

Decision Enacting the Law on Amendments to the Election Law of Bosnia and Herzegovina

07/22

In the exercise of the powers vested in the High Representative by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1. (d) of the last said Agreement, according to the terms of which the High Representative shall “Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation”;

Recalling Paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid “by making binding decisions, as he judges necessary” on certain issues including (under sub-paragraph (c) thereof) “measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities”;

Recalling further Paragraph 4 of Resolution 1174 (1998) of the United Nations Security Council of 15 June 1998, by which the Security Council, under Chapter VII of the United Nations Charter “... reaffirms that the High Representative is the final authority in theatre regarding the interpretation of Annex 10 on civilian implementation of the Peace Agreement and that in case of dispute he may give his interpretation and make recommendations, and make binding decisions as he judges necessary on issues as elaborated by the Peace Implementation Council in Bonn on 9 and 10 December 1997”;

Underscoring that the Peace Implementation Council Steering Board has condemned “the stagnation and dysfunctionality in the FBiH, including the failure to appoint Federation-level (...) governments for three and a half years since the 2018 General Elections, which is a constitutional, and therefore GFAP, obligation and the fact that the Federation President has failed in his constitutional duty to nominate judges to the Federation Constitutional Court, leaving the Court barely able to function and its Vital National Interest Panel completely unable to function”;

Deploring that the authorities in Bosnia and Herzegovina also failed to implement the decision of the Constitutional Court of Bosnia and Herzegovina of 1st December 2016 in Case No. U 23/14 (hereinafter: Ljubić Case) establishing that the provision of Sub-chapter B, Article 10.12 (2), in part stating that each of the constituent peoples shall be allocated one seat in every canton and the provisions of Chapter 20 – Transitional and Final Provisions of Article 20.16A (2), items a-j of the Election Law of BiH are not in conformity with Article I(2) of the Constitution of BiH and ordered the BiH Parliamentary Assembly to harmonise those provisions with the Constitution of BiH not later than six months from the day of delivery of its decision;

Regretting that the absence of implementation of the Decision taken in the Ljubić case has led to a situation where the legal framework regulating the election of delegates to the House of Peoples of the Federation of Bosnia and Herzegovina was insufficiently harmonized;

Commending the Central Election Commission of Bosnia and Herzegovina for its commitment to ensure that the delegates to the Federation House of Peoples were nevertheless elected following the 2018 General Elections in accordance with bylaws enacted by it;

Persuaded of the importance, in a system like the one put in place under the General Framework Agreement for Peace, to ensure that constituent peoples are adequately protected and not subject to discrimination;

Bearing in mind the need to find a proper balance between maintaining constitutional guarantees given to constituent peoples and Others and the need not only to preserve the functionality of institutions but also to conform to the constitutional obligation not to violate individual rights in a discriminatory manner which follows from Article II(4) of the Constitution of BiH;

Recalling also the Decision of the BiH Constitutional Court in case no. U 14/12 of 26 March 2015 is yet to be implemented but that its implementation is linked to the prior adoption of constitutional and legislative measures in the implementation of the European Court of Human Rights Judgments taken in the *Sejdic-Finci* group of cases and that the relevant provisions of the Constitution of the Federation and the Election Law of Bosnia and Herzegovina regulating the composition and the election of the President and Vice-Presidents of the Federation remain problematic and shall need to be adjusted;

Welcoming the efforts of the European Union and the United States of America to facilitate an agreement on electoral reform that would address the decisions of the European Court on Human Rights and of the Constitutional Court of Bosnia and Herzegovina as well as the deficiencies related to the integrity of the electoral process that were identified by international institutions, including the OSCE Office for Democratic Institutions and Human Rights or the Venice Commission of the Council of Europe;

Regretting that political parties were unable to use that process to reach agreement on the constitutional and electoral reforms needed to restore citizens' confidence and required by the EC Opinion on the BiH membership application;

Emphasizing that the legislative changes hereinafter are provisional and do not release the political parties and the authorities of their responsibility to find solutions that accommodate all pending decisions of the European Court on Human Rights and the Constitutional Court of BiH;

Aware that the negotiations that will take place after the 2022 General Elections in respect to the conditions for BiH to receive candidate status will provide an opportunity to finally put the reform of the BiH Constitution and the Election Law behind us and to take a decisive step towards the country's integration in the European Union;

Bearing in mind the prominent place that elections have under the General Framework Agreement for Peace and the need to guarantee that elections held on October 2, 2022 are free, fair and democratic and can be implemented shortly thereafter regardless of the results;

Always mindful of the need to ensure that guarantees and safeguards built in the Constitution of the Federation and the Election Law of BiH are not used to the detriment of good governance and the functionality of institutions;

Conscious of the importance of overcoming the current deadlock in the institutions of the Federation of BiH to ensure that executive authorities are appointed shortly after the elections;

Aware of the need for Bosnia and Herzegovina to engage meaningfully in reforms needed for the country to advance its integration into European Union and to be able to do so as early as possible;

Having considered and borne in mind all the matters aforesaid, the High Representative hereby issues the following

DECISION

Enacting the Law on Amendments to the Election Law of Bosnia and Herzegovina

1. The Law which follows and which forms an integral part of this Decision shall enter into force as provided for in Article 7 thereof, on an interim basis until such time as the Parliamentary Assembly of Bosnia and Herzegovina adopts this Law in due form, without amendment and with no conditions attached.

2. This Decision shall come into effect immediately and shall be published on the official website of the Office of the High Representative, and in the "Official Gazette of Bosnia and Herzegovina" without delay.

Sarajevo, 2 October 2022

Christian Schmidt

High Representative

LAW ON AMENDMENTS TO THE

ELECTION LAW OF BOSNIA AND HERZEGOVINA

Article 1

In the Election Law of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13, 7/14, 31/16, 41/20, 38/22 and 51/22; hereinafter: the Law), Chapter 9A shall be amended to read:

“Chapter 9A

President and Vice-Presidents of the Federation of BiH

Article 9.13

(1) Any group of eleven delegates in each caucus of constituent peoples of the House of Peoples may nominate a candidate from the corresponding constituent people, provided that each delegate may only support one candidate. All candidates may be elected pursuant to Article 9.15 through 9.19 of this Law as either President or Vice-President of the Federation.

(2) If the requisite number of delegates in one or more constituent people’s caucus(es) fails to nominate a candidate for the positions of President and two Vice-Presidents of the Federation pursuant to Paragraph (1) of this Article within 30 days of the verification of the results for the election of delegates to the House of Peoples, then any group of seven delegates from the constituent people caucus(es) of the House of Peoples that failed to nominate shall do so.

(3) If the requisite number of delegates in one or more constituent people’s caucus(es) fails to nominate a candidate for the positions of President and two Vice-Presidents of the Federation pursuant to Paragraphs (1) and (2) of this Article within 50 days of the verification of the results for the election of delegates to the House of Peoples, then any group of four delegates from the relevant constituent people caucus(es) of the House of Peoples that failed to nominate shall do so.

Article 9.14

The election for the President and two Vice-Presidents of the Federation shall require the approval of a list composed of three candidates including one candidate from among each constituent peoples, each nominated in the relevant constituent people caucus, in the House of Representatives and then in the House of Peoples. The election for the President and two Vice-Presidents of the Federation shall be done by public voting except if otherwise decided by the House.

Article 9.15

(1) The candidates nominated pursuant to Article 9.13 of this Law shall be submitted to the House of Representatives which shall vote on one or more list(s) within 30 days of the submission of the last candidate(s) pursuant to Article 9.13 of this Law. A list shall be approved by the House of Representatives if it is supported by a majority of the members present and voting and shall be forwarded to the House of Peoples for approval.

(2) Should the number of candidates nominated pursuant to Article 9.13 of this Law enable the formation of two lists, a single vote will be organized within the House of Representatives and each member of the House will be able to cast his/her vote for one of the two lists. The list that obtains the highest number of votes in the House of Representatives shall be forwarded to the House of Peoples for approval. If two lists obtain the same number of votes, the list that is composed of the candidates that received cumulatively the most support in the caucuses of the House of Peoples when nominated pursuant to Article 9.13 of this Law shall be forwarded to the House of Peoples. If two lists have obtained the same support in the caucuses of the House of Peoples when nominated pursuant to Article 9.13, the list that is forwarded to the House of Peoples shall be determined by drawing of a lot.

(3) In the event that the number of candidates nominated pursuant to Article 9.13 of this Law enables the formation of more than two lists, a single vote will be organized within the House of Representatives and each member of the House will be able to cast his/her vote for one of the lists. If none of the lists obtains a majority of votes of the members present and voting in the first round of voting, a second round of voting shall be organised within a week where the members of the House of Representative will vote for one of the two most voted lists in

the first round of voting. If two lists obtain the same number of votes, the list that is composed of the candidates that received cumulatively the most support in the caucuses of the House of Peoples when nominated pursuant to Article 9.13 of this Law shall be forwarded to the House of Peoples. If two lists have obtained the same support in the caucuses of the House of Peoples when nominated pursuant to Article 9.13, the list that is forwarded to the House of Peoples shall be determined by drawing of a lot.

Article 9.16

(1) The House of Peoples shall decide by a majority of the delegates present and voting within 30 days of the receipt of the list approved by the House of Representatives.

(2) For the avoidance of any doubt, the delegates to the House of Peoples of the Parliament of the Federation of BiH from the rank of Others shall participate in the procedure prescribed in Paragraph (1) of this Article.

Article 9.17

(1) Notwithstanding Article 9.14 of this Law, if the House of Representatives fails to approve a list of candidates in the deadline provided for in Article 9.15 Paragraph (1) of this Law, the list composed of the candidates that received the most support in the respective caucuses of the House of Peoples when nominated pursuant to Article 9.13 of this Law shall be forwarded to the House of Peoples. If more than one such candidate received identical support in one or more caucuses of the House of Peoples when nominated pursuant to Article 9.13 of this Law, the candidate that is included on the list forwarded to the House of Peoples shall be determined by drawing of a lot. The list forwarded to the House of Peoples shall be considered elected if approved in the House of Peoples in accordance with Article 9.16 of this Law.

(2) Notwithstanding Article 9.14 of this Law, if the House of Peoples fails to vote on the list of candidates submitted by the House of Representatives in the deadline provided for in Article 9.16 Paragraph (1) of this Law, the list approved in the House of Representatives only shall be considered elected.

Article 9.18

(1) If the list of candidates is not approved pursuant to Articles 9.15 to 9.17 of this Law, the procedure shall be repeated. In the repeated procedure, the House of Representatives shall vote for a new list within 15 days of the vote by which the list of candidates was rejected. If the House of Representatives has exhausted all possible lists of candidates nominated pursuant to Article 9.13 of this Law, the procedure provided for in Articles 9.13 through 9.15 of this Law shall be repeated provided that the deadlines for the relevant caucus to nominate candidate(s) stipulated in Article 9.13 of this Law shall be halved and shall start on the day of the vote of House by which it rejected the last list.

(2) In the repeated procedure the list which obtains a majority of votes of the members present and voting in the House of Representatives pursuant to Article 9.15 of this Law shall be considered elected.

Article 9.19

(1) The three candidates approved pursuant to Article 9.13 through 9.18 of this Law shall decide among themselves who shall occupy the position of President. If no agreement is reached, the House of Representatives shall decide.

(2) The mandate of the President and Vice-President shall be for four (4) years provided that the mandate does not expire earlier. The same person may not be elected to one of the positions of either President or Vice-President more than twice consecutively."

Article 2

Article 10.10 shall be amended to read:

"The cantonal legislatures shall elect eighty (80) delegates to the House of Peoples, twenty-three (23) from among the Bosniacs, twenty-three (23) from among the Croats, twenty-three (23) from among the Serbs and eleven (11) from among the group of Others."

Article 3

In Article 10.12 of the Law, Paragraph (2) shall be amended to read:

“(2) For each canton, the population figures for each constituent people and for the group of Others shall be divided by the numbers 1,3,5,7 etc. as long as necessary for the allocation. The numbers resulting from these divisions shall represent the quotient of each constituent people and of the group of Others in each canton. All the constituent peoples’quotients and quotients of the group of Others shall be ordered by size separately, the largest quotient of each constituent people and of the Others being placed first in order. Each constituent people and the group of Others shall be allocated one seat in every canton which has at least one such delegate in its legislative body provided that, if a canton does not have one such delegate in its legislative body, Article 10.16 of this Law shall apply. The highest quotient for each constituent people and for the group of Others in each canton shall be deleted from that constituent peoples’ list of quotients or from the list of the group of Others. The remaining seats shall be allocated to constituent peoples and to the Others one by one in descending order according to the remaining quotients on their respective list.”

Article 4

In Article 10.13 of the Law, a new Paragraph (2) shall be added to read:

“(2) If a Cantonal Assembly fails to elect delegates from one or more constituent peoples or from the group of Others to the House of Peoples of the Federation of BiH within the deadline stipulated in Paragraph (1) of this Article, the seats allocated to the relevant constituent people(s) and/or to the group of Others from that Canton shall be re-allocated in accordance with Article 10.16 of this Law.”

Article 5

In Article 10.16 of the Law, after the existing Paragraph (2), a new Paragraph (3) shall be added to read:

“(3) Exceptionally, the Central Election Commission of BiH shall adopt a special act in order to prescribe the method of filling the seats assigned to one of the constituent peoples or to the group of Others that remain vacant after the procedure provided in Paragraph (1) and (2) of this Article and shall fill the missing number of delegates from among the constituent people or from among the group of Others.”

Article 6

Article 20.16A of the Law shall be deleted.

Article 7

This Law shall enter into force on the eighth day after its publication on the official website of the Office of the High Representative or the day following its publication in the “Official Gazette of Bosnia and Herzegovina”, whichever comes first.