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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

***AMICUS CURIAE* BRIEF
FOR THE CONSTITUTIONAL COURT
OF BOSNIA AND HERZEGOVINA**

**ON CERTAIN PROVISIONS
OF THE ELECTION LAW
OF BOSNIA AND HERZEGOVINA,
OF THE CONSTITUTION
OF THE FEDERATION OF BOSNIA AND HERZEGOVINA
AND OF THE STATUTE OF THE CITY OF MOSTAR**

**Adopted by the Venice Commission
at its 84th Plenary Session
(Venice, 15-16 October 2010)**

On the basis of comments by

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I. Introduction

1. On 16 September 2009, the Caucus of Croat people in the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina submitted to the Constitutional Court of Bosnia and Herzegovina an application for review of the constitutionality of Articles 19.1, 19.2, 19.3, 19.4, 19.5, 19.6, and 19.7 of the Election Law of Bosnia and Herzegovina (CDL(2010)094); of paragraphs 4) and 7) of Article VI.C of the Amendments to the Constitution of the Federation of Bosnia and Herzegovina (CDL(2010)095); and of Articles 7, 15, 16, 17, 38, 44 and 45 of the Statute of the City of Mostar (CDL(2010) 096).
2. On 9 July 2010, the Constitutional Court decided to request an *amicus curiae* opinion from the Venice Commission.
3. A working group was set up, composed of Messrs Scholsem, Torfason and Tuori, as well as Mr Angel Sanchez Navarro (expert, Spain).
4. The present opinion was prepared on the basis of their contribution and was adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010).

II. The legal situation pertaining to the organisation and administration of the City of Mostar

5. The legislative provisions challenged by the application all specifically relate to the organisation and administration of the City of Mostar as a distinct unit of local self-government, and provide for a municipal election regime and administration system particular to the City, within the framework of the overall constitutional structure and electoral system of the country. The provisions were all enacted by decisions of the High Representative on 28 January 2004¹.
6. The Statute of the City of Mostar enacted by the High Representative in 2004 replaced the Interim Statute which had been adopted on 7 February 1996 on the basis of the Dayton Peace Agreement of 10 November 1995, which included a set of principles for such Statute reflecting a concept of support for the unity of the City under an interim structural agreement.
7. The Mostar City Council is composed of 35 members; 17 of these councillors are elected in a city-wide electoral constituency which encompasses the entire territory of the City as defined in Article 5 of the Statute of the City of Mostar. Pursuant to Article 19 paragraph 4 of the Electoral code, a minimum of four councillors of each constituent people and one councillor from the group of "Others" shall be elected from the city-wide electoral constituency. None of the constitutional peoples or the "others" may have more than 15 councillors in the City Council of the City of Mostar, regardless of the number of voters and the election results.
8. The other 18 city councillors are elected at the level of 6 "city area electoral constituencies" corresponding to the six City Municipalities, as defined in Articles 7 and 15 of the Statute of the City of Mostar.
9. These City Areas are constituencies in municipal elections and administrative units on a limited scale; they are as follows: Mostar South, Mostar South-West, Mostar West and Mostar South-East, Mostar North and Stari Grad (Old Town). For each City Area, according to Article 38 of the Statute, there is a Committee of the City Council, comprising the three City

¹ The competence of the Constitutional Court in assessing the constitutionality of decisions taken by the High Representative was established by the Court itself in its judgment no. U-9/00 (see CDL-AD(2005)004, §§ 84 ff).

Councillors elected from the City Area at issue. The provisions on the Committee organisation and the composition of the Committees follow the same criteria as the electoral provisions.

10. The Central Zone of Mostar, comprising a small and heavily damaged area around the former confrontation line in the city centre², was not made into a City Area and was not given a Committee of the City Council. There is indeed no mention of the Central Zone in the Statute, with the exception of a reference to the “former Central Zone” in paragraph 4 of Article 56 of the Statute, according to which the distribution of revenues derived from allocated construction land within the former Central Zone are determined by the City Council (revenues from each of the six City Areas are distributed by the respective Committees under the Statute).

11. The Mayor of Mostar is elected by the City Councillors from among them, with the majority provided for in Article 44 of the Statute of the City of Mostar.

III. The allegations

12. The Caucus of Croat people in the House of Peoples of the Parliamentary Assembly of BiH alleges that the impugned articles of the Election Law of Bosnia and Herzegovina, of the Constitution of the Federation of BiH and of the Statute of the City of Mostar discriminate against persons belonging to Croatian ethnicity.

13. Three main distinct allegations have been made before the Constitutional Court. Firstly, the manner of election of the councillors to the City Council of the City of Mostar allegedly violates the principles of equality and non discrimination guaranteed by the Constitution of Bosnia and by international standards.

14. Secondly, Article 38 of the Statute of the City of Mostar, providing for committees for city areas with specific responsibilities, allegedly discriminates against the citizens of the former “Central Zone” of the City of Mostar who are directly administered by the City Council. In addition, the provisions of Article 38 of the Statute of the City of Mostar place the City Councillors in an unequal position and thereby are not in conformity with the Constitution of Bosnia and Herzegovina and the above mentioned international instruments.

15. Thirdly, the provisions on the elections of the Mayor of Mostar allegedly entail discrimination of the population of Mostar in respect of other citizens of BiH who elect their mayor directly.

IV. The applicable standards

16. According to the application, these provisions are in breach of Article II/4 of the Constitution of Bosnia and Herzegovina in conjunction with Article 14 of the European Convention on Human Rights (ECHR), Article 25 of the 1966 International Covenant on Civil and Political Rights (ICCPR), and the 1966 and 1989 Optional Protocols and Article 3 of the Protocol 1 to the 1966 International Covenant on Civil and Political Rights, and Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

17. According to Article II (4) of the Constitution of Bosnia and Herzegovina “*the enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*”. The list in Annex I includes the international instruments referred to in the application.

² ICG Europe Report No. 150, Building bridges in Mostar, 20 November 2003, p. 2.

18. Article 3 of Protocol 1 to the European Convention on Human Rights (not, as indicated by the applicants, to the 1966 International Covenant on Civil and Political Rights) provides: "*Right to free elections - The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.*" This provision explicitly refers to elections to "the legislature", and is therefore not applicable to elections of non-legislative bodies of local self-government, such as the City Council of the City of Mostar.

19. Art. 14 of the ECHR does not contain any general prohibition of discrimination, but lays down that "*the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*". As Article 3 of Protocol 1 to the Convention is not applicable to local elections, Article 14 cannot be invoked in this context.

20. Bosnia and Herzegovina, however, has ratified Protocol 12 to the European Convention on Human rights, which prohibits discrimination in general terms: "*Article 1 - 1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.*"

21. As appears from the judgment in the case *Sejdic and Finci v. BiH*, the European Court of Human Rights interprets Protocol 12 in the context of electoral rights in the same manner as Article 3 of Protocol no. 1; it follows that the Constitutional Court of BiH may be guided by the case-law of the ECtHR relating to the latter provision.

22. A leading case in this field is the judgment *Mathieu-Mohin and Clerfayt v. Belgium*³, in which the Court pointed out that States "[...] have a wide margin of appreciation in this sphere, but it is for the Court to determine in the last resort whether the requirements of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate".⁴

23. The Court underlined that "*electoral systems seek to fulfil objectives which are sometimes scarcely compatible with each other: on the one hand, to reflect fairly faithfully the opinions of the people, and on the other, to channel currents of thought so as to promote the emergence of a sufficiently clear and coherent political will*". While Article 3 of Protocol 1 guarantees the principle of equality of treatment of all citizens in the exercise of their right to vote and their right to stand for election, "*it does not follow that all votes must necessarily have equal weight as regards the outcome of the election or that all candidates must have equal chances of victory*". The Court added that for the purposes of Article 3 of Protocol No. 1, any electoral system must be assessed in the light of the political evolution of the country concerned; features that would be unacceptable in the context of one system may accordingly be justified in the context of another, at least so long as the chosen system provides for conditions which will ensure the "free expression of the opinion of the people in the choice of the legislature".⁵

³ ECtHR, *Mathieu-Mohin and Clerfayt* judgment of 3 March 1987.

⁴ ECtHR, *Mathieu-Mohin and Clerfayt* judgment, paragraph 52.

⁵ ECtHR, *Mathieu-Mohin and Clerfayt* judgment, op. cit. paragraph 54.

24. Another particularly relevant case is *Aziz v. Cyprus*⁶, in which the Court found that the right to vote of the applicant, a Turkish Cypriot living in the government-controlled area of Cyprus, had been violated on account of his complete deprivation of any opportunity to express his opinion in the choice of the members of the House of Representatives of the country. The Court criticised that the essence of the applicant's right to vote had been impaired; however, it conceded and reiterated that States enjoy considerable latitude to establish rules within their constitutional order governing parliamentary elections and the composition of the parliament, and that the relevant criteria may vary according to the historical and political factors peculiar to each State.

25. Finally, it is useful to note that the Court has summarised the principles to be applied to Article 3 of Protocol No. 1 in the judgment *Zdanoka v. Latvia*⁷ as follows:

(a) Article 3 of Protocol No. 1 is akin to other Convention provisions protecting various forms of civic and political rights such as, for example, Article 10 which secures the right to freedom of expression or Article 11 which guarantees the right to freedom of association including the individual's right to political association with others by way of party membership. There is undoubtedly a link between all of these provisions, namely the need to guarantee respect for pluralism of opinion in a democratic society through the exercise of civic and political freedoms. In addition, the Convention and the Protocols must be seen as a whole. However, where an interference with Article 3 of Protocol No. 1 is in issue the Court should not automatically adhere to the same criteria as those applied with regard to the interference permitted by the second paragraphs of Articles 8 to 11 of the Convention, and it should not necessarily base its conclusions under Article 3 of Protocol No. 1 on the principles derived from the application of Articles 8 to 11 of the Convention. Because of the relevance of Article 3 of Protocol No. 1 to the institutional order of the State, this provision is cast in very different terms from Articles 8 to 11 of the Convention. Article 3 of Protocol No. 1 is phrased in collective and general terms, although it has been interpreted by the Court as also implying specific individual rights. The standards to be applied for establishing compliance with Article 3 of Protocol No. 1 must therefore be considered to be less stringent than those applied under Articles 8 to 11 of the Convention.

(b) The concept of "implied limitations" under Article 3 of Protocol No. 1 is of major importance for the determination of the relevance of the aims pursued by the restrictions on the rights guaranteed by this provision. Given that Article 3 of Protocol No. 1 is not limited by a specific list of "legitimate aims" such as those enumerated in Articles 8 to 11 of the Convention, the Contracting States are therefore free to rely on an aim not contained in that list to justify a restriction, provided that the compatibility of that aim with the principle of the rule of law and the general objectives of the Convention is proved in the particular circumstances of a case.

(c) The "implied limitations" concept under Article 3 of Protocol No. 1 also means that the Court does not apply the traditional tests of "necessity" or "pressing social need" which are used in the context of Articles 8 to 11 of the Convention. In examining compliance with Article 3 of Protocol No. 1, the Court has focused mainly on two criteria: whether there has been arbitrariness or a lack of proportionality, and whether the restriction has interfered with the free expression of the opinion of the people. In this connection, the wide margin of appreciation enjoyed by the Contracting States has always been underlined. In addition, the Court has stressed the need to assess any electoral legislation in the light of the political evolution of the country concerned, with the result that features unacceptable in the context of one system may be justified in the context of another [...].

(d) The need for individualisation of a legislative measure alleged by an individual to be in breach of the Convention, and the degree of that individualisation where it is required by the Convention, depend on the circumstances of each particular case, namely the nature, type, duration and consequences of the impugned statutory restriction. For a restrictive measure to comply with Article 3 of Protocol No. 1, a lesser degree of individualisation may be sufficient, in contrast to situations concerning an alleged breach of Articles 8 to 11 of the Convention.

*(e) As regards the right to stand as a candidate for election, that is, the so-called "passive" aspect of the rights guaranteed by Article 3 of Protocol No. 1, the Court has been even more cautious in its assessment of restrictions in that context than when it has been called upon to examine restrictions on the right to vote, the so-called "active" element of the rights under Article 3 of Protocol No. 1. In *Melnychenko* (cited above, § 57), the Court observed that stricter requirements may be imposed on eligibility to stand for election to Parliament than is the case for eligibility to vote. In fact, while the test relating to the "active" aspect of Article 3 of Protocol No. 1 has usually included a wider assessment of the proportionality of the statutory provisions disqualifying a person or a certain group of persons from the right to vote, the Court's test in relation to the "passive" aspect of the above provision has been limited largely to a check on the absence of arbitrariness in the domestic procedures leading to disqualification of an individual from standing as a candidate (see, in particular, paragraphs 106-08 above).*

⁶ ECtHR, *Aziz v. Cyprus* judgment of 22 June 2004.

⁷ ECtHR, *Zdanoka v. Latvia* judgment of 16 March 2006, para. 115.

26. The right to vote is also guaranteed by Article 25 para. b) of the 1966 ICCPR, which provides that *“every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions, ... to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”*.

27. In its General Comment on Article 25, the UN Human Rights Committee has stated that *“any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria”* (para. 4) and that *“the right to vote at elections and referenda must be established by law and be subject only to reasonable restrictions”* (para 10). Furthermore, the principle of “one person, one vote” must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely. (Para. 21)

V. Analysis

A. The manner of election of the City Councillors

28. Articles 19.4 and 19.6 of the Election Law of BiH, which regulate the election of the City Council of Mostar, deviate from the principle of equal weight of each vote by establishing a minimum and a maximum threshold of representation of the three constituent peoples and of the Others.

29. These provisions aim to guarantee the representation of all constituent peoples and the group of Others, and to prevent the dominance of the Council by one constituent people or the group Others.

30. The Commission stresses in the first place that ethnic-based limitations of electoral rights are rooted in the constitutional rules on protection of the constituent peoples.

31. As recalled above, according to the principles of the case-law of the European Court of Human Rights and of the UN Human Rights Committee, decisive in the assessment of the provisions in question is whether the restrictions on the principle of equal weight can be regarded as reasonable and based on objective criteria. Reasonableness requires the legitimacy of the aims pursued by the restrictions and the proportionality of the restrictions with regard to legitimate aims. Attention should be paid to both the general circumstances in BiH and the particular circumstances in the City of Mostar.

32. In its opinion on the Election Law of BiH⁸ in 2001, the Venice Commission recalled that “the distribution of posts in the State organs between the constituent peoples was a central element of the Dayton Agreement making peace in Bosnia and Herzegovina possible. In such a context, it is difficult to deny legitimacy to norms that may be problematic from the point of view of non-discrimination but necessary to achieve peace and stability and to avoid further loss of human lives. The inclusion of such rules in the text of the Constitution at that time therefore does not deserve criticism, even though they run counter to the general thrust of the Constitution aiming at preventing discrimination.” However, the Commission added that “this justification has to be considered in the light of developments in Bosnia and Herzegovina since the entry into force of the Constitution. Bosnia and Herzegovina has become a member of the Council of Europe and the country has therefore to be assessed according to the yardstick of common European

⁸ CDL(2001)106fin, § 23.

standards. It has now ratified the European Convention on Human Rights and Protocol No. 12 thereto. As set forth above, the situation in Bosnia and Herzegovina has evolved in a positive sense but there remain circumstances requiring a political system that is not a simple reflection of majority rule but which guarantees a distribution of power and positions among ethnic groups. It therefore remains legitimate to try to design electoral rules ensuring appropriate representation for various groups.”⁹

33. The Venice Commission is also aware of the principles developed by the Constitutional Court of Bosnia and Herzegovina on the constituent peoples, notably that it is necessary for all three constituent peoples to be “given minimum guarantees for the participation on the city council irrespective of the election results since that is the only way to respect the principle of constituent peoples in the entire territory of Bosnia and Herzegovina” (decision U 4/05 on the electoral system of the City of Sarajevo) and that the principle of collective equality of the constituent peoples prohibits any domination in governmental structures (Third Partial Decision No. 5/98). The Court also noted that “a consistent application of the democratic principle - one elector one vote, in the existing political circumstances in Bosnia and Herzegovina, is running a risk of creating mono-ethnic authority elected in the areas in which one of the constituent peoples is in majority”.

34. Against this background, the Commission finds that, in the general circumstances of BiH, guaranteeing the representation in elected bodies of all constituent peoples and the group of Others as well as preventing any of the groups from dominating such bodies remain legitimate aims, although the development should move towards a system giving more weight to electoral results.

35. As to the specific circumstances in Mostar, the history of ethnic violence in the war of 1992-1994, the consequent ethnic divisions and the incomplete return of refugees and displaced persons make the said objectives particularly vital still today. An indication of the peculiar situation of Mostar may be drawn from reference to it in the Washington and Dayton agreements.

36. This distortion of the principle of equal weight of each vote does not appear unreasonable or arbitrary; the need for pacification and the consequent recognition of the constituent peoples as pillars within the community needs to be balanced against the risk of fragmentation inherent in electoral rules governed by ethnic representation¹⁰.

37. In particular, it should be noted that similar solutions have been adopted in respect of Sarajevo (as appears from the decision of the Constitutional Court No. U4/05) as well as other European cities with similar contexts of multi-ethnic or multi-lingual composition. Belgium in particular is a case in point. The Region of Brussels-Capital (which comprises the city of Brussels as well as 18 other municipalities) has an assembly divided into two linguistic groups; the government appointed by this assembly must comprise two French-speaking ministers and two Flemish-speaking ministers plus the president and must decide by consensus. This means that the French-speakers, who are numerically superior to the Flemish, have lost their dominant position on the Region and must share the power with the Flemish minority which is protected by a number of measures.

38. A further step in this direction was made in 2001, when it was decided that the representation of the Flemish community would be pre-determined with a threshold higher than the election results. The Belgian Constitutional Court has endorsed this mechanism on the

⁹ CDL(2001)106fin, § 24.

¹⁰ CDL-EL(2005)014, Comments on the Draft Law on amendments to the Election Law of Bosnia and Herzegovina by A. Sanchez Navarro, § 8.

basis of Article 3 of Protocol No. 1, by stressing that the said provision does not entail that the seat allocation must reflect the votes in an exact manner, and that it is possible that a fixed representation be provided for a given minority.¹¹

39. In Belgium a specific system of administration applies to certain municipalities only, on account of the existence of controversies concerning the linguistic skills of the elected representatives. This diversified system had been endorsed by the Cour d'Arbitrage (now Constitutional Court).¹²

40. The Venice Commission further observes that the electoral rules in question do not stretch to deprive the residents of Mostar of their right to vote (as was the case in Aziz¹³ and Matthews¹⁴), and therefore do not curtail the essence of this right: they therefore appear to remain within the legitimate margin of appreciation of Bosnia and Herzegovina.

41. It follows in the Commission's view that the deviations from the principle of equal weight of each vote are proportionate to the legitimate aim pursued and, thus, meet the criteria of reasonableness and objectivity, required by Protocol 12 as well as by Article 25 of the ICCPR and the General Comment of the UN Human Rights Committee.

42. The same may be said for the provisions on the organisation and the composition of the Committees of the City Council, which follow the same criteria.

B. The lack of a city-area electoral constituency for the Central Zone of Mostar

43. The Commission notes in the first place that the situation of the former Central Zone is unclear. While the Central Zone does not exist anymore under the 2004 Statute of the City of Mostar, the Commission understands that those who resided there¹⁵ are not registered on the voters' lists of other city areas. In a sense, the Central Zone still exists, but only as an electoral entity.

44. Mostar former Central Zone is not a City Area and does not have a relevant Committee within the City Council. This has several consequences.

45. In the first place, the people residing in the Central Zone, unlike residents of Mostar who live in any of the six City Areas, only vote for the seventeen councillors elected in a city-wide electoral constituency, and not also for the other eighteen councillors elected at the level of the city-area electoral constituencies. This means that the electoral rights of the residents in the Central Zone are lesser than those of the other inhabitants of Mostar.

46. The ground for this different treatment is a purely geographical one: their actual place of residence within the city. While there may have been a sufficient justification for this difference in treatment at the time of the adoption of the Statute, the Venice Commission has not been informed of any special reasons pertaining today which may still justify this situation. In the absence of reasonable and objective justifications, this difference in treatment appears as discriminatory, in breach of Protocol 12 to the ECHR.

¹¹ Cour d'Arbitrage, judgment no. 35/2003, 25 March 2003, B.16.5.

¹² Cour d'Arbitrage, judgment no. 18/90 of 23 May 1990, B.13.2.

¹³ ECtHR, Aziz v. Cyprus, Op. Cit.

¹⁴ ECtHR, Matthews v. UK judgment of 18 February 1999.

¹⁵ According to some statistics, the registered voters in the Central Zone in 2002 were 1008 (278 Croats – 27,58% ; 706 Bosniaks – 70,03% ; 24 Serbs – 2,38%); see ICG Europe Report no. 150, op.cit., appendix A.

47. The second consequence of the lack of a City Council Committee for the Central Zone is that the City Council is not elected in an equal manner by all Mostar inhabitants, as 17 councillors are elected by all Mostar residents, while 18 councillors are elected by those residing in the six City Areas (with the exclusion of the Central Zone).

48. The Venice Commission recalls in this respect that pursuant to Article 3 of the European Charter on Local Self-government, “[the] right [to self-government] shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, *equal* [emphasis added], universal suffrage, and which may possess executive organs responsible to them.” Voting rights for the Mostar City Council are not equal.

49. In the absence of reasons of general interest justifying this difference in the rules applicable to the local communities, in the Commission’s view the manner of election of the Mostar City Council may be considered to be at variance with the Charter (which Bosnia ratified on 1 November 2002).

50. The third consequence is that the City Council, which is elected in a manner which penalises the residents of the Central Zone, has direct substantial powers in respect of the Central Zone in fields (notably the distribution of revenues derived from Land Allocation Compensation, Article 56 § 4 of the Mostar Statute) which in the six City Areas are within the competence of the City Council Committees.

51. Residents of the Central Zone are therefore deprived, in a discriminatory manner which appears to be lacking any special and objective justification, of their right to regulate and manage autonomously and in their own interest the share of public affairs which is instead devolved to residents of other areas of Mostar. In the view of the Venice Commission, this situation infringes Protocol 12 (and also possibly the principles of the European Charter on Local Self-government).

52. Finally, the lack of a City Council Committee for the Central Zone discriminates the residents of the Central Zone insofar as the election of the Mayor is concerned. Indeed, the Mayor is elected by and among city councillors, including those elected by City Areas, while Central Zone residents cannot elect their own Committee members. This difference in treatment does not appear to be justified and is therefore discriminatory, in breach of Protocol 12 to the ECHR.

C. The indirect election of the Mayor of the City of Mostar

53. Neither the Constitution of BiH nor the international instruments invoked by the applicants address the election of the Mayor, but allow for both direct and indirect election.

54. Under Chapter VI Article 5 of the Constitution of the Federation of BiH, “each Municipal Governing Council shall arrange for the selection of the Municipal Executive and establish rules of procedure, subject to federal and Cantonal legislation.” The manner of election of the Mayor of Mostar (indirect election among the city councillors) is instead directly regulated by the Constitution of the Federation (CDL(2010)095).

55. The choice of indirect elections aimed at obtaining ethnic pacification, which is more difficult to achieve in the context of direct elections. This aim appears to be legitimate, and the essence of the voting right in question is preserved.

56. In the Commission’s view, therefore, the choice to submit Mostar to a different treatment appears reasonable and objectively justified, in compliance with the applicable international standards.

57. In general, nevertheless, and with reference to all the matters raised in this opinion, the Commission is of the view that it would be appropriate to assess the provisions in issue in the light both of the political situation at the time of adoption of the constitution and of the developments in the country since that time.