

Interview with Ambassador Brian Aggeler

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[Ageler za "Nezavisne": Vraćanje klevete u Krivični zakonik RS korak unazad](#)

What is your message to journalists and public on the occasion of World Press Freedom Day?

World Press Freedom Day reminds us of the essential role that journalists play in safeguarding democratic societies and promoting transparency and accountability. Media freedom is a fundamental pillar of democracy and, as such, should be vehemently protected by all.

We are aware of challenges and threats faced by journalists and media professionals in Bosnia and Herzegovina, especially in Republika Srpska. Proposed legislative changes to recriminalise defamation, worrying attacks, threats and other acts of violence against journalists create a challenging environment for media freedom.

The OSCE Mission to BiH has recorded an increasing number of incidents affecting the free work of journalists and the media. Not only are incidents becoming more frequent, they are also becoming more serious. We have witnessed several attacks which included damaging journalists' property and equipment, open threats and intimidation by public officials, cyber-attacks and other aggressive online activities.

According to the Press Freedom Index compiled by Reporters Without Borders, Bosnia and Herzegovina's ranking dropped significantly, from 58th in 2021 to 67th out of 180 countries in 2022, highlighting the concerning decline in press freedom in BiH.

Attacks against journalists not only violate their fundamental rights, but also undermine the free flow of information, which is crucial for a vibrant and functioning democracy.

It is essential that the authorities ensure an adequate institutional follow up to these reports and enable a safe working environment for all media.

One way to address do this is through regular and constructive co-operation and coordination among various stakeholders, e.g. by establishing of a system of focal points for safety of journalists within law enforcement agencies and the judiciary.

For example, in Canton Sarajevo, there is a designated prosecutor within the Canton Sarajevo Prosecutor's Office tasked with protecting journalists. The prosecutor is available to all journalists and associations of journalists in times when they feel threatened. We are currently exploring ways to replicate and expand this model to other prosecutor's offices in the country as well as across ministries of the interior. The modalities of achieving this were discussed at a conference the Mission recently organized in Banja Luka with our partners from the EU Delegation and the BiH High Judicial and Prosecutorial Council. The recommendations of the

conference will hopefully contribute to better record keeping and following up to cases concerning the safety of journalists.

In conclusion, let me repeat that the Mission remains committed to supporting a free, independent, and vibrant media landscape in BiH. We all need to continuously work towards a society wherein journalists can carry out their vital work without fear or hindrance.

How do you see the intention of the RS Government of RS to introduce the criminalization of defamation in the Criminal Code, given that public discussions are due to begin these days?

We understand the growing concerns across Bosnia and Herzegovina about the harmful effects of disinformation and hate speech, and we stand ready to support institutions in Bosnia and Herzegovina in their legitimate efforts to address these threats. However, any actions taken in these areas must be proportionate and necessary. Countering disinformation must not be a pretext for undue restrictions of freedom of opinion and expression. On the contrary, protecting these freedoms is essential to countering disinformation, as is increasing transparency and ensuring access to information.

The amendments are definitely contrary to BiH's OSCE commitments and the recommendations of the OSCE Representative on Freedom of the Media, which has called for full decriminalization of defamation in all OSCE participating States.

OSCE strongly advocates for decriminalization of defamation and insult in the OSCE region in an effort to end the chilling effect that even the mere possibility of a criminal sanction has on media freedom. This kind of sanction should never be regarded as proportionate nor necessary in democratic societies in which reporting in the interest of public should be of paramount importance.

Across the OSCE region, criminal defamation has been often used to stifle political dissent and public debate as well as to discourage, threaten and sanction media who are critical of public authorities or cover sensitive topics. It is of note that Bosnia and Herzegovina (BiH) was the first country in the South East Europe region to decriminalize defamation over 20 years ago.

This served as a positive example to prompt other States in the region to follow suit. Reinstating criminal defamation would be an unfortunate step backwards not only for the country but also for the entire region. It would affect not only journalists and the media, but also human rights defenders, academics and other citizens who wish to express their opinion about topics of public interest. The OSCE Mission's monitoring shows that, already, over 80% of civil defamation cases in BiH are being brought against journalists and media outlets by public officials.

The OSCE's Office for Democratic Institutions and Human Rights (ODIHR) will prepare a full legal review of the amendments, which will be widely shared with all relevant stakeholders during the public discussion phase.

We are planning to closely monitor the public discussions set to take place across the entity of RS. The Mission once again notes the lack of transparency in the legislative process before it was reviewed by the RS National Assembly and reminds that any changes affecting

fundamental freedoms of citizens should be subject to a broad and open discussion among stakeholders and citizens.

Another systemic issue that is important for Bosnia and Herzegovina and in which there seems to be little progress is the improvement of the electoral process. What will happen if there are no technical improvements and things remain as they were in the last elections?

Not to confuse readers, it is important to note that the OSCE Mission to Bosnia and Herzegovina (the Mission) has not directly dealt with election implementation since 2002, when this mandate was handed over to the Central Election Commission (CEC). However, the Mission carefully follows the political situation in the country, including elections. Elections are of utmost importance for ensuring democratic governance and political stability in Bosnia and Herzegovina (BiH).

Election observation is carried out by the OSCE ODIHR Election Observation Mission (EOM).

Our engagement includes other activities connected to elections. For example, in these last elections, we assisted a local civil society organization *Pod Lupom* with their election monitoring efforts by delivering trainings on civic election monitoring and on reporting irregularities. We organized debates and forums – including between citizens, experts and CSOs on ethical campaigning and strategies for engaging the public. We monitored hate speech and divisive rhetoric, including by monitoring the implementation of parties' Gender Equality Pledges. We familiarize media outlets with key aspects of the Election Law, and we push for inclusivity by supporting Roma CSOs to encourage BiH Roma to vote. We also support the rights of persons with disabilities in the electoral process. Finally, we are working with the rest of the international community to increase voter turnout.

A specific focus for the Mission was a project titled “Support to the Implementation of the 2022 General Elections in Accordance with ODIHR Recommendations”. Part of the project led to developing several online applications. The most important one simplifies the online vote. Others help streamline the CEC's efficiency as the CEC used to spend over EUR 100,000 shipping voter registration materials abroad. Dozens of people had to then process and verify mailed forms, which resulted in many technical errors and fraud. This new system has also resulted in a smaller number of voters registered to vote by post from abroad. We believe this reflects a lower degree of fraud and abuse of the system through absentee voting. And this is in spite of the fact that political parties carried out a very strong campaign among the diaspora.

What do you think is the minimum that needs to be done to make the election process better?

First, a comprehensive review of the legal framework should be undertaken to address all outstanding ODIHR recommendations, eliminate existing gaps and inconsistencies, and incorporate in the legislation judgments of the European Court of Human Rights and Constitutional Court of Bosnia and Herzegovina regarding ethnicity and residency-based restrictions on the right to stand as a candidate. In line with international good practice, the comprehensive review process should be open, inclusive and consultative and take place well before the next elections.

Authorities should provide adequate and effective allocation of funds to ensure the functionality of the Central Election Commission, including in non-election years, and to cover all costs associated with organizing elections. The Central Election Commission should be provided with resources necessary to hire sufficient and qualified staff, including in its audit, legal and IT departments, and to develop its IT infrastructure.

In order to ensure the timely formation, impartiality and professionalism of Polling Station Commissions and increase stakeholders' trust, authorities should review the system of appointment of these commissions. This could be achieved by limiting eligibility to nominate their members only to parties represented in the state and entity parliaments, or those drawn from a permanent roster of trained people maintained by the Central Election Commission.

Authorities should ensure that members of the election administration are not recalled for arbitrary reasons and that they are able to conduct their duties without fear of retaliation or intimidation, including retaliation based on gender, and should promptly investigate and respond to such cases.

In order to ensure that citizens have full access to the rights and freedoms guaranteed them, relevant authorities should take prompt and effective steps to investigate and prosecute election-related criminal offences and work proactively to deter such practices, including coercion of voters by public officials and candidates.

To facilitate women's active participation in public and political life, comprehensive legal, institutional, and educational efforts challenging the existing gender stereotypes about the role of women and men in politics should be undertaken by authorities at all levels.

Generally, numerous previous ODIHR recommendations remain unimplemented, including from the 2014 and 2018 General Elections. Fulfilling these ODIHR recommendations would help to address irregularities noted during BiH elections, including the 2022 General Elections.

The Mission will maintain its commitment and support relevant BiH authorities, including the Central Election Commission, to improve the integrity and functionality of the electoral process in BiH.

The process establishing authorities in BiH slowed down after gaining initial momentum. How do you view the current events on the political scene in Bosnia and Herzegovina?

Thus far I have had a chance to engage with many political figures at different levels in Bosnia and Herzegovina, from ruling parties and opposition parties and many expressed optimism about putting the country on a positive track to greater security and prosperity. Following the general elections, authority formation was initially promising. Unfortunately, the High Representative ultimately had to intervene to finalize F BiH authorities' formation.

The political situation in BiH is unfortunately not improving. Many leaders appear to be more proactive in exploiting divisive agendas than in finding solutions for all citizens. The initiative to re-criminalize defamation in RS is one of the most troubling issues in BiH, especially with journalists facing frequent intimidation and pressure. Education is misused to create further divisions, instead of serving as a platform for common ground and intellectual advancement.

Corruption and nepotism impede economic development. All of these elements together generate a negative atmosphere without major consequences for those behind these negative developments, who frankly at times benefit politically from such harmful attitudes.

At the same time, citizens across the country are working across ethnic and entity lines to build the futures they deserve. Across the country local leaders, civil society representatives, and citizens are working together in the interest of all, in places like Bosanski Petrovac and Majeвица region, and OSCE is proud to support their efforts.

How do you see the intention of some governments to increase EUFOR troops? I am asking this for the reason that your mission was involved after Dayton in matters of arms control and security, and the OSCE is the umbrella organization in Europe when it comes to dialogue on security on the continent.

The Mission cannot comment on the intentions of other governments, but EUFOR has an important and well-recognized role in ensuring security and stability in BiH. Decisions on the scope of an international presence are a result of thorough assessments and analysis – a process in which we have full confidence.

EUFOR and the OSCE partner in a number of different areas, including on arms control. Our joint assistance to BiH has, for example, established BiH as an example of good practice and expertise in ammunition management and testing, as well as a key actor in upholding regional arms control regimes and military transparency.

Six months have passed since the last elections, and we see that very little has been done on 14 European key priorities. Is your mission involved in some of those reforms, say in the area of the judiciary?

Per its mandate, the Mission continues to support BiH authorities in achieving the country's own strategic goals.

That specific benchmark requires establishing and protecting a fair, efficient and independent judiciary, one that respects the essential principles of transparency and accountability.

Unfortunately, as the Mission has repeatedly noted, the rule of law in BiH is under threat, with public trust in both individual judicial office holders and in the judiciary as a whole continuing to decline. All jurisdictions in BiH struggle to deal properly and efficiently with complex cases – cases that ultimately affect the stability, security and progress of BiH.

To combat these negative trends, the Mission works closely with the High Judicial and Prosecutorial Council of BiH (HJPC BiH), which is itself mandated to preserve and strengthen the independence of the judiciary while ensuring full accountability of judicial office holders, including – importantly – by making merit-based and professional appointments.

The Mission further supports wider justice sector reform efforts, which, among other things, will require amending and adopting relevant policies and improving the legal and institutional framework. This includes adopting the Justice Sector Reform Strategy and drafting the new Law on the HJPC. These efforts complement and build upon the Mission's day-to-day trial and

justice sector monitoring, through which it gathers and analyzes a wealth of data on the functioning of the criminal justice system and of the HJPC BiH itself. This monitoring provides a wealth of evidence that then informs the Mission's capacity-building, advocacy, and technical support programming.

Most recently, the Mission supported the HJPC BiH's annual conferences of court presidents and chief prosecutors, organized in Sarajevo on 26 and 27 April, respectively.

During these conferences, representatives of the BiH judiciary discussed ongoing challenges facing the judiciary, including the fight against corruption and organized crime, and the Mission itself hosted panels on judicial efficiency and trial management and further discussed the judicial response to election-related crimes.

The Mission would like to reiterate that restoring public trust in the judiciary requires commitment from BiH authorities at all levels to take a systematic and inclusive approach to reform.

The Mission will continue to monitor the work of the justice sector and remains similarly committed to supporting all judiciaries across BiH in meeting their legal and professional obligations, thereby fulfilling the fundamental expectations of everyone living in BiH to have access to an equitable, effective and accountable judiciary.

Another key area where BiH must improve is in parliamentary oversight of the security sector, also in line with the *OSCE Code of Conduct on Politico-Military Aspects of Security* to which BiH is politically bound.

Any misuse of law enforcement capacities for narrow political party gains would be a matter of serious concern and would bring a focus on identifying any potential breaches of key OSCE politico-military commitments.