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# IMPROVEMENT OF DEMOCRATIC PERFORMANCES OF THE PARLIAMENTARY ASSEMBLY OF BOSNIA AND HERZEGOVINA

*Recommendations*

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**– Recommendations –**

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## PREFACE

Within the project *Democratic Performances of the Parliaments of Serbia, BiH and Montenegro*, supported by the Regional Research Promotion Programme (RRPP) and the University of Fribourg/Switzerland, a group of researchers of public policies, gathered around Sarajevo Open Centre, created a study aimed at analysis of functioning of the Bosnian-Herzegovinian parliament, with the purpose of drafting recommendations for improvement of its role and functioning in the decision-making process.

The joint project, realized by the Faculty of Political Sciences in Belgrade, Faculty of Political Science in Podgorica and Sarajevo Open Centre, focused on analysis of work of state parliaments in the three states of the Western Balkans, which in the process of democratization have been facing similar transition problems. Within the framework of the project, research were carried out at national levels, while one of the project outcomes shall be a comparative analysis of thus obtained findings.

This study, which is primarily focused on decision-makers, strongly rely on research of the national team gathered around Sarajevo Open Centre. The findings which the researchers published in their papers shall be presented in a separate publication.

We would like to thank to all the Members and Delegates, as well as to the representatives of international organizations whose responses intensively contributed the creation of this study. The Research Team owes a particular gratitude to Prof. Florian Bieber, international mentor of the BiH research team, professor of political sciences at the University of Graz/Austria. Thanking to his large experience and useful suggestions, we have the opportunity to present a document which can serve as an important platform for objective insight in and further

improvement of the work of the Parliamentary Assembly of Bosnia and Herzegovina.

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## INTRODUCTION

The BiH Constitution, which entered into force on December 14<sup>th</sup>, 1995, envisaged a set of specific solutions which, among else, pertain to the BiH Parliamentary Assembly. Its constitutional-legal position is dominantly determined by the *federal state organization* of BiH, accompanied by many specificities and the political regime of consociative democracy. American impact on legal-technical framing of the Constitution influenced the constitutional subject matter referring to the Parliamentary Assembly not to be regulated precisely and completely, so that an effort-consuming analysis of laws and Rules of Procedure is necessary for relatively comprehensive learning about the legal nature and political role of the Parliamentary Assembly.

The Constitution does not explicitly proclaim the principle of division of power; however, this can be concluded from the analysis of constitutional norms. The Parliamentary Assembly *does not have a character of the supreme state authority*. Its structure is partly conditioned by the state organization of BiH, and even more by the nature of *divided society*. Ethnic elements, i.e. domination of national political elites, are obvious both from the structure of the Parliamentary Assembly and from the manner of its decision-making. Although the House of Representatives should be the representation of citizens (which it is, if observed from the aspect of direct election of its members), it is also dominated by *ethnic and entity elements* (ethnic nature of political parties and the so-called *entity voting*). The House of Peoples is predominantly the representation of constituent peoples, while its delegates are elected indirectly, in the entities.

The Parliamentary Assembly performs usual functions, however with unusual content and scope. This is conditioned by a *narrow scope of state competences*, in difference from entities, which enjoy a high level of autonomy. On the other hand, in difference



from numerous parliaments, the Parliamentary Assembly *does not perform functions which are often in competence of legislative authority*. It, for example, does not elect judges of the BiH Constitutional Court, but that competence, paradoxically, belongs to the entity parliaments although it deals with the election of members of state institution. The Parliamentary Assembly, as well, has no role in appointment of holders of judiciary functions at the state level, since that is the competence of an independent institution – the High Judicial and Prosecution Council of BiH.

Exercise of functions of the Parliamentary Assembly is conditioned by *domination of ethnic political elites and broad coalitions over political life*. So far, the opposition in the Parliamentary Assembly was scarce, except in one convocation, while the broad coalition had no programme character, which hampered the decision-making. The broad coalition is essentially created of parties from among the ranks of all three peoples. Although it is possible to find in this coalition the parties representing only a minor will of a constituent people, so far it generally have not happened. Heterogeneous composition of broad coalitions makes the concept of parliamentary majority, i.e. government and opposition, specific, since the majority often cannot be certain if its politics will be adopted and implemented. This influences the work of the Parliamentary Assembly, particularly its performance of legislative function and its relation with the Council of Ministers. Although the Council of Ministers dominates the legislative procedure, more often than in other states it happens that its bills are not adopted, exactly due to the instability of the parliamentary majority.

Besides, party discipline that bonds the members of the Parliamentary Assembly and non-institutional agreements of party leaders reduce the importance of the Parliamentary Assembly, which only formalizes the political agreements achieved at the meetings of party elites. Some of the most important decisions from the competences of the Parliamentary Assembly were adopted in that manner, thus significantly reducing its credibility.

The analysis of performance of legislative and control functions, as well as of transparency and international influence, should respond to the question if and to what extent the Parliamentary Assembly exercises the functions granted to it by the Constitution.

## LEGISLATIVE FUNCTION

*The basic function* of the Parliamentary Assembly of BiH is its legislative function. It includes also the *constitution-framing and budgetary function*, whereas according to the BiH Constitution the function of ratification of international treaties is specific, considering that the Parliamentary Assembly does not ratify international treaties, but confirms the ratification carried out by the BiH Presidency.

Constitutional standardization and practical realization of legislative function of the Parliamentary Assembly is caused by numerous specificities of the state organization, political regime, political relations and the very society of BiH. Therefore, the recommendations that would be grounded upon the experiences of developed representative democracies, particularly the ones just copying the solutions known in other states, would not only fail to meet the approval of political elites, but would be inapplicable.

*Recommendations* can be oriented in two directions: *improvement of constitutional and procedural norms*, which are highly imprecise, and *changes of some actual solutions*. The volume of these changes can be different, and it would depend on the readiness of political elites to accept proposals and opinions from beyond their own circles. The minimum scope of changes would pertain to more precise definition of valid norms, removal of ambiguities, which are indeed numerous and which hamper the decision-making process. If some ambiguities have already been removed from the parliamentary practice, which was necessary for the functioning of the Parliamentary Assembly, it is necessary to introduce the harmonized solutions into the Constitution and the Rules of Procedure, so that the change of relation of political forces in future would not return the disputes about inadequate positive legal solutions to the agenda.

Changes in performing the legislative function of the Parliamentary Assembly cannot be satisfactory if based only on removal of shortcomings of applicable positive legal regulations, as there are certain conceptual deficiencies which should also be emphasized and which create the core of weaknesses in performing the legislative function.

### ***Revision of the Constitution***

Article X of the BiH Constitution is devoted to its *revision*. Constitutional norms contained in this Article are not complete and clear. First, the Constitution does not stipulate whom the right of proposing amendments to the Constitution belongs to. Second, it is not clearly defined who enacts the decision on amendment to the Constitution. Third, since this Article of the Constitution pertains to its change by implementation of amendment technique, in theory there is an opinion that the total revision of the Constitution is not allowed.

Since these issues are not regulated by the Constitution, they have *partly* been *regulated by the Rules of Procedure of the parliamentary Houses*, however this was done in an inadequate manner. First, the Rules of Procedure stipulate whom the right to propose amendments to the Constitution belongs to. That right is, among else, granted to any member/delegate. This solution cannot be considered justified. The BiH Constitution is formally rigid, so it is not justified that the right to amending the formally rigid Constitution is granted to one member/delegate. Comparative solutions are exactly opposite.

#### **••••• RECOMMENDATION 1: Proposing amendments to the Constitution**

The Constitution should define whom the right to propose amendments to the Constitution belongs to. In that context, it should define a minimum number of members/delegates who can propose amendments.

In comparative constitutional law, this issue is regulated by the Constitutions. It would not be justified for it to be regulated only by the Rules of Procedure. However, if there is no politi-

cal readiness for amendments to the Constitution, it would be better to regulate this issue in the above mentioned manner by the Rules of Procedure of parliamentary Houses, than to leave the currently applicable solution.

## **RECOMMENDATION 2: Total revision of the Constitution**

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The Constitution should explicitly stipulate that the Parliamentary Assembly can do the total revision of the Constitution, i.e. that it is legally permitted to replace the actual Constitution by an entirely new text.

This would avoid eventual doubt on that issue if the future sees a political decision for adoption of new Constitution.

## **RECOMMENDATION 3: The manner of deciding when adopting the constitutional amendments**

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The Constitution should explicitly prescribe the role of the House of Peoples and the majority by which it decides on the constitutional amendments.

The third recommendation pertains to a precise standardization of the manner in which the Parliamentary Assembly decides on the adoption of constitutional amendments. The constitutional norm has been formulated in such a manner as it is not clear what the role of the House of Peoples is and what is the majority it decides with in an event of amendments to the Constitution. Therefore, this norm should be formulated more clearly and comprehensively. To us it seems that the current norm can be interpreted so as the decision on constitutional amendments is passed in the Parliamentary Assembly, meaning in its both Houses, considering that only the House of Representatives requires a two-third majority of the present members. The House of Peoples also decides on the amendments, however passing that decision only by the majority required for all decisions from its competence, considering that the Constitution does not envisage the qualified majority. Some authors think that the adoption of amendments requires a qualified majority at the House of Peoples as well, composed

of the majority of delegates from among the ranks of all three constituent peoples.

If the future sees the adoption of constitutional amendments, without a broad consensus of political elites thereupon, such unclear constitutional norms should make a serious problem. Therefore it is necessary to regulate the procedure of the revision of the Constitution in a clear and unambiguous manner.

### ***Legislative initiative***

The BiH Constitution does not contain norms on the holders of the right to legislative initiative. This solution is not necessarily undemocratic, particularly because a narrow circle of authorized proposers would be a worse solution than a broad circle defined by the Rules of Procedure of the parliamentary Houses. However, it seems that the existing solution is not adequate, as it enables the parliamentary majority to increase or decrease, by its own will, the circle of subjects entitled to the right to legislative initiative, which can entail negative political consequences to the development of the process of democratic political participation in performance of the legislative function.

Therefore, it would be good that the BiH Constitution determines the subjects entitled to the right of legislative initiative. If these subjects would be defined in a manner common in the regimes of representatives democracy, political elites would not be able to change the circle of authorized proposers by their own will, from one to another convocation, by the amendment to the Rules of Procedure. This possibility is not so emphasized and "dangerous" when it is about the proposers which are a part of the political elites, but it is important to establish clear norms if this right belongs to the citizens as well.

According to the current solutions contained in the Rules of Procedure of the Houses of the Parliamentary Assembly, the right to legislative initiative belongs to any member/delegate, committees, another House, as well as to the Council of Ministers and the Presidency, concerning the issues from their respective competence. From this norm it derives that the right to legislative initiative does not belong to citizens. Of course, it should not have been envisaged that it belonged to an unde-

fined number of citizens, but to some minimum number thereof. This would standardize the institution of people's or civil initiative. It is not clear whether the adopters of the Rules of Procedure considered that the right to legislative initiative was not granted to the citizens by the BiH Constitution. If that was their opinion, they were wrong. Namely, the Annex I to the Constitution, among else, states the International Covenant on Civil and Political Rights, which grants to the citizens the right to direct participation in decision-making. By its quoting in Annex I, that Covenant became an integral part of the Constitution, whereas the right to direct deciding became the constitutional right of the BiH citizens. Here is the constitutional-legal framework of people's initiative. It is necessary in a desire to avoid the reduction of representative democracy to an elitist form.

#### **RECOMMENDATION 4: To clearly define the right to legislative initiative**

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An item of Article IV to the Constitution should define the subjects entitled to the right of legislative initiative, in such a manner for it to be any member/delegate, committees, the Council of Ministers, the Presidency and a defined number of citizens.

The number of citizens should be such as not to make the exercise of this right unrealistic, while, in the same time, it should not be too small, in order not to lead to an abuse of that right by submission of unserious initiatives. Having in mid that the people's initiative has already been standardized in Republika Srpska, in which the right to propose laws belongs to at least 3,000 voters, at the BiH level the number of citizens holding the right to legislative initiative should be less than 10,000.

Although the circle of the subjects entitled to the right to legislative initiative is relatively broad, it is not equally exercised by all of them. The most important proposer of the laws is the BiH Council of Ministers. In the period 1997-2012, the Council of Ministers proposed 67% of the total number of the adopted laws. In other states, the governments are the most frequent and the most important proposers of laws. In BiH, the Council of Ministers experiences less success in exercising the right to legislative initiative, because of a rather high number of bills

not adopted by the Parliamentary Assembly. That percentage rises to as much as 28% of the total number of bills originating from the Council of Ministers (period 2006-2010).

The reasons thereof are multiple. The MPs think that the problem is in insufficient preparation of the bills and inadequate communication of the competent Minister with the Parliament Assembly, particularly with the MPs from his/her party. Thus it happens that the Council of Ministers has no sufficient information if the Parliamentary Assembly is willing to adopt the bill.

• • • • • **RECOMMENDATION 5: To intensify the cooperation between the parliament and the Government in the procedure of drafting the laws**

Members of the Parliamentary Assembly should initiate an active cooperation with the Council of Ministers in the procedure of drafting the laws, in the sense of exchange of opinions if and what kind of bill can obtain the support of the parliamentary majority.

Another reasons of a relatively high percentage of rejected bills originating from the Council of Ministers is of systemic nature and more difficult to be rectified. The first reason is in the fact that the Council of Ministers is always a "broad coalition" composed of parties from among the ranks of three constituent peoples. In order for the right to legislative initiative to be used in a productive manner, it is necessary that such coalitions have programme character, i.e. that they are capable to define a policy in advance, which will make the relation between the Council of Ministers and the Parliamentary Assembly more certain in the procedure of drafting the laws.

• • • • • **RECOMMENDATION 6: Programme formation of the parliamentary majority**

In confirmation of appointment of the Council of Ministers, the Parliamentary Assembly should take care of the programme character of its politics.

Another reason for a non-harmonized action are the differences in the manner of decision-making between the Council of Ministers and the Parliamentary Assembly. In order to propose bills, the Council of Ministers does not require a consensus of Ministers from among the ranks of different constituent peoples, so that such decisions can be adopted by outvoting. The Parliamentary Assembly, however, has mechanisms of qualified deciding (entity voting and vital national interest), enabling the Council of Ministers to propose a bill in advance known for not enjoying the support of the Parliamentary Assembly. Without changing the manner of decision-making of the Council of Ministers, the only way to alleviate this problem is in the political sphere: better communication between the Council of Ministers and the Parliamentary Assembly in the process of proposing bills and in the programme character of the legislative action of both institutions.

The role of the members/delegates in performing the legislative function in this segment is not important, as in the period 1997-2011 MPs proposed only 10,5% of the total number of adopted laws. This is a clear sign that the role of the members of the legislative body in performing the legislative function is mostly formal and reduced to confirmation of decisions of party oligarchies. There are several reasons influencing this role of the MPs: 1) ignoring of the Parliamentary Assembly by other institutions; 2) the lack of democracy in the decision-making process, as the most important decisions are made on meetings of party leaders and party leaderships; 3) insufficient interest of a part of members/delegates to participate in the legislative procedure; 4) insufficient knowledge about the legal system and the subject matter regulated by laws; 5) the absence of financial, human resource and infrastructural support to the members/delegates for performing the legislative function.

### **RECOMMENDATION 7: Strengthening of capacities of members/delegates**

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Parliamentary Assemblies should educate MPs, offer them necessary basic knowledge for the performance of legislative function and create human resource and financial assump-



tions for the quality and knowledge-based participation of MPs in performing the legislative function.

Other recommendations which we could formulate are beyond the influence of the Parliamentary Assembly and pertain to the nature and internal relations in political parties. Only the democratization of political parties and weakening of party bonds should contribute a more active participation of MPs in performing the legislative function. This should further be contributed by a different manner of selection of candidates for performing the member/delegate function, in the sense that political parties rather select their members prone to an independent and critical thinking, while in the same time truly interested in active participation in the legislative process.

The next recommendation pertains to granting the right to other subjects as well to initiate the laws, without the legal obligation of the parliament to initiate the legislative procedure on the grounds of such initiatives. In other words, apart from the right to legal initiative, which should belong to the above mentioned subjects, the Rules of Procedure of Parliamentary Houses should indicate the subjects entitled to legislative initiative, while the Parliamentary Assembly can decide to start the legislative procedure upon such initiatives, after assessing that such initiative was justified.

• • • • • **RECOMMENDATION 8: To expand the non-obligatory right to legislative initiative**

The right to submit initiatives should be entitled to: citizens, political parties, citizens' associations, assemblies/councils of municipalities and cities and economic entities.

In this manner, the legislative procedure is democratized, as it can be participated by the subjects interested in enacting the laws, while the legislative process itself is not complicated since the Parliamentary Assembly is not obliged to commence the legislative procedure upon these initiatives.

### ***Public debate***

Public debate is a possible phase of the legislative procedure, carried out by the competent committee. The decision on holding a public debate is passed by the competent committee, and not by the House, as stipulated by the Rules of Procedure of the entities' parliaments. Public debate, however, can only be held when the legislative procedure had already started and when the House voted on adoption of the law, however not yet solving how the concrete solutions would read. Thus the role of the public is limited, as it cannot express its opinion whether the passing of the law is necessary and on which principles it should rest upon. Besides, public debates are not organized often, and parliamentary clubs are not ready to largely adopt the opinions presented therein. In the period 2006-2010, public debates were organized on 16 bills, which is only 8.5% of the number of bills adopted in this convocation of the Parliamentary Assembly.

### **RECOMMENDATION 9: More public debates**

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The parliamentary committees should organize public debates more often.

This serves the achievement of two goals. The first is to create public assurance of the necessity of participation of interested subjects in the legislative procedure through public debates, gradually developing a new type of political culture. Another goal of more frequent organization of public debates is to hear different ideas on what the content of the laws should be like, in order to adopt a more quality solutions.

### **RECOMMENDATION 10: Public debates at the very beginning of the legislative procedure**

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Public debates should be organized even before one of the Houses decides to adopt the principles the law shall rest upon, which means before the beginning of the debate on particular legal solutions.

Thus the public shall be involved in the legislative procedure since the very beginning, and not only after the House decided to adopt certain law and only wants to debate on the content of particular legal solutions.

### ***Debate and voting***

During the legislative procedure carried out in the Houses, the members/delegates has right to submit amendments. This right is more often used by the MPs from the ruling parties, which is expected for two reasons. First, the parliamentary majority is extremely broad and supreme in numbers, so it is logical that its members propose a higher number of amendments. Second, the content of their amendments is such that they do not challenge the essence of the proposed legal solutions, and such amendments have more chances to be accepted. In spite of that opposition in Houses is numerically weak, its members in certain convocations proposed a large number of amendments. Thus in the convocation 2006-2010, the opposition members in the House of Representatives proposed 260 out of 550 amendments to the bills. This negated the opinion of certain members of the ruling parties that opposition members mostly act in a populist manner and seldom submit the proposals. On the other hand, the members of the ruling parties with a longer parliamentary experiences pay tribute to their colleagues from the opposition when saying that there is no significant difference between the members of the ruling and opposition parties in proposing amendments.

Political parties control the behaviour of their MPs to the largest extent, so that party discipline is strongly emphasized in functioning of the Parliamentary Assembly. This weaken the MPs' role in exercising legislative function.

### **..... RECOMMENDATION 11: More independent action of MPs**

Parliamentary clubs of certain parties should enable their members a larger freedom of action during the debate and proposing amendments, particularly if it is about the amendments not altering the essence of the bill.

In the formal-legal sense, their freedom is so far preserved, as the Rules of Procedure do not prevent members/delegates from participation in debate, proposing and voting without pressures and limitations. The reality, of course, is not like that, since party discipline transforms parliamentarians into servants of their parties. The fact that under the BiH Election Law the mandate belongs to the MP and not to his/her party is a positive solution, which might influence increase of level of freedom of parliamentarians, however it is insufficient for their truly free action. There is always a possibility for expelling from the party, which most often entail a consequence that MP cannot renew his/her mandate unless joining another party. Therefore, political parties should develop internal democracy and not sanction the MPs from their ranks if they show independence in parliamentary work which does not violate the basic programme principles.

When it is about voting, both mechanisms of qualified deciding are the stumbling blocks – the entity voting and the protection of vital national interests.

### **RECOMMENDATION 12: To define the manner of deciding by the Constitution**

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The manner of deciding should be precisely defined by the Constitution, to avoid that parliamentary majorities, due to change in balance of forces, interpret constitutional norms in different ways, or for the defined manner of deciding not to be changed depending of interests of actual parliamentary majority.

One of disputable questions is what majority is required for deciding in the Parliamentary Assembly. The constitutional norm should precise if it is the majority of the number of present members/delegates, providing that it encompasses at least one third of the total number of members/delegates elected in each of the entities. This removes the doubt if it is one third of the number of present or of the number of elected members/delegates.

The Constitution stipulates that the Constitutional Court shall, under certain conditions, decide on procedural correctness of

the decision of the Parliamentary Assembly on the occasion of which the procedure for protection of vital interests has been initiated. In practice, however, procedural correctness implies passing a meritory decision if the disputable act violates vital interests. In that manner, the Constitutional Court interprets vital national interests and determines whether in actual case it can be spoken about their violation.

The legislative function of the Parliamentary Assembly is limited by such role of the Constitutional Court, which can prevent enactment of laws supported by the majority of members, however opposed by the delegates from one constituent people. The essence of the institution of vital national interest is to prevent outvoting of political representatives of one constituent people about the issues its considers important. The problem appears when delegates of two peoples disagree if an issue can be considered the issue of vital national interest. In that case, they interpret single constitutional institution in different manners. Since the Constitutional Court is authorized to interpret the Constitution, it should, by its interpretation, resolve the dispute if the actual case assumes the vital national interest. The Constitutional Court, therefore, does not resolve a procedural issue, but interprets the Constitution or, more precisely, interprets the meaning of a constitutional institution.

••••• **RECOMMENDATION 13: To define the role of the Constitutional Court in the procedure of protection of vital national interest**

The Constitution should envisage that the Constitutional Court should decide if an issue can be considered the issue of vital national interest, on which the final decision of the Parliamentary Assembly shall depend.

***Relation of Houses in the legislative procedure***

The Constitution stipulates that the Houses of the Parliamentary Assembly are equal in exercising legislative function. We consider this solution justified, as in that manner the constitutive elements of the BiH federation are brought into an equal position. This equality, however, can be challenged by factual functioning of the Parliamentary Assembly, in which the bills

are most often submitted in the House of Representatives, although that is not the legal obligation.

The Rules of Procedures of the parliamentary Houses envisage that, in case of disagreement of the Houses about the text of the bill, a commission shall be formed with a task to reach a single, harmonized text of the law. However, the Rules of Procedure state that this commission shall be formed if the Houses do not adopt the bill in the identical text. It can be concluded that the commission shall not be formed if one House did not accept the bill at all. This solution has its logic, as there is no need to forward the bill to other House if the first one rejected it. However, in that case, the latter House, and that is by rule the House of Peoples, is not given a chance to declare at all about the bill. If it would have such chance, than it would be known what is the opinion on the bill of the Parliamentary Assembly, and not just of one House thereof, as it is decided by the Assembly as a whole. Finally, it can happen that the House of Representatives nevertheless agree to adopt the bill if it is discussed by the joint commission of the Houses, as at first it might oppose to certain solutions which can be modified during the joint debate.

#### **RECOMMENDATION 14: To equalize the role of the Houses**

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Amendments to the Rules of Procedure should enable both Houses to decide on any bill, and to form the joint commission also in the cases when one House is against the bill, with an aim to reach an ultimately compromise solution.

This amendment would not necessarily complicate the legislative procedure if the Rules of Procedure envisage short terms in which joint commission would be obliged to take an attitude about the disputable bill.

#### ***Abbreviated and urgent procedure***

The Rules of Procedure do not clearly define the urgent procedure. It seems that there is a confusion with abbreviated and urgent procedure. Urgent procedure is defined as a procedure for enacting laws of high level of urgency or the laws the com-

plexity of which do not require carrying out the two readings procedure, nor the submission of amendments. The procedure of enacting laws by urgent procedure should be regulated in a different manner.

• • • • • **RECOMMENDATION 15: Urgent procedure**

The Rules of Procedure should define in a relatively precise manner which laws can be adopted by urgent procedure.

These are the laws enacted due to emergence of unpredictable circumstances which might have harmful effects on life and health of people, BiH security or normal functioning of its authorities. The Houses should define whether in concrete case it is about the law which should be enacted by urgent procedure, while the Rules of Procedure should define the minimum number of members/delegates who can initiate the enactment of laws by urgent procedure, in order to prevent the abuse of this procedure.

***Budgetary function***

Constitutional standardization of budgetary function of the Parliamentary Assembly has two important specificities. First is the participation of the BiH Presidency in the budget proposing procedure, while the second is the absence of a norm that would envisage what would happen if the budget fails to be adopted within a defined period of time.

The Constitution stipulates that the Council of Ministers submits the draft budget to the Presidency, which forwards the draft budget to the Parliamentary Assembly. This solution is an expression of the constitution-framer's idea to make the Presidency the central institution of executive power. In practice, however, the Council of Ministers influences much more the creation of state policy. Besides, in states with bicephalic executive, it is not common that the head of the state proposes budget. At the end, this is neither practical, as it can happen that the majority of members of the Presidency belong to the opposition parties, so that it will be difficult for the Presidency and for the Council of Ministers to harmonize the final text of

the budgetary bill submitted to the Parliamentary Assembly. Ultimately, the Constitution does not require that harmonization, however in that case the fate of the budgetary bill in the Parliamentary Assembly is uncertain, as it is difficult to expect that the parliamentary majority would adopt the budgetary bill which came from the Presidency dominated by opposition parties, and with disagreement of the Council of Ministers which enjoys the support of the parliamentary majority.

The role of the Presidency in budget proposal is excessive, and it can also represent a source of political conflicts in case of cohabitation.

#### **RECOMMENDATION 16: Council of Ministers as the budget proposer**

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Amendment to the BiH Constitution should define the competence of the Council of Ministers to submit the budgetary bill to the Parliamentary Assembly without the participation of the Presidency in that procedure.

Another recommendation pertains to the deadlines in which the budget must be adopted. Since the Constitution does not envisage sanction in case of failure to adopt the budget before the beginning of the fiscal year, and not even for certain time after its beginning, the practice is that budget is adopted even as many as several months after the beginning of the fiscal year.

#### **RECOMMENDATION 17: Deadline for budget adoption**

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It is necessary to define deadlines in which budget must be adopted, with clear mechanisms, such is even the dismissal of the Parliamentary Assembly, if the budget is not adopted before the beginning of the fiscal year.



## CONTROL FUNCTION

One of the fundamental competences of the parliament, with legislative function, is the control function which assumes “disciplining” of the work of executive authorities. Control function is exhausted in initiation of political accountability of the Government in the parliament and submission of report on the Government’s work to the parliament. Annex IV to the General Framework Agreement for Peace in BiH, i.e. the BiH Constitution, insufficiently elaborates the control functions of the BiH Parliamentary Assembly. The provisions on control functions are more closely elaborated in the Rules of Procedure of both Houses of the Parliamentary Assembly. It would be certainly meaningful to define the control functions of the BiH Parliamentary Assembly by the BiH Constitution.

### ***Election and voting no-confidence to the BiH Council of Ministers***

Generally speaking, control functions are exhausted, primarily, in election of the Government by the parliament which then, during the electoral period, exercises permanent control of work of a politically accountable government. In this manner a bond is created between the BiH Parliamentary Assembly and the BiH Council of Ministers, considering that the Council of Ministers, theoretically, depends on the majority in the Parliamentary Assembly, the members of which can exercise strong influence on functioning of the Council of Ministers. However, the fact is that the BiH Council of Ministers enjoys support of the majority in the BiH Parliamentary Assembly, and that therefore the exercise of control function of dismissal should be in hands of the opposition parties in the Parliamentary Assembly. This, however, is not the case. The actual convocation of the BiH Parliamentary Assembly has not started the debate

on confidence to the BiH Parliamentary Assembly. In the Parliamentary Assembly there is no classical division to the ruling and opposition parties, so it cannot be defined if the opposition in the stated situations acted as united. Besides, actual situation points to the fact that eventual initiation of debate on confidence to the BiH Council of Ministers can hardly be spoken about, considering that the BiH parliamentary factuality does not have parliamentary unity, i.e. united opposition. That is one of the profound problems, with the existing ethnic and entity diversity, due to which debates on confidence have not been initiated. In the same time, there cannot be a motivation for assessment and critique of the work of the BiH Council of Ministers when ruling parties in the Parliamentary Assembly are the same ones which ministers are in the BiH Council of Ministers and when loyalty to the party is emphasized.

### **RECOMMENDATION 18: Strengthening the role of opposition**

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Opposition parties must enhance their pressure and coerce the Council of Ministers to clear and open action.

### ***Budget adoption***

Considering that by adoption of budget the parliament defines the expenditures of the Government, i.e. revenues and expenditures during the fiscal year, one of particularly efficient manners of control of work of the Government is the parliament's right to adopt the budget without which the Government cannot perform its function. In BiH, the Parliamentary Assembly monitors the budget execution through submission of reports thereon, submitted by the BiH Presidency upon proposal of the BiH Council of Ministers and through the data on realized revenues and expenditures in the fiscal year. If having doubts in correctness of the figures, the Houses can require explanations or corrections from the BiH Council of Ministers. In the current situation, debates on the budget primarily depend on extra-institutional influences, i.e. the debate depends on in advance defined agreements achieved beyond the Parliamentary Assembly. Debates on the budget are permeated by action of political leaders and not of the BiH Parliamentary

Assembly as a whole. In the same time, in party, ethnic and entity relations of the members of the Parliamentary Assembly, which are even antagonistic, there is no feeling for obligatory exercise of the control over the budget execution, regardless the political party and without influence if these are the ruling or opposition parties, parties from one or another entity. Therefore, although the members of the BiH Parliamentary Assembly have instruments and mechanisms for control of the BiH Council of Ministers at their disposal, their volume is not proportionally accompanied with the involvement of the Parliamentary Assembly in the practice of control of work.

••••• **RECOMMENDATION 19: Strengthening of the parliament in relation to the parties**

The focus of decision-making should be transferred from the party headquarters to the BiH Parliamentary Assembly with respect of envisaged procedure, which would bring respect to the Parliamentary Assembly as a public authority.

### ***Reports***

Reports are one of the manners in which the parliament controls the Government. In BiH, the BiH Council of Ministers is obliged to submit information on all important activities from its scope of work to the BiH Parliamentary Assembly, with responsibility for proposing and pursuing politics and implementation of laws, other regulations and provisions the implementation of which is a part of its constitutional and legal competence, as well as guiding and harmonization of the work of Ministries. However, debate on reports is permeated with party, ethnic and entity colours. There is a problem of avoiding the role assigned to the BiH Parliamentary Assembly in favour of strengthening the party affiliation and loyalty. Therefore, the purpose of debate leading to the adoption or non-adoption of a report submitted by the BiH Council of Ministers, i.e. any other control authority, is not a clear reporting to the Parliamentary Assembly on performance of the assigned functions nor the encouragement of debate on existing problems which arise from their performance, which is the common parliamentary practice.

**RECOMMENDATION 20: Overcoming of ethnic and entity fragmentation**

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Overcoming of ethnic and entity fragmentation is necessary as ethnic and entity interests are implemented on the expense of functions performed by the members of the BiH Parliamentary Assembly.

***Parliamentary questions***

The MPs are entitled to the right to pose questions to the Government and in that manner exercise the control function. In parliamentary questions, MPs pose question about the actual situation either to the Government as a whole or to its individual members. The question is posed verbally or in writing, to be responded on the same or the forthcoming sitting, without a debate. This right is usually used by opposition parties. In the BiH Parliamentary Assembly, members/delegates can pose members/delegates' questions to the BiH Council of Ministers, self-governments, institutions, directorates, i.e. all BiH institutions. The BiH Parliamentary Assembly has the practice of posing members/delegates' questions. In general, the period of waiting for the responds to the posed parliamentary questions is several months long, although the Rules of Procedure of both Houses prescribe the 30 days deadline with possible 10 days extension for submitting the responses. In the same time, there are no prescribed instruments and mechanisms by which the BiH Council of Ministers would be compelled to respond to the parliamentary questions. Even when the responds are obtained, the content of the responds to the posed questions is mostly unsatisfactory, as the question is responded only in part. From the above it can be concluded that the BiH Council of Ministers does not take the parliamentary questions seriously. In the BiH Parliamentary Assembly it can hardly be spoken about a common division to the ruling parties and opposition parties, so therefore it is difficult to find out who poses parliamentary questions more frequently. Finally, respondents agree that in posing parliamentary questions the influence of daily politics is decisive.

••••• **RECOMMENDATION 21: Commitment of the Council of Ministers to respond to parliamentary questions.**

It is necessary to define the system of accountability, i.e. to envisage instruments and mechanisms by which the BiH Council of Ministers would be coerced to respond to the posed parliamentary questions. This means that the causal relationship in case of failure of the BiH Council of Ministers to act regarding the posed members/delegates' questions should be defined and envisaged.

***Interpellation***

The opening of the parliamentary debate upon parliamentary question means interpellation, which formulation is equal to the parliamentary question, however with a debate in which all MPs can participate, and not only the one who posed the question. The BiH Parliamentary Assembly recognizes the institution of interpellation, however in the actual convocation it has not been used at all. The question is why the members of the BiH Parliamentary Assembly, if unsatisfied with the responses obtained through parliamentary questions, do not initiate interpellation. The research shows that the MPs of the BiH Parliamentary Assembly are not sufficiently informed on the institution of interpellation and they are not familiar with the procedure enough well to implement it.

••••• **RECOMMENDATION 22: Better knowledge of the institution of interpellation**

The members of the BiH Parliamentary Assembly should be acquainted in details with the interpellation institution, and a clear legal framework and efficient mechanisms should be established for obtaining a harmonized and efficient interpellation system.

Besides, the Rules of Procedure should regulate the institution of interpellation in a different manner. First, it is necessary to establish the minimum number of members/delegates entitled to the right to submit interpellation, as submission by only one member/delegate is not in compliance with the nature of this institution. Second, the Rules of Procedure should envis-

age the outcome of the interpellation to be: the statement of the House that the Council of Ministers worked well; the adoption of guidelines for the work of the Council of Ministers; voting on confidence to the Council of Ministers.

### ***Inquiry committees***

The theory of constitutional law mentions the inquiry committees for examination of certain issues in the work of Government as a whole or some of its Ministries. In the BiH Parliamentary Assembly, the Houses establish their standing or temporary committees in the Houses, i.e. joint permanent and temporary committees of both of them. The task of the committees is to give opinions, submit proposals and reports and perform other tasks.

According to the data obtained from the BiH Parliamentary Assembly, there is an established practice of functioning of inquiry committees. However, although they are considered good practice, their effects are lacking because in most cases the institutions deny information.

### **RECOMMENDATION 23: Strengthening of the institution of inquiry committee**

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The recommendation is to establish the system of accountability, i.e. to stipulate instruments and mechanisms enabling the final goal and complete fulfilment of the purpose which inquiry committees are established for.

### ***Public hearings***

Public hearings are mechanism for collecting information used by parliamentary committees in their work. The BiH Parliamentary Assembly guarantees it as one of the control functions. During the research, we noticed that members of the BiH Parliamentary Assembly mostly equalize public hearings with public debates and public advocacy.

••••• **RECOMMENDATION 24: More intensive use of public hearings**

Members of the Parliamentary Assembly should get acquainted in details with public hearings in order to use them in their work in an appropriate and efficient manner.

***Oversight of the defence and security sector***

Control over the defence and security sector is extremely important, particularly if taking into account that the defence and security institutions have been assigned with the competences the implementation of which can have impact on limitation of the rights and freedoms of citizens. BiH founded mechanisms of democratic control over the defence and security sector within the BiH Parliamentary Assembly through two joint committees composed of members of both Houses of the Parliamentary Assembly. These are the Joint Committee on Defence and Security of BiH and the Joint Security and Intelligence Committee on Supervision of the Work of Intelligence and Security Agency of BiH which, in the aspect of control, carry out the control of work and the execution of budget of state-level institutions in the field of security. When assessing the control of joint committees over the defence and security sector, the research shows that the members of the BiH Parliamentary Assembly agree that this is a kind of control which subject matter, generally observed, is unresolved and unfocused to what it really should be. The opinions are that the committees are useful, but that the control system does not fulfil its tasks, ultimately leading to lacking of effects.

••••• **RECOMMENDATION 25: To intensify the oversight of the security and defence sector**

Democratic oversight over the security and defence sector must be established in such a manner as it is not only the condition for the processes which started after its establishment, here primarily having in mind the Euro-Atlantic integration. This means envisaging and definition of the actual effect of the work of joint committees.

In implementation of principles of division of power, the control function, founded on the *checks and balances* system which is assigned to the legislative branch, in relation to the executive one, is a guarantee of democratic functioning of public authorities. In the same time this means that in the procedure of creation and implementation of a policy, the control function of the parliament is one of the most important functions. The capacity of a representative body for carrying out an efficient control of executive bodies, of course accompanied with the relevant results, shows the true level of democracy of a certain system. It is clear that control functions of the BiH Parliamentary Assembly are non-emphasized and hesitant, considering that the functions of the Parliamentary Assembly are exhausted in the legislative function. In the same time, members of the BiH Parliamentary Assembly contribute such position of the parliament at the BiH state level. The established parliamentary system which assumes different control functions should be improved and enhanced. Appropriate and strong mechanism that should encourage the application of control functions of the BiH Parliamentary Assembly should be established. All this requires permanent and consistent efforts and commitment of the members of the BiH Parliamentary Assembly.



## TRANSPARENCY OF WORK

Transparency is usually defined as a principle enabling the public to acquire information on the structure and operations of the given “entity”. It is often perceived as a synonym for openness and reveal, although subtle differences can be found among these concepts. In the public discourse, transparency is observed as a public good similar to the rights to public speech and privacy. The development of new communication technologies and their broad use and the actual influence of the public to the Government create new forms and means of governance, which further influence the increase of level of transparency. On the practical realm, transparency of work of an authority means its relations with media, non-governmental organizations and interested citizens, and the manners and possibilities for access to information held by that authority, either through media or through some other forms of modern communication channels.

### ***Freedom of access to information in BiH***

Normative frameworks for access to information on the work of the BiH Parliamentary Assembly are regulated by the Freedom of Access to Information Act for BiH and the Rules of Procedure on the work of the Houses. The Freedom of Access to Information Act was adopted in autumn 2000. This Act establishes information under the control of a public authority as a *public resource* the access to which promotes greater transparency and accountability of the authorities and enables democratic processes in a society. This Act establishes as the principle the right of every person to access an information, and the obligation of public authority to disclose that information to the interested person. A public authority holding the information under its control means: executive, legislative, administra-

tive and judicial authority; a legal person carrying out a public function, and a legal person either owned or controlled by a public authority. Each public authority is obliged to assist any natural or legal person in the procedure of requesting an information, and it is obliged to appoint an Information Officer for processing the requests for access to information. Besides, public authority gives a guide to each person requesting an information, on the actions that should be taken in order to acquire the information, a sample request, information on categories of exemptions, data on legal remedies, deadlines and the like. The guide should also refer to index, registry of the kinds of information under the control of the public authority, form in which the information are available as well as the data on where the information can be accessed.

#### **RECOMMENDATION 26: Strengthening of public access to information**

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The Parliamentary Assembly should take further steps towards improvement of access to information on its work.

The Rules of Procedure of both Houses of the Parliamentary Assembly of Bosnia and Herzegovina regulate the issue of publicity of work, i.e. the possibility for access the information on the work of the Houses. In that sense, the Rules of Procedure of the House of Representatives of the BiH Parliamentary Assembly devoted a special chapter to the publicity of work. The House of Representatives works publicly and it informs the public on its work objectively and in full. Also, in accordance with the Freedom of Access to Information Act, it shall enable every interested person the access to information held with this House. The complete minutes of discussions from the sittings of the House, as well as the most significant activities related to the work of the House and its committees are available to the public in electronic form, or in hardcopy if possible. Exemptions from the above stated rule are the cases in which the disclosure of the data would influence the issues of foreign policy, defence and security, interests of monetary policy, prevention and detection of crime, as well as other cases stipulated by the Rules of Procedure and the Freedom of Access to Information Act.

Proposals and acts adopted in the House can be published in press and public information media. Citizens and media representatives have ensured access to the sittings of the House in a specially reserved space. Besides, the committees' sittings are open for public, unless otherwise decided by the committee. Minutes from the sittings of the House are published in full. The sittings of the House are audio recorded, whereas additional notes can also be made for the purpose of creating a final transcript of the sitting. The House uses the electronic voting system which registers and presents the total number of votes *in favour*, the number of votes *against* and the number of *abstained* votes. The screen presents the vote of each representative in green (*in favour*), red (*against*) and white colour (*abstained*), with the grey colour for the vacant seats of the representatives not attending the sitting. The electronic voting system registers if there is a quorum and if the majority, if it exists, includes at least one third of the votes from the territory of each of the entities. Upon voting, the results are displayed on the screen. In an event of voting on amendments to the BiH Constitution, confirmation of appointment of the Chair of the BiH Council of Ministers or when required by one third of the representatives in the House, the electronic voting system registers also the manner in which each of the representatives voted and this information is made public.

The Rules of Procedure of the House of Peoples of the Parliamentary Assembly in almost an identical manner regulates the issue of publicity of the work of this House, availability of information in relation to its work, and electronic voting which started to be used only since 2011 and thus contributed the increase of transparency of the work of the House of Peoples. Although the data on the work of the BiH Parliamentary Assembly are publicly available, MPs do not feel the need and accountability to inform the interested persons on their work and on the parliamentary work as such.

••••• **RECOMMENDATION 27: Access to parliamentary committees**

The Parliamentary Assembly should enable a better access of the media, non-governmental organizations and citizens to the work of the parliamentary committees.

**RECOMMENDATION 28: Raising awareness of MPs about the publicity of work**

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The awareness of MPs on obligation and accountability to inform the interested persons on their work and the parliamentary work should be raised.

***Presentation of work***

Presentation of work of the Parliamentary Assembly is best shown through its website ([www.parlament.ba](http://www.parlament.ba)) which, according to the assessment not only of the MPs, but also of international organizations, is one of the best in the region. The website contains data on the parliament, the House of Representatives, the House of Peoples, joint bodies, sittings, Secretariat and international activities, in Bosnian, Croatian, Serbian and English language; in Latin and Cyrillic script. Besides, the website offers the bills undergoing the procedure, the adopted laws, rejected, withdrawn, suspended and held bills, as well as a review of the legislative procedure. In addition to the laws, here one can find annual reports, resolutions, strategies and declarations. The website offers the option for registration to a *newsletter* with information on news, legislative procedure and calls for applications, and RSS which publishes, in chronological order of the events, the news from the parliament and the calendar of its activities. In addition to these sources, the Secretariat publishes a bulletin on the most important news in the parliament. The website also provides audio and video live stream of the plenary sittings, and audio record after their end, reports from the sittings of the committees, report on voting at the plenary sittings etc. The website publishes the calendar of activities, the agenda of the forthcoming sitting of a House, the legal framework for access the information, form, guide and the Press corner, intended for the media who would like to monitor the work of the state parliament. The website also enables a virtual visit to the parliament, and informs on the manner in which visits can be organized. The website contains data on members and delegates, their constituencies, e-mail addresses, party affiliation and other information.

• • • • • **RECOMMENDATION 29: Access to information for blind persons and persons of impaired vision**

The BiH Parliamentary Assembly should further develop the already established system for access to information on the work of the BiH Parliamentary Assembly to blind persons and persons of impaired vision.

During its term of office (2006-2010), the PABiH launched a so-called *Open Room*, used by the reporters from the BiH Parliamentary Assembly, as it meets the technical requirements for work and quality information of the public on all segments of work of this legislative authority. The mentioned room is equipped with a 6 computers with permanent internet connection, it has about 20 seats and it fulfils all necessary technical requirements for *ad hoc* addressing to public by the members or the delegates of the PABiH.

The year 2009 saw the ceremonial opening of the *Visitors Centre*, with the financial assistance of the United States Agency for International Development (USAID) – the state-of-the-art centre which enabled more than 50 visitors to attend presentations of the work of the BiH National Assembly and thus gather interesting and useful information on the working processes carried out within the legislative authority. Within the framework of the *Open Parliament* programme, which has been realized since 2005, totally 10,188 guests visited the building of the BiH Parliament where they could get acquainted with the manner of work of this legislative authority and pose questions to its members and delegates. The total number of visitors in 2011 exceeded 3,000. Such enhanced interest in the work of the parliament is a result of the work of the Secretariat of the BiH Parliament which placed the transparency of work of this legislative authority among its strategic goals. To add, the conclusion of the House of Representatives on direct broadcast of the plenary sittings of both Houses of the BiH Parliament, which would increase the transparency of work of this legislative authority, has not yet been implemented. In 2011, the electronic voting system has finally been implemented in the House of Peoples of BiH, enabling an insight into the manner of voting of delegates on bills, reports, declarations, resolutions, appointments, treaties, decisions etc. to the present citi-

zens, media and representatives of non-governmental organizations.

### **RECOMMENDATION 30: Direct broadcast of the sittings**

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The BiH Parliamentary Assembly should influence the realization of conclusions about the direct TV broadcasting of the sittings of the BiH Parliamentary Assembly through public services.

### **RECOMMENDATION 31: Improvement of the Parliament's image**

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The BiH Parliamentary Assembly should take measures towards the improvement of the public image of the BiH Parliamentary Assembly.

Observed from the normative point of view, through the Freedom of Access to Information Act and the Rules of Procedure of both Houses of the state parliament, the field of free access to information is well regulated. A relatively good normative framework but a weak implementation is an often illness of the societies in transition, so it can be expected that such is the case also in the example of Bosnia and Herzegovina. It can be concluded that from 2000 until today (2012) a lot has been done about the access to information on the work of the state parliament. To that end, it is necessary to emphasize the existence of a good website of the state parliament ([www.parliament.ba](http://www.parliament.ba)), with available information on the work of the state parliament; possibilities to follow the sittings via internet; the work of the Secretariat of the parliament as an administrative authority in charge for rendering information on work; the implementation of the *Open Parliament* projects, and the existence of special premises for media which from the technical aspect meet all requirements for timely reporting; the introduced system of electronic voting in both Houses of the state parliament, enabling the insight to individual voting of members and delegates, and a possibility for attending plenary sittings of the state parliament and committees (when possible); possibilities for impaired vision persons to follow the work of the parliament through the website; the fact that the

state parliament is the only one in the region to have adopted the *Communication Strategy*, and the like. At a negative side, there is a fact that the sittings of both Houses are not broadcasted in media, although there is a conclusion of the House of Representatives on the need for public services to broadcast the sittings. Also, there is still a negative public image of the Parliamentary Assembly, which is attributed to often sensationalist reporting by the media. Keeping in mind all the facts obtained through the research and observing the parameters which must be fulfilled, the state parliament can be positively assessed from the aspect of transparency and availability of information. Finally, on the grounds of the available data, it can be concluded that there is no sufficient communication of MPs themselves with the electoral body; it depends on the will of MPs if they will respond to the inquiries of citizens and non-governmental sector, which was particularly obvious in this research when the MPs did not reply on inquiries for holding an interview through official channels, but only through personal and direct contacts. That is, the very conducting of the interviews depended on personal acquaintances of researchers with MPs.

## INFLUENCE OF INTERNATIONAL ACTORS

Bosnia and Herzegovina (BiH) is one of the few states in the world with a such emphasized concentration of international actors. Of course, this situation derives from the very structure of the political system. The international actors are not external actors influencing the political system itself, and hence the Parliamentary Assembly of Bosnia and Herzegovina (PA BiH) as the highest legislative body, but they are integrated into the political structure of the state.

The Dayton Accords envisaged that the *international factors take over important positions in the BiH institutions*. Thus, for example, the Organization for Security and Cooperation in Europe (OSCE) was assigned the task to establish a Provisional Election Commission and conduct the election (Annex 3 of the General Agreement for Peace, Article II). Bosnian-Herzegovinian institutions took over the full responsibility for elections only in the year 2002, through the Central Election Commission. In many other cases as well, the international actors under the Dayton Accords took over active roles in political system

One of the central elements of the Dayton political system is the Office of the High Representative (OHR), an ad-hoc international organization. The OHR is headed by the High Representative, appointed by the UN Security Council. At the disposal of the High Representative there are certain non-democratic methods, for the sake of efficient implementation of the peace accords.

In the context of our research, the fact must be emphasized that the High Representative, only in the period from 1996. to 2007, within the *legislative competences of the BiH Parliamentary Assembly* imposed 112 laws in total, the highest number of which in the years 2000 (20) and 2002 (24 laws). These interventions have mostly pertained to the field of judiciary reform,



followed by the fields of citizenship, personal and travel documents, public property, privatization, electoral system, telecommunication and the like. The year 2006 saw the adoption of a strategic decision of withdrawal of the High Representative from the BiH political system. Although the closure of the OHR was expected much earlier, this has not yet happened.

### ***Influence of the Council of Europe through the action of the Venice Commission***

The Venice Commission dealt with the BiH Parliamentary Assembly in a series of its opinions. These were the opinions dealing with the following issues: *discrimination in election of delegates* in the House of Peoples, veto-mechanisms through *vital national interest* in the House of Peoples and through the so-called *entity majority* in the House of Representatives, and the issue of the *nature of bicameralism* of the Parliamentary Assembly in general. Particularly in the *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative* (number CDL-AD (2005)004 of March 11<sup>th</sup>, 2005) and the *Opinion on the Draft Amendments to the Constitution of Bosnia and Herzegovina* (number CDL-AD(2006)019 of June 12<sup>th</sup>, 2006) the Venice Commission have rendered very direct and open recommendations pertaining to the Parliamentary Assembly.

Thus the Venice Commission, in the above quoted opinion of 2005, also confirmed the *discrimination in election of delegates* of the House of Peoples of the BiH Parliamentary Assembly:

“With respect to the right to stand for election, as in the case of the BiH Presidency, persons not identifying themselves as Bosniac, Croat or Serb are completely excluded. In addition, entity and ethnicity are linked and only Serbs from the RS and Croats and Bosniacs from the Federation may be elected. No Serb from the Federation and no Croat or Bosniac from the RS may sit in the House of Peoples, which is a chamber with full legislative powers. A significant part of the population of BiH therefore does not have the right to stand for elections to the House of Peoples.”

Exactly this discrimination later became the subject of the judgement of the European Court of Human Rights (see the following chapter). The Venice Commission in its opinions very clearly expressed its opposition to both *parliamentary veto mechanisms*. Thus in its opinion of 2005 it states:

“Under present conditions within BiH, it seems unrealistic to ask for a complete abolition of the *vital interest veto*. The Commission nevertheless considers that it would be important and urgent to provide a clear definition of the vital interest in the text of the Constitution”.

Same, on the *entity veto*:

“In addition to the vital interest veto, Art. IV.3.d) of the Constitution provides for a veto by two-thirds of the delegation from either Entity. This veto, which in practice seems potentially relevant only for the RS, appears redundant having regard to the existence of the vital interest veto”.

Based on the critiques of the veto mechanism within the legislative process and the discriminatory structure, the Venice Commission was free to realistically express its attitude against *ethnic bicameralism*:

“The drawback of this arrangement is that the House of Representatives becomes the chamber where legislative work is done and necessary compromises are made in order to achieve a majority. The role of the House of Peoples is only negative as a veto chamber, where members see as their task to exclusively defend the interests of their people without having a stake in the success of the legislative process. It would therefore seem preferable to move the exercise of the vital interest veto to the House of Representatives and abolish the House of Peoples. This would streamline procedures and facilitate the adoption of legislation without endangering the legitimate interests of any people. It would also solve the problem of the discriminatory composition of the House of Peoples.”

Although legally logical and entirely doubtless, the Council of Europe’s recommendations remained at the level of recommendations. Even the strong actors such is the High Representative did not take any significant measures when speaking about carrying out of institutional reforms, through reor-

ganization of relation of Houses, abolishment or reform of veto mechanisms and abolishment of the discriminatory structure within the House of Peoples.

### **The influence of the Council of Europe through the action of the European Court of Human Rights: the judgement Sejdić and Finci v. BiH**

By adoption of the judgement in case of Sejdić and Finci v. BiH, the European Court of Human Rights, as a body of the Council of Europe, adopted the judgement that shall have incredible consequences not only to the structure and composition of the Presidency and the Parliamentary Assembly, but in the same time to the pillars of ethno-national democracy in BiH.

The BiH citizens Dervo Sejdić and Jakob Finci, who lodged the applications, complained that, in spite of having an experience comparable to that of the highest elected officials, the BiH Constitution and the relevant provisions of the BiH Election Law of 2001 prevent them from standing for elections to the Presidency and the House of Peoples of the BiH Parliamentary Assembly only on the grounds of their ethnic origin. As a result, the Court concluded, by 14 votes to 3, that further illegibility of the applicants for standing for the elections to the House of Peoples does not have an objective and reasonable justification and that there has been a violation of Article 14, taken in conjunction with Article 3 of Protocol 1 of the European Convention on Human Rights and Fundamental Freedoms. Regarding the eligibility for standing for election to the BiH Presidency, the applicants only referred to Article 1 of Protocol 12. The Court noticed that, while Article 14 of the Convention prohibits discrimination in enjoyment of "the rights and freedoms set forth in the Convention", Article 1 of Protocol 12 expands the scope of protection to "any right set forth by law". This, therefore, introduced the general prohibition of discrimination. The applicants refuted the Constitutional provisions which make them illegible for standing for the election to the BiH Presidency. From this it derives that, regardless the fact that the election for Presidency falls under Article 3 of Protocol 1, their application pertains to the "right set forth by law", so that Article 1 of Protocol 12 is applicable. The Court empha-

sized that the concept of discrimination should be interpreted in the same manner in relation to Article 14 and in the context of Article 1 of Protocol 12, although the latter provision has a different scope. From this it can be concluded that, due to the reasons presented in relation to the election for the House of Peoples and Constitutional provisions according to which the applicants are illegible for standing for election for the Presidency, they, as well, must be considered discriminatory. In accordance thereto, the Court with 16 votes to 1 agreed that there was a violation of Article 1 of Protocol 12. The Court, as well, unanimously considered that there is no need to examine the same complaint under Article 3 of Protocol No. 1 taken alone or in conjunction with Article 1 of Protocol No. 12.

Although the judgement was adopted in December 2009, it has not been implemented ever since. Numerous attempts and deadlines from the side of the European Union did not result in abolishment of discrimination. Bosnian-Herzegovinian national political elites disagree about the future system. Although the Venice Commission proposed complete abolishment of the House of Peoples, BiH parties are not ready for such radical changes and they advocate for cosmetic changes, directed to an introduction of delegates of the "Others" to the House of Peoples without a significant participation of the right to vital national interest veto.

### **RECOMMENDATION 32: To abolish discrimination in election of delegates for the House of Peoples**

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The Parliamentary Assembly should implement the judgement *Sejdić and Finci v. BiH* and in that manner abolish all forms of discrimination in election of delegates for the House of Peoples of the BiH Parliamentary Assembly.

### **RECOMMENDATION 33: To reconsider the bicameral structure of the Parliamentary Assembly**

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The BiH Parliamentary Assembly, upon recommendation of the Venice Commission, should examine and reconsideration the position of the House of Peoples when it is about its competence, equality of the House, its structure and manner of election.

***Parliamentary Assembly in the context of the EU integration***

When it is about the integration to the European Union, BiH is in a difficult position. In spite of the achieved “progress in four fields: reform of police, cooperation with international criminal tribunal, public broadcasters and public administration reform”, the European Union requests further reforms, particularly “amendment of Constitution in compliance with the European Convention on Human Rights and Fundamental Freedoms”. However, the general election of 2010 did not yield the creation of a stabile governmental majority, ready for coping not only with constitutional amendments but also with “creation of political environment open to the European Union”.

Although declaratively in favour of the EU integration, BiH MPs did not show that in practice. The laws such are the Law on State Assistance or the Census Law were adopted after a long delay. In other fields, such is the military/state property, no progress is obvious. According to the data from the report of the BiH non-governmental organization Centre for Civil Initiatives on Monitoring of the Work of the BiH Parliamentary Assembly for the period 2006-2010, the Parliamentary Assembly in its first four-year term of office (the convocation 2002-2006) adopted 47 laws per year, whereas the convocation 2006-2010 adopted totally 170 laws out of the planned 506. According to the data quoted in the Annual Report of the Centre for Civil Initiatives on the Work of the BiH Parliamentary Assembly for the year 2011, the Parliamentary Assembly in that year adopted only 12, while rejecting 15 laws. Out of the 15 rejected laws, 10 were rejected due to entity voting, whereas 5 laws were rejected by simple majority. On the grounds of these data only it can be concluded that BiH is in a deep governmental blockade.

• • • • • **RECOMMENDATION 34: Adoption of the EU legislation must become the priority**

The Parliamentary Assembly should intensify its work, particularly on the laws and acts pertaining to future progress towards the European Union.

For the sake of fulfilment of its leading role in the process of association to the Union, the Parliamentary Assembly has to

work on *increase of its capacities* (BiH06), i.e. on increase of the number of employees and their advanced training. In principle, public institutions are the ones which should employ the most educated and most capable human resources, however without neglecting their in-service training. The Parliamentary Assembly currently employs 85 public officials, which means that 1.4 employees in average are in service of one member/ delegate. Out of these 85, only three are in charge for the Joint Committee on European Integration.

### **RECOMMENDATION 35: Strengthening of capacities of the Joint Committee on European Integration**

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The Parliamentary Assembly should significantly enhance the Joint Committee on European Integration, regarding its financial assets, knowledge and human capacities. The Committee has to intensify its cooperation with other EU bodies in BiH.

When speaking about *Aquis Communautaire*, it is unknown to what extent the MPs are familiar with this subject matter. Having in mind that the MPs have only one or none associate/ advisor, it is doubtful to which extent they in general can deal with individual policies in details. Therefore, “the number of laws proposed by the MPs remains quite low”. However, “the Council of Ministers checks the draft laws and checks its harmonization with the EU *Acquis*, prior to sending the bill to the parliament”.

Out of all parliamentary committees, the supreme driving force in the process of a country's accession to the European Union membership should certainly be the one dealing with the European integration issues. Accordingly, only since the former convocation of the BiH Parliamentary Assembly (2006-2010) a body was established which should, in fact, be the main holder of the majority of activities or play a vital role in the process of accession to the Union. This body is the *Joint Committee on European Integration of the Parliamentary Assembly*. Thus, for example, according to the Report on Work of the Joint Committee on European integration, in the period from January 1<sup>st</sup> to December 31<sup>st</sup>, 2008, only ten sittings were held, and only *one bill* was considered (the Bill on Classification of Activities).

The Report on work of the Committee for the period January 1<sup>st</sup>-December 31<sup>st</sup>, 2009 contains similar data, also quoting that in that year totally ten sittings were held, however that no bill for which this Joint Committee would be competent had been submitted into the procedure. As for the year 2010, the Committee held five sittings and only the Bill on Classification of Activities was reconsidered. In the year 2011, the Joint Committee held five sittings (the constitutional sitting for the 2010-2014 convocation was, due to the late formation of the House of Peoples, held only on July 7<sup>th</sup>, 2011) so that in the reporting period no bill in charge of the Joint Committee on European Integration has been submitted into the procedure.

It can be concluded that the Parliamentary Assembly has neither the structure nor the results that would confirm an active participation of the parliament in the EU integration. "The role of the parliament is to confirm the legislation prepared by the ministries and international consultants". The parliament shall be able to take a more active role in the EU integration once when there is a political will of leaders of key national political actors for genuine desire to work on the integration providing that in this process the state level is granted a free hand without further blockade from the side of the entities.

## CONCLUSION

From 1996 to 2009, the primary focus of work was on the establishment of basic structures and procedures. The High Representative particularly influenced the Parliamentary Assembly to take over its mandate as the *legislator*. He summoned the parliamentary sittings and as well imposed the laws (which in the subsequent parliamentary procedure had to be confirmed by the Assembly itself).

Different international development projects supported the establishment of administrative and professional structures within the newly established parliament. In this period the conclusion was made that BiH has to move from its so-called Dayton phase to the new Brussels phase, i.e. that public institutions and the parliament itself should strengthen further. The April Package and the Butmir Process amendments, attempted to realize these changes in 2006 and 2009 respectively. The lack of consensus on reforms resulted in rejection of these proposals.

The year 2009, upon rendering the decision of the European Court on Human Rights in the case of Sejdić and Finci v. BiH, saw the establishment of the judicial obligation of abolishment of discrimination in the BiH parliament. The judgement also has potential to entirely “democratize” the parliament, providing that the BiH political elites are ready to do so. Exactly this action of international factor imposed the obligation for BiH to reach a broader consensus on future general systemic reforms, including the state parliamentary reforms as well.

The actions of international organizations, international non-governmental organizations and various development programmes of international actors are largely important for the Parliamentary Assembly, particularly in the context of the Euro-Atlantic integration of Bosnia and Herzegovina. However, as



long as BiH political elites remain without a consensus about the future “road map” of development of the state, it is not possible to expect further enhancement of the work of the parliament and its independent, proactive participation in the EU integration.

## BIOGRAPHIES

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