

Council of Europe contribution for the 34th UPR session (Oct-Nov 2019) Regarding Bosnia and Herzegovina

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Prevention of torture (CPT)

The 'European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment' organises country visits in order to visit places of detention to assess how persons deprived of their liberty are treated. After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings, and its recommendations, comments and requests for information.

2015 periodic visit

CPT report:



CPT_Inf_2016_17_Bi
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Executive summary:



CPT_Inf_2016_17_p
art_BiH.pdf

Government response:



CPT_Inf_2017_2_Go
v_resp_BiH.pdf

Publication news flash for a brief summary of the report: <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-2015-visit-to-bosnia-and-herzegovina>

Council of Europe Commissioner for Human Rights

The Commissioner for Human Rights is an independent and impartial non-judicial institution established by Council of Europe to promote awareness of and respect for human rights in the 47 Council of Europe member States.

On **7 November 2017** the Commissioner published a [report](#) following his visit to Bosnia and Herzegovina from 12 to 16 June 2017, focusing on issues relating to transitional justice and to media freedom. Noting the reported regression in co-operation on the prosecution of wartime crimes in the region, the Commissioner called on all states in the region, including Bosnia and Herzegovina, to reverse this negative trend. He was concerned about the slow progress in the prosecution of wartime crimes and urged the authorities to take all necessary measures to end impunity, and effectively address all shortcomings in the protection of and support to witnesses. The authorities were also urged to ensure that all direct victims of wartime crimes and their families are provided with effective access to justice and adequate reparation.



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The Commissioner reiterated that additional efforts at the national and regional levels are necessary to resolve the pending cases of missing persons and urged the authorities to establish the long-awaited fund for support to families of missing persons, and to fully comply with their international obligations notably as regards the relevant case-law of the UN Human Rights Committee.

Addressing the situation of some 50 000 internally displaced persons in need of targeted assistance, including more than 7 000 persons living in 156 collective centres, the Commissioner urged the authorities to step up their work in this field with a view to creating adequate conditions for sustainable return. He also called on the authorities to resolutely fight ethnic intolerance and hate crime and to ensure that law enforcement officials and legal professionals are adequately and systematically trained to be able to recognise and effectively investigate and sanction these offences.

With regard to freedom of the media, the Commissioner noted that despite the existence in Bosnia and Herzegovina of an adequate legislative framework, the media operate in very difficult conditions. He was seriously concerned that civil lawsuits for defamation are increasingly used against journalists and have had a chilling effect on their work and freedom of expression and stressed the need to strengthen the training and capacity of domestic judges on Article 10 ECHR.

Stressing his serious concern about acts of violence and threats against journalists, the Commissioner called on the authorities to live up to their positive obligation to initiate prompt, thorough and transparent investigations into all cases of physical violence or threats against journalists, and to bring perpetrators to justice. Considering unacceptable the public use by certain leading politicians of inflammatory remarks, including personal insults, against journalists and their work, the Commissioner urged politicians to put an end to this and other forms of pressure on the media. The Commissioner also expressed his concern about the reported deterioration of journalists' working conditions and called on the authorities to engage in an open dialogue with the professional media community on this issue and take all necessary measures in order to create adequate conditions for media professionals' work. At the same time, he underlined the need for media professionals to strengthen ethical journalism and to ensure that the mechanisms for self-regulation are effectively used by all media actors.

Last but not least, the Commissioner was seriously concerned by the failure of the authorities to find a sustainable funding solution for Bosnia and Herzegovina Radio-Television (BHRT). Expressing his grave concern about the existing tendency to organise the public service media along ethnic lines, the Commissioner regretted the lack of constructive and inclusive dialogue on necessary reforms of the public service media which would ensure that they effectively serve the needs of society as a whole with regard to information, education and culture. He urged the authorities to find a long-term, sustainable funding model.

On 15 May 2018, the Commissioner published a [letter](#) sent to the Minister for Human Rights and Refugees and the Minister of Security of Bosnia and Herzegovina, Semiha Borovac and Dragan Mektić respectively, concerning the migration situation in Bosnia and Herzegovina, in light of the increased arrivals of refugees and migrants into the country. Stressing her concern about the lack of

a systematic response by the authorities to the humanitarian needs of the many refugees and migrants, including families and children, the Commissioner called on the authorities, as a matter of urgency, to provide all refugees and migrants, including asylum seekers, with adequate accommodation using all available resources, including the refugee reception centre in Salakovac. The Commissioner also raised her concern about reports indicating that many potential asylum seekers faced obstacles in accessing the asylum procedure, in particular those persons who have been unable to register their address on time in Bosnia and Herzegovina. Lastly, noting the government's intention to step up border controls to prevent further arrivals, the Commissioner drew the authorities' attention to their human rights obligations with a view to ensuring that all persons who wish to seek international protection in Bosnia and Herzegovina have the possibility to do so.



CommDH_9May2018
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Fight against racism and intolerance (ECRI)

The European Commission against Racism and Intolerance (ECRI) is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as "race", national/ethnic origin, colour, citizenship, religion and language. It prepares reports and issues recommendations to member States, in which its findings, along with recommendations are published. These reports are drawn up after a contact visit to the country in question and a confidential dialogue with the national authorities. The country monitoring takes place in five-year cycles. As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.

ECRI's third report on Bosnia and Herzegovina was adopted on 6 December 2016 and published on 28 February 2017.



ECRI2017_2_BiH.pdf

Protection of minorities

Framework Convention for the Protection of National Minorities

The monitoring procedure for this convention requires each state party to submit a report within one year following the entry into force of the Framework Convention and additional reports every five subsequent years. State reports are examined by the [Advisory Committee](#), a body composed of 18 independent experts responsible for adopting country-specific opinions. These opinions, on which States Parties have an opportunity to comment, are meant to advise the Committee of Ministers in the preparation of its resolutions, containing conclusions and recommendations to the State concerned.

The Advisory Committee on the Framework Convention adopted the [4th Opinion in respect of Bosnia and Herzegovina](#) on 9 November 2017.



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European Charter for Regional or Minority Languages

The [Charter's monitoring procedure](#) is based on state reports, as each State Party is required to present its first report within the year following the entry into force of the Charter with respect to the Party concerned. The subsequent reports are presented at three-yearly intervals. A committee of independent experts examines the state's periodical report and addresses an evaluation report to the Committee of Ministers, including proposals for recommendations.

Bosnia and Herzegovina was the last State to ratify the European Charter for Regional or Minority Languages and it entered into force in Bosnia and Herzegovina in 2011. The authorities submitted their 2nd periodical report in August 2015. The Committee of Experts adopted its evaluation report on Bosnia and Herzegovina in March 2016 and the corresponding Committee of Ministers' recommendations were adopted in October 2016.

Periodical report:



MIN_LANG_BiH_2015
PR6.pdf

Evaluation report:



ECRML2016_3_BiH.p
df

CM recommendations:



CMRecChL2016_4_Bi
H.doc

Action against trafficking in human beings (GRETA)

The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008, following its 10th ratification. While building on existing international instruments, the Convention goes beyond the minimum standards agreed upon in them and strengthens the protection afforded to victims.

The Convention has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

The main added value of the Convention is its human rights perspective and focus on victim protection. Its Preamble defines trafficking in human beings as a violation of human rights and an offence to the dignity and integrity of the human being. The Convention provides for a series of rights for victims of trafficking, in particular the right to be identified as a victim, to be protected and assisted, to be given a recovery and reflection period of at least 30 days, to be granted a renewable residence permit, and to receive compensation for the damages suffered.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.


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Preventing and combating violence against women and domestic violence (GREVIO)

The Council of Europe Convention on preventing and combating violence against women and Domestic violence ([Istanbul Convention](#), CETS No. 210) is the most far-reaching international treaty to tackle this serious violation of human rights. It aims at zero tolerance for such violence and is a major step forward in making Europe and beyond safer. Preventing violence, protecting victims and prosecuting the perpetrators are the cornerstones of the convention. It also seeks to change the hearts and minds of individuals by calling on all members of society, in particular men and boys, to change their attitudes. In essence, it is a renewed call for greater equality between women and men, because violence against women is deeply rooted in the inequality between women and men in society and is perpetuated by a culture of intolerance and denial.

The Council of Europe Istanbul Convention provides for two types of monitoring procedures:

- 1. a country-by-country evaluation procedure;*
- 2. and a special inquiry procedure in exceptional cases where action is required to prevent a serious, massive or persistent pattern of any acts of violence covered by the Convention.*

The aim of the monitoring mechanisms of the Istanbul Convention is to assess and improve the implementation of the Convention by Parties. It consists of two distinct, but interacting, bodies:

- 1. [GREVIO](#), the Group of Experts on Action against violence against women and domestic violence, is the independent body responsible for monitoring the implementation of CETS No. 210. GREVIO launched its first evaluation procedure in spring 2016, after adopting a questionnaire on legislative and other measures giving effect to the Istanbul Convention.*
- 2. The [Committee of the Parties](#) is composed of the representatives of the Parties to the Convention. The Committee of the Parties may adopt, on the basis of the reports and conclusions of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), specific recommendations addressed to the Parties concerned.*

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.

Bosnia and Herzegovina is even further away in terms of the monitoring procedure so nothing to report at this stage.

Protection of children against sexual abuse (Lanzarote Convention)

The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, also known as “the Lanzarote Convention”, requires criminalisation of all kinds of sexual offences against children. It sets out that states in Europe and beyond shall adopt specific legislation and take measures to prevent sexual violence, to protect child victims and to prosecute perpetrators.

The “Lanzarote Committee” (i.e. the Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse) is the body established to monitor whether Parties effectively implement the Lanzarote Convention. To do so, the Committee evaluates the information which has been provided by the national authorities and other sources in their replies to questionnaires developed by the Committee itself. This monitoring procedure is divided by rounds, each round concerning a theme; starting with sexual abuse in the circle of trust.

As to the 1st monitoring round on the “Protection of children against sexual exploitation and sexual abuse in the circle of trust”, the Bosnia and Herzegovina was urged to:

- review its legislation to ensure effective protection of children from situations where abuse is made of a recognised position of influence (R1, 1st implementation report);
- take the necessary legislative or other measures to set up or designate mechanisms for data collection or focal points at national or local level and in collaboration with civil society, for the purpose of observing and evaluating in terms of quantitative data collection the phenomenon of the sexual exploitation and sexual abuse of children in general and child sexual abuse committed in the circle of trust, in particular (R13, 1st implementation report);
- [as it limits mandatory screening only to specific professionals] to extend such screening to the recruitment of all professionals (public or private) in regular contact with children (R19, 2nd implementation report);
- to deny the perpetrator, temporarily or permanently, the exercise of the professional or voluntary activity involving contact with children in the course of which the offence was committed (R22, 2nd implementation report);
- put in place effective intervention programs or measures for persons, including children, who fear they may offend to prevent the risk of offences being committed (R24, 2nd implementation report);
- put in place a tool or procedure to make an assessment of the dangerousness and possible risks of repetition of sexual offences against children (R26, 2nd implementation report);
- put in place a tool or procedure to evaluate the effectiveness of the intervention programmes or measures (R27, 2nd implementation report);
- put in place an offer dedicated to meet the developmental needs of children who sexually offend, including those who are below the age of criminal responsibility with a view to providing them adapted programmes or measures so that they can be helped (R28, 2nd implementation report);
- which have not yet put in place effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed, in the pre-trial phase of the procedure, to do so (R29, 2nd implementation report).

As regards the urgent monitoring round on "Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse", the Bosnia and Herzegovina (as well as the other 39 parties covered by the round) received the following 5 "urge recommendations":

- urges Parties in line with Article 5 of the Convention to effectively screen all persons who, by their professions, have regular contact with children affected by the refugee crisis for convictions of acts of sexual exploitation or sexual abuse of children in line with their internal law (R18);
- since examining the family situation is important where there are suspicions of child sexual exploitation or abuse, urges Parties to take the necessary measures to avoid risks that the child may be abused or exploited in case of family reunification (R27);
- urges Parties that have not yet done so to take the necessary legislative or other measures to ensure that child victims of sexual exploitation and sexual abuse affected by the refugee crisis may benefit from therapeutic assistance, notably emergency psychological care (R29);
- urges Parties to encourage the co-ordination and collaboration of the different actors who intervene for and with children affected by the refugee crisis to ensure that appropriate support may be provided immediately after the disclosure of sexual exploitation and sexual abuse (R30);
- urges Parties to make use, within the context of the refugee crisis, of the specific co-operation tools already available in the framework of Europol/Interpol which are specifically aimed at identifying victims of sexual exploitation and sexual abuse (R33).

Fight against corruption (GRECO)

The 'Group of States against Corruption' (GRECO) monitors all its 49 members through a peer review evaluation procedure within thematic evaluation rounds. The evaluation reports contain recommendations aimed at furthering the necessary legislative, institutional and practical reforms. Subsequently, the implementation of those recommendations is examined in the framework of a "compliance procedure", assessing whether they have been implemented satisfactorily, partly or have not been implemented 18 months after the adoption of the evaluation report.

Fourth Evaluation Round: "Corruption prevention in respect of members of parliament, judges and prosecutors.

GRECO adopted its 4th Evaluation Round report on Bosnia and Herzegovina in March 2018 and published it in May 2018.



[GRECORC4_2017_2_2_BiH.pdf](#)

GRECO concludes that Bosnia and Herzegovina has implemented satisfactorily none of the fifteen recommendations contained in the Fourth Round Evaluation Report.

With respect to members of parliament, timid steps have been made by Parliament to strengthen its integrity system. A long-awaited amendment of the Code of Conduct took place in 2015 to reportedly step up enforcement and oversight mechanisms for ethical breaches, but it remains to be seen how it is indeed implemented in practice. Further, much more needs to be done in terms of the provision of advisory and training opportunities on corruption prevention matters for members of Parliament. The new proposed legislation on the prevention of conflicts of interest is a promising development, which could go a long way in meeting GRECO's recommendations. At present, however, there is still no credible and independent mechanism to deal with conflict of interest or to check up on asset declarations by parliamentarians at State level. This calls for determined and priority action.

As far as judges and prosecutors are concerned, the High Judicial and Prosecutorial Council has adopted new criteria to improve prosecutors' performance appraisals, guidelines on preventing conflicts of interest in the judiciary, guidelines on integrity plans, as well as guidelines on disciplinary sanctions. These represent worthwhile steps toward the implementation of some of the recommendations, which will need to be confirmed in practice. Many of the changes required, however, are subject to amendments to the Law on the High Judicial and Prosecutorial Council. This process was already on-going when the Evaluation Report was adopted and it is disappointing that it has not yet been successfully completed.

Execution of judgments and decisions of the European Court of Human Rights

Statistical data

As 31 December 2018, there were 24 (30 cases at 31 December 2017) cases against Bosnia and Herzegovina pending before the Committee of Ministers for supervision of their execution. Among these cases, 9 cases were "leading cases" evidencing more or less important general problems (11 leading cases at 31 December 2017). In 2018, the CM was seized by 4 new leading cases (4 new leading cases in 2017) and the amount of just satisfaction awarded was € 182,661 (€ 33,300 awarded in 2017). In 2018, 21 cases (12 cases closed in 2017) were closed by the adoption of a Final Resolution.

Main cases / groups of cases under the Committee of Ministers' supervision

The main cases presently under the Committee of Minister's supervision cover notably the issues presented below. For fuller overview of the situation see the [Country Factsheets](#) available on the website of the Department for the Execution of Judgments of the European Court of Human Rights and in the [Committee of Ministers' Annual Reports](#) on its supervision activity. More detailed information on the status of execution in individual cases can be found through [Hudoc-EXEC](#).



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Violation of the right to free elections and discrimination on account of citizens' ineligibility to stand for elections to the House of Peoples due to their lack of affiliation with a constituent people

Sejdić and Finci group, Application No. 27996/06, judgment final on 22/12/2009, enhanced supervision

Inability of Yugoslavian armed forces members to regain possession of their pre-war apartments

Đokić + Mago group, Applications No. 6518/04 and 12959/05, judgments final on 4/10/2010 and 24/9/2012, enhanced supervision

Unlawful placement in social care home, i.e. without a decision of the competent civil court

Hadžimejlić and Others, Application No. 3427/13, judgment final on 3/2/2016

Non-enforcement of domestic judgments concerning unpaid work-related benefits
Kunić and Others, Application No. 68955/12, judgment final on 14 February 2018

Important cases closed in 2018

In 2018 the Committee of Ministers ended its supervision of a case relating to the **non-enforcement of judgments ordering the State to pay war damages** (Čolić and Others, Application No.1218/07, final on 9/4/2009, See [Final Resolution](#)).



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OTHERS AGAINST BC

Social and Economic Rights (ECSR)

The European Committee of Social Rights (ECSR) monitors compliance with the [European Social Charter](#) under two procedures: the national periodic reporting system and the collective complaints procedure. Following a decision taken by the Committee of Ministers in 2006, the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

Please note that these factsheet will be updated by the end of March, after the conclusions of the European Committee of Social Rights are made public.

Bosnia and Herzegovina

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680492808&format=pdf>



ESC_BiH.pdf

Venice Commission

The [European Commission for Democracy through Law](#) (Venice Commission) is the Council of Europe's advisory body on constitutional matters. It provides States and international organisations working with it (EU, OSCE/ODIHR) with legal advice in the form of opinions.

Since 2013 the Commission adopted three opinions on prohibition of discrimination and ombudsman, judiciary and electoral matters of Bosnia and Herzegovina.

Prohibition of discrimination

CDL-AD(2013)027

Amicus Curiae Brief for the Constitutional Court of Bosnia and Herzegovina, on the Compatibility with the **non-discrimination principle of the selection of the Republic Day** of the Republika Srpska



CDL-AD_2013_027_
BiH.pdf

Democratic institutions

CDL-AD(2015)034

Opinion on the draft law on **Ombudsman for Human Rights** of Bosnia and Herzegovina



CDL-AD_2015_034_
BiH.pdf

Judiciary

CDL-AD(2014)008

Opinion on the draft law on the **High Judicial and Prosecutorial Council** of Bosnia and Herzegovina



CDL-ADL_2014_008_
BiH.pdf

CDL-AD(2013)015

Opinion on the draft law on the **courts** of Bosnia and Herzegovina



CDL-AD_2013_015_
BiH.pdf

CDL-AD(2016)024

Amicus Curiae Brief for the Constitutional Court of Bosnia and Herzegovina on the mode of **elections** in the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina



CDL-AD_2016_024_
BiH.pdf