

Decision Enacting Amendments to the Constitution of the Federation of Bosnia and Herzegovina

06/22

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 on several occasions 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 a General Framework Agreement for Peace in Bosnia and Herzegovina 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: Ljubic 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 no later than six months from the day of delivery of its decision;

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

Commending the Central Election Commission of BiH 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;

Bearing in mind the need to find a proper balance between maintaining constitutional guarantees given to constituent peoples and Others under the system in place 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 and Finci*, *Zornic* and other relevant cases and that the requirement under Article IV.B.1. Paragraph (2) of the Constitution of the Federation remains problematic and shall need to be adjusted, along with the provisions of Article IV.B.2. provided hereinafter;

Recalling further that implementing those Judgments is overdue and calling for discussions on this to resume as soon as possible;

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;

Convinced however that the constitutional guarantees given to constituent peoples should not interfere in any way with the individual rights of citizens safeguarded by the relevant international conventions and the Constitution of BiH and must therefore be confined in a limited number of institutions such as the House of Peoples;

Persuaded that further reform of the Constitution of the Federation will be necessary and that the rules governing the composition, election, role and functions of the House of Peoples, including the role of caucuses of three constituent peoples, will need to be examined in the shortest possible time frame with a particular emphasis on the rights of Others;

Noting in this respect the hybrid nature of the House of Peoples which combines ethnic and territorial elements and emphasizing that the various functions exercised by the House of Peoples as a legislative chamber which also exercises functions related to the protection of vital interests of constituent peoples and important appointment functions is seriously affecting the ability of the House and the Federation Legislature as a whole to function efficiently and to exercise its constitutional responsibilities;

Emphasizing that Annex VII to the General Framework Agreement for Peace in Bosnia and Herzegovina has not been declared implemented and that particular protection should be granted to the members of constituent peoples that are living in areas where they constitute a numerical minority;

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 EC Opinion on the BiH membership application;

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 can be implemented shortly thereafter regardless of the results, which is an essential element for elections to be considered free, fair and democratic;

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 in order for Bosnia and Herzegovina to engage meaningfully in reforms needed for the country to advance its integration into European Union and noting in that respect the Political Agreement on principles for ensuring a functional BiH that advances on the European path reached in the presence of the President of the European Council, Mr. Charles Michel on 12 June 2022;

Further noting that Bosnia and Herzegovina and the wider region is at a crossroad and must be given the tools to decisively ensure that the country can move further in its integration in the European Union;

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

DECISION

Enacting Amendments to the Constitution of the Federation of Bosnia and Herzegovina

This Decision and the amendments attached hereto which form an integral part of this decision, shall be published without delay in the Official Gazette of the Federation of Bosnia and Herzegovina and on the Official website of the Office of the High Representative and shall enter into force forthwith.

Such amendments shall have precedence over any inconsistent provisions of laws, regulations and acts. No further normative act is required to ensure the legal effect of such amendments. Nevertheless, authorities in the Federation of BiH remain under the obligation to harmonize such laws, regulations and acts with the Constitution of the Federation of Bosnia and Herzegovina.

Sarajevo, 2 October 2022

Christian Schmidt

High Representative

AMENDMENTS TO THE CONSTITUTION

OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Constitution of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, nos. 1/94, 1/94, 13/97, 13/97, 16/02, 22/02, 52/02, 52/02, 63/03, 9/04, 20/04, 33/04, 71/05, 72/05, 32/07 and 88/08) shall be amended as follows:

Amendment CX

After Article III.4, a new Article III.5. shall be added to read:

“Unless otherwise provided by this Constitution, in exercising the responsibilities under Articles III.1, III.2 and III.4 of this Constitution, the Federation and the Cantons shall act consistent with this Constitution and in the interest of the Federation as a whole, support each other in the performance of their duties taking into account the principles of loyalty and solidarity among all levels of authority, and shall cooperate, coordinate and consult with each other on an ongoing basis and negotiate in good faith.”

Amendment CXI

Article IV.A.6, Paragraph (2) shall be amended to read:

“(2) The House of Peoples shall be composed of 80 delegates: 23 from among each of the constituent peoples and 11 from among the Others.”

Amendment CXII

In Article IV.A.8, Paragraph (1) shall be amended to read:

“(1) Delegates to the House of Peoples shall be elected by the Cantonal Assemblies in proportion to the ethnic structure of the population. They shall be elected from among their representatives except if otherwise provided by law.”

Paragraph (3) shall be amended to read:

“(3) In the House of Peoples there shall be at least one Bosniac, one Croat, one Serb and one delegate of the group of Others from each Canton which has at least one such delegate in its legislative body.”

Amendment CXIII

Article IV.A.10 shall be amended to read:

"Cantonal Assemblies shall elect their delegates to the House of Peoples within thirty (30) days of the certification of the results of the elections. The law shall specify the manner of re-allocating the seats allocated to one or more constituent peoples and/or to the group of Others in a Canton if its Cantonal Assembly fails to elect delegates from that or those constituent peoples or from the group of Others to the House of Peoples within the deadline stipulated in this Article."

Amendment CXIV

After Article IV.A.12, a new Article IV.A.12a shall be added to read:

"In order to enhance the transparency and accountability of the Federation Legislature, each House shall enable citizens' participation, including youth participation, in their work and shall prescribe in its Rules of Procedure the appropriate forms of direct participation of citizens in matters falling under the responsibilities of the Federation Legislature, including the right of citizens of the Federation of BiH to initiate adoption of the laws in certain fields and the conditions to exercise such a right."

Amendment CXV

Article IV.A.15 shall be amended to read:

"Each House is expected to reject or approve necessary legislation within 45 days of its approval in the other House. If the deadline is not met, the Law shall be included on the agenda of the House at the session following the expiry of the 45 days deadline and no later than 30 days after the expiry of such deadline."

Amendment CXVI

In Article IV.A.17a, the text after "public information system" reading ", and other issues treated as of vital national interest if so claimed by 2/3rd of one of the caucuses of the constituent peoples in the House of Peoples" shall be deleted.

Amendment CXVII

In Article IV.A.17b, Paragraph (3) shall be amended to read:

"(3) The Vital Interest Panel shall be composed of seven members, two from each constituent people and one from the group of Others. The judges shall be selected by the Constitutional Court among its judges."

Amendment CXVIII

Article IV.A.18 shall be amended to read:

"(1) In the event that two thirds of one of the caucuses of the constituent peoples in the House of Peoples or more than one Chairman or Vice Chairman of the House of Peoples decides that a law, other regulation or act affects a vital national interest as defined under Article IV.A.17a of this Constitution, the law, regulation or act shall be considered by the House of Peoples as a vital interest issue.

(2) The decision that a law, other regulation or act affects vital national interest must be done within one week from the day when the proposal of a law, regulation or act is submitted to the delegates and no later than the voting on said law, regulation or act takes place in the House of Peoples.

(3) If a majority of each caucus represented in the House of Peoples vote in favour of such law, regulation or act, it is deemed to be adopted.

(4) If the House of Peoples agrees on amendments, the law, regulation or act is resubmitted to the House of Representatives for approval.

(5) If no agreement can be reached in the House of Peoples or if approval is not given to proposed amendments, a Joint Commission composed of representatives of the House of Representatives and the House of Peoples shall be established. The Joint Commission shall be composed on a parity basis and shall decide by consensus. The Joint Commission shall seek to achieve the harmonisation of the terms of the law, regulation or act. If the terms are

harmonised, the law, regulation or act shall be deemed to be adopted.

(6) If no harmonisation can be established by the Joint Commission, the Constitutional Court of the Federation of Bosnia and Herzegovina shall be addressed to decide finally whether the law, regulation or act in question relates to a vital interest of a constituent people.

(7) The Vital Interest Panel of the Constitutional Court of the Federation of Bosnia and Herzegovina shall decide by a two-thirds majority within one week on the admissibility of such a case and within one month on the merits of a case held to be admissible.

(8) The vote of at least two judges is needed for the Court to decide that it is a vital interest.

(9) If the Court decides in favour of a vital national interest, the law, other regulation or act shall fail and the document shall be returned to the proponent for a new procedure. In that event the proponent may not resubmit the original law, regulation or act.

(10) In the event the Court decides that no vital interest is involved, the law, regulation or act is deemed to be adopted/shall be adopted by simple majority."

Amendment CXIX

Article IV.A.18a shall be deleted.

Amendment CXX

Article IV.B.2 shall be amended and read:

"(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 this Article 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.

(4) 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.

(5) The candidates nominated pursuant to Paragraphs (1) through (3) of this Article 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 Paragraph (1) through (3) of this Article. 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.

(6) Should the number of candidates nominated pursuant to Paragraph (1) through (3) of this Article 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.

(7) In the event that the number of candidates nominated pursuant to Paragraph (1) through (3) of this Article

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. The list that obtains the highest number of votes in the House of Representatives shall be forwarded to the House of Peoples for approval.

(8) 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.

(9) Notwithstanding Paragraph (4) of this Article, if the House of Representatives fails to approve a list of candidates in the deadline provided for in Paragraph (5) of this Article, the list composed of the candidates that received the most support in the respective caucuses of the House of Peoples when nominated pursuant to Paragraph (1) through (3) of this Article shall be forwarded to the House of Peoples and such list shall be considered elected if approved in the House of Peoples only.

(10) Notwithstanding Paragraph (4) of this Article, 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 Paragraph (8) of this Article, the list approved in the House of Representatives only shall be considered elected.

(11) If the list of candidates is not approved pursuant to Paragraphs (4) through (10) of this Article, the procedure shall be repeated. In the repeated procedure, the House of Representatives shall vote for a new list in accordance with Paragraph (5) through (7) of this Article 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 Paragraphs (1) through (3) of this Article, the procedure provided for in Paragraphs (1) through (7) of this Article shall be repeated provided that the deadlines for the relevant caucus to nominate candidate(s) provided for in Paragraphs (1) to (3) of this Article shall be halved and shall start on the day of the vote of House by which it rejected the last list.

(12) Notwithstanding Paragraph (4) of this Article, in the repeated procedure, the list approved by the House of Representatives shall be considered elected.

(13) The three candidates elected pursuant to this Article shall decide among themselves who shall occupy the post of President. If no agreement is reached, the House of Representatives shall decide.

(14) The President and two Vice-Presidents of the Federation shall be elected for a four-year term of office. The same person may not be elected to one of the positions of either President or Vice-President more than twice consecutively."

Amendment CXXI

In Article IV.B.3, Paragraph (2) shall be amended to read:

"(2) If either the President or a Vice-President of the Federation dies, is removed from office, or, in the opinion of the Cabinet acting by consensus, is permanently unable to fulfill the duties of the office, the procedure provided in Article IV.B.2 shall be followed, provided that the deadlines for the relevant caucus to nominate candidate(s) for the vacant position will start on the day the position(s) to fill became vacant. The vacancy shall be filled for the remainder of the original term."

Amendment CXXII

In Article IV.B.5, Paragraph (1), after the words "a nominee for that office" the words "within 30 days of the election of the President and two Vice-Presidents" shall be added.

Amendment CXXIII

In Article IV.C.6, Paragraphs (1) and (2) shall be amended to read:

"(1) The judges of the Supreme Court, including the court president, shall be selected, appointed, disciplined and removed by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina in accordance with law.

(2) The President of the Federation with the concurrence of the Vice-Presidents shall nominate the judges of the Constitutional Court for all vacancies within 30 days of the submission of the list of candidates by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina pursuant to Article IV.B.7(a)(i) of this Constitution.”

After Paragraph (2) new Paragraphs (3) and (4) shall be added to read:

“(3) The approval of a majority of the present and voting members of the House of Peoples shall be required for appointment of the judges nominated pursuant to Paragraph (2) of this Article. If one or more judges nominated pursuant to Paragraph (2) of this Article are not approved by a majority of the present and voting members of the House of Peoples, the President of the Federation with the concurrence of the Vice-Presidents shall nominate new judge(s) for all leftover vacancies within 30 days from the day of the vote in the House of Peoples. This process will be repeated until the vacancies are filled. If no judges of the requisite constituent people or from the rank of Others remain on the list of candidates, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina shall submit a new list of candidates.

(4) If the President with the concurrence of the Vice-Presidents does not nominate candidates for all vacancies within 30 days from the submission of the list of candidates by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina or from the day of the vote by which the House of Peoples decided not to approve candidates nominated pursuant to Paragraph (2) of this Article, the House of Peoples shall decide by a majority of the present and voting members on the approval of one highest ranked candidate from the relevant constituent people or from the rank of Others on the list submitted by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. If the candidate does not receive the necessary majority, the House of Peoples shall decide on other candidates from the requisite constituent people or from the Others following the rank order on the list submitted by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. This process will repeat until all vacancies are filled. If no judges of the requisite constituent people or from the rank of Others remain on the list of candidates, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina shall propose a new list of candidates.”

Current Paragraph (3) shall become Paragraph (5).

The current Paragraph (4) shall become Paragraph (6) and shall be amended to read:

(6) Unless they resign or are removed for a cause by consensus of other judges of the Constitutional Court, the judges of the Constitutional Court shall serve until they reach 70 years of age. For the purpose of initiating the procedure of appointment of a new judge of the Court, the Constitutional Court shall inform the High Judicial and Prosecutorial Council of Bosnia and Herzegovina no later than six months prior to the date when a judge shall reach 70 years of age. If a new judge is not appointed by that date, the judge who reached 70 years of age shall continue to serve until a new judge assumes office.

Amendment CXXIV

Article IV.D.1. shall be amended to read:

“(1) Out of the following positions, not more than one can be filled by representatives of any one constituent people or of the group of Others:

- Prime Minister/President of the Government;
- Speaker of the House of Representatives;
- Speaker of the House of Peoples.

(2) The President of the Federation and the Prime Minister/President of the Government shall not come from the same constituent people.

(3) Following the election of the President of the Federation and the appointment of the Prime-Minister, each House shall, as appropriate, ensure compliance with Paragraph (1) of this Article.

(4) Out of the following positions, not more than one can be filled by representatives of any one constituent people or of the group of Others:

- President of the Supreme Court;

- President of the Constitutional Court;
- Federation Chief Prosecutor.”

Amendment CXXV

Article IV.D.1a shall be deleted.

Amendment CXXVI

In Article V.2.7b, Paragraph (3) the words “Article IV.6.18.a” shall be replaced by the words “Article IV.A.18”.

Amendment CXXVII

In Article VI.C.6, the words “in accordance with the procedure foreseen in Article IV.A.18 a) item 5 through 8 of this Constitution” shall be replaced by the words “in accordance with the procedure foreseen in Article IV.A.18 Paragraphs (7) through (10) of this Constitution”.

Amendment CXXVIII

In Article IX.7, the existing provision shall become paragraph (1) after which a new paragraph (2) shall be added to read:

“(2) Notwithstanding Paragraph (1) of this Article, published results of the latest census in Bosnia and Herzegovina shall be used for the calculations requiring demographic data made for the election of delegates to the House of Peoples.”

Amendment CXXIX

After Article IX.11f, a new Article IX.11g shall be added to read:

Article 11g

(1) Notwithstanding provisions of Article IV.C.6. Paragraph (2) of this Constitution providing for a deadline of 30 days, the President of the Federation with the concurrence of the Vice-Presidents shall nominate the judges of the Constitutional Court for all positions vacant at the time of the entry into force of these amendments from the lists of candidates submitted by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina on 16 October 2019 and 26 February 2021 within five days of the entry into force of these Amendments.

(2) If the President with the concurrence of the Vice-Presidents does not nominate candidates for all vacancies within five days or within five days from the day of the vote by which the House of Peoples decided not to approve candidates nominated pursuant to Paragraph (1) of this Article, the House of Peoples shall decide by a majority of the present and voting members on the approval of one highest ranked candidate from the relevant constituent people or from the rank of Others on the list submitted by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. If the candidate does not receive the necessary majority, the House of Peoples shall decide on other candidates from the requisite constituent people or from the Others following the rank order on the lists referred to in Paragraph (1) of this Article submitted by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. This process will repeat until all vacancies are filled. If no judges of the requisite constituent people or from the rank of Others remain on the list of candidates, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina shall submit a new list of candidates.

(3) Exceptionally, the House of Peoples established following the general elections held in 2018 shall be entitled to meet and take decisions required to fill all positions vacant at the time of the entry into force of these amendments until the certification of the results of the general elections of 2022 by the BiH Central Election Commission.”

Amendment CXXX

After Article IX.11g, a new Article IX.11h shall be added to read:

“(1) Both Houses shall adopt appropriate amendments to their Rules of Procedure pursuant to Article IV.A.12a of this Constitution within one year of the entry into force of these amendments to the Constitution of the Federation

of Bosnia and Herzegovina.

(2) The legislative and executive authorities of the Federation, the cantons and the cities and municipalities shall develop appropriate structures for inclusive participation of the youth in matters concerning their future in those units of government within one year of the entry into force of these amendments to the Constitution of the Federation of Bosnia and Herzegovina.”