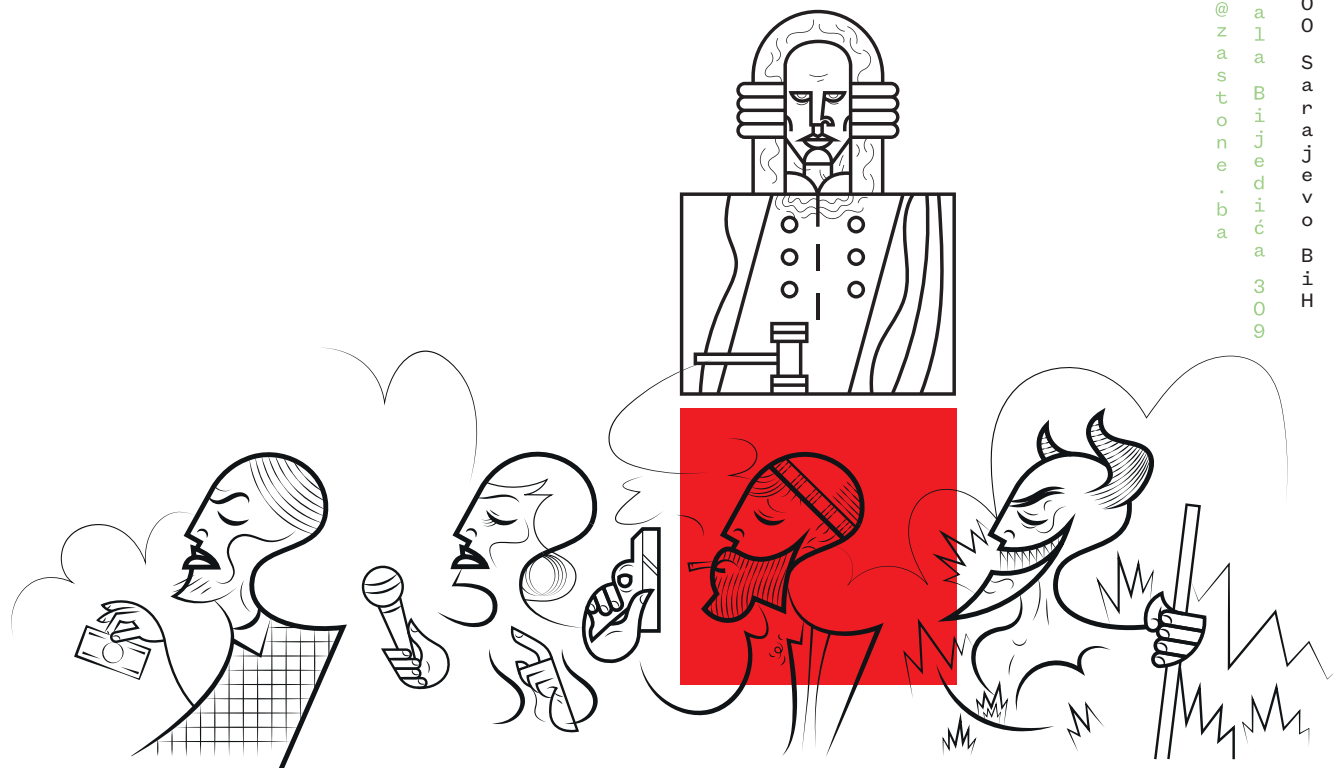


# Judiciary: The reform challenges and current situation

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Assessment of Bosnia and Herzegovina's progress in meeting political criteria in EU negotiations

**JUDICIARY:**  
**The reform challenges**  
**and current situation**

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**SARAJEVO, MARCH 2020.**



# BACKGROUND AND CONTEXT

In early September 2015, the Justice Sector Reform Strategy for Bosnia and Herzegovina for 2014-2018<sup>1</sup> was adopted. It was not until 2017 that the Action Plan<sup>2</sup> for the implementation of this Strategy was adopted. The Strategy, together with the Action Plan for its implementation, envisages a series of measures whose sole aim is to improve the judiciary in BiH.

The Action Plan contains over 40 pages and dozens of measures from the establishment of the Court of Appeal, the adoption of amendments to the Law on the High Judicial and Prosecutorial Council, the Law on the Constitutional Court of BiH, to the adoption of new regulations for better financing of judicial institutions, improvement of ethical standards for judges and prosecutors, improvement of communication strategies of courts and prosecutors' offices, as well as a better quality system of execution of criminal sanctions and pardons.

However, the mere existence of these documents does not guarantee a successful reform of the judicial system. Delays in implementation are large, and only a few of planned measures have been adopted. The delay in implementation is also accompanied by the fact that, at the beginning of 2020, the revised Action Plan for the implementation of the Justice Sector Reform Strategy for Bosnia and Herzegovina<sup>3</sup> for the period 2019 to 2020 has not yet been adopted.

The delays are also confirmed by the latest European Commission Report<sup>4</sup>, stating that the relevant levels of government do not allocate sufficient financial resources to the measures outlined in the Strategy, although many working groups for their implementation are operational. This, on the one hand, tells us about the lack of institutional capacity to carry out the necessary reforms and measures. On the other hand, the current situation in, and the affairs affecting the judiciary also indicate the presence of a lack of political will to bring about reforms.

<sup>1</sup> Justice Sector Reform Strategy for Bosnia and Herzegovina 2014-2018, BiH Ministry of Justice, May 2015

[http://www.mpr.gov.ba/organizacija\\_nadleznosti/planiranja\\_koordinacija/strateska\\_planiranja/strategija/13%201%20SRSP%20u%20BiH%20-%20BJ.pdf](http://www.mpr.gov.ba/organizacija_nadleznosti/planiranja_koordinacija/strateska_planiranja/strategija/13%201%20SRSP%20u%20BiH%20-%20BJ.pdf)

<sup>2</sup> Action Plan for the Implementation of the Justice Sector Reform Strategy in BiH 2014-2018, BiH Ministry of Justice, December 2016

[http://www.mpr.gov.ba/organizacija\\_nadleznosti/planiranja\\_koordinacija/strateska\\_planiranja/institucionalna/?id=6043](http://www.mpr.gov.ba/organizacija_nadleznosti/planiranja_koordinacija/strateska_planiranja/institucionalna/?id=6043)

<sup>3</sup> Draft Action Plan for the BiH Justice Sector Reform Strategy 2014-2018 revised 2019-2020, BiH Ministry of Justice

[http://www.mpr.gov.ba/organizacija\\_nadleznosti/planiranja\\_koordinacija/strateska\\_planiranja/strategija/?id=8416](http://www.mpr.gov.ba/organizacija_nadleznosti/planiranja_koordinacija/strateska_planiranja/strategija/?id=8416)

<sup>4</sup> Analytical Report of the European Commission, Brussels, May 2019

[https://europa.ba/wp-content/uploads/2019/06/Analiti%C4%8Dki-izvje%C5%A1taj-Mi%C5%A1ljenje-Komisije-o-zah\\_tjevu-Bosne-i-Hercegovine-za-%C4%8Dlanstvo-u-Evropskoj-uniji.pdf](https://europa.ba/wp-content/uploads/2019/06/Analiti%C4%8Dki-izvje%C5%A1taj-Mi%C5%A1ljenje-Komisije-o-zah_tjevu-Bosne-i-Hercegovine-za-%C4%8Dlanstvo-u-Evropskoj-uniji.pdf)

## MAIN FINDINGS

Scandals, threats of criminal charges, years of failure to approve the HJPC report, and general stagnation in reform processes have marked the past years in the judicial system.

Almost the whole 2019 year in the judiciary was marked by the "Potkivanje" affair, in which the current President of the HJPC BiH, Milan Tegeltija, was one of the main actors. The footage, which revealed the affair, shows a conversation between SIPA inspector, businessman Nermin Alešević and HJPC president Milan Tegeltija, in which Tegeltija promises to complete the case at the Cantonal Prosecutor's Office of Sarajevo Canton for Nermin Alešević. From the footage itself, it can be seen that the SIPA inspector is taking over the money that has to be handed over to Tegeltija.<sup>5</sup> Although the case has been dragged on for months by the media and the competent investigative bodies, the HJPC president has left the whole affair intact. A criminal complaint against Tegeltija was never filed, and a disciplinary action was dismissed and a request for his suspension for inappropriate contact and bribery to speed up the process.

The HJPC president himself does not see anything controversial in the incident, stating that people often ask him for similar help, noting that he never took any money. Shortly afterwards, instead of discussing reforms and improvements of the judiciary system, Tegeltija once again found himself on the media front pages. This time, due to doubts about his impartiality and independence, which the function he performs requires. The media accused him of being politically biased to one political party and its president.<sup>6</sup> Specifically, the HJPC President responded and attended a meeting convened by SNSD President and BiH Presidency Member Milorad Dodik. According to the media, the meeting aimed to bring together RS representatives in state institutions and arrange for them to be blocked. On the other hand, the President of the HJPC BiH is not the only representative of the judicial authorities to which various affairs are related. The Prosecutor General of the Prosecutor's Office of BiH, Gordana Tadić, was among the various, who was repeatedly credited with hiring her relatives<sup>7</sup>, and relatives of her close associates.<sup>8</sup>

<sup>5</sup> "Potkivanje" affair: "Žurnal" published video of Tegeltija, Alešević and Pandža, 23.05.2019. N1

<http://ba.n1info.com/Vijesti/a346167/Afera-Potkivanje-Zurnal-objavio-video-Tegeltije-Alesevica-i-Pandze.html>

<sup>6</sup> I.Č. "Some of Tegeltija's illogicalities: Meeting in East Sarajevo and independence of the HJPC." 20.02.2020. Klix.ba <https://bit.ly/3dmSCJO>

<sup>7</sup> A.A. "Gordana Tadic hires daughter-in-law to Federal Ministry of Justice" 06.11.2018. Žurnal.info <https://zurnal.info/novost/21606/gordana-tadic-zaposlila-snahu-u-federalno-ministarstvo-pravde>

<sup>8</sup> A.A. "Gordana Tadic hires daughter of HJPC member and sister of her associate" 04.04.2019. Žurnal. Info <https://zurnal.info/novost/22006/gordana-tadic-zaposlila-kcerku-clanice-vstv-a-i-sestru-svog-saradnika>

The highest representatives of BiH judicial institutions have also been accused of covering up facts in certain court cases, protecting murderers<sup>9</sup> etc. The public was particularly shaken by the murder cases of two young men, Dženan Memić and David Dragičević. Both cases are followed by a series of illogicalities, reversal of criminal acts, concealment of evidence, and, as the media reports, strong political influence on judicial institutions and individuals.<sup>10</sup> The cases have not been resolved to date.

The above is just part of the scandals<sup>12</sup> that have shaken the judiciary in the past. And while the entire state structure, from the Minister of Justice to the President of the HJPC, is declaratively committed to strengthening the rule of law in BiH, passing a number of new laws, strategies, projects tells us quite the opposite. According to a survey conducted by Transparency International BiH, on the results of the Corruption Perceptions Index (CPI) for 2019<sup>13</sup>, BiH received a score of 36 on a scale from 0 to 100, where 0 represents the highest level of corruption and 100 the lowest.

Thus, BiH, together with Kosovo, ranks 101st out of a total of 180 countries surveyed. This is the worst rating BiH has received since 2012. The aforementioned report mentions the "Memić" and "Dragičević" cases mentioned above, stating that the judiciary did nothing to detect the perpetrators but to cover them up, rewarding individuals with high positions, rather than being sanctioned.

Dissatisfaction with the work of the judicial authorities, as well as with the HJPC, was demonstrated by the BiH Parliamentary Assembly, not taking into account the reports of that body for 2017 and 2018. New political clashes and accusations, this time from the MPs, could be seen in all media reports.

That there is cause for concern, and that the integrity and independence of the judiciary is jeopardized and public confidence in it is decreasing day by day, confirmed the letter sent to the HJPC President Milan Tegeltija by the OSCE, US Embassy and EU Delegation.<sup>14</sup>

<sup>9</sup> E.M. „MPs Seek Answer: Who Killed Dženan Memić and David Dragičević?“ 11.03.2020. Klix.ba <https://bit.ly/2WGculz>

<sup>10</sup> M.V. „Three years after Dženan Memić's death, family seeks truth“ 15.02.2019. N1 <http://ba.n1info.com/Vijesti/a316374/Tri-godine-nakon-smrti-Dzenana-Memica.html>

<sup>11</sup> A.O., U.Č. „The Dragičević Case: A Year and a Half in Search of the Truth“ Slobodnaevropa.org <https://www.slobodnaevropa.org/a/david-dragicevic/30230629.html>

<sup>12</sup> „Judicial scams lead to less and less confidence of citizens“ 17.02.2020. Okanal.oslobodjenje.ba <https://okanal.oslobodjenje.ba/vijesti/afere-u-pravosudju-vode-do-sve-manjeg-povjerenja-gradjana/10331/>

<sup>13</sup> A.B. „Corruption as a way of life: BiH is constantly declining“ 23.01.2020. Klix.ba <https://www.klix.ba/vijesti/bih/korupcija-kao-nacin-zivota-bih-svrstana-medju-zemlje-koje-stalno-nazaduju/200123028>

<sup>14</sup> „EXCLUSIVE: Content of letters from OSCE, US Embassy and EU delegation addressed to HJPC“ 28.05.2019. N1 <http://ba.n1info.com/Vijesti/a347157/EKSKLUZIVNO-Sadrzaj-pisma-OSCE-a-Ambasade-SAD-i-delegacije-EU-upucenog-VSTV-u.html>

According to the letter, the positive efforts made so far in the implementation of the reforms during 2018 have been overshadowed by worrying phenomena that adversely affect their further implementation, related to the areas of filing property records, performance appraisal, and the appointment process of judges and prosecutors. International officials warn of favoring appointments, lengthy processes, and questioning the integrity and independence of the judiciary. All the above claims have been confirmed, both through international and domestic reports on the state of BiH's judiciary. Thus, according to a European Commission report<sup>15</sup> Bosnia and Herzegovina has an incomplete constitutional and legal framework governing the field of justice and does not provide sufficient guarantees of independence, accountability and efficiency. The report further notes that the HJPC Law should be revised to better regulate the appointment of officials and the evaluation of the work of judicial office holders and disciplinary proceedings against them.

Similarly, the December 2019 Expert Report on Rule of Law Issues in BiH<sup>16</sup> confirms that the appointments, promotions and career advances of judges and prosecutors conducted by the HJPC should primarily follow a non-national approach and be based on expertise.

The report also states that nationality should only be considered at the end of each procedure if the election is reduced to two equally ranked candidates, which is not the case and often the best-ranked candidate is not appointed. The quality and duration of initial training programs for newly appointed judges and prosecutors are also sought, with the caveat that training is often used only as an opportunity for tourism and leisure, rather than for upgrading knowledge.

Even the property cards of judicial office-holders in BiH are still not available to the public, although the HJPC BiH decided in 2018 to publish the property records of judges and prosecutors, when the Rulebook on the filing, verification and processing of financial statements of judges and prosecutors was adopted. The aforementioned Rulebook introduced the verification of financial statements that were arbitrary and uncontrolled until then. However, after pressures from various associations, the data were not released.

It is also worth mentioning that the Revised War Crimes Prosecution Strategy, pending adoption from 2017, has not been adopted to date. The new Strategy should allow more cases to be transferred to the courts of the Entities and Brčko District, thus releasing the Prosecutor's Office and the Court of BiH with less complex cases and allowing them to complete the most complex cases by the end of 2023.

<sup>15</sup> Analytical Report of the European Commission, Brussels, May 2019.

<https://europa.ba/wp-content/uploads/2019/06/Analiti%C4%8Dki-izvje%C5%A1taj-Mi%C5%A1ljenje-Komisije-o-zahhtjevu-Bosne-i-Hercegovine-za-%C4%8Dlanstvo-u-Evropskoj-uniji.pdf>

<sup>16</sup> Expert Report on Rule of Law Issues in Bosnia and Herzegovina, Sarajevo, December 2019.

<https://europa.ba/wp-content/uploads/2019/12/Izvje%C5%A1taj-stru%C4%8Dnjaka-o-pitanjima-vladavine-prava-u-BiH.pdf>

<sup>17</sup> Revised War Crimes Prosecution Strategy removed from the agenda, 20.02.2020. Nezavisne.com

<https://www.nezavisne.com/novosti/bih/Revidirana-strategija-za-procesuiranje-ratnih-zlocina-skinuta-sa-dnevnog-reda/582519>



According to 2019 data, there are more than 550 war crimes cases in the Prosecutor's Office of BiH that have named more than 4,500 known perpetrators and as many cases where the perpetrators are unknown.<sup>18</sup>

All of the above challenges that the judiciary has been facing for years are still in place, as evidenced by the Semiannual Report on the Implementation of the Justice Sector Reform Strategy in Bosnia and Herzegovina and the 2019 Action Plan, and its conclusions.<sup>19</sup> The public is still awaiting for the HJPC BiH, as the umbrella institution of the BiH judiciary system, to begin, continue or complete many of the challenges and problems that have been put before them.

There are still no key reform goals and measures. There is no Court of Appeal or a new Law on the Constitutional Court of BiH. Changes to the HJPC Act are still pending.

The establishment of commercial courts in the FBiH, which have been announced for years as a reform burden on municipal courts, has not yet taken place. In due time, the public also awaits improvement of the funding of BiH judicial institutions, increasing the efficiency of criminal investigations, improving the system for monitoring the efficiency and quality of work of judges, prosecutors and expert associates, and dozens of other measures. Let's not forget, the BiH Justice Reform Strategy was adopted for the period 2014-2018. Draft Action Plan for its implementation, third in a row, for the period 2019-2020.<sup>20</sup> And 90% of the measures are only planned for 2020.

<sup>18</sup> E.D. "Revised War Crimes Prosecution Strategy is still pending" 26.02.2019. Balkaninsight.com

<https://balkaninsight.com/2019/02/26/bosnias-updated-war-crimes-strategy-languishes-in-limbo/?lang=sr>

<sup>19</sup> Semiannual Report on the Implementation of the Justice Sector Reform Strategy in Bosnia and Herzegovina and the Action Plan for 2019, BiH Ministry of Justice, July 2019

[http://www.mpr.gov.ba/organizacija\\_nadleznosti/planiranja\\_koordinacija/strateska\\_planiranja/institucionalna/default.aspx?id=9697&langTag=bs-BA](http://www.mpr.gov.ba/organizacija_nadleznosti/planiranja_koordinacija/strateska_planiranja/institucionalna/default.aspx?id=9697&langTag=bs-BA)

<sup>20</sup> Draft Action Plan for the BiH Justice Sector Reform Strategy 2014-2018, revised 2019-2020, BiH Ministry of Justice [http://www.mpr.gov.ba/organizacija\\_nadleznosti/planiranja\\_koordinacija/strateska\\_planiranja/strategija/?id=8416](http://www.mpr.gov.ba/organizacija_nadleznosti/planiranja_koordinacija/strateska_planiranja/strategija/?id=8416)

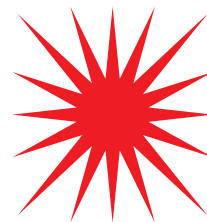
## Conclusion

There are many accumulated problems, and solution is yet to come, if political will is indicated and financial resources are provided. As long as the holders of judicial functions, above all - those in charge, spend most of their time as the main actors in suspicious affairs, the opportunities for progress and continuation of reform processes are diminishing.

The revised Justice Sector Reform Strategy for Bosnia and Herzegovina, new action plans with realistic implementation deadlines, and their consistent implementation are one of the pathways to a new and better judicial system in BiH. Bosnia and Herzegovina has a long way to go to restore public confidence in the judiciary, strengthen their integrity, and free judicial system from direct political interference and influence.

Such a thing, however, requires strong political will, conditioned by the international community and their demands, and sufficient financial resources to relaunch and complete the reform process.

# About the project



Research on the progress of the countries of the region in meeting the political criteria on the road to the European Union (EU) is being done with the financial support of the Balkan Democracy Fund and in cooperation with colleagues from the non-governmental organizations CRTA (Serbia), Metamorfozis (Northern Macedonia) and CDT (Montenegro).

Based on a set of indicators, we examine the quality of the strategic and legal framework, institutional and material capacity, as well as the results achieved in six areas: elections, the judiciary, the fight against corruption and organized crime, the media and public administration reform, each of which will be addressed in a separate document.

Our analyzes include assessments of the fulfillment of the criteria we have come up with by summarizing and articulating the views and evaluations of experts who monitor the quality of implementation of EU standards, as well as analyzing the implemented normative and institutional reforms and their practical results.

The first part of the research deals with the quality of public administration reform. We evaluated this area on the basis of 39 indicators, and during the work we consulted the opinions of three experts in this field. We remain open to all suggestions, well-intentioned criticisms and discussions about our research. We are also ready to offer concrete solutions to all the issues we have assessed as problematic and thus contribute to this important reform.



