

Decision enacting the Law on amendments to the Election Law of Bosnia and Herzegovina

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 “[f]acilitate, 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 which “may include actions against persons holding public office or officials...who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement or the terms for its implementation”;

Noting that the Steering Board, at its meeting held at Political Directors’ level on 26 September 2003, considered the resolution of the Mostar question as crucial to the sustainable and peaceful development of Bosnia and Herzegovina;

Bearing in mind the special status given to Mostar under the Dayton Agreement on Implementing the Federation of Bosnia and Herzegovina, signed on 10 November 1995, and in the Annex thereto which establishes principles for the Interim Statute for the City of Mostar;

Further bearing in mind that the political authorities at the “City” and the “City-Municipality” levels have hitherto failed to unify the City of Mostar under the said Interim Statute, and have, rather, used the City-Municipalities to create parallel institutions and divide the City;

Mindful of the need to consolidate the administrative, functional and legal unity of the City of Mostar in a manner that promotes efficiency in the delivery of services, guarantees the fundamental rights of all citizens, ensures the collective rights of the constituent peoples and prevents dominance by one segment of the population of Mostar;

Acknowledging the work of the Commission for Reforming the City of Mostar established by the High Representative on 17 September 2003 (hereinafter: “the Commission”);

Welcoming the efforts undertaken by the political parties involved in the said Commission which culminated in concrete proposed solutions to various key issues relating to the reorganization of the City of Mostar;

Convinced that said proposed solutions provide a sound basis for the establishment of the aforementioned guarantees and safeguards, and, further contain carefully negotiated power-sharing provisions aimed at enabling the citizens of Mostar to build a foundation for a progressive future predicated upon, *inter alia*, protection of national vital interests;

Encouraged that said proposed solutions emerged from the broadest possible consensus with respect to the reorganization of the City of Mostar;

Regretting that the parties involved in the Commission failed to reach a consensus on two outstanding issues and convinced that the resolution of said issues would significantly improve applied standards of governance in the City while maintaining an electoral architecture reflective of the *sui generis* circumstances in Mostar arising from profoundly conflicting interests among its constituent peoples;

Bearing in mind that the Steering Board of the Peace Implementation Council, at its meeting held in Brussels on

11 December 2003, committed itself to give its full support to the implementation of a solution to the issue of Mostar based on a single coherent city administration with effective guaranteed power-sharing mechanisms which prevent any one people having majority control of the City Council and to act to ensure that implementation of the plan in the coming months has the necessary political and economic support”;

Stressing the need to hold democratic elections at local level in Mostar as well as throughout Bosnia and Herzegovina on the first Saturday of October 2004 and bearing in mind the need to start preparing those elections;

Having considered, borne in mind and noted 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

The amendments set out hereunder form an integral part of this Decision and shall enter into force on the date set forth in Article 4 hereof. This Decision shall be published without delay in the Official Gazette of Bosnia and Herzegovina, the Official Gazette of the Federation of Bosnia and Herzegovina, the Official Gazette of Republika Srpska and the Official Gazette of Brcko District of Bosnia and Herzegovina.

Article 1

The words “and the Mostar City Council” will be added in Article 4.19, paragraph 5 of the Law after the words “National Assembly of Republika Srpska”.

Article 2

A new Chapter 19 will be introduced in the Election Law of Bosnia and Herzegovina (OG BiH, 23/01, 7/02, 9/02, 20/02 and 25/02): after Chapter 18, “District of Brcko”, a Chapter entitled “The City of Mostar” will be added and read as follows:

“Article 19.1

This law shall govern the elections of the councilors to the Council of the City of Mostar (hereinafter: “the City Council”). The principles outlined in this Chapter will apply to elections in the City of Mostar, notwithstanding Chapter 13 of this Law.

Article 19.2

The City Council shall be composed of 35 members. The councilors in the City Council shall be elected in a city-wide electoral constituency and city area electoral constituencies, in the manner set forth in Article 19.4 hereof.

‘A city-wide electoral constituency’ shall for the purpose of the preceding paragraph cover the entire territory of the City, as defined in Article 5 of the Statute of the City of Mostar.

For the purpose of paragraph 1 of this Article, “city areas electoral constituencies” shall be the former city municipalities, as defined by Article 7 and 15 of the Statute of the City of Mostar.

Article 19.3

The City of Mostar shall have one Election Commission established in accordance with the provisions of this Law pertaining to Municipal Election Commissions.

Article 19.4

Seventeen (17) councilors shall be elected from a city-wide electoral constituency. A minimum of four (4) councilors of each constituent people and one (1) councilor from the group of “Others” shall be elected from the city-wide electoral constituency.

Three (3) councilors shall be elected from each of the six city area electoral constituencies.

The city area electoral constituency 1 shall consist of the former City-Municipality Mostar North.

The city area electoral constituency 2 shall consist of the former City-Municipality Mostar Stari Grad.

The city area electoral constituency 3 shall consist of the former City-Municipality Mostar Southeast.

The city area electoral constituency 4 shall consist of the former City-Municipality Mostar South.

The city area electoral constituency 5 shall consist of the former City-Municipality Mostar Southwest.

The city area electoral constituency 6 shall consist of the former City-Municipality Mostar West.

Each constituent people or the group of "Others" shall not have more than fifteen (15) representatives in the City Council.

Article 19.5

The mandates to be filled from the city-wide electoral constituency shall first be allocated under the formula set forth in Article 9.6, paragraph 1 of this Law. If the allocation of mandates from the city-wide electoral constituency does not allow minimum representation of any of the constituent peoples and/or of the group of "Others", as provided for under Article 19.4, paragraph 1 of this Law, the following method shall apply:

1. the last mandate(s) to be allocated from the city-wide electoral constituency required to fill the quotas of any of the constituent peoples and/or the group of "Others" shall be allocated to the candidate(s) from the relevant constituent people(s) and/or group of "Others" having received the highest number of votes on the list of the political party, the list of independent candidates or the coalition's list to which the mandate was allocated under Article 9.6, paragraph 1 of this Law. If the mandate would, under the formula set for the in Article 9.6, paragraph 1 of this Law, be allotted to an independent candidate, item 2 of this Article will apply.

2. If the political party, list of independent candidates or coalition to which the mandate(s) was allocated under Article 9.6, paragraph 1 of this Law does not have enough such eligible candidate(s) on its city-wide electoral list or if the mandate would, under Article 9.6 of this Law, be allocated to an independent candidate, the mandate shall be transferred either:

- to the political party(ies), list(s) of independent candidates or coalition(s) having such candidates left on its list;

or

- to (an) independent candidate(s) from the relevant constituent people or from the group of "Others",

which/whoever ha(s)(ve) the next highest quotient as defined in Article 9.6 of this Law.

3. If no candidate from the relevant constituent people(s) or the group of "Others" can be found in accordance with items 1 and 2 of this Article, the mandate(s) shall be transferred to either:

- the political party, list of independent candidates or coalition's list having such candidate(s) left on a list for any city area constituency after the seats filled from the area constituencies have been allocated in accordance with Article 19.6 of this Law;

or

- the independent candidate(s) from the relevant constituent people or from the group of "Others" running for any city area constituency,

which/whoever ha(s)(ve) received the highest quotient as defined in Article 9.6 of this Law.

Article 9.6, paragraph 2 shall not apply when allocating mandate(s) under this Article.

Article 19.6

The mandates filled from the city areas electoral constituencies are thereafter allocated under the formula set forth in Article 9.6 of this Law. Mandates shall be allocated individually, starting with the highest placed candidate in each city area constituency, and proceeding in similar fashion to fill each available seat from each city area constituency. The sequence of filling the mandate allotted to each city area constituency, for each of the three successive steps, shall be determined by the drawing of lots. The drawing of lots shall be organized by the Election Commission of Bosnia and Herzegovina.

If the allocation of a mandate from the city areas electoral constituency would lead to the representation of a constituent people and/or the group of Others beyond the quota provided for under Article 19.4, paragraph 4 of this Law, the following method shall apply:

1. The mandate shall be re-allocated to the candidate who does not belong to the said constituent people and/or to the group of "Others" having received the highest number of votes on the list of the political party, the list of independent candidates or coalition's list to which the mandate was allocated under Article 9.6, paragraph 1 of this Law. If the mandate would, under the formula set for the in Article 9.6, paragraph 1 of this Law, be allotted to an independent candidate, item 2 of this Article will apply.

2. If there is no such candidate or if the mandate would, under the formula set for the in Article 9.6, paragraph 1 of this Law, be allotted to an independent candidate, the mandate shall be transferred, in the same city area constituency, either:

- to the party, list of independent candidates or coalition's list having a candidate who does not belong to the said constituent people and/or to the group of "Others" left on its list;

or

- to the independent candidate(s) who does not belong to the said constituent people and/or to the group of "Others",

which/whoever has the next highest quotient as defined in Article 9.6 of this Law.

3. If no such candidate can be found in accordance with items 1 and 2 of this Article, the mandate(s) shall be transferred to either:

- the political party, list of independent candidates or coalition's list having such candidate(s) left on a list for any other city area constituency after the seats filled from that city area constituencies have been allocated in accordance with Article 19.6 of this Law;

or

- the independent candidate(s) from the relevant constituent people or from the group of "Others" running for any city area constituency,

which/whoever ha(s)(ve) received the highest quotient as defined in Article 9.6 of this Law.

Article 19.7

Notwithstanding Article 13.7 of this Law, the Mayor of the City of Mostar will be indirectly elected in accordance with the Constitution of the Federation of Bosnia and Herzegovina."

Article 3

Chapter 19 entitled "Transitional and Final Provisions" shall become Chapter 20 and Article 19.1 through 19.17 shall become 20.1 through 20.17.

Article 4

This Decision shall enter into force on 1 March 2004 and requires no further procedural steps to effect its enactment.

Sarajevo, 28 January 2004

*Paddy Ashdown
High Representative*