Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 2025 (2013)[1]
Final version

The functioning of democratic institutions in Bosnia and Herzegovina

Parliamentary Assembly

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 and Herzegovina, for the first time in 2004 in its Resolution 1383 (2004) on the honouring of obligations and commitments by Bosnia and 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 of reforms abolishing, 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, although 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 and 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 and 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.

1. *Assembly debate* on 2 October 2013 (33rd Sitting) (see Doc. 13300, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Ms Woldseth and Mr Vareikis). *Text adopted by the Assembly* on 2 October 2013 (33rd Sitting).

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 and 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 and 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 the instruction of political party leaders, but should work according to the four-year mandate they have received from voters. The Assembly considers that the necessary constitutional amendments should not be negotiated behind closed doors by mainly non-elected party leaders, 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 and 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 electoral 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 and 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. The Assembly encourages all political stakeholders in Bosnia and Herzegovina to do everything possible in order that the country, as a member of the Council of Europe, fulfils the requirements of the *Sejdić and Finci* judgment by the end of 2013.

12. Furthermore, the Assembly asks the Committee of Ministers to urge the authorities and political leaders of Bosnia and Herzegovina to amend the constitution and electoral legislation in conformity with the S*ejdic and Finci* judgment without delay.

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 and 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, 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 and 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 exclude 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, the State Court and Prosecutor's Office, the 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 have 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, local elections could not 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 with regard to adopting amendments to the law on the 13-digit 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 the end of September 2014, the Assembly will have no other possibility than to discuss and consider, in the October 2014 part-session, further action in its relations with Bosnia and Herzegovina.