

OSCE/ODIHR and Representative of Freedom of the Media Submission of Information about an OSCE Participating State or Partner for Co-operation under Consideration in the Universal Periodic Review Process

Participating State: Bosnia and Herzegovina

UPR Working Group Session and Date of Review: 48th Session, 20 January – 31 January 2025

Background

1. Bosnia and Herzegovina (BiH) has been a participating State (pS) in the former Conference for Security and Co-operation in Europe since 1992, and has thus undertaken and recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE documents.¹
2. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE pSs, including BiH, to assist them in implementing their human dimension commitments. ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area.
3. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Denmark and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms in BiH.

Legislation reviewed by ODIHR

4. Upon request by authorities of an OSCE pS or of an OSCE entity, ODIHR reviews draft or enacted legislation of OSCE pSs to analyze conformity with OSCE commitments and international law.² In 2019-2024, these relevant legal opinions (on topics other than elections) were issued:
5. ***Freedom of Association – the ODIHR-Venice Commission Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organizations (2023)***³ – raised serious concerns concerning the Draft Law which was aimed at targeting specifically associations receiving foreign funding in the Republika Srpska (RS), noting the proposed excessively burdensome or costly registration and reporting obligations, prohibition to exercise broadly defined “political activities, as well as separate legal regime of oversight and inspections, subject to disproportionate sanctions. It was recommended the adoption of the Draft Law be rejected entirely. The Draft Law was adopted in first reading has now been withdrawn from the legislative process on 28 May 2024.

¹ OSCE Office for Democratic Institutions and Human Rights, *Compendium of OSCE Human Dimension Commitments: Volume 1, Thematic Compilation (third edition), and Compendium of OSCE Human Dimension Commitments: Volume 2, Chronological Compilation (fourth edition)*, 2023, OSCE Summit Meeting, Astana 2010, Astana Commemorative Declaration: Toward a Security Community, 3 December 2010.

² The legal reviews and opinions, often produced jointly with the CoE’s Venice Commission, are available at www.legislationonline.org.

³ OSCE/ODIHR-Venice Commission, *Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organizations*, 12 June 2023.

6. ***Freedom of Peaceful Assembly – the ODIHR-Venice Commission Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in Bosnia and Herzegovina, its two entities and in Brčko District***⁴ - assessed legislation on public assemblies (freedom of peaceful assembly) across BiH, (entity and cantonal levels and the District of Brčko), noting that in most of the laws, the specific provisions providing the definition of public assembly are drafted from a perspective of the state's need to "regulate" public assemblies, conveying the impression that assemblies are viewed and treated as issues to be regulated and managed, rather than as a right that should be facilitated. The laws heavily burden the organizers, holding them personally liable for breaches of public order during assemblies, and impose too broad grounds to restrict, prohibit, and terminate peaceful protests. Apart from the cumbersome notification requirements, the blanket restrictions imposed on the location or time of assemblies are particularly problematic as they do not allow the implementing authorities to make a proportionality assessment of the restrictions to their legitimate aim in the concrete circumstances of each case. In 2019, ODIHR also reviewed a proposed Draft Law on Public Assembly in RS, noting the restrictive approach.⁵ This Draft Law was not adopted.

7. ***Lawmaking Process – the ODIHR Assessment of the Legislative Process of Bosnia and Herzegovina (2023)***⁶ – concluded that the legal framework regulating the law-making processes in BiH (state and entity levels) organizes the legislative process in a timely and adequate manner, and is not intrinsically incompatible with the democratic law-making standards. However, it also notes the complex constitutional framework, the political context, and the way in which existing rules are (not) implemented, which are the principal challenges for making qualitative legislation in BiH. ODIHR recommended several practical improvements of the legal framework, including: identifying different aspects of regulatory impact assessment, adding provisions on meaningful consultation and ex-post evaluation of laws, developing an online manual on legislative technique, setting specific rules on public debate to ensure coherent practice on consultations, introducing more and clearer deadlines in the parliamentary procedure, reconsidering the definition of "emergency" as a legal basis for an accelerated procedure, and requiring a qualified majority vote for the use of emergency procedure.

Freedom of expression and media freedom related issues

8. ***Freedom of Expression/Media – the ODIHR Urgent Comments on the Draft Criminal Offences Against Honour and Reputation in the Republika Srpska (2023)***⁷ – recommended not to adopt the provisions aiming at re-criminalizing "insults" and "defamation" in the RS, recalling that international human rights bodies, have called upon states to abolish any such laws, also noting the vague and broad terms used in the proposed amendments and the fact that criminal sanctions are disproportionate and can have a chilling effect on the freedom of expression. Most recommendations remain relevant since the Amendments were adopted on 20 July 2023, although the criminal offence of "insult" was removed and the proposed amount for fines for "defamation" was substantially reduced.

Election-related activities

⁴ OSCE/ODIHR and Venice Commission, *Joint Opinion on the Legal Framework Governing the Freedom of Peaceful Assembly in Bosnia and Herzegovina, its Two Entities and in Brčko District*, 09 December 2019.

⁵ OSCE/ODIHR, *Opinion on the Draft Law on Public Assembly in Republika Srpska*, 27 December 2019.

⁶ OSCE/ODIHR, *Assessment of the Law Making Process of Bosnia and Herzegovina*, 7 February 2023.

⁷ OSCE/ODIHR, *Urgent Comments on the Draft Criminal Offences Against Honour and Reputation in the Republika Srpska*, 11 May 2023.

9. Following an invitation to observe the 2 October 2022 general elections, and in accordance with its mandate, the ODIHR established an Election Observation Mission (EOM). ODIHR concluded that the elections “were overall well organized and competitive. However, regrettably, the increasing segmentation along ethnic lines and the corresponding divergent views on the future of the country remain a concern for the functioning of democratic institutions. Universal and equal suffrage is still not guaranteed. Failed negotiations among political parties left the electoral legal framework without needed reforms; nevertheless, recently introduced amendments strengthened some aspects of the electoral process. Election preparations were managed in an overall efficient and transparent manner by upper-level election commissions. Political impasse, a general mistrust in public institutions and references to the country’s wartime past marked the electoral environment. Women’s active participation was undermined by insufficient efforts to overcome long-standing gender stereotypes. During the campaign, fundamental freedoms were respected. However, the lack of public debate and the use of divisive rhetoric, also reflected in the limited and biased media coverage, reduced voters’ opportunity to make an informed choice. Election day was overall orderly, but impacted by concerns regarding the secrecy of the vote and inconsistent application of procedural safeguards, mainly during the vote count.”

10. The Final Report⁸ included 8 priority recommendations, to support efforts to bring elections in BiH further in line with OSCE commitments and other international obligations and standards for democratic elections⁹. The key recommendations included:

- Review the legal framework to address all outstanding ODIHR recommendations, eliminate existing gaps and inconsistencies, and incorporate in the legislation judgments of the European Court of Human Rights and the Constitutional Court of BiH regarding ethnicity and residency-based restrictions on the right to stand as a candidate. In line with international good practice, the comprehensive review process should be open, inclusive and consultative and take place well before the next elections;
- Provide adequate and effective allocation of funds to ensure the functionality of the Central Election Commission (CEM) as an institution, including in non-election years, and to cover all the costs associated with the organization of the elections. The CEM should be provided with the necessary resources to hire sufficient and qualified staff, including in its audit, legal and IT departments, and to develop its IT infrastructure;
- Ensure timely formation, impartiality and professionalism of Polling Station Commissions and increase stakeholders’ trust, the authorities should review the system of appointment of these commissions. This could be achieved by limiting eligibility to nominate their members only to the parties represented in the state and entity parliaments, or those drawn from a permanent roster of trained people maintained by the CEM;
- Ensure that members of the election administration are not recalled for arbitrary reasons and that they are able to conduct their duties without fear of retribution or intimidation, including based on gender. Cases should be promptly investigated;
- Address the issue of public officials and electoral contestants exerting pressure on voters. Authorities should take prompt and effective steps to investigate such allegations and misuse of administrative resources, and proactively work to deter such

⁸ EOM Final Report, 2 February 2023

⁹ 1999 OSCE Istanbul Document, para 25, OSCE pSs committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”.

practices;

- Facilitate women's active participation in public and political life, comprehensive legal, institutional, and educational efforts challenging the existing gender stereotypes about the role of women and men in politics should be undertaken by the authorities at all levels. Conduct a thorough assessment on the impact of the gender quota requirements on the election of women officeholders at all levels;
- Reinforce effective protection of journalists from threats and intimidation. Consider strengthening the capacity of law enforcement bodies to ensure swift investigation of online and offline cases of pressure on journalists and media outlets;
- The authorities should take effective measures to protect the voters' right to a free and secret choice. The importance of ballot secrecy, protecting a voter's identity, and ensuring voters can vote in a free atmosphere should be emphasized during the training of election commissions and in voter education materials. The polling station layout should be reviewed, and overcrowding should be addressed to ensure the secrecy of the vote and protection against undue influence on voters.

Tolerance and non-discrimination issues, including incidents of and responses to hate crime

11. OSCE pSs have made a number of commitments to promote tolerance and non-discrimination and specifically to combat hate crime, and ODIHR supports states in their implementation of those commitments.¹⁰ In this context, ODIHR produces an annual report on hate crime¹¹ to highlight the prevalence of hate crimes and good practices that pSs and civil society have adopted to tackle them. ODIHR also helps pSs design and draft legislation that effectively addresses hate crimes; provides training that builds the capacity of pSs' criminal justice systems and law-enforcement officials, prosecutors and judges; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports the efforts of civil society to monitor and report hate crimes.

12. In respect of the 2022 Hate Crime Report (published in November 2023) and ODIHR's key observations,¹² ODIHR recognizes BiH's efforts to report hate crimes to ODIHR and improve hate crime recording and data collection. However, based on the available information, ODIHR observes that the country's mechanisms for recording hate crime data and statistics do not sufficiently distinguish hate crimes from other crimes, while the numbers of officially recorded hate crimes are low. In addition, ODIHR observes that BiH would benefit from raising awareness among and building the capacity of criminal justice officials, in particular prosecutors and judges, to address hate crimes.

¹⁰ OSCE pSs have committed to strongly condemn racial and ethnic hatred, xenophobia, discrimination, anti-Semitism and intolerance against Muslims, Christians and other religions, and have committed to address these phenomena in all their forms (Copenhagen Document, 1990). Since 2003, the OSCE pSs have established a normative framework of OSCE Ministerial Council (MC) decisions to reflect their commitments to address these phenomena: MC Decisions 4/03, 12/04, 10/05, 13/06, 10/07 and 9/09. Additionally, a number of OSCE human dimension commitments recognize the vital importance of pSs' realization of their binding human rights obligations under international treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

¹¹ <https://hatecrime.osce.org/>

¹² Findings on the information available to ODIHR on hate crimes in a particular pS in relation to OSCE commitments are presented as Key Observations. There are, in total, 13 Key Observations linked to OSCE pSs' commitments in the area of addressing hate crime. This [methodology](#) has been in place since the 2020 Hate Crime Report.

13. With regard to support for hate crime victims, there are no specialized services for victims of hate crime in BiH.¹³ Furthermore, there is no institutional system for recording and collecting hate crime data in the country. In co-operation with ODIHR and the OSCE Mission to BiH, the authorities of RS have worked to improve hate crime recording and data collection through ODIHR's Information Against Hate Crimes Toolkit (INFAHCT) programme, including through a diagnostic workshop held in April 2022. BiH has also co-operated with ODIHR and the OSCE Mission to train law enforcement officers and criminal justice professionals on hate crime over the last 10 years.¹⁴

14. ODIHR's 2020 publication "OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic" reported that refugees and migrants were often blamed for the spread of Covid-19 in many pSs including through inflammatory rhetoric by local political figures which may have provided legitimacy and encouraged hate crimes and discriminatory acts. In BiH, a high-level political representative demonized migrants in the context of the pandemic and threatened them with deportation. Old age also represented grounds for marginalization and discrimination in the pandemic where older citizens faced restrictions on freedom of movement, as some pSs, including BiH, requested older people not to leave their homes, for days or even weeks, including those living alone and without assistance. Members of some minority groups, such as LGBTI, were in a particular situation of vulnerability in the context of the pandemic. In BiH, LGBTI community members reported that self-isolation and quarantine rendered them vulnerable to discrimination and hate crime at the hands of their own family members. There were also reports of LGBTI migrants quarantined in collective centres suffering abuse from other migrants.¹⁵

15. ODIHR's recommendations to BiH on the basis of this publication include:

- Condemn any form of discrimination and hate crime and abstain from any statement or action that exacerbates vulnerabilities.
- Respond swiftly to hate crimes, including those motivated by gender or sex, to record and investigate them so that the perpetrators can be brought to justice and adequate penalties imposed.
- Support victims as they report their experiences, and ensure the availability of all necessary psychological, social and legal support for victims, including through close co-operation with civil society. Relevant authorities should also publicly condemn any such acts and ensure that perpetrators are brought to justice.
- Consider, where states have not done so, providing the possibility to report hate crimes online and allowing third-party reporting to police by civil society groups and equality bodies.
- Assess and improve relevant mechanisms for hate crime recording and data collection, including gender disaggregated data and assess the existing current victim support systems.
- Ensure that the consequences of the pandemic, including the economic crisis, do not affect states' capacities to provide support to victims of hate including through appropriate funding to non-state actors and civil society organizations.
- Build law enforcement and justice sector capacities to recognize and effectively investigate hate crimes and to ensure that specialized training, focused on hate crime victims and their needs, is provided for officials and civil society organizations within

¹³ National frameworks to address hate crime in Bosnia and Herzegovina | HCRW (osce.org)

¹⁴ Bosnia and Herzegovina | HCRW (osce.org)

¹⁵ Organization for Security and Co-operation in Europe, *OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic*, Warsaw, 17 July 2020, p. 126-136

- the victim support structures
- Enact policies, through inter-agency co-operation, to address hate crimes in a comprehensive manner.
- In collaboration with civil society, celebrate and harness the strength of diversity within the country, including through awareness-raising programmes, as a means of overcoming current and forthcoming social and economic challenges of the pandemic.

Roma and Sinti issues

17. The Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area (Action Plan) mandates ODIHR *inter alia* to provide support to pSs in meeting the OSCE commitments on Roma and Sinti. Such commitments encompass the areas of public policy, non-discrimination, socio-economic issues, education, public and political participation, and the rights of Roma and Sinti in crisis and post-crisis situations.¹⁶

18. In December 2023, ODIHR published its Fourth Status Report that takes a comprehensive stock of the progress made by pSs between 2018 and 2022 in realising the Action Plan's commitments.¹⁷ BiH reported on existing policies and tailored programmes focused on Roma¹⁸, policies and programmes on housing,¹⁹ streamlining of education in relevant policy programming for Roma²⁰, and to provide non-discriminatory access to healthcare.²¹

19. In BiH Roma communities were recognized as one of the most vulnerable categories of residents affected by the crisis caused by the COVID-19 pandemic, and international and domestic non-governmental organizations carried out various activities to provide full access to education for Roma children.²²

20. In view of public and political life, BiH also informed ODIHR about building political will and sustainable engagement with local authorities on the political level for the promotion of democratic local administration and strengthening local Roma communities²³, as well as the role and functioning of advisory and consultative mechanisms for Roma.²⁴ However, civil society actors continue to note poor implementation of the *Sejdić and Finci v. Bosnia and Herzegovina* judgment of the European Court of Human Rights.²⁵

21. Statelessness and lack of documentation remains an issue for Roma communities in BiH. The Action Plan of BiH for the Social Inclusion of Roma for the period 2021 to 2025 also includes measures to address the legal status of Roma communities. To that end, the government outlined actions to monitor the implementation of the Roadmap for Ending Roma Statelessness and the harmonization of regulations related to the issuance of personal

¹⁶ OSCE Ministerial Council, Decision No. 3/03, "Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area", Maastricht, 1-2 December 2003.

¹⁷ Implementation of the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area - Fourth Status Report, OSCE/ODIHR, 8 December 2023.

¹⁸ *Ibid*, p. 18-21.

¹⁹ *Ibid*, p. 41-42.

²⁰ *Ibid*, p. 55.

²¹ *Ibid*, p. 45-46.

²² *Ibid*, p. 61.

²³ *Ibid*, p. 68.

²⁴ *Ibid*, p. 72.

²⁵ For more information see: [SEJDIĆ AND FINCI v. BOSNIA AND HERZEGOVINA \(coe.int\)](#)

documents and registration of citizenship.²⁶

22. ODIHR's recommendations:

- Ensure the adequate implementation of *Sejdic and Finci v. Bosnia and Herzegovina* judgment of the European Court of Human Rights.
- Ensure that statelessness and lack of documentation for Roma communities are addressed through the implementation of existing policy frameworks.

²⁶ [Implementation of the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area - Fourth Status Report](#), OSCE/ODIHR, 8 December 2023, p. 77.