

Migration: The Case of Bosnia Herzegovina

The unique state structure of Bosnia Herzegovina and the novelty of its migration policy pose challenges for the implementation of its legal framework for migration.

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Bosnia Herzegovina's unique institutional structure

Bosnia Herzegovina (BiH) has a unique state structure. It is the only federation in which one of the federal units is also set up as a federation. This bears on its institutional structure, and its policy and legislative functioning. Migration is a rather new policy and legislative area for the country. To understand migration issues in BiH, a short description of the country's institutional structure is useful.

The current state structure of Bosnia Herzegovina is the result of the General Agreement for Peace in Bosnia and Herzegovina (known as the Dayton Agreement), signed on 14 December 1995, which ended four years of war (1992 to 1995). BiH consists of a state (national) level, two entities – the Federation of Bosnia Herzegovina (FBiH) and Republic of Srpska (RS) – and the Brcko District, created in 1999. The country is based on a rigid system of national-ethnic political representation that provides full citizenship rights and powers to three constituent peoples (Bosniacs, Croats and Serbs) and limited citizenship rights to a fourth group called *ostali* (others)¹. Each of the BiH levels has its own structure and government. The state level has a presidency (tripartite presidency), a bicameral parliament (Parliamentary Assembly of BiH and House of People), and a Government with its Council of Ministers (a total of nine ministries). The Federation of BiH has three distinct levels of administration: the entity government, cantons (10) and municipalities (79). RS consists of two administrative and political levels: the entity government and municipalities (62).

The constant battle between the national state government and the two entity levels regarding attribution of competences locks BiH. Two opposite visions of statehood are held by each of the state entities: one of a strong and centralised state and the other of a highly decentralised state (almost a federation of states) with the concentration of power at the entity level. These two visions result in delayed or halted implementation of policies; entity officers

¹ According to the BiH Constitution, only citizens belonging to the constituent population are eligible to run for president of BiH or RS.

employ a veto strategy as a tool in negotiations on the assignment of power and responsibility. The result is a country that struggles to find agreement on policy and implementation and in which each part acts independently and sometimes contradictorily.

Lack of statistical data

The overarching problem in relation to statistical data is that the last census was conducted in 1991, before the war. Due to the structural fragmentation of BiH and the several levels and centres of powers, data is not always available and collected in a standardised way. Data and information is collected at several levels, but is not shared. The Agency for Statistics is not able to provide data on the number of foreigners living in BiH or on migration flows. However, in a more positive step, from April 2009, the State Agency for Work and Employment has agreed to include among its labour market indicators a table on the number of work permits granted to foreign nationals. Unfortunately, the absence of disaggregated gender data does not allow for any analysis in relation to foreign women.

Even though a centralised Information Management System has been established for the purpose of migration monitoring, as at July 2008 it was still not working at full capacity (Ministry of Security & IOM, 2008).

Migration law in BiH

According to the BiH Constitution², the state is responsible for migration, visa and asylum affairs. Competences are divided among three ministries: the Ministry of Security, Ministry of Foreign Affairs, and Ministry of Human Rights and Refugees³. The lead institution is the Ministry of Security with its organisational unit; while competences over vital sectors like health, employment and education belong to the FBiH and RS.

Since April 2008, BiH has had a new umbrella

² BiH Constitution, Article 3, para 1, line (f): Policy and regulation of immigration affairs, refugees and asylum.

³ It is important to remember that the major movement of people in BiH was generated by the war (March 1992 to November 1995); more than 2.2 million people reportedly left their homes. For a country of 4.4 million inhabitants this meant a movement of almost 50 per cent of the population. According to the latest data provided by UNHCR, from 1996 to the end of 2008, 1,026,692 people were returned, but only 467,297 to their place of origin. BiH still has approximately 124,529 displaced persons: 55,894 in the FBiH, 67,523 in the RS and 1,112 in Brcko District (UNHCR, 2008).

Law on the Movement and Stay of Aliens and Asylum (LMSAA), which can be regarded as a major accomplishment towards migration policy development. This law offers a framework for the development of future legislation and for realising harmonisation between laws and competences in the fragmented political and legislative scenario.

Illegal migration

It was just after the war that BiH institutions started to build the infrastructure necessary to secure and monitor borders and migrations flow. Prior to this, BiH had no experience in border management, being part of the former Yugoslavia and with no external borders. The BiH Border Police (BP) manage passenger movement through all official border crossing points. It is difficult to control the flow of migration in and out of BiH. Only 14 out of the 55 international border crossings have some technology to support the registration of passages, which together with the geographical nature of the country made it possible last year for 432 (identified) illegal crossings into BiH from Montenegro and Serbia. Readmission data shows that the border with Croatia is used to exit BiH to reach Western Europe, while the borders with Montenegro and Serbia are used to enter BiH for transit migration and other illegal activities. Data for 2007 shows that a total of 34,203 people entered BiH, and 3,120 failed to exit, which can be considered an indirect indication that BiH is being used as a transit country for the irregular migration of citizens belonging to Serbia, Montenegro, Kosovo, Albania and Croatia.

A unique case: 'In-country' illegal migrants

BiH is not a country with a high influx of refugees; registered flows are mainly related to the Balkan wars (the conflict in Croatia from 1991 to 1995, and the NATO intervention in 1999 in the Federal Republic of Yugoslavia). Figures show 7,257 refugees from Croatia, who nearly all live in RS (7,037), and 170 refugees from Serbia/Kosovo, who all live in FBiH (UNHCR, 2008).

When it comes to asylum seekers, the majority of cases are 'in-country' situations. Once more, there are links to the Balkan wars in the 1990s. In 2007, due to a change in legislation, two groups found themselves in the position of seeking asylum: the first group are people originally coming from Serbia/Kosovo who had the status of refugees; the other group are BiH naturalised citizens, originally from Africa and Asian countries, who arrived in BiH during

the war to defend the Bosnian-Muslim population. Called *mujahedin*, these Islamic combatants came to BiH during the war as volunteers and were rewarded for their services with citizenship of the Federation of BiH. Although the Dayton Agreement stipulates that “all foreign military instructors and volunteers had to leave Bosnia”, many remained and married (Azinovic, 2007). After 9/11, however, things started to change. The issue culminated with the amendment of the Law on Citizenship in 2006, when the Citizens Review Commission examined 1,200 citizenships awarded during the war and immediately after and found irregularities in 612 cases. In some cases, citizenship was obtained under a false name. Recently, there have been accusations that this group of naturalised citizen’s human rights have been violated. What is certainly true is that this sensitive issue has been used to polarise public opinion.

Economic migration

Given that any data related to population is an estimate based on the census of 1991, data provided by World Bank estimates that the immigrant population in BiH is equal to 1 per cent (40,000) of the actual population. According to the recently established Service for Foreigners’ Affairs (SFA), the sole immigration authority for BiH, during 2007 there were more than 2,980 requests for temporary residence (based on marriage to a BiH national, work permit or family reunification) and 3,226 applications for extension of temporary permits.

The new LMSAA says that foreign residents who have a temporary (up to one-year) or permanent permit to stay are equal to BiH nationals in regards to labour rights. All other rights as described in the Council Directive 2003/109/EC in relation to education, health, social security and so forth are within the competence of the entities. This means that these rights are not guaranteed, and there is a need for the coordination and harmonisation of entity regulations with the LMSAA in each of these sectors. At present, foreign residents do not participate in political life in BiH at any of the administrative levels (municipalities/entities or state).

The largest number of residence permits in BiH are issued to citizens from neighbouring countries (Serbia, Montenegro, Croatia, Macedonia), and the second largest number to citizens of Turkey and China. For Chinese citizens, BiH is regarded as a final destination; the majority of Chinese migrants are entrepreneurs involved in small shops and catering. The last relevant group is composed of nationals of EU countries, employed in private and not-for-profit sectors, as well as in the various international bodies and diplomatic institutions. As citizens of EU countries are entitled to visa-free entry, it is impossible to verify their actual number.

Brain drain and remittances

Regarding the emigration of BiH citizens, there is little (and inadequate) data available. Top destina-

tions for BiH emigrants are Croatia, Germany, Austria and the USA. According to third-country information, in the EU alone there are 300,000 BiH citizens.

The first outflow of highly qualified migrants from BiH was generated by the war. With the country severely damaged, low incomes and the lack of a national strategy on education and private sector issues, highly qualified workers looked for solutions abroad. The United Nations Development Programme (UNDP) estimates that more than 92,000 young people left BiH between 1996 and 2001. According to a report done by the Commission for Coordination of Youth Issues in BiH, in 2007, more 57 per cent of youth would leave the country if offered an opportunity; this data correlates with the youth unemployment estimate, which is 58.2 per cent (Commission for Coordination of Youth Issues in BiH, 2007). In any case, it is not possible to estimate migration balances due to the lack of baseline information. In BiH, it is possible to be registered as unemployed, while working abroad, due to the poor or lack of centralised data on diaspora.

According to information provided by the World Bank (2007), BiH remittances peaked in 2007 when the country was among the top ten remittance countries in Europe and Asia and among the top five when considering remittances as a proportion of GDP. Remittances were approximately USD 19 billion, equal to 17.2 per cent of GDP, a trend that continued in 2008 (USAID, 2008). This calculation only takes into account remittances through official bank channels. According to global estimates, unofficial remittances are likely to be another 50 per cent on top of this.

The global economic crisis is expected to impact on BiH citizens through reduced remittances. Unfortunately the governments of BiH do not seem interested or able to develop policies to diminish the impact of the expected reduction in remittances, or to support employment and economic development. This is illustrated by the stand-by arrangement signed with the International Monetary Fund (IMF) under which a flat 10 per cent cut in public expenses, in each sector and per category, was the only policy measure adopted. This highly unpopular measure was justified as a condition imposed by the IMF; citizens were not informed of the details of the agreement with the IMF and were expected to passively accept it. The latest developments show that not all sectors and categories (workers, public administration) are being treated equally; politicians are protecting their privileges and salaries while imposing the cost cuts on the most vulnerable categories. ■

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