

The Decision of the Federation Presidency is Unconstitutional



Despite claims that the Federation President, together with the Vice-presidents, has acted in line with the Federation Constitution, the decision of 3 February 2011 to appoint three members of the Federation Constitutional Court breaches the Constitution of the Federation on two counts. "By this decision the Federation President, in concurrence with the two Vice Presidents, has circumvented the constitutional and legal role of the High Judicial and Prosecutorial Council and relegated the role of the Federation Parliament to a formal act for publication of the decision in the official gazette," said High Representative, Valentin Inzko today.

The Constitution of the Federation explicitly states that the President of the Federation shall propose candidates for the Constitutional Court from the list of candidates submitted by the High Judicial and Prosecutorial Council. In 2008, as today, the President and Vice-presidents of the Federation ignored the fact that one of the appointed individuals was not on the list of candidates submitted by the High Judicial and Prosecutorial Council. The High Judicial and Prosecutorial Council's role is to ensure that only those suitable to hold office in the Federation Constitutional Court will be appointed. The Federation House of Peoples concurred with this view in 2009 when it rejected the Federation President's

previous attempts to appoint Constitutional Court judges outside the constitutional and legal framework.

Since 2009, the Federation President has failed to nominate judges for the Federation Constitutional Court, thus leaving the Court's Vital National Interest Panel incapacitated for over two years. This fact has made it impossible for any constituent people in the Federation to get a decision on vital national interest, not just in relation to Federation legislation but also in relation to the Cantons and the City of Mostar.

By taking this decision the President and Vice-presidents have sought to circumvent the role of the Parliament altogether. Their decision states that the appointment comes into force on the day it was adopted. The Federation Constitution, however, clearly says that any appointment to the Federation Constitutional Court shall require approval of the FBiH House of Peoples.

"This is a clear breach of the Federation Constitution," said the High Representative today. "It is time now for the Federation Presidency to act to uphold the Constitution and the Rule of Law – therefore I expect them to repeal this Decision and ensure that appointments are made to the FBiH Constitutional Court in line with the Constitution and the Law."