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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**COMMENTS ON
THE DRAFT LAW ON AMENDMENTS
TO THE ELECTION LAW
OF BOSNIA AND HERZEGOVINA**

by

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I. Introduction

1. *In February 2006 the Venice Commission received a request to give its opinion on the amendments to the Election Law of Bosnia and Herzegovina (CDL-EL(2006)013).*
2. *The rapporteur of the Venice Commission, Mr A. Sanchez Navarro (Substitute member, Spain) prepared a first set of comments on 10 March 2006. In the meantime the authorities of Bosnia and Herzegovina announced that some amendments could be introduced to the Constitution of Bosnia and Herzegovina, modifying, among other provisions, some articles concerning the national electoral system.*
3. *Any further work of the Venice Commission and the OSCE/ODIHR on the electoral reform will largely depend on the nature of changes introduced into the Constitution of Bosnia and Herzegovina.*
4. *The comments below are subject to subsequent modifications after the planned constitutional reform.*

II. General remarks

5. In the obviously difficult constitutional, institutional and political context of Bosnia and Herzegovina, the election law has already been subject to quite frequent reforms in its less than five-years history. The new draft revision develops some points and eliminates others, in particular transitional provisions. However, it does not propose any radical reform of the electoral system in Bosnia and Herzegovina.
6. In very general terms, it has to be underlined that some difficulties arise from the text submitted to the Venice Commission:
 - a. Firstly, the structure of the whole law in force is quite complex. The numbers are based on chapters (so: chapter 1 includes articles 1.1 to 1.14; chapter 2, articles 2.1 to 2.21; chapter 5, arts. 5.1 to 5.32). It should be more logical to number the articles independently of the chapters, as it is generally done in most of the countries. The law contains 20 articles which, in practice, are nearly 300.
 - b. Secondly, the very wording of different provisions, probably reinforced by the translation is not quite clear (which seems to be worse in the draft reform law: see, e.g., art. 1.1.a, points 2 to 4; art. 7, second paragraph; art. 20, or 30).
 - c. Thirdly, the law in force is a complex document and it has numerous repetitive provisions (see, e.g., arts. 10.3 to 10.9 and 11.3 to 11.9, which repeat what, in fact, are “general rules”). Repetitions do not disappear in the draft (see, e.g., the new wording of the art. 9.12.c established by the art. 79).
 - d. In this general sense, the efforts to simplify the law have to be welcomed, even if they could evidently be much more widespread. For instance, the proposed art. 1.1 introduces some definitions of expressions used in the Law. The first of them is that of “political entity”, which includes “political party, and independent candidate, coalition or a list...”. It is an absolutely right approach, but it should be applied to the whole text, which is not the case: article 86 of the draft law uses the new expression of political entity, but the reform does not use it in many other articles of the law in force, where the old and more complex wording is repeatedly used (see, e.g., arts. 7.1, 7.3, 4.18, 4.21, 5.30, 9.7, 15.6, or 17.5).

7. All that said, the law tries to detail some rules applicable to the election of the different assemblies foreseen in the complex institutional framework of Bosnia and Herzegovina (*Parliamentary Assembly of Bosnia-Herzegovina*, with its House of Representatives and House of Peoples; *Parliament of Federation of Bosnia-Herzegovina*, also formed by a House of Representatives and a House of Peoples; and *National Assembly and Council of Peoples of the Republika Srpska*), and therefore it would be in close relationship with any constitutional reform that may affect that institutional framework. In particular, the law develops the provisions which rule on participation and on protection of the different “constituent peoples” in the House of Peoples of the Parliamentary Assembly of BiH.

8. In this respect, the main point is of course that of the concept of representation, and the desirability of the idea of ethnic representation in the field of electoral rules. The idea of equality, but also some general concepts such as that of political representation, or the integrating role inherent to political parties, deserve to be taken into account when treating this issue. National minorities may require some kind of affirmative action rules. But their acceptance may lead other minorities to build similar demands, and will possibly lead to a segmented political life, that will in the end underline the “particular” points of view instead of the “common interests”. This is not the place to treat this issue, but it cannot be ignored than the fragmentation of representation will not reinforce the survival of the political entity as it is now defined.

III. Particular remarks

9. Apart from that, the reform introduces some minor changes, which can anyway be important in the working of the system. It foresees wider terms for some acts in the electoral process (e.g., arts. 14, 38 or 41), sets up a new electoral threshold of 4 % of the valid votes for a political entity to participate in the allocation of mandates, instead of the previous 3 % (art. 74 of the draft, reforming the 9.6 of the Law in force). It also introduces some new rules affecting the Electoral authorities (in particular, the status of the members of the Election Commission of Bosnia and Herzegovina, including a quite arguable and not very clearly defined immunity: art. 21; and the Polling Station Committees).

10. The draft deeply reforms the provisions related to the Voter’s Register (chapter 3 of the law in force) in a quite reasonable way that has to be welcomed, including the definition of a modern “Central Voters Register” as “unique, permanent and... regularly updated” *ex-officio*, with “an electronic version” - article 31, reforming articles 3.2, 3.4, and 3.5. It also rules the authorities and the proceedings needed to form, to modify or to fulfil all the functions linked to the maintenance of the register - for instance, the making of excerpts and the right of any citizen to inspect the data and to submit a request to correct invalid or inaccurate date (which has to be considered, of course, limited to his/her personal date, although these limit seems not to be clear in the wording proposed for art. 3.13).

11. As to the candidatures, the amendments simplify somehow –quite logically- the requirements for participation in elections, particularly releasing political entities of the requirement to submit supporting signatures when they already fulfil certain conditions (arts. 34 and 37).

12. The draft does also expand the rules on “protection of the electoral rights” (Chapter 6), that is, the system of complaints and appeals. It shortens some terms (f.i.: art. 58, modifying the art. 6.2), and in general it seems to establish a quite simple and logical two-level system of protection within the administrative sphere (Municipal Election Commissions and Central E.C., new art. 6.6); and the possibility of judicial appeals before the Appellate Division of the Court of Bosnia and Herzegovina (6.9).

13. The draft law seems also to improve and clarify the rules on campaign financing (chapter 15) and media coverage of elections (ch. 16). In respect to the latter, some points could be developed, although not very important ones (the unnecessary repetition of the principle of balance, fairness and impartiality in arts. 16.2 and 16.4; the confusing wording of the 16.5, second paragraph, about non-reliable telephone-research or street-pools...). The limit of 48 hours for the prohibition to release public opinion research seems too short, but possibly realistic (16.10). The possibility for the media to refuse political advertisements for being “contrary to the Constitution or laws of BIH” may pose problems of implementation (16.13). The exceptions provided for private media in this field could be more carefully defined, avoiding problems in its practical implementation.

14. In Chapter 17, dealing with the “election observers”, the proposal made by art. 92 of the draft law should be more precise: the exemption of generally-settled limitations for International observers is obviously limited to their number, but not to other elements (such as the obligation of observers not to interfere with political activities).