

The End of an Odyssey in Bosnia and Herzegovina

The Police Reform Smooths the Way to a Stabilisation and Association Agreement with the EU but Fails to End Stagnation

Solveig Richter

When a considerably modified version of the police reform crossed the final hurdle in the upper house of the parliament of Bosnia and Herzegovina on 16 April 2008, officials not only in Sarajevo but in Brussels as well breathed a sigh of relief. The road to signing a Stabilisation and Association Agreement (SAA) with the European Union (EU) was finally clear, bringing an end to an odyssey that had lasted years. Yet the wrangling over the police reform was really just a symptom of the structural deficits that continue to prevent a progressive dynamic developing in the country, each of which reveals a dilemma that hampers the involved parties' ability to act: First of all there is the "dysfunctionality of Dayton", a derogatory term used to denounce the complex constitutional structure and the lack of willingness by elites in Bosnia and Herzegovina to engage in political reform. Thus, although desirable, a reform of the constitution is not realisable in the short term. Second, in recent years the international community, in particular the High Representative and the European Union, have acted in ways that have proved to be counterproductive. So while external actors continue to be the most important engine of reform in Bosnia and Herzegovina, their presence at the same time is an obstacle to further democratisation.

In adopting the police laws Bosnia and Herzegovina fulfilled the final criterion for the conclusion of a Stabilisation and Association Agreement with the EU and thus cleared a way out of the deadlock that the involved parties had manoeuvred themselves into.

After a series of analyses the reform was initiated in 2004 by the High Representative at the time Paddy Ashdown. He called

for a centralisation and complete reorganisation of the police force that transcended the boundaries of Bosnia and Herzegovina's two political entities. Together with former EU Commissioner for External Relations Chris Patten he succeeded in 2005 in getting the police reform included in the EU's catalogue of criteria for the SAA.

This conditionality intensified the confrontation between the various ethnic

groups in Bosnia and Herzegovina. While the reform proposals were vehemently rejected by the Serbian entity (*Republika Srpska*), which feared the loss of one of its key competencies and the gradual erosion of its power, they were welcomed by the Bosniac parties, which favour a strengthening of the central government. It is therefore hardly surprising that the controversy over the police reform became a vehicle for a public conflict over fundamental differences of opinion and for years dominated the political agenda. Numerous negotiations, always accompanied by threats and mutual accusations, failed to yield results. It was not until the serious constitutional crisis of autumn 2007 that all the involved parties began to change their attitudes on a number of issues, including the police reform.

In a surprise move the six major parties of the three ethnic groups managed in the Mostar Declaration to reach agreement on the basic principles of a police reform. In addition the High Representative Miroslav Lajčák showed a willingness to make concessions. The *Republika Srpska's* consistent rejection of the reform had rendered him powerless, for he had ruled out from the start imposing the EU conditions by force and he thus had no further instruments at his disposal. It thus proved impossible to implement the originally ambitious demands in practice. Ultimately, however, the integration of the country in the EU proved to be the highest priority and moved Lajčák to adopt a new line, which he managed to push through in Brussels together with the High Representative for the Common Foreign and Security Policy Javier Solana. A modified version of the police reform, as agreed on in the Mostar Declaration, was now deemed sufficient to fulfil the final condition for the conclusion of the SAA.

The police laws finally adopted by the parliament in Sarajevo in April 2008 established seven new institutions at the central government level, which included training, forensic investigations and coordination of

the police forces. Yet the relationship between these central agencies and the entities remained unclear and was only to be defined as part of a reform of the existing constitutional structure. The outcome is thus a long way off the fundamental restructuring of the police forces originally envisaged, but, as all those involved had to admit, it was impossible to achieve more politically.

The political implications of the disagreements over the police reform are twofold: on the one hand it proved impossible for many years, despite all the incentives and instruments of power employed by the EU and the High Representative, to achieve a consensus among all the ethnic groups on a restructuring of the allocation of competencies in a key area of state jurisdiction. The crux remains the relationship between Sarajevo and the entities, which must, of course, be clarified in the framework of a constitutional reform. On the other hand, the position of the High Representative in power relations in Bosnia and Herzegovina has been considerably weakened. His relaxation of the conditions was tantamount to admitting, at least implicitly, that his ambitious projects and vision of “doing things right for once” had blocked the country for years and put paid to his own opportunities for exerting influence.

Dilemma 1: The Gordian Knot of Constitutional Reform

The debate on police reform brought about a confrontation between the three fundamentally different views of the three constituent peoples (Bosniacs, Croats and Serbs) on how the state of Bosnia and Herzegovina should be structured. While the Croats and the Serbs are striving for an even greater degree of federalisation, the Bosniacs favour more centralisation and are thus pulling in the opposite direction. The current constitution, which was integrated in the Dayton Peace Agreement as Annex 4 in 1995, gives the three ethnic groups and the two state entities, the Bos-

nian-Croat Federation (51% of the territory) and the *Republika Srpska* (49%), far-reaching veto powers and prerogatives. After only a few years, however, this constitutional structure began to have destructive effects. Introduced in a spirit of reconciliation, the consensus democracy became the scene of ethnic blockade policies and a prime example of inefficient governance. The provisions designed to protect the group interests of the three constituent peoples fostered the ethnic division of social and political culture by restricting the scope for a civil culture based on individual rights to evolve. An expert evaluation by the Council of Europe in 2005 showed clearly that the central norms of the constitution were not only inefficient and undemocratic but also incompatible with the European Convention on Human Rights.

Hence, while the constituent peoples enjoy equality before the law, individual citizens do not, as shown, for example, in the lack of equal voting rights in the elections. The constitution also has a discriminating effect because it in some instances withholds political and civil rights citizens other than the three constituent people. There is thus an obvious need to reform the current constitution for legal and functional reasons. Both the EU in its Progress Report issued in autumn 2007 and the Steering Board of the Peace Implementation Council in February 2008 pointed out the shortcomings and demanded a revision. Under the mantra of the “dysfunctionality of Dayton” there have been repeated calls in the political arena and in society for change, even going so far as to demand the revocation of the peace treaty and its constitution. In fact, though, this broad discreditation of the state structure established in Dayton does not go far enough – for three reasons.

Firstly, the constitutional barriers erected by the Dayton Peace Accord have proven to be an anchor of stability and even today their contribution to providing a corridor for action that secures people’s expectations should not be underestimated. Day-

ton thus guarantees the existence of the state. If the accord were to be revoked, this basis, which enjoys the protection of the international community, would disappear.

Secondly, pointing out structural deficits provides domestic politicians with a cheap guise to cover up their own incompetence and to conceal or justify a lack of willingness to engage in political reform or to cooperate. There is no doubt that change might threaten cherished privileges. It is questionable, however, whether an institutional reorganisation could really be a substitute for the stronger effect of action by central players whether in a positive or a negative sense.

Thirdly, the continuous criticism of Dayton is also having counterproductive side-effects. Many election campaigns and controversial reform projects in recent years have shown that in Bosnia and Herzegovina citizens’ existential fears lead to a strengthening of the nationalists and to radicalisation and polarisation. The debate over constitutional reform is currently setting precisely this mechanism in motion again and creating a security dilemma. Among the Serbs it provokes defensive reactions that even go as far as threats to declare independence, with the domestic political goal of consolidating their political entity. The Bosniacs, for their part, perceive the existence and the strength of the *Republika Srpska* as a threat and regard centralisation and giving the entities less power as the only way of guaranteeing the existence of “their” state, while among the Croats the calls for constitutional change have prompted demands for an entity of their own. The uncertainty of all the ethnic groups about their future as a state, in turn, creates a breeding ground for centrifugal and nationalist forces.

Essentially the whole situation boils down to a familiar dilemma: The cornerstones of Dayton, which continue to guarantee the unity of the state, are simultaneously having a counterproductive effect and are hindering the development of a positive dynamic in the country – for cur-

rently stability is tantamount to stagnation. Without a fundamental revision of the constitutional structure established in Dayton, Bosnia and Herzegovina has neither a long-term future nor any prospect of becoming a member of the EU. Nevertheless, a hurriedly drafted constitutional reform would have difficulty meeting the high expectations and hopes pinned on it or of solving the country's problems all in one go. On the contrary, it would simply direct energy in the wrong direction.

For this reason two points need to be reconsidered:

1. *Realism instead of idealism*: Currently there is no realistic chance of pushing through a constitutional reform, for there is no prospect of achieving a consensus among the different ethnic groups and parties. First of all, the police reform has made it clear that the attitudes of political leaders have hardened. Secondly, given the powerful position of the *Republika Srpska*, strengthening the central level of the state is not currently an option. The Serbian political leadership is not prepared to make any further concessions that would entail conceding competencies. So while under these conditions Bosnia and Herzegovina is not heading for an apocalypse, a new country will not emerge overnight either.

2. *Evolution not revolution*: The possibilities for external influence are limited under these circumstances, for the key to the long-term existence of the state of Bosnia and Herzegovina is its constitutional legitimacy, which can only be achieved via consensus among all ethnic groups. A consensus of this kind requires changing mindsets over a long period of time and is therefore not a short-term process. Indeed, there is a danger that if external actors set specific goals or issue specific instructions this could undermine the legitimacy of the new constitution. Calls for comprehensive structural changes tend either to evaporate or else to provoke resistance and divert attention from problems that ought to be solved at a lower political level – perhaps even without any major constitutional reform

but simply with a greater degree of efficiency and functionality. These include, for example, the educational system or the administration. Minor constitutional amendments might also rectify the legal problems identified by the Council of Europe.

Dilemma 2: The Ambivalent Role of the International Community

The reasons for the prolonged conflict over the police reform lay not only in fundamental differences between the ethnic groups but also to a large extent in the ambivalent role played by international actors, particularly the High Representatives and the EU.

As “benevolent dictators” – as one of the holders of this office once described himself – the High Representatives have certainly done much to advance the establishment of the cornerstones of democracy. Yet progress towards democracy has also been hampered by counterproductive side-effects, including an increasingly widespread passivity and overly high expectations on the part of elites and citizens. The shaping of political opinion, which was built on consensus and compromise, actually favoured confrontations and blockades, since no politician had to make any painful concessions. After all, what was the High Representative there for? As the Council of Europe also argued, the Bonn Powers violated key principles of democracy and the rule of law. For they neither stipulated political responsibility vis-à-vis voters nor did they provide for the possibility of using legal instruments to challenge a decision.

In autumn 2007 the differences of opinion in the international community over the role of the High Representative escalated in the Steering Board of the Peace Implementation Council: Russia came down firmly on the side of the *Republika Srpska* and withdrew its support for some of the High Representative's proposals. Lajčák saw himself forced to make concessions. As a result of this crisis the Steering Board changed its strategy in February

2008. From 2006 until then the international community had continually issued new deadlines for the expiry of the mandate, which Bosnian politicians simply allowed to elapse. Now, however, they linked (without setting a time limit) the departure of the High Representative to progress towards five *objectives* – acceptable and sustainable resolution of the issue of apportionment of property between State and other levels of government, acceptable and sustainable resolution of defence property, completion of the Brčko final award, fiscal sustainability and the entrenchment of the rule of law – and to the fulfilment of two *political conditions*: the signing of the SAA and a positive overall assessment by the Steering Board.

The aim was, on the one hand, to strengthen the position of the High Representative and to provide him with leverage to put more pressure on domestic politicians. On the other hand, this also represented a concession to the Russians in that it tied the mandate to clear reference points. Russia has voiced overt support for Serbian demands for the High Representative to leave as soon as possible and would also like to see a positive overall evaluation, which is ultimately what counts.

The combination of a considerable weakening of the powers of the High Representative and a high level of stagnation of reforms also puts the international community in a quandary regarding its goals. The High Representative is generally believed to have become rather a “lame duck” whose authority and ability to get things done have suffered considerably. In addition his main instrument, the Bonn Powers, has ceased to have much effect. Nevertheless, he continues to be a guarantor of Dayton and can intervene if the situation gets serious, as soon as the international ambassadors in Sarajevo give their consent. In other words, while as long as he is there things may not be move forwards, without him they may well go backwards.

The only realistic option under these circumstances would be for the EU to rise

to become the leading actor in Bosnia and Herzegovina. With its various instruments, which include EUFOR, the EU police mission EUPM, the EU Special Representative and the delegation of the European Commission, it is well equipped for this. While the SAA certainly also offers the EU a further channel of influence, the disputes over the police reform have had an adverse impact on the EU as well. Its preference for a central state model, from which above all one ethnic group – the Bosniacs – would have benefited, and its insistence on a strict conditionality inevitably provoked a confrontation and poisoned the political atmosphere in the country. The EU’s conditionality, which has proved to be effective in the stabilisation and association process in some neighbouring states, has in recent months literally collapsed. The EU recognized that by pursuing a strictly performance-oriented, incentive-based policy, it was limiting its scope for action, and it therefore sacrificed conditionality in favour of its overarching goal – the association of Bosnia and Herzegovina.

The goal of European policy in Bosnia and Herzegovina can therefore only be to initiate change in order to counter the long-term danger of the dysfunctional status quo becoming permanent. At the same time it will seek to minimise the short-term risks associated with such change. These comprise above all an increasing polarisation and radicalisation of ethnic groups of the population and as a consequence the realisation of the *Republika Srpska*’s secessionist intentions. A gradualist policy may well succeed in placating the Bosniacs without provoking the Serbs and at the same time induce a positive dynamic.

© Stiftung Wissenschaft und Politik, 2008
All rights reserved

These Comments reflect solely the author’s view.

SWP
Stiftung Wissenschaft und Politik
German Institute for International and Security Affairs

Ludwigkirchplatz 3–4
10719 Berlin
Telephone +49 30 880 07-0
Fax +49 30 880 07-100
www.swp-berlin.org
swp@swp-berlin.org

ISSN 1861-1761