High Representative explains his decision to amend law on presidential succession

The High Representative, Wolfgang Petritsch, regrets that he has had to amend the Law on Filling a Vacant Position of a Member of the Presidency of Bosnia and Herzegovina which was adopted by the BiH Parliamentary Assembly on July 31.

The High Representative has decided to impose amendments which ensure the election of a Presidential Member, following the occurrence of a vacancy, in a constitutional and democratic manner. The decision enables the people of Bosnia and Herzegovina from the territory of the Entity concerned to have the greatest possible influence on the outcome of the election of a Presidential Member if such a vacancy should arise.

The amended law on succession will now insist that if the House of Peoples twice rejects candidates for the Presidency put forward by the directly elected Members of the House of Representatives – elected from the territory of the same entity as the member of the Presidency whose position has become vacant – the third nominee put forward in this manner by the House of Representatives will then fill the vacancy.

In addition, the law now provides that should a vacancy occur within 120 days before an election, the vacancy in the Presidency will be permanently filled by the new Parliamentary Assembly after the election. The interim solution provided for in the said law remains in force.

Prior to adoption of the Law by the House of Peoples, the Office of the High Representative and the OSCE mission to Bosnia and Herzegovina warned clearly against adoption of the proposed law as it stood. A letter dated July 31 outlined the High Representative’s concerns, adding that the law would be

subject to his review if it was adopted despite the warning.

If the adopted law had come into force, it would have enabled a small minority of the respective caucuses of the indirectly elected House of Peoples to impose their own choice of candidate by twice rejecting those candidates for the Presidency elected by the House of Representatives.

In addition, by adopting the law on 31 July, the Parliamentary Assembly would have enabled Members of the Presidency still in office to unfairly influence the choice of their successors.

Article 7 of the law as it stood provided that if a vacancy in the Presidency occurred before the 30 days of the date announced for the next election of the House of Representatives, the existing Parliamentary Assembly would choose the successor. This would give the outgoing Parliament undue influence over the composition of the Presidency which will continue in office until 2002.

The High Representative is aware that he may be required to review this law in light of the forthcoming ruling by the Constitutional Court of Bosnia and Herzegovina on the "constituent peoples" case.

In addition, the High Representative has issued a Legal Opinion stating that only an actual resignation or withdrawal formally announced with immediate effect has the legal consequence of vacating the office of an individual office holder. Only at that point in time, and not before, does a vacancy arise. Obviously, this has relevance to the issues concerning the above mentioned law.