

The problem with constitutional reform in Bosnia and Herzegovina

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The European Commissioner for Enlargement, Stefan Füle, visited Sarajevo on 8 October. He met new members of the presidium of BiH. Füle emphasised that the country needed to carry out constitutional reform to strengthen the central government before it would be able to continue the process of integration between BiH and the European Union. EU representatives had hoped that as a result of the elections held on 3 October in Bosnia the government elite would be replaced with a team more willing to compromise on changing the country's political system. However, the fundamental differences in the interests of the communities which make up BiH and between the political parties which represent them still prevent thorough political reform. Making this a top priority issue will probably not bring the expected results and may even broaden the divides between the communities. The EU could adopt a more effective strategy by focusing on initiating and supporting reform in certain sectors (for example, the health service, economy and justice). This would improve the state administration system and reinforce its institutions. Additionally, an atmosphere of co-operation and trust between the communities of BiH would be created, which is necessary to achieve tangible progress on the road towards the EU.

The malfunctioning political system

The present political system of BiH is an effect of the constitution, which was an annexe to the Dayton peace accord signed in 1995, which the country had to adopt. BiH is divided into two entities: Republika Srpska (RS) and the Federation of BiH (FBiH) mostly inhabited by the Bosniaks and Croatian population, and Brcko District, which is administered jointly by the two entities. Additionally, FBiH is divided into ten cantons which enjoy broad autonomy and have their own governments and parliaments. The powers of the central government, the entities and the cantons have not been clearly defined, and overlapping competences cause numerous disputes.

Such a political system is the result of a weak central government, which has quite limited competences (foreign and security policy). In turn, a strong authority centre at the entity level has been created in RS, which has successively implemented reforms, has introduced market economy rules and has been adjusting the law to the EU's *acquis*. It is also gradually taking over the competences of the ineffective central government. The government of RS is increasingly active on the international arena and is trying to develop contacts with the EU on its own, for example with the help of RS's delegation to the European Commission in

Brussels. In turn, the FBiH has developed a system of inefficient and expensive bureaucracy consisting of many levels (the level of entity, cantons and communes), with overlapping competences and dispersed responsibility. Conflict between numerous political parties representing Croats and Bosniaks prevents efficient administration at each level, also allowing a dilution of responsibility for the failure to carry out reforms. As a consequence, RS is now more developed economically and better prepared for EU membership than the FBiH.

However, this extreme inefficiency of the state institutions at all levels (with the exception of the ethnically homogeneous institutions in the RS) results mainly from a lack of willingness to co-operate and a strong mutual distrust between the nations of BiH. In effect, common institutions are paralysed and the implementation of harmonised legal solutions in all parts of the country is impeded (for example, at present, different criminal codes apply in each of the entities, and construction law regulations and conditions for running businesses vary from canton to canton).

Varying preferences: between unitarianism and federation

The constitutional reform the EU wants to see implemented is an issue which is shaping the political debate in BiH. It determines the programmes and activities of political parties and is in the centre of the interests of public opinion.

Bosniak parties assume that political reform should lead to the creation of a unitarian state, with a strong central government and well-developed local governments at the commune level. This solution would put an end to the autonomy of the entities and cantons. In contrast, Serb parties want the entities to maintain the broadest possible autonomy, but without ruling out the liquidation of cantons in the FBiH. In turn, Croat parties want to maintain broad autonomy in the cantons or to create a third, Croat entity. Serbs from RS would be ready to support the latter solution, as this would weaken the central government's position.

Due to such radical divides, the debate on the transformation of the state system is aggravating the antagonisms between the nations of BiH, creating a sense of impermanence and reducing the feeling of security among citizens. The aspirations of other communities in such conditions are perceived as a potential threat. As a result, support for nationalist parties, whose main slogan is the protection of the interests of the communities they represent, remains high. Readiness to compromise is often branded as a betrayal of one's own national group.

Additionally, constitutional reform is a convenient substitute subject for political parties as it is distracting attention from the main problem, the blocked reform process and the need to resolve citizens' problems, such as the lack of an independent and efficient judicial system, a uniform education system, a good business environment, a well-functioning health service and an efficient curbing of corruption. Another problem is also the unfair social welfare system, which is addressed predominantly to war veterans.

The October elections awoke a hope for change among people. Forming a new government at the central level and in the FBiH creates an opportunity for implementing certain reforms, unless they cover the controversial issues linked to the autonomy of each of the national communities. In the Serb part of the country, neither the victorious Alliance of Independent

Social Democrats (SNSD) nor the main opposition party, Serbian Democratic Party (SDS) are ready to limit the autonomy of the RS. In turn, the parties which are likely to form the government at the level of the FBiH and take over power in the cantons, namely the Party of Democratic Action (SDA) and the Social Democratic Party (SDP), are ready to compromise on some issues to a limited extent with the other partners (economy, education, health service). However, they will not relinquish their main demand, the building of a unitarian state.

Implications for the EU

The main challenge for the European Union, which is supervising the peace process in BiH, is to overcome the mutual distrust and to create an atmosphere of co-operation. An example of the successful application of the conditionality policy which has forced the BiH authorities to carry out reforms is the process of introducing a visa-free regime with the Schengen Area, which is being finalised. Requirements which are concrete and easy to verify and which are not directly linked to changes in the political system have forced the leaders of the three conflicting nations to co-operate and led to the establishment of efficient institutions in particular areas (for example, protection of refugees and document protection system). They have also made the political elite accountable to citizens for concrete actions. A model of this kind should be taken into consideration in the currently pending work on the reinforcement of the EU's presence in BiH and in improving the efficiency of EU policy in this country. If the EU again (after the April package in 2006 and the Butmir process in 2009) determines constitutional reform as the most urgent challenge for BiH, this will not bring the expected effect and will only aggravate the antagonisms between the communities.