Council of Europe standards, and to revise it where necessary;

c. to adopt, within six months after its accession, if it has not yet done so, the laws which have been temporarily imposed by the High Representative;

d. to adopt and implement the following laws in conformity with Council of Europe standards, within two years after its accession:

- the Law on Immigration and Asylum (Bosnia and Herzegovina);
- the Law on Recognition of Public Documents (Bosnia and Herzegovina);
- the Law on Associations and Foundations (Bosnia and Herzegovina, Entities);

- the Law on Citizenship (Federation of Bosnia and Herzegovina);
- the Criminal Code and Criminal Procedure Code (Bosnia and Herzegovina, Entities);
- the Law on Schools (Bosnia and Herzegovina, Entities);

e. to adopt and to implement fully in conformity with Council of Europe standards, within two years after its accession, the Law on the Civil Service in the Governmental Institutions of Bosnia and Herzegovina, already adopted by the Council of Ministers of Bosnia and Herzegovina;

v. with regard to human rights:

a. to co-operate with the institutions active in the human rights field at state level and in the Entities and, in particular, to comply fully with the decisions and recommendations of the Human Rights Chamber and Human Rights Ombudsman;

b. to ensure adequate funding of the human rights institutions, in particular of the Human Rights Chamber, the Human Rights Ombudsman and the Commission for Real Property Claims (CRPC) immediately and continuously (with a yearly minimum of 600 000 convertible marks to be progressively increased over time);

c. to work towards establishing multi-ethnic ombudsmen and to consider establishing, in the long term, a single, unified human rights ombudsman's office at state level, which would include the present ombudsmen institutions at Entities level;

d. to ensure the full implementation of the property laws and, in particular, to abide fully by the decisions of the CRPC;

e. to continue restructuring human rights protection mechanisms in accordance with the recommendations of the Venice Commission, including the merger of the Constitutional Court and the Chamber of Human Rights, and in co-operation with the Council of Europe and the Office of the High Representative;

f. to implement the legislation to guarantee the independence of the ombudsman institutions at state as well as Entity levels, including amendments to the Federation of Bosnia and Herzegovina Law on Ombudsmen drafted by the Venice Commission;

g. to continue the reforms aimed at the establishment of a professional and independent judicial and prosecution system as well as to continue facilitating the expeditious and fair review of judges and prosecutors presently in office, and to assist the Independent Judicial Commission;

h. to ensure adequate funding for the Constitutional Court and for the judiciary with a view to reinforcing their independence;

i. to take all necessary measures for the expedient and safe return of refugees and displaced persons and to create conditions for sustainable returns;

j. to adopt, within three years after its accession, laws on conscientious objection and alternative service;

k. to maintain and continue reform in the field of education and to eliminate all aspects of segregation and discrimination based upon ethnic origins;

l. to continue reforms in the field of the media, in order to guarantee freedom of expression and the independence of journalists;

m. to institutionalise the police academies set up under the aegis of the international community and to continue reforms aimed at establishing multi-ethnic police forces;

n. to abide by the decisions of the United Nations International Police Task Force (IPTF) and to fully co-operate with it;

o. to increase efforts to combat corruption within the judicial and prosecution system and the police, as well as in the administration;

p. to adopt and to implement a revised law on internal affairs in both Entities;

vi. with regard to the monitoring of commitments:

to fully co-operate in implementing the Assembly's [Resolution 1115](#) (1997) on the setting up of an Assembly committee on the honouring of obligations and commitments by member states of the Council of Europe (Monitoring Committee), as well as with the monitoring process set up under the Declaration of the Committee of Ministers dated 10 November 1994 (95th Session);

vii. with regard to the proper functioning of the state institutions:

a. to strengthen co-operation between armed forces on the basis of common defence policy;

b. to restructure the armed forces in Bosnia and Herzegovina aiming at compatibility with international standards and procedures, in particular with regard to the principles of democratic control of defence forces and transparency in defence planning and budgeting processes.

16. The Assembly further wishes to see Bosnia and Herzegovina undertake to sign and ratify, within two years of accession, the joint Council of Europe and UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region.

17. The Assembly is aware that some of the above commitments are within the fields of competence of the Entities (the Federation of Bosnia and Herzegovina and the Republika Srpska), whose actions are essential to their fulfilment. Nevertheless, it considers that the state authorities of Bosnia and Herzegovina are responsible to the Council of Europe for ensuring that the Entities take the measures necessary to comply with these commitments.

18. On the basis of these commitments, the Assembly believes that Bosnia and Herzegovina is able and willing, in accordance with Article 4 of the Statute of the Council of Europe, to fulfil the conditions of membership of the Council of Europe as set forth in Article 3 of the Statute in the following terms "Every Member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim (of the Council of Europe)".

19. With a view to ensuring compliance with these commitments, the Assembly decides, pursuant to Resolution 1115 (1997), to closely monitor the situation in Bosnia and Herzegovina, as from its accession.

20. On the basis of the commitments set out above, the Assembly recommends that the Committee of Ministers:

- i. invite Bosnia and Herzegovina to become a member of the Council of Europe;
- ii. allocate five seats to Bosnia and Herzegovina in the Parliamentary Assembly.

21. Furthermore, in order to enable Bosnia and Herzegovina to honour its obligations and commitments, the Parliamentary Assembly also recommends that the Committee of Ministers:

- i. redefine, in the light of this opinion, the priority areas for Bosnia and Herzegovina within the Council of Europe co-operation programmes, and allot the necessary financial resources to them;
- ii. increase its political, financial and technical support for the Council of Europe Secretariat office in Bosnia and Herzegovina.

1. *Assembly debate* on 22 January 2002 (2nd Sitting) (see [Doc. 9287](#), report of the Political Affairs Committee, rapporteur: Mr Surján; and [Doc. 9288](#), opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mrs Jääteenmäki).

Text adopted by the Assembly on 22 January 2002 (2nd Sitting).