

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

n. 05/22

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”;

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;

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;

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;

Guided by the need to strengthen the integrity of elections and to improve the management of election process in a transparent manner by giving the Central Election Commission the means to efficiently sanction violations of the rules of conduct in the election campaign, all with the aim to bring the election law in line with international standards and good practices for democratic election as recommended by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and underlined in European Commission’s Opinion on the EU membership application of BiH;

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 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 European Commission’s Opinion on Bosnia and Herzegovina’s membership application.

Strongly urging all political parties to refrain from negative, divisive and irresponsible rhetoric, appealing to authorities to ensure integrity of the electoral process and calling on citizens to cast their vote;

Recalling that the tone of the past campaigns has been largely negative and polarizing, with an emphasis on nationalism, personal attacks, references to the Bosnia and Herzegovina's wartime past and fearmongering which overshadowed socio-economic issues, such as corruption, unemployment, migration and education;

Confident that the amendments hereinafter do not alter the electoral system of Bosnia and Herzegovina nor have any impact on activities undertaken by the Central Election Commission of BiH;

Noting that the reforms necessary to move on integration within the European Union include electoral reform and will need to be tackled after the elections;

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 10 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, 27 July 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 and 38/22; hereinafter: the Law), in Article 1.1a after item (15) new items (16) to (21) shall be added to read:

"(16) Electronic media", for the purpose of this Law, shall mean any public and private television and radio stations holding an appropriate license issued by the Communications Regulatory Agency (CRA).

(17) "Online media", for the purpose of this Law, shall mean the Internet portals and other Internet platforms that represent the means of communication with the purpose of disseminating information of public interest.

(18) "Print media", for the purpose of this Law, shall include printed publications such as e.g. newspapers, tabloids, magazines, books, pamphlets, which represent the means of mass communication with the purpose of disseminating information of public interest.

(19) "Social networks" shall mean the Internet or mobile platforms that enable a two-way interaction through user-generated contents and communication, i.e. media available on specific platforms designed to allow users to generate contents and interact with information and its sources.

(20) "Hate speech" shall mean any form of public expression or speech that provokes or encourages hatred, discrimination or violence against any person or group of persons, based on race, skin color, nationality, sex or religion, ethnic origin or any other personal characteristic or orientation that incites to discrimination, hostility and violence.

(21) "Abuse of public funds and resources", for the purpose of this Law, shall mean any illegal use of funds and

resources of the BiH State, the Entities, Cantons, Brčko District of BiH, or other units of local government and self-government, which the candidates in the elections and on the election lists hold at their disposal in their capacity as public officials or civil servants, or directly elected officials, for the needs of exercising their official duties. The term “resources”, for the purpose of this definition, shall mean movable and immovable properties, including all human resources of the public institutions used during the working hours.”

Article 2

In Article 2.15 of the Law, at the end of the second paragraph a new sentence shall be added to read:

“In the event that the appointment of the new or of the replacing member of the Municipal Election Commission has not been made within the period prescribed by law, the Central Election Commission of BiH shall be allowed to make their appointment.”

Article 3

In Article 2.19 of the Law, after paragraph (12) a new paragraph (13) shall be added to read:

“(13) The abuse of the right to participate in the work of the Polling Station Committee by fictitious representation as prescribed by Article 7.3, paragraph (2) of this Law shall be prohibited.”

Current paragraphs (13) through (17) shall become paragraphs (14) through (18).

Article 4

Article 6.7 of the Law shall be amended to read:

“(1) When deciding *ex officio* or when deciding the appeals and complaints, the Central Election Commission of BiH shall have the authority to order an election commission, the Voters Registration Centre, counting centres or a Polling Station Committee to undertake measures to correct the identified irregularities.

(2) The Central Election Commission of BiH shall also have the authority to impose the following penalties:

1. fines not to exceed BAM 30,000;
2. removal of a candidate’s name from the list of candidates, where it is determined that the candidate is personally responsible for a violation;
3. de-certification of a political party, coalition, list of independent candidates or independent candidate; and
4. prohibition of engagement of an individual to work at a Polling Station, in the Voters Registration Centre, in a Municipal Election Commission, in the counting centres or in another election commission established pursuant to Article 2.21 of this Law.”

Article 5

After Article 7.2 of the Law a new Article 7.2a shall be added to read:

“Article 7.2a

(1) A holder of executive office as defined under Article 1.8, paragraph (6) of this Law and a mandate holder shall not be allowed to abuse public resources.

(2) The following actions shall constitute abuse of public resources referred to in paragraph (1) of this Article:

- a. involvement of the civil servants who are subordinate to a candidate in the performance of work during the working hours in order to promote the candidate or political entities;
- b. use of premises occupied by public institutions and authorities for pre-election campaigning activities where the use of the same premises is not guaranteed to other candidates and political entities under the same terms and conditions;
- c. use of means of communication, information services, office equipment of public institutions

- and authorities for election campaigning;
- d. use of a means of transportation owned by state, entity, city, cantonal or municipal authorities and organizations free of charge or at reduced charges for campaigning activities. This provision shall not be applicable to transport of individuals who under a regime of special protection defined by law which is provided as part of security measures applicable in respect of high-ranking officials subject to official protection provided by competent authorities during the course of performance of their official duties or when acting in line of their official duty;
 - e. collection of signatures or election campaigning carried out by persons who hold elected offices or are civil servants, during the official activities or events organized by a public institution or authority.

(3) Compliance with the restrictions referred to in paragraph (2) of this Article shall not prevent public and elected officials or civil servants from performing their official duties.”

Article 6

In Article 7.3 of the Law, first paragraph, sub-paragraph 7) shall be amended to read:

“7) use hate speech, and/or, publish or use pictures/images, symbols, audio and video recordings, SMS messages, Internet communications, social networks and mobile applications or any other materials that can have such effect.”

Second paragraph of Article 7.3 of the Law shall be amended to read:

“(2) False impersonation on behalf of any political party, coalition, list of independent candidates or independent candidate shall be prohibited, as well as the abuse of the legal right to participate in the work of a Polling Station Committee on behalf of one political entity contrary to the provision of Article 2.19 of this Law by fictitiously representing a political entity entitled to a seat at the Polling Station Committee, in order to favour another political entity not entitled to the seat at the Polling Station Committee. This prohibition shall also be applicable to members of a Polling Station Committee.”

Article 7

Article 19.8 of the Law shall be amended to read:

“(1) A fine in the amount between 600 KM and 3,000 KM shall be imposed for a violation on those employed or hired in the election administration, if :

1. if he/she participates in the decision which may raise doubt as to his/her ability to act impartially (Article 2.1);
2. if he/she fails to designate polling stations in the territory of the municipality for voting at all levels of authorities in BiH (Article 2.13 item 2.);
3. if he/she fails to provide the polling materials for voting at all levels of the elections in BiH (Article 2.13 item 4.);
4. if he/she fails to notify voters of all information necessary for the administration of elections in line with the regulations of the Central Election Commission of BiH (Article 2.13 item 5.);
5. if he/she conducts the counting of ballots at polling stations and in municipal counting centres in an inappropriate manner (Article 2.13 item 7.);
6. if he/she appoints the president and members of polling stations and their deputies in contravention to Article 2.19 paragraph (3);
7. if he/she acts in breach of the prohibition referred to in Article 2.19, paragraph (13);

8. if he/she fails to update data in line with the changes in the number of voters and regulations of the BiH Central Election Commission of BiH [Article 3.8, paragraph (3) item b)];
9. if he/she fails to provide access to the excerpt from the Central Voters Register in the territory of its municipality [Article 3.8, paragraph (3) item c)];
10. if he/she fails to provide data for the Central Voters List as stipulated by the regulations of the Central Election Commission of BiH [Article 3.8, paragraph (3) item d)];
11. if he/she fails to keep the records of requests and appeals and fails to keep the supporting documentation [Article 3.8 paragraph (4)];
12. if he/she designates the polling stations contrary to Article 5.1, paragraph (3);
13. if he/she fails to provide the polling material for voting [Article 5.3, paragraph (3)];
14. if he/she is not present during the entire process of voting without justified cause (Article 5.5);
15. if he/she fails to assign duties to the members of the Polling Station Committee [Article 5.6, paragraph (2)];
16. if the Poll Book on the operation of the polling committee does not contain the information stipulated by this law (Article 5.7);
17. if he/she fails to explain to the voters the manner of voting and fails to secure secrecy of the voting [Article 5.11, paragraph (1)];
18. if he/she fails to verify the identity of the voter and his/her signature in the excerpt from the Central Voters Register in accordance with this Law (Article 5.13);
19. if he/she issues ballot(s) contrary to the regulations governing the issuance of ballot (Article 5.13);
20. if he/she helps individuals with voting in the manner which is not in accordance with this Law [Article 5.19, paragraph (2)];
21. if the forms have been filled contrary to Article 5.25; or
22. if the data of the consolidated summary of voting results for the municipality are not in accordance with Article 5.27.

(2) For the violations referred to in paragraph (1) sub-paragraphs 1., 7., and 13. to 21. of this Article, the members of the Polling Station Committee shall be fined in an amount ranging from BAM 600.00 KM and BAM 3,000.00.

(3) For the violations referred to in paragraph (1) sub-paragraphs 1., 7., and 14. To 21. of this Article, the political entity on whose behalf the member of the Polling Station Committee has been appointed shall be fined in an amount ranging between BAM 3,000.00 and BAM 10,000.00."

Article 8

Article 19.9 of the Law shall be amended to read:

"(1) A political entity shall be fined for a violation in an amount ranging between BAM 3,000.00 and BAM 30,000.00, if:

1. if it fails to submit changes of data within ten (10) days (Article 4.22);
2. if it removes, covers up, damages or alters printed notices, placards, posters or other materials which are used, in accordance with law, for purposes of the election campaign of political

parties, coalitions, lists of independent candidates or independent candidates [Article 7.2, paragraph (2)];

3. if it displays a notice, placard or a poster, or places its name or slogan related to the election campaign, in or on the building of a government authority at any level, public enterprise, public institution or a local community, or on a religious facility, on a public road or in a public area, except for the places designated for distribution of posters and advertising;
4. if it abuses public resources for his/her personal use and for the promotion of the political entity he/she is a member of [Article 7.2a, paragraph (2)];
5. if it carries and displays a weapon in a political gathering, polling station or its surroundings, or during a gathering related to an activity of a political party, coalition, independent candidates' list or an independent candidate in the election process [Article 7.3 paragraph (1) item 1.];
6. if it disturbs a gathering of other political party, coalition or independent candidate, or incites others to conduct such activities [Article 7.3 paragraph (1) item 2.];
7. if it prevents a journalist from carrying out work in accordance with his/her professional rules and election rules [(Article 7.3 paragraph (1) item 3.);
8. if it promises a financial reward or other material benefit with the purpose of gaining the support of voters or threatens the supporters of other political parties, coalitions, independent candidates' lists and independent candidates [Article 7.3 paragraph (1) item 4.];
9. if it induces a person to vote who are not entitled to vote [Article 7.3 paragraph (1) item 5.];
10. if it induces a person to vote more than once in the same election, or to vote in the name of another person [Article 7.3 paragraph (1) item 6.];
11. 11. if it uses hate speech, and/or publishes or uses a picture/image, a symbol, audio or video recording, SMS message, Internet communication, social network and mobile application or any other material that can have such effect [Article 7.3 paragraph (1) item 7.];
12. if it falsely impersonates any political party, coalition, independent candidates' list or independent candidate, or fictitiously represents a political entity to which a seat in the Polling Station Committee was allocated so as to favour another political entity to which that seat in the Polling Station Committee was not allocated [Article 7.3, paragraph (2)]
13. if it holds a meeting for the purpose of election campaigning [Article 7.4 paragraph (1) item 1.];
14. if it presents any kind of materials for the purpose of influencing voters at a polling station and the surrounding area [Article 7.4 paragraph (1) item 2.];
15. if it uses national or international means of communication with the aim of influencing voters [Article 7.4 paragraph (1) item 3.];
16. if it uses a megaphone or other public address systems for the purpose of influencing voters [Article 7.4 paragraph (1) item 4.];
17. if it carries out any activity that interferes with or obstructs the election process [Article 7.4 paragraph (1) item 5.];
18. if it fails to submit, within the period of 30 days following the date of publication of the certified mandates in the Official Gazette of Bosnia and Herzegovina, the statement about the total property situation on the required form (Article 15.7 and Article 15.8);

19. if it exceeds the highest amount of funds allowed to be spent for financing of the election campaign referred to in Article 15.10;
20. if it conducts the election campaign in the period from the day when the elections have been announced to the day of official start of the election campaign [Article 16.14, paragraph (3)];
21. if an observer, while observing electoral process, interferes with the election activities and fails to respect the secrecy of voting [Article 17.2 paragraph (1)];
22. if an observer, while observing electoral activities, fails to wear official accreditation or wears or carries any insignia or a symbol that identify him/her with a particular political party, coalition, independent candidates' list or independent candidate [Article 17.2 item (3)].

(2) For the violations referred to in paragraph (1) subparagraphs 2. to 17. of this Article committed by a follower of a political entity, that political entity shall be sanctioned.

(3) For the violations referred to in paragraph (1) subparagraph 1. of this Article, the responsible person in the political party, coalition and list of independent candidates shall also be fined in the amount from 600,00 KM to 15.000,00 KM.

(4) For the violations referred to in paragraph (1) sub-paragraphs 2. to 18. of this Article, the candidate of the political entity shall also be fined in an amount ranging between BAM 3,000.00 and BAM 15,000.00.

(5) For the violations referred to in paragraph (1) sub-paragraphs 5., 9. and 10. of this Article, those employed or hired in the election administration shall also be fined in an amount ranging between BAM 600,00 and BAM 3.000,00.

(6) For the violations referred to in this Article, the Central Election Commission of BiH may, in addition to the fines, also impose other sanctions as set forth in Article 6.7 of the BiH Election Law."

Article 9

For the avoidance of doubt, minor offences' proceedings started before the entry into force of this Law shall be concluded pursuant to provisions of the law in force at the time of perpetration of a minor offence, unless this Law is more lenient.

Article 10

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.