

Constitutional Position and Territorial Organisation of Local Self-Government in Bosnia and Herzegovina: Current State and Challenges

*Muhamed Mujakić**

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In addition to analysing the constitutional and normative framework of local self-government in Bosnia and Herzegovina, the paper aims to establish normative and other shortcomings of the existing system of local self-government. It also offers proposals for improving its efficiency and quality, bringing it in line with the best existing European practices. The paper presents and critically assesses the status of local self-government in the three constitutional units of Bosnia and Herzegovina, namely the Federation of Bosnia and Herzegovina, the Srpska Republic, and the Brčko District.

Keywords: local self-government, Bosnia and Herzegovina, constitutional reform, Federation of Bosnia and Herzegovina, Srpska Republic, cities, municipalities, European Charter of Local Self-Government

* Muhamed Mujakić, LL.M., a member of the Law Institute, Bosnia and Herzegovina (mr. sc. Muhamed Mujakić, član Pravnog instituta Bosne i Herecegovine, e-mail: muhamed.mujakic@gmail.com)

1. Introduction

The awareness of local self-government in Bosnia and Herzegovina (BH) has been quite prominent since 1994, when Bosnia and Herzegovina ratified the European Charter of Local Self-Government (Charter, ECLSG). Local self-government is a very prominent topic today, given that it has ever greater importance for BH, as well as for the broader region, the European Union (EU), and the world as a whole. Lying ahead of BH is a process of constitutional reforms that should, *inter alia*, adequately regulate the domain of local self-government as a constitutional category. The relevance of local self-government will become even more apparent with the accession to the EU, wherein local and regional self-government play an important role. In late 2004, one entity of Bosnia and Herzegovina, Republika Srpska (RS), adopted the Law on Local Self-Government, and in 2006 the entity of the Federation of Bosnia and Herzegovina (FBH) adopted the Law on Principles of Local Self-Government. Amendment I to the Constitution of Bosnia and Herzegovina defines the Brčko District as a special and distinct unit of local self-government in BH. The statutes of the cities of Sarajevo, Mostar, and Banja Luka have been amended and modified in accordance with the above entity laws, or by decisions of the High Representative for Bosnia and Herzegovina. Ever since that period no significant progress or initiatives have taken place which would seek to amend or improve the existing constitutional or legislative framework of local self-government. This article aims to examine the current framework and to offer some policy proposals concerning its improvement.

2. Constitutional Framework for Local Self-Government

The current constitutional regime in BH was established under the 1995 Constitution, as well as under Annex IV to the General Framework Agreement for Peace in BH reached in Dayton, USA. A complicated, asymmetric, and multi-layered structure of BH as a country has ultimately resulted in a non-functional structure of local self-government. In order to understand the state of local self-government, one has to bear in mind that BH is a complex country, with an exceptionally complex organisational and functional structure, having two entities with a great deal of independence and competencies in exercising the powers of the state

government. Central bodies of the state government have a very limited scope of powers and competencies (Mujakić, 2014: 54).

Local self-government in BH has been advancing through two separate and, to some extent, distinct subsystems: the system in the Srpska Republic and the one in the Federation of Bosnia and Herzegovina. Given that the entities of BH are quite different from one another, local self-government enjoys somewhat dissimilar treatment between the Srpska Republic and the Federation of Bosnia and Herzegovina. This is reflected in the different competencies vested in the municipalities as local self-government units under their respective constitutions and laws, in the different degree to which the municipalities exercise the powers they are entrusted with, and in the different kinds of relationships the municipalities have with higher government levels.

The Constitution of Bosnia and Herzegovina does not contain any explicit provisions on local self-government. There is only one mention of the territorial organisation of Bosnia and Herzegovina: in the provision stipulating the obligation of the entities and their administrative units to uphold this Constitution and the general principles of public international law (Article III(3)(b)).

Indeed, it is noteworthy that the Constitution of BH treats local self-government in this way, unlike the majority of constitutions currently in place in developed and modern countries, wherein local self-government is regarded as a prerogative of the citizens and wherein law pertaining to local self-government is defined in detail. This is not the case with the current Constitution of BH from 1995, wherein there is no mention of local self-government at all. The Constitution does not contain a single general norm that would guarantee the right of the person to local self-government. In this regard, it is obvious that the Constitution does not regulate local self-government (Mujakić, 2014: 54). Nonetheless, given that BH has signed the 1994 ECLSG, the Charter has become a constituent part of the legal system of Bosnia and Herzegovina, although not all elements of the Constitution and BH laws have been fully harmonised with the Charter (Trnka, 2006: 385).

Respective entity legislations have provided a normative framework; still, improving the organisation and functionality of local self-government in practice is a long-lasting process. Local self-government models in the two entities, although very similar, have their distinctive advantages and disadvantages, while a major problem in both models is the lack of sufficient autonomy of local self-government, which ultimately has a bearing on its normal functioning.

In BH, there are currently two disparate systems of local self-government, given that the respective entity constitutions and laws have made different and contrasting arrangements on numerous issues regarding the position, competencies, and functioning of municipalities, cities, and other forms of local self-government. On the territory of the Federation of Bosnia and Herzegovina there are 74 municipalities, while Republika Srpska is administratively divided into 57 municipalities. Brčko is a distinct administrative unit of local self-government – a district of Bosnia and Herzegovina. In the Federation of Bosnia and Herzegovina there are currently six cities: Sarajevo, Mostar, and – as of 2014 – Tuzla, Zenica, Bihać, and Široki Brijeg. In the Srpska Republic there are also six cities: Banja Luka, East Sarajevo, and – as of 2012 – Bijeljina, Doboj, Prijedor, and Trebinje.¹

3. Local Self-Government in the Federation of Bosnia and Herzegovina

The entity of the Federation of Bosnia and Herzegovina (FBH) was established within BH in 1994, as an agreement between the Bosniaks and the Croats, and with the involvement of the USA. The 1994 Constitution of the FBH originally provided for the municipality as the only form of local self-government. The June 1996 amendments to that Constitution defined yet another level/form of local self-government – the city. Later on, in 1997, further amendments separately defined the position of Sarajevo as the capital and the position of the city of Mostar. The FBH adopted the Law on Fundamentals of Local Self-Government in 1995, while the cantons adopted their own laws on local self-government. This law was in force until 2006. The new Law on Principles of Local Self-Government in the FBH (Official Gazette of the FBH no. 49/06, 51/09) includes detailed provisions on local self-government as contained in the ECLSG and the Constitution of the FBH (Trnka, 2006: 386). The Constitution of the FBH stipulates that local self-government is exercised in municipalities.² The Law on Principles of Local Self-Government in the FBH stipulates the competencies of municipalities in the FBH without any diverging or excep-

¹ It is worth noting that cities as bodies of local self-government are not bodies of second instance to municipalities and the decisions of municipal organs.

² See Article VI(2)(1) of the Constitution of the FBH, unofficial revised text of the Constitution of the FBH.

tions, at least formally. Thus municipalities are monotypic in the FBH; i.e., all municipalities have the same and equal competencies regardless of the number of inhabitants, the size of the territory/area, economic and commercial development, or other parameters. Local self-government in the FBH is organised and exercised in municipalities and cities as local self-government units, and it is carried out by the bodies of local self-government units and by the citizens, in accordance with the Constitution, the laws, and the statutes of respective units of local self-government.³ Regardless of the flaws in the law pertaining to legal drafting techniques, it is obvious that the legislation on local self-government in the FBH evolved over the period between the old (1995) and the new (2006) law, and this has been to the good:

- a) it accepted a modern, European notion of local self-government (not as a prerogative of the citizens, but as the right of local bodies to administer a portion of local affairs in the interest of the local population);
- b) into the monotypic structure of local self-government, on top of municipalities, it introduced cities as units of local self-government;
- c) it gradually extended the competencies of municipalities;
- d) it changed the manner of election of the mayor (he/she is now elected directly by the citizens, while he/she was previously selected by the municipal council) (Zlokapa et al., 2007: 183).

A municipality in the FBH is a unit of local self-government, which is established under law based on the fulfilment of certain requirements. It is the basic unit of local self-government in the FBH. A city is a unit of local self-government that constitutes an urban, infrastructural unity connected through the daily needs of the population. A city can be established not only by the constitution, but also under federation law based on an agreement of association between two or more municipalities; or by the decision of the municipal council of the municipality that meets the criteria provided for under the law, and has at least 30,000 inhabitants, or whose city centre as an encircled urban area is inhabited by at least 10,000 people. Under the law, a city constitutes the seat of the canton even if other requirements under the law have not been met.

The FBH currently has 74 municipalities⁴ and six cities. Based on the provisions ensuing from the Law on Principles of Local Self-Government, as

³ Article 3 of the Law on Principles of Local Self-Government in the FBH (Official Gazette of the FBH nos. 49/06, 51/09).

⁴ See the Law on Federation Units (Official Gazette of the FBH no. 9/96).

well as on continued advocacy by Tuzla, Zenica, Bihać, and Široki Brijeg, in 2014 the Parliament of the FBH passed four laws, turning these municipalities into cities. All the cities have maintained the territories they had as municipalities, and they were given the legal status of cities as units of local self-government. Their city councils were established as self-governing bodies, and their city mayors as executive bodies, with the councillors who had been elected to the municipal councils and the municipal mayors elected at the municipal elections continuing their work, without interruption, as the city councillors and the city mayors respectively.⁵

4. Local Self-Government in the Entity of the Srpska Republic

The Srpska Republic (RS) as an entity within Bosnia and Herzegovina formally came into being with the signing of the Dayton Peace Agreement in 1995. Article 5 of the Constitution of Republika Srpska provides for local self-government as one of the elements on which its constitutional regime is founded. In the RS, municipalities operate more as decentralised bodies of the entity government than as bodies of local self-government (Trnka, 2006: 388). The reason for this is that in the entity of the RS there is no extra government layer between the municipality and the entity (multi-layered governance), as is the case with the cantons in the FBH. Central entity bodies have direct influence on the units and bodies of local self-government in the RS (for example, in the domain of education, healthcare, and so on).

The Constitution of the RS provides for the following primordial competencies, under which the municipality: 1. adopts development programmes, urban plans, and budgets; 2. regulates and safeguards utility operations; 3. regulates and safeguards the use of city construction land and business premises; and 4. establishes bodies, organisations, and services for the needs of the municipality and regulates their organisation and operation (Article 102 of the Constitution of the Srpska Republic).

The RS adopted the Law on Territorial Organisation and Local Self-Government as early as in 1994, then a new one in 1999 (Official Gazette of the RS no. 35/99, 20/01, 51/01), and the current one in 2004, whose

⁵ See the Law on the City of Zenica, the Law on the City of Tuzla, the Law on the City of Bihać, and the Law on the City of Široki Brijeg (Official Gazette of the FBH no. 80/14).

application began on January 1, 2005. The new Law on Local Self-Government of the RS (Official Gazette of the RS no. 101/04, 42/05, 118/05, 98/13) stipulates in somewhat more detail the local self-government in this Bosnian-Herzegovinian entity. The novelty compared to the old laws is that it enumerates the principles of the European Charter of Local Self-Government, the law is harmonised with the other laws currently in force, as well as a number of other arrangements. Local self-government in the RS is single-layered; i.e., monotypic, wherein the citizens enjoy some degree of independence and freedom in the execution of certain tasks, rights, and duties. Even though local self-government is exercised in the municipality, the Constitution of the RS provides for the possibility of entrusting the city with the performance of certain tasks of local self-government by law (Dmičić, 2008: 20). On top of this law, the RS has the Law on Territorial Organisation of the RS (Official Gazette of the RS no. 69/09, 70/12), stipulating the territorial organisation of the RS, as well as the requirements and procedure for territorial changes.

Unlike the Federation of Bosnia and Herzegovina, which is a complex political and territorial community consisting of cantons, the Srpska Republic is organized as a unitary entity. This means that between the units of local self-government (as the lowest level of government) and the entity government there are no intra-governments, be it cantons, counties, districts, or regions (Zlokapa, 2007: 188).

Municipalities are the basic territorial units of local self-government, which are established as parts of a settlement – for one settlement or for more than one settlement. Normatively, just like in the Federation of Bosnia and Herzegovina, the Srpska Republic has accepted a monotypic model of municipality mentioned above, which means that all municipalities have the same competencies and powers; i.e., the legal status of all municipalities is equal, regardless of their size, number of inhabitants, level of development, or any other peculiarities.

The entity of the RS has 58 municipalities. A city may be established by law in an urban area constituting a coherent geographical, social, economic, historical, and territorial unity with an adequate level of development. A city that does not have in its composition multiple municipalities (two or more) has the competencies that are entrusted to, i.e., pertain to municipalities. In the entity of Republika Srpska there are currently six cities: Banja Luka, East Sarajevo, and – as of 2012 – Bijeljina, Dobož, Prijedor, and Trebinje.⁶

⁶ See the Law on Territorial Organisation of the RS, Official Gazette of the RS no. 69/09, 70/12.

5. Local Self-Government in the Brčko District

Annex II to the General Framework Agreement for Peace in BH defines the Brčko District as “a self-governing administrative unit under the sovereignty of Bosnia and Herzegovina”. The Brčko District is undoubtedly one of BH particularities, in every way, from its foundation to the issue of its constitutional status (Gavrić et al., 2009: 337). The setup of Brčko and its surroundings has been organised in a special way within Bosnia and Herzegovina. The particularity of the way the Brčko District was established was conditioned by the interests of both BH entities, the Federation of Bosnia and Herzegovina and Republika Srpska, as the parties to the dispute over having the territory of the former Brčko municipality become part of their entity. This is why the issue was not settled under the Dayton Peace Agreement, but rather it was agreed for the matter to be resolved by arbitration. Upon the establishment of the arbitral tribunal, both parties presented their arguments in favour of having Brčko assigned to their entity.

Aiming at finding the best solution, the Arbitral Commission for the Brčko District decided, based on the Final Award of the Arbitral Tribunal,⁷ that the territory of Brčko would not belong to either Republika Srpska or the Federation of Bosnia and Herzegovina. Rather, they organised Brčko as a special territorial and local administration unit – a district. On top of the existing territorial organisations of the entities in BH, this decision established yet another *sui generis* form of territorial organisation.

The Brčko District is a unique administrative unit of local self-government, which is under the sovereignty of BH.⁸ The powers of the District regarding local self-government arise from the fact that each entity has delegated to the district government all of their governing powers, which had previously been carried out by the two entities and three municipal authorities on the territory of the pre-war municipality of Brčko, prior to the establishment of the institutions of the Brčko District.

The final arbitration award required the establishment of a special governance regime, so the High Representative for BH made a decision on the establishment of the Brčko District of Bosnia and Herzegovina (Official Gazette of BH no. 9/00). All municipal authorities that had existed in the

⁷ Final Arbitration Award for the Brčko District available at: www.bdcentral.net and www.oht.int.

⁸ Article 1 of the Statute of the Brčko District (Official Gazette of the Brčko District of BH no. 2/10).

territory of the District on March 08 2000 ceased to exist as of that date. The Brčko District is the legal successor to the portion of the Brčko municipality in the RS, as well as of the administrative arrangements of Brka and Ravne-Brčko⁹ in the FBH.

The status of the Brčko District was finally settled as late as in 2009, when the Parliamentary Assembly of Bosnia and Herzegovina adopted Amendment I to the BH Constitution.¹⁰ This amendment resolved the status of the Brčko District by defining it as a special unit of local self-government with its own institutions, laws, and regulations, with its own powers and status, which is under the sovereignty of BH and falls under the jurisdiction of the institutions of BH, whose territory is in joint ownership (condominium) of the entities. The legislator provided for the possibility of a more detailed relationship between the Brčko District and the institutions of BH and the entities to be regulated by law passed by the Parliamentary Assembly of Bosnia and Herzegovina.

6. Conclusion

The reform of local self-government in BH is not at its very beginning, but local self-government is surely far from being fully reformed, European-like local self-government. Nothing has been brought to a conclusion or finally resolved in this domain. The biggest shortcoming of the prior course of reforms to local self-government in BH is that they were almost exclusively done in the normative sphere (“cosmetic reforms”), by fixing old and passing new regulations. In BH, there is solid legislation (although not fully harmonised with the European Charter) compared to very inequitable local self-government. The reason for major problems in this domain is the inadequate and inconsistent application of the laws and of the ECLSG.

Provisions regarding local self-government are very diverse. It is obvious that local self-government in BH has many ambiguities regarding the division of competencies between municipalities and higher government levels, which is particularly pronounced in the FBH, in the relations between the municipalities and the cantons, where the cantons often do not

⁹ Article 77 of the Statute of the Brčko District (Official Gazette of the Brčko District of BH no. 2/10).

¹⁰ Amendment I to the Constitution of Bosnia and Herzegovina (Official Gazette of BH no. 29/09).

respect the independence and autonomy of local self-government units. In both entities, higher government levels often grasp at the powers of the municipalities, usurp their rights and property, thus denying and challenging the principles of the ECLSG.

Some good examples represent the positive side of local self-government in BH, such as the unity of local governments all over BH in their demands for a balanced functional and fiscal decentralisation – a redistribution of competencies and material resources in favour of the local government level. The local level is the only government level in BH that has had a tradition and continuity of operation, and the Brčko District is a homegrown example of the positive and swift effects of functional and fiscal decentralisation.

Having outlined the current situation, i.e., the legal framework for local self-government *de lege lata*, we should now make proposals *de lege ferenda*. In our opinion, the following should be done in the domain of local self-government:

1. Incorporate in the Constitution of Bosnia and Herzegovina, at the very minimum, general provisions on local self-government; i.e., stipulate that local self-government in BH is exercised at the level of municipalities and cities. It is a fact that Amendment I to the BH Constitution, which settles the status of the Brčko District and which let the Brčko District become part of the Constitution of Bosnia and Herzegovina, does mention *local self-government* in the context of the definition of the Brčko District as a special self-governing administrative unit. However, this is not enough, because the issue of local self-government should be clearly regulated, at least by general constitutional norms, as a constitutional category.
2. It is necessary for both entity laws on local self-government – the Law on Principles of Local Self-Government in the Federation of Bosnia and Herzegovina and the Law on Local Self-Government of the Srpska Republic – to be mutually harmonised and to establish a uniform (symmetrical) system of local self-government across the territory of Bosnia and Herzegovina. This would imply the same or similar scope of competencies for the municipalities, the same municipal bodies, the same requirements for the establishment/forming of cities, and a series of other things that currently lead to unequal treatment between the two BH entities when it comes to local self-government.
3. It is necessary for both entity laws on local self-government – the Law on Principles of Local Self-Government in the FBH and the Law on Local Self-Government of the RS – to be fully harmonised with the European Charter of Local Self-Government, because the Law on

Local Self-Government of the RS is not harmonised with the basic principles of the European Charter, as it is not harmonised with other documents and regulations of the Council of Europe and the EU, in particular in view of the European integration of Bosnia and Herzegovina.

4. All provisions of the European Charter must be literally applied at all government levels in BH, in the manner that BH, as a country that has ratified the Charter, should delegate to its entities and units of local self-government clear orders for full application of the Charter, and this should also be stipulated by a framework law from the next item.
5. In BH, it is necessary to adopt a framework or general law on local self-government at the state level; i.e., a law on the fundamentals of local self-government that should organise in a uniform manner the system of local self-government in accordance with the ECLSG, and this framework law should define the competencies of local self-government units. In our opinion, these competencies are: preparing the budgets of local self-government units, adopting development and urban plans, administering and managing local property, collecting local revenues, administering and managing natural resources, administering utility operations, as well as competencies within the areas of culture, social welfare, sports, local-level tourism, and so on.
6. Furthermore, it is necessary to adopt a framework law on the financing of local self-government units, i.e., on their corresponding shares in public revenues, in a uniform way across BH, without any major discrepancies in the financing of local self-government, as is the case now. The proposal to adopt a state-level law on the financing of local self-government ensues from the fact that the percentage of total revenues allocated for local self-government in the Srpska Republic is 23 per cent, unlike the percentage in the Federation of Bosnia and Herzegovina, which is 8.42 per cent. The financing of local self-government in BH must be appropriate for units of local self-government; i.e., the allocated funds must be distributed evenly, based on criteria such as the number of inhabitants, size of municipality, or any other criterion to be determined by the legislator, provided that it is appropriate.
7. The City of Sarajevo, as the BH capital, should be organised in a unique manner, even more so given that the current City of Sarajevo consists of only four municipalities (Centar, Novi Grad, Stari Grad,

and Novo Sarajevo), while before the war in Bosnia and Herzegovina it consisted of six city and four suburban municipalities. We believe that an adequate form of organising the City of Sarajevo as the BH capital might be to organise it as a district of Bosnia and Herzegovina, in a way similar to establishing the Brčko District.

8. City statutes in Bosnia and Herzegovina should be harmonised, these being Sarajevo, Banja Luka, and Mostar, in the way that the election of mayor should be uniform (either indirect, through city councils, as is the case with Sarajevo, Mostar, and even the Brčko District, or direct, as is the case with Banja Luka). Moreover, it should be clearly stipulated that the mayor, deputy mayors, and the president of the city council and his/her deputies cannot come from the same constituent peoples. In the context of such harmonisation, one should use positive experiences from the Brčko District, as it is a good organisational model with years of experience in multi-ethnic local self-government.
9. The new cities in the FBH (Zenica, Tuzla, Bihać, and Široki Brijeg) and in the RS (Bijeljina, Doboj, Prijedor, and Trebinje) should be further strengthened in terms of capacity building for good quality and functional local self-government based on the principles of the European Charter, instead of these cities having the same functions as they did when they were municipalities, with their new status being reflected solely in their new name.
10. It is necessary to ensure greater autonomy for the municipalities (in particular when it comes to their provision of public services) and to strengthen the capacities in all municipal segments, such as finance, human resources, technical capacity, IT, operations, and so on.
11. It is necessary to render the municipal administration functional and efficient in order to ensure the provision of good-quality services to the citizens, to computerise public administration in the municipalities (for instance, by introducing *e-administration*), as well as to provide and facilitate administrative procedures at the local level, which means reducing the quantity of documents involved in dealing with the rights of citizens when it comes to local needs, simplifying the procedure for obtaining documents issued by local municipal bodies, such as city planning approval, construction permits, and so on.
12. Ensure a uniform system of protection of the right to local self-government in the entire BH by ensuring constitutional mechanisms for the protection of the right to local self-government, in the manner it

is settled in the FBH, where the constitutional court is vested with the protection of the right to local self-government. Thus it is necessary to define a similar provision/norm in the Constitution of Bosnia and Herzegovina (and in the Constitution of Republika Srpska, which currently does not contain any mechanisms for the protection of the right to local self-government) in order to ensure the same level of protection of local self-government units across the territory of Bosnia and Herzegovina in a uniform way.

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CONSTITUTIONAL POSITION AND TERRITORIAL
ORGANISATION OF LOCAL SELF – GOVERNMENT IN BOSNIA
AND HERZEGOVINA: CURRENT STATE AND CHALLENGES

Summary

In addition to analysing the constitutional and normative framework of local self-government in Bosnia and Herzegovina, the paper aims to establish normative and other shortcomings of the existing system of local self-government. It also offers proposals for improving its efficiency and quality, bringing it in line with the best existing European practices. The paper presents and critically assesses the status of local self-government in the three constitutional units of Bosnia and Herzegovina, namely the Federation of Bosnia and Herzegovina, the Srpska Republic, and the Brčko District.

Keywords: local self-government, Bosnia and Herzegovina, constitutional reform, Federation of Bosnia and Herzegovina, Srpska Republic, cities, municipalities, European Charter of Local Self-Government

USTAVNI POLOŽAJ I TERITORIJALNO USTROJSTVO LOKALNE
SAMOUPRAVE U BOSNI I HERCEGOVINI: TRENUTNO STANJE
I BUDUĆI IZAZOVI

Sažetak

U radu se analizira ustavni i normativni okvir lokalne samouprave u Bosni i Hercegovini, te se nastoje utvrditi normativni i drugi nedostaci postojećeg sustava. Također se predlažu načini povećanja učinkovitosti i kvalitete sustava lokalne samouprave, kako bi ga se približilo najboljim primjerima europske prakse. U radu se opisuje i kritički razmatra status lokalne samouprave u svakoj od tri konstitutivne jedinice Bosne i Hercegovine: Federaciji Bosne i Hercegovine, Republici Srpskoj i Distriktu Brčko.

Ključne riječi: lokalna samouprava, Bosna i Hercegovina, ustavne reforme, Federacija Bosne i Hercegovine, Republika Srpska, gradovi, općine, Europska povelja o lokalnoj samoupravi