



Resolution 1513 (2006)¹

Constitutional reform in Bosnia and Herzegovina

Parliamentary Assembly

1. Since Bosnia and Herzegovina's accession to the Council of Europe in April 2002, slow but steady progress has been achieved in building a stable, functional and efficient state. Examples are the setting up of a court at state level and the transfer of competences from the entities to the state in the fields of defence, intelligence, the judiciary, indirect taxation and the forthcoming police reform, the principles of which were agreed upon by all parliaments at entity and state level in October 2005.
2. To date, however, the continuing weakness of the state and the constitutional necessity to ensure full equality at every level between the 3 constituent peoples have led to a situation where around 60% of the GDP is still spent on maintaining state and entity apparatus: there are 3 rotating presidents at state level, 2 presidents at entity level, 13 prime ministers, over 180 ministers, 760 members of various legislative bodies and 148 municipalities. Furthermore, the voluntary or imposed transfer of a number of competences to the state level has not resulted in a corresponding reduction of the entity apparatus.
3. The Assembly recalls that a key objective of Bosnia and Herzegovina's membership in the Council of Europe is to promote domestic ownership and responsibility for reform. It also recalls its [Resolution 1383 \(2004\)](#) on honouring of obligations and commitments by Bosnia and Herzegovina in which it urged the authorities and the political forces in the country to engage in a constructive dialogue on the issue of constitutional reform.
4. Since the opening of Stabilisation and Association Agreement negotiations with the European Union just before the 10th anniversary of the Dayton Peace Agreements in November 2005, it has become even more imperative to take measures to address the generally recognised need to strengthen state institutions that are currently too weak to allow for Bosnia and Herzegovina's further integration into Europe.
5. Different options for a comprehensive constitutional reform have already been submitted by the European Commission for Democracy through Law (Venice Commission), upon request by the Parliamentary Assembly, in March 2005. Consultations between the leaders of the main political parties in Bosnia and Herzegovina, facilitated by the United States and with the constant advice of the Venice Commission, resulted in a political agreement on constitutional reform which was finally reached on 18 March 2006 by six political parties and forwarded to parliament.
6. The reform package provided, inter alia, for an increase in the number of members of parliament in the state-level House of Representatives (from 42 to 87, with 3 seats reserved for the first time for members of non-constituent peoples, the so-called "Others"). The upper house, the House of Peoples, would have 21 instead of 15 members and only the competence to decide on the veto regarding vital national interests that can be invoked by any of the three constituent peoples. The reform also foresaw the indirect election of a state-level president and 2 vice-presidents, whose powers would be reduced, with a rotation of the 3 members every 16 months instead of 8 as at present, the creation of 2 additional ministries at state level, and a reinforcement of the competences of the Council of Ministers.

1. Assembly debate on 29 June 2006 (21st Sitting) (see [Doc. 10982](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs : Mr Çavușoğlu and Mr Sasi). Text adopted by the Assembly on 29 June 2006 (21st Sitting).



7. Although some may have considered these constitutional amendments as being neither comprehensive nor particularly far-reaching, the Assembly considers that they nevertheless represented a first attempt by the citizens of Bosnia and Herzegovina and their representatives to take their future in their own hands, and it should be welcomed as such.
8. The Assembly therefore strongly regrets that on 26 April 2006, the Parliament of Bosnia and Herzegovina failed, by just two votes, to reach the required two-thirds majority in the House of Representatives in order for the constitutional amendments to pass.
9. The Assembly also notes that the failed amendments should have entered into force by 1 May, five months before the next general election scheduled for 1 October 2006. It is now clear that the new government will be formed, and quite possibly function for its entire four-year mandate, according to the current constitution, which was part of the 1995 Dayton Peace Agreements.
10. This means that the forthcoming elections will be held in violation of Council of Europe commitments, in particular Protocol No. 12 to the European Convention on Human Rights on the prohibition of discrimination (ETS No. 177), because again only Serbs, Bosniacs and Croats will be able to stand as candidates for election as members of the presidency and for the indirect elections of delegates to the House of Peoples, to the exclusion of the so-called "Others", that is, everybody not identifying themselves with one of the three constituent peoples.
11. The Assembly also regrets that the failure of this first attempt at constitutional reform and the outcome of the referendum in Montenegro on 21 May 2006 are being grossly misused by some of the domestic political forces in the current electoral campaign: nationalism, ethnic hatred and distrust are again high on the political agenda. This is all the more regrettable since Bosnia and Herzegovina continues to face a dire economic situation and high unemployment, adversely affecting social cohesion and interethnic relations, as well as the sustainable return of internally displaced persons (IDPs).
12. The Assembly in particular condemns the recent statements by the authorities in Republika Srpska according to which, just like Montenegrins, Serbs in Bosnia and Herzegovina should be entitled to self-determination: a secession referendum in Republika Srpska has no constitutional basis and the collection of already 50 000 signatures asking for such a referendum has no legal basis.
13. It also condemns the refusal of the Serb representatives to participate in any meaningful way in the work of the Steering Board of the Police Reform Directorate charged with the implementation of the October 2005 political agreement on reform in this field and the recent decision (24 May) of Serbian parliamentarians to boycott the work of the House of Representatives which prevents the adoption of much needed laws, such as the state-level law on higher education, one of the unfulfilled commitments to the Council of Europe.
14. The Assembly considers that, before the responsibilities for running the state are completely transferred to the domestic authorities, hopefully by June 2007, the country's political forces must absolutely find an alternative to the perpetual confrontation and obstructionism which have so far dominated Bosnian politics.
15. The Assembly strongly believes that the only realistic way out of Bosnia and Herzegovina's current constitutional impasse is for the three constituent peoples and their representatives to leave behind their war-time thinking. Serbs, Bosniacs and Croats must show readiness for an open dialogue on all contentious issues: this remains a precondition for finding innovative and comprehensive solutions for a future constitutional reform.
16. All citizens of Bosnia and Herzegovina who also hold the citizenship of neighbouring states must realise that they cannot only claim rights but that they also have duties towards the state of Bosnia and Herzegovina. And civic-minded citizens of Bosnia and Herzegovina need to abandon their disillusionment with the political process and fully engage with it instead.
17. Although it would probably not be realistic to expect that Bosnia and Herzegovina move quickly from a system based on ethnic representation to a system based on representation of citizens, drafting a completely new constitution would certainly in the long run be preferable to trying to improve the Dayton version.
18. As a first step the Assembly expects people and politicians in Bosnia and Herzegovina to again discuss constitutional reform immediately after the October general elections, and if they decide to do this on the basis of the proposals agreed upon so far, to eliminate at least the entity voting in the House of Representatives and to define more precisely the vital national interests and the related veto mechanism. In this respect, the Assembly urges the House of Representatives to take into account all the different recommendations made by the Venice Commission in its provisional opinion dated 7 April 2006, both on the text of the failed amendments and on the steps to be taken in the next phase of constitutional reform.

19. The Assembly expects the political leaders who will emerge from the next elections to go finally beyond sectarian political divides and to put the interests of citizens first. It will not be possible to continue simply creating further layers of bureaucracy at the state level in addition to the multiple bureaucracies at the lower level; in particular the situation in the Federation of Bosnia and Herzegovina with its 10 cantons will have to be addressed as soon as possible.

20. As a second step the Assembly therefore urges the authorities of Bosnia and Herzegovina, by October 2010 at the latest, to draft and adopt a new constitution in order to:

20.1. replace the mechanisms of ethnic representation by representation based on the civic principle, notably by ending the constitutional discrimination against "Others";

20.2. find efficient and rational decision-making procedures that are not sacrificed to the principle of involving representatives of each constituent people in any decision;

20.3. review the territorial organisation of the state and its division into entities, cantons and municipalities and the repartition of competences between the state and the lower levels with a view to increasing efficiency and sustainability;

20.4. examine how to integrate the Brčko District.

21. The Assembly also urges the authorities of Bosnia and Herzegovina to adopt and/or implement, as soon as possible, the laws at state and entity level that are necessary in order to fulfil the remaining Council of Europe commitments, notably:

21.1. the laws on higher education that should include accreditation and financing at state level;

21.2. the state-level law on primary and secondary education with a view to ending ethnic segregation in schools;

21.3. the by-laws on a sustainable public broadcasting service;

21.4. the police reform, in accordance with the three principles set by the EU Commission;

21.5. the local government reforms, notably in the federation, and the reunification of Mostar;

21.6. the laws needed for an effective protection of the rights of all minorities;

21.7. the creation of a state-level supreme court to enhance the reform of the judiciary.

22. The Assembly further reminds the authorities of Bosnia and Herzegovina that the revised European Social Charter (ETS No. 163), the European Charter for Regional or Minority Languages (ETS No. 148) and the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) remain to be ratified and that the exercise aimed at checking compatibility of all legislation with the provisions of the European Convention on Human Rights (ETS No. 5) should be finalised without further delay.

23. The Assembly also recalls that co-operation with the International Criminal Tribunal for the former Yugoslavia and the arrest of MM. Karadžić and Mladić are prerequisites for any future democratic development in the country. The organisation of a population census at the latest by 2010 and the setting up of a truth and reconciliation commission should also be included on the agenda of the next government .