

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

n. 03/22

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”;

Mindful that the Security Council of the United Nations has repeatedly affirmed, through its resolutions adopted pursuant to Chapter VII of the Charter of the United Nations, that the role of High Representative as final authority in theater regarding the implementation of Annex 10 to the GFAP includes the “authority to make binding decisions as he judges necessary on issues as elaborated by the Peace Implementation Council in Bonn on 9 and 10 December 1997”;

Noting that the Constitution of Bosnia and Herzegovina states that Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections and that the principle of periodicity of elections is strongly embedded in international law as both the International Covenant on Civil and Political Rights and the Additional Protocol to the European Convention on Human Rights give it a prominent position;

Recalling that the international community members in letters sent to the Minister of Finance and Treasury of Bosnia and Herzegovina in January and April 2022 urged him to secure funds for the conduct of 2022 General Elections stating that the absence of 2022 budget and temporary financing does not have to restrict the overall capacity and scope of activities that the Central Election Commission of Bosnia and Herzegovina must perform to implement preparatory actions including procurement necessary for the conduct of General Elections, as they are already envisaged in the temporary financing decision;

Considering that the Bosnia and Herzegovina Central Election Commission of Bosnia and Herzegovina adopted on 4 May 2022 the Decision on Calling and Holding the General Elections in Bosnia and Herzegovina in 2022 pursuant to which the elections will be held on Sunday, October 2, 2022;

Considering further that, whereas the 15 days legal deadline for the relevant institutions to secure funding has long passed, the Council of Ministers of Bosnia and Hercegovina failed to enable the Central Election Commission of Bosnia and Herzegovina to proceed with the activities needed to hold elections in a timely manner;

Aware that that the BiH Election Law, in Article 1.2a. Paragraph 1 and 6 regulates that the Budget of the Institutions of BiH and International Obligations shall provide for the cost and expense for the conduct of elections

by the Central Election Commission of BiH referred to in Article 2.9 and Article 2.19 paragraph 17 of this Law and that such funds must be provided by the relevant institutions within 15 days from the day the decision to announce the elections is issued by the Central Election Commission of BiH as well as the fact that Bosnia and Herzegovina competent authorities have failed to provide the necessary funds in due time in clear violation of said obligations;

Regretting that the competent authorities have justified their unwillingness to comply with their obligations under the Election Law of BiH, including by putting forward technical difficulties and that they have interpreted the provisions of the Election Law of BiH to apply only to situations where a budget is adopted by the institutions of BiH in due time, thereby jeopardizing the fundamental right of citizens to choose their own representatives in periodic elections;

Reaffirming that the citizens of Bosnia and Herzegovina must be able to exercise their democratic rights in the free, fair and democratic elections and that the conditions for such elections exists in spite of the inability of their political leaders to reach a compromise on electoral reform;

Bearing in mind the prominent place that elections have under the General Framework Agreement for Peace and its Annexes and convinced of the need to facilitate the resolution of the above-mentioned difficulties in order to guarantee the holding of free, fair and democratic elections on October 2, 2022.

All the above considered, born in mind and noted, I hereby issue the following:

DECISION

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

The Decision Enacting the Law on Amendments to the Election Law of Bosnia and Herzegovina (hereinafter: the Decision) set out hereunder forms an integral part of this Decision.

The Decision shall be in force on an interim basis, until such time as the Parliamentary Assembly of Bosnia and Herzegovina adopts this Decision in due form, without amendments and with no conditions attached.

The Decision Enacting the Law on Amendments to Election Law of Bosnia and Herzegovina 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, 7 June 2022

Christian Schmidt

High Representative

Law on Amendments to the Election Law of Bosnia and Herzegovina

Article 1

Article 1.2a paragraph (6) of 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 and 41/20) is hereby amended to read:

"(6) The total amount for conducting elections envisaged by the respective budgets, the institutions specified by paragraphs (1), (2), (3) and (4) of this Article shall be made available not later than 15 days following the Decision of the Central Election Commission announcing the elections."

After Paragraph (6), new paragraphs (7), (8) and (9) shall be added to read as follows:

"(7) In case the budget for the fiscal year in which the elections are held has not been adopted, the institutions specified in Paragraph (9) of this Article shall provide funds during the temporary financing either from surplus income over expenditures, current reserves or any other source or category of income.

(8) Nothing in the present Article shall be interpreted as preventing allocation of funds prior to the deadline specified in paragraph (6).

(9) The Ministry of Finance and Treasury of Bosnia and Herzegovina and the institutions responsible for budget execution at the relevant level of government shall be responsible for the implementation of the provisions of this Article. "

Article 2

This Law shall enter into force on the eight day after the date of its publication on the official website of the Office of the High Representative or one day after the date of its publication in the "Official Gazette of Bosnia and Herzegovina", whichever comes first.