


Matteo Nicolini • Alice Valdesalici  
Editors

# Local Governance in Multi-Layered Systems

A Comparative Legal Study in the Federal-  
Local Connection

 Springer

*Editors*

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# ‘Everything is Bridgeable’ in a Post-Conflict Situation? The Situation of Local Government in Bosnia and Herzegovina



Jens Woelk 

**Abstract** After a brief overview of the post-conflict transition of Bosnia and Herzegovina, the chapter illustrates local self-government in the two entities before addressing some common and fundamental problems. This analysis is followed by the case of the city of Mostar, which concentrates all the difficulties of local self-government in BiH in one single case. Despite the separate and different systems, local authorities in both entities face similar challenges: an ageing and shrinking population, the decline of smaller towns and an increasing divide between urban centres and rural areas, fragmented and often expensive local administration, debt burdens, disputes over the allocation of resources (especially in FBH), insufficient cooperation. Therefore, according to a large majority of local politicians and mayors, fundamental reforms are needed. However, despite the clear results of the analysis and the unanimous opinion of many local politicians, a real reform momentum or change from below is hardly to be seen or expected any time soon.

## 1 Potential for Change “from Below”? Introduction

Twenty-five years after the end of the war and the Dayton Peace Agreement (DPA), the situation in Bosnia and Herzegovina (hereinafter BiH) can only be characterised as ‘lost in transition’.<sup>1</sup> In many papers, the main focus of analysis has been on the country’s complex federal and institutional system as well as on questions of competence, the replacement of the international ‘semi-protectorate’ and the prospects of the ‘way to Bruxelles’ (i.e. the preparation for EU membership in the pre-accession phase), as well as on the specific challenges of a multinational system

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<sup>1</sup>Woelk (2017).

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in the context of a divided society. For the last fifteen years, the situation in BiH has appeared to be deadlocked; this is shown by the annual reports of the European Commission, which are all very similar, almost irrespective of the year of publication. ‘*Status quo* instead of progress’ seems to be a constant.<sup>2</sup>

This chapter will therefore examine whether the municipal level offers some potential for change of the deadlocked system and whether change ‘from below’ seems possible. This would be particularly important with regard to the participation of citizens as well as for the implementation of numerous reforms necessary for a rapprochement with the European Union.

After a brief overview of the post-conflict transition of Bosnia and Herzegovina, local self-government will be analysed in the following way: First, the differences between the two entities are explained before some common and fundamental problems are addressed. This is followed by the case of the—*de facto* divided—city of Mostar, where, after 10 years, municipal elections have been held for the first time in December 2020. Thus, Mostar concentrates all the difficulties of local self-government in BiH in one single case. It will hardly come as a surprise that in view of the overall situation, the potential for change ‘from below’ is limited at best.

## 2 Eternal Transition?

The federal system of Bosnia and Herzegovina (BiH) is one of the most complex in the world. The extreme decentralisation in the distribution of competences was necessary to end the war and the Croatian and Serbian attempts at secession: a quasi-confederation between two ‘entities’, held by the warring parties, was the resulting compromise. The basis of the post-war order is the Dayton Peace Agreement (DPA), which ended the war and guaranteed the continued existence of the state. Part of the peace agreement is the constitution (Annex IV), which, however, was neither confirmed by referendum nor published as an official version in (the three) national language(s). Therefore, the legitimacy of the constitution is largely based on values, principles and fundamental rights guaranteed in international treaties.<sup>3</sup> Due to its (active) role as guarantor of the peace agreement and its commitment to a functioning state, in addition to the three constituent peoples, the international community is rightly regarded as a ‘fourth constituent’ element.<sup>4</sup>

The Dayton Constitution establishes a multinational state<sup>5</sup> consisting of three constituent peoples—Bosniaks (approx. 50.11%), Croats (approx. 15.43%) and

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<sup>2</sup>Not only in Bosnia and Herzegovina, see e.g., Woelk (2018).

<sup>3</sup>Art. 2 of the Constitution provides for its direct applicability and supremacy over national law.

<sup>4</sup>Bose (2002). While the international presence and engagement has been strongly reduced over the last 15 years, the Office of the High Representative and the Embassies still play an active role and regularly interfere within Bosnian politics. International influence is also guaranteed by an impressive technical and financial assistance.

<sup>5</sup>The three constituent peoples enjoy a constitutionally guaranteed, equal status in the most important institutions. In addition, a general rule applies on the adequate representation of the

Serbs (approx. 30.78%)<sup>6</sup>—living in two constituent entities: *Republika Srpska* (RS), in which the majority are Bosnian Serbs, and the Federation of Bosnia and Herzegovina (FBH) with a Bosniak and Croat majority; both already existing at the time of the DPA. The resulting 'twin federal state' is characterised by an extremely weak state level with only a few institutions and by the fact that all essential competences and financial resources remain with the entities.<sup>7</sup> Despite their symmetrical relations with the (federal) 'state' level, the two constituent entities are unequal 'twins': the RS is a highly centralised unitary system, while the FBH has a federal structure with ten cantons. A sophisticated system of consociational democracy (power sharing) with detailed rules is designed to ensure that minority positions are not disregarded.

The peculiar structure of the Bosnian federal system—a federal system composed of two 'entities', one of which (the Federation of Bosnia and Herzegovina—FBH) is itself a federal system—and the international community's objective of guaranteeing continuity and unity of the Bosnian state (BiH) have terminological consequences: reference is to 'state' institutions and 'state' structures, when referring to the level that elsewhere (and in this volume) is usually called 'central' or 'national'. In fact, in the Bosnian context, the latter two terms cannot be used for that level, as 'central' is identified with the political objective of centralising the entire system, and 'national' risks to create confusion as there are three constituent peoples in a multi-national system. The same goes for 'federal' which is used for the federal subnational system of the FBH.

Three phases can be distinguished in the constitutional development of the post-war period: A first phase of stabilisation, in which serious problems in the implementation of the peace agreement became apparent, was followed by a second phase in which these were partly corrected, through the use of the extraordinary powers of the High Representative of the International Community (so-called Bonn Powers)<sup>8</sup> and through some fundamental decisions of the Constitutional Court (often the three international judges were decisive). However, until today, no fundamental or comprehensive constitutional reform has turned the 'Dayton constitution' (annex IV of the peace agreement) into a truly Bosnian one. So far, there was only one minor

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three peoples in public institutions, art. IX.3. This principle was made obligatory for all levels by a ruling of the Constitutional Court (U-5/98-III, July 2000) and enforced by the High Representative in 2003 with constitutional amendments to the entity constitutions.

<sup>6</sup>Data according to the 2013 census (first since the end of the war); the data was only published in 2017. In addition to the three 'constituent peoples', 2.73% 'others' and 0.71% citizens who have not declared themselves still live in the country. The total population decreased from almost 4.4 million (1991) to 3.5 million; the ethnic cleansing and expulsions during the war have led to a stronger separation of the groups and greater homogenisation of the population, although it is not possible to speak of three separate settlement areas; see the official website of the State Institute of BiH: <http://popis2013.ba/?lang=eng>.

<sup>7</sup>The apt expression has been coined by Graf Vitzthum (2003), p. 118.

<sup>8</sup>At the Peace Implementation Council held in Bonn, 1997, the High Representative was invested with extraordinary powers to remove officials obstructing the implementation process of the DPA and to impose legislation by international decree in case of inertia of the domestic legislators.

amendment that anchored the special situation of the *Brčko* district in the BiH Constitution, after the city had been directly under international administration in the first years after the war due to its strategic-geographical significance.<sup>9</sup> In this second phase, the corrections were usually initiated by the international community and largely carried out using special powers, a kind of ‘international substitution’ of domestic institutions. The goals were the viability of the peace agreement and its defence as well as overcoming obstruction on the part of nationalist forces. In this way, however, the international community (IC) became more and more involved in the details of Bosnian politics and itself part of the system (as well as a problem). Together with the considerable financial aid and technical support, the international decisions, which take precedence over Bosnian law and legislation, led to an increasingly pronounced culture of dependence. In addition, the legitimacy of this international ‘semi-protectorate’ was more and more questioned and increasingly criticised for the intensity of the interventions and the duration of the IC’s extraordinary powers.<sup>10</sup>

More than ten years after the end of the war, therefore the time seemed ripe for a different approach. The situation in the region had clearly improved after the Kosovo war, the democratic change in Serbia and the Ohrid Agreement in Northern Macedonia. Moreover, the prospect of future accession of the Western Balkan states to the European Union provided a clear goal, guidance for necessary reforms and financial and technical support for reform projects. In this situation, ‘local ownership’ became the new concept: sustainability of the reform processes could only be guaranteed if the necessary changes were actually achieved from within, by domestic institutions and actors. Accordingly, between 2006 and 2009, several attempts were made to pass a constitutional reform in Bosnia and Herzegovina: in 2006, only two votes were missing in parliament for a comprehensive reform project (so-called April Package). Subsequent attempts to reach an agreement among the political party leaders also failed.<sup>11</sup>

The momentum was missed, the problems remained. Nevertheless, the international community significantly reduced its involvement in the aftermath. The EU took over since the conclusion of the Stabilisation and Association Agreement (SAA). It demanded ownership, in line with the logic of preparing for future accession (but long before candidate status and the start of negotiations). This also meant that the extraordinary powers of the High Representative were practically no

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<sup>9</sup>In March 2009, the Parliamentary Assembly added a new Art. VI, 4 to the constitution to include the *Brčko* district final award. See ‘Amendment I to the Constitution of Bosnia and Herzegovina’, in Official Gazette of Bosnia and Herzegovina, No. 25/09 (31 March 2009), <http://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/001%20-%20Constitutions/BH/BH%20Amendment%20I%20to%20BH%20Constitution%2025-09.pdf>.

<sup>10</sup>See for a profound and still valid analysis of the constitutional situation, European Commission for Democracy through Law (Venice Commission) (2005).

<sup>11</sup>Cf the comments of the European Commission for Democracy through Law (Venice Commission) (2006), as well as of Marko (2007).



longer exercised; in any case, they are linked to the DPA and do not cover the reforms demanded in the context of EU conditionality.

However, the necessary acceptance of the common state and agreement on its purpose on the part of the major political parties continued to be lacking. Instead, a 'cold war' prevails, in which all political forces use their respective positions of power primarily for personal interests and (economic) returns as well as for blocking change and progress (the institutional fragmentation and the numerous veto rights at all levels are an invitation to this). According to the motto '*divide et impera*', the interest of the power cartel of ethnic-nationalist parties is above all to maintain the status quo, which is in clear contradiction to the need for incisive reforms.

Nowadays, those reforms must even correct some of the very foundations of the Dayton Constitution since the European Court of Human Rights (ECtHR) in Strasbourg ruled in December 2009 that the exclusion of certain population groups from the election to the tripartite BiH presidency violates the ECHR. This decision (*Sejdić-Finci* case)<sup>12</sup> and several subsequent decisions (*Zornić* 2014, *Šlaku* 2016, *Pilav* 2016 and *Pudarić* 2020),<sup>13</sup> have not been implemented to date due to the extensive constitutional consequences and the lack of constitutional consensus.

Bosnia and Herzegovina seems stuck in eternal transition.<sup>14</sup>

### 3 One Country, Three Systems: The Organisation of Local Self-Government

The country's territorial and administrative structures had been swept away by the war, town halls and municipal property had been destroyed, and parts of the population had been forced to flee to other parts of the country or abroad. Reorganisation and reconstruction after the war took place on the basis of the division into the *Republika Srpska* (RS), founded on 9 January 1992 as a secession project, and the Federation (FBH), founded in 1994 by an international treaty, the Washington Agreement. The latter agreement ended the war between Bosniaks and Croats and established a federal system consisting of ten cantons. The territory was

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<sup>12</sup>Grand Chamber ECtHR, judgment in the case of *Sejdić and Finci v. Bosnia and Herzegovina* (applications no. 27996/06 and 34836/06). See the comment by the European Commission for Democracy through Law (Venice Commission) (2008) See e.g. Council of Europe (2019); and Human Rights Watch (2019).

<sup>13</sup>ECtHR *Zornić v. Bosnia and Herzegovina* App no 3681/06 (ECtHR, 15 July 2014). ECtHR *Šlaku v. Bosnia and Herzegovina* App no 56666/12 (ECtHR, 26 May 2016). ECtHR *Pilav v. Bosnia and Herzegovina* App no 41939/07 (ECtHR, 9 June 2016). ECtHR *Pudarić v. Bosnia and Herzegovina* App no 55799/18 (ECtHR, 8 December 2020).

<sup>14</sup>Recently, the Bonn powers have been used again by the High Representative, see Woelk and Sahadžić (2022) Cutting the Gordian Knot in Bosnia and Herzegovina: The High Representative Imposes Constitutional and Legislative Amendments on Election Eve, *VerfBlog*, 2022/10/07, <https://verfassungsblog.de/cutting-the-gordian-knot-in-bosnia-and-herzegovina/>.

divided approximately in half (RS 49%, FBH 51%), while the population distribution is about one third RS and two thirds FBH.

After the war, the number of 109 municipalities increased to 146 municipalities and to twenty-four cities (in the meantime, the number of municipalities has decreased to 140); one reason for this was the division of some municipalities located on the ‘inter-entity boundary line’ which corresponds to the ceasefire-line of 1995 and therefore zigzags through the country. The new, divided municipalities are therefore relatively small, while most of the municipalities are relatively large by comparison, in line with Yugoslav tradition: in FBH only six municipalities have less than 10,000 inhabitants, in RS there are twenty-one of them.

The Dayton Constitution (Annex 4 DPA) guarantees a maximum of autonomy for the two entities, in exchange for the continuation of BiH as one state. The state level is therefore weak, and the subnational units (the two ‘entities’) are very independent. Regularly, this leads to a debate about the nature of the system, whether it is confederal or federal. This debate is influenced by the political debate and by the incompatibility of the respective visions for the state: for one side (usually Bosniak parties) the state level and its institutions need to be further strengthened, for the other an alleged confederal arrangement only allows for ‘common institutions’ in Sarajevo, which are controlled by the entities (position of RS parties). However, the clear intention of the drafters of the Dayton Peace Agreement and of the International Community which brokered it, was the continuation of BiH as a State. The academic and political debate on the (con)federal nature is therefore without too much practical consequence; in practice it is decisive whether the system works and how efficiently. But the different political approaches have a huge impact here: pushing for a stronger state level in a centripetal logic or defending entity prerogatives at any cost in a centrifugal approach.<sup>15</sup>

The BiH Constitution does not mention local self-government,<sup>16</sup> as it lies entirely within the entities’ sphere of competence. Accordingly, also the set-up of territorial government is different: while there is a three-tier structure in FBH (municipalities-cantons-federation), the RS has a unitary, two-tier structure (municipalities-ministry).

Until 2017, the RS consisted of sixty-four municipalities and two cities, Banja Luka and East Sarajevo (the latter consists of six different municipalities and was called ‘Serbian Sarajevo’ until a Constitutional Court decision). After extensive consultation, a new RS Law on Municipalities was adopted in November 2016, which introduced important changes;<sup>17</sup> after the territorial reform, the RS now consists of fifty-four municipalities and ten cities (2023).

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<sup>15</sup> See, for the debate on the (con)federal nature Keil (2016), as well as on the division of competences, Keil and Woelk (2017).

<sup>16</sup> Apart from the Brčko District, which, after years of international administration, was established by a constitutional amendment in March 2009 as a local self-governing unit directly subordinate to the state, Art. IV.4 BiH Constitution (see below).

<sup>17</sup> There are now seven cities in RS: Banja Luka, Bijeljina, Doboj, Zvornik, Prijedor, Trebinje and Eastern Sarajevo.

In the Federation (FBH), in 2023 there are fifty-eight municipalities and twenty-two cities,<sup>18</sup> of which Sarajevo and Mostar have special status. The competences regarding the municipal level in the FBH lie with the cantons. Therefore, the FBH Constitution only contains some general basic provisions, as a guideline for the cantonal constitutions (Art. VI.A.1-6 FBH Constitution, as amended in 2004).<sup>19</sup> Instead, there is a FBH Act on 'Basic Principles of Local Self-Government', which was enacted just before the end of the war in 1995, on the occasion of the ratification of the European Charter of Local Self-Government of the Council of Europe (hereinafter ECLSG); it incorporates the essential principles of the ECLSG and defines municipal autonomy.<sup>20</sup> These principles have been elaborated in detail by the cantons in their constitutions and legislation. All cantonal constitutions contain such provisions; the constitution of Sarajevo Canton is considered a positive example. The competences, organisation, and finances of the municipalities are regulated in separate cantonal laws, although the regulations are basically similar, they differ in some cases. A right of complaint of the municipalities to the FBH Constitutional Court in order to review possible infringements of the right to municipal self-government completes the picture (Art. IV.C.10 FBH Constitution).

Apart from the institutional fragmentation and disputes over competences, the enormous costs of this multi-level system need to be mentioned, since each canton consists—on average—of only ten municipalities, some cantons even of only three. In addition, there are the ethnic difficulties which, in the past, led to the formation of unofficial parallel structures with their own institutions and budgets, especially on the part of the Croats. Until 2000, when the Croatian Democratic Union (HDZ) in Croatia lost its majority, the Bosnian Croats, supported by Croatia, even openly pursued the secession of 'Herzeg-Bosna'. However, until today the political demand for a third entity, dominated (and controlled) by Croats, still persists and the Croat-majority cantons co-operate intensively in numerous areas.

In 2002, the High Representative imposed constitutional amendments for the two entities that enshrined the proportional representation of all population groups at all levels of government.<sup>21</sup> This includes the municipal level. However, the 1991 census was used as a basis for establishing the demographic proportions in order not to

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<sup>18</sup> Despite their different designation as 'city', however, cities do not have broader or more extensive competences; it is largely a symbolic concept rather than a legal category.

<sup>19</sup> In the same year, proposals to create a regulatory competence at the FBH level were not adopted in the end.

<sup>20</sup> Pejanovic (2006). On the first phase of local self-government reforms in the Western Balkans see Woelk (2006).

<sup>21</sup> In the context of implementing the Constitutional Court's landmark case U-III 5/98 ('constituent peoples-case', July 2000) which established that the institutional equality of the three constituent peoples required the application of the multinational principle not only in the State-level institutions but throughout the country and at all levels of government. After an agreement between the major political parties which, however, did not lead to the adoption of the constitutional amendments, the High Representative adopted them by decree using his extraordinary 'Bonn powers'. See Marko (2007).

retroactively legitimise ethnic cleansing and expulsions during the war. In many cases this did not correspond to the situation and needs of the post-war population on the ground. Furthermore, this approach forces all citizens to declare themselves as belonging to one of the three groups—or as ‘other’—for a job in the public administration, which causes discrimination problems for smaller groups (for example, Roma and Jews) or ‘others’ and raises the question of the relationship between merit-based selection and group membership in recruitment or promotion wherever an ethnic ‘quota’ has to be guaranteed.<sup>22</sup>

Brčko is a special case (and place).<sup>23</sup> The city is located at a strategic point on the Sava River, where the two parts of the RS meet; at the same time, the city separates a canton from the rest of the FBH. Since 2000, Brčko, with a population of only 70,000, has therefore been a special district under international administration, after an international arbitration procedure had ended disputes over its status. In March 2009, the district received its own constitutional basis through the first and only constitutional amendment (Art. IV.4 BiH Constitution). Brčko is both a municipality and a special district with its own assembly (thirty-one deputies). Thus, it has its own legislation, which must be coordinated with the BiH legislation (not with that of the entities). In the elections in Brčko, which take place in parallel with BiH elections, also minorities can be elected, not only members of the three constituent peoples. As an exception, compared to the rest of the country, the mayor is not elected directly, but by the assembly.

## 4 Main Problems in Local Self-Government

### 4.1 *Some Fundamental Problems*

In accordance with the lack of state competences with regard to local self-government, there is also no state level ministry that would be responsible for it. In the FBH, the Ministry of Justice, with its Department of Public Administration, is responsible for dealing with questions of local self-government. Only three cantons have adapted their legislation to the framework of the FBH Act on the Principles of Local Self-Government,<sup>24</sup> while Tuzla Canton has adopted the FBH law in its entirety.

In the FBH, twenty-nine competences are assigned to the municipalities (Art. 8 FBH Law on Principles of Local Self-Government), but not all of them are

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<sup>22</sup>In 2006, in its Monitoring report, the Congress of Local and Regional Authorities of the Council of Europe had already called for reducing the importance of ethnic elements at all levels; Recommendation 202(2006), 4.c).

<sup>23</sup>Bieber (2006), and Parish (2009).

<sup>24</sup>More than a decade after the expiry of a six month-deadline for doing so in the FBH Law on Local Self-Government (Art. 58).

respected or fully implemented. In addition, cantons can transfer further competences to the municipalities without simultaneously allocating the necessary financial resources, in contradiction to the principle of connexity (Art. 11); municipal associations criticise that in practice no more than 20% of the necessary financial resources are made available. With regard to the distribution of competences, there is no clear mention of or reference to the principle of subsidiarity at all levels; this can be found only in Art. 10 of the FBH Act on the Principles of Local Self-Government.

In the RS, municipal organisational sovereignty is constrained by a new restriction on the employment of municipal staff, which sets the number of municipal employees at a maximum of three persons per 1000 inhabitants (for cities: one person per 1000 inhabitants) for reasons of budgetary discipline. It is estimated that most municipalities will not be able to meet this target.

The difficult budgetary situation after the financial crisis has different impacts on the municipalities in the RS: cities and large municipalities usually have stable budgets, while smaller municipalities often experience problems on the revenue side. Especially in smaller towns, the outflow of the young and the increase of the elderly population have a particularly negative and proportionally stronger impact than in the smaller rural municipalities (5000–20,000 inhabitants), where about 60% of the population still lives. They often have natural resources and raw materials.

In the RS, there is a distribution key for financial assistance to structurally weak municipalities, which is based on the respective level of development and distinguishes between four different categories: developed cities, average level of development, underdeveloped, and highly underdeveloped municipalities. The last group does not generate enough income from its own population and is therefore supported by contributions from the entity budget (1.15 million euros in 2018).

Financially weak municipalities are also supported in the FBH (between five and ten million euros per year). However, there is no formalised compensation system in the FBH, only financial allocations to cantons and forms of co-financing or earmarked allocations to municipalities.

Since 2015, many migrants try to cross BiH in order to enter Croatia and the EU (so-called 'Balkan route'). The migration problem exacerbates the precarious financial situation of many municipalities which have to provide care and assistance to migrants on their territory. Urbanisation, which is concentrated in a few centres, as well as the general trend of emigration of mainly young, qualified people, pose additional problems for many municipalities. In the cities, this leads to a significant reduction in unemployment, but also to difficulties in finding suitable and qualified personnel for the provision of public services. The decreasing and ageing population requires more qualified and therefore more expensive services, especially in the health and elderly care sectors, while at the same time the tax and revenue base are decreasing.

## ***4.2 Sarajevo: Divided Capital, Multi-Level System and Metropolitan Region***

According to the Dayton Constitution, Sarajevo is the capital of the entire country (Art. I.5). The FBH Constitution—which designates Sarajevo as the capital of FBH (Art. I.4)—also stipulates that Sarajevo is established as a city in the canton of the same name. Despite these express references to important roles at all levels, there is neither a simple legal basis nor a clear definition of competences and resources. Before the war, the territory of the city was much larger; its current territory essentially corresponds to the territory under siege during the war. After the war, administrative reforms based on ethnic criteria deepened the division. The four municipalities which today form the city of Sarajevo in the canton of Sarajevo are contrasted with six municipalities in the territory of the RS, which form the city of ‘Eastern Sarajevo’, a dispersed cluster of settlements, without a real centre. Also, according to the RS Constitution, ‘Sarajevo’ is still the capital of the RS (Art. 9). In practice, however, Banja Luka, a three-hour drive away, where all RS government institutions are concentrated, performs this role. An attempt to amend the RS Constitution for introducing Banja Luka as the new capital failed in 2009.<sup>25</sup>

In everyday life, the current institutional complexity of the situation in Sarajevo leads to various problems: For example, the city has neither competences regarding the riverbed of the Miljacka, which flows through the entire valley in which the city is located, nor planning competences, which continue to be vested with the four municipalities, while all major public enterprises are managed by the canton after the war. The situation is illustrated by the budget figures of the three levels: the municipality of Sarajevo-Centar has an annual budget of about seven million euros and the city of Sarajevo of about nine million euros, while the canton of Sarajevo (four municipalities of Sarajevo and another five surrounding municipalities) has 450 million euros annually. Coordination is the central problem in practice, as it is throughout BiH. The municipalities have quite broad competences, but rarely coordinate with each other and with the city (although the city council is elected by the municipal assemblies). At the same time, the canton often does not consider the decisions of the city council.

There are currently no discussions about cooperation with Eastern Sarajevo, which lies behind a hill in a parallel valley and extends until the airport. Despite the large number of commuters, there are no integrated transport systems; buses to Belgrade, for example, only leave from Eastern Sarajevo, but there is no connection from the central bus station in Sarajevo to the bus station in Eastern Sarajevo. Taxis from one part do not have a license for the other part because of different entity legislation and therefore have to cover their taxi signs all times they cross into the other parts of Sarajevo, if they do not want to risk a fine.

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<sup>25</sup> Although the necessary two-thirds majority was achieved in the RS National Assembly, in the House of Peoples, the upper house of the BiH parliament, the majority of Bosniak representatives vetoed the reform.

For Sarajevo, the 'freezing' of the status issue means major problems, especially with regard to the development of infrastructures, as the municipalities are located in both entities and thus are subject to different (and often antagonistic) political control. This is also the reason why reforms aimed, for example, at establishing a metropolitan district by merging the historical ten municipalities, have no chance politically. However, after the local elections in 2018, the new cantonal government, a coalition of former opposition parties,<sup>26</sup> intended to introduce legislation on the capital city at the BiH and FBH levels and to merge the canton and the city into a metropolitan region (like Zagreb).

### ***4.3 Radical Reforms for Better Economic Development?***

A 'regional approach' based on geographical areas rather than current institutional structures is recommended in a recent study by the Local Government Initiative.<sup>27</sup> Stronger cooperation between the cantons and their role as coordinators in the provision of services should help overcome fragmentation in the FBH and enable greater efficiency. On the other hand, the RS government's plans to introduce a differentiated structure with different types of local authorities and a spoke model around the existing cities as centers should be implemented: This hub and spoke approach (for example in health care) should be complemented by targeted associations for the provision of higher-level services (for example for water supply) and by a network approach with functional agencies (for example for economic development or transport), which are jointly owned by the local authorities.

These conclusions are mainly based on the observation that effective and cost-saving services in a small country can only be meaningfully provided through cooperation, especially since two-thirds of the municipalities of one entity have a common border with a municipality of the other entity.<sup>28</sup> Although this approach advocating functional cooperation is well-founded and would undoubtedly be

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<sup>26</sup>This cantonal government, widely seen as an alternative to the power cartel of the established ethnic parties, had a short life: after only one year, it was substituted by a more traditional coalition in January 2020 in the wider context of the formation of a FBH government (involving the same parties). But after few months, due to the results in the local elections, the previous cantonal government under Prime Minister Edin Forto was re-established and may thus continue with the implementation of its concrete but ambitious projects. The results of the October 2022 elections suggest that the coalition may continue its work.

<sup>27</sup>Local Government Initiative 2018: Local Government in Bosnia and Herzegovina. Report on Consultations of a Joint Commission on Local Government, June 2018, 12. Ten years before, economic regions have been thoroughly analysed and proposed as an alternative territorial design: Osmankovic and Pejanovic (2007).

<sup>28</sup>Due to the fact that the Inter-Entity Boundary Line was the ceasefire-line at the end of the war it is actually criss-crossing the whole country without any geographical, demographical or infrastructural logic or concerns.

successful economically, it is not politically feasible, as it would break or at least challenge the current (political) ‘*divide et impera*’ structures.

## 5 Mostar: ‘Everything is BRIDGEable’?

The sympathetic motto above, which alludes to Mostar’s restored Old Bridge in order to promote the city’s application to become European Capital of Culture (2024),<sup>29</sup> is unfortunately more slogan than reality. Mostar reflects the difficulties and the divisions of the whole country on a small scale. In fact, no municipal elections had taken place in Mostar for ten years, until 18 December 2020.

Mostar is the capital of the West Herzegovina Canton, which has a clear Croat majority and thus a symbolic significance for Bosnian Croats. The war did not only lead to a general decrease in its population (105,797 in 2013, compared to 126,662 in 1991), but also to considerable demographic changes: Croats are now the strongest group (52.2% compared to 33.3% in 1991). Although Bosniaks have also increased in numbers, they are now only the second strongest group (46.8%, compared to 34.8%), while Serbs and ‘others’ have virtually disappeared (4.2% instead of 18.8%, and 1.9% instead of 12.5%).<sup>30</sup>

After the war, there were various attempts to unify the divided city, its schools and health services. In 2004, High Representative Paddy Ashdown enacted a new statute for the city, which transformed the formerly independent six municipalities into six constituencies for a single city council and included safeguards against overvoting on issues of major interest (i.e., veto rights as at all other levels of government). Nevertheless, the city remained essentially ethnically divided.

The 2004 electoral system provided that a part of the thirty-five city council members were elected in six electoral districts (three per district, regardless of the actual number of inhabitants; and despite large differences in those numbers: between 3000 and 38,000 inhabitants), while the remaining seventeen members were elected in a city-wide district.<sup>31</sup> A second election took place in 2008, after which a constitutional dispute and the lack of implementation of a decision by the Constitutional Court of BiH prevented further elections.

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<sup>29</sup> See for information on the slogan: <https://www.zelenika.design/project/mostar2024>. Interestingly, Mostar (FBH) was competing with Banja Luka (RS) for the title; in the end, neither city was chosen and the city of Bodø (in Northern Norway) was recommended instead ([https://ec.europa.eu/programmes/creative-europe/content/european-capital-culture-2024-title-beyond-eu\\_en](https://ec.europa.eu/programmes/creative-europe/content/european-capital-culture-2024-title-beyond-eu_en)).

<sup>30</sup> See the official data on the 2013 census published in 2017, see above, official website of the BiH Institute of Statistics: <http://popis2013.ba/?lang=eng>.

<sup>31</sup> Text of the Mostar City Statute. Available at: <https://www.mostar.ba/statut-181.html>. Commission for Reforming the City of Mostar 2003: Recommendations 15 December 2003. Available at: [http://www.ohr.int/archive/report-mostar/pdf/Reforming%20Mostar-Report%20\(EN\).pdf](http://www.ohr.int/archive/report-mostar/pdf/Reforming%20Mostar-Report%20(EN).pdf): for a map of the six electoral districts, see 70–71.



In 2010, the Constitutional Court of BiH had declared some provisions of the Mostar Statute unconstitutional, due to restrictions on voters in the central zone and the unequal balance of votes in the six districts, whose populations were too different in terms of numbers of votes to justify the equal number of three representatives each in the city council. However, the legislature did not comply with the call for reform.

<sup>32</sup> In a similar decision, the Constitutional Court of BiH declared quotas in the House of Peoples of BiH (one representative for each constituent people for each canton), which were independent of the number of voters, unconstitutional. Once again, the legislator did not comply with the mandate to amend the electoral legislation.

Since in both cases the constitutional judges offered neither an alternative nor a transitional solution, there was a legal vacuum that could only be filled by new electoral legislation. However, the political will to do so was lacking for a decade. Despite a convergence at the local level on technical issues (number of representatives and the division of districts), procedural issues prevented a compromise: Who is to adopt the new statute? The newly elected city council after electoral reform? Or should the statute first be amended before the elections as part of a package solution, subject to the creation of further guarantees for minorities?

Thus, the incumbent mayor remained in office and continued to conduct business, without a city council and in agreement with the head of the city's finance department. This is based on a law that allows for the replacement of the city council by the mayor if the former fails to adopt the budget within three months, in which case the mayor must reach an agreement with the Minister of Finance. Financial resources were allocated annually from the FBH budget. Development projects were continued on the basis of the urban planning documents adopted in the legislative period from 2008 to 2012, but further development was practically inhibited, which was a great disadvantage, especially in view of the positive development of tourism. Citizens continued to pay taxes and duties but had no possibility of effective political participation (i.e., 'taxation without representation'). Ten years without elections raised uncomfortable questions about the nature and quality of democracy. The ethnic calculations of the parties united in a power cartel prevented solutions, which were made even more difficult to imagine due to the profound loss of trust as a result of the war and due to the important demographic changes.

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<sup>32</sup> Following a request from the Croat Caucus in the House of Peoples of the Parliamentary Assembly of BiH, on 26 November 2010 the Constitutional Court declared sections 19.2(1) to (3) and 19.4(2) to (8) of the Election Act 2001, and section 17(1) of the Statute of the City of Mostar unconstitutional (case U 9/09). On 18 January 2012 the Constitutional Court adopted a ruling on the non-enforcement of its decision of 26 November 2010 by the Parliamentary Assembly. It established that the impugned provisions of the Election Act 2001 would cease to be in effect on the day following the publication of its ruling in the Official Gazette. On 28 February 2012 the relevant provisions of the Election Act 2001 lost their legal validity.

In October 2019, the European Court of Human Rights ordered Bosnia and Herzegovina to amend legislation and allow elections in Mostar.<sup>33</sup> Irma Baralija, president of the Mostar branch of the interethnic party *Naša Stranka*, had sued Bosnia and Herzegovina because it was impossible for her, a politician living in Mostar, to vote or run for office. The European Court of Human Rights ruled in her favour, finding that the failure of Bosnian authorities to enforce the Bosnian Constitutional Court's 2010 ruling has created a legal void.<sup>34</sup> If politicians were not able to find a solution within six months, the ECtHR 'notes that the Constitutional Court, under domestic law and practice [. . .], has the power to set up interim arrangements as necessary transitional measures' (paragraph 62), which would citizens finally allow to vote, after more than a decade!

In the European Commission's 2019 Opinion on BiH's membership application, the EU listed fourteen key priorities and included local elections in Mostar and improvements of the electoral system in its conditionality program.<sup>35</sup> The Congress of Local and Regional Authorities of the Council of Europe, which had already established a Reflection Group on Mostar with the mandate of exploring sustainable solutions for restoring local democracy in the city, launched a major project on participatory democracy with the goal of strengthening the direct involvement of citizens in local affairs.<sup>36</sup>

The ECtHR decision in the *Baralija* case triggered an intense activity at all levels and finally, in June 2020, the International Community and the EU managed to broker a political compromise, signed by representatives of the Bosniak and Croat majority parties (SDA and HDZ). While the city was originally exempted from local elections held throughout the country on 15 November 2020,<sup>37</sup> the last-minute political deal enabled the BiH election commission to set 20 December as the date for voting in Mostar.

The new electoral arrangement establishes a city council with thirty-five members elected via two ballots: one vote for thirteen members elected under a single

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<sup>33</sup>The European Court of Human Rights (Fourth Section), case of *Baralija v. Bosnia and Herzegovina*, (Application no. 30100/18), Strasbourg, 29 October 2019 (<https://hudoc.echr.coe.int/eng?i=001-197215>).

<sup>34</sup>Woelk (2020).

<sup>35</sup>Key findings of the Opinion on Bosnia and Herzegovina's EU membership application and analytical report, May 2019 ([https://ec.europa.eu/commission/presscorner/detail/de/COUNTRY\\_19\\_2778](https://ec.europa.eu/commission/presscorner/detail/de/COUNTRY_19_2778)).

<sup>36</sup>The Congress' Reflection Group on Mostar had been established in October 2017 and visited Mostar several times; as part of the cooperation activities, on 18 November 2020, the project 'Building democratic participation in the City of Mostar' was introduced by the Congress and followed by meetings on deliberative democracy (citizens' assemblies) and peer-to-peer-exchange meetings for and with councillors from Mostar and abroad, see: <https://www.coe.int/en/web/congress/reflection-group-on-mostar> and <https://mostargradimo.ba/en/home/>.

<sup>37</sup>Originally, the local elections were to be held in early October, but due to the pandemic, they were postponed to mid-November 2020. For the City of Mostar, a later date had to be found for organisational reasons. See on the political agreement (<https://ba.n1info.com/english/news/a441539-mostar-deadlock-comes-to-an-end-local-vote-unblocked-after-eight-years/>).

proportional representation system for the entire city, the other vote for the election of a total twenty-two members from six separate constituencies.<sup>38</sup> By contrast with the other municipalities in BiH, Mostar's mayor shall be elected indirectly, i.e. by and from within the Council. The new City Council was actually established on 5 February 2021; it elected the mayor 10 days after and adopted a budget for 2021.

The case of Mostar shows at small scale that a new equilibrium of the two opposing principles—ethnic balances as a compromise to end the war and individual human rights guaranteed under the ECHR, regardless of group membership—is urgently needed. More than 25 years have passed since the end of the conflict and the country is preparing for the goal of future accession to the EU. However, the stalemate in Mostar exemplifies the situation of the whole country and, above all, the lack of a unified vision of the common state: while Serbian and Croatian parties emphasise the role and status of the constituent peoples, representatives of most Bosniak parties call for a civic state based on basic individual rights.

## **6 Outlook: Status Quo or Chance for Change 'from Below'?**

Local self-government in BiH is extremely complex and not a coherent system. This is especially true for the distribution of competences between the municipal and the cantonal or entity levels. The financial autonomy of the smaller (and smallest) municipalities is also very limited. The distribution of competences and the decision-making processes at the municipal level appear to be inefficient, and the municipal administrations often lack competences and qualified personnel. The fragmented institutional system is an additional burden, as it hinders or prevents cooperation, especially between neighbouring municipalities of different entities, due to the lack of a unified frame of reference. A loan from the European Bank for Reconstruction and Development for water supply, bridge construction and other municipal infrastructure in Banja Luka had to be approved by a total of nine institutions: the BiH Presidency, the BiH Council of Ministers, two chambers of the BiH Parliament, the RS Government, two chambers of the RS Parliament and, finally, the City Council of Banja Luka!

Despite the separate and different systems, local authorities in both entities face similar challenges: an ageing and shrinking population, the decline of smaller towns

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<sup>38</sup> See on details of the agreement and for a critical evaluation the interview with the member of the Central Election Commission, Suad Arnautović, The electoral system in BiH is discriminatory and follows the ethno-territorial political representation, Interview.ba, 28 July 2020, at: <https://ba.boell.org/en/2020/07/28/dosje-mostar-izborni-sistem-u-bih-je-diskriminatoran-proizilazi-iz-etno-teritorijalnog>, as well as Bodo Weber, The West's dirty Mostar deal: Deliverables in the Absence of a BiH Policy, DPC Policy Note #16, Democratization Policy Council, Berlin December 2020, at: [http://www.democratizationpolicy.org/wp-content/uploads/2020/12/DPC-Policy-Note16\\_The-Wests-Dirty-Mostar-Deal.pdf](http://www.democratizationpolicy.org/wp-content/uploads/2020/12/DPC-Policy-Note16_The-Wests-Dirty-Mostar-Deal.pdf).

and an increasing divide between urban centres and rural areas, fragmented and often expensive local administration, debt burdens, disputes over the allocation of resources (especially in FBH), insufficient cooperation. Therefore, according to a large majority of local politicians and mayors, fundamental reforms are needed.<sup>39</sup>

However, despite the clear results of the analysis and the unanimous opinion of many local politicians, a real reform momentum or change from below is hardly to be seen or expected any time soon.

In Bosnia and Herzegovina, the pervasive control of ethnic political parties over the distribution of resources, combined with a fine-grained patronage system, is omnipresent. Control is exercised directly in the decision-making processes, for example through veto rights, as well as through the media, which are also largely ethnically segregated and close to politicians. The aim of the power cartel of ethno-nationalist political parties is to maintain the status quo, which is why neither constitutional changes nor far-reaching political reforms can be expected without pressure or events from outside.

This context clearly limits the possibilities of local self-government for change ‘from below’.

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<sup>39</sup>Local Government Initiative 2018 (n. 25) 8.

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