

Interpretation Removes Dilemma Over Appointment of Constitutional Court Judges



In a legal interpretation on the process of appointment of judges to the FBiH Constitutional Court issued yesterday the High Representative, Miroslav Lajčák, concludes that FBiH President Borjana Kristo must choose a candidate from the list proposed by the High Judicial and Prosecutorial Council (HJPC). Individuals not on this list are not candidates and may not be nominated to the FBiH House of Peoples for appointment.

The High Representative yesterday informed President Kristo of the interpretation outlining that the FBiH Constitution states that while the President of the FBiH is responsible for “nominating...judges of the Constitutional Court”, it also states that the FBiH President may only consider nominations made “upon proposal of candidates by the High Judicial and Prosecutorial Council”.

The High Representative states that the HJPC’s role goes beyond providing the FBiH President and Vice Presidents with a trigger to make nominations to the FBiH House of Peoples. The HJPC is to provide a list of qualified candidates for the FBiH President to choose from and pass on to the FBiH House of Peoples for approval.

The High Representative points out that the intention of the Constitution, by including the HJPC is to ensure that the judges of the FBiH Constitutional Court have the skills and experience needed to be able to rule in complex matters of law, and that all the individuals considered by the FBiH

President and Vice-Presidents the FBiH House of Peoples meet the minimum professional standards needed for such a crucial post.

In his letter the High Representative notes that the balance among constituent peoples is ensured two fold, first through the requirement that the FBiH President makes a nomination in concurrence with the Vice-Presidents and secondly by the fact that these nominations must then be approved by the FBiH House of Peoples.

The High Representative expressed the hope that with this legal interpretation the problems concerning appointments to the FBiH Constitutional Court are resolved.

The High Representative issued this interpretation as the HJPC's role in the appointment of judges to the FBiH Constitutional Court was imposed by decision of the High Representative in May 2002. The High Representative said yesterday that "as part of the process of moving to full ownership all legislatures in BiH will need to adopt the laws, and constitutional amendments enacted through the use of High Representative powers. Legislation imposed by my predecessors may only be amended or updated once it has been adopted by the competent law making institutions".