Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1701 (2010)[1]
Final version

Functioning of democratic institutions in Bosnia and Herzegovina

Parliamentary Assembly

1. Since Bosnia and Herzegovina joined the Council of Europe in 2002, the Parliamentary Assembly has been repeatedly calling for the implementation of a constitutional reform with a view to improving the functioning of the country's democratic institutions, ensuring compliance with the European Convention on Human Rights (ETS No. 5) (the Convention) and speeding up the necessary reforms to complete the realisation of its remaining commitments and obligations. In its Resolution 1626 (2008) on the honouring of obligations and commitments by Bosnia and Herzegovina, the Assembly called upon all political stakeholders to "re-launch dialogue about the various reform proposals immediately after the October 2008 local election, in close co-operation with the European Commission for Democracy through Law (Venice Commission), with a view to drafting and adopting a new constitution before October 2010".

2. The Assembly regrets that the lack of constitutional reform has frequently led to deadlock within state institutions, as entity and party agendas block the decision-making process. Perpetual confrontation and obstructionism negatively affect Bosnia and Herzegovina's ability to honour its commitments to the Council of Europe. Moreover, Bosnia and Herzegovina is lagging behind its neighbours in the process of Euro-Atlantic integration and the gap is widening every day. All this hampers the completion of much needed reforms, such as:

2.1. the implementation of the National War Crime Strategy and the National Judicial Reform Strategy;

2.2. the adoption of the Revised Strategy for the Implementation of Annex VII to the Dayton Peace Agreement;

2.3. decentralisation reforms and the effective devolution of sectoral competences and financial resources to the municipalities in the Federation of Bosnia and Herzegovina and the Republika Srpska.

3. The Assembly takes note of the fact that, since the adoption of Resolution 1626 (2008), two initiatives aimed at implementing a constitutional reform have been launched:

3.1. the so-called "Prud process" brought together the leaders of the key political parties that form the ruling majority at state level and helped resolve several outstanding issues, such as the adoption of the first constitutional amendment on the status of the Brcko district and the agreement on the organisation of a population census in 2011;

3.2. the so-called "Butmir process" was a joint United States and European Union-led endeavour to generate an agreement between key domestic political stakeholders on a package of concrete proposals relating to the constitutional reform, as well as to the issues of apportionment of state and defence property. Supported by the Swedish Foreign Minister Carl Bildt, on behalf of the European Union, and Deputy Secretary of State Jim Steinberg, on behalf of the United States, the "Butmir

1. *Assembly debate* on 26 January 2010 (4th Sitting) (see Doc. 12112, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: MM. Çavuşoğlu and Sasi). *Text adopted by the Assembly* on 26 January 2010 (4th Sitting). See also Recommendation 1894 (2010).

package" sought to bring the domestic constitutional order into line with the Convention and improve the functioning of the country's democratic institutions. The Venice Commission was informally involved in the drafting process.

4. Regrettably, both initiatives have so far failed to produce concrete results. The Prud process ended before any discussions on concrete reform proposals actually started and the Butmir process has so far failed to secure the agreement of key domestic political stakeholders.

5. The Assembly is seriously concerned about the lack of progress on constitutional reform. It takes note of the judgment of the European Court of Human Rights in the case *Sejdić and Finci v. Bosnia and Herzegovina*, in which the Court ruled that the applicants' continued ineligibility to stand for election to the House of Peoples and to the Presidency of Bosnia and Herzegovina, on the grounds that they do not identify themselves with one of the three "constituent peoples", constitutes a violation of Article 14, taken in conjunction with Article 3 of Protocol No. 1, as well as Article 1 of Protocol No. 12 to the Convention. To comply with the decision of the Court, the authorities of Bosnia and Herzegovina must implement a constitutional reform. If this reform is not implemented in the coming months, it will be impossible to hold the parliamentary elections of October 2010 on the basis of new rules, as it will not be possible to change the electoral legislation in time. Thus, there is a serious risk that, following the parliamentary elections of October 2010, the country's institutions will once again be formed in violation of the Convention.

6. The Assembly believes that a last-minute agreement on the constitutional reform is still possible. It notes, however, that the negotiations must focus on a comprehensive set of reform proposals, endorsed by the Venice Commission and in line with the standards of the Convention. A "piecemeal" approach based on short-term compromises and ambiguous formulas will merely mask rather than resolve the problems Bosnia and Herzegovina has to face.

7. The Assembly is deeply concerned by statements and possible actions by politicians at the highest level of Republika Srpska, which undermine state institutions and challenge the authority and powers of the High Representative. As long as the authorities of the state and of the entities comply with their constitutional and legal obligations, the High Representative has no reason to use the so-called "Bonn powers" to impose legislation. As long as obstructionism continues and important reforms are blocked because of entity and ethnic agendas, the High Representative should remain the final authority in the enforcement the Dayton Peace Agreement, under the political guidance and with the backing of the Peace Implementation Council.

8. The Assembly believes that, fourteen years after the signing of the Dayton Peace Agreement, new challenges to the stability of Bosnia and Herzegovina's institutions have emerged and new approaches and solutions should be found. Therefore, it considers that it is high time to launch a wide discussion, with the participation of key local and international stakeholders, including the members of the Peace Implementation Council and in particular European Union institutions and Bosnia and Herzegovina's neighbours, about the challenges Bosnia and Herzegovina currently has to face and the means to overcome them. Such a discussion would contribute to speeding up the advancement of the country on the path of Euro-Atlantic integration. The Council of Europe could play a leading role in this process.

9. In the light of the above considerations, the Assembly urges all domestic political stakeholders to fully engage in a meaningful and constructive dialogue on concrete proposals for amendments to the constitution, in line with the 2005 recommendations of the Venice Commission, with a view to adopting a reform package in time for the 2010 parliamentary elections which should be organised in accordance with the revised constitution.

10. Moreover, the Assembly calls upon the authorities of Bosnia and Herzegovina to:

10.1. stop obstructionism and work constructively at the level of state institutions, in order to speedily enact key legislation necessary to advance on the path of Euro-Atlantic integration;

10.2. speed up the implementation of key reforms relating to the implementation of the remaining commitments to the Council of Europe, in particular as regards the National War Crimes Strategy and the National Judicial Reform Strategy;

10.3. comply with the decision of the High Representative concerning the extension of the mandate of the international judges and prosecutors working in the war crimes chambers of the State Court and of the Chief Prosecutor's Office, secure the necessary funding and train appropriate staff in order to hire, in 2013, national judges and prosecutors to replace international officials;

10.4. complete the reform of the state-level institution of Ombudsperson by effectively dismantling the offices of the existing entity Ombudsperson institutions;

10.5. implement a comprehensive local government reform, with a view to harmonising local government legislation at entity level and, in the Federation of Bosnia and Herzegovina, between the different cantons, in order to effectively devolve sectoral competences to local authorities, strengthen fiscal decentralisation, build up the capacity of local authorities and promote cross-entity intermunicipal co-operation;

10.6. ensure media pluralism and provide all political parties with equal access to the media, in order to guarantee fair and unbiased coverage of the election campaign in the run-up to the October 2010 parliamentary elections;

10.7. urgently adopt the Revised Strategy for the Implementation of Annex VII to the Dayton Peace Agreement; the funds for the implementation of the revised strategy should be obtained in accordance with the February 2009 decision of the Parliamentary Assembly of Bosnia and Herzegovina;

10.8. urgently enact the legislation necessary to conduct a nationwide population census in 2011, in accordance with the agreement previously reached between the key stakeholders;

10.9. comply with their legal obligations with a view to completing the implementation of the Brcko Final Award and working towards the termination of international supervision.

11. The Assembly resolves to closely follow the situation in Bosnia and Herzegovina and invites its Monitoring Committee, at its next meeting prior to the April 2010 part-session, to examine the progress achieved by the authorities of Bosnia and Herzegovina in the implementation of this and previous Assembly resolutions, and to propose any further action to be taken as required by the situation.