Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1384 (2004)[1]

Strengthening of democratic institutions in Bosnia and Herzegovina

Parliamentary Assembly

1. The Parliamentary Assembly welcomes the undeniable progress in building democratic institutions which has been achieved in Bosnia and Herzegovina since the Dayton Peace Agreements were signed in 1995 and especially since its accession to the Council of Europe in April 2002. A stable, democratic Bosnia and Herzegovina is an important factor of stability for South-eastern Europe as a whole.

2. However, in its Opinion No. 234 (2002) on Bosnia and Herzegovina's application for membership of the Council of Europe, the Assembly stressed that "the state institutions should be strengthened at the expense of the institutions at Entity level, if need be by a revision of the constitution". In that respect, it observes that the said strengthening is proceeding very slowly indeed and essentially under pressure from the international community, in particular through the action of the Office of the High Representative (OHR).

3. The constitutional order prescribed by the Dayton Peace Agreements, on which the state institutions are founded, is extremely complicated and contradictory. As the outcome of a political compromise reached in order to end the war, it cannot secure the effective functioning of the state in the long term and should be reformed once national reconciliation is irreversible and confidence is fully restored.

4. The Assembly is aware that the change in the constitutional framework established by the Dayton Peace Agreements can only take place by consensus among the principal political forces of Bosnia and Herzegovina, both at state and Entity level.

5. It considers that a constitutional reform must be the subject of a dispassionate political debate and welcomes that this is already under way within the civil society of Bosnia and Herzegovina.

6. It remains the remit of the Bosnians to establish the timetable, terms and parameters of a constitutional reform. The Assembly is at their disposal to assist in this but wishes to point out that, as a Council of Europe member state, Bosnia and Herzegovina is bound to comply with the Organisation's fundamental principles.

7. At the same time, the Assembly is convinced that the present constitution allows progress to be made towards reforms designed to strengthen the institutions. A prime example of this is the recent creation, at state level, of the Ministry of Defence, which was necessitated by the shared aspiration of the political forces for Bosnia and Herzegovina to be integrated into the Partnership for Peace. In this context, the Assembly welcomes the agreement concluded between the political parties in Parliament to carry out the reforms needed to open negotiations aimed at reaching an agreement on stabilisation and associate status with the European Union.

8. At the same time, major political forces, while proclaiming their commitment to European integration, remain hesitant in striving for a stronger, united Bosnia and Herzegovina and still see the assurance of their future in maintaining the present state structure. The Assembly reiterates that the path to Europe is by way of unity in diversity and not division and exaggerated nationalism.

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1. Assembly debate on 23 June 2004 (20th Sitting) (see Doc. 10196, report of the Political Affairs Committee, rapporteur: Mr Kirilov). Text adopted by the Assembly on 23 June 2004 (20th Sitting).

9. The Assembly deplores the fact that several institutions put in place at state level are struggling to become fully operational because of the lack of human and financial resources available to them, which detracts from their effectiveness and credibility. It considers that the political decision makers at Entity level who command the funding of the state institutions should be more involved in structuring the policies at central level.

10. The implementation of the reforms is also hampered by lengthy procedures for appointments to positions of responsibility, bearing in mind the need to ensure proper regard for a balance between the representatives of the three constituent peoples. The Assembly fully appreciates the sensitivity of the issues relating to ethnic balance within the institutions but stresses that it cannot constitute the prime – or indeed the single – component of the political process. The common interest of the people of Bosnia and Herzegovina must come before any factional or community concerns.

11. The future of Bosnia and Herzegovina belongs to its people who, via its elected representatives, must finally assume responsibility for its destiny.

12. The Assembly calls on:

12.1. the political forces of Bosnia and Herzegovina to:

a. increase their efforts to achieve a broad political consensus in favour of establishing, reinforcing and ensuring the efficient functioning of state institutions;

b. demonstrate their political maturity and concentrate on the country's real problems, while avoiding any potential obstacles to the political process presented by the current institutional system;

c. become fully and constructively involved in the debate on the need for constitutional reform and its timing and parameters;

d. pay special attention to the need to ensure that any future constitution brings the concept of "constituent peoples" and their specific rights into line with the principle of the primacy of individual rights;

12.2. the international community to:

a. place greater trust in the political leaders of Bosnia and Herzegovina, while continuing to support the reforms, and restrict any direct intervention to cases of absolute necessity;

b. envisage a more coherent and specific strategy for transferring responsibilities and gradually withdrawing the OHR.

c. make efforts to ensure a relaxed visa system and, where possible, a visa-free system for citizens of Bosnia and Herzegovina.

13. The scope of the OHR is such that, to all intents and purposes, it constitutes the supreme institution vested with power in Bosnia and Herzegovina. In this connection, the Assembly considers it irreconcilable with democratic principles that the High Representative should be able to take enforceable decisions without being accountable for them or obliged to justify their validity and without there being a legal recourse. The Assembly asks the Venice Commission to determine how far this practice complies with the Council of Europe's basic principles, and in particular with the Convention for the Protection of Human Rights and Fundamental Freedoms. Furthermore, the Assembly asks the Venice Commission to make a comprehensive assessment of the conformity of the Constitution of Bosnia and Herzegovina with the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Charter of Local Self-Government (ETS No. 122), as well as of the efficiency and rationality of the present constitutional and legal arrangements in Bosnia and Herzegovina.