

NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

BOSNIA HERZGOVINA, Situation as of 31 December 2003

General Overview

Preliminary Note: this table is accompanied by an explanatory note

COUNTRY: Bosnia and Herzegovina	Constitutional Provisions	Specific Legislation	Criminal Law	Civil and Administrative Law
Norms concerning discrimination in general	Yes.	No.	Yes.	Yes.
Norms concerning racism	Yes.	No.	Yes.	No.
Relevant jurisprudence	No information available.	No.	No information available.	No.

EXPLANATORY NOTE

BOSNIA AND HERZEGOVINA / GENERAL OVERVIEW

The State of Bosnia and Herzegovina declared its independence from Yugoslavia in March 1992. Concluding four years of war, the Dayton Peace Agreement was signed in Paris on 14 December 1995. It established the post of High Representative (hereinafter HR), tasking him to oversee the civilian aspects of the Agreement. Heading an important office – the Office of the High Representative (hereinafter OHR), he/she is the final authority with regard to the interpretation of the Agreement, authorised to impose legislation and dismiss officials (including judges), and tasked with co-ordinating the activities of other international civilian organisations in the country. The OHR's scope of activities has extended with time to include nowadays, for instance, the functioning of institutions and the rule of law. As a result, various legal acts and decisions were prepared and passed by the Office of the High Representative (OHR).

The Dayton Agreement established Bosnia and Herzegovina (BiH) as a State comprising two Entities, each with a high degree of autonomy: the Republika Srpska (RS) and the Federation (FBiH). As a matter of fact, there is at present a “third Entity”, namely the district of Brcko (BD), situated in the north of the country. It is subject to particular regulations and subject to close international supervision. From a constitutional point of view, the current system bears the features of a very decentralised federal system, with each Entity having its own Constitution, President, Government, Parliament, judicial organisation, military responsibility and penal law. The Entities may conclude international agreements and relations between the Entities are normally regulated by agreements. Contrary to the RS, the FBiH is itself a federation subdivided into Cantons (which have their own constitutions and may also enter into international agreements under certain conditions), each being governed by a Canton President, a Deputy-President and a Government led by a Prime Minister. Sarajevo is the State capital and that of the RS and of the FBiH according to the three constitutions concerned. The legal/institutional situation in the country is the result of many compromises and ethnic/religious considerations. The protection of human rights is a constitutional requirement in BiH and a prerequisite and instrument for the achievement of long-term stability in the country.

Constitutional Law

Preliminary Note: this table is accompanied by an explanatory note

Constitutional provisions	Scope	Relevant jurisprudence	Remarks
Dayton Peace Accords Annex 4 (1995) Article II Human Rights and Fundamental Freedoms Paragraph 1 Human Rights	Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms. To that end, there shall be a Human Rights Commission for Bosnia and Herzegovina as provided for in Annex 6 to the General Framework Agreement.		
Dayton Peace Accords Annex 4 (1995) Article II Human Rights and Fundamental Freedoms Paragraph 2 International Standards	The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other laws.		
Dayton Peace Accords Annex 4 (1995) Article II Human Rights and Fundamental Freedoms	All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms		

<p>Freedoms Paragraph 3 Enumeration of Rights</p>	<p>referred to in paragraph 2 above; these include:</p> <ul style="list-style-type: none"> (a) The right to life. (b) The right not to be subjected to torture or to inhuman or degrading treatment or punishment. (c) The right not to be held in slavery or servitude or to perform forced or compulsory labour. (d) The rights to liberty and security of person. (e) The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings. (f) The right to private and family life, home, and correspondence. (g) Freedom of thought, conscience, and religion. (h) Freedom of expression. (i) Freedom of peaceful assembly and freedom of association with others. (j) The right to marry and to found a family. (k) The right to property. (l) The right to education. (m) The right to liberty of movement and residence.
<p>Dayton Peace Accords Annex 4 (1995) Article II Human Rights and Fundamental Freedoms Paragraph 4 Non-Discrimination</p>	<p>The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex* to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any grounds such as gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.</p>
<p>Dayton Peace Accords Annex 4 (1995) Article II Human Rights</p>	<p>All refugees and displaced persons have the right freely to return to their homes of origin.</p>

and Fundamental Freedoms Paragraph 5 Refugees and Displaced Persons	They have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void.
Dayton Peace Accords Annex 4 (1995) Article II Human Rights and Fundamental Freedoms Paragraph 6 Implementation	Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms set forth in the European Convention for the Protection of the Human Rights and Fundamental Freedoms and its Protocols.
Dayton Peace Accords Annex 4 (1995) Article II Human Rights and Fundamental Freedoms Paragraph 7 International Agreements	Bosnia and Herzegovina shall remain or become party to the international agreements listed in Annex* to this Constitution.
Dayton Peace Accords Annex 4 (1995) Article II Human Rights and Fundamental Freedoms Paragraph 8 Cooperation	All competent authorities in Bosnia and Herzegovina shall co-operate with and provide unrestricted access to: any international human rights monitoring mechanisms established for Bosnia and Herzegovina; the supervisory bodies established by any of the international agreements listed in Annex* to this Constitution; the International Tribunal for the Former Yugoslavia (and in particular shall comply with orders issued pursuant to Article 29 of the Statute of the Tribunal); and any other organisation authorised by the United Nations Security

Council with a mandate concerning human rights or humanitarian law.

EXPLANATORY NOTE

BOSNIA AND HERZEGOVINA / CONSTITUTIONAL LAW

The Constitution of Bosnia and Herzegovina was adopted as Annex 4 of the Dayton Peace Accords, initiated in Dayton, Ohio on 21 November 1995. It came into force with the signing in Paris on 14 December 1995 and the following international instruments are listed in the document as binding for Bosnia and Herzegovina:

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide
2. 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto
3. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
4. 1957 Convention on the Nationality of Married Women
5. 1961 Convention on the Reduction of Statelessness
6. 1965 International Convention on the Elimination of All Forms of Racial Discrimination
7. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto
8. 1966 Covenant on Economic, Social and Cultural Rights
9. 1979 Convention on the Elimination of All Forms of Discrimination against Women
10. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
11. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
12. 1989 Convention on the Rights of the Child
13. 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
14. 1992 European Charter for Regional or Minority Languages
15. 1994 Framework Convention for the Protection of National Minorities

The Constitution of Bosnia and Herzegovina provides that BiH shall be a democratic state operating under the rule of law and obliges the state and entity governments to ensure the highest level of internationally recognised human rights and fundamental freedoms. The Constitutional Court of Bosnia and Herzegovina has jurisdiction over issues referred to it by any court in Bosnia and Herzegovina concerning whether a law is compatible with the Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina. It can also rule on the applicability or the scope of a general rule of public international law pertinent to the court's decision. Additionally, the court may receive appeals against decisions from any court whereby it is alleged that they violate the Constitution, including the provisions on Human Rights. Furthermore, the Human Rights Ombudsperson has the power to investigate alleged human rights violations and to recommend possible remedies. The Ombudsperson can act upon complaints or on his/her own initiative. The efforts of the Ombudsperson are aimed at reaching

amicable solutions. Where such solutions cannot be reached, the Ombudsperson can either forward a report on such a case to HR for political action, or to the Human Rights Chamber for a final legal resolution of the matter.

The Ministry for Human Rights and Refugees is responsible for the uniform application of human rights throughout the country, especially in the regulation of immigration, refugee and asylum policies.

Criminal Law

Preliminary Note: this table is accompanied by an explanatory note

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Infringement of the Equality of Individuals and Citizens	Article 145, Paragraph 1, Penal Code (2003)	An official or responsible person in the institutions of Bosnia and Herzegovina, who on the grounds of differences in race, skin colour, national or ethnic background, religion, political or other belief, gender, sexual orientation, language, education or social status or social origins, denies or restricts the civil rights as provided by the Constitution of Bosnia and Herzegovina, ratified international agreements, law of Bosnia and Herzegovina, some other regulation of	Punishment by imprisonment for a term between six months and five years		

		Bosnia and Herzegovina or general act of Bosnia and Herzegovina or, whoever on the grounds of these differences or background or other status grants unjustified privileges or does unjustified favours to individuals.	
Infringement of the Equality of Individuals and Citizens	Article 145, Paragraph 2, Penal Code (2003)	An official or responsible person in the institutions of Bosnia and Herzegovina, who in contravention of the regulations of Bosnia and Herzegovina on the equal use of languages and alphabets of the constituent peoples and others living on the territory of Bosnia and Herzegovina, restricts or denies to a citizen the use of his language or alphabet while addressing bodies or institutions of Bosnia and Herzegovina, business enterprises or other legal persons in order	Punishment by a fine or imprisonment for a term not exceeding one year

		to exercise his rights.		
Infringement of the Equality of Individuals and Citizens	Article 145, Paragraph 3, Penal Code (2003)	An official or responsible person in the institutions of Bosnia and Herzegovina, who denies or limits the right of citizens to be freely employed within the entire territory of Bosnia and Herzegovina and under the same prescribed terms.	Punished by imprisonment for a term between six months and five years	
Genocide	Article 171 Penal Code (2003)	Whoever, with an aim to destroy, in whole or in part, a national, ethnic, racial or religious group, orders perpetration or perpetrates any of the following acts: Killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births	Punishment by imprisonment for a term not less than ten years or long-term imprisonment.	

		within the group; forcibly transferring children of the group to another group		
Crimes against Humanity	Article 172 Penal Code (2003)	Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack perpetrates any of the following acts: -depriving another person of his life (murder); -extermination; -enslavement; -deportation or forcible transfer of population; -imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; -torture; -coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape), sexual	Punishment by imprisonment for a term not less than ten years or long- term imprisonment.	

slavery, enforced
prostitution,
forced
pregnancy,
enforced
sterilisation or
any other form
of sexual
violence of
comparable
gravity;
-persecutions
against any
identifiable
group or
collectivity on
political, racial,
national, ethnic,
cultural,
religious, sexual,
gender or other
grounds that are
universally
recognised as
impermissible
under
international
law, in
connection with
any offence
listed in this
paragraph of this
Code, any
offence listed in
the Penal Code
or any offence
falling under the
competence of
the Court of
Bosnia and
Herzegovina; -
enforced
disappearance of
persons;
-the crime of
apartheid;
-other inhumane
acts of a similar
character
intentionally

		causing great suffering, or serious injury to body or to physical or mental health.	
Torture and Other Cruel, Inhuman or Degrading Treatment	Article 190 Penal Code (2003)	An official or another person who, acting upon the instigation or with the explicit or implicit consent of a public official person, inflicts on a person physical or mental pain or severe physical or mental suffering for such purposes as to obtain from him or a third person information or a confession, or to punish him for a criminal offence he or a third person has perpetrated or is suspected of having perpetrated or who intimidates or coerces him for any other reason based on discrimination of any kind.	Punishment by imprisonment for a term between one and ten years.

EXPLANATORY NOTE

BOSNIA AND HERZEGOVINA / CRIMINAL LAW

The Criminal Code of Bosnia and Herzegovina was enacted by HR on January 24, 2003 and entered in force on 1 March 2003. Although there is insufficient information on cases under this Code, there is information communicated by non-governmental

organisations that “slow, inadequate and convoluted investigations and prosecutions by local authorities continue to be the norm and systematic discrimination on the basis of ethnicity continues to be a pervading factor” and “there appears to be little evidence that criminal proceedings are concluded efficiently or expeditiously: courts, prosecutors and police often mask bias by ineffectual investigations, excessive time delays and dubious decisions. There has been little evidence of genuine commitment or initiative on behalf of prosecutors to overcome local pressures, of an ethnic or political nature”¹.

Civil and Administrative Law

Preliminary Note: this table is self-sufficient and is not accompanied by an explanatory note

Provision	Scope	Consequences of breach	Relevant jurisprudence	Remarks
High Representative's Decision establishing interim procedures to protect vital interests of Constituent Peoples and Others, including freedom from Discrimination Paragraph 2 (2001)	The Constitutional Commission of the House of Representatives of the Parliamentary Assembly of the Federation of Bosnia and Herzegovina, and the Constitutional Commission of the National Assembly of Republika Srpska, are hereby required to act to ensure within the Federation of Bosnia and Herzegovina and within the Republika Srpska respectively, during the interim period until such implementation has been effected, that vital interests of the constituent peoples along with Others are to be fully protected during this period, and that there should, pursuant to the European Convention on Human Rights and Fundamental Freedoms, be freedom from			

	discrimination throughout Bosnia and Herzegovina.		
High Representative's Decision establishing interim procedures to protect vital interests of Constituent Peoples and Others, including freedom from Discrimination Paragraph 7 (2001)	In the event that any three members of the respective Commissions should consider that a law, regulation or governmental decision hereafter and during the said interim period taken or proposed to be taken within the Entity concerned, was, or threatened to be destructive of a vital interest of a constituent people or of Others, or was in conflict with the principle that there should be freedom from discrimination throughout Bosnia and Herzegovina, or in breach of a provision of the European Convention on Human Rights, a meeting of the relevant constitutional Commission shall be convened by the Chair Person of the Commission concerned no later than the fifth day after receiving notification in writing of the same.		
Press Code (1999) Article 3	Incitement - The press shall at all times be aware of the danger that arises when media, deliberately or by inadvertence, encourage discrimination and intolerance. Mindful of this danger, the press shall do its utmost not to incite to or inflame hatred or inequality on		

grounds of ethnicity, nationality, race, religion, gender or sexual orientation or any physical or mental illness or disability. The press shall under no circumstances incite to criminal acts or violence.

Press Code
(1999)
Article 4

Discrimination - Newspapers and periodicals must avoid prejudicial or insulting references to a person's ethnic group, nationality, race, religion, gender or sexual orientation or to any physical or mental illness or disability. References to a person's ethnic group, nationality, race, religion, gender, sexual orientation or physical or mental illness or disability shall be made only when directly relevant to the event being reported.

Note

¹ For further information see Helsinki Committee of Bosnia and Herzegovina home page: <http://www.bh-hchr.org/index2.htm>