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The functioning of democratic institutions in Bosnia and Herzegovina

Addendum to the report

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

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1. Foreword

1. Since the adoption by the Monitoring Committee, on 17 December 2009, of the draft report on the functioning of democratic institutions in Bosnia and Herzegovina, several important political developments have occurred. Some of these developments are directly related to the subject matter of the report and require that the committee should adopt amendments to the draft resolution and to the draft recommendation.

2. The aim of the present addendum is to take stock of the political developments that affect the report as well as to propose, where appropriate, specific amendments to the draft resolution and to the draft recommendation. If approved, we suggest that these amendments should be tabled by the Chair of the Monitoring Committee, on the committee's behalf.

2. Adoption of the ruling of the European Court of Human Rights in the case *Sejdić and Finci v. Bosnia and Herzegovina*

3. On 22 December 2009, the European Court of Human Rights issued its decision in the case *Sejdić and Finci v. Bosnia and Herzegovina*.¹ The applicants, Mr Dervo Sejdić, of Roma origin, and Mr Jakob Finci, of Jewish origin, both prominent political figures in Bosnia and Herzegovina, complained about the violation of their rights protected by the European Convention on Human Rights (ECHR) and its Protocols Nos. 1 and 12, on the grounds that the current constitutional arrangements exclude them from running for the election to the presidency of Bosnia and Herzegovina, as well as from the procedure of election of delegates to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, because they do not identify themselves as belonging to one of the "constituent peoples". As we expected, the Court ruled that the applicants' continued ineligibility to stand for election to the House of Peoples lacks an objective and reasonable justification and has therefore breached Article 14, taken in conjunction with Article 3 of Protocol No. 1 to the ECHR. Equally, the Court held that the applicants' ineligibility to stand for election to the presidency of Bosnia and Herzegovina constitutes a violation of Article 1 of Protocol No. 12 to the ECHR. In the motivating part of the decision, the Court makes extensive reference to the opinions of the European Commission for Democracy through Law (Venice Commission), which demonstrate that there are mechanisms for introducing a system of election of the members of the presidency of Bosnia and Herzegovina and of the delegates to the House of Peoples which would not exclude the members of various communities of Bosnia and Herzegovina

1. Case of *Sejdić and Finci v. Bosnia and Herzegovina* (Applications Nos. 27996/06 and 34836/06). Final judgment, Strasbourg, 22 December 2009.



from the political process, while preserving the power-sharing mechanisms established by the Dayton Peace Agreements with the legitimate aim of establishing peace and dialogue between the three main ethnic communities of Bosnia and Herzegovina – the so-called “constituent peoples”.

4. In order to implement the Court’s judgment in this case, the authorities of Bosnia and Herzegovina must take appropriate general measures that, in our opinion, will require amending the constitution, in accordance with the recommendations of the Venice Commission. We reiterate that time is of the essence: in order to hold the forthcoming parliamentary elections in conformity with the standards of the ECHR, amendments to the constitution must be drafted and adopted within the next couple of months. In this context, we urge, once again, all political stakeholders to be fully engaged in a meaningful and constructive dialogue about concrete proposals for amendments to the constitution, in line with the 2005 recommendations of the Venice Commission, with a view to adopting a reform package in time for the 2010 parliamentary elections which should be organised in accordance with the revised constitution.

3. Adoption of the law on the cessation of the activities of the ombudsperson’s office of the Republika Srpska

5. We welcome the adoption by the National Assembly of the Republika Srpska (RS), on 23 December 2009, of the law on the cessation of activities of the RS ombudsperson’s office. The adoption of this law was one of the essential elements in the process of the implementation of Bosnia and Herzegovina’s commitment relating to the establishment of a single ombudsperson’s office at state level.² The European Union also sees the adoption of this law as a condition for the liberalisation of the visa regime for Bosnia and Herzegovina’s citizens. We call upon the competent RS authorities promptly to implement this law. At the same time, we note that, together with the adoption of this law, the RS National Assembly requested the RS Government to prepare legislation on the respect of human rights in the RS, including the work of the institutions responsible for safeguarding human rights. We shall continue to follow this process in the near future in order to assess the implications of this new legislation to be adopted on the functioning of the single state-level ombudsperson’s institution.

4. The situation in the city of Mostar

6. Also, on a positive note, in accordance with the High Representative’s recent decision,³ 438 days after the holding of local elections, the Mostar City Council finally elected, on 18 December 2009, Mr Ljubo Beslic (HDZ BiH) as Mayor of Mostar. Mr Beslic won the election in the third round by obtaining 17 votes of the councillors present, against the SDA candidate, Mr Suad Hasandedic, who received 15 votes. This election result shows that the balance of political forces in the city council is tight and that all political stakeholders should co-operate constructively in order to ensure the smooth running of the affairs of the city.

7. The 2009 budget of the city of Mostar was proclaimed on 23 December 2009 by the newly elected Mayor of Mostar, as provided for in the decision of the High Representative amending the city statute. We now expect all political parties represented in the city council to work on the prompt adoption of the city’s budget for 2010.

5. Alarming escalation of political tensions in the Republika Srpska

8. On 14 December 2009, the Government of the Republika Srpska rejected the decision of the High Representative to extend the mandate of international judges and prosecutors working in the war crimes departments of the Bosnia and Herzegovina State Court and prosecutor’s office,⁴ claiming that the High Representative had acted outside the scope of the Dayton Peace Agreements in adopting that decision. On 28 December 2009, the National Assembly of the Republika Srpska, meeting in an extraordinary session, considered the government’s position and adopted its own conclusions. In these conclusions, the RS National Assembly rejected the High Representative’s decision as “unacceptable, unconstitutional and illegal”. The conclusions also obliged the RS Government to prepare amendments to the RS law on referenda. Once amendments are adopted, the conclusions call for the holding of a referendum on the decision of the High Representative.

2. See paragraph 34 of our report.

3. See paragraph 77 of our report.

4. See paragraph 49 of our report.

9. The High Representative immediately reacted to these events, stating that the RS Government's position of 14 December and the RS National Assembly's conclusions of 28 December were in violation of the Dayton Peace Agreements.⁵ The High Representative's position was later on supported by the Steering Board of the Peace Implementation Council, which issued a statement on 8 January 2010. In this statement, the ambassadors of the member states of the Steering Board "strongly support[-ed] the High Representative's actions, decisions and his ability to use his authorities to ensure full respect for the Dayton Peace Agreement, and reiterate[-ed] that any attempts to undermine the High Representative's mandate under Annex 10 [were] unacceptable."⁶

10. We are seriously concerned by the hardening of the position of the RS Government and of the RS National Assembly. As stated in our report on the functioning of democratic institutions in Bosnia and Herzegovina as well as in previous Assembly reports, we consider that the authorities of the State of Bosnia and Herzegovina and of the entities are under a legal obligation to implement the decisions which are taken by the High Representative within the scope of his mandate, as defined by the Dayton Peace Agreements and the Peace Implementation Council and reaffirmed in the resolutions of the UN Security Council. Moreover, this particular decision of the High Representative was taken in place of the authorities because of the failure of the Parliamentary Assembly of Bosnia and Herzegovina to extend the mandate of international judges and prosecutors or to provide for their timely replacement by domestic magistrates. It is therefore essential to ensure the full implementation of this decision.

11. We would like to stress, once again, that the challenging of the decisions of the High Representative, especially by way of conducting a referendum, does not help the country move forward, in particular in view of the closure of the Office of the High Representative which, as everybody agrees, should eventually happen. On the contrary, the state and entity authorities should closely co-operate with the High Representative in the preparation and adoption of the legislation necessary to implement key reforms, thus ensuring the smooth implementation of the civilian component of the Dayton Peace Agreements and preparing the ground for closing the OHR.

6. Additional information about concerns regarding media pluralism

12. Since the approval of our draft report on the functioning of democratic institutions in Bosnia and Herzegovina, we were informed of some additional concerns about the lack of media pluralism. We were informed that the RS Government recently approved a subsidy for local media from the entity budget, which amounts to 5 million convertible marks. Reportedly, only the Swiss-owned newspaper *Euroblic* rejected the subsidy. In the current context, we were told that the opposition parties in the Republika Srpska have only limited possibilities to make their voice heard in the media. This is a worrying development, especially in the light of the imminent launch of the election campaign for the 2010 parliamentary elections.

13. We call upon the authorities of Bosnia and Herzegovina to guarantee media pluralism and provide equal access to the media to all political parties, in order to guarantee a fair and unbiased coverage of the election campaign in the run-up to the October 2010 parliamentary elections.

7. Additional information on the implementation of the National Judicial Sector Reform Strategy

14. Since the approval of our draft report on the functioning of democratic institutions in Bosnia and Herzegovina, the third ministerial conference for the review of the implementation of the National Judicial Sector Reform Strategy took place on 22 December 2009.

15. We were informed that the participants in the conference noted that the implementation of the strategy is not progressing as well as it should. A number of key projects have either not been implemented or their implementation is seriously delayed. As a result, limited or no action has been taken with regard to the harmonisation of the procedures for the selection of the judges in the state and entity constitutional courts; the enactment of a single law on the prosecutor's office in the federation; the harmonisation of the standards and regulations pertaining to the execution of criminal sanctions and to the prison administrations in Bosnia and Herzegovina; the establishment of institutional capacities for strategic planning, policy development and to support the process of regulation and harmonisation of the justice sector with the *acquis communautaire* in the state and entities' ministries of justice and the Brcko District Judicial Commission.

5. See OHR's communiqué of 29 December 2009, www.ohr.int/ohr-dept/presso/pressr/default.asp?content_id=44358.

6. See the statement by the Peace Implementation Council Steering Board ambassadors of 8 January 2010, www.ohr.int/pic/default.asp?content_id=44410.

16. Moreover, it would appear that some key institutions and key stakeholders lack commitment and do not actively participate in the sessions of the working groups and the technical secretariat, which further slows down the implementation of planned projects.

17. We share these concerns and call, once again, upon the authorities of Bosnia and Herzegovina to speed up the implementation of key reforms relating to the implementation of the remaining commitments to the Council of Europe, in particular, as regards the National War Crimes Strategy and the National Judicial Sector Reform Strategy.

8. Still no agreement on constitutional reform

18. Despite continued consultations at a high level between the key domestic political stakeholders and the representatives of the European Union and the United States, no agreement on the constitutional reform package has been reached so far. This is unfortunate as time is of the essence: if a constitutional reform is not implemented in the coming months, it will be impossible to hold the forthcoming parliamentary elections in October 2010 on the basis of new rules, as it will not be possible to change the electoral legislation in time. Moreover, constitutional reform is now necessary to comply with the judgment of the European Court of Human Rights in the case of *Sejdić and Finci v. Bosnia and Herzegovina* (see paragraphs 3 and 4 above).

19. In this context, we call upon all political stakeholders to be fully involved in meaningful discussions about a comprehensive constitutional reform package, making full use of the expertise of the Venice Commission.

20. At the same time, we reiterate our proposal to launch a wide discussion, with the participation of key domestic and international stakeholders, including the members of the Peace Implementation Council and, in particular, the European Union institutions and Bosnia and Herzegovina's neighbours, about the challenges Bosnia and Herzegovina currently has to face on the road to Euro-Atlantic integration and the means to overcome them.

Appendix – Proposals for amendments to the draft resolution and to the draft recommendation

1. Amendments to the draft resolution

Amendment 1

Delete paragraph 2.1.

Amendment 2

Insert a new paragraph at the end of paragraph 2 as follows:

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

Amendment 3

In paragraph 5, insert a new sentence after the first sentence as follows:

“It takes note of the judgment of the European Court of Human Rights in the case Sejdić and Finci v. Bosnia and Herzegovina, in which the Court ruled that the applicants’ continued ineligibility to stand for election to the House of Peoples and to the Presidency of Bosnia and Herzegovina, on the grounds that they do not identify themselves with one of the three ‘Constituent peoples’, constitutes a violation of Article 14, taken in conjunction with Article 3 of Protocol 1 to the European Convention on Human Rights, and of Article 1 of Protocol 12 to the Convention. To comply with the decision of the Court, the authorities of Bosnia and Herzegovina must implement a constitutional reform.”

Amendment 4

In paragraph 6, in the first sentence, delete the words “within the framework of the ‘Butmir process’” and replace them with the words “on the constitutional reform”.

Amendment 5

Delete paragraph 10.4 and replace it with a new paragraph as follows:

“10.4. complete the reform of the State-level Ombudsperson’s institution by effectively dismantling the existing Entity Ombudsperson’s institutions;”

Amendment 6

After paragraph 10.5, insert a new paragraph 10.6 as follows:

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

2. Amendment to the draft recommendation

Amendment 7

After paragraph 2.2, insert a new paragraph 2.3 as follows:

“2.3. consider launching a wide discussion, with the participation of key domestic and international stakeholders, including the members of the Peace Implementation Council and, in particular, the European Union institutions and Bosnia and Herzegovina’s neighbours, about the challenges Bosnia and Herzegovina currently has to face on the road to Euro-Atlantic integration and the means to overcome them.”