

## ORIGINAL RESEARCH PAPER

# BOSNIA AND HERZEGOVINA IN THE EUROPEAN UNION INTEGRATION PROCESS: SYSTEMIC LIMITATIONS TO PROGRESS IN THE RULE OF LAW

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## ABSTRACT

This paper critically examines the systemic limitations impeding the progress of the rule of law in Bosnia and Herzegovina (B&H) from the perspective of the European Union (EU). Despite significant efforts and investments by the EU to foster democratic governance and the rule of law in B&H, progress has been inconsistent and fraught with challenges. Through a comprehensive analysis of policy documents, legal frameworks, and qualitative interviews with key stakeholders, this paper identifies three primary systemic barriers: entrenched ethno-political divisions, the complexities of the post-conflict legal landscape, and the intricate governance structure of B&H. The article also explores how these barriers are exacerbated by external influences and internal political dynamics, which often hinder both EU efforts and the local adoption of necessary reforms. Additionally, the research delves into the EU's policy approach towards B&H, assessing its effectiveness in addressing these systemic issues. The paper argues that EU strategy in this field needs to be more attuned to the specific political and social context of B&H that is also marked by an ongoing peace process, i.e. implementation of the Dayton Peace Accord (DPA), as the two processes increasingly end up in a friction due to different priorities and mandates in B&H. The findings contribute to broader understanding of deficiencies of systemic processes and their impact on democratization in post-conflict societies, particularly in the B&H. Results of the analysis focuses on the the need for a more nuanced and context-sensitive approach in promoting the rule of law and democratic reforms in B&H.

**Keywords:** European Union, Bosnia and Herzegovina, EU acquis, rule of law, Dayton Peace Accord



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## Introduction

Countries aspiring to join the EU are required to follow long and demanding process of harmonization and compliance in accordance with the *Acquis Communautaire*. Negotiations on EU membership is obligatory integration process of the candidate country to the EU. Accession negotiations evolve the terms under which candidate countries comply with the conditions of the EU. Progress of B&H in the rule of law evolves at slow pace towards European Integration. Numerous EU conditions defined in negotiation chapters require comprehensive involvement of B&H and European representatives. By signing the Stabilization and Association Agreement (SAA) between member states, B&H undertook the obligation to coordinate its legislation with the EU *acquis* covered by the agreement (DEI, 2013). Under the SAA vital priority for B&H is obligation to develop a National Plan for the Adoption of the *Acquis* (NPAA) which includes all levels of government to align with the implementation of the EU *acquis* (European Commission, 2022). Firmly by the requirements in respect to public administration reform and 14 priorities that come out of the *Avis* on the level of preparedness of B&H to join the EU, there is also an ambition for B&H to adopt an overall Integration Programme (Pi).

Alignment of B&H with chapters of EU *acquis* related to the rule of law is related to both Chapter 23 in the area of judiciary and fundamental rights, justice, freedom and security and Chapter 24 justice, freedom and security. They are at the core of EU Enlargement Policy. The European Commission regularly monitors each country effort towards fulfillment of the criteria and the accession process evolves through different stages until the candidate country is fully considered able to join EU (European Commission, 2023). Therefore, the EU is committed to provide guidance and support the country in undertaking the necessary reforms on its path towards European Integration (European Commission, 2019). The key conditions that B&H needs to fulfill are contained in number of documents in the framework of the European Court for Human Rights which imply that in order for B&H to become full member of the EU it has to change necessary constitutional deficiencies (Čakardžić, 2022).

Until now, B&H has achieved some level of preparation to align with the EU *acquis* and to comply with European requirements. However, further progress is required which continues to create gaps in proper functioning of the country. Ultimately, the EU aims to support accomplishment of these policies of B&H in improving its efficiency and quality in

accordance with the required rules and standards. However, B&H has demonstrated numerous systemic and political limitations in the alignment process. The establishment of the OHR as the highest authority is responsible for overseeing the implementation of the civilian aspect of the DPA and also the developments on the rule of law which is fundamental requirement for reform changes (OHR, 2015).

In December 2022, B&H was granted the status of a candidate country for EU membership accompanied by a recommendation for implementation of eight necessary steps to strengthen the rule of law, fight against corruption, migration and fundamental rights which require future implementation. In the upcoming period is expected formation of the institutions to focus on the implementation of these condition (Slobodna Evropa, 2022).

## Literature Review

Extensive number of articles, documents, guidebooks and reports have been published related to negotiation chapters of the EU. The most relevant piece of literature is defined in the 35 chapters of the *acquis Communautaire*. The additional focus includes the reports of the European Commission report on the B&H integration process for membership to the EU, 2022. "Guidebook on the 23 and 24 negotiation chapters. What we negotiate" deeply elaborates necessary process and conditions required on the path towards membership. (Suljević; Hodović, 2016). The European Commission launched the "EU Initiative to enhance the monitoring of the Rule of Law in B&H that provides causes for lack of its insufficient implementation along with monitoring of any reform changes (European Commission Expert Report, 2019). Additionally, it includes analysis on the latest progress in all sectors of B&H Report 2022 (European Commission, October 2022). Harmonizing the legislation, regulations and procedures of aspiring country for membership takes a long and painstaking process of integration (Sinanović, 2014).

The EU advocates for promotion of human rights, democracy and the rule of law as an essential object which are further elaborated in "The EU Role in Promoting Human Rights and Democratization in Third Countries (European Commission, 2011). The latest European Commission report on progress of B&H for 2023 states necessary changes of constitutional and electoral reforms in accordance with European Convention on Human Rights. Even though B&H has achieved notable improvement in

the Foreign affairs with the EU, still no progress has been made to tackle corruption as well as regarding the economic criteria, the country is at early stages of establishing functional market economy (Brļjavac, 2023).

Additional necessary fulfillment of the reform changes are clearly outlined in an article of "Europska integracija - Bosna i Hercegovina postala kandidatkinja za EU" in order to open negotiating chapters (Orešković, 2022). B&H complex constitutional structure also lacks progress in judiciary sector. The conditions are outlined in 2019 by the European Commission in form of three vital programmatic documents on B&H as Opinion (Avis), following Analytical report and "The Expert Report of Law Issues in B&H known as Priebe Report, emphasizing rule of law as key priority requiring comprehensive reform (Weber, 2021). The importance of the structured dialogue was launched in 2011 with the intention of enabling B&H politicians to implement decisions towards better functioning of the judiciary (Sinanović, 2014).

## Theoretical framework

During the negotiation process of the EU of candidate countries social constructivism has significant approach in dealing with interesting aspects of European integration process. Social constructivism relies on that social group constructs things for one another collaboratively creating a small culture of shared artefacts with shared meanings (Moodle, 2015). Therefore, social constructivism relies on that individuals act collectively to reconstruct the environment through their actions and behavior. Therefore, its importance is included in numerous areas of study in the EU in which states are more willing to cooperate collectively at EU level. Constructivism is constructed on social ontology which argues that human agents do not exist independently from their social environment, and its united system of meanings as 'culture' in broad terms (Risse, 2019). One of the prominent core constructivists Alexander Wendt focuses on the role of identities and interests of international actors (Silva, 2022). His approach elaborates those roles by providing practical implications for recognizing and predicting future of the international relations (Danijah, 2023).

Wendt fundamental concept of constructivism argues that "structures of human association are determined primarily by shared ideas rather than material forces, whereas identities and interests of purposive actors are constructed by these shared ideas rather than given by nature" (Palan,

2000). Wendt's theory of constructivism is related to European integration by focusing on the influence of ideas and cognitive frames on decisions making process within the EU (Ruszkowski, 2019). Constructive features of social institutions of the EU are not based only on constraining behavior, but it also affects interest, identities and preferences of actors (Risse, 2019).

EU also promotes number of normative values which are constituted as peace, democracy, freedom, human rights, rule of law, equality, social solidarity, sustainable development and good governance (Manners, 2008). Therefore, Manners believes that the EU values produce different identity to other actors involved in the international system. While member states created the EU, they are also influenced by its norms, regulations, conditions and common values and modes of behavior. Ultimately, constructivism is beneficial in the context of European politics as it has impact on how different actors make decision collectively at European level.

## Methodology

### a) Research Problem

The purpose of the research paper is to elaborate necessary conditions outlined in the negotiating chapters of the EU in order for B&H to successfully join membership in a limiting context imposed by the process of the DPA implementation. The research question is: "What are the requirements outlined in the negotiating chapters of the EU that BiH must fulfill for successful membership, within the constraints of DPA implementation?"

### b) Sources of the Data

Primary sources of information include interviews with active-decision makers from B&H. Content of the interviews is used as a primary source of information. The ten responders answered per three questions related to the rule of law in B&H by e-mail.

Secondary sources include desk research, studies of documents and daily developments, including media statements and other relevant information. Participants in the interview are mainly representatives of the parliaments of the Federation B&H and the Republika Srpska. Additional participants included are vice-presidents, delegates, an advisor, an independent political activist, an editor in chief and a councilor.

## c) Data Collection

Data are collected and processed with a combination of qualitative and quantitative analysis techniques. Information would be gathered from the relevant documents, reports, articles, professionals and experts in the field and other related information that are looked into through content analysis.

## d) Data Analysis

The method used for the purpose of this research article is qualitative with included in-depth analysis of the given topic. Engaging with policy-makers, civil society representatives, and other stakeholders through interviews or focus groups can provide valuable perspectives on the practicalities of meeting EU requirements within the DPA's constraints. This method allows for the collection of nuanced views and insights into the political and social dynamics affecting integration efforts. Content analysis involves the systematic reading of main requirements from the relevant EU negotiating chapters and related legal texts to identify specific requirements BiH must meet. Content analysis helps in understanding EU expectations and the extent of alignment required with the EU acquis.

## Results

The question provided to ten respondents was related to three the most significant obstacles that slow down the process of integration of B&H into the EU. Majority of responders agree on presence of insufficient will towards reform changes such as the rule of law and judiciary. Minority of responders view obstacles such as expensive state administration, high corruption, and lack of reform changes in the defense sector. Second question of interest referred if provisions of the DPA limit entry of B&H to the EU.

Majority of respondents believe that certain provisions of the DPA make path towards the EU difficult because it created complicated administrative structure, lack of jurisdiction, justice and security.

Conversely, one of the respondents is convinced that only after joining the EU that all shortcoming of DPA would come to an end. However, related to benefits of B&H joining the EU membership, which was the third question, all of the responders believe that European membership would bring numerous benefits the most vital rule of law, prevention of corruption, the country with European living standards, equal rights and economic quality.

Furthermore, B&H would achieve a suitable place in the European family among other democratic countries, based on the system of development and values.

## Negotiating process

Initial stage in negotiating process is screening or analytical examination of the acquis. The Commission is responsible to provide detailed examination and evaluate policy chapters of each candidate country and to examine the level of preparedness. The progress of the negotiations depends on the speed of reform changes and alignment with EU laws in each country. No negotiations on any individual chapter are closed until every EU government is satisfied with candidate process (European Commission, 2019). Therefore, each country has sufficient time period for opening and closure of negotiations and Council of the EU concludes every decision. The whole negotiation process is only fully concluded once every chapter has been closed. In December 2022 B&H was granted the status of candidate country.

In order to open EU accession negotiations initially B&H must significantly advance implementation of 14 key priorities. These priorities include ensuring that the elections are conducted in accordance with European standards, along with improvement of the constitutional reform, judiciary, strengthening the fight against corruption, and organized crime and improved control of border management (Orešković, 2022). Additional conditions include strengthening the protection of human rights, freedom of expression and media, along with protection of minorities and changes in public administration reforms (Orešković, 2022).

Taking into consideration length of negotiating process of the countries in the region Serbia opened 22 out of 35 chapters, while Montenegro opened 33 out of 34 chapters. Croatia became member on July 2013 of the EU while negotiated for six years until complete closure of all the chapters. Albania and North Macedonia have been waiting for opening of the negotiations, that were announced in 2022.

## Rule of Law Related EU Acquis Chapters

Chapter 23 Judiciary and Fundamental Rights is one of the most important and complex chapters of the negotiation process based on the principles included in the article 2 of the Treaty of EU. The Chapter was officially opened on 18 December 2013 at the Intergovernmental Conference in Brussels and aims to maintain and develop the EU

in different sectors of freedom, security and justice to create effective judiciary system and equality. The Chapter is structured into three key divisions, judiciary, the fight against corruption and fundamental rights (European Commission, 2012).

## Fight against Corruption

This particular area has been of vital interest of the EU since the opening of the negotiations. Primary goal of the EU is that potential candidate countries solve the issue of corruption, before joining the full membership (Hodović; Suljević, 2016). However, corruption presents profound challenge to already B&H complex state system and its stagnant reforms which contribute to the continuous widespread corruption. Despite that anti-corruption bodies are increasingly involved to tackle high corruption; the indicators show otherwise which further affects proper functioning of the state. Moreover, there still exists limited commitment or political will to solve the ongoing issue.

The European Commission and Group of States against Corruption (GRECO) has recommended numerous requests for B&H to provide efficiency to curb the corruption as one of the most important conditions outlined (European Commission, 2023). Throughout the years numerous attempts have been made to control this issue in different state sectors especially in employment and among political elites. However, most of these attempts remained ineffective. In its annual report for 2022 GRECO emphasized that importance of access to information is vital in ensuring public transparency to tackle harmful acts of corruption. GRECO president Martin Mrčela stated: "Governments should guarantee the overall principle of transparency of public documents in practice.

Any expression to the rule of public disclosure should be limited to a minimum and be thoroughly justified. When it comes specifically to public procurement, public scrutiny and access to official documents are key to effectively preventing corruption" (Council of Europe, 2023). Corruption takes various forms ranging from the embezzlement, fraud, nepotism, bribery, extortion and money laundering which makes it difficult to control corrupt practices in a single indicator (UNDP, 2015). Disadvantages of corruption are numerous as it undermines the system and weakness the progress of the country.

The most affected are the vulnerable citizens of the society for which corruption create gaps

and social injustice towards slow economic growth and less space and interest of trade and investment for foreigners. The most undermined is the rule of law and citizens trust in the state institutions along with reputation of the state, representing one of the most difficult forms of crime to suppress (CSS, 2015). Therefore, corruption is harmful to society, democracy and individuals and affects the rightful functioning of the institutions as well as their ability to deliver effective public policies and quality public services (European Commission, 2023).

The EU requests that every country is responsible to introduce specific plan and program of anti-corruption measures, which would enable to tackle corruption in each state sector. All member states are obliged to fight corruption as it undermines proper work of democratic institutions along with the rule of law. Member states need to ensure that law enforcement and prosecutors have appropriate means to fight corruption (European Commission, 2023). Corruption is hindrance to sustainable economic growth, diverting resources from productive outcome, affecting the public spending and creating social gaps (European Commission, 2023). It is important for all countries to establish separated institutions which will fight against corruption.

Every country is responsible to deal with its best means to insure effectiveness of the institutional form. Establishment of the institutions that will define the policy and implementation of the anti-corruption policy. The fight against corruption includes numerous forms such as detection, prosecution and sanctioning of corruption. Initial and the most important is prevention which implies removal at the very stage all risks and threats which cause or promote signs of corruption. Therefore, initial prevention reduces the possibility of corruption as well as its reappearance. Lastly, repression implies the prosecution and removing from position or sanctioning those responsible for criminal misconduct (Hodović; Suljević, 2016).

Another effective way is to bring an awareness and reduce corruption through public campaigns that would focus on consequences and work of dysfunctional state sectors. Additionally, establishment of independent bodies would closely follow and investigate any corrupt activity (Hodović; Suljević, 2016). The strategy for prevention of corruption and coordination of the fight against corruption drafted the strategy to tackle corruption for 2022-2024 period and the implementation of Action Plan.

The Government of the Brčko District of B&H simultaneously adopted the same decision for the same time period. Even though state strategy to combat corruption is key priority of B&H towards integration into EU, there is still lack of adequate strategy at the state level. Since its stagnation and ongoing delay in the adoption of the document the lower levels have started to adopt their strategies to tackle corruption. In 2023 the EU introduced anti-corruption package which emphasizes communication as effective tool on the fight against corruption (European Commission, 2023). Anti-package provides deep insight into existing EU anti-corruption legislation and policies and reflects on necessary future of EU action. Secondly, EU proposed a new directive to tackle corruption. Directive includes strict rules and penalties for corruption offenses to ensure that criminal laws are fully implemented for successful prevention of corruption and to improve its enforcement. Third, the High Representative of the Union for Foreign Affairs and Security Policy with the assistance of the EU Commission proposes to complement the Common Foreign and Security Policy (CFSP) of rigid sanctions to fight corruption worldwide (European Commission, 2023).

Many EU member states are considered the least corrupt in the World. However, as included in the report of law there are many issues of concern for people across the EU as shown by Eurobarometer data. In 2022 statistics results on opinion of citizens on the corruption in their country, seven out of 10 Europeans (68%) believed that corruption was widespread in their country. About 31% believed that government means to tackle corruption were effective. Moreover, the leading companies based in EU (51%) believe that sanctions to criminal acts of corrupt people or business are unlikely to be reported to the authorities or prosecutors (European Commission, 2022).

Proposed directive obliges member states that adequate measures are put in place including effective rules on access information on conflicts of interest in the public sector, on assets of public officials and their connection with private sector. The Directive for combating corruption encourages member states to ensure the highest degree of transparency and accountability in public administration along with public decision making. Conduction of necessary action are important to raise awareness of negative consequences of corruption (European Commission, 2022). It requires to encourage civil society and community organizations to engage in anti-corruption efforts.

Furthermore, it provides coherent set of rules to successfully tackle corruption at national and EU level. In 2022 EU Commission report on B&H stated that political leaders and judicial institutions were ineffective to reduce the widespread corruption leading to ongoing increase of political inability to handle the issue. Furthermore, in May 2022 a State Level Law on the prevention of conflict of interest was rejected which emphasized lack of political will to rule of law and speed up process towards EU. Following non-transparent judicial follow up of corruption is greatly unsettled. Additional concern is related to low cooperation and coordination among anti-corruption bodies. In January 2023 the latest Transparency International report ranks B&H Corruption Perception Index (CPI) the lowest in the region with 34 score with further decline in the progress. This score ranks B&H same as the last year and the worst in the last decade.

B&H has not made any progress in the fight against corruption, mostly due to the political obstruction to change key reforms. Although the number of complaints in the anti-corruption sector has increased in 2021 compared to 2020, it still remains low from the number of complains issued in 2018. In order to tackle corruption, number of prevention bodies are established including the Agency for Prevention of Corruption and Coordination fight against corruption (AKIP) remains insufficient. Corruption prevention bodies at the entity and cantonal levels need to increase significantly to tackle corruption though some positive progress of anti-corruption comes from office of Sarajevo Canton. Collected analysis in 2021 in Sarajevo office reported 919 cases of corruption has been submitted mostly related to corruption in employment sector (European Commission, 2022).

Additionally, Tuzla Canton closely follows the steps towards better functioning of state progress and solving corruption. In May 2021, Tuzla Canton adopted legislation to establish anti-corruption office following in December adopted law on reporting of public officials (European Commission, 2022). For the period 2022-2003 the government of Sarajevo Canton adopted the strategy for the fight against corruption along with the Action Plan for the implementation of the strategy. Adoption was implemented by the Office for the fight against corruption and the quality management of the Canton in cooperation with the ministry of justice and administration. The effectiveness of the Strategy consists of several pillars related to transparency and strengthening of the institutions. Adoption of the document shows interest of the government to

initiate valuable project of value for the society. The adoption of this strategy is following up of the strategy from 2018 (Zugić, 2022).

### Judiciary

Judiciary plays vital part in proper functioning of the state. B&H is at early stage of improvement in the area of judiciary (European Commission, 2022). In May 2022, the Parliament rejected the legislative amendments aimed at establishing a system to confirm asset declarations of judges, prosecutors and High Judicial Prosecutorial Council (HJPC) members which emphasizes lack of political will to the rule of law and to the countries of EU membership. In June 2022, the Interim Investigative Committee on the state of judiciary of the House of Representatives published the results despite the delays due to political stagnation. Clear evidence of continuous deterioration exists, and require urgent measures to strengthen integrity and reliance of the public in judiciary system. B&H is still required to adopt a new Justice Sector Reform Strategy for 2021-2027 and relevant action plan (European Commission, 2023). The new strategy needs to include important key reforms required by the EU Commission included in Analytical report and Expert Report on Rule of Law issues (Priebe Report, 2019).

Therefore, in B&H proper mechanisms of the strategy should include monitoring and reporting with possibility to adopt proper action (European Commission, 2023). B&H citizens have lack of trust in the rule of law institutions, in the delivery of justice, in public and personal security along with the international community particularly the EU as responsible for defending and promoting the rule of law (Weber, 2021). In the coming year B&H should adopt reform strategy on new justice sector and implement national war crimes strategy, mainly by appointing new supervisory body. Its needs to adopt amendments to the Law on the High Judicial Prosecutorial Council which would create a stronger system of judicial staff (European Commission, 2022).

Additionally, professionalism and expertise are key role of the judicial reform. Hence, the EU is committed to strengthening of professional education and training to enable proper work of judiciary. Introduction of special educational programs and education would strengthen work of the institution. In that regard, in 2003 B&H established a center for education of judges and prosecutors in the Federation of B&H and the Republika Srpska.

### Efficiency of judiciary

In July 2023 was initiated strengthening the efficiency and proper functioning of the judiciary in B&H through establishment of the European Commission for the efficiency of Justice (CEPEJ). The implementation of the project focuses on the increase in the efficiency, better functioning and quality of the judiciary. The projects aim to support the judicial system of B&H in accordance with required rules and conditions developed by the European Commission. Furthermore, the project role is improved efficiency and trust in overall quality of the judiciary system including shortening of the duration of the procedure and reduced number of old cases in the court (Council of Europe, 2023).

Additional attention would be focused on the efficiency to collect, organize data of the judicial system of archives, statistics and new cases. Outlined procedures would be performed in close coordination with the (CEPEJ) project for the Western Balkans" Dashboard Western Balkans" with expertise and professional assistance in the judiciary field (Council of Europe, 2023).

Users of the judicial system will have significant importance from improved efficiency and proper functioning of the system. Program manager at the Delegation of the EU to B&H, Enrico Visentin emphasized that the project is a joint partnership between the EU, the Council of Europe and European Commission for judicial efficiency. This joint cooperation supports B&H to promote its path towards improvement. "This cooperation is key in promoting and preserving the principles of justice across our continent, further harmonizing legislation and establishing common standards, and enables the exchange of best practices among member states and countries of the Western Balkans in the EU accession process, stated Visentin (VSTV, 2023). B&H judicial problems are mainly reflected in lengthy judicial processes, and the lack of transparency and independence of the judiciary (Karović, 2019). In order to improve the efficiency of the judiciary the European Commission recommend to adopt the changes in the existing law on the High Judicial and Prosecutorial Council and also necessity to adopt the law on the High Judicial and Prosecutorial Council and law on the courts of B&H (Slobodna Evropa, 2022).

Among the eight priority conditions set by the European Commission for B&H also refers to changes in judiciary. Therefore, it is expected to make changes in the High Judicial and Prosecutorial Council as to adopt the new law on the High Ju-

dicial and Prosecutorial Council along with the law on the courts of B&H (Orešković, 2022).

### Fundamental Rights

Fundamental rights within the Chapter 23 are considered important to civilization and the rule of law. The implementation of fundamental of rights must be completely guaranteed. This particular sector consists of numerous conventions, charters, protocols and declarations that must be part of a legal system of EU candidate countries. Specific topics that stand out and require special attention are related to anti –discrimination, the right to justice, fair trial of the citizens and the protection of their personal data. The protection and promotion of Fundamental rights is important principle of EU law and international law. The Charter of Fundamental Rights defines list of political, personal, civil, economic and social rights that should be equally applied all citizens in the EU. Another included priority is the right to remain free from discrimination regardless of ethnicity, age, gender equality, adequate healthcare and the right to fair justice system. All these rights must be fully respected and protected with regular promotion. Specific rights and freedoms of fundamental rights can be grouped into substantive chapters which include dignity, equality, freedom, citizens' rights and justice. The EU is committed to promoting human rights and democracy, effective guarantees of the rule of law and fight against poverty (European Commission, 2001).

In 1993, Vienna World Conference on Human Rights reaffirmed its commitment to strengthen and protect the rights of woman, children, including economic and social rights (UN, 1993). Protection of minorities is special emphasis of EU policy on Human rights. Article 6 of the Treaty on EU (TEU) applied to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Additionally, article 14 of the (TEU) states that EU member states and potential candidate countries should comply with human rights without discrimination and requires that all of the rights and freedoms stated in the article must be followed and protected. The right of EU citizens is applied to each candidate country to comply with the conditions for exercising the rights of nationals of EU member states. These includes right to vote for local and European Parliament elections, the right to reside freely within the EU and diplomatic and consular protection.

Rights related to European Citizenship under Chapter 23 is included the right to free movement

and residence throughout the Europe without any act of the discrimination on the basis of nationality. Furthermore, the citizens right to vote in choosing their representative in the European Parliament, the right to diplomatic or consular protection. The right to petition to the European Parliament and the right to complain to European Ombudsmen about mal-administration by the EU institutions or body. The importance of citizens' rights allows to actively participate in the realization of numerous projects and to have benefits of EU membership.

Article 39 of the EU Charter of Fundamental Rights refers to right to vote and to stand as a candidate at elections to European Parliament. "Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot." While article 45 of the EU states that "Every citizen of the Union has the right to move and reside freely within the territory of the Member States. Freedom of movement and residence may be granted in accordance with the Treaties to nationals of third countries legally resident in the territory of a Member State".

EU emphasizes special attention to the rights of minorities of the EU enlargement process. Particular attention refers to Roma/Sinti communities as these population is widely exposed to discrimination. This relates to ruling European Court of Human Rights (ECHR) in case of Sejdić - Finci vs. B&H, that is focusing on "unconstituent" minority population and their dissatisfaction from being ineligible to stand for elections of the Presidency and the House of Peoples of Parliamentary Assembly because of their ethnic origin. The ECHR published a report stating that B&H has violated 19 judgements on rights guaranteed by the European Convention on Human Rights (ECHR).

Rulings on cases on human rights violations that are yet to be complied with, such as Sejdić-Finci, Zornić, Šlaku, Pilav and Pudarić, require constitutional amendments which still await resolution of equality among citizens. Political parties could not form joint agreement for constitutional reforms in accordance with the European Convention on Human Rights despite the negotiations and support from EU and US. Therefore, B&H still lacks accomplishment in adopting a comprehensive policy framework on the promotion and enforcement of human rights such as non-discrimination and protection of minorities. The Law on the Human Rights



Ombudsman still requires amendment to strengthen its independence and effectiveness. Therefore, full implementation of Constitutional court decisions has yet to be fully enforced.

Chapter 24 includes justice, freedom and security which is the most requested and consists of 11 areas of negotiations of wide range of issues starting from the EU borders control, to the visa, fundamental rights, drug related criminal, custom cooperation and police asylum and external immigration issues of fight against organized crime and terrorism, judicial cooperation in criminal and civil matters. The creation of these policies is included in the Treaty on the Functioning of the EU Articles (67-89). B&H has achieved some level of success in the implementation of the EU *acquis* in this field in particular on key priority on managing migration and asylum (European Commission, 2022). EU key challenges will be focused on migration and preparation of capacities for rightful servicing of asylum seekers and their protection. In this regard each candidate country is obliged to comply within the framework of the community law in this area along with its full implementation. B&H has taken further significant steps have towards implementation of a sustainable migration management system.

However, despite the EU support and advocacy to stabilize migrants in the country, B&H authorities have failed to adequately manage the responsibility in hosting asylum seekers migrants across the country (European Commission, 2022). The lack of management is neglected among entities and cantons under the full supervision of state authority. B&H authorities are requested to comply with the procedures provided by the EU Agency for asylum (EUAA) in accordance with Common European Asylum System (CEAS) and EU standards and to extend validity of 2020-2021 road map for stronger cooperation (European Commission, 2022). According to the article 3 of the Treaty of the EU it sets out as the objective that Union shall offer its citizens an area of freedom, security and justice without internal frontiers in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border control, asylum, immigration and the prevention and combating of crime.

The effort of the Ministry of the Security has contributed to improve coordination and take over responsibility of illegal immigration which should include support of all levels of the government (European Commission, 2022). Therefore, the Council of Ministers is required to adopt a new strategy and action plan on migration and asylum for 2021-2025.

Moreover, judicial and police cooperation have constantly developed during European Integration which contributed to achievement of higher level of security within the EU. Various security challenges and threats such as international terrorism, organized crime and migration led to close ties between member states in combating this issue. In addition, constant cooperation of police, customs and other authorities is requested of the member states to strengthen law enforcement along with judicial cooperation to regulate criminal acts (Sinanović, 2014).

## EU's Freedoms

The Charter of Fundamental Rights of the EU encompass the most important freedoms and rights enjoyed by the citizens of the EU. The Preamble of the Charter presents that 'the peoples of Europe, in creating an even closer union among them are resolved to share a peaceful future based on common values'. The union highlights universal values of human rights, freedom, equality and solidarity. It is built on the foundation of democracy and the rule of law.

The rights of the individual are placed at the center of its activities by establishing the citizenship of the Union and by creating area of freedom, security and justice. The Preamble emphasizes the importance of the preservation and the development of these common values, while simultaneously respecting the diversity of cultures and traditions of the peoples of Europe, as well as the national identity of the member states. Regarding the interpretation of rights and principles, any restrictions to rights and freedoms in the Charter must be provided for by the law and respect for those rights and freedoms.

## Asylum

Asylum is considered a fundamental right of the EU adopted in 1951 Geneva Convention on protection of refugees. Since 1999, the EU established a Common European Asylum system (CEAS) for member countries to focus on providing joint control and protection for refugees (European Commission, 1999). In the Article 78 of the Treaty on the functioning of the EU (TFEU) provides a specific legal basis for implementing the principle of international protection. It states "In the event of one or more Member States being confronted by an emergency situation characterized by a sudden inflow of nationals of third countries, the Council on a proposal from the Commission, may adopt provisional measures for the benefit of the Mem-

ber States concerned. It shall act after consulting the European Parliament" (asylumaccess, 2021). In 2023, newly published report of the EU Agency for Asylum (EUAA) revealed that EU member countries received around 996,000 asylum applications in 2022 which is 53% increase over 2021 year (Asylum Report, 2023). Implementation of effective asylum procedures remains complex. The main issue lies in the insufficient facilities and staff of the Foreign Affairs and Border Police to register asylum entry in short period of time (European Commission, 2023).

Negotiating chapter includes External border and Schengen that is considered as one of the fundamental principles of the EU to enable free movement of people, goods and services. Freedom of movement would not only boost tourism and business, but has also enabled cross border workers and students to communicate with ease. Schengen agreement also ensured collective security which eliminated internal border control. Additionally, establishment of the Schengen Information system (SIS) enabled member states to share information and strengthening regional security. It is recommended that B&H should adopt the second-generation road map for cooperation with EUAA (2023-2025). The previous road map (2020-2022) was only partially implemented (European Commission, 2023). Asylum procedures and mechanism should be strengthened to ensure faster processing of their request and to ensure that people in need of international protection obtain it (European Commission, 2023).

## Structured Dialogue on Justice

The EU structured dialogue is of special importance in the judiciary and sectors related to fight against corruption and judiciary reform. It was initiated in 2011 as a desire to start talking about the rule of law and efficient judicial system as soon as possible towards the harmonization of Chapters 23 and 24 before the agreements were opened. The establishment of the dialogue is formed in the framework of the Stabilization and Association Process and requires the engagement and the responsibility of the local authorities to reach an agreement on reforms in numerous sectors (EEAS, 2015).

Integration of B&H into the EU would only be achieved through effective changes of reforms, tackled corruption and proper functioning of judiciary system. Already in 2011 representatives of the EU presented recommendations of required reform changes to B&H authorities. The recommendations were emphasized on the judicial reform system at the state level which remains among key priorities.

The agenda of the structured dialogue is reviewed by all 27 member states through debate and assess the information proposed by the Commission which agree on certain "positions" and "conclusions" of relevance. Solely at this stage is the position of the EU consolidated (EEAS, 2015).

Additionally, recommendation was especially focused on the comprehensive analytical review on the prosecution of those responsible for criminal offenses. Since the dialogue initiative slight progress has been made in the preparation of the rightful legislation in the context of reform of the High Judicial and Prosecutorial and Court of B&H. Special priority in dealing with criminal offenses would be based on resolving war crime cases. Following 2013 report of the European Commission on the progress of B&H it was stated that "The structured dialogue on the judiciary produced a number of concrete and positive results with a growing number of recommendations that have either been fully fulfilled or their implementation is on the right path". Since EU recommendations fairly good progress has been achieved in processing war crimes and work on the reform of the state level judiciary.

However, B&H still has long way of reform changes, while has made limited progress in the fight against corruption and organized crime (European Commission, 2013). In order to reach successful changes of reforms complete engagement and responsibility of members of judiciary along with local institutions is of vital importance. In 2014 report on the progress of B&H emphasizes range of problems of institutions and non-compliance with the law. European Commission report stated that slight progress has been made in the area of judicial reform system emphasizing that structured dialogue in the judiciary remains crucial plan for consolidating the consensus and should be extended to all issues of the rule of law which would lead to opening of negotiating chapters 23 and 24 to EU membership (Sinanović, 2014).

## Fight against organized crime

Organized crime possesses major threat to European citizens, organizations and institutions. Criminal activities are present in European countries and often include cross-border criminal operations. EU estimates that about 70% of criminal activities are active in more than three member states. Therefore, in May 2021 the EU adopted priorities to strengthen the fight against serious and organized crime. The priorities are expected to implement between 2022 and 2025 year within the European multi-disciplinary platform

against criminal threats (EMPACT). B&H has some initial level of preparation in the prevention of fight against corruption and organized crime. Still is evident continued lack of progress at this level.

## Conclusion

Accession talks in the process of candidate countries towards EU membership remain crucial. Each candidate country is obliged to engage in the opening of negotiating chapters to further fulfill necessary conditions to membership. However, the procedures have created strict conditions that create demanding and long-term negotiation process. Time period of accession depends of the several factors such as on the fulfillment of the conditions and reforms.

The progress towards opening of the negotiation chapters evolves relatively slow as B&H fight to tackle corruption is ongoing and it significantly affects the rule of law, judiciary and proper functioning of the overall administration. Hence, the European Commission regularly monitors, directs and gives recommendations on the fulfillment of conditions and annual reports on development in the country. Fulfilling accession negotiations is an endeavor that requires effort of all state institutions in the country, the involvement of society and communities along with daily information of citizens for successful outcome. B&H along with neighboring countries have established centers for education of judges and prosecutors in both entities which significantly contributes to better efficiency of the judiciary and enables justice and security.

The rule of law is one of the values of EU and it is essential for existence of fundamental rights and civil liberties. Therefore, when the rule of law is undermined proper decision making, independent courts and laws are put in danger. In order to prevent these occurrences, the B&H representatives need to act in accordance with EU treaties for functional overall system. B&H is currently faced with numerous challenges which cannot be accomplished without constitutional changes. As the majority of the interview responders agree the most significant obstacle that slows down the process of B&H to EU membership is due to political stagnation of reform changes. For the candidate country to become full member of the EU must change its legal system and harmonize the legislation of rights and obligations that are binding for all EU countries.

Towards such path many reform changes are required in the area of democracy, rule of law,

fundamental rights, judiciary, and public administration, economic and other segments of society. The additional issue which prolongs the integration to the EU is related to the violation of human and civil rights, among other, due to the DPA constitutional and legal framework, remain a serious limiting factor for fulfilment of conditions towards EU integration process. Ultimately, long and strenuous challenges remain towards integration which require decisive politicians and functional institutions for all citizens.

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