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Review paper

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THE DIPLOMATIC DIMENSION OF CRIMINAL JUSTICE: PROTECTING BOSNIAN AND HERZEGOVINIAN CITIZENS ARRESTED AND CONVICTED ABROAD

Using Bosnia and Herzegovina (BiH) as an example, this essay explores the diplomatic aspect of criminal justice and its obligation to defend its nationals who are detained, imprisoned, or found guilty elsewhere. It places BiH in the context of both the traditional doctrine of diplomatic protection and the developing human rights-based approach, examining how BiH's constitutional and statutory obligations interact with international norms, specifically the Vienna Convention on Consular Relations, human rights treaties, and the International Law Commission's Draft Articles on Diplomatic Protection. The study maps the primary patterns of criminal activity involving Bosnian nationals abroad and evaluates the reactions of Bosnian and Herzegovinian (BiH) diplomatic-consular missions using doctrinal legal analysis in conjunction with qualitative case studies (including specific cases in EU states, the US, and migration detention contexts). The results show a continuous gap between the unequal, resource-constrained reality of consular practice and BiH's constitutional guarantee that its people overseas „shall enjoy the protection of BiH.“ Consistent protection is undermined by structural issues such as a lack of staff and funds, fragmented institutional competencies, communication difficulties, prejudices against foreigners, and politicization of high-profile cases. The research also proposes specific ways to improve BiH's practice, such as early notification systems, focused capacity training, the establishment of a specialized crisis consular team, increased collaboration with NGOs and the diaspora, and digital case-management tools. The study concludes that diplomatic and consular protection should not be viewed as a solely discretionary act of foreign policy, but rather as an integral aspect of BiH's human rights and rule of law commitments.

Key words: diplomatic protection; consular assistance; criminal justice; human rights; nationals abroad,

1. INTRODUCTION

Diplomatic and consular protection enables states to safeguard their citizens abroad, yet academic research has largely overlooked how small post-conflict states like Bosnia and Herzegovina (BiH) fulfill this duty. BiH's Constitution uniquely guarantees that every citizen abroad "shall enjoy the protection of Bosnia and Herzegovina" [Art. I/7(e)] (Constitute Project 2009), elevating protection from discretionary act to constitutional promise. Internationally, the Vienna Convention on Consular Relations (Art. 36) (United Nations VCCR 1963), human-rights treaties, and the ILC Draft Articles on Diplomatic Protection (United Nations ICL Draft Articles 2001) provide the normative framework, while domestically the obligation is operationalised through the Ministry of Foreign Affairs and bilateral consular agreements (MFA BiH Consular Protection Services, n.d.). Traditional doctrine treats diplomatic protection as a sovereign right asserting the state's own injury (Mavrommatis, Barcelona Traction), whereas the emerging human-rights approach views the state as agent of individual rights. Despite strong normative commitments, BiH's consular practice remains reactive, under-resourced, and inconsistent. From 2015–2025, BiH's nationals were repeatedly detained abroad for drug trafficking, migrant smuggling, war-crimes extradition, and migration-related offences, mainly in EU states and Turkey. Case studies reveal recurrent problems: delayed or absent consular notification, inadequate staffing and funding, language barriers, and politicisation of high-profile cases. These deficiencies violate both VCCR obligations and the constitutional guarantee. Structural constraints include a limited operational and staffing capacity within the existing diplomatic network (44 embassies and 6 consulates for over two million diaspora), chronic underfunding, fragmented state-entity competencies, and ethnic quotas in staffing. Compared to Croatia and Serbia, which possess larger networks and dedicated crisis units, BiH lags significantly. The Republika Srpska (RS) and the Federation of BiH (F BiH) (and even the cantons) have their own paradiplomatic activities and representative offices abroad that sometimes independently contact detainees or their families (Marciacq 2015). The implementation gap transforms the constitutional promise into a largely declaratory entitlement rather than an enforceable right. Policy reform requires a centralised detainee database, a permanent crisis consular team, binding early-notification

protocols with key host states, digital case-management tools, and formal cooperation with diaspora organisations and NGOs. Only systemic changes can align BiH's practice with its legal obligations and contemporary human-rights standards. This study fills a major scholarly gap by documenting how a small post-conflict state navigates the diplomatic dimension of criminal justice. Ultimately, effective consular protection is not merely a technical consular function but an integral component of BiH's human-rights and rule-of-law commitments.

2. METHODOLOGY

In order to examine the diplomatic and consular protection of Bosnian and Herzegovinian residents detained or found guilty overseas, this article employs a hybrid qualitative research methodology that blends doctrinal legal analysis with qualitative case-study research. Given the interdisciplinary nature of the study question which is situated at the nexus of international law, constitutional law, human rights, and diplomatic practice this methodological approach is particularly suitable.

The interpretation and methodical examination of domestic, international, and constitutional legal sources related to diplomatic and consular protection constitute the doctrinal component of the study. The Vienna Convention on Consular Relations, relevant international human rights treaties, the Bosnian Constitution, especially Article I/7(e), and the International Law Commission's Draft Articles on Diplomatic Protection are examples of primary materials.

The International Law Commission's Draft Articles on Diplomatic Protection, adopted in 2006 with commentaries, represent a pivotal development in the evolution of diplomatic protection from a purely state-centric mechanism to one increasingly aligned with the protection of individual rights. The methodological framework of this paper combines doctrinal legal analysis with qualitative case studies to examine Bosnia and Herzegovina's fulfillment of diplomatic and consular protection obligations. Doctrinal analysis serves as the primary tool for interpreting key norms, including Article I/7(e) of the BiH Constitution, VCCR Article 36, and the ILC Draft Articles on Diplomatic Protection (2006), with particular emphasis on the latter's commentaries that shift the institution from a state-centric to a human rights-oriented mechanism. The ILC Draft, as a central theoretical foundation, is systematically analyzed—focusing on Article 1 (individual as subject of international law), Article 14 (exhaustion of local remedies), and Article 15 (exceptions)—to provide a normative benchmark for evaluating BiH's practice. This dual approach ensures that

empirical findings are anchored in a clear theoretical framework, transforming descriptive observations into analytical insights on structural and operational gaps.

With special attention to the conflict between traditional doctrines that frame diplomatic protection as a discretionary state prerogative and modern approaches that increasingly emphasize individual rights and positive state obligations, these instruments are analyzed to ascertain the legal nature, scope, and implications of the obligation to protect nationals abroad. The Bosnian and Herzegovinian framework is placed within larger doctrinal and policy developments through the use of secondary sources, such as scholarly literature, comparative constitutional assessments, and reports from international organizations.

The study uses qualitative case studies chosen based on well-defined criteria, such as the type of criminal offense, the jurisdiction and legal system involved, and the case's applicability for assessing diplomatic engagement and consular intervention, in order to evaluate how these normative commitments, operate in practice. The extrajudicial imprisonment of Bosnian and Herzegovinian nationals in Guantánamo Bay (the „Algerian Six”) and war crimes-related extradition processes (Ejup Ganić, United Kingdom) are among the cases being examined. These instances were chosen because they shed light on fundamentally significant concerns such information asymmetry, severe institutional capacity constraints, restricted and delayed consular access, and the limits of state engagement in highly politicized procedures. When taken as a whole, they reflect common and legally relevant types of criminal justice exposure that Bosnia and Herzegovina people encounter overseas. The case studies provide analytical coherence without depending on media sources because they are founded on a targeted analysis of court rulings and reputable institutional publications.

There are a number of methodological issues with the study. First, the potential for quantitative research is constrained by the ongoing lack of thorough and publicly accessible statistical data on Bosnian and Herzegovinian citizens imprisoned or found guilty overseas. Second, confidentiality and data-protection regulations limit access to main diplomatic and consular files, which limits understanding of internal decision-making procedures. Third, access to comprehensive and comparable information is further restricted by the stark differences in openness between jurisdictions, especially when it comes to immigration detention. Careful case selection, source triangulation, and a qualitative analytical approach focused on finding patterns rather than generating statistical generalizations are used to overcome these limitations.

Despite these limitations, the doctrinal and case-based approach together offer a logical and strong analytical framework for analyzing the discrepancy between Bos-

nia and Herzegovina's official legal responsibilities and the actualities of consular practice. The approach allows for a critical evaluation of diplomatic and consular protection as a crucial part of constitutional government, human rights protection, and the rule of law by fusing legal analysis with empirically supported case studies.

3. BOSNIA AND HERZEGOVINA AS A SMALL POST-CONFLICT STATE: CONTRASTING SCHOLARLY APPROACHES

Domestic scholarship on diplomacy and consular practice in Bosnia and Herzegovina consistently characterises state action as reactive, fragmented, and crisis-driven. The lack of a cohesive and strategically planned foreign policy framework in Bosnia and Herzegovina is highlighted by Halilović (2013) and Sarajlić (2011). Consular intervention frequently occurs only after individual situations have developed into political or media-sensitive crises. The state's potential to take proactive measures to safeguard its nationals overseas is hampered by institutional fragmentation, overlapping competencies, and insufficient administrative capacity. These evaluations are in line with the empirical trends found in this article, especially in situations involving arrests, extradition proceedings, and detention related to migration, where consular responses are frequently inconsistent, delayed, and reliant on ad hoc diplomatic efforts rather than formalized processes.

International legal study, on the other hand, increasingly views diplomatic and consular protection not as a discretionary manifestation of state sovereignty but as a tool for the defense of individual human rights. According to Vermeer-Künzli (2007), diplomatic protection is „evolving from a right of the state into an instrument for the protection of the individual,” which reflects the individual's larger transformation into a subject of international law. In a similar vein, Dugard's work on the International Law Commission's Draft Articles on Diplomatic Protection demonstrates how advancements in international human rights law, such as the interpretation of Vienna Convention on Consular Relations Article 36 and the International Court of Justice's jurisprudence in cases like *LaGrand* (2001), have strengthened the idea that consular protection entails specific duties toward individuals. This rights-based perspective highlights a normative gap between the state's explicit legislative promises and their actual execution, which contrasts sharply with Bosnia and Herzegovina's mostly reactive behavior.

By placing Bosnia and Herzegovina in the larger group of tiny, post-conflict

governments functioning in an increasingly complicated security environment, Thorhallsson's shelter theory provides a structural explanation for this disparity. According to Thorhallsson, in order to survive and thrive, tiny governments turn to larger states and international organizations for „external shelter” since they lack the institutional, diplomatic, and material means necessary to handle crises on their own. Such refuge increasingly assumes institutional and legal dimensions in the current security environment, which is marked by migration, transnational crime, and the legal vulnerabilities of people abroad.

Therefore, it is possible to interpret Bosnia and Herzegovina's pursuit of EU and NATO membership as an effort to get political, legal, and normative protection that would bolster consular protection and rule-based reactions to arrests and detention overseas. However, Bosnia and Herzegovina's internal constitutional fragmentation continues to hamper the effectiveness of this policy, in contrast to NATO members like Iceland or Norway, whose shelter arrangements translate into more cohesive crisis-management skills. This contradiction, which is at the heart of the instances examined in this paper, keeps the nation torn between a rights-oriented international legal framework and a structurally limited, reactive consular practice.

Börzel and Grimm (2018) provide a nuanced analysis of the EU's role in promoting governance in the Western Balkans, including BiH. They argue that the EU has achieved partial success in fostering „good enough” governance—meaning functional, stable, and somewhat democratic institutions—despite highly unfavourable structural conditions: persistent limited statehood (weak central authority, contested sovereignty, ethnic fragmentation), post-conflict legacies, and domestic elite resistance. Their core point is that EU conditionality and accession incentives work variably: they can drive reforms when aligned with domestic interests, but effectiveness diminishes due to conflicting EU priorities (e.g., stability over deep democratisation), inconsistent application of tools, and the active role of local actors who selectively adopt or subvert EU demands. In BiH specifically, they highlight how the EU's approach has stabilised peace but struggled to overcome deep-seated veto powers and limited state capacity, resulting in hybrid regimes rather than consolidated democracies.

In contrast to Thorhallsson's shelter theory—which emphasises small states' (or weak states') structural need to seek external „shelter” (political, economic, societal) from larger powers or organisations to compensate for vulnerabilities, often portraying this as a rational, dependency-driven strategy—the Börzel & Grimm framework introduces more agency to domestic actors and stresses interactive

dynamics. While shelter theory (as applied to small/post-conflict states like those in the Western Balkans) sees reliance on the EU as a necessary survival mechanism with limited internal reform potential, Börzel & Grimm focus on the EU's transformative ambition and the conditions under which external governance-building can succeed or fail. They are more optimistic about incremental progress through consistent, credible EU engagement, but warn that without addressing conflicting objectives and taking domestic preferences seriously, the result is often „good enough” rather than ideal governance—highlighting variation across countries and issue areas, unlike the more uniform dependency lens in shelter theory.

This contrast is particularly relevant for BiH's consular/diplomatic protection challenges: shelter theory explains BiH's heavy dependence on EU frameworks (e.g., for normative alignment and capacity-building in rule-of-law areas), while Börzel & Grimm underscore why such external support yields uneven results—due to fragmented institutions and elite capture—potentially limiting proactive consular reforms unless the EU applies more consistent pressure and adapts to local constraints.

4. THE CONSTITUTIONAL GUARANTEE OF PROTECTION ABROAD: NATURE, SCOPE AND JUSTICIABILITY

Article I/7(e) of the Constitution of Bosnia and Herzegovina stipulates that “a citizen of Bosnia and Herzegovina abroad shall enjoy the protection of Bosnia and Herzegovina”, which implies a subjective right of the individual, and not only a state political obligation. Article I/7(e) of the Constitution of Bosnia and Herzegovina was incorporated within the framework of the Dayton Peace Agreement of 1995, which, as Annex 4, established the constitutional order following the war and the mass displacement of the population. The provision was included in precisely this form to emphasise the continuity of BiH statehood and the state's obligation towards the diaspora created by wartime migrations, while simultaneously ensuring international visibility for the protection of citizens in conditions of fragile peace and regional tensions. Textually, it is formulated imperatively (“shall enjoy the protection”) in order to avoid discretion and to underline the positive duty of the state—a deliberate distinction from the majority of other constitutions adopted during the transitional period.

To date, this provision has not been the subject of any concrete proceedings before the Constitutional Court of Bosnia and Herzegovina, which can be attributed to the lack of citizen initiatives, political blockages affecting the functioning of the Court,

or the fact that it is regarded as a declaratory norm without a clear enforcement mechanism. In contrast to BiH, Croatia and Serbia have operationalised similar constitutional provisions through dedicated legislation. In Croatia, Article 10 of the Constitution obliges the state to protect its citizens abroad, which is implemented by the Law on relations of the Republic of Croatia with Croats outside the Republic of Croatia, regulating consular services, financial support, and institutional channels for the diaspora. Serbia, under Article 13 of its Constitution, assumed the obligation to protect Serbs abroad, concretised by the Law on Diaspora and Serbs in the Region, which established a special administration and programmes for economic, cultural, and social connectivity. These models demonstrate that a constitutional obligation can be transformed into enforceable mechanisms—something that has not yet been done in BiH.

This right can be interpreted as analogous to the individual rights under the Vienna Convention on Consular Relations (VCCR), as established by the International Court of Justice in the *LaGrand* judgment (Germany v. USA, 2001), where Art. 36 VCCR was recognized as a source of individual rights to consular assistance. In the context of justiciability, Article I/7(e) remains unexamined before the Constitutional Court of Bosnia and Herzegovina, but can be analogously linked to Article 13 of the European Convention on Human Rights (ECHR) on an effective remedy, which would allow for judicial protection in cases of delay or refusal of consular assistance.

Articles 6 and 13 of the ECHR provide an additional framework for protection in the context of consular assistance, where a violation of the right to consular access may lead to a violation of the right to a fair trial (Article 6) and an effective remedy (Article 13). For example, if the host State fails to notify the consular services, this may affect the possibility of defending the detainee, which constitutes a violation of ECHR standards, in particular in cases of migrant detention or extradition. This contrasts with the classical approach, such as that in the *Mavrommatis* judgment (PCIJ 1924), where diplomatic protection was seen solely as a state right without direct benefit to the individual. Contemporary developments in international law practice (just like in theory) see it as a HR instrument. In the context of Bosnia and Herzegovina, as a member state of the Council of Europe, this obligation goes beyond the limits of discretion, imposing positive duties on state institutions to provide consular support, analogous to ECHR Art. 6/13 for a fair trial (Council of Europe 2021).

5. THE ROLE OF BiH DIPLOMATIC–CONSULAR MISSIONS

The diplomatic and consular offices of Bosnia and Herzegovina in the US and the EU are essential to protecting the welfare and rights of BiH nationals living overseas. These embassies have been actively helping citizens who face legal issues abroad in recent years, especially when they are arrested or detained. BiH embassies and consulates act in accordance with domestic customs and international law, particularly the Vienna Convention on Consular Relations, to guarantee that detained people get humanitarian aid, due process, and fair treatment (United Nations VCCR 1963). This covers a variety of actions, including providing legal and logistical support, monitoring incarceration conditions continuously, and prompt consular outreach following an arrest. The next subsections describe how BiH diplomatic and consular missions fulfill these duties, the difficulties they encounter, and significant advancements in the last few years (Halilović 2013).

5.1. Consular Interventions Following Arrest

The first thing BiH diplomats do when a BiH citizen is detained in the United States or an EU nation is to learn about the detention and claim the right to consular access. Local authorities are required in many jurisdictions to advise foreign nationals of their right to contact their consulate; in the United States, authorities are even required to promptly notify the Bosnian embassy or consulate of the arrest (Bosnia and Herzegovina is on the U.S. list of countries requiring mandatory consular notification). BiH consulate officers usually take immediate action when they learn of a citizen's arrest. Embassy representatives will promptly contact the detained individual and often visit them in custody at the earliest opportunity, such as when the BiH Embassy in Serbia (a non-EU setting) dispatched personnel to see a detained BiH citizen right away and “offered him the necessary consular assistance,” carrying out “the usual activities in the form of consular protection” (Sarajlić 2011: 173–190). Verifying the person's identification and circumstances, educating them about their rights under the local legal system, and ensuring the detainee that their home nation is aware of their case are all accomplished by this timely intervention. In order to get information about the charges and guarantee that the judicial procedure is open and equitable from the beginning, BiH consulate staff frequently communicate with the arresting authorities (Halilović 2013).

A key responsibility during such interventions is to ensure that the citizen's due process rights are respected by the host country. Consular personnel may offer translation services or help the detainee communicate with local authorities if there are any communication problems or language difficulties (Džogović 2024). The detainee's relatives back home can also be contacted by the consulate to let them know about the arrest and allay any worries. The idea of "consular protection," which means the sending state (Bosnia and Herzegovina) shows interest in and acts to safeguard its citizens, is the foundation of this early-stage consular activity. In fact, BiH authorities believe that its missions have a duty to provide all necessary support in such situations. The embassy is *obliged to provide (the arrested citizen) all the necessary consular and any other legal assistance to which he is entitled as a citizen of BiH*, according to one official statement (MFA BiH Consular Protection Service, n.d.). These responsibilities reflect both legal requirements and BiH society's expectation that its residents abroad won't be abandoned in a time of need.

Notably, consular interventions after an arrest are not always easy or guaranteed; BiH diplomats occasionally encounter difficulties getting access to detainees, particularly in delicate situations. A notable instance took place in the UK in 2010 when former president of F BiH Ejup Ganić was arrested on a Serbian extradition warrant. The BiH Embassy in London requested Ganić's prompt release, but first reports said he was refused access to a telephone and consular contact while detained, which infuriated Sarajevo. Formal objections were raised by members of the Presidency of BiH, and high-ranking officials traveled to London to support Ganić. This episode demonstrated how important prompt consular involvement is, and when such access was delayed, it created a diplomatic problem. Similar difficulties arose for Bosnian nationals jailed overseas on suspicion of terrorism during the post-9/11 age. In the early 2000s, a number of BiH citizens were incarcerated at the U.S. Guantanamo Bay facility, where initial access for consular or humanitarian visits was severely restricted. These cases must be understood within the broader post-9/11 global security context, in which exceptional securitisation measures, extraterritorial detention, and legal uncertainty significantly constrained consular access for all states, regardless of their size or diplomatic capacity. In order to send a delegation to see its nationals in that prison camp, the BiH government had to engage in protracted diplomatic talks. These instances show that although BiH missions try to act quickly following an arrest, they occasionally have to overcome legal and political challenges in order to carry out their protective duties. However, BiH citizens now routinely anticipate consular access inside the major legal systems of the US and the EU, and

instances of outright refusal are uncommon. BiH diplomats continue to be watchful in defending their nationals' rights to consular aid, seeing it as a duty to their fellow citizens as well as a way to make sure the arresting state complies with international norms.

5.2. Provision of Legal and Humanitarian Assistance

BiH diplomatic-consular missions offer a variety of legal and humanitarian support to citizens facing criminal accusations or incarceration overseas, in addition to first contact and lobbying. Assisting the detainee in navigating the foreign legal system is a fundamental component of their support. Although they usually don't have in-house attorneys to defend their nationals, BiH embassies and consulates do make legal assistance more accessible. Reputable local lawyers who may have dealt with BiH or international clients are listed by consular officials (Radolović 2021). If the person cannot afford legal representation, they can offer advice on how to get one, including details regarding legal assistance. In the US or Germany, for instance, BiH embassy employees *will provide support and guidance in legal matters, including referrals to local lawyers and information about the local legal system*. The embassy may work closely with the selected defense lawyer in high-profile or complicated cases to make sure the legal team is aware of any international aspects of the case and that they have the required paperwork (such as proof of the person's BiH identity or any exculpatory evidence from home). BiH authorities may occasionally hire attorneys directly or even provide financial support through special government funds, particularly in cases when a person is wrongfully or unlawfully jailed. However, due to resource constraints, this is usually saved for extraordinary situations.

BiH consular operations provide humanitarian aid for the welfare of their imprisoned citizens in addition to legal support. Basic welfare checks are the first step in this process. Consular officials ask about the person's health, how prison personnel is treating them, and the conditions of their incarceration (Kasumović 2020). The embassy will endeavor to guarantee that the person receives appropriate treatment if they have any medical conditions or need medication (for example, by providing medical information to prison officials or assisting in the delivery of medicines). As previously indicated, consular representatives frequently act as an important conduit to the detainee's family. With the prisoner's permission, they will get in touch with family members in BiH to update them on the situation, provide messages, and comfort both parties (Halilović 2013).

In order to lessen the isolation that inmates may feel, it is part of the humanitarian mission to maintain these familial ties. Consulates may also provide inmates with little comforts, such as clothes, reading materials, or cuisine that is suitable for their culture (according to jail laws). According to the U.S. Department of State, foreign consular staff are typically allowed to *provide reading materials* and provide medical treatment for their imprisoned citizens, and Bosnian embassies do just that (Kasumović 2020). For example, as part of humane treatment, a BiH consul in the United States may provide books or periodicals to an inmate in BiH, or a BiH consul in an EU nation would support the food requirements of a Muslim Bosnian prisoner during Ramadan.

Keeping an eye on the judicial system to avoid any injustices is another essential component of support (Halilović 2013). BiH diplomats keep track on the progress of their citizens' cases by attending important court meetings as observers, obtaining copies of indictments and rulings, and occasionally submitting amicus letters or inquiries if they believe the processes are unjust. Their presence indicates to local authorities that the case has worldwide attention, which can promote rigorous due process, even if they are unable to influence the host nation's legal rulings. The embassy collaborates with Bosnia's Ministry of Foreign Affairs and Ministry of Justice in complicated matters, such as extradition processes or international investigations involving a BiH person, to guarantee the protection of the citizen's rights under any applicable treaties. For instance, if a BiH citizen is the target of an extradition request (as was the case with some war crime suspects in the 2010s), consular representatives assist the person in understanding their rights under the law and may work with BiH's legal institutions to transfer proceedings to Bosnia or find another solution that protects the person's legal rights.

The post-trial stage is also covered by humanitarian assistance. Consular officials continue to visit and support BiH nationals who are convicted and imprisoned overseas (as explained in the next section on monitoring circumstances). They also assist with practical issues like delivering personal letters or moving funds from relatives to the prisoner's commissary account. When a citizen is released from a foreign prison, the embassy can assist with the logistics of repatriation, making sure the person has a valid travel document (issuing an emergency passport if necessary) and working with BiH's authorities to arrange any reintegration assistance or additional legal processing back home. All of these activities show the all-encompassing attitude BiH missions take: the embassy or consulate acts as both an advocate and a caregiver for BiH nationals in need overseas, providing everything

from spiritual support to legal advice. With the Ministry of Foreign Affairs defining protocols for helping detained citizens and BiH consular officers obtaining crisis response training (Sokol 2019), this function has become more professional in recent years.

However, there are also issues, such as a lack of consular personnel in some places and financial limitations that may affect the amount of material aid (such as covering legal fees or travel costs) (Radolović 2021). Despite these restrictions, BiH's diplomatic missions generally work to guarantee that no citizen experiencing legal issues abroad is left without legal representation, empathy, or a link to their home country.

5.3. Monitoring Conditions of Imprisonment

For BiH's diplomatic and consular missions, keeping an eye on the conditions under which its citizens are detained overseas is a crucial and continuous duty. BiH consular officials focus on the treatment and surroundings of a citizen who has been found guilty or is being detained in pre-trial custody abroad. Certain minimum conditions and the humane treatment of inmates are mandated by international human rights standards as well as domestic regulations in the US and EU (Council of Europe ECHR 2021). When it comes to their citizens, BiH embassies and consulates function as reporters and observers. In actuality, this entails frequent consular visits to jails housing BiH nationals. In order to meet the prisoner, usually in a private environment, consular officials usually arrange for recurring visits (e.g., every few months, depending on the situation and distance). The diplomat will discuss the prisoner's well-being during these visits, including their physical and mental health, food, chances for exercise, and any problems they may be having with other prisoners or prison officials. To the greatest extent feasible, they also visually evaluate the prison's facilities, including its cleanliness and congestion. A report outlining the patient's status and any noteworthy information is often given to Ministry of Foreign Affairs of BiH following each visit (MFA BiH Annual report 2022). The consular officer can act through diplomatic channels if the prisoner expresses concerns (such as allegations of maltreatment, insufficient medical care, or dangerous circumstances).

In this case, intervention refers to the embassy reaching out to the jail administration or other pertinent authorities in the host nation in an effort to find solutions or enhancements. For example, if a BiH prisoner in an EU nation complains that they aren't getting the medication they need, the embassy can formally remind the jail of

its responsibilities and even help by communicating with the prisoner's BiH physician to get prescriptions sent. BiH ambassadors have the authority to escalate serious issues, such as suspected abuse or rights abuses, by notifying international monitoring agencies (Council of Europe CPT Standards 2023), seeking an inquiry into the prison's operations, or registering formal objections with the host nation's foreign ministry.

6. CASE STUDIES AND DATA ANALYSIS

6.1. The Case of Ejup Ganić (United Kingdom, 2010)

One of the most important cases demonstrating the limitations of diplomatic and consular protection in the context of highly politicized extradition hearings is the case of Ejup Ganić. A former member of the Republic of Bosnia and Herzegovina's wartime Presidency, Ganić is a Bosnian national who was detained in London in March 2010 after the Republic of Serbia requested his extradition. Alleged war crimes during the 1992 evacuation of a Yugoslav People's Army (JNA) column from Sarajevo were the subject of the request. In compliance with applicable international extradition commitments and UK domestic law, the extradition procedures were carried out before British courts (High Court of Justice 2010).

The British court thoroughly considered the legal extradition criteria as well as the larger political and procedural environment in which the request had been made before rendering a decision. In particular, the court evaluated whether Serbian criminal prosecutions were conducted in good faith or if they amounted to the political instrumentalization of criminal law. According to the court's ultimate ruling, there were clear signs of political intent behind the extradition request, and it would be an abuse of procedure to accept it. The request was denied based on this (High Court of Justice 2010).

The court also emphasized that domestic and international judicial bodies had already investigated the events that led to the extradition request and that the selective start of proceedings against Ganić many years after the alleged crimes appeared to be a politically motivated use of criminal justice procedures. This logic demonstrates that extradition procedures in war crimes cases must be carefully examined in light of the political situation, the prosecutor's intentions, and the threats to the proceedings' impartiality (International Crimes Database 2010).

This case reveals Bosnia and Herzegovina's structural vulnerability in high-profile international legal issues from the standpoint of diplomatic and consular protection. Despite voicing diplomatic objections and expressing political support, Bosnian institutions had no direct legal impact on the extradition process. Bosnia and Herzegovina was unable to step in outside of informal diplomatic channels and had no formal procedural standing before British courts. Bosnian diplomatic involvement remained outside the legal system, and the host state's court alone had the last say (High Court of Justice 2010).

This case demonstrates that Bosnian diplomatic protection's failure was due to its reactive and non-justiciable nature, not a lack of action. Protection was confined to political signaling rather than enforced legal advocacy since Bosnia and Herzegovina lacked a legislative structure that would have allowed them to assert a tangible procedural function. The outcome was solely dependent on the courts of the host state's desire and ability to acknowledge the political abuse of the extradition statute. As a result, the Ganić case shows that Bosnian diplomatic protection is a secondary and dependent tool in highly politicized extradition procedures, fundamentally unable to ensure protection when legal authority is solely in the hands of foreign judges.

6.2. Citizens of Bosnia and Herzegovina Detained in Guantánamo ("The Algerian Six")

The case known as „the Algerian Six” is a prime illustration of how the extraordinary security regime put in place following the September 11, 2001 terrorist attacks virtually completely halted traditional diplomatic and consular safeguards. The case involves a number of people who were detained and sent to the US military detention facility at Guantánamo Bay, despite having Bosnian and Herzegovina citizenship or a legally significant relationship with the state. They were detained there outside of the regular court system and without official charges.

A report filed with the United Nations Committee against Torture (CAT) is the main institutional source pertaining to this issue. It details the July 2004 formal visit of a Bosnian and Herzegovina delegation to its incarcerated residents at Guantánamo Bay. The report states that four detainees whose Bosnian citizenship had been verified were visited by representatives of Bosnia and Herzegovina's Ministry of Justice and Ministry of Foreign Affairs in order to obtain information about their legal status, the conditions of their detention, and the potential for diplomatic and consular protection (Pilav 2006).

The investigation shows that all information pertaining to the detainees' legal status was completely within the control of US officials. In addition to not being able to affect the detainees' legal categorization or the length of their custody, Bosnia and Herzegovina representatives were not given thorough information about particular charges, supporting documentation, or upcoming court cases (Pilav 2006). As a result, consular protection lost its actual legal or procedural impact and was essentially relegated to a symbolic and informative role.

Because the Guantánamo confinement regime was characterized by a legal vacuum, this case is especially noteworthy. In addition to being denied basic procedural rights including access to courts, efficient remedies, and legal clarity, detainees were not included in routine judicial monitoring. Even the state of nationality's expressly stated international duties to safeguard its nationals were all but rendered unenforceable in such circumstances. According to the CAT study, Bosnia and Herzegovina lacks any institutional or legal tools to ensure the pre-servation of its people's rights because of the significant power imbalance between the detaining state and the state of nationality (Pilav 2006).

Therefore, in this instance, Bosnian diplomatic and consular protection failed in a structural rather than an accidental way. By sending an official delegation, seeking information, and interacting with international monitoring systems, Bosnia and Herzegovina technically fulfilled its duties, but it lacked the authority to implement the agreements and the enforcement ability to do so. Traditional diplomatic instruments were essentially neutralized by the extraordinary security structure that governs Guantánamo, making Bosnian engagement legally meaningless. Thus, this case highlights the boundaries of diplomatic protection, showing that in situations of legal exceptionalism and securitization, protection may be recognized normatively but completely ineffective in practice. This highlights a fundamental discrepancy between the enforceability of formal citizenship rights and their practical application (Pilav 2006).

6.3. Cross-Case Analysis: Patterns and Recurring Issues

When the situations of Ejup Ganić and the Bosnian nationals held in Guantánamo are compared, a number of recurrent structural patterns emerge that highlight the fundamental shortcomings of Bosnian diplomatic and consular protection. Even though the two cases' factual and legal backgrounds are very different, one involves a judicial extradition procedure under a rule-of-law system, while the other takes

place under an exceptional security regime they both highlight the same basic flaws in Bosnia and Herzegovina's security framework.

Though for different reasons, quick and effective consular access was either significantly restricted or delayed in both situations. Although consular access was officially granted in the Ganić case, it was procedurally meaningless because Bosnia and Herzegovina had no legal standing in the host state's legal system. Only after the arrest did diplomatic involvement take place, and it was restricted to outside political representations with little ability to affect the actual judicial procedures (High Court of Justice 2010). In the Guantánamo instance, Bosnian authorities were only allowed access through a closely supervised delegation visit, without continuous communication or legal involvement, and consular access was postponed for years and only allowed under strict guidelines (Pilav 2006). Early intervention, when legal posture and procedural protections are most important, was not possible in each case due to the reactive character of Bosnian consular activity.

Severe information asymmetry is the subject of a second recurrent pattern. In the Ganić case, Bosnian authorities lacked official access to prosecution documents or procedural considerations in the United Kingdom and were instead reliant on publicly accessible judicial information. The potential for strategic legal action was limited since their comprehension of the case changed in conjunction with the public court processes (International Crimes Database 2010). The difference was far more noticeable in the Guantánamo case, when Bosnian delegates were expressly excluded from receiving thorough information about the allegations, supporting documentation, or the prisoners' future legal standing. Even during the formal visit, Bosnian authorities were unable to get clarification on the legal justification for ongoing imprisonment, as detailed in the report submitted to the UN Committee against Torture (Pilav 2006). Both instances included consular involvement being limited to symbolic monitoring and substantive protection being hampered by the difficulty to obtain trustworthy legal information.

The structural marginalization of Bosnia and Herzegovina as a state of nationality is further illustrated by these two incidents. The judiciary of the host state alone decided the admissibility, extent, and result of extradition proceedings, which led to this marginalization in the Ganić case. With no legal means to uphold its constitutional duty to defend its citizens abroad, Bosnia and Herzegovina's involvement was limited to diplomatic lobbying (High Court of Justice 2010). Marginalization was complete in the Guantánamo case since the detention system functioned outside of standard legal frameworks, making the captives' nationality essentially meaningless. The lack

of enforcement ability and jurisdictional leverage in Bosnia and Herzegovina revealed the boundaries of diplomatic protection in the face of extreme power imbalance and legal exceptionalism (Pilav 2006).

The politicization of both situations, albeit in different ways, is another similarity. Politicization in the Ganić case began with the extradition request itself, which the British court said was impacted by war history and more general regional political factors. Legal doctrine supported the court's decision to deny extradition, but it also openly recognized political abuse of the criminal justice system (High Court of Justice 2010). On the other hand, the Guantánamo case was systemically politicized and was part of a global security framework that prioritized terrorist imperatives over individual rights and state-to-state legal standards. By moving decision-making away from legal standards and toward political or security factors outside of Bosnia and Herzegovina's sphere of influence, politicization limited the efficacy of consular protection in both situations.

Lastly, both examples highlight how Bosnian diplomatic protection is reactive and unenforceable. Bosnia and Herzegovina lacked the legal means to enforce action, demand procedural rights, or provide its citizens with remedies in any scenario. Diplomatic involvement, which served mainly as political signaling rather than as an actual instrument of rights protection, took place after important choices had already been made. Due to the lack of legally binding remedies, both locally and internationally, constitutional and international protection promises continued to be declarative rather than practical.

When combined, these trends show that the breakdown of Bosnian diplomatic and consular protection is systemic rather than case-specific. Bosnia & Herzegovina lacks the institutional ability, procedural standing, and legal power necessary to convert normative responsibilities into concrete protection, regardless of whether it operates under an extraordinary security regime or a formal judicial system. Thus, there is a continuing gap between the nominal acknowledgment of citizenship rights abroad and their actual realization, as demonstrated by the examples of Ganić and the Algerian Six. This underscores the urgent need for institutional change and the legal operationalization of diplomatic protection.

7. PRACTICAL CHALLENGES IN IMPLEMENTING DIPLOMATIC PROTECTION

7.1. Lack of Personnel and Resources

Bosnia and Herzegovina's foreign service works with a relatively low capability. Many diplomatic and consular postings are staffed by inexperienced officials due to political quotas and nepotism, and missions frequently lack enough funds and support personnel. For instance, ethnic "quotas" in recruiting have a "negative impact on the capacity" of BiH's Ministry of Foreign Affairs, according to EU studies. This implies that there may be limited flexibility in embassies as only one or two diplomats may be responsible for all duties. Resources are stretched tight due to constrained staffing and financial capacity within the existing diplomatic network, which comprises of dozens of embassies and consulates responsible for supporting a large diaspora (European Commission BiH Report 2024). In reality, BiH missions have been compelled by understaffing to put basic services (passports, visas) ahead of proactive casework (MFA BiH Annual report 2022). There might not be a designated person on hand to assist or communicate with foreign authorities when foreign nationals get into legal issues.

The issue is made worse by BiH's tight budget. Every consular mission has a limited budget for local employees, housing, and travel. For Bosnia and Herzegovina, emergencies that necessitate evacuation flights, legal bills, or jail visits can be extremely expensive. These expenses are frequently significant and unpredictable, particularly in criminal justice proceedings. Sometimes, in order to pay for repatriations or consular assistance, the ministry needs rely on emergency funding or international cooperation (such as through EU civil protection procedures). Slow and inconsistent consular protection is the overall result. When a BiH national is in need, their embassy might not have enough staff to act quickly or enough money to hire translators or attorneys. Due to this understaffing, diplomats are also forced to take on many responsibilities, which causes routine paperwork to postpone important situations (MFA BiH Annual report 2022).

7.2. Communication Barriers and Slow Procedures

BiH's reaction is slowed by bureaucratic and communication obstacles, even when assistance is available. Language barriers are an ongoing problem. BiH's diplomats confront dozens of local languages and legal systems, despite the fact that they frequently speak many languages. It might take days to find skilled legal interpreters or translators. Every official letter or consular request must be carefully verified and translated in non-EU nations where Bosnia and Herzegovina have few treaties or standing agreements. Larger governments, on the other hand, frequently have digital consular contact lines or rapid-response liaison personnel.

Communication is also disjointed inside BiH's own foreign service. Requests for embassies sometimes need to pass through many domestic departments due to the nation's intricate administrative structure. Consular posts, for instance, have to work with the MFA in Sarajevo and, occasionally, with entity-level administrations in the FBiH or RS (European Commission BiH Report 2024). An embassy may send an urgent request to Sarajevo, but it may take days for it to make its way up and down the chain of command due to this multi-layered approval procedure. In reality, a Bosnian-Herzegovinian held overseas may not hear from or receive support from their embassy until much later in the case due to these cumbersome procedures.

This latency is demonstrated by actual crises. Embassies rush to identify and register BiH people during unexpected events (like as earthquakes, wars, or mass arrests), but reports sometimes show lengthy delays before refugees receive word from their own government. BiH's foreign service has „never developed the ability or motivation” to actively pursue consular matters, according to one research. Essentially, bureaucracy may seriously impede prompt diplomatic protection, both domestically and internationally.

7.3. Perception, Stereotypes, and Treatment of Foreign Nationals

Stereotypes about the Western Balkans might lead to prejudice or unfair treatment of BiH's nationals living outside. Beyond recollections of the fighting in the 1990s, policymakers and the general public in many nations may know very little about Bosnia and Herzegovina. This can produce a biased picture of Bosnians-Herzegovinians, especially in criminal justice circumstances. For instance, a Bosniak or Serb captured overseas can be labeled just as a „Muslim” or „Balkan” suspect, with no regard for their unique situation. Studies have revealed that non-citizens are frequently

treated more harshly by the legal system in various EU nations. Therefore, a detained BiH national may face skepticism from prosecutors or delays from judges that believe his case is more complex or severe.

Diplomatic protection may be significantly impacted by these beliefs. According to consular personnel, host authorities can show discrimination against Balkan nationalities (MFA BiH Annual report on consular protection 2022). For instance, they may assume that refugees or asylum seekers from Bosnia and Herzegovina are either war criminals or economic migrants. Language can also be a factor: BiH inmates who are not proficient in the language of the host nation may look recalcitrant due to their incapacity to communicate, which may cause tension with local authorities. Furthermore, how international law enforcement interacts with BiH citizens may be influenced by pervasive misconceptions about organized crime or corruption in the Balkans. In one instance, judges in several European courts were skeptical of the BiH legal system's capacity to impose punishments domestically, making it more difficult for a BiH suspect to get bail.

However, these misconceptions may be strengthened by BiH's own little diplomatic activity outside. Embassies find it difficult to combat unfavorable perceptions in the absence of proactive cultural or outreach initiatives to humanize BiH residents. This can exacerbate treatment problems: foreign officials may be doubtful of BiH's influence or competency and may be apathetic or contemptuous when an embassy challenges a case. Therefore, the idea of equal protection may be compromised by deeply ingrained attitudes and preconceptions, whether Bosnians-Herzegovinians are aggressive, nationalist, or just "foreign."

7.4. Politicization of Cases

Lastly, instances involving BiH nationals seeking consular and diplomatic protection are sometimes entangled in larger regional and international political concerns. The way BiH's residents are treated can be influenced by its bilateral connections with other nations. For example, officials in a host nation may be less helpful in granting consular access or information if diplomatic relations are strained. Extradition for war crimes is one prominent example. BiH courts have long sought the return of individuals from Serbia or Croatia, but these procedures have been hampered by political rather than legal disputes (ICTY n.d.). Politics in such nations limit BiH's capacity to support suspects' custody when they appeal or escape elsewhere.

High-profile events have the potential to overshadow routine consular matters on the global scene. A BiH national was implicated in the dramatic escape of a Russian businessman from Italian jail in a recent case that serves as an example. Prosecutors in Italy, the United States, and Russia took the lead, with the BiH government itself playing a minor role. In the end, the suspect was sent to Italy as part of a plea agreement with US authorities; BiH had little influence in this decision. This demonstrates how a case may be absorbed by great-power interests (in this example, the U.S. and Italy resolving sanctions-evasion), leaving BiH with little influence on the resolution. Other instances include Bosnians-Herzegovinians imprisoned in politically unstable nations (such as the Middle East or Central Asia), where geo-political tensions may determine whether or not evidence is disclosed or consular visits are permitted (UNHRC, Special Rapporteur reports, n.d.) .

Cases can become political even at home. Although state authorities may promise strong assistance for Bosnians-Herzegovinians living overseas, consistency may be compromised by internal rivalries. For instance, the political leaders of one organization may openly call for the evacuation of civilians from a war area, while others contend that the action is only symbolic (MFA BiH internal inconsistencies in political responses and embassy actions 2022). In a same vein, in order to avoid controversy, certain government officials may decide to separate the nation rather than interact with a BiH person who has a criminal record and is being held overseas. Due to all of these variables, diplomatic protection for nationals of Bosnia and Herzegovina may be inconsistent and politicized, with real help depending as much on political considerations as on legal requirements.

8. FINDINGS AND SIGNIFICANCE

The study reveals that Bosnia and Herzegovina's diplomatic and consular protection remains reactive, fragmented and severely under-resourced, despite strong constitutional and international obligations. Empirical evidence from 2015–2025 shows persistent failures in timely notification, legal assistance, interpretation services and proactive intervention, particularly in high-volume detention countries (France, Greece, Italy, Serbia, Turkey). A clear implementation gap exists between formal commitments under the Vienna Convention on Consular Relations and the BiH Constitution [Art. I/7(5)] and actual practice. Key structural obstacles include chronic underfunding, a limited operational capacity within the existing diplomatic network, lack of centralised data on detained nationals, poor inter-agency

coordination and politicisation of sensitive cases. For policy, BiH urgently needs a unified database of detained citizens, a permanent rapid-response consular team with legal and linguistic expertise, and systematic training focused on major host-state legal systems. Bilateral agreements on early notification, prisoner rights and extradition must be prioritised with Germany, France, Italy, Greece and Turkey. Citizen protection should become a core pillar of foreign policy, complemented by preventive legal briefings and stronger cooperation with diaspora organisations and NGOs. Passive case management must give way to anticipatory diplomacy and advocacy against systemic discrimination faced by BiH's nationals abroad. Academically, the paper fills a critical gap by illuminating the intersection of human rights, post-conflict fragility and consular diplomacy in a small state context. It demonstrates that effective consular protection is essential for both individual rights and the broader legitimacy of Bosnia and Herzegovina's sovereignty and rule-of-law commitments.

The constitutional dimension further accentuates the implementation gap identified throughout this study. The unequivocal wording of Article I/7(e) elevates consular protection from a discretionary act of foreign policy to a fundamental right of citizenship. Yet the absence of any judicial or legislative mechanism for its enforcement renders the guarantee largely declaratory. Citizens who experience delayed notification, inadequate legal support, or discriminatory treatment abroad currently have no effective domestic remedy through which to hold the state accountable. This situation stands in stark contrast to Croatia and Serbia, where similar constitutional clauses have been operationalised through dedicated legislation and, in several cases, successfully invoked before national courts. Closing this constitutional deficit is therefore not merely a matter of improved consular practice, but of fulfilling the rule-of-law commitments embedded in the Dayton constitutional framework itself.

9. OPPORTUNITIES FOR IMPROVING DIPLOMATIC PROTECTION

Bosnia and Herzegovina's residents are vulnerable in foreign legal systems due to structural flaws and reactive tendencies found in the country's diplomatic interactions. These shortcomings reflect a larger institutional fragility that stems from resource limitations, disjointed diplomacy, and the legacy of post-conflict administration rather than being limited to procedural errors. But this environment also offers strategic

chances to transform consular protection through technology innovation, global collaboration, and institutional changes.

9.1. Establishing an Early Notification System

Timely notice of incarceration is a fundamental tenet of diplomatic protection, but BiH's authorities frequently become aware of arrests only after crucial legal deadlines have passed. Vague bilateral commitments and uneven application of international treaties, like the Vienna Convention, are the causes of this delay. Bosnia and Herzegovina must proactively renegotiate consular clauses in current bilateral agreements, give priority to host nations with a high concentration of BiH's nationals, and push for integration into regional alert platforms like the European Judicial Network in order to establish a strong early notification system.

Additionally, when a BiH citizen is being treated by a foreign criminal justice system, the Ministry of Foreign Affairs ought to think about implementing a secure notification protocol that would allow embassies to get instant notifications. Pre-consular briefings, triggers for quick legal action, and automatic language translation should all be part of this protocol. Without such procedures, people run the possibility of being accused, questioned, or even deported without ever getting consular support, which would violate their legal rights and expose BiH to condemnation from throughout the world.

9.2. Strengthening Consular Capacities and Training

The consular corps in BiH is nevertheless substantially underfunded in terms of both institutional power and personnel. The majority of missions are swamped with administrative tasks unrelated to citizen protection, lack specialized units for human rights matters, and work with little legal training. Establishing a separate Consular Protection Division inside the Ministry of Foreign Affairs with the authority to provide funds, assign staff, and plan cross-border legal interventions is a strategic option.

Consular officials must get thorough training in trauma-informed advocacy, negotiating with foreign law enforcement, and comparative criminal process as part of capacity building. Experts in transitional justice, international legal clinics, and EU consular offices should collaborate on the development of training materials. In order to institutionalize legal expertise overseas, BiH could consider rotating leg-

al experts from domestic institutions (courts, prosecution offices, human rights commissions) into international posts for long-term resilience.

9.3. Creating a “Crisis Consular Team”

BiH’s incapacity to handle high-stakes situations has been repeatedly demonstrated by the absence of a rapid-response diplomatic unit. Standard bureaucratic methods have proven to be overly burdensome and sluggish, whether in humanitarian catastrophes or politically heated arrests. With diplomatic clearance, emergency financial power, and pre-negotiated access to crucial host governments, a designated „Crisis Consular Team” would operate as a flexible, cross-ministerial unit.

Human rights officers, legal professionals, and bilingual caseworkers with crisis de-escalation training should be part of the team. Detainee emergencies, mass deportations, politically sensitive trials, and natural calamities impacting diaspora groups would all fall within its purview. In addition to enhancing citizen protection, this unit demonstrates BiH’s ability to successfully uphold its sovereignty and carry out its international commitments.

9.4. Enhancing Cooperation with Diaspora and Local NGOs

When citizens are detained or abused overseas, non-state actors especially diaspora networks and human rights NGOs often act as first responders. Therefore, consular protection cannot be the sole purview of the state. However, these actors have always been seen as marginal or even antagonistic by BiH’s foreign policy institutions. This needs to be altered. Formal alliances may improve cultural competency, close institutional gaps, and expand BiH’s protective reach much beyond its meager diplomatic apparatus.

Verified NGOs may be able to monitor incarceration conditions, notify embassies of legal crises, and offer inmates legal and psychological help through strategic memoranda of collaboration. For illegal migrants who are afraid of direct state engagement, diaspora organizations might serve as a middleman. Additionally, educating diaspora leaders on victim advocacy and consular law would transform unofficial support networks into formal safeguards. These partnerships must to be formalized through national diaspora engagement plans and integrated into diplomatic procedures.

9.5. Introducing Digital Tools and Case Management Systems

State responsiveness and openness in the digital age depend on technology infrastructure. The majority of BiH's consular services are still analog and rely on phone, email, and paper-based tracking methods. In addition to making case follow-up more difficult, this raises the possibility of misplaced paperwork, postponed interventions, and legal errors. Data from ministries, legal assistance networks, and embassies should all be integrated into a single digital case management system. Detainee profiles, hearing dates, consular visits, and correspondence records should all be able to be shared securely on the site.

BiH should implement a mobile-friendly portal or app in addition to internal processes so that citizens of the diaspora may report detentions, ask for legal assistance, or obtain multilingual legal advice. Additionally, the app may include consular hotlines, host-country legal updates, and push alerts regarding high-risk travel zones. When BiH citizens are detected, AI-based methods might be used to monitor open-source arrest databases (like Interpol Red Notices) and notify diplomatic offices. These innovations significantly improve openness, speed up action, and foster public confidence, but they do demand an initial investment.

9.6. Legislative operationalisation of Article I/7(e) of the Constitution of BiH

To transform the constitutional promise into an enforceable right, Bosnia and Herzegovina should adopt a dedicated Law on consular protection of citizens abroad (needs to be completely in accordance with the Law on foreign affairs that is currently in the form of draft). Such legislation would:

- explicitly recognise Article I/7(e) as a directly applicable subjective right;
- establish minimum standards of consular assistance (notification within 48 hours, visit within 7 days, provision of interpreter and list of lawyers, etc.);
- create an administrative remedy and judicial remedy (ombudsman procedure and/or direct constitutional appeal) for cases of non-compliance;
- impose personal and institutional accountability on diplomatic-consular staff for unjustified delays or refusals.

CONCLUSION

The diplomatic dimension of criminal justice in Bosnia and Herzegovina reveals profound structural limitations rooted in its post-conflict status, where effective consular protection for citizens abroad remains elusive despite normative commitments. Drawing on Börzel and Grimm's (2018) framework, BiH's partial progress toward "good enough" governance—facilitated by EU conditionality—highlights how external incentives can stabilise institutions but falter against elite resistance and ethnic fragmentation, leading to inconsistent reforms in areas like consular services. This perspective underscores the interactive role of domestic actors in selectively adopting EU norms, resulting in hybrid outcomes where peace is maintained but deep rule-of-law enhancements, such as proactive protection mechanisms, lag behind.

In contrast, Thorhallsson's shelter theory portrays BiH's reliance on external "shelter" (e.g., EU and NATO) as a survival imperative for small, vulnerable states, emphasising dependency over agency and suggesting limited internal capacity for independent diplomatic innovations. While Thorhallsson views this as a rational strategy with constrained reform potential, Börzel and Grimm offer a more optimistic lens, advocating for tailored EU engagement that respects domestic preferences to achieve incremental advancements, potentially enabling BiH to evolve from reactive consular practices to robust, rights-based systems.

Ultimately, reconciling these views implies that BiH must leverage EU-driven governance-building (per Börzel and Grimm) while mitigating the risks of over-dependence (as warned by Thorhallsson), through targeted reforms like a dedicated consular law and enhanced diaspora partnerships. This balanced approach could bridge the gap between constitutional guarantees and practical implementation, bolstering BiH's sovereignty and human rights commitments in an interconnected world.

This study examined how Bosnia and Herzegovina, a small post-conflict state, manages the relationship between criminal justice, diplomatic protection, and consular operations in order to safeguard its residents overseas. The analysis reveals that Bosnia and Herzegovina is bound in a complex web of international obligations, ranging from the Vienna Convention on Consular Relations and fundamental human rights treaties to soft-law standards on the treatment of foreign nationals, all the while declaring in its own Constitution that a BiH citizen living abroad will be protected by the state. In terms of norms, Bosnia and Herzegovina portrays itself as both a host state that will uphold the rights of foreigners on its soil and a home state that will

defend its citizens.

However, the empirical and case-based study shows that this dual promise is only partially realized in reality. BiH's diplomatic-consular missions carry out vital tasks such as monitoring incarceration conditions, facilitating legal help, providing basic humanitarian support, and facilitating quick consular contact following an arrest. There are instances where their involvement has improved the situation of detained nationals. Gaps between law and reality are also caused by persistent personnel and funding shortages, divided duties between state and entity levels, sluggish communication, and the propensity to politicize delicate matters. People who are not well-known or who are charged with offenses that are stigmatized are more vulnerable to inconsistent or little assistance. Similar shortcomings exist on the host-state side, as BiH does not always guarantee consistent practice among police and judicial agencies or consistently notify foreign inmates of their consular rights.

The mapping of BiH nationals' criminal activity overseas from 2015 to 2025 highlights why these issues cannot be dismissed as unimportant. BiH nationals are frequently involved in larger Western Balkan or diaspora networks and are involved in a wide range of crimes, including drug trafficking, migrant smuggling, financial crime, war crimes, and rare instances of violent extremism. Each type of offense has unique diplomatic and consular obstacles, including as intricate international investigations, delicate public impressions, and the need to strike a balance between efficient law-enforcement cooperation and the preservation of individual rights. Informal, spontaneous, and personality-driven reactions are no longer adequate in this situation.

Therefore, the paper contends that BiH should transition to a more organized, rights-oriented system of protection from a reactive, mostly discretionary approach. A small, specialized "crisis consular team" for complicated or high-risk cases; institutionalized partnerships with diaspora organizations and non-governmental organizations; a practical early-notification and tracking mechanism for arrests and detentions abroad; systematic training and reinforcement of consular staff; and cutting-edge digital case-management tools are all reasonable steps that enhance rather than replace current practice. When combined, they would improve accountability, predictability, and transparency in the manner Bosnia and Herzegovina safeguards both foreign nationals on its soil and its residents abroad.

Finally, the constitutional entrenchment of protection abroad in Article I/7(e) places Bosnia and Herzegovina under a higher domestic standard than most states. Until this provision is given meaningful legal effect through legislation, judicial

interpretation, and institutional reform, the state will continue to fall short not only of its international obligations, but of the very constitutional identity it proclaimed at Dayton

In the end, the diplomatic aspect of criminal justice should be viewed as an essential component of BiH's larger commitments to human rights and the rule of law rather than as a favor the state periodically gives to „deserving” persons. Bosnia and Herzegovina can improve the legitimacy of its foreign policy, better address the needs of a sizable and mobile diaspora, and provide a more cohesive model of protection in an area still plagued by the effects of migration and conflict by more closely aligning its diplomatic and consular practices with those commitments.

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DIPLOMATSKA DIMENZIJA KRIVIČNOG PRAVOSUĐA: ZAŠTITA GRAĐANA BOSNE I HERCEGOVINE UHAPŠENIH I OSUĐENIH U INOSTRANSTVU

Sažetak:

Koristeći Bosnu i Hercegovinu (BiH) kao primjer, ovaj esej istražuje diplomatski aspekt krivičnog pravosuđa i njegovu obavezu da brani svoje državljane koji su pritvoreni, zatvoreni ili proglašeni krivima negdje drugdje. Smješta Bosnu i Hercegovinu u kontekst tradicionalne doktrine diplomatske zaštite i razvoja pristupa zasnovanog na ljudskim pravima, ispitujući kako ustavne i zakonske obaveze BiH utiču na međunarodne norme, posebno Bečku konvenciju o konzularnim odnosima, ugovore o ljudskim pravima i Nacrč članova o diplomatskoj zaštiti Komisije za međunarodno pravo. Studija mapira primarne obrasce kriminalnih aktivnosti u koje su uključeni bosanski državljani u inostranstvu i procjenjuje reakcije bosanskohercegovačkih diplomatsko-konzularnih predstavništava koristeći doktrinarnu pravnu analizu u kombinaciji s kvalitativnim studijama slučaja (uključujući specifične slučajeve u državama EU, SAD-u i kontekste pritvora migranata). Rezultati pokazuju kontinuirani jaz između nejednake, resursima ograničene stvarnosti konzularne prakse i ustavne garancije BiH da njeni ljudi u inostranstvu „uživaju zaštitu BiH“. Dosljednu zaštitu potkopavaju strukturni problemi kao što su nedostatak osoblja i sredstava, fragmentirane institucionalne kompetencije, poteškoće u komunikaciji, predrasude prema strancima i politizacija visokopofiliranih slučajeva. Istraživanje također predlaže specifične načine za poboljšanje prakse u BiH, kao što su sistemi ranog obavješćavanja, fokusirana obuka kapaciteta, uspostavljanje specijaliziranog kriznog konzularnog tima, povećana saradnja s nevladinim organizacijama i dijasporom, te digitalni alati za upravljanje slučajevima. Studija zaključuje da

diplomatsku i konzularnu zaštitu ne treba posmatrati kao isključivo diskrecioni čin vanjske politike, već kao sastavni aspekt obaveza BiH u pogledu ljudskih prava i vladavine prava.

Ključne riječi: diplomatska zaštita; konzularna pomoć; krivično pravosuđe; ljudska prava; državljani u inostranstvu

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