

## Institutional Reforms as Requirement for Efficiency and Functionality in the Governance of Bosnia and Herzegovina

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### **Abstract**

The aim of this paper is to emphasize the problems of state governance regarding constitutional structure of Bosnia and Herzegovina and economic inefficiencies as a consequence of an overloaded, jaded and complex state structure.

In addition, the paper analyzed how the system can be accommodated to provide more state powers, credibility and accountability in regards to lower state levels to overcome and prevent bad business conditions, legal and political particularism.

The institutional overlapping can be overcome with a strategy of providing the state with more legitimate authority over other levels of governance and by redefining the most basic interests of the current constitutional system based on the Dayton agreement.

Thus, presenting valuable argument and solution for addressing institutional reforms and/or economic development.

**Key words:** state governance, institutional reform, state structure, political system, economic development, legal particularism

### **Introduction**

Bosnia and Herzegovina has fallen in to a stage of decadence, claiming a position of status quo under the constitutional governing system that consistently proves to be inefficient and nonfunctional. Under the boundaries of state institutions that are smothering the financial, economic as well as the political system, there is a dire need for institutional reforms that would transfer the existing financial burden to efficient and more effective state governance. In addition, the system can be accommodated to provide more state powers, credibility and accountability in regards to lower state levels to overcome and prevent bad business conditions, legal and political particularism. The current virtually of the state is an existing pathological problem, controlled and monitored by the international society with soft politics that is in constant turmoil in terms of political changes that would grant the existing state structure more significant political power in regards to lower state government. In addition, coordination within different levels of state government is a prerequisite for a functional state government.

On the 8<sup>th</sup> March, 2003, by the meeting of the Peace Implementation Council (PIC), Brussels, chairman of the Council of Ministers as well as the representatives of both entities within Bosnia and Herzegovina have agreed to conduct reform measures in regards

to public administration, that has still yet to be considered. In addition, available funds that have been provided for this purpose, as a necessary requirement for the implementation of the reforms have been disregarded and left without professional coordination and allocation. Nevertheless, the strategy for reform of public administration has been respectively analyzed and determined that from 2006, when the strategy was created, only 36.46% has been strategically fulfilled.<sup>1</sup>

The aim of the research is to address the weaknesses that arises from an overwhelming and overlapping institutional structure thus conditioning legal particularism, bad business conditions that could easily be overcome with a clear strategy for reforms, slow financial flow due to a nonfunctional system that create significant financial burden to state administration, communication deficit with an ineffective overlapping system and an inefficient state administration.

### **Constitutional organization of Bosnia and Herzegovina**

Bosnia and Herzegovina gained its independence in 1992 after three and a half-year war that was ended by General Framework Agreement for Peace in Bosnia and Herzegovina (Hereinafter Dayton Agreement).<sup>2</sup> Integral part to the Dayton Agreement is the Constitution of Bosnia and Herzegovina. According to the Constitution, Bosnia and Herzegovina is a democratic state, which operates under the rule of law, based on free and democratic elections.<sup>3</sup>

Bosnia and Herzegovina has a specific and very complex constitutional and legal system. It is a state composed of two entities: the Federation of Bosnia and Herzegovina and the Republic of Srpska, as well as Brcko District. Also, Federation of Bosnia and Herzegovina consist of 10 cantons.

The Constitution of Bosnia and Herzegovina divides jurisdiction between the state and the two entities. The following matters fall under exclusive authority of the state level institutions: foreign policy; foreign trade policy; customs and monetary policy; finances of the institutions and for the international obligations of the state; immigration, refugee, and asylum policy and regulation; international and inter-entity criminal law enforcement, including relations with Interpol; establishment and operation of common and international communications facilities; regulation of inter-entity transportation; air traffic control.<sup>4</sup> All governmental functions and powers that are not expressly assigned to the state institutions fall under authority of entities.

As we can see the jurisdiction of the entities is greater in scope than the jurisdiction of the state level institutions. Also, considering exclusive legal powers of cantons in Federation of B&H, it is obvious that the cantons participate significantly in the overall performance of state authority. Furthermore Brcko District has a status of neutral, self-governing

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<sup>1</sup>Strategijareformejavneuprave u Bosni i Hercegovini: [www.parco.gov.ba](http://www.parco.gov.ba); Uredkoordinatoraza reformu javneuprave i Akcioni plan 1 uz Strategijureformejavneuprave u Bosni i Hercegovini.(accessed on [http://www.adsf\(Commission, 2010\)bih.gov.ba/uploaded/posebnidokumenti/PAR\\_strategija\\_hrvatski.pdf](http://www.adsf(Commission, 2010)bih.gov.ba/uploaded/posebnidokumenti/PAR_strategija_hrvatski.pdf))

<sup>2</sup>The General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Agreement is the peace agreement reached at Wright-Patterson Air Force Base near Dayton, Ohio in November 1995, and formally signed in Paris on 14 December 1995. These accords put an end to the Bosnian War, one of the armed conflicts in the former Socialist Federative Republic of Yugoslavia. Available at >[http://www.ohr.int/dpa/default.asp?content\\_id=380](http://www.ohr.int/dpa/default.asp?content_id=380)

<sup>3</sup>Robbers, G. Encyclopedia of World's Constitutions, Facts on File Inc, 2007, pp 115-117

<sup>4</sup>Article III of the Constitution of B&H

administrative unit, under directly sovereignty of Bosnia and Herzegovina. The city of Mostar also has some kind of special legal treatment.

### **Economic argument for institutional reforms**

The post-war public administration bodies and the governing institutions have been defined by fragmentation, miscommunication, administrative overlapping and as a very significant budget consumer. Thus, they have been labeled as an unnecessary financial burden that can be overcome with a strategic approach that would divide the existing institutions upon necessity and functionality. In addition, there is a significant institutional overlapping that is not managed accordingly and without functional coordination as well as the fact that under different levels of the governance, there is a different legal stature. Nevertheless, administrative workers lack significant professional enhancement and qualifications that has to be addressed equally as important as the issues mentioned above. Nevertheless, according to the Strategy for Reforms in Public Administration (2006), the essential need for reforms is highlighted in the sector of "Public Finances" which is significantly linked with the requirements of the European Union", and concerns with the "process of establishing the budget" under the principles and standards of the internal public financial control (PIFC1). As the document<sup>5</sup> confirms the fact that most of the reforms conducted previously have not been done in a strategic, planned and efficient manner, and in the aim of promoting an "open, efficient, effective and responsible" administration, it is necessary to conduct "consolidation and increase the current efforts in the sector of public finances, to establish an efficient system of governing and controlling the finances and increase the monitoring procedure of the sector".

Thus, the reform would increase the quality of politics in the sector of public finances, strengthen the effectiveness and efficiency in controlling and governing the budget, redevelop the accounting system as well as the banking system.<sup>6</sup> In addition, the reform would instate a Public Internal Financial Control (PIFC) in line with the requirements of the EU as well as "increase the capacity of the Ministry of Finance that would have impact on all budget consumers and fiscal organs".

### **Negative reform politics**

The political system, based on the constitutional requirements has defined as such that it could be easily manipulated. The fact stays that public administration has witnessed several attempts for reforms, unsuccessfully. Thus, the paper also discusses the causes for such an inability as well as the requirements for a successful one. A functional and effective institutional structure and network is necessary for a functioning governance and economic development. A complex state structure is sucking the funds right underneath the social, health, educational and other sectors that are fewer priorities due to the financial burden caused by unnecessary administrative wages. All of these interconnected, interrelated and co-existent institutions are also dependent on a political consensus guided by effective leadership that would provide necessary coordination between the existing administrative bodies on different levels of the government. The status quo is unstable and causes a loss in credibility of the state that thus loses power. With the economic instability

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<sup>5</sup>Strategijareforme javne uprave u Bosni i Hercegovini: [www.parco.gov.ba](http://www.parco.gov.ba); Uredkoordinatoraza reformu javne uprave i Akcioni plan 1 uz Strategijureforme javne uprave u Bosni i Hercegovini. Translated document (accessed on [http://www.adsfbih.gov.ba/uploaded/posebnidokumenti/PAR\\_strategija\\_hrvatski.pdf](http://www.adsfbih.gov.ba/uploaded/posebnidokumenti/PAR_strategija_hrvatski.pdf))

<sup>6</sup>*Ibid*

arises the political one. Nevertheless, this section of the paper deals with the possibilities to manage the current instable system of public administration, the negative political influence, the economic argument for effective reforms, alternatives and the measures needed for strengthening the state structure through reforms and new arrangements that would include economic development. According to the European Commission report (2010)<sup>7</sup>, in regards to the sector of public administration, the reforms in this sector are crucial and “top priority” of the European partnership”, suggesting that there has been some advancements in regards to the reforms. Further on, the “resources have been allocated for conducting the reforms but the resources for the necessary requirements are insufficient in terms of entities and cantons, except Brcko district. In addition, there is no, or limited state capabilities to have an impact on this process” adding that political will and more funds are crucial for this arrangement and the success for the reforms of public administration. The document further on suggests that the institutional and “administrative structure is still incapable to respond efficiently to the requests of the European integration” as well as confirming that “the state institutional structure is too big, divided.... and with no clear understanding of jurisdictions on different levels of the government”.

Nevertheless, there has been certain development in terms of communication. A unique information system has been adopted for governing human resources. Naming of certain offices are still lacking due to political tension, which prove to be the main issue in fulfilling the reforms. Further on, due to a complex institutional structure, the report emphasizes the need for “transparent procedures of employment based on success and a system of modern career promotion.”

Analyzing the report from a year ahead (2010)<sup>8</sup> there is a noticeable difference and the lack of enthusiasm for further development. The document<sup>9</sup> further states that although the “office of the Coordinator for reforms (PARCO) has enough human and financial resources for coordination and monitoring of the strategy... but on the entity and cantonal level... the resources are still insufficient “. Thus, a clear pattern of unwillingness and low state power and the lack of “executive jurisdiction” limit the success of the reform and the process of the strategy for reforms in the public administration sector. Further on, the report states that “Bosnia and Herzegovina has not witnessed any advancements in administrative (institutional) capacities” as well as the fact that the institutional structure is too “big, divided and with no clear control and jurisdiction overlapping” in terms of different levels of the government. It is necessary to highlight the inefficient development in terms of “professional and politics state administration” and continues to emphasize the issue of communication in terms of “unique information system for management of human resources” that the state has stopped using. Further “strengthening state institutions are made difficult with the development of polarized laws about state institutions in the Federation, where they predict the creation of new agency for state service on the cantonal level... that would cause more risks and further divide the system of state service throughout the country.”<sup>10</sup> To conclude that, according to the report of the European Commission in 2011, there still lacks sufficient political will as well as coordination

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<sup>7</sup>European Commission „Report of the progress in Bosnia and Herzegovina 2010“, p.10, (accessed on [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ba\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf))

<sup>8</sup>European Commission „Report of the progress in Bosnia and Herzegovina 2010“, p.10, (accessed on [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/ba\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/ba_rapport_2010_en.pdf))

<sup>9</sup>*Ibid*

<sup>10</sup>*Ibid*

structures for entities and cantons. The report suggests that new measures should be taken to overcome this issue in terms of a more “professional, responsible, transparent and efficient state service based on the professional criteria and responsibility.”

### Public Finances and the Administrative structure

Joseph Stiglitz<sup>11</sup> has defined the public finances as „the finances of the many that a small group of people deal with“. Of course, public finances are usually regarded as a discipline that secures the functioning of the state executive, legislative and judicial organs by providing the necessary financial requirements. Thus, the process of collecting public revenues, their distribution and spending or economic activity of the state is called public Finance. Politics of state income and expenditure of a country is a fiscal policy that governs how revenues will be collected and how it will be deployed. One of the most important issues is the amount of participation of public revenue and expenditure in total newly created values, i.e. gross domestic product during the calendar year.

Defining the term “public administration” regards the “implementation of government and public policies through and academic study of preparing civil servants for working in public sector.”<sup>12</sup> As a “field of inquiry with a diverse scope” its “fundamental goal... is to advance management and policies so that government can function.”<sup>13</sup> For the purposes of this paper, according to Ferid Otajagić, public administration would best be defined as:

- a) Natural activity carried out by various parties – functionally defining the concept of administration, and the type
- b) Type of organization - defining the concept of organizational management.<sup>14</sup>

The extent to which it points is called Fiscal burden and what is the ratio of all fiscal levies (taxes, contributions, tax, customs, etc.) in relation to the gross national product, and is expressed as a percentage of gross domestic products. After understanding the terminology in use, further assumption involving the reform would present in the field of public finances. Thus, the reform would involve the process of “harmonizing the creation of the budget on all levels of the government... in the next three years that at the same time presents a proposal for a global fiscal framework.”<sup>15</sup> Addressing the constitution of Bosnia and Herzegovina, authority has been provided for an internal organization within the entities and lower level of the government, each entity has been given the political “power” for internal organization for the government and institutions, thus the institutional structure and arrangements of each entity is different. Each administrative level of the government provides and governs within its own budget area<sup>16</sup>: “budget of the common institutions of B&H, the budgets of the entities of the Federation of Bosnia and Herzegovina and the Serbian Republic, the budget of the Brcko District, cantonal budgets and budgets of municipalities. Executive government institutions in Bosnia and Herzegovina Presidency of B&H (3), the Council of Ministers (the chairman and nine ministers) and deputies of the entity (RS president and two vice presidents, Federation - the president and two vice-

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<sup>11</sup> Joseph Eugene Stiglitz, (born February 9, 1943) is an American economist and a professor at Columbia University.

<sup>12</sup> Random House Unabridged Dictionary (accessed on <http://dictionary.infoplease.com/public-administration>)

<sup>13</sup> Eds Jack Rabin, W. Bartley Hildreth, and Gerard J. Miller. Handbook of Public Administration. 1989: Marcel Dekker, NY. p. 3

<sup>14</sup> Ferid Otajagić, Savremene Tendencije u Javnoj Upravi, Anali Pravnog fakulteta br.10, god. 5. (accessed on [http://prf.unze.ba/v2/docs/anali/godina\\_5\\_broj\\_8/10%20Otajagic.pdf](http://prf.unze.ba/v2/docs/anali/godina_5_broj_8/10%20Otajagic.pdf))

<sup>15</sup> Cenić, S. (2011). *Budžet institucija Bosne i Hercegovine i međunarodnih obaveza Bosne i Hercegovine*.

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[http://www.fes.ba/publikacije/2012/Budzet/s\\_cenic.pdf](http://www.fes.ba/publikacije/2012/Budzet/s_cenic.pdf), translated from Bosnian

<sup>16</sup> ibid

presidents), government entities (Republika Srpska Prime Minister and 16 ministers, Federation - Prime Minister and 16 ministers), Canton (ten cantons of FB&H, 10 + 95 prime ministers) and the Brcko District (Mayor, Deputy coordinator and 10 heads of departments) and mayors (142 municipalities FBiH-79 + RS 63). Administrative and professional tasks performed by institutions of public administration at the state, entity, cantonal and local level. The executive power of the Brcko District made the mayor and heads of departments.”<sup>17</sup>

According to the statistics, World Bank document (February, 2012) “Bosnia and Herzegovina: Challenges and Recommendations for Reform - Public Expenditure and institutions, according to data during the reconstruction period (1996th to 2002nd)”<sup>18</sup> Revenue growth after the introduction of VAT, the government in B&H have increased spending since 2007. Rapid increase in public spending, especially public sector and administrative institutional wages and cash transfers, resulted in a fiscally unsustainable situation, which has led to a recession in 2009, while public spending is again exceeded 50 percent of GDP (is around 53%).

When addressing the issue of an unnecessary budget overload, according to the Agency for Statistics of B&H (Monthly Report, August, 2011)<sup>19</sup> shows that the sector of public administration and defense - compulsory social insurance in B&H with 72,406 employees located at the third position in the number of employees, with the number of workers in this field increased by 2.3 percent compared with the same period last year. Of this number, 21,400 were employed in the institutions of Bosnia and Herzegovina. During the 2011th year, the salaries of the budget is expended the sum of 520 million marks, and for other expenses such as per diem or representations are 110 million marks from the budget. This is a significant budget burden which in the end proves to be one of the biggest consumers, not only in the state of B&H, but also in Europe (comparing the overall percentage of demography, financial data etc.)

## Conclusion

Bosnia and Herzegovina has a specific and very complex constitutional and legal system which remains inefficient and is subject to different political and financial interpretations. Current constitutional system resulted in legal particularism and very complicated decision-making process at all levels of governance. All above mentioned has contributed to the delay in structural reforms and reduced the state capacity to make any progress.

The existing situation can be overcome with a strategy of providing the state with more legitimate authority over other levels of governance and by redefining the most basic interests of the current constitutional system based on the Dayton agreement. Also the boundaries of state institutions that are smothering the financial, economic as well as the political system, there is a dire need for institutional reforms that would transfer the existing financial burden to efficient and more effective state governance.

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<sup>17</sup>ibid

<sup>18</sup>Izazovi i preporuke za reforme, Pregled javnih rashoda i institucija.(2012) World Bank Document.

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