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Research Article

ARBITRATION AND MEDIATION IN BOSNIA AND HERZEGOVINA: TIME TO MEDIATE A CHANGE

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ABSTRACT

Background: *The article focuses on the legal and institutional framework applicable to alternative dispute resolution (ADR) mechanisms i.e. mediation and arbitration in Bosnia and Herzegovina. The legislative framework applicable to ADRs in Bosnia and Herzegovina shows a divergent path of development for mediation and arbitration. Mediation is regulated by a single law with country wide applicability that was progressive at the time of its creation but is now in need of an update. Arbitration, on the other hand is regulated not by a single statewide legislation but in parts of Civil Procedure Laws of the entities (country's constitutional units) and District Brčko and is badly in need of realignment with the international standards, primarily UNCITRAL Model Law. The article compares the institutional and legislative framework of Bosnia and Herzegovina with neighbouring countries, some of which have made significant improvements in the area of ADR, as part of their EU accession process, or as a stand-alone exercise recognizing the importance and the potential of ADRs. The framework is also assessed relative to its conformity with international standards such as*

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UNCITRAL Model Laws, the New York Convention, the European Convention on International Commercial Arbitration, Directive 2008/52/EC, and the Singapore Convention on Mediation.

Method: *Using legal-historical and comparative methods alongside content analysis, the legal and institutional structure and the development of arbitration and mediation in Bosnia and Herzegovina are analysed and compared to the neighbouring states of former Yugoslavia, with whom Bosnia and Herzegovina shared a similar starting position.*

Results and Conclusions: *The article concludes that while certain positive points can be identified such as general compliance with the requirements of the New York Convention and functional legal and institutional basis for development of ADRs, the ADRs are still underused compared to neighbouring countries and in need of a significant update to meet the requirements of international standards.*

1 INTRODUCTION

Alternative dispute resolution (ADR) mechanisms, such as mediation and arbitration, have become a significant part of the civil and commercial dispute resolution process in developed economies and their legal systems rather than a "side feature." From the viewpoint of state institutions and legislators, they are often seen as a way of relieving the burden carried by ordinary courts and lowering the backlog of cases, with the aim of increasing efficiency and access to justice. On the other hand, from the viewpoint of the parties, the ADR mechanisms offer more control over the process and alleviate some of the doubts over bias of national courts, especially in international settings.[1]

For the countries emerging from socialist economic and legal orders, and in the case of Bosnia and Herzegovina and some other Western Balkans countries, emerging from devastating wars, the importance of ensuring credible ADR mechanisms is not just a matter of increasing judicial efficacy, but also a matter of attracting foreign direct investment and increasingly fulfilling the obligations related to the European Union accession process.[2]

1 See generally, Gary B Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021) 6-97 <https://tind.wipo.int/record/44313> accessed 25 July 2026; Nigel Blackaby, Constantine Partasides and Alan Redfern, *Redfern and Hunter on International Arbitration* (7th edn, OUP 2022) 1-40 <https://doi.org/10.1093/law/9780192869906.001.0001> accessed 25 July 2026; Klaus J Hopt and Felix Steffek (eds), *Mediation: Principles and Regulation in Comparative Perspective* (OUP 2013) 3-130 <https://doi.org/10.1093/acprof:oso/9780199653485.001.0001> accessed 25 July 2026.

2 Cf, CH van Rhee and Alan Uzelac (eds), *Civil Justice between Efficiency and Quality: From Ius Commune to the CEPEJ* (Intersentia 2008) <https://www.academia.edu/15515370/Civil_Justice_between_Efficiency_and_Quality_From_Ius_Commune_to_the_CEPEJ> accessed 25 July 2026. Situates ADR reform in post-socialist Europe within broader debates on judicial efficiency.

The specific feature of Bosnia and Herzegovina is its distinctive and distinctively complex constitutional order,[3] which resulted from the 1995 General Framework Agreement for Peace (the Dayton Agreement) and its Annex 4, which serves as the country's constitution. The constitutional order foresees a central government with limited powers and two entities, the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS), with a later addition of the self-governing Brčko District, which hold significant competencies. This is especially relevant in civil and commercial law matters, including civil procedure and dispute resolution in general, which is regulated primarily at the entity and district levels.[4]

The consequence for dispute resolution is that it operates in a legal order in which arbitration is regulated three times over, in near-identical but nonetheless formally separate chapters of three Laws on Civil Procedure, without any dedicated arbitration statute, while mediation, counter-intuitively, was regulated as early as 2004 by a single state-level Mediation law applicable throughout the country. It should be noted that the legislative framework also holds a Law on Civil Procedure before the Court of Bosnia and Herzegovina, applicable to proceedings before the state-level Court of Bosnia and Herzegovina, but it does not hold any provisions on arbitration.

Apart from the potential to raise the efficacy of the judicial system and access to justice, Bosnia and Herzegovina has in recent years been the respondent in a series of investor-state arbitrations, including a costly award rendered in 2022 against the state in connection with obstructed hydroelectric concessions, upheld on annulment in 2024.[5]

At the same time, domestic commercial arbitration remains marginal, and mediation, despite two decades of legislative existence and donor-supported pilot projects, has failed to have a measurable effect on judicial backlogs that the European Commission continues to identify as a systemic weakness of the country's justice sector.[6] The example of how

3 Harun Halilovic, 'How Not to Do European Integrations: Bosnia and Herzegovina and Legal Challenges in Accession Process to European Union' (2024) 7(4) Access to Justice in Eastern Europe 143 <https://doi.org/10.33327/AJEE-18-7.4-a000111> accessed 25 July 2026.

4 Constitution of Bosnia and Herzegovina: Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina (initialed 21 November 1995, signed 14 December 1995) art III <https://hrlibrary.umn.edu/icty/dayton/daytonannex4.html> accessed 25 July 2026.

5 Case no ARB/16/36 *Boris Goljevšček, Viaduct doo Portorož and Vladimir Zevnik v Bosnia and Herzegovina* (ICSID, 18 April 2022; 1 May 2024) <https://jusmundi.com/en/document/decision/en-boris-goljevscek-viaduct-d-o-o-portoroz-and-vladimir-zevnik-v-bosnia-and-herzegovina-award-monday-18th-april-2022> accessed 25 July 2026. See 'Goljevšček and others v Bosnia and Herzegovina' (*UNCTAD Investment Dispute Settlement Navigator*, 15 November 2016) <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/752/goljev-ek-and-others-v-bosnia-and-herzegovina> accessed 25 July 2026.

6 European Commission, *Bosnia and Herzegovina 2024 Report* (SWD(2024) 691 final, 30 October 2024) ch 23 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52024SC0691> accessed 25 July 2026 (noting persistent case backlogs and the limited use of alternative dispute resolution).

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underused mediation is can be seen in the Report by the European Commission for the Efficiency of Justice (CEPEJ), where, according to the last available data from 2024, there were only 135 cases of completed mediation, with 128 of them resulting in a settlement agreement. To provide context, the total number of non-criminal law cases in the country for the same year was reported at close to a million (942,717).[7] The country's advancement to EU candidate status in December 2022 has added urgency to the question of whether, and how, its ADR framework should be reformed.

The central research question and aim of the article is primarily to showcase:

1) what the normative and institutional foundations of arbitration and mediation in the legal order of Bosnia and Herzegovina are and

2) what the development trajectory of both is. The comparative analysis with selected neighbouring jurisdictions, that emerged from the former Yugoslavia aims to

3) portray the position of Bosnia and Herzegovina, as compared to legal systems that shared a common legal framework but experienced (often dramatically) divergent development. In addition, the legislative framework of Bosnia and Herzegovina is compared to applicable international standards to determine

4) what the level of compliance with the contemporary transnational arbitration and mediation legal framework is, and whether there is a need for legislative amendments? The reasons for the inclusion of arbitration and mediation in a single study are that both represent alternative dispute resolution mechanisms (albeit quite different) and both are often part of the ADR policy the countries adopt in judicial reform efforts, especially during the EU accession. In addition, comparative research on mediation and arbitration in Bosnia and Herzegovina is lacking, since most of the research efforts focus on one of them, without putting them in a larger ADR context. The legal framework of ADR is analysed for its positive and negative sides, followed by recommendations and conclusions.

2 LITERATURE REVIEW

Scholarly sources on which any study of arbitration must draw consist primarily of the leading works of international arbitration doctrine as a starting point. Born's monumental works systematise the law of international commercial arbitration around the principles of party autonomy, separability of the arbitration agreement, and competence-competence, and provide the benchmark against which national frameworks are conventionally

7 CEPEJ, *HFIII: Towards a Better Evaluation of the Results of Judicial Reform Efforts in the Western Balkans: "DASHBOARD Western Balkans"*, Pt 2 (A): Beneficiary Profile – Bosnia and Herzegovina (CEPEJ(2025)1REV1 pt 2, 9 July 2025) <https://rm.coe.int/bosnia-and-herzegovina-deliverable-2/1680b2722c> accessed 25 July 2026.

measured.[8] Redfern and Hunter perform a similar function, focused primarily on arbitral practice, while the UNCITRAL Model Law on International Commercial Arbitration of 1985, as amended in 2006, has become the *de facto* blueprint of transnational legislation in this field.[9] On the mediation side, the comparative collection edited by Hopt and Steffek and the volume edited by Esplugues and Marquis chart the worldwide state of mediation, a process accelerated in Europe by Directive 2008/52/EC.[10] Related to mediation, the notable work of Alexander[11] provides an important comparative overview. Vandekerckhove's work is particularly useful because it places the Directive within the broader EU framework of civil and commercial dispute resolution, while Tan[12] provides an overview of the Singapore Convention. Interesting work comes from De Palo et al.[13] who explore the frequency of use of mediation in the light of legislative and institutional support.

Within the post-Yugoslav area, Triva and Uzelac's research on Croatian arbitration law remains the standard regional work concerning the Model Law tradition as received in the successor states, and Uzelac's broader body of work on civil justice reform in transition countries frames ADR as part of a wider effort related to the efficiency of civil procedure.[14] For Serbia, Stanivuković's monograph on international arbitration and Knežević and Pavić's textbook on arbitration and ADR provide systematic treatments that are frequently cited, *mutatis mutandis*, by courts and scholars in Bosnia and Herzegovina, given the near-identity of the pre-1991 legal inheritance.[15]

8 Born (n 1) 375-610 (on arbitration agreements), 1141-265 (on competence-competence and separability).

9 Blackaby, Partasides and Redfern (n 1) 49-204; UNCITRAL, *UNCITRAL Model Law on International Commercial Arbitration 1985: With amendments as adopted in 2006* (UN 2008) <https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration> accessed 25 July 2026.

10 Hopt and Steffek (n 1); Carlos Esplugues and Louis Marquis (eds), *New Developments in Civil and Commercial Mediation: Global Comparative Perspectives* (Springer 2015) <https://doi.org/10.1007/978-3-319-18135-6> accessed 25 July 2026; Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on Certain Aspects of Mediation in Civil and Commercial Matters [2008] OJ L136/3 <http://data.europa.eu/eli/dir/2008/52/oj> accessed 25 July 2026.

11 Nadja Alexander, *International and Comparative Mediation: Legal Perspectives* (Kluwer Law International 2009) <https://ink.library.smu.edu.sg/sol_research/2676> accessed 25 July 2026.

12 David Tan, 'The Singapore Convention on Mediation to Reinforce the Status of International Mediated Settlement Agreement: Breakthrough or Redundancy?' (2023) 40(4) Conflict Resolution Quarterly 467 <https://doi.org/10.1002/crq.21377> accessed 25 July 2026.

13 Giuseppe De Palo, Peter Grajzl and Agnė Tvaronavičienė, 'The European Mediation Paradox Revisited: Insights from a New Expert Survey' (2026) 33(3) European Journal of Law and Economics 311 <https://doi.org/10.1177/1023263X261426759> accessed 25 July 2026.

14 Siniša Triva and Alan Uzelac, *Hrvatsko Arbitražno Pravo: Komentar Zakona o arbitraži i drugi izvori hrvatskog arbitražnog prava* (Narodne novine 2007); van Rhee and Uzelac (n 2).

15 Maja Stanivuković, *Međunarodna Arbitraža* (Službeni glasnik 2013); Gašo Knežević and Vladimir Pavić, *Arbitraža i ADR* (Pravni fakultet Univerziteta u Beogradu 2010) <https://unov.tind.io/record/34256> accessed 25 July 2026.

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Scholarship specifically devoted to Bosnia and Herzegovina falls into three groups. The first doctrinal group analyses the arbitration provisions of the entity codes of civil procedure. Čizmić's research has drawn attention to the incompleteness of those provisions and their uneasy coexistence with the 1982 federal statute on the resolution of conflicts of laws, which continues to govern the recognition of foreign awards.[16] The most recent contribution is the one found in Alternative Dispute Resolution in the Western Balkans, a survey of several jurisdictions edited by Marc Bungenberg and others, which portrays the legislative framework of Bosnia and Herzegovina as a "patchwork" dispersed across the country's territorial units, yet argues that the framework's deficiencies cannot alone explain the rarity of arbitral proceedings, pointing instead to institutional weakness and legal culture.[17] Practitioner-oriented surveys, notably the national chapters in the Chambers Global Practice Guides and the CMS Expert Guide, converge on the diagnosis that the absence of a *lex specialis* and the presence of provisions permitting the termination of arbitration agreements undermine predictability.[18] Literature specifically on mediation in Bosnia and Herzegovina dating from the early to mid-2000s is closely linked to the donor-driven introduction of mediation in the mid-2000s. The World Bank/IFC Southeast Europe Enterprise Development (SEED) project aimed to document the pilot programmes in the Banja Luka and Sarajevo first-instance courts. The Association of Mediators of Bosnia and Herzegovina published a practice-oriented guide collecting statutory and regulatory materials.[19] Other sources from the same period examined the "transplantation" of North American mediation models into the Bosnian procedural environment and identified early frictions between the state-level mediation law and entity procedural codes.[20] Mutapčić's work on Mediation in the judicial system

16 Jozo Čizmić, 'O arbitražnom Rješavanju Sporova s Posebnim Osvrtom na Pravo Bosne i Hercegovine' (2016) 53(4) Zbornik radova Pravnog fakulteta u Splitu 1213.

17 Marc Bungenberg and others (eds), *Alternative Dispute Resolution in the Western Balkans: Trends and Challenges* (Springer 2025) 61 <https://www.springerprofessional.de/en/alternative-dispute-resolution-in-the-western-balkans/50581518> accessed 25 July 2026.

18 Miodrag Jevtić, 'Bosnia & Herzegovina: Trends and Developments' in Gary Born (ed), *International Arbitration 2025* (Chambers Global Practice Guides, Chambers and Partners 2025) 66 <https://gpg-pdf.chambers.com/International-Arbitration-2025/66/> accessed 25 July 2026; Indir Osmić, 'International Arbitration Law and Rules in Bosnia & Herzegovina' (*CMS Expert Guide to International Arbitration*, 7 September 2020) <https://cms.law/en/int/expert-guides/cms-expert-guide-to-international-arbitration/bosnia-and-herzegovina> accessed 25 July 2026.

19 Vesna Dasović-Marković and Kendel Rust, *Introduction of Mediation in Banja Luka's 1st Instance Court: Evaluation Report Alternative Dispute Resolution Program in Bosnia and Herzegovina* (World Bank 2004) <http://documents.worldbank.org/curated/en/662201468014043807> accessed 25 July 2026; Udruženje medijatora u Bosni i Hercegovini, *Vodič Kroz Medijaciju u Bosni i Hercegovini* (Udruženje medijatora u BiH 2007) <https://www.yumpu.com/xx/document/view/37906941/strucna-publikacija-vodic-kroz-medijaciju-u-bosni-i-hercegovini#google_vignette> accessed 25 July 2026.

20 Steven Austermiller, 'Mediation in Bosnia and Herzegovina: A Second Application' (2006) 9 Yale Human Rights and Development Law Journal 132 <https://openyls.law.yale.edu/entities/publication/bc7527a5-b0bc-4b42-a052-7d866ed643cd> accessed 25 July 2026 (analysing the Law on

of Bosnia and Herzegovina[21] provides an overview of the development, legal framework, and position of mediation in Bosnia and Herzegovina's judiciary.

The third group of literature specifically related to Bosnia and Herzegovina addresses investor-state dispute settlement (ISDS). A series of claims against Bosnia and Herzegovina, including *Viaduct (Goljevšček)*, *ALAS International*, *Elektrogospodarstvo Slovenije*, and the India-related coke-industry disputes, has generated case commentary and policy analysis emphasising the state's uneasy response and the fiscal consequences of adverse awards.[22]

The literature review shows that there are three areas where more research is needed. First, arbitration and mediation were mostly treated in isolation from one another, without comparison between how those two mechanisms are treated in Bosnia and Herzegovina. Second, comparative analysis tends either to subsume Bosnia and Herzegovina within generic "Western Balkans" surveys or falls short on the specific effects of its constitutional order. Third, the conformity of the legal framework related specifically to mediation in Bosnia and Herzegovina with the full range of applicable international instruments, including the more recent Singapore Convention on Mediation and the 2018 UNCITRAL Model Law on International Commercial Mediation, has not been systematically assessed. Covering those areas represented the primary motivation for this research which aims to cover, among others, those specific deficiencies in the current literature.

3 METHODOLOGY

The article uses methods such as doctrinal content analysis, legal historical method, comparative legal method, and legal normative method.

Content analysis is used to interpret the doctrinal and positive legal content of the legislation applicable to arbitration and mediation in Bosnia and Herzegovina. The primary sources are the Constitution of Bosnia and Herzegovina, the Laws of Civil Procedure of the Federation of Bosnia and Herzegovina, the Republika Srpska, and the Brčko District, the state-level Mediation law of 2004 and 2005 with its implementing regulations, and the 1982 Law on the resolution of conflicts of laws (Private international law), which was taken over from the former Yugoslavia. In addition, the rules of the

Mediation Procedure of 2004 against the UNCITRAL Model Law on International Commercial Conciliation and the US Uniform Mediation Act).

21 Džemaludin Mutapčić, *Medijacija u pravosudnom sistemu Bosne i Hercegovine* (Biblioteka Logos, Planjax 2011).

22 'Arbitration in Bosnia and Herzegovina' (*Aceris Law*, 13 April 2025) <https://www.acerislaw.com/arbitration-in-bosnia-and-herzegovina> accessed 25 July 2026; 'Bosnia and Herzegovina: Cases as Respondent State' (*UNCTAD Investment Dispute Settlement Navigator*, 2023) <https://investmentpolicy.unctad.org/investment-dispute-settlement/country/25/bosnia-and-herzegovina/respondent> accessed 25 July 2026.

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Arbitration Court attached to the Foreign Trade Chamber of Bosnia and Herzegovina are considered. On the international level, the relevant sources applicable in Bosnia and Herzegovina principally refer to the New York Convention of 1958, the European Convention on International Commercial Arbitration of 1961, and the ICSID Convention. This method helped in reaching conclusions on the points where legislation of Bosnia and Herzegovina is lacking or in need of update.

The historical method presents the development of the current framework since the time of the former Yugoslavia, especially after the new post-Dayton constitutional order of Bosnia and Herzegovina and its divergent path of emergence. The historical method facilitated the conclusions related to the divergent development of mediation and arbitration in Bosnia and Herzegovina and the trajectory that followed the country's independence.

The comparative method was used, and the following jurisdictions were selected: Croatia, Serbia, Slovenia, Montenegro, and North Macedonia. The selected jurisdictions are those with which Bosnia and Herzegovina shared a common baseline reference of former Yugoslav legislation and a similar legal tradition. Besides the shared baseline, the selected jurisdictions are also useful for comparison, as all the countries selected are at different levels of EU accession (some being long-term EU members, while others are at different stages of accession process). The comparative method was used to showcase the differences between the compared jurisdictions on the points of arbitration and mediation legislation and policy related to ADRs, the main comparator being UNCITRAL Model Law(s), the mediation framework, and its alignment with Directive 2008/52/EC. The comparative method used is focused narrowly on points where the legislation of Bosnia and Herzegovina has been identified to be lacking and in need of an update. A more comprehensive comparative overview would exceed the aims and limits of the research. Therefore, the legislation of jurisdictions compared pinpoints questions such as whether there were new statutes adopted and/or accessions to new international treaties such as the Singapore Convention, points where Bosnia and Herzegovina falls behind. On the arbitration side, questions such as whether the issues of competence-competence, separability, and interim-measures regime are legislated in the new statutes are examined, since those have been identified in legislation of Bosnia and Herzegovina as lacking. On the mediation side, the questions whether new statutes take a different approach in incentivising mediation proceedings, by requiring any initial mediation attempts prior to litigation or by offering incentives related to costs of the proceedings, the alignment with Directive 2008/52/EC or accession to Singapore Convention, all identified in legislation of Bosnia and Herzegovina as in need of an update. The comparative method substantiates the conclusions and recommendations regarding legislative amendments in Bosnia and Herzegovina, by showcasing the gaps between international standards and practices of comparably similar jurisdictions.

The research is primarily based on doctrinal analysis and not on empirical data, largely because empirical data related to arbitration and mediation, both being mostly private

dispute resolution mechanisms, is scarce and where available, incomplete. Another factor is the absence of credible institutional data on the number of cases involving mediation and arbitration, which renders any conclusion and empirical analysis without solid basis for conclusion. Some empirical data are presented, where available to showcase the underusage of ADR in Bosnia and Herzegovina as compared to litigation, which is still seen as a "standard" dispute resolution venue.

The normative component measures the legislative frameworks of Bosnia and Herzegovina with the benchmarks identified from international documents such as the New York and European Conventions, the ICSID Convention, Model laws and other instruments (such as the UNCITRAL Model Laws of 1985/2006 and 2002/2018), European Union law, in parts that are relevant to the accession process (Directive 2008/52/EC and the acquis on judiciary and fundamental rights), and Council of Europe recommendations on mediation.[23]

4 ANALYSIS

4.1. Conceptual Framework: Arbitration and Mediation in the Legal Order of Bosnia and Herzegovina

Arbitration and mediation belong to the group of alternative dispute resolution mechanisms (ADRs), but they rest on fundamentally different premises, and the laws of Bosnia and Herzegovina and other countries reflect this difference.

Arbitration is an adjudicative process in which the parties, by agreement, confer to one or more private adjudicators the power to render a decision that is final and binding, and to which the legal order attaches effects equivalent to those of a court judgment. The Laws on Civil Procedure of both entities define the domain of arbitrability by reference to rights of which the parties may freely dispose, permitting parties to agree to submit to arbitration existing or future disputes arising out of a defined legal relationship, provided at least in the international context that statutory conditions are met. Matters of criminal law and rights withdrawn from party disposition are excluded.[24] The arbitral award, once

23 Recommendation Rec(98)1 of the Committee of Ministers to Member States on Family Mediation (adopted 21 January 1998) <https://rm.coe.int/1680747b77> accessed 25 July 2026; Recommendation Rec(2002)10 of the Committee of Ministers to member States on Mediation in Civil Matters (adopted 18 September 2002) <https://search.coe.int/cm?i=09125948801f59f4> accessed 25 July 2026.

24 Zakon o parničnom postupku Federacije Bosne i Hercegovine (FBiH) [2003] Službene novine FBiH 53, arts 434–453 <https://pravosudje.ba/vstvfo/E/10/article/115983> accessed 25 July 2026; Zakon o parničnom postupku Republike Srpske (RS) [2003] Službeni glasnik RS 58, arts 434–453 <https://www.paragraf.ba/propisi/republika-srpska/zakon-o-parnicnom-postupku.html> accessed 25 July 2026; Zakon o parničnom postupku Brčko Distrikta BiH [2018] Službeni glasnik Brčko Distrikta BiH 28, arts 427–446 <https://www.paragraf.ba/propisi/brcko/zakon-o-parnicnom-postupku-brcko-distrikta-bih.html> accessed 25 July 2026.

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rendered, has *inter partes* the force of a final judgment unless the parties have provided for review by a higher-instance arbitral tribunal (if any), and it constitutes an enforceable title.[25] Arbitration in Bosnia and Herzegovina may be *ad hoc* or institutional; the principal domestic institution is the Arbitration Court attached to the Foreign Trade Chamber of Bosnia and Herzegovina (*Arbitražni sud pri Vanjskotrgovinskoj/Spoljnotrgovinskoj komori BiH*),[26] competent for both domestic and international commercial disputes when the parties have so agreed.[27]

Mediation, by contrast, is a facilitative and consensual process. The state-level Law on Mediation Procedure of 2004 (Mediation law) defines mediation as a procedure in which a neutral third person, the mediator, assists the parties in their efforts to reach a mutually acceptable resolution of their dispute, and expressly provides that the mediator may not impose a solution on the parties.[28] The Mediation law contains the basic principles of the process, such as voluntariness, confidentiality, equality of the parties, and the obligations of neutrality and impartiality of the mediator. The Mediation law also foresees that statements made by the parties in mediation may not, without their consent, be used as evidence in any other proceedings.[29] However, arguably the most important and consequential provision is found in article 25 of the Mediation law, under which a settlement agreement concluded during the mediation process has the force of an enforceable document (bos.: *izvršna isprava*). Such "radical" solution removes the need for subsequent judicial recognition procedure; a rather strong stance compared to standards at the time of enactment.[30]

The legal framework of ADR in Bosnia and Herzegovina shows distinct features. The first is the asymmetric regulation. Mediation is governed by state-level legislation of general territorial application throughout the country, whereas arbitration is governed by entity (and District) level procedural codes. The state Mediation law applies before all courts in the country, in both entities and the Brčko District, which makes it one of the relatively few instruments of uniform civil-justice regulation at the state level in Bosnia and Herzegovina.[31] The second feature is the relational position of both mechanisms related

25 Zakon o parničnom postupku FBiH (n 24) art 448; Zakon o parničnom postupku RS (n 24) art 448. See also, International Association of Defense Counsel, *Survey of International Litigation Procedures: Bosnia and Herzegovina* (IADC 2014) 2-3.

26 The institutional title retains the term "Arbitration Court" (bos.: Sud), rather than Arbitration tribunal or other more frequently used terms found elsewhere.

27 Pravilnik o postupku pred Arbitražnim sudom pri Vanjskotrgovinskoj komori BiH (adopted 18 March 2025) [2025] Službeni glasnik BiH 26 <https://advokat-prnjavorac.com/zakoni/pravilnik-o-postupku-pred-arbitraznim-sudom-pri-vanjskotrgovinskoj-komori-bosne-i-hercegovine.html> accessed 25 July 2026.

28 Zakon o postupku medijacije Bosne i Hercegovine (BiH) [2004] Službeni glasnik BiH 37, arts 2, 23 <https://ksud-livno.pravosudje.ba/vstvfo/H/10/article/126809> accessed 25 July 2026.

29 ibid, arts 5–9.

30 ibid, art 25.

31 ibid, art 1. See also, Austermiller (n 20).

to court proceedings. The applicable Laws on Civil Procedure oblige the courts, in appropriate cases, to draw the parties' attention to the possibility of settlement and mediation. If the parties agree during litigation to attempt mediation, the court will adjourn or stay the proceedings for a limited period.[32] Conversely, a valid arbitration agreement bars the jurisdiction of the ordinary courts. Upon a timely objection, the court will declare itself without jurisdiction and dismiss the claim. Neither mechanism is mandatory, the recourse to mediation is not a condition of access to court, and arbitration rests entirely on party agreement.

4.2. Historical Development

4.2.1. The Yugoslav Inheritance

The historical starting point is the legal framework of the Socialist Federal Republic of Yugoslavia (SFRY), of which Bosnia and Herzegovina was a constituent republic until 1992. Yugoslav law regulated arbitration, termed "*izbrani sud*" (chosen court), in the federal Code of Civil Procedure of 1976, in a short chapter (art. 468-487) governing the arbitration agreement, the constitution of the tribunal, the award, and its setting aside.[33] In parallel, foreign-trade arbitration was institutionalised at the Yugoslav Chamber of Economy in Belgrade, whose Foreign Trade Arbitration enjoyed a monopoly over disputes with a foreign element involving Yugoslav enterprises and acquired considerable regional notability. Private-international-law aspects, including the recognition and enforcement of foreign arbitral awards, were codified in the federal law with the long and cumbersome title of the Act on the Resolution of Conflicts of Laws with the Regulations of Other Countries of 1982 (Private international law).[34] The SFRY was, moreover, an early contracting state of the New York Convention (1958) and the European Convention on International Commercial Arbitration (1961). Mediation, by contrast, had no statutory existence as an autonomous procedure. Its functional analogue was the judicial settlement (*sudsko poravnanje*) and the conciliatory ethos of socialist courts and self-management arbitration boards (*mirovna vijeća*).[35]

32 Zakon o parničnom postupku FBiH (n 24) art 86; Zakon o parničnom postupku RS (n 24) art 86; Zakon o postupku medijacije BiH (n 28) arts 12, 13 (adjournment of the hearing for up to thirty days where the parties agree to mediate).

33 Zakon o parničnom postupku Socijalističke Federativne Republike Jugoslavije (SFRJ) [1977] Službeni list SFRJ 4, arts 468a–487 <https://www.wipo.int/wipolex/en/legislation/details/2171> accessed 25 July 2026.

34 Zakon o rješavanju sukoba zakona s propisima drugih zemalja u određenim odnosima [1982] Službeni list SFRJ 43, 72 <https://opsud-mostar.pravosudje.ba/vstvfo/E/10/article/152954> accessed 25 July 2026.

35 Mutapčić (n 21) 18.

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Upon the dissolution of the SFRY, Bosnia and Herzegovina, like the other successor states, took over the federal legislation as its own by way of general reception and largely succeeded to the SFRY's treaty obligations. By notification of succession deposited in 1993, Bosnia and Herzegovina became a party to the New York Convention with effect from the date of its independence, maintaining the reciprocity and commercial reservations originally entered by the SFRY, and likewise succeeded to the European Convention of 1961.[36]

4.2.2. The Post-Dayton Reform Period (1995–2005)

The General Framework Peace Agreement for Bosnia and Herzegovina (Dayton agreement) of 1995 profoundly reshaped the constitutional and legislative order of the country (through its Annex 4 which serves as the country's Constitution). The matters of civil procedure are within the competence of the entities, and in 2003 both entities enacted new Laws on Civil Procedure as part of a donor-supported reform of civil justice designed to accelerate proceedings and shift more responsibility to the parties. Each Civil Procedure Law contains, in a chapter, a set of arbitration provisions, in articles 434 to 453. They were drafted "with reference" to the UNCITRAL Model Law but do not follow the Model Law structure, its main points being radically shortened. The later Brčko District Law on Civil Procedure followed with materially identical provisions.[37] Meanwhile, the Arbitration Court at the Foreign Trade Chamber of Bosnia and Herzegovina adopted its Rulebook on Arbitration (2003). It was aimed at establishing an institutional arbitration forum at the state level, following the tradition of the former Yugoslav foreign-trade arbitration.[38]

Mediation followed a different path. Building on comparative models promoted by the World Bank/IFC SEED project and drawing on the UNCITRAL Model Law on International Commercial Conciliation of 2002, the Parliamentary Assembly of Bosnia and Herzegovina adopted the Law on Mediation Procedure in 2004 (Mediation law), among the earliest dedicated mediation statutes in South-East Europe. The law was followed in 2005 by the Law on the Transfer of Mediation Affairs to the Association of Mediators, which delegated the operational administration of mediation (training, certification, the register of mediators, ethical discipline) to the professional Association of Mediators of Bosnia and

36 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958) [1959] UNTS 330/3 <https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=xxii-1&chapter=22&clang=_en> accessed 25 July 2026. Succession by Bosnia and Herzegovina notified 1 September 1993, with effect from 6 March 1992. European Convention on International Commercial Arbitration (adopted 21 April 1961) [1965] UNTS 484/349 <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-2&chapter=22&clang=_en> accessed 25 July 2026.

37 Zakon o parničnom postupku FBiH (n 24) arts 434–453; Zakon o parničnom postupku RS (n 24) arts 434–453; Zakon o parničnom postupku Brčko Distrikta (n 24) arts 427–446.

38 Osmić (n 18) (describing the 2003 Rulebook and its scope).

Herzegovina.[39] Several implementing regulations adopted in 2006, on the register and list of mediators, referral to mediation, the training programme, mediator remuneration, liability, discipline, and a code of mediator ethics, completed the normative framework.[40] Pilot projects in the first-instance courts of Banja Luka (2004) and Sarajevo (2005), supported by the SEED project, produced encouraging early results. By the end of 2006, several hundred mediations had been conducted, with settlement rates reported at above one half of concluded procedures.[41]

4.2.3. Stagnation (2006–2026)

The two decades following the initial legislative activity are best characterised as a period of normative stagnation with some reform initiatives. No dedicated state-level or entity-level arbitration law has been enacted, despite repeated calls from scholars and practitioners and periodic drafting initiatives; the constitutional division of competences and the absence of political consensus have proved decisive obstacles.[42] The mediation framework has likewise remained essentially unamended at the state level. Following the initial donor-funded promotion of mediation, the numbers dropped to minuscule levels as seen in the Report by CEPEJ. At the same time, neighbouring jurisdictions moved on with the amendments aligned with Directive 2008/52/EC. Institutional developments have been modest as well. The Foreign Trade Chamber's Arbitration Court revised its arbitration rules, most recently in a 2025 reform. The amendments were intended to modernise procedure and enhance international credibility.[43] Meanwhile, the country's exposure to investor-state arbitration, including the *Viaduct* award and subsequent enforcement measures against state assets, has forced a degree of public and institutional interest, and the EU accession process, formally opened in 2024, but essentially stalling, has created external pressure to address judicial backlog and to promote ADR within the Chapter 23 framework.[44]

39 Zakon o postupku medijacije BiH (n 28); Zakon o prijenosu poslova medijacije na udruženje medijatora BiH [2005] Službeni glasnik BiH 52 <http://www.podaci.net/_gBiH/propis/Zakon_o_prijenosu/Z-ppmume02v0552.html> accessed 25 July 2026; UNCITRAL, *UNCITRAL Model Law on International Commercial Conciliation with Guide to Enactment and Use 2002* (UN Doc A/57/17, UN 2004) annex I <https://uncitral.un.org/en/texts/mediation/modellaw/commercial_conciliation> accessed 25 July 2026.

40 Pravilnik o registru medijatora; Pravilnik o listi medijatora; Pravilnik o upućivanju na medijaciju; Kodeks medijatorske etike; Pravilnik o programu obuke za medijatore [2006] Službeni glasnik BiH 21 <https://www.umbih.ba/index.php/medijacija/zakoni-i-pravilnici> accessed 25 July 2026.

41 Dasović-Marković and Rust (n 19) § 7; Udruženje medijatora u BiH (n 19) 5-9 (reporting 590 mediations by the end of 2006, of which 330 ended in settlement).

42 Jevtić (n 18) (noting that scholars and practitioners have long advocated a unified state-level arbitration law, and that the constitutional allocation of competences has made such reform politically difficult).

43 ibid (describing the 2025 reform of the arbitration rules of the Foreign Trade Chamber of BiH as a step toward modernisation).

44 'Arbitration in Bosnia and Herzegovina' (n 22); European Commission (n 6) ch 23.

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4.3. Sources of Law

4.3.1. Constitutional Foundations

The Constitution of Bosnia and Herzegovina enumerates the competences of the state institutions and assigns all residual functions to the entities.[45] Matters of civil procedure, as well as arbitration, are not among the enumerated state competences. It therefore belongs to the entities and, by virtue of the arbitral award establishing its status within the constitutional framework of Bosnia and Herzegovina, to the Brčko District. The constitutional system can be described as rather complex, and when it comes to delivering necessary reforms, as dysfunctional, especially when it comes to EU accession reforms.[46]

Since there is a presumption for division of competences that favours entities, and not the state level, the adoption of unified legislation needs to be rationalised through constitutional provisions. The adoption of mediation legislation at the state level was constitutionally rationalised through the framework character of the 2004 Mediation Law and inter-entity consent, but the episode remains an exception rather than a rule. This can be seen in the sector-specific push by international donors and advisors that recommended that approach for mediation but left arbitration.

Generally, the constitutional right of access to court and to a fair hearing, incorporated through the direct applicability of the European Convention on Human Rights under article II of the Constitution, forms the background against which the voluntariness of ADRs and judicial control must be understood.[47]

4.3.2. Legislative Sources on Arbitration

In the absence of a *lex specialis*, the law of arbitration applicable in Bosnia and Herzegovina is contained in three parallel chapters of the Laws on Civil Procedure: articles 434 to 453 of the FBiH law, articles 434 to 453 of the RS law, and articles 427 to 446 of the Brčko District law. The three sets of provisions are textually harmonised to the point of near-identity, which mitigates, though it does not eliminate, the risks of internal fragmentation, due to the ever-present risk of diverging amendments and inconsistent legal practice. Their content may be summarised with some basic points. Parties may agree to arbitrate disputes concerning rights at their free disposal; the arbitration agreement must be in writing. The number of arbitrators is not determined but must be odd. In the absence of a party agreement, the law foresees subsidiary court assistance in the appointment of arbitrators. The parties are free to determine the seat, language, and rules of procedure, subject to

45 See, Constitution of Bosnia and Herzegovina (n 4) art III (1), (3)(a).

46 Halilovic (n 3).

47 Constitution of Bosnia and Herzegovina (n 4) art II (2) (providing that the ECHR and its Protocols apply directly and have priority over all other law).

mandatory guarantees of equal treatment. Failing agreement, the tribunal may decide. The award must be in writing and reasoned. The award has the force of a final judgment and constitutes an enforceable title. The award may be challenged before the courts by a lawsuit for setting aside within statutory time limits. The grounds are enumerated and refer to the invalidity of the arbitration agreement, irregular composition of the tribunal, violation of the right to be heard, excess of mandate, defects of form, and conflict with public policy.[48]

Two features of these chapters have attracted criticism. First, the Laws contain provisions, articles 450 and 451, under which an arbitration agreement may cease to have effect or may be terminated by judicial declaration in circumstances such as the failure of the appointment or the impossibility of constituting the tribunal, in terms broad enough to permit an unwilling party to bring about the collapse of the agreement. Commentators regard these provisions as a serious derogation from the principle of the binding force of arbitration agreements and a source of procedural unpredictability.[49] Second, the Laws are silent on several matters that the UNCITRAL Model Law treats as essential: there is no express recognition of the tribunal's competence to rule on its own jurisdiction (*Kompetenz-Kompetenz*), no provision on the separability of the arbitration clause, no regulation of interim measures by or in support of arbitral tribunals, and no provisions on multi-party proceedings or the default of a party.[50]

The recognition and enforcement of foreign arbitral awards is governed not by the procedural codes but by the 1982 Act on the Resolution of Conflicts of Laws, taken over from the SFRY (private international law), whose chapter on the recognition of foreign decisions applies to awards and operates alongside the New York Convention. In practice, the Convention prevails as *lex specialis* for awards from contracting states, which today constitute the overwhelming majority.[51] Enforcement itself proceeds under the entity Laws on Enforcement Procedure, in which arbitral awards and mediated settlements alike figure among enforceable documents.[52]

48 Zakon o parničnom postupku FBiH (n 24) arts 435–453; Zakon o parničnom postupku RS (n 24) arts 435–453. For a synthetic English-language overview, see Osmić (n 18).

49 Jevtić (n 18) (arguing that these provisions severely undermine party autonomy and procedural predictability and should be removed or significantly limited).

50 'Arbitration in Bosnia and Herzegovina' (n 22) (noting the absence of explicit rules on the tribunal's power to determine its own jurisdiction); Osmić (n 18) (noting the absence of provisions on multi-party issues and party default).

51 Zakon o rješavanju sukoba zakona s propisima drugih zemalja (n 34).

52 Zakon o izvršnom postupku Federacije Bosne i Hercegovine (FBiH) [2003] Službene novine FBiH 32/03 <https://www.fbihvlada.gov.ba/bosanski/zakoni/2003/zakoni/37hrv.htm> accessed 25 July 2026; Zakon o izvršnom postupku Republike Srpske (RS) [2003] Službeni glasnik RS 59 <https://www.paragraf.ba/propisi/republika-srpska/zakon-o-izvrsnom-postupku.html> accessed 25 July 2026.

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4.3.3. Legislative Sources on Mediation

The mediation framework rests on the two state laws of 2004 and 2005 and the 2006 implementing regulations. The Law on Mediation regulates the basic questions related to mediation procedure such as: initiation of mediation by written agreement between the parties and the mediator; the content of that agreement; the conduct of the procedure, including the mediator's power to propose options for settlement without imposing any; confidentiality and its evidentiary consequences; conflict-of-interest rules for mediators; the termination of the procedure; and the form and effects of the settlement.[53] Where court proceedings are pending, the parties must inform the court of their agreement to mediate, and the court will adjourn the hearing for up to thirty days.[54] Mediator qualifications, higher education, completed accredited training, and registration, are entrusted to the Association of Mediators. The 2005 Transfer law confers public powers of certification, registration, and discipline to the Association. The foreign mediators may act in individual cases subject to reciprocity and prior consent of the Ministry of Justice and the Association.[55] The Laws on Civil Procedure complement this framework by empowering and, in appropriate circumstances, obliging judges to encourage parties to settlement, including through mediation.[56]

4.3.4. International Sources

Bosnia and Herzegovina is bound by the principal instruments of the international arbitration regime. It is a contracting state of the New York Convention, subject to reciprocity and commercial-dispute reservations; of the European Convention on International Commercial Arbitration of 1961; and of the ICSID Convention, which it ratified in 1997.[57] It is a party to the Energy Charter Treaty and to a substantial network of bilateral investment treaties (around forty in force), most of which contain investor-state arbitration clauses referring to ICSID or UNCITRAL arbitration. These treaties are the legal basis for known claims against the state in investor-state arbitration cases.[58] In the field of mediation, by contrast, the state has undertaken no treaty obligations. It has not signed

53 Zakon o postupku medijacije BiH (n 28) arts 10–25.

54 ibid, arts 12, 13.

55 ibid, arts 26–31; Zakon o prijenosu poslova medijacije na udruženje medijatora BiH (n 39).

56 Zakon o parničnom postupku FBiH (n 24) art 86; Zakon o parničnom postupku RS (n 24) art 86.

57 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (n 36); European Convention on International Commercial Arbitration (n 36); Convention on the Settlement of Investment Disputes between States and Nationals of Other States (adopted 18 March 1965) [1968] UNTS 575/159 <https://treaties.un.org/pages/showDetails.aspx?objid=080000028012a925> accessed 25 July 2026.

58 Energy Charter Treaty (adopted 17 December 1994) [2002] UNTS 2080/95 <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028009ac15> accessed 25 July 2026; 'Bosnia and Herzegovina: Cases' (n 22).

the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention) of 2019, and, not being an EU member state, it is not bound by Directive 2008/52/EC, although the Directive constitutes accession-relevant acquis and a *de facto* benchmark.[59]

4.3.5. Institutional Rules

The Rulebook on Arbitration of the Arbitration Court at the Foreign Trade Chamber of Bosnia and Herzegovina governs institutional arbitration where the parties have agreed on that forum, regulating the organisation of the Court, commencement of proceedings, appointment and challenge of arbitrators, conduct of the proceedings, the award, and costs. The 2025 revision modernised these rules to align them more closely with contemporary institutional practice.[60] In the area of mediation, the operative rules are those of the Association of Mediators. The register, training programme, tariff, and code of ethics, which together perform the regulatory function that in other jurisdictions is usually performed by ministries of justice or judicial councils, are adopted by the Association.

4.4. Comparative Analysis with the Successor States of the Former Yugoslavia

The successor states of the SFRY began in 1991 from an essentially common legal position. Arbitration was regulated in a chapter of the received federal Code of Civil Procedure, recognition of foreign awards under the 1982 Private International Law, membership of the New York and European Conventions by succession, and no autonomous mediation legislation. Their subsequent trajectories, however, diverged increasingly over time.

4.4.1. Slovenia

Slovenia, as the first successor state of the former Yugoslavia to join the EU (2004), completed the modernisation of both ADR mechanisms the earliest. Its Arbitration Act of 2008 adopted the UNCITRAL Model Law as amended in 2006 and includes express provisions on competence-competence, separability, and interim-measures regime.[61] On the mediation side, the Mediation in Civil and Commercial Matters Act of 2008 transposed Directive 2008/52/EC and drew on the UNCITRAL Model Law on International Commercial Conciliation, while the Act on Alternative Dispute Resolution in Judicial Matters of 2009 obliged courts to offer parties the possibility of court-adjacent

59 UNCITRAL, *United Nations Convention On International Settlement Agreements Resulting From Mediation* (UN 2019) <Https://Uncitral.Un.Org/En/Texts/Mediation/Conventions/International_Settlement_Agreements> Accessed 25 July 2026; Directive 2008/52/EC (n 10).

60 Jevtić (n 18); Osmić (n 18).

61 Zakon o arbitraži Republike Slovenije (ZArbit) [2008] Uradni list RS (Slovenia) 45 <https://pisrs.si/pregledPredpisa?id=ZAKO5288> accessed 25 July 2026.

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mediation in most civil cases, an institutional innovation that produced one of the region's most developed court-adjacent mediation systems.[62] The Ljubljana Arbitration Centre at the Chamber of Commerce and Industry of Slovenia, with modern rules adopted in 2014, has established a regional profile.

4.4.2. Croatia

Croatia enacted its Arbitration Act in 2001, which is modelled on the UNCITRAL Model Law (1985 version), applicable to both domestic and international arbitration seated in Croatia, and consolidates in a single statute matters previously scattered between the procedural code and the conflicts statute. The Permanent Arbitration Court at the Croatian Chamber of Economy administers institutional arbitration.[63] Mediation was regulated by the Conciliation Act of 2003, replaced in 2011 by a statute aligned with Directive 2008/52/EC following EU accession requirements.[64] In March 2026 Croatia adopted a new Mediation Act that significantly strengthens the institutional framework. It consolidates a National Centre for Mediation, introduces a duty to attend an informational meeting on mediation before commencing certain categories of litigation, such as small-value damages claims and disputes arising from succession proceedings. The initiative is backed by cost sanctions rather than inadmissibility and provides fee incentives for parties who genuinely engage in mediation, with express carve-outs for cases involving gender-based and domestic violence.[65] Therefore, Croatia has moved its mediation policy from mere availability toward incentivised promotion.

4.4.3. Serbia

Serbia adopted a dedicated Arbitration Act in 2006, closely following the 1985 Model Law, unifying the regime for domestic and international arbitration. It includes express provisions on issues of competence-competence and separability.[66] Institutionally, the Permanent Arbitration at the Serbian Chamber of Commerce continues the tradition of Belgrade foreign-trade arbitration. The founding of the Belgrade Arbitration Center in 2013

62 Zakon o mediaciji v civilnih in gospodarskih zadevah Republike Slovenije (ZMCGZ) [2008] Uradni list RS (Slovenia) 56/08 <https://pisrs.si/pregledPredpisa?id=ZAKO5289> accessed 25 July 2026; Zakon o alternativnem reševanju sodnih sporov Republike Slovenije (ZARSS) [2009] Uradni list RS (Slovenia) 97/09 <https://pisrs.si/pregledPredpisa?id=ZAKO5648> accessed 25 July 2026.

63 Zakon o arbitraži Republike Hrvatske [2001] Narodne novine 88 <https://www.zakon.hr/z/250/zakon-o-arbitrazi> accessed 25 July 2026. See, Triva and Uzelac (n 14) for the authoritative commentary.

64 Zakon o mirenju Republike Hrvatske [2011] Narodne novine 18/11 <https://narodne-novine.nn.hr/clanci/sluzbeni/2011_02_18_310.html> accessed 25 July 2026.

65 Zakon o medijaciji Republike Hrvatske [2026] Narodne novine 27 <https://narodne-novine.nn.hr/clanci/sluzbeni/2026_03_27_305.html> accessed 25 July 2026.

66 Zakon o arbitraži Republike Srbije [2006] Službeni glasnik RS 46 <https://www.paragraf.rs/propisi/zakon_o_arbitrazi.html > accessed 25 July 2026. See, Knežević and Pavić (n 15); Stanivuković (n 15).

introduced a modern, practitioner-driven institution with regional ambitions. Mediation was first regulated in 2005 and re-regulated by the Law on Mediation in Dispute Resolution of 2014, which aligned the framework with Directive 2008/52/EC. It centralised mediator licencing in the Ministry of Justice and clarified certain issues, including limitation-period effects.[67] Serbia signed the Singapore Convention in 2019, signalling openness to the international enforceability of mediated settlements.

4.4.4. North Macedonia

North Macedonia adopted a Law on International Commercial Arbitration in 2006 based on the Model Law, while domestic arbitration remained governed by the procedural code and the rules of the Permanent Court of Arbitration at the Economic Chamber of Macedonia.[68] Its mediation legislation has passed through several amendments, statutes of 2006 and 2013, followed by a new Law on Mediation in 2021, reflecting alignment with the Directive. North Macedonia has also signed the Singapore Convention.[69]

4.4.5. Montenegro

Montenegro, after its independence in 2006, enacted the Arbitration Law in 2015 based on the 2006 version of the Model Law. It covers domestic and international arbitration in a single statute with express provisions on competence-competence, separability, and interim measures.[70] Montenegro's mediation framework of 2005 was replaced by the Law on Alternative Dispute Resolution of 2020, which introduced, inter alia, mandatory referral to an information session on mediation in certain civil disputes. It also restructured mediator licencing under a Centre for ADR.[71]

4.4.6. Bosnia and Herzegovina in Comparative Perspective

Compared to the situation in neighbouring countries, Bosnia and Herzegovina exhibits certain negative features. Related to arbitration, it is now the only successor state of the

67 Zakon o posredovanju u rešavanju sporova Republike Srbije [2014] Službeni glasnik RS 55/2014 <https://www.paragraf.rs/propisi/zakon_o_posredovanju_u_resavanju_sporova.html> accessed 25 July 2026; previously, Zakon o posredovanju – medijaciji Republike Srbije [2005] Službeni glasnik RS 18 <https://www.paragraf.rs/propisi/zakon_o_posredovanju_medijaciji.html> accessed 25 July 2026.

68 Law on International Commercial Arbitration of the Republic of Macedonia [2006] Official Gazette RM 39 <https://dejure.mk/akti/akt/zakon-za-megjunarodna-trgovska-arbitrazha-na-republika-makedonija> accessed 25 July 2026.

69 Law on Mediation of the Republic of North Macedonia [2021] Official Gazette RNM 294 <https://dejure.mk/akti/akt/zakon-za-medijacija-2> accessed 25 July 2026.

70 Zakon o arbitraži Crne Gore [2015] Službeni list CG 47 <https://www.sluzbenilist.me/propisi/315344> accessed 25 July 2026.

71 Zakon o alternativnom rješavanju sporova Crne Gore [2020] Službeni list RCG 77/20 <https://www.sluzbenilist.me/propisi/310691> accessed 25 July 2026.

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former Yugoslavia without a separate law on arbitration. As mentioned in the neighbouring countries, the inherited Civil Procedure Law chapter has been replaced by Model Law-based separate legislation, following either the 1985 version (in Croatia, Serbia, and North Macedonia) or the 2006 version (in Slovenia and Montenegro). The Civil Procedure Laws provisions in Bosnian laws, though drafted "with reference to" the Model Law, do not have its structural pillars and required completeness, leaving certain important points ambiguous. When it comes to mediation, the situation is different but lacks meaningful updates. Bosnia and Herzegovina legislated early (2004) at the state level but has not updated its framework in two decades, while every other neighbouring jurisdiction has enacted several amendments to their legislation aligned with Directive 2008/52/EC. The most recent reforms in Croatia (2026) and Montenegro (2020) have moved further to incentivise the use of mediation. Furthermore, the Sarajevo-based Foreign Trade Chamber's Arbitration Court has a much lower profile than the Permanent Arbitration in Belgrade, the Zagreb Permanent Arbitration Court, or the Ljubljana Arbitration Centre.[72]

4.5. Conformity with International Legal Documents

When it comes to the conformity and fulfilment of the commitments Bosnia and Herzegovina undertook through international treaties, it can be said that the legislative framework is broadly compliant. The New York Convention is broadly applied. The grounds for refusing recognition of the award in the 1982 Private International Law are generally compatible with article V; and there are no reports suggesting systematic non-compliance in practice. The point of divergence can be found in article II, since the Bosnian legal framework is ambiguous and permits courts to terminate arbitration agreements in loosely defined circumstances, which runs contrary to the obligation to refer parties to arbitration where a valid agreement exists. Conformity with the European Convention of 1961 and the ICSID Convention raises no distinctive difficulties related to legislation, although the *Viaduct* case showed significant systemic issues related to enforcement testing the commitments under article 54 of the ICSID Convention.[73]

The arbitration provisions in Civil Procedure Laws conform to the UNCITRAL Model Law only in basic outline. The omissions mentioned previously mean that Bosnia and Herzegovina cannot be strictly described as a Model-Law jurisdiction, in contrast to every other state of former Yugoslavia. The Mediation law predates and therefore does not conform to Directive 2008/52/EC in respect of limitation periods and cross-border scope, although its enforceability and confidentiality rules meet or exceed the Directive's requirements. Alignment will eventually become a legal obligation as a practical benchmark during the EU accession process. Finally, Bosnia and Herzegovina did not accede to the

72 Jevtić (n 18).

73 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (n 57) arts 53, 54 (binding force and enforcement of awards).

Singapore Convention, while Serbia, Montenegro, and North Macedonia have signed it. This leaves cross-border mediated settlements involving Bosnian parties without a reliable and dedicated enforcement mechanism and broadly signals the state's indifference to the international mediation regime.[74]

4.6. Evaluation of ADR framework in Bosnia and Herzegovina

Several issues can be identified related to arbitration and mediation in Bosnia and Herzegovina. First, there is normative fragmentation and a long overdue need for legislative amendments. Bosnia and Herzegovina has three parallel sets of provisions related to arbitration, all "made with reference" to the Model Law but not fully implementing it. The Law on mediation also remains unamended since 2004. The enforcement regime is still largely dependent on the inherited Yugoslav era 1982 Private International Law. On the institutional side, the mediator profession is sustained largely by association-level self-regulation. A further problem is the absence of official statistics on arbitration and mediation, creating an obstacle for any potential evidence-based policy and scholarly or practical assessment. The cultural factors also play a significant role. The risk aversion of corporate counsel and public enterprises, judicial unfamiliarity produces a situation in which litigation remains the default option.

On the positive side, the fundamental prerequisites and a solid basis for further reform do exist. The main principles of modern international arbitration law are broadly preserved, as well as enforcement of arbitral awards. Although fragmented and outdated, the functioning framework exists, together with a growing number of educated legal professionals. Mediation law, even though outdated itself, was regarded as progressive at the time of its adoption and broadly accommodates the main principles of mediation. Mediation law, as opposed to arbitration legislation, is adopted uniformly at the state level and foresees voluntariness, confidentiality, impartiality, and, most notably, the direct enforceability of mediated settlements under article 25, an effect that Directive 2008/52/EC would later require member states to make merely *available* upon request.

The shortcomings are nonetheless substantial and require immediate attention. The arbitration provisions in applicable Civil Procedure Laws do not mirror the doctrinal structure on which modern arbitration depends. The absence of an express competence-competence rule creates ambiguity for arbitral tribunals regarding the clear statutory basis for ruling on their own mandate. The absence of a separability rule exposes arbitration clauses to attacks on the main contract, furthering the ambiguity. Articles 450 and 451 of the Civil Procedure Laws, permitting the termination of arbitration agreements, stand in direct conflict with the aims of article II of the New York Convention.[75] The Mediation Law,

74 Singapore Convention on Mediation; on the region's signature pattern, see UNCITRAL, *United Nations Convention on International Settlement Agreements Resulting from Mediation* (n 59).

75 Born (n 1) 1141 ff (on the systemic function of competence-competence); Jevtić (n 18).

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on the other hand, is overdue for an update. It does not regulate the effect of mediation on limitation periods, a core guarantee of Directive 2008/52/EC. Further, it does not address online mediation, cross-border mediation, or the enforceability of international settlement agreements, and its conflict-of-interest rules fall short of European standards.[76]

The institutional framework suffers from what may be called a competence vacuum. No ministry is leading or tasked with designing the ADR policy at the state level, pointing out possible reasons for the lack of reform. The Foreign Trade Chamber's Arbitration Court lacks the caseload, visibility, and resources to compete with similar institutions in Zagreb, Ljubljana, and Belgrade. The Association of Mediators is mostly dependent on membership and project funding and lacks resources to play a more significant role. The absence of statistics is not a trivial issue either and precludes any meaningful scholarly or policy analysis.

On the other hand, the backlog of cases in certain courts situated in more populous areas creates an issue of access to justice and calls for an increased and credible use of ADR mechanisms. The need for assertive (even aggressive) promotion of both mediation and arbitration, even in their current legislative and institutional form, would potentially lead to the allocation of cases and an increase in judicial efficiency. Comparably, as the investor-state arbitration cases show, there is a significant export of "dispute resolution business" from Bosnia and Herzegovina to other arbitration centers, even though growing local expertise exists. The investor-state cases also highlight a fiscal dimension. Adverse awards such as one in the example of *Viaduct*, and the ensuing enforcement measures, represent costs that a proactive arbitration and investment-governance policy might have mitigated.[77]

5 RECOMMENDATIONS

Several broad recommendations can be made to mitigate and improve on the legislative, as well as institutional framework of ADR in Bosnia and Herzegovina.

As a first step, drafting and enactment of a dedicated law on arbitration, based on the UNCITRAL Model Law, 2006 version, should be prioritised. The law should preferably be enacted at the state level with country-wide effect; however, taking into account the constitutional order of the country, the adoption of parallel identical legislation can be considered, as seen in the example of adoption of functionally identical Civil Procedure

76 Directive 2008/52/EC (n 10) arts 6–8 (enforceability, confidentiality, limitation periods); UNCITRAL, *UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation with Guide to Enactment and Use (2018)* (UN Doc A/73/17, UN 2022) annex I <https://uncitral.un.org/en/texts/mediation/modellaw/commercial_conciliation> accessed 25 July 2026.

77 'Arbitration in Bosnia and Herzegovina' (n 22); Jevtić (n 18) (arguing for a transition from a reactive to a proactive posture in investment arbitration).

Laws. However, this option leaves the danger that subsequent amendments might diverge and that the judicial practice might become uneven in the implementation phase. Failing that, amendments of current Civil Procedure Laws, although inadequate solution, could be made. However, those amendments would have to be made in parallel across entities and District. In addition, they would have to be substantial, practically implanting a new arbitration law into existing Civil Procedure Laws, an option plausible but not recommended. In any case legislative solutions need to address currently lacking points such as competence-competence and separability. They should regulate interim measures by tribunals and courts in support of arbitration and replace current articles 450 and 451 or confine termination to narrowly defined cases.[78]

Further, the law on mediation should be amended and aligned simultaneously with Directive 2008/52/EC and the 2018 UNCITRAL Model Law. Specifically, suspension of limitation periods during mediation, express regulation of cross-border and online mediation, refined confidentiality exceptions, and strengthened quality assurance for mediators should be addressed. The direct enforceability of settlements as the existing law's principal hallmark provision should be maintained, and mandatory information sessions should, at a minimum, be considered in certain types of cases. Ultimately, it is in Bosnia and Herzegovina's interest to sign and ratify the Singapore Convention. This step is legislatively inexpensive, visible in terms of presenting the country as mediation-friendly, and regionally overdue.

Even without legislative amendments to the Mediation law, incentives for the use of mediation (as well as arbitration) should be considered. Drawing on Slovenian, Montenegrin, and most recently Croatian experience, entities should consider incentivising court-adjacent mediation with mandatory information sessions in selected categories, such as small claims cases and utility debts. The incentives should be designed to reduce costs (such as court-fee reductions for parties who attempt mediation in good faith) rather than admissibility bars.

On the institutional side, the Foreign Trade Chamber's Arbitration Court should continue with reforms and consider publishing (anonymised) awards or as a minimum case statistics and should prioritise cooperation agreements with regional centers. The High Judicial and Prosecutorial Council should introduce specialised training for judges in arbitration-related and enforcement matters and maintain a public registry of arbitration-related court proceedings and mediation referrals, remedying the information deficit.[79] The Association of Mediators should gain better access to resources and enhance the quality of training and continuous education, and strengthen promotion and advocacy activities.

78 This corresponds to the consensus of recent practice commentary: Jevtić (n 18).

79 Jevtić (n 18) (recommending judicial training and a centralised arbitration registry).

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6 CONCLUSION

It is time to "mediate" a change regarding the treatment of arbitration and mediation in Bosnia and Herzegovina. The basis of a functional legislative and institutional framework exists. However, the state of ADR mechanisms in Bosnia and Herzegovina can be broadly described as outdated, fragmented, and under-used. The underusage is starkly presented in the last available Report by the European Commission for the Efficiency of Justice (CEPEJ), which portrays minuscule numbers compared to litigation, which is still seen as the "go-to" dispute resolution venue. The conclusion becomes even more visible when Bosnia and Herzegovina is compared to neighbouring countries. That is especially true in the case of arbitration, which lacks a single dedicated Arbitration law with country-wide applicability, and is minimally regulated by provisions made "in reference" to Model Law, found in the country's Civil Procedure Laws. Dedicated and definitive arbitration legislation brought in line with the requirements of Model law, would solve many ambiguities, potentially stimulating the increase of use of arbitration in dispute resolution. Mediation, on the other hand, even though having country-wide dedicated legislation, suffers from under-usage. Mediation law, although in need of an update and alignment with the EU standards, gives a solid basis; however, the lack of a credible institutional strategy in support of mediation positions it as a mere curiosity and not as a built-in feature of the judicial system, as it should be. The factors contributing to Bosnia and Herzegovina's slower development in the area of ADR as compared to other countries presented can be identified in the country's complex constitutional order, and the fact that some of the countries analysed are well ahead in their EU accession process (Slovenia and Croatia being members). The EU accession process itself was one of the driving forces for reforms in countries compared, since ADR reform, as a part of wider judicial sector reform is one of pre-accession obligations, and especially in the case of mediation, the countries need to align with the corresponding Directive(s) while aligning with EU *acquis*.

The judicial system, on the other hand, suffers from a chronic backlog of unresolved cases, bringing into question the very right of access to justice to the parties, and is in dire need of ADR mechanisms to offset some portion of those cases and increase efficacy. The example of neighbouring countries, successors of the former Yugoslavia, shows that a shared legislative background (some of which is still in use, as seen in the example of Yugoslav era private international law) cannot be considered as an obstacle. One of the factors that may be considered is a deeply rooted legal culture favouring litigation and holding general mistrust of alternative dispute resolution mechanisms.

What other countries have done and what Bosnia and Herzegovina is failing to do is devise a strategy, as a first step, to address the modernisation and promotion of both arbitration and mediation. Solutions exist, and can be implemented, regardless of the complicated constitutional order. The understanding of the potential benefits of credible use of ADRs to the judicial system as well as the economy and international standing of the country is therefore a priority.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

АРБІТРАЖ ТА МЕДІАЦІЯ В БОСНІЇ І ГЕРЦЕГОВИНІ: ЧАС ДЛЯ УЗГОДЖЕНИХ ЗМІН

Гарун Халілович

АНОТАЦІЯ

Передумови. *У статті досліджено нормативно-правові та інституційні засади застосування механізмів альтернативного вирішення спорів (АВР), зокрема медіації та арбітражу, у Боснії і Герцеговині. Розвиток законодавчого регулювання медіації та арбітражу в Боснії і Герцеговині відбувається за різними напрямами.*

Медіація врегульована єдиним законом, який поширюється на всю територію держави. На момент ухвалення закон був прогресивним, однак зараз потребує оновлення. Натомість арбітраж регулюється не єдиним загальнодержавним нормативно-правовим актом, а окремими положеннями законодавства про цивільне судочинство ентитетів (конституційних утворень Боснії і Герцеговини) та округу Брчко й потребує істотного узгодження з міжнародними стандартами, передусім із Типовим законом ЮНСІТРАЛ про міжнародний торговельний арбітраж. У статті здійснено порівняльний аналіз інституційної та законодавчої бази Боснії і Герцеговини та сусідніх держав, деякі з яких здійснили суттєву модернізацію законодавства у сфері альтернативного вирішення спорів як у межах євроінтеграційного процесу, так і в межах самостійно ініційованих реформ, визнаючи важливість та потенціал альтернативних способів вирішення спорів. Крім того, чинне правове регулювання оцінено з погляду його відповідності міжнародним стандартам, зокрема Типовим законам ЮНСІТРАЛ про міжнародний торговельний арбітраж, Нью-Йоркській конвенції, Європейській конвенції про зовнішньоторговельний арбітраж, Директиві 2008/52/ЄС та Конвенції ООН про міжнародні мирові угоди, досягнуті в результаті медіації (Сінгапурській конвенції про медіацію).

Методи. *У статті застосовано історико-правовий і порівняльно-правовий методи, а також метод контент-аналізу. Проаналізовано нормативно-правову й інституційну структуру, а також динаміку розвитку арбітражу та медіації в Боснії і Герцеговині у зіставленні із сусідніми державами колишньої Югославії, з якими Боснія і Герцеговина мала подібні початкові умови формування системи альтернативного вирішення спорів.*

Результати та висновки. *У статті зроблено висновок, що, попри наявність певних позитивних чинників (зокрема, загальної відповідності вимогам Нью-Йоркської конвенції та дієвої нормативно-інституційної основи для розвитку АВР), механізми альтернативного вирішення спорів усе ще недостатньо використовуються порівняно із сусідніми державами і потребують істотного оновлення для узгодження з міжнародними стандартами.*

Ключові слова: *Боснія і Герцеговина; медіація; арбітраж; альтернативне вирішення спорів; Західні Балкани.*

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