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The functioning of democratic institutions in Bosnia and Herzegovina

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Co-rapporteurs: Ms Karin S. WOLDSETH, Norway, European Democrat Group, and Mr Egidijus VAREIKIS, Lithuania, Group of the European People's Party

Summary

The Monitoring Committee strongly regrets, following the October 2010 elections in Bosnia and Herzegovina, the long delay in forming the government: at State level it was formed only in February 2012, more than 14 months after the elections.

The committee is also seriously concerned about the ongoing political crisis following the break-up of the six-party coalition at State level in May 2012. To date, the new coalition partners have still not managed to reshuffle the Federation-level government. As a result, the Federation is completely paralysed and not functioning.

It is also seriously concerned about a growing disrespect for the rule of law. Republika Srpska high officials have repeatedly attacked key State institutions. In the Federation, there have been numerous cases in which political leaders and parties ignored, or in some cases directly violated, requirements set out in constitutions and laws. More worrying still is the growing trend simply not to implement judgments of the State-level Constitutional Court.

According to the committee, in order to end the perpetual cycle of deadlock and confrontation, the authorities of Bosnia and Herzegovina and the key political stakeholders should shoulder their responsibilities, stop obstructionism and work constructively at the level of State institutions.

The authorities are once again urged to implement the 2009 judgment of the European Court of Human Rights in the case of *Sejdic and Finci*. The Assembly should not tolerate yet another election in blatant violation of this judgment. If it is not implemented in good time before the next elections in October 2014, the committee recommends that the Assembly impose sanctions against the delegation of Bosnia and Herzegovina, in accordance with Rules 6 to 9 of the Rules of Procedure.

Furthermore, should no substantial progress be made on the implementation of the Sejdić and Finci judgment and other outstanding obligations and commitments before the October 2014 elections, the Monitoring Committee recommends that the Assembly ask the Committee of Ministers to consider suspending Bosnia and Herzegovina from its right of representation, in conformity with Article 8 of the Statute of the Council of Europe.

1. Reference to committee: Resolution 1115 (1997).

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A. Draft resolution[2]

1. The Parliamentary Assembly recalls that, since the country's accession to the Council of Europe in 2002, it has consistently and repeatedly urged for a constitutional reform in Bosnia-Herzegovina, for the first time in 2004 in its Resolution 1383 (2004) on the honouring of obligations and commitments by Bosnia-Herzegovina (paragraph 3).

2. The Assembly notably recalls its Resolution 1701 (2010) on the functioning of democratic institutions in Bosnia and Herzegovina, in which it called on the key political stakeholders to engage, before the October 2010 parliamentary elections, in a constructive dialogue about concrete proposals for constitutional amendments, with a view to adopting a comprehensive package addressing, in particular, the constitutional discriminations found by the European Court of Human Rights in its judgment of 22 December 2009 in the case of*Sejdić and Finci v. Bosnia and Herzegovina*, with regard to the prohibition of the so-called "Others" – namely members of national minorities or people who refuse to be labelled as "constituent peoples" (Bosniaks, Serbs or Croats) – to stand for election to the Presidency and the House of Peoples.

3. The Assembly also recalls its Resolution 1725 (2010) on the urgent need for constitutional reform in Bosnia and Herzegovina, in which it expressed its serious concern about the non-adoption, prior to the 2010 elections, of the necessary amendments to the Constitution and the election law. These elections, albeit globally free and fair, were thus held on the basis of a constitutional and legal framework which is in violation of the European Convention on Human Rights (ETS No. 5) and its Protocols. This affects the democratic legitimacy of the Presidency members and the MPs elected in accordance with a fundamentally flawed system.

4. The Assembly also recalls its Resolution 1855 (2012) on the functioning of democratic institutions in Bosnia-Herzegovina, in which it reminded the authorities that the *Sejdić and Finci* judgment is legally binding and must be implemented. The Assembly also warned Bosnia-Herzegovina that, if the necessary amendments were not adopted in good time before the next elections in 2014, the continued membership of the country in the Council of Europe would be at stake.

5. The Assembly reiterates that the execution of the *Sejdić and Finci* judgment is a first step in the comprehensive constitutional reform that is needed in order to move away from the institutional straitjacket created by the Dayton Constitution, towards a modern, euro-compatible and functional democracy in which every citizen, regardless of his or her ethnic affiliation, enjoys the same rights and freedoms. The Assembly considers, in particular, that the restrictive quorum rules, the excessive use of entity voting (a double qualified majority used for all decision-making in parliament) and the vague definition of the so-called "vital national interest" – instead of preventing outvoting by any of the ethnic groups through dialogue and search for compromise – have been systematically abused and now hamper all decision-making processes.

6. The Assembly strongly regrets that no credible efforts were made by the authorities to set up, before the 2010 elections or afterwards, a serious institutionalised process for the preparation of a comprehensive package of constitutional amendments, in consultation with civil society and a broad range of legal experts.

7. In this connection, the Assembly reminds the authorities of Bosnia-Herzegovina that the non-implementation of the *Sejdić and Finci* judgment is not only a failure to abide by its obligations and commitments to the Council of Europe, but that the Stabilisation and Association Agreement concluded with the European Union in 2008 cannot enter into force, and that no application for candidacy to the European Union can be submitted unless and until this judgment is implemented. The other countries in the region are making progress, but Bosnia-Herzegovina is lagging more and more behind.

8. The Assembly therefore strongly regrets that the political leaders reneged on the road map agreed with the European Union on 27 June 2012 in the framework of the high-level dialogue on the European Union accession process, by which they committed themselves to putting constitutional amendments before parliament by 31 August 2012 and to changing the Constitution by November 2012.

9. Democratically elected institutions, such as the Parliamentary Assembly of Bosnia and Herzegovina or the tripartite Presidency, should not be under instruction of political party leaders, but should work according to the four-year mandate they have received from the voters. The Assembly considers that the necessary constitutional amendments should not be negotiated behind closed doors by mainly non-elected party leaders,

2. Draft resolution adopted unanimously by the committee on 6 September 2013.

but be submitted to parliament and voted on. It therefore regrets that the three constitutional amendments submitted to parliament in August 2012, though mutually exclusive, have not even been submitted to a vote yet.

10. The Assembly reminds the authorities of Bosnia-Herzegovina that, according to the standards of the Council of Europe, notably those drawn up by the European Commission for Democracy through Law (Venice Commission), the election system should not be modified less than a year before elections, in order to allow the election administration time to cope with the adopted changes. It is therefore of fundamental importance that the constitutional amendments required for the implementation of the *Sejdić and Finci* judgment, and the corresponding changes to the election law, be adopted in good time before the next elections in October 2014 for the Presidency of Bosnia-Herzegovina, the State-level parliament, the Entity parliaments and the cantonal assemblies in the Federation.

11. The Assembly will not tolerate yet another election in blatant violation of the *Sejdić and Finci* judgment. If this judgment is not implemented in good time before the next elections in October 2014, it will consider imposing sanctions against the delegation of Bosnia-Herzegovina, in accordance with Rules 6 to 9 of its Rules of Procedure.

12. Furthermore, should no substantial progress be made on the implementation of the *Sejdić and Finci* judgment and other outstanding obligations and commitments before the October 2014 elections, the Assembly will ask the Committee of Ministers to consider suspending Bosnia-Herzegovina from its right of representation, in conformity with Article 8 of the Statute of the Council of Europe (ETS No. 1).

13. Finally, the Assembly recalls that constitutional reform is indispensable for the functioning of the State, but that it is also necessary to carry out constitutional reform at entity level. It therefore calls on Republika Srpska to relaunch the constitutional amendment procedure which failed to be adopted in April 2012 because of the opposition of the Bosniak caucus in the Republika Srpska Council of Peoples. It is unacceptable, for example, that the Republika Srpska Constitution still provides for the death penalty.

14. The Federation, the other entity in Bosnia-Herzegovina, composed of 10 cantons, each with its own Constitution and elected cantonal assembly, also needs to adopt amendments to its Constitution as a matter of urgency, notably with regard to the deletion of the constitutional provisions on the Federation ombudsman, which is no longer in existence following the setting up in 2008 of a unified Ombudsman institution at State level.

15. The Assembly has consistently called for a profound reform of the Federation, as the current system is not only inefficient, but also unsustainable in times of economic and financial crisis. The Assembly therefore urges the authorities in the Federation to seriously consider the 185 constitutional reform proposals submitted by domestic experts for constitutional reform in the Federation, including the merger of some cantons and the redefinition of the repartition of competences between the municipal, cantonal and Federation levels.

16. In its Resolution 1855 (2012), the Assembly strongly regretted, following the October 2010 elections, the long delay in the constitution of the two houses of the Parliamentary Assembly of Bosnia and Herzegovina: the House of Representatives only started to function towards the end of May 2011, and the House of Peoples at the beginning of June 2011. The government at State level was formed only in February 2012, more than 14 months after the elections.

17. The Assembly welcomes the adoption in February 2012 of the State budget for 2011 and of the laws on census and State aid, which are requirements of the European Partnership Agreement with the European Union. It regrets that the census was once again postponed, to October 2013, and recalls that Bosnia-Herzegovina is the only country in the region, apart from “the former Yugoslav Republic of Macedonia”, not to have held a census in 2011.

18. The Assembly is seriously concerned about the ongoing political crisis following the break-up of the six-party coalition at State level in May 2012, after the refusal of the Party for Democratic Action (SDA) to vote for the 2012 budget. This crisis had its origin in the Social Democratic Party’s (SDP) attempt – with the support of the Party for a Better Future (SBB) and the two Croatian Democratic Union parties (HDZ BiH and HDZ 1990) – to expel the SDA and its allies from governing coalitions at the State, Federation and cantonal levels, and the refusal of the latter to step aside.

19. The Assembly notes that the SDP and its coalition partners at State level succeeded in removing the three SDA ministers from the State-level government only in late October 2012. The SDP, SBB and the two HDZ parties have also managed to reshuffle authorities in four cantons and a few municipalities. However, to date, these parties have still not managed to reshuffle the Federation-level government, despite having a

significant majority in the Federation parliament, which voted no confidence in the government in both chambers of the parliament in mid-February 2013. The SDA-dominated Bosniak caucus has blocked implementation of the vote of no confidence by invoking “vital national interest” in the House of Peoples of the parliament. The vital national interest case has not yet been ruled on, however, because missing judges to the Federation Constitutional Court and its vital national interest panel were appointed only in late July 2013. As a result, the Federation is completely paralysed and not functioning.

20. The Assembly is also seriously concerned about a growing disrespect for the rule of law. Republika Srpska high officials have repeatedly attacked key State institutions such as the Bosnia and Herzegovina Constitutional Court, State Court and Prosecutor’s Office, High Judicial and Prosecutorial Council, and the Bosnia and Herzegovina Central Election Commission. In the Federation, there have been numerous cases in which political leaders and parties ignored or in some cases directly violated requirements set out in constitutions and laws, for the sake of political expediency. More worrying still is the growing trend simply not to implement judgments of the State-level Constitutional Court.

21. The Assembly in particular condemns the failure to implement the 2010 judgment of the Constitutional Court on some specific provisions related to the election system in Mostar, a city divided since the end of the war. Because of the legal vacuum created by this non-implementation, no local elections could be held in Mostar on 7 October 2012. The mandates of the previous members of the city council thus expired in November 2012 and the city has been without a proper budget or legally elected officials ever since. The Assembly urges the political stakeholders to put an end to this situation which has created a lot of hardship for the population. It also notes with great concern the continuing non-implementation of the July 2012 decision of the Constitutional Court annulling the Republika Srpska law on State property and the long delay in the State parliament to adopt amendments to the law on the 13-digit single citizen identification number to comply with rulings of the Constitutional Court of 2011 and early 2013. This has left around 3 000 children born since March 2013 without access to health care or travel documents.

22. The Assembly considers that the current situation hampers the completion of much-needed reforms in key sectors, such as democratic institutions, the rule of law and human rights, and slows down the country’s advancement on the path to European integration. The Assembly notes that, since 2006, very little progress has been achieved in the implementation of outstanding key commitments of Bosnia and Herzegovina to the Council of Europe.

23. In order to end the perpetual cycle of deadlock and confrontation, the Assembly once again calls on the authorities of Bosnia and Herzegovina and the key political stakeholders to shoulder their responsibilities, stop obstructionism and work constructively at the level of State institutions.

24. The Assembly will closely follow the situation in Bosnia and Herzegovina and take stock of the progress achieved in the implementation of this and previous resolutions. If no progress is made on the issues mentioned in this resolution before October 2014, the Assembly will consider any further action that might be required, as outlined in paragraphs 11 and 12 of this resolution.

B. Explanatory memorandum by Ms Woldseth and Mr Vareikis, co-rapporteurs

1. Introduction

1. On its accession to the Council of Europe on 24 April 2002, Bosnia and Herzegovina (BiH) accepted to honour the obligations placed on all member States under Article 3 of the Organisation's Statute, together with a number of specific undertakings set out in Opinion 234 (2002) on Bosnia and Herzegovina's application for membership of the Council of Europe. With a view to ensuring compliance with these commitments, the Parliamentary Assembly decided, pursuant to Resolution 1115 (1997), to closely monitor the situation in Bosnia and Herzegovina as from its accession.

2. The first monitoring report was presented to the Assembly on 23 June 2004 and led to the adoption of Resolution 1383 (2004) and Recommendation 1664 (2004). Following the failure of the constitutional reform in April 2006, the Assembly also decided in June 2006 to hold a debate under urgent procedure on the constitutional reform in Bosnia and Herzegovina and adopted Resolution 1513 (2006). The second full monitoring report was debated in September 2008 and led to the adoption of Resolution 1626 (2008).

3. On 22 December 2009, the European Court of Human Rights delivered its judgment in the case of *Sejdić and Finci v. Bosnia and Herzegovina*, in which it found a violation of Protocol No. 12 (general prohibition of discrimination) to the European Convention on Human Rights (ETS No. 5, "the Convention") and a violation of Article 3 of Protocol No. 1 in conjunction with Article 14 of the Convention (right to free elections and prohibition of discrimination in relation to other Convention-protected rights). Both Mr Finci (a Jew) and Mr Sejdić (a Roma) belong to the constitutional category of "Others" and, as such, cannot stand for election to the Presidency of the country or be elected to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina.

4. According to the Constitution (Annex 4 of the Dayton Peace Accords), the tripartite Presidency of the State is directly elected every four years: one member must be a Serb elected from the territory of Republika Srpska (RS), one of the two entities, and the other two must be respectively a Croat and a Bosniak (Muslim) elected from the territory of the Federation of Bosnia and Herzegovina, the other entity, composed of 10 cantons. Again, according to the Constitution, the House of Peoples must be composed of five Serbs (appointed by the Republika Srpska National Assembly) and by five Croats and five Bosniaks appointed by the House of Peoples of the Federation. This system excludes everybody who does not declare him or herself as belonging to a "constituent people", either because they are members of the 17 recognised minorities or because they do not wish to declare themselves, from participating in the political life of the country.

5. In January 2010, the Assembly adopted Resolution 1701 (2010) on the functioning of democratic institutions in Bosnia and Herzegovina, urging the authorities to adopt the necessary constitutional and legislative amendments in order at least to abide by the *Sejdić and Finci* judgment before the next general elections, scheduled for 3 October 2010. The Assembly also suggested holding a multilateral conference with key local and international actors (notably the countries represented on the Peace Implementation Council, the European Union, the Council of Europe and the neighbouring countries) to discuss ways of overcoming the institutional and political deadlock in Bosnia and Herzegovina.

6. Neither the Constitution nor the election law were amended in time for the 2010 elections.[3] In Resolution 1725 (2010) on the urgent need for constitutional reform in Bosnia and Herzegovina, the Assembly therefore expressed its disappointment that the next elections would be held on the basis of rules which were in violation of the Convention and its Protocols and called on the authorities not to waste the remaining time before the elections and to launch immediately a serious institutionalised process for preparing a comprehensive package of constitutional amendments to be adopted right after the elections. This was not done either, since the members of the mixed Sejdić and Finci working group (three ministers and nine MPs) could not agree on the mandate and composition of this constitutional reform commission and, in particular, whether it should be set up by a law or by a decision of parliament. Thus, on 26 August 2010, the Council of Ministers had to take note of the working group's failure and agreed to its proposal to resume work only after the elections.

3. In order for the changes to apply for the 2010 elections, both the Constitution and the election law would have to have been amended before 5 May 2010 when the Central Election Commission announced that elections would take place on 3 October.

7. In January 2012, the Assembly adopted Resolution 1855 (2012), in which it regretted the failure of the Joint Interim Committee of the Parliamentary Assembly of Bosnia and Herzegovina, which had been set up in October 2011, one full year after the elections, to prepare constitutional amendments by the deadline of 31 December 2011. The Assembly also warned that Bosnia and Herzegovina's continued membership of the Council of Europe might be at stake if the necessary amendments were not adopted in good time before the next elections in 2014.

2. The 2010 elections

8. Elections were held at all levels, except municipal, on 3 October 2010. At State level, voters had to elect the three-member Presidency of the State and the 42 members of the House of Representatives. Voters in the Republika Srpska elected the President of the Republika Srpska (and two vice-presidents) and the 83 members of the National Assembly of Republika Srpska. Voters in the Federation of Bosnia and Herzegovina elected the 98 members of the House of Representatives of the Federation.[4] Finally, voters in the Federation also had to elect the members of the 10 cantonal assemblies.

9. With the exception of the Social Democratic Party (SDP), which officially claims to be multi-ethnic, the other major parties remain essentially ethnic parties. For the Serbs, the main parties are the SNSD (Alliance of Independent Social Democrats), the SDS (Serbian Democratic Party) and the PDP (Party for Democratic Progress). On the Croat side, the main parties are the HDZ (Croatian Democratic Union of Bosnia and Herzegovina) and the HDZ 1990 (Croatian Democratic Union 1990[5]). For the Bosniaks, the main parties are the SDA (Party for Democratic Action), the SBiH (Party for BiH) and the newly created SBB (Party for a better future of BiH). On polling day, the turnout was 56.28%, which was an increase of some 3% over 2006.

2.1. Election of the tripartite State presidency

10. Voters registered in Republika Srpska, whether Serb, Croat or Bosniak or from the category of "Others", could only vote for the Serb member of the Presidency. Incumbent Nebojša Radmanović, from the SNSD, was re-elected with 295 629 votes, namely 48.92%.

11. Voters in the Federation, again independently of their own ethnic affiliation, could only vote either for the Croat member of the Presidency or for the Bosniak one. For the Bosniak seat, the winner was Bakir Izetbegović who received 162 831 votes, namely 34.86%. Incumbent Haris Silajdžić from the SBiH, was relegated to third place with barely 25.10% of the votes. The most popular politician in the Federation,[6] and the best elected throughout the country, is undoubtedly the Croat member of the Presidency, Zeljko Komšić, from the SDP. He was re-elected for a second term with 337 065 votes, namely 60.61%. The candidates from the biggest Croat parties, Borjana Kristo of the HDZ and Martin Raguž of HDZ 1990, barely received 19.74% and 10.84% of the votes respectively.

12. Given the relatively small size of the Croat ethnic community in BiH (they were around 760 000, namely 17% of the population according to the pre-war 1991 census, and, according to Cardinal Puljić, the number today is approximately 400 000 people (out of the total population of about 3 800 000), it is clear that a vast number of Bosniaks, instead of voting for their ethnic Bosniak candidate, voted instead for Mr Komšić. As in 2006, we see this as a positive sign that politics in BiH can move away from the ethnic divide.

13. The mainstream Croat parties, HDZ and HDZ 1990, however, consider that Mr Komšić is not a "legitimate" Croat because he was elected with Muslim votes. They do not question his ethnicity *per se,* but deny him the right to represent the Croat people in the Presidency. For them, there is a major difference between being a representative *of* the Croat people, elected by Croats, and being a representative *from* the Croat people, elected with votes cast by others than Croats.

14. We still completely disagree with this view. We think that it has no constitutional and legal basis whatsoever and that it shows complete disrespect for the democratically expressed will of the people.

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4. In the Federation, the President (and two vice-presidents) is indirectly elected by the Federation House of Representatives.

5. The HDZ 1990 was originally a splinter party of the HDZ and was set up just before the 2006 elections. This time, however, they decided to join forces.

6. In Republika Srpska, the most popular politician is Milorad Dodik from the SNSD. The outgoing Republika Srpska Prime Minister won the presidential race in Republika Srpska with 319 618 votes, namely 50.52%.

2.2. Elections to the various parliaments, at State and entity levels

2.2.1. At State level

15. The BiH Constitution provides that the House of Representatives of BiH is composed of 42 delegates, of which 28 are elected from the territory of the Federation and 14 from the territory of Republika Srpska. This time the biggest election winner from among the 28 MPs to be elected to the House of Representatives from the territory of the Federation was Zlatko Lagumžija's SDP. This multi-ethnic party, which has been in opposition since 2002, won 26.07% of the votes and now has eight MPs in the House of Representatives. The main Bosniak parties, Sulejman Tihić's SDA, Fahrudin Radončić's SBB and Haris Silajdžić's SBiH, won seven, four and two seats respectively. The main Croat parties, HDZ and HDZ 1990, won three and one seat respectively. Two smaller Croat parties, the HSP (Croatian Party of Rights) and the NSRzB (People's Party for Betterment through Work), got one seat each. One seat went to a small mainly Bosniak party, the DNZ.

16. The seats allocated to the 14 delegates elected from the territory of Republika Srpska are as follows: eight for Milorad Dodik's SNSD, four for Mladen Bosić's SDS, one for the Mladen Ivanić's PDP and one for the DNS (Democratic People's League). For the first time, all 14 MPs from Republika Srpska are ethnic Serbs. The SNSD and SDS decided to form a coalition at State level, but the SDS remains in opposition at the entity level in Republika Srpska.

17. Following the elections, the SDP, the SDA and two small Croat parties (HSP and NSRzB) formed a coalition based on a commonly agreed platform for government. Together, they held 17 seats out of 42. This was of course not a majority, but the "platformists", as they are called, hoped, at least on issues of major importance, to be able to count on the four votes of the SBB and the two votes of the SBiH, which both decided to stay in opposition.

18. The newly elected MPs met in an inaugural session on 30 November 2010, but only to take the oath. Due to the ongoing negotiations on government formation, there was no agreement either on who should become Speaker and Vice-Speakers of the House. Finally, the House elected a Speaker (from SDP) and two Vice-Speakers (from SNSD and HDZ 1990) on 20 May 2011 and started working.[7] However, since all legislation also needs to be adopted by the House of Peoples, which was not constituted until 4 June 2011, in effect there was no legislative work carried out at all for eight months after the elections.

19. The House of Peoples of Bosnia and Herzegovina comprises 15 delegates, two thirds of which must come, according to the Constitution, from the Federation (five Croats and five Bosniaks) and one third from Republika Srpska (five Serbs). It is the Republika Srpska National Assembly which appoints its five delegates to the House of Peoples, this was done already in January 2011. For the Federation delegates, matters were unacceptably delayed because the 10 delegates had to be appointed by the House of Peoples of the Federation.

20. The House of Peoples of the Federation has 58 delegates (17 Bosniaks, 17 Serbs, 17 Croats and seven "Others") who are appointed by the 10 cantonal assemblies. According to the Federation's Constitution (Article 10), the cantonal assemblies should have sent their delegates to the Federation House of Peoples no later than 20 days after the elections. This constitutional deadline was ignored by a number of cantons with a Croat majority[8] until 30 May 2011. The House of Peoples at State level was thus inaugurated only on 4 June 2011.

2.2.2. At entity level

21. In Republika Srpska**,** although Milorad Dodik's SNSD lost four seats compared with 2006, the SNSD remains the strongest party[9] in the RS National Assembly with 37 seats out of 83. In coalition with the Socialist Party and the DNS, the SNSD thus has a comfortable majority of 47 seats. In these circumstances, government formation was not a problem: the RS government, which consists of 16 ministers, was approved already on 29 December 2010, and Prime Minister, Aleksandar Džombić, took office on 1 February 2011,[10] following a 31 January ruling of the Vital National Interest (VNI) Panel of the RS Constitutional Court that his appointment did not violate Bosniaks' vital national interest.[11]

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7. In total, one year after the elections, only 10 laws amending existing legislation had been adopted.
8. The Central Election Commission confirmed to us that there was no legal avenue to sanction this delay. The CEC has no competence to impose fines or other sanctions.
9. The SDS (Serb opposition) got 18 seats, the PDP (Serb opposition) got seven, the Democratic Party (Serb opposition) got two, the Democratic People's League or DNS received six, the Socialist Party four, the SDP three, the SDA two, the National democratic Party two, the Serb Radical party one. There is one independent MP.

22. Things were much more complicated in the Federation. The Federation House of Representatives has 98 seats: 28 were won by the SDP, 23 by the SDA, and five by the NSRzB. The Platform parties thus command 56 seats and have a clear majority. The HDZ gained 12 seats and the HDZ 1990, five seats.[12] According to the election law,[13] however, the government could not be formed until the composition of House of Peoples of the Federation was completed, i.e. until all 10 cantonal assemblies had sent their delegates.

23. In order to keep a strong bargaining chip for the negotiations over government formation at State level, three cantons with a Croat HDZ/HDZ1990 majority did not send their delegates to the Federation House of Peoples. On 17 March 2011, the Platform parties, who had a majority of 33 cantonal delegates in the House of Peoples (out of 58), convened a session, took the oath and elected the President[14] and Vice-Presidents of the Federation and the Speaker and Vice-Speakers of the House of Peoples.

24. The House of Peoples then immediately proceeded with the appointment of a government, which was confirmed by the House of Representatives. The Federation Government comprises 16 ministers, with Nermin Nikšic (SDP) as Prime Minister, and Jerko Ivanković-Lijanović (NSRzB) and Desnica Radivojević (SDA) as Deputy Prime Ministers. The two HDZ parties held no ministerial post.

25. On 24 March 2011, these two decisions were annulled by the Central Election Commission[15] and, on 28 March, the High Representative, Valentin Inzko, suspended them until further notice. This suspension has not been lifted to date.

26. The High Representative was very much criticised for interfering in the Federation government formation process. But a solution had to be found urgently: on 26 January 2011, the High Representative had to issue a decision on temporary financing for the period January-March, expiring 31 March, without which salaries, pensions and allowances could no longer be paid by the Federation authorities to budget beneficiaries. A budget for 2011 was adopted by the new government on 26 March 2011.

27. The HDZ and HDZ 1990, with the support of Dodik's SNSD, consider the formation of the House of Peoples and the subsequent formation of the government in the Federation to be unconstitutional, illegal and illegitimate because they consider themselves as the only legitimate representatives of the Croats in Bosnia and Herzegovina. Both the HDZ and HDZ 1990 felt sidelined and excluded. They are now forcefully calling for the creation of a third entity and have revived the Croat National Council, a body grouping all political parties with a Croat prefix.

3. The protracted stalemate with regard to government formation at State level

28. The Council of Ministers of Bosnia and Herzegovina comprises nine ministers and a chairman. The Constitution of Bosnia and Herzegovina provides that no more than two thirds of all ministers may be appointed from the territory of the Federation and that the chairman may appoint deputy ministers who shall not be of the same constituent people as their ministers. In total, there are thus 19 positions to be shared. There is an unwritten gentlemen's agreement that the position of chairman should rotate between the constituent peoples. The previous chairman, Nikola Špirić, is a Serb, the one before him, Adnan Tersić, was a Bosniak. The chairman to be appointed for the 2010-2014 term was thus supposed to be a Croat.

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10. There was a government reshuffle in March 2013, which led to the dismissal of six ministers, including the Prime Minister. The new Prime Minister is a woman, former adviser to Milorad Dodik and former Minister for Economic Relations.
11. The Bosniak caucus in the RS Council of Peoples had invoked vital national interest because the RS Constitution stipulates that any of the three constituent peoples or "Others" cannot hold more than two positions each among the six highest positions in the RS. The RS Council of Peoples (28 members: eight Serbs, eight Croats, eight Bosniaks and four "Others") is elected by the RS National Assembly.
12. The SBB won 13 seats, the SBiH, nine, and three seats went one each to the A-SDA (a splinter party of the SDA), the DNZ and the SNSD.
13. Under the election law of Bosnia and Herzegovina, the cantonal legislatures were obliged to elect delegates to the House of Peoples of the Federation of Bosnia and Herzegovina "as soon as a cantonal assembly convenes after the elections for the cantonal assemblies, and no later than one month after validation of the results".
14. HSP's Živko Budimir was appointed President of the Federation of Bosnia and Herzegovina, while the Vice-Presidents are Mirsad Kebo (SDA) and Svetozar Pudariæ (SDP).
15. No appeal against these decisions of the CEC was lodged with the State Court. Instead the HDZ lodged two appeals with the Constitutional Court of the Federation complaining about the unconstitutional "coup" perpetrated by the Platform parties.

29. The Presidency forwards to the House of Representatives, no later than 15 days after its inaugural session, its proposal for the position of chairman of the Council of Ministers. If the House of Representatives confirms the nomination, the chairman then appoints ministers and deputy ministers, who again need to be confirmed by the House of Representatives. If the candidate proposed by the Presidency fails to be confirmed by the House of Representatives, the Presidency has eight days to come up with a new nomination.

30. Given its election results, the SDP originally claimed the position of chairman of the Council of Ministers, preferably for the SDP President[16] himself. This was strongly opposed by the two HDZ parties and by the Serb parties, because of the above-mentioned informal rotation rule. As the biggest Croat parties, the two HDZs consider the post to be theirs by right. They also claim two other ministerial posts.

31. The SDP, as a multi-ethnic party, then proposed a non-partisan Croat, a professor from Mostar, Slavo Kukić. The HDZ proposed Borjana Kristo, former Federation President, and the NSRzB, another of the Platform parties, proposed Mladen Ivanković-Lijanović. On 14 June 2011, the Presidency examined these candidatures and decided to send the nomination of Slavo Kukić to the House of Representatives for confirmation. However, on 29 June 2011, Mr Kukić's nomination, although it obtained a majority of 22 votes, was not confirmed, because the majority needed to include one third of positive votes from Republika Srpska, and it did not. According to the BiH Constitution, in the second round of voting, it was required that votes from the 14 Republika Srpska delegates should not include two thirds or more of votes against the nomination. On 14 July, the nomination of Mr Kukić was thus finally rejected, as more than two thirds of RS Delegates voted against.

32. According to the law on the Council of Ministers, the Presidency should have forwarded another nomination to the House of Representatives within the next eight days. It did not, but instead wrote a letter to the main political parties requesting them to nominate a candidate who would have the support of at least 22 delegates in the House of Representatives.

33. As in 2006, it was widely expected that negotiations for government formation at State level would take around three to four months, or a maximum of six months. Instead, there was no government at State level more than one year after the elections. Extremely concerned about this situation and the resulting institutional paralysis, we carried out a fact-finding visit to Bosnia and Herzegovina from 20 to 23 September 2011, visiting, *inter alia,* leaders of the main political parties in Sarajevo and Mostar in order to get a better understanding of the reasons behind this continued deadlock.

34. The six main party leaders (SDP, SDA, HDZ, HDZ 1990, SNSD and SDS) subsequently held a number of meetings but no agreement was reached: Republika Srpska claimed four ministries, including the Minister for Foreign Affairs,[17] the two HDZs insisted on having the chairmanship and two other ministries, the SDP still wanted at least the Foreign Affairs Ministry. There were fights also with regard to the distribution of the posts of deputy minister: the Platform parties at some point agreed on the attribution of posts to the HDZs, including the chairmanship, but requested that at least one deputy minister be appointed from the Croat Platform parties. This was refused. The SDA suggested taking into account not only the 19 positions in the Council of Ministers, but more globally the 63 to 70 positions in all State institutions and to distribute them according to the ethnic repartition key provided by the 1991 census. This was rejected as well, because the HDZs claimed complete equality, namely a third of all posts. In order to show some flexibility, the Republika Srpska accepted at some point that one of the ministers appointed from the territory of the Republika Srpska could be either a Bosniak or a Croat.[18]

35. Finally, on 28 December 2011, the leaders of HDZ 1990, HDZ, SDA, SDP, SDS and SNSD reached a broad political agreement that included forming the Council of Ministers of Bosnia and Herzegovina, more than a year after the October 2010 elections. The 28 December agreement included a commitment to adopt a budget for 2011 and two key European Union-related laws — the State Aid Law and the Census Law.

36. The Bosnia and Herzegovina Council of Ministers was finally appointed by the Bosnia and Herzegovina House of Representatives on 10 February 2012, with Mr Vjekoslav Bevanda (a Croat from HDZ) as Chairman. On 3 February, the Law on Population Census, Households and Apartments in Bosnia and Herzegovina and the Law on State Aid were adopted by the Bosnia and Herzegovina Parliamentary Assembly. Further positive news followed on 9 March 2012, when the leaders of the six political parties in the State-level governing

16. Zlatko Lagumdžija, the President of the SDP, is a Bosniak.

17. This was quite a surprising demand: the former Foreign Affairs Minister is a Jew, that is to say from the category of "Others". The RS apparently considers him to be a Bosniak, because he was nominated to this post in 2006 by Haris Silajdžić of the SBiH. The Foreign Affairs Minister in the 2002-2006 mandate was a Serb, Mladen Ivanić.

18. The former Minister of Security was a Bosniak from Srebrenica, which is located in Republika Srpska.

coalition signed an agreement on principles to be used to resolve the issues of ownership and use of defence and State property. The implementation of the agreement on defence property would open the way for the full participation of Bosnia and Herzegovina in the Membership Action Plan of the North Atlantic Treaty Organisation (NATO).

37. We again travelled to Bosnia-Herzegovina from 3 to 7 June 2012. This was the first visit to the country of the newly appointed co-rapporteur, Mr Egidijus Vareikis. We had been happy to hear that on 31 May 2012, just before our visit, the House of Representatives had finally adopted the State budget for 2012, totalling 1.3 billion KM (around 650 million euros).

38. However, on our arrival in Sarajevo, we heard that the SDA (the biggest Bosniak party), one of the main partners in the coalition formed by the SDP (the officially multi-ethnic party), together with two small Croat parties (the HSP and the NSRzB), had voted against the budget.

39. The SDA's refusal to vote for the budget was apparently the straw that broke the camel's back, given the increasingly strained relations between SDA and SDP since the formation of government at State level in February 2012.

40. The SDP leader and current Foreign Affairs Minister, Zlatko Lagumdžija, called for the resignation of the three SDA ministers at State level, where they were holding the positions of Ministry of Security, Ministry of Defence and Deputy Minister of Finance. He also announced that the coalition agreement with the SDA and the two small Croat parties was equally no longer valid for the Federation government and in the ten cantons of the Federation.

41. In a complete U-turn,[19] the SDP decided to form a coalition with the two main Croat parties (HDZ and HDZ 1990) and with the SBB (Party for a Better Future), headed by Fahrudin Radončić, a media mogul and owner of the biggest daily newspaper, *Dnevni Avaz*. Out of 42 seats in the House of Representatives at State level, the two HDZ's together and the SBB would command four seats each, and the SDP eight, i.e. a total of 16 seats. The previous coalition commanded 17 seats in the House of Representatives, including the seven seats of the SDA.

42. Both the SDA and the two small Croat parties have apparently decided to fight their eviction tooth and nail, as we will see below. The new coalition agreement is not only opposed by the SDA, it has also created havoc within the SDP party itself. On 23 July 2012, Mr Zejlko Komšić, Vice-President of the SDP, who had been re-elected in October 2010 to the Croat seat in the Presidency of the country, announced that he was leaving the SDP. Komšić, the most popular politician in the country, then proceeded to create his own multiethnic party, the Democratic Front.

43. On 25 June 2012, the Chairman of the Council of Ministers formally requested parliament to confirm the dismissal of the three SDA ministers. This required a simple majority in both Houses. On 5 July 2012, the House of Representatives voted in favour of dismissal. Things were trickier in the House of Peoples where the SDA holds three seats out of the five reserved for Bosniaks. At its session on 19 July 2012, the Bosniak caucus invoked "vital national interest" to block the voting on the removal of its ministers. This was rejected by the Constitutional Court and the SDP's efforts to remove the SDA from the State-level Council of Ministers ultimately succeeded on 22 October 2012, with the BiH Parliamentary Assembly voting to remove them from the BiH Council of Ministers. The new ministers took up office in November 2012.

44. As a result of this protracted political crisis and the ensuing political bickering, the productivity of the common institutions at State level has been dismal: from October 2010 to July 2013, the BiH Parliamentary Assembly adopted only seven new laws (of which three related to the budget), and 48 amendments to existing laws. Eight bills submitted by the Council of Ministers were rejected, of which five did not pass because the MPs from Republika Srpska used the mechanism of entity voting.

45. One striking example of the totally irresponsible behaviour of the politicians in BiH is the law on the 13-digit single citizen identification number. The existing law must be amended because the BiH Constitutional Court ruled in 2011 that the names of a number of municipalities needed to be changed. Since its decision was not implemented, the Constitutional Court decided in February 2013 to repeal the said provisions. As a result, no personal ID numbers could be attributed to the 3 000 children born after February 2013. This means they cannot get travel documents or health-care benefits.

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19. For almost 14 months after the October 2010 elections, the SDP did its absolute best to shun the two major Croat parties (HDZ and HDZ 1990), refusing to give them any ministerial positions in the State government, as well as in the Federation government.

46. On 6 June 2013, following the death of a three-month-old girl because she could not cross the border for urgent medical treatment abroad, protesters gathered peacefully in front of the parliament, urging MPs to adopt amendments to this law as a matter of urgency and in any event before 30 June. They prevented the MPs from leaving the premises for 14 hours. MPs from Republika Srpska, as well as a number of Croat MPs, then claimed they no longer felt safe in Sarajevo and refused to attend any parliamentary sessions, unless and until the State and cantonal police were held accountable and the demonstrators prosecuted. This boycott continued until 9 July, when the whole session was devoted to a discussion on the security of MPs.

47. The law was eventually adopted under urgent procedure on 23 July, but the Bosniak caucus in the House of Peoples invoked vital national interest and its adoption is thus blocked until the BiH Constitutional Court takes position, probably not before late September 2013.

4. The ongoing political crisis in the Federation

48. At State level, the HDZ and HDZ 1990 were eventually given the three ministerial positions they were claiming, including the post of Chairman of the Council of Ministers. But at Federation level, neither HDZ got a single ministerial post: they were distributed either to the SDA or to the two small Croat parties (HSP and NSRzB), part of the so-called Platform coalition. The President of the Federation is, for example, from the HSP, and one of the vice-presidents is from the SDA. Since May 2012, the new coalition has tried unsuccessfully to oust the SDA both at Federation and cantonal level.[20]

49. The speaker and deputy speaker of the Federation House of Representatives can be removed by a simple majority. This was done on 26 June 2012, during a session convened by the deputy speaker, which was declared unconstitutional by the Federation Constitutional Court on 28 August, following which the dismissed speaker from the SDA and the deputy speaker from the HSP returned to their posts. They were finally dismissed in accordance with the rules of procedure on 6 September 2012. The Federation House of Peoples for its part succeeded in replacing its speaker on 3 July 2012.

50. The President of the Federation can only be dismissed for violation of the oath of office or because he is unworthy to serve, according to Article 16.2 of the Constitution, by a decision of the Constitutional Court upon requests made by both houses with a two-thirds majority. The new coalition cannot muster this two-thirds majority and the President thus remains in office to date. On 26 April 2013, he was arrested and placed in pre-trial detention by the State police upon request of the State prosecutor for allegedly having sold presidential pardons to convicted criminals. The detention order was cancelled by the BiH Constitutional Court and he resumed office about a month later.

51. The Federation government must be composed of eight Bosniaks, five Croats and three Serbs.[21] The Cabinet may be removed either by the President with the concurrence of the Vice-President, or by a vote of no confidence adopted by a majority in each house of the legislature. The President removes ministers upon the proposal of the Prime Minister (except when he receives a resignation, see below). The SDA holds nine ministerial positions in the Federation government, while the SDP holds eight, including the Prime Minister. All of the SDA ministers refused to resign and the Federation President (from HSP) refused to remove them.

52. On 22 June 2012, the Federation President accepted the resignation of the Minister for Spatial Planning, who had switched allegiance from the SDA to the SDP. The minister claimed he had not in fact resigned and that the Federation President had acted upon a blank resignation letter,[22] which he had signed at the request of the SDA when taking up office. On the same day, seven SDP ministers, plus the Minister for Spatial Planning, voted to launch personnel changes in a number of Federation public companies. This led to an appeal to the Federation Constitutional Court, which ruled on 9 October 2012 that the decision on the minister's resignation was valid until disputed by the minister himself.

53. In November 2012, the SDA, and the two small Croat parties (HSP and NSRzB) walked out of a government session over a contested decision on the management of the Federation Development Bank. This left the government without the necessary quorum to adopt the 2013 budget, a prerequisite for the disbursement of funds by the International Monetary Fund (IMF).

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20. Government reshuffling was successful in five cantons. Canton 10 (Livno) formed its first government after the 2010 elections only on 31 July 2012, 22 months after the elections.

21. One "Other" may be appointed as minister from the quota of the largest constituent people.

22. See also the opinion of the European Commission for Democracy through Law (Venice Commission) on this particular issue in document CDL-AD(2012)021, adopted on 12-13 October 2012. The opinion was requested by the Minister of Justice of the Federation.

54. Since it proved impossible to remove the SDA ministers from government, the only other solution was a vote of no confidence. The House of Representatives thus voted no confidence on 12 February 2013, and the House of Peoples followed suit on 15 February, but the Bosniak caucus in the House of Peoples invoked vital national interest (VNI), and, therefore, the decision on no confidence cannot be deemed adopted or in force.

55. The Federation Constitutional Court must adjudicate the invocation of VNI. This Court has nine members of which five are required as a minimum quorum to make decisions. For the past four years however, both the former and current Federation President and Vice-Presidents failed to propose nominations for the four missing[23] judges to the Constitutional Court, nominations which have to be confirmed by the Federation House of Peoples. In addition, the VNI panel of the Federation Constitutional Court has to be composed of seven members, two from each constituent peoples, plus one "Other", who must be elected by both houses of the Federation parliament, and can only decide by a two-thirds majority on each invocation of the VNI. There is currently a backlog of 18 VNI cases before the Federation Constitutional Court, all related to complaints brought by cantonal legislatures.

56. Finally, one judge was elected in March and another in July 2013. Another appointment was blocked by the Bosniak caucus in the House of Peoples. As the Court now has seven judges out of nine, there was no reason to postpone appointments to the VNI panel. This was done by both houses of parliament at the end of July 2013.

57. We therefore expect the Federation Constitutional Court to deal with the VNI invocation regarding the vote of no confidence as a matter of priority.

5. The situation in Mostar

58. Mostar is a divided city[24] and its statute was imposed by the High Representative in 2004. It is, with Sarajevo and Brčko, the only city in Bosnia-Herzegovina where the mayor is indirectly elected.

59. We visited Mostar in June 2012, a few months ahead of the local elections scheduled for 7 October 2012. Our meetings focused on the implementation of the decision of the Constitutional Court of Bosnia-Herzegovina that had found unconstitutional in November 2010 a number of provisions specific to the election system in Mostar.[25] The Constitutional Court had set a six-month deadline to the BiH Parliamentary Assembly to correct the relevant provisions of the election law. After the deadline expired, the Constitutional Court decided, in February 2012, to repeal the provisions it had earlier deemed unconstitutional.

60. Given the existing legal vacuum, the Central Election Commission considered it could not organise elections in Mostar. We spoke to the current mayor, the city council, the cantonal Prime Minister and the Mostar Mufti. The situation is very tense: the Bosniaks are unwilling to accept the Croat proposal to amend the election law to make the city a single electoral constituency, because the Croats would then have the majority (which was Bosniak before the war).

61. The Croat parties (HDZ and HDZ 1990) consider that the decisions of the Constitutional Court can only be implemented by giving each vote the same weight. There is no agreement in sight: the working group established by the city council has not been able to reach a consensus and the intersectoral working group at State level, whose mandate ended on 1 May 2012, also failed to agree on amendments. The Office of the High Representative organised around 100 meetings with the various political parties, but to no avail.

62. The mandate of the 35 members of the city council expired on 5 November 2012. The election law is perfectly clear in this regard: there is no possibility for the city council to act *ad interim* until elections can be organised. The decision of the city councillors to extend both their own and the mayor's mandate is therefore legally questionable, to say the least, as are the two decisions of the city council on temporary financing for the first three months of 2013, without participation of the Croat members. The caretaker mayor, a Croat, challenged these two decisions before the Federation Constitutional Court.

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23. Originally, only three judges were missing, but the election to the European Court of Human Rights in October 2012 led to a fourth vacancy. Another judge is due to retire in January 2014.

24. The 2004 Statute was supposed to achieve reunification of the city. We were told that administrative and institutional reunification had been achieved, at least to some extent, but that most utilities (water, sewage, electricity, fire brigades) remained divided between Mostar East and Mostar West.

25. Mostar is divided into six city zones and a central zone: each city zone elects three councillors, independently of the size of the constituency, while the residents in the so-called central zone can only vote for the 17 councillors elected in a city-wide electoral constituency.

63. Under intense pressure from the unions, the caretaker mayor then proclaimed a budget for 2013 on 8 April. Criminal charges were brought against him for abuse of office and he refrained from making any payments. It was only after the criminal charges were dropped that the first payment of the January salaries was made, in May 2013.

64. Neither the BiH Central Election Commission nor the BiH Court has ruled on the question of the Mostar councillors' mandate. The BiH Parliamentary Assembly to date, more than three years later, has not adopted the necessary amendments to the election law, and it has not even replied to a request for an authentic interpretation of the election law submitted to it in December 2012.

65. The situation in Mostar is unacceptable and has created great hardship for the population, especially the most vulnerable. It also illustrates a growing trend not to abide by judgments of the Constitutional Court, which are, according to the Constitution, final and binding. We have been informed that, between 2005 and 2013, the BiH Constitutional Court reported to the Prosecutor's Office 80 cases where its judgments have not been implemented. This is normally a criminal offence, punishable by five years in prison. However, nobody has been prosecuted to date.

66. The situation in Mostar shows the increasingly bitter ethnic power struggle in Bosnia and Herzegovina at all levels, and the utter inability of the political stakeholders to shoulder their responsibilities.

67. Another negative development is the decision of Mostar's Cantonal Court of 19 June 2013 to overturn a landmark ruling of Mostar's Municipal Court of 27 April 2012 ordering municipalities and schools in Stolac and Caplijna[26] to end the practice of two schools under one roof and to provide children with an integrated and joint curriculum by 1 September 2012. This ruling was overturned because the lawsuit had been brought by a non-governmental organisation (NGO) and not by the parents themselves. We remind Bosnia and Herzegovina that ending segregation in schools is an accession commitment.

6. The situation in Srebrenica and the Brčko district

68. We travelled in early June 2013 to Srebrenica and the Brčko district. We stopped in Tuzla to visit the morgue and the DNA identification laboratory of the International Commission for Missing Persons, which, since the war, has managed to identify around two thirds of the 30 000 missing persons in BiH.

69. We also went to the Potocari memorial site to pay our respects to the 8 000 victims of the genocide that took place there, and in neighbouring villages, in July 1995, and to meet with representatives of victims' associations. Yet another 520 recently exhumed victims were laid to rest on 11 July 2012, and another 409 on 11 July 2013.[27] We therefore condemn in the strongest possible terms the continued statements of Republika Srpska authorities denying that genocide actually took place. RS politicians should be obliged to visit the morgue in Tuzla and the Potocari memorial every year.

70. Srebrenica, one of the biggest municipalities in Bosnia and Herzegovina (546 square kilometers) and today located in Republika Srpska, is a place suffering under difficult social and economic circumstances. During the war, 6 400 houses were destroyed, the industrial infrastructure ruined and left to decay, and the pre-war population of 36 000 has dropped to 7 000. The municipality's budget is around 2 million euros per year, there are no jobs and the economic situation is dire (additionally, in 2012, the area suffered from isolation due to excessive snowfall, followed by drought, fires and floods).

71. The 2012 local elections in Srebrenica were held without the special arrangements in force since the end of the war (renewed for the last time in 2008), whereby all those living in Srebrenica in 1991, regardless of where they lived at the time of the elections, were able to vote in the Srebrenica local elections. This was very important for the Bosniaks, because they could not accept that the mayor of a city where genocide had been committed could be a Serb. Serbs are now a majority in Srebrenica, which was not the case before the war.

72. In May 2012, a coalition of Bosniak civil groups organised a registration campaign to get former Srebrenica residents to register either as residents, or as absentee voters. This campaign was successful, although contested in court by the Republika Srpska authorities.[28] The newly elected mayor is a young Bosniak, whom we met, and who is focused on the economic development of his municipality.

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26. This practice still exists also in the municipalities of Mostar, Prozor Rama and Caplina.
27. For the families, agreeing to bury their loved ones is sometimes a very difficult decision to take: DNA identification leads to an over 99% degree of certainty as to identity, but to bury just one or two bones is painful.
28. In December 2012, the appellate Court of BiH rejected an appeal by the SNSD contesting the election results.

73. As our predecessors already noted in their 2004 report to the Assembly, Brcko district provided us with a breath of fresh air. People there may not necessarily like each other, but they are pragmatic and focused on the common good. We visited a primary school, where there is no segregation and where the pupils are taught both in the Latin and Cyrillic scripts. We simply cannot understand why the Brcko model cannot be replicated elsewhere in BIH, especially in the Federation.

74. Maybe this is due to the important role played by the Brčko Supervisor (always an American), in accordance with the 1999 Final Arbitration Award, which gave him/or her comparable powers to that of the High Representative (imposing laws or firing elected officials). However, we note with satisfaction that the High Representative decided on 31 August 2012 to close the Brčko Final Award Office, in parallel with the Supervisor's decision to suspend[29] the exercise of his supervisory functions on the same day.

7. Constitutional reform

7.1. The implementation of the Sejdić and Finci judgment

75. Needless to say, the current political stalemate has also impacted on the constitutional reform. The Joint Interim Committee of both houses of parliament was finally set up in early October 2011, namely one full year without any work being done on constitutional reform since the elections. It was given excessively short deadlines: 30 November to propose constitutional amendments and 31 December for amendments to the election law. The committee held 10 meetings, hearing, *inter alia*, also representatives of civil society and minorities, but, on 1 December 2011, it was officially announced that no consensus could be reached for constitutional amendments.

76. The Joint Interim Working Group of both houses of parliament, tasked with preparing amendments to implement the *Sejdić and Finci* case, has not convened since because they are waiting for a political agreement between the party leaders.

77. The reason no consensus could be reached would appear to be that views on both the scope and content of the amendments differ widely and cannot be reconciled. Republika Srpska will only accept *a minima* amendments and only those necessary to abide by the judgment. They propose to simply delete the existing ethnic prefix in the BiH Constitution: one Presidency member would still be elected from the territory of the RS, while two would be elected from the territory of the Federation. This is unacceptable for the HDZ parties in the Federation.

78. For election to the Presidency, Republika Srpska wishes to maintain its system of direct election of the RS member, whereas the Croat parties want indirect elections by parliament for the FBiH members, in order to be sure that their candidate is elected. Failing this, they call for a third entity so that Croats would have their own electoral constituency. No agreement was found on how to guarantee the right of "Others" to stand for the Presidency. The SDA seems to be willing to agree to the Serb proposal but with the *proviso* that no more than two presidential nominees can come from the same constituent people or others.

79. On the other hand, a consensus seems to have emerged with regard to the Council of Peoples: a number of "Others" would be added. How this would function in practice is not clear, but the entity constitutions foresee a similar solution.

80. On 27 June 2012, the representatives of the executive authorities and the main political parties attended the launch of the "High Level Dialogue on the European Union Accession Process" (HLAP) in Brussels upon the invitation of the European Commissioner for Enlargement and European Neighbourhood Policy, Štefan Füle. This new initiative aimed to help Bosnia and Herzegovina to move forward in the European Union accession process by explaining the requirements and the methodology of accession negotiations and concretely what is expected from Bosnia and Herzegovina in the European Union accession process. This marked the beginning of a much more proactive approach by the European Union delegation in Sarajevo, which organised a great number of meetings with political parties to facilitate a consensus on the implementation of the *Sejdić and Finci* judgment. This is a condition for the entry into force of the 2008 Stabilisation and Association Agreement, which has already been ratified by the then 27 European Union member States, and also for a credible application for membership of the European Union.

81. All participants agreed on a road map, which, if timely and successfully implemented, could have led the country to submit a credible membership application to the European Union before the end of 2012.

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29. Which means he can resume them at any time, should the circumstances warrant it.

82. The authorities and political parties from Bosnia and Herzegovina agreed, *inter alia*: to ensure a political agreement on the implementation of the 2009 *Sejdić and Finci* judgment of the European Court of Human Rights, to put constitutional amendment proposals before parliament by 31 August 2012 and to change the Constitution by November 2012. They also agreed to set up a co-ordination mechanism, another requirement of the European Union.

83. The leaders of seven political parties met in Banja Luka on 13 July 2012 to discuss implementation of the road map, but, once again, no agreement was reached with regard to the constitutional amendments. In an attempt to be seen as fulfilling the road map, three draft amendments to the Constitution were tabled in parliament before the 31 August 2012 deadline, one by the SNSD simply deleting the ethnic prefix, another one by the SDA, and a third by the main Croat parties, providing for a very complicated indirect election system to the Presidency. None of these proposals has been voted on to date.

84. A second meeting in the framework of the "High Level Dialogue on the European Union Accession Process" took place on 27 November 2012, mainly to discuss technical issues. The third meeting scheduled for April 2013 was cancelled by the European Union, since no progress had been made with the *Sejdić and Finci* case or the required co-ordination mechanism. When we visited Sarajevo in early June 2013, we heard that the European Union was extremely disappointed about the failure to reach a consensus for the implementation of the agreed road map. The European Union Enlargement Commissioner, Mr Füle, was quoted as saying that the door to the European Union remains open, but that the BiH authorities must do their homework first.[30]

85. We are perfectly aware that, in such a difficult political climate, with an evident lack of trust and with repeated strident calls for secession of one part of the country, even politicians with the best intentions will have a hard time fulfilling the country's essential international obligations. But the options available are scarce: either Bosnia and Herzegovina abides by the judgment of the European Court of Human Rights or it will ultimately have to leave the Council of Europe. Respect for the European Convention on Human Rights is the primary condition for membership in the Council of Europe, and it would be unthinkable to have the next elections, in 2014, conducted under the same discriminatory regime.

86. For our part, we cannot understand why a single President of the country would be anathema to all three main ethnic groups, while some even propose to add a fourth one to remove the discrimination of "Others". A tripartite member Presidency, furthermore rotating every eight months, is unheard of in the European Union member States.

87. We believe that the Dayton Constitution will ultimately need to be completely rewritten. With hindsight, it was probably a mistake to append a constitution to a peace treaty. The Dayton straightjacket has been abused in the last 18 years to a point where obstruction and stagnation have become the norm and not the exception.

7.2. Constitutional reform in the entities

88. Constitutional reform is not only necessary at State level, it is also much needed at the entity level. We are very concerned over the failure, on 26 April 2012, to adopt the amendments to the Constitution of Republika Srpska. Work on these amendments started in 2006, the European Commission for Democracy through Law (Venice Commission) provided an opinion in 2008, and the RS National Assembly voted in favour in 2009. But the 29 amendments ultimately failed in the RS Council of Peoples where, in order to pass, they had to get the majority of each caucus (Serb, Croat, Bosniak and Others). In the Bosniak caucus, the SDA voted against each of the 29 amendments, including the one abolishing the death penalty. We were told by the Speaker of the RS National Assembly that for the time being the RS Government had no intention of restarting the constitutional reform process.

89. The Federation Constitution dates back to 1994 and has been amended on a number of occasions by decisions of the High Representative. It still includes provisions on the entity ombudsman institution, which was abolished in 2008 following the creation of a unified ombudsman institution at State level. With its 10 cantons, each with its own parliament, its own judiciary and its own constitution, the system is far too cumbersome and expensive. We therefore welcome the US-sponsored initiative to make proposals for a serious overhaul of the Federation Constitution. A group of local experts, with the large participation of civil society, prepared a list of 185 recommendations and submitted them to the authorities in June this year. We hope that these recommendations will provide a sound basis for constitutional reform in the Federation.

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30. The third meeting in the framework of the "High Level Dialogue on the European Union Accession Process" is scheduled for 1 October 2013.

8. Conclusions

90. Bosnia and Herzegovina, as we all know, is a very complex State, with an extremely high degree of decentralisation and very weak central institutions. It consists of two entities: Republika Srpska (covering 49% of the territory) and the Federation of Bosnia and Herzegovina, which is divided into 10 cantons by virtue of the 1994 Washington agreement. There is also the autonomous Brčko district, the status of which is the result of international arbitration (the 1999 Brcko Final Arbitration Award).

91. Given this complex structure, when dealing with any issue, one has to deal with five presidents, 13 prime ministers, around 180 ministers at the State, entity and cantonal level, and with 14 elected parliaments or assemblies (including Brčko, but excluding the municipal level). Unfortunately, there is a very serious lack of co-ordination and co-operation, even of communication, between the various levels of government and the decision-making process is hampered by a high number of complex mechanisms designed to prevent outvoting by any of the three "constituent" peoples: the Bosniaks, Serbs and Croats. State laws do not apply automatically throughout the country, legislation in many areas is not harmonised and can vastly differ, and there is no mechanism at the disposal of the State to force sub-State levels to comply with laws or policy decisions.

92. We do not agree with statements to the effect that Bosnia and Herzegovina is a special country, with an institutional straightjacket imposed on it by foreigners in Dayton after a long and bloody war, and that it therefore deserves special treatment. In our view, the Dayton straightjacket has been considerably tightened by the local politicians themselves since the war, for example through the abuse of the double qualified majority, called entity voting. This majority applies to everything in parliamentary procedure: setting the agenda, taking note of annual reports, tabling motions or elections, such as the chairman of the Council of Ministers. Nor has any attempt been made to limit the use of the vital national interest to specific issues that indeed affect the vital national interests of the three main ethnic groups. Common institutions at State level are constantly contested, criticised or systematically weakened, particularly by Republika Srpska.

93. Although Bosnia and Herzegovina has been back-sliding in its reform process since about 2006, despite some positive news, such as the signing of a Stabilisation and Association Agreement (SAA) with the European Union in June 2008 and an invitation by NATO in April 2010 to a Membership Action Plan, the current impasse represents the most serious crisis for the country since the end of the war in 1995.

94. The fundamental question which Bosnia-Herzegovina will need to address is whether power should be shared between representatives *of* constituent peoples or between representatives *from* constituent peoples, and whether it should be shared on a proportional basis[31] or on the basis of total equality between the three constituent peoples. We think that the concept of equality of constituent peoples is being abused and that it is today at the origin of undemocratic power-sharing arrangements.

95. As the Assembly has pointed out many times, a solution requires trust, a common vision of the future of the country and the political will of all the local political stakeholders. All these have been in short supply, to the point where people perceive the situation as "war by other means". This cannot continue for yet another election cycle, with citizens being held hostage.

96. Simply muddling along and focusing only on sterile power struggles, while counting on the apparently endless patience of the international community, will not move the country forwards. Republika Srpska should understand that it has no future outside of Bosnia and Herzegovina. It should stop its repeated calls for independence, its weakening and attacking of State-level institutions and its abuse of the entity voting mechanism in the State parliament simply to block any legislation it dislikes. The main Bosniak party, for its part, should stop abusing the vital national interest mechanism, and the main Croat parties must understand that their maximalist demands with regard to total equality, under cover of implementing the *Sejdić and Finci* judgment, risk undermining democracy to a dangerous extent.

97. We would also like to warn that the current crisis risks having serious consequences not only for Bosnia and Herzegovina itself, but also with regard to its membership, or future membership, in international organisations such as NATO or the European Union.

98. We regret to say that, as a member State of the Council of Europe, Bosnia and Herzegovina has not lived up to the Organisation's expectations and has not sufficiently used its membership to learn from the experiences and best practices of other members. Due to the ongoing disagreement over the ethnic distribution of posts, including in international organisations, the Presidency still has to appoint or nominate

31. Article IX.3 of the BiH Constitution provides that "Officials appointed to positions in the institutions of BiH shall be generally representative of the peoples of BiH".

candidates for fundamental positions in the Council of Europe, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Venice Commission, the European Commission against Racism and Intolerance (ECRI), the bodies of the Framework Convention for the Protection of National Minorities (ETS No. 157), and others. The new BiH delegation to the Assembly, which was finally appointed in time for the Assembly's June 2011 part-session (almost one year after the 2010 elections) has still not elected its chairperson.

99. The utter irresponsibility of the parties which represent the three main ethnic groups will lead to complete isolation of the country. Already hard hit economically and financially, with unemployment now at 44%, the country only survives by taking loans from the IMF to finance its budgetary deficits. Croatia's accession to the European Union on 1 July 2013, which means BiH now has a 1 000 km border with the European Union, will pose significant challenges which Bosnia and Herzegovina has so far been unable to deal with: a border agreement with Croatia was signed at the very last minute, on 18 June 2013, and the absence at State level of a ministry of agriculture means that BiH is unable to satisfy the European Union's norms and standards for food safety and will no longer be able to export its agricultural produce to Croatia.

100. The last three years have seen the worst political crisis since the war. Institutions are paralysed and not functioning, there is a growing and worrying trend not to abide by the rule of law and, needless to say, this impacts respect for human rights as well. Corruption at all levels is rife.

101. We believe the Assembly should not tolerate yet another election in violation of the European Convention on Human Rights, more than four years after the *Sejdić and Finci* judgment. We also believe that it is high time for the political stakeholders to live up to their obligations and commitments to the Council of Europe. If no serious progress is recorded in due time before the October 2014 elections, we suggest not ratifying the credentials of a delegation which will have been appointed in violation of the Convention, and asking the Committee of Ministers to envisage suspending Bosnia and Herzegovina from its right of representation, in accordance with Article 8 of the Statute of the Council of Europe (ETS No. 1), given its persistent failure to honour its obligations and commitments.