

Supporting Constitutional Reform in Bosnia and Herzegovina

Objectives

The goal of the ICDT is to help facilitate the constitutional reform process by examining both the way forward to launching a viable reform process and possible institutional and legal solutions as a remedy to the problems of the current constitution.

Background

The current constitution of the country took effect in 1995 as an Annex to the Dayton Peace Accords. A vital framework at the time, the constitution has since then come under criticism by politicians and experts as well as the public at large; there is too much duplication in the present political system between the federal and entity levels which complicates decision making, hinders necessary reforms and poses a great financial burden. Constitutional reform is made all the more pressing by the implementation of the Stabilization and Association Agreement (SAA), the main instrument governing EU-BiH relations in the framework of the EU's regional Stabilization and Association Process (SAP). Specifically, EU accession raises three sets of key issues: (1) The transfer of competences to European institutions and/or international authorities (transfer of sovereignty); (2) The relationship between Community Law and BiH Constitutional (Federal and Entity) Law; (3) Revision of existing federal and entity responsibilities, as the transfer of constitutional competences to Union authorities itself necessitates a redefinition of the division of powers as currently set out in the Constitution. A series of legislative recommendations were prepared in 2006 to modify the constitution, but the proposal did not get the necessary support from the parliament.

Project

A roundtable discussion was organized in Sarajevo in December 2008 where local and international experts were invited to reflect on the way forward mainly in procedural terms, i.e., the question of how to build and drive a constitutional reform process that would, on the one hand, involve all major stakeholders but, on the other one, would avoid pitfalls that led to the failure of previous attempts at reform. The event was successful in attracting significant attention and involvement in both the national and international community. The ICDT proposes a second meeting which will analyze potentially applicable/adaptable international models on federal structures and the lessons learned of European integration by new Member States like Hungary from a constitutional point of view. At the same time, the ICDT seeks to target and involve parliamentarians in the discussions. As the result of the project, the ICDT expects not only to develop specific recommendations with regard to shaping a new constitution, but more broadly to outline a framework for action based on a platform developed to define the reform process.

Donor:	Hungarian Ministry of Foreign Affairs, Swiss Cooperation Office in BiH
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