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## **The functioning of democratic institutions in Bosnia and Herzegovina**

Report

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

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### *Summary*

The Monitoring Committee is seriously concerned about the lack of constitutional reform in Bosnia and Herzegovina, which has frequently led to deadlock within State institutions and negatively affects the country's honouring of its commitments to the Council of Europe.

The Committee urges all domestic stakeholders to fully engage in a meaningful and constructive dialogue about amendments to the Constitution, in line with the recommendations of the Venice Commission, with a view to adopting a reform package in time for the 2010 parliamentary elections. The authorities should also speed up the implementation of reforms necessary to honour the remaining commitments.

At the same time, the Monitoring Committee suggests launching a wide discussion, with the participation of key local and international stakeholders, about the challenges Bosnia and Herzegovina has to face and the means to overcome them, in order to speed up the country's advancement on the path of Euro-Atlantic integration.

## A. Draft resolution

1. Since Bosnia and Herzegovina joined the Council of Europe in 2002 the Parliamentary Assembly has been repeatedly calling for the implementation of a constitutional reform with a view to improving the functioning of its democratic institutions, ensuring compliance with the European Convention of Human Rights and speeding up the necessary reforms to complete the implementation of the remaining commitments and obligations. In its Resolution 1626 (2008) on the honouring of obligations and commitments by Bosnia and Herzegovina, the Assembly called upon all political stakeholders to “re-launch dialogue about the various reform proposals immediately after the October 2008 local election, in close co-operation with the European Commission for Democracy through Law (Venice Commission), with a view to drafting and adopting a new constitution before October 2010”.

2. The Assembly regrets that lack of constitutional reform has frequently led to deadlock within the State institutions as Entity and party agendas block the decision-making process. Perpetual confrontation and obstructionism negatively affect Bosnia and Herzegovina’s honouring of its commitments to the Council of Europe. Moreover, Bosnia and Herzegovina is lagging behind its neighbours in the process of Euro-Atlantic integration and the gap is widening every day. All this hampers the completion of much needed reforms, such as:

2.1. the reform of Bosnia and Herzegovina’s merged Ombudsperson institution, as Entity Ombudspersons continue to operate, in violation of a State law voted by representatives of both Entities;

2.2. the implementation of the National War Crime Strategy and the National Judicial Reform Strategy;

2.3. the adoption of the Revised Strategy for the Implementation of Annex VII to the Dayton Peace Agreement.

3. The Assembly takes note of the fact that, since the adoption of Resolution 1626 (2008), two initiatives aimed at implementing a constitutional reform were launched:

3.1. the so-called “Prud process” brought together the leaders of key political parties forming the ruling majority at State level and helped resolve some outstanding issues, such as the adoption of the first Constitutional amendment on the Status of the Brcko district and the agreement on the organisation of a population census in 2011;

3.2. the so-called “Butmir process” was a joint United States- and European Union-led endeavour to generate the agreement of key domestic political stakeholders around a package of concrete proposals relating to the constitutional reform, as well as to the issues of apportionment of State and Defence property. Supported by the Swedish Foreign Minister Carl Bildt, on behalf of the European Union, and Deputy State Secretary Jim Steinberg, on behalf of the United States, the “Butmir package”, sought to bring the domestic constitutional order into line with the European Convention of Human Rights and improve the functioning of the country’s democratic institutions. The Venice commission was informally involved in the drafting.

4. Regrettably, so far, both initiatives have failed to produce concrete results. The “Prud process” ended before any discussions on concrete reform proposals actually started and the “Butmir process” has so far failed to secure the agreement of key domestic political stakeholders.

5. The Assembly is seriously concerned about the lack of progress on the constitutional reform front. If a constitutional reform is not implemented in the coming months, it will be impossible to hold the forthcoming parliamentary elections of October 2010 on the basis of new rules, as it will not be possible to change the electoral legislation in time. Thus, there is a serious risk that the country’s institutions established following the parliamentary elections of October 2010, yet again, will be formed in violation of the European Convention of Human Rights.

6. The Assembly believes that a last-minute agreement within the framework of the “Butmir process” is still possible. It notes, however, that the negotiations must focus on a comprehensive set of reform proposals, endorsed by the Venice Commission and in line with the standards of the European Convention of Human Rights. A “piece-meal” approach based on short-term compromises and ambiguous formulas will merely mask rather than resolve the problems Bosnia and Herzegovina has to face.

7. The Assembly strongly condemns statements and actions by politicians at the highest level of Republika Srpska which undermine State institutions, as well as challenge the authority and powers of the High Representative. So long as the authorities of the State and of the Entities comply with their constitutional and legal obligations, the High Representative has no reason to use the so-called "Bonn powers" to impose legislation. As long as obstructionism continues and important reforms are blocked because of Entity and ethnic agendas, the High Representative should remain the final authority to enforce the Dayton Peace Agreement, under the political guidance and with the backing of the Peace Implementation Council.

8. The Assembly believes that, fourteen years after the signing of the Dayton Peace Agreement, new challenges to the stability of Bosnia and Herzegovina's institutions have emerged and new approaches and solutions should be found. Therefore, it considers that it is high time to launch a wide discussion, with the participation of key local and international stakeholders, including the members of the Peace Implementation Council and, in particular, the European Union institutions and Bosnia and Herzegovina's neighbours, about the challenges Bosnia and Herzegovina currently has to face and the means to do so. Such a discussion would contribute to speeding up the advancement of the country on the path of Euro-Atlantic integration. The Council of Europe could play a leading role in this process.

9. In the light of the above considerations, the Assembly urges all domestic political stakeholders to be fully engaged in a meaningful and constructive dialogue about concrete proposals for amendments to the Constitution, in line with the 2005 recommendations of the Venice Commission, with a view to adopting a reform package in time for the 2010 parliamentary elections which should be organised in accordance with the revised Constitution.

10. Moreover, the Assembly calls upon the authorities of Bosnia and Herzegovina to:

10.1. stop obstructionism and work constructively at the level of State institutions, in order to speedily enact key legislation necessary to advance on the path of Euro-Atlantic integration;

10.2. speed up the implementation of key reforms relating to the implementation of the remaining commitments to the Council of Europe, in particular, as regards the National War Crimes Strategy and the National Judicial Reform Strategy;

10.3. comply with the decision of the High Representative concerning the extension of the mandate of the international judges and prosecutors working in the war crimes chambers of the State Court and of the Chief Prosecutor's Office and secure the necessary funding as well as train appropriate staff in order to hire, in 2013, national judges and prosecutors to replace international officials;

10.4. complete the establishment of the Ombudsperson's institution of Bosnia and Herzegovina and dismantle the Ombudspersons' Offices at Entity level, in line with the law on the establishment of the State Ombudsperson's institution;

10.5. implement a comprehensive local government reform, with a view to harmonising local government legislation at entity level and, in the Federation of Bosnia and Herzegovina, between the different cantons, in order to effectively devolve sectoral competences to local authorities, strengthen fiscal decentralisation, build up the capacity of local authorities and promote cross-entity inter-municipal co-operation;

10.6. urgently adopt the Revised Strategy for the Implementation of Annex VII to the Dayton Peace Agreement; the funds for the implementation of the revised strategy should be obtained in accordance with the decision of the Parliamentary Assembly of Bosnia and Herzegovina from February 2009;

10.7. urgently enact the legislation necessary to conduct a nation-wide population census in 2011, in accordance with the agreement previously reached between the key stakeholders;

10.8. comply with their legal obligations with a view to completing the implementation of the Brcko Final Award and opening the door for closing international supervision.

11. The Assembly resolves to closely follow the situation in Bosnia and Herzegovina and invites its Monitoring Committee, at its next meeting prior to the April 2010 part-session, to examine the progress achieved by the authorities of Bosnia and Herzegovina in the implementation of this and previous Assembly Resolutions, and to propose any further action to be taken as required by the situation.

**B. Draft recommendation**

1. The Parliamentary Assembly refers to its Resolution ... (2010) on the functioning of democratic institutions in Bosnia and Herzegovina in which it calls upon the authorities of Bosnia and Herzegovina and the key political stakeholders to urgently agree on and implement, in close co-operation with the European Commission for Democracy through Law (Venice Commission), a constitutional reform, in time for holding the forthcoming parliamentary elections in 2010 according to new rules in line with the requirements of the European Convention of Human Rights.

2. The Assembly recommends that the Committee of Ministers:

2.1. takes Assembly Resolution ... (2010) into account in its own periodic reporting procedure conducted by the Group of Rapporteurs on Democracy (GR-DEM);

2.2. intensifies co-operation programmes with Bosnia and Herzegovina aimed at facilitating the constitutional reform and harmonising the domestic legislation with the constitutional amendments to be adopted, in particular, in the field of electoral legislation, as well as completing the implementation of the country's remaining commitments and obligations.

**B. Explanatory memorandum by Mr Çavuşoğlu and Mr Sasi, co-rapporteurs****Table of contents**

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**I. Introduction**

1. On 1-4 September 2009, we travelled to Bosnia and Herzegovina to collect information about the state of implementation of Assembly Resolution 1626 (2008) on the honouring of obligations and commitments by Bosnia and Herzegovina, adopted on 30 September 2008. In this Resolution, the Assembly took stock of the progress made by Bosnia and Herzegovina in implementing its obligations and commitments, taken upon accession in accordance with the Assembly in Opinion 234(2002), and addressed a number of concrete recommendations to the authorities in order to speed up reforms and fulfil the remaining undertakings.

2. We learned from our meetings with key stakeholders that, one year ahead of the next parliamentary elections, foreseen for October 2010, very little progress has been made in the implementation of the remaining commitments. Of particular concern is the lack of progress on the constitutional reform front. As the Assembly noted in its previous reports<sup>1</sup>, the constitutional reform is required to improve the functioning of the country's democratic institutions, in order to implement reforms in various areas which are not advancing as well as they should because of constant blockages and obstructionism at the level of State institutions, as well as in the Entities.

3. In this context, we wrote in the information note about our September 2009 visit to Bosnia and Herzegovina that we would follow the situation in Bosnia and Herzegovina closely and propose to the Monitoring Committee "*any further measures to be taken, as the situation requires, including a possible debate on the functioning of democratic institutions in Bosnia and Herzegovina at the January 2010 part-session of the Assembly.*"<sup>2</sup>

<sup>1</sup> See Doc. 11700 of September 2008 and Doc. 10982 of April 2006 and Resolution 1513 (2006)

<sup>2</sup> See Doc. AS/Mon (2009) 33 rev, paragraph 24

4. In the light of recent developments and taking into account our proposal, the Bureau of the Assembly has included on the draft agenda of the January 2010 Assembly part-session of the Assembly a debate on the functioning of democratic institutions in Bosnia and Herzegovina.<sup>3</sup>

5. Specific in its nature and scope, the present reports aims primarily at proposing concrete measures to be taken in order to find a response to the challenges Bosnia and Herzegovina has to face in implementing its remaining commitments towards the Council of Europe. It thus contains an analysis of the state of advancement of the constitutional reform, takes stock of the implementation of a number of key reforms relating to democratic institutions, as well as highlights a number of worrying political developments which have occurred in the past six months.

6. In the preparation of this report, we used extensively the Opinions of the Venice Commission, as well as the reports by international partners (especially, the European Commission's Progress report for 2009 and the report by the High Representative to the UN Security Council) and non-governmental organisations and think-tanks. We are also grateful to the Council of Europe Office in Sarajevo and to the Special Representative of the Secretary General for the advice and organisational assistance for the September 2009 visit.

## **II. Key Assembly concerns and consequences of the lack of constitutional reform in Bosnia and Herzegovina**

7. Resolution 1626 (2008) can be considered a concrete and realistic roadmap in the process of completing the remaining obligations and commitments. It is therefore against the requirements of this Resolution that we will assess the functioning of Bosnia and Herzegovina's institutions in the present report. In this respect, constitutional reform is one of the key Assembly demands.

8. In particular, in paragraph 8 of Resolution 1626 (2008), the Assembly called upon all political stakeholders to "*re-launch dialogue about the various reform proposals immediately after the October 2008 local elections, in close co-operation with the European Commission for Democracy through Law (Venice Commission), with a view to drafting and adopting a new constitution before October 2010, as previously recommended by the Assembly in Resolution 1513 (2006)*". The latter resolution was adopted as a result of an urgent debate on the functioning of democratic institutions, held in April 2006 following the rejection by the Parliamentary Assembly of Bosnia and Herzegovina by just two votes, of the so-called "April package" of constitutional amendments. The "April package", sought to bring the domestic constitutional and legal order of Bosnia and Herzegovina into line with the European Convention of Human Rights (ECHR) and improve the overall functioning of the institutions of the State.

9. In the view of the Assembly, the constitutional reform should address as a matter of priority two concrete issues:

- the Entity voting system and the excessively broad scope of the "vital national interests" clause in the Constitution, together with the related veto mechanism in the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, should be reviewed;

- the problem of the inability of Bosnia and Herzegovina citizens, identifying themselves as belonging to the so-called group of "Others", to run for the election of the members of the Presidency of Bosnia and Herzegovina and participate in the designation of delegates to the House of Peoples, should be resolved.<sup>4</sup>

10. Combined, these two problems prevent the members of the Parliamentary Assembly from acting as free and democratically elected representatives of all citizens of Bosnia and Herzegovina, making them prisoners of the political majorities dominating in the Entities, as well as introduce inequality between the citizens of Bosnia and Herzegovina with respect to the exercise of their rights to participate in the political process, protected by the ECHR and its Additional Protocols 1 (right to free elections) and 12 (prohibition of discrimination), as applied by the European Court of Human Rights (the Court).

11. Moreover, in the view of the Assembly, "*constitutional revision is required in key reform areas where the distribution of competences between the Entities and the State needs to be changed*". "*State structures in key reform areas should be reinforced and not undermined. Entity institutions, especially in the Federation*

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<sup>3</sup> On 20 November 2009, the Standing Committee took note of the draft agenda established by the Bureau.

<sup>4</sup> Resolution 1626 (2008), paragraph 4

of Bosnia and Herzegovina, should be further reformed in a spirit of cost-effectiveness and with the aim of ensuring coherent policy-making and enforcement of the legislation at all levels of public institutions".<sup>5</sup>

12. The lack of the constitutional reform negatively affects the functioning of democratic institutions at State (and, at times, Entity) level. It slows down reforms in other areas, which are necessary for Bosnia and Herzegovina to move ahead along the path of European integration (e.g. reform of the judiciary, implementation of the national war crime strategy, implementation of Annex VII of the Dayton Peace Agreement<sup>6</sup>), as well as impedes the implementation by Bosnia and Herzegovina of its commitments and obligations to the Council of Europe.

13. Insufficient progress in key reform areas was also acknowledged by the European Commission. In its Progress report for 2009, the Commission concluded that very limited progress has been made in addressing key reforms required for further approximation towards the European Union.<sup>7</sup>

14. Poor performance in key reform areas has serious tangible consequences for the citizens of Bosnia and Herzegovina: given the country's inadequate progress in fulfilling the requirements of the visa liberalisation roadmap, the European Commission decided, in July 2009, not to include Bosnia and Herzegovina in the list of priority countries to benefit from visa free regime as of 19 December 2009.<sup>8</sup> It is true that, by October 2009, the authorities have managed to complete the implementation of most of the requirements of the roadmap established by the Commission and there is now hope that Bosnia and Herzegovina could be included in the "second wave" of visa liberalisation for the Western Balkans.

15. However, the psychological effects of the delay, creating among the citizens of Bosnia and Herzegovina the feeling of being treated as citizens of a "second-class country", have been very damaging. Yet again, political manoeuvring of Entity and party leaderships, have made it that the country is lagging behind its neighbours and puts Bosnia and Herzegovina's citizens in a disadvantaged position. This is especially obvious because an important proportion of citizens of Bosnia and Herzegovina have multiple citizenship and hold either Croat or Serbian passports. Croatian citizens can already travel freely to Europe and Serbian citizens will benefit from a visa-free regime as of 19 December 2009; this creates a flagrant *de facto* inequality between those citizens of Bosnia and Herzegovina who have multiple citizenship and those who hold solely Bosnia and Herzegovina passports.

16. It is against this background that we will analyse in the following Chapter the implementation by Bosnia and Herzegovina of its obligations and commitments relating to the functioning of democratic institutions since the adoption of Resolution 1626 (2008). We will also address the implementation of key related reforms in the areas of the Rule of Law and the return of refugees and displaced persons.

### **III. State of implementation of the commitments and obligations relating to the functioning of democratic institutions**

#### *i. Constitutional reform*

17. Since the adoption of Resolution 1626 (2008), two different initiatives were launched to negotiate a constitutional reform in Bosnia and Herzegovina. Unfortunately, both initiatives have yet to produce concrete results.

##### *a. The "Prud process"*

18. This was a locally-driven initiative of the leaders of the three main political parties of Bosnia and Herzegovina, i.e. Mr Milorad Dodik (SNSD – Alliance of Independent Social Democrats), Mr Sulejman Tihic (SDA – Party of Democratic Action) and Mr Dragan Covic (HDZ BiH – Croatian Democratic Union of Bosnia and Herzegovina), to launch a discussion about the prospects of a constitutional reform. The "Prud process" was launched on 8 November 2008 and consisted in a series of trilateral meetings devoted to various aspects of the functioning of the State, including the constitutional reform. It lasted, roughly, until March 2009, when the constitutional amendment on the District of Brcko was adopted.<sup>9</sup> We have described the

<sup>5</sup> Resolution 1626 (2008), paragraphs 4 and 7

<sup>6</sup> Annex VII deals with the return of displaced persons

<sup>7</sup> See Doc. SEC (2009) 1338 of 14 October 2009

<sup>8</sup> Those included in the priority list are: Montenegro, Serbia and "the former Yugoslav Republic of Macedonia"

<sup>9</sup> See also below, chapter b.iii.

outcome of the “Prud process” in the information note about our visit to Bosnia and Herzegovina in September 2009.<sup>10</sup>

19. We would like, however, to stress that, although the “Prud process” was a commendable initiative which led to the signing of a number of political declarations, it has not brought concrete results and does not seem to have helped to bring the positions of the parties closer. At the time of our visit to Bosnia and Herzegovina in September 2009, the positions of the leaders of the key political parties appeared to be as polarised as ever. In the opinion of the High Representative, not only did the domestic stakeholders fail to build upon the success of the adoption, in March 2009, of the first constitutional amendment on Brcko, but they also failed to engage in a meaningful dialogue on constitutional reform.<sup>11</sup> This assessment strengthened our impression that translating ideas around which agreement between key domestic political stakeholders could be reached into concrete proposals solely by local efforts was almost an impossible task. In this context, the fact that in-depth consultations were engaged between United States (US) and European Union (EU) experts and high officials about the drafting of a new package of constitutional reforms, drawing upon the expert opinions of the Venice Commission, was, in our view, a promising initiative. Later, this initiative became known as the “Butmir process”.

*b. The “Butmir process”*

20. On 9 October 2009, in an attempt to re-launch discussions about concrete proposals of a constitutional reform, the EU and US high level representatives, namely Swedish Foreign Minister Carl Bildt, for the EU, and Deputy State Secretary Jim Steinberg, for the US, together with the EU Enlargement Commissioner Olli Rehn, brought together the leaders of the key political parties of Bosnia and Herzegovina at the EUFOR Butmir base. This was the first joint EU- and US-led attempt since Dayton to discuss concrete proposals for reforming the country’s structures. Despite initial plans to hand over the proposed package on 9 October, the first negotiating session was limited to one-to-one talks with the leaders of key political parties. The “Butmir package” was handed over to the stakeholders during the second session of talks, which was held on 20-21 October 2009.

21. The proposals for amendments, which were largely publicised in the press, as well as in reports by authoritative international non-governmental organisations and think tanks<sup>12</sup>, build upon the Opinion of the Venice Commission on the so-called 2006 “April package” constitutional amendments<sup>13</sup> as well as on the Opinion of the Venice Commission on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative.<sup>14</sup> Also, following the so-called “package approach”, the proposals for amendments were accompanied by two declarations, dealing respectively with State and Defence property. This approach was clearly intended to set the basis for strengthening State institutions in order to fulfil two of the essential conditions for closing the Office of the High Representative, as established by the Steering Board of the Peace Implementation Council.<sup>15</sup>

22. The proposed package of constitutional amendments envisaged the constitutional confirmation of a number of responsibilities exclusively exercised at State level (e.g. defence, intelligence and external security, establishment and regulation of a single indirect taxation system), as well as the introduction of a set of shared responsibilities between the State and the Entities (in particular, taxation, electoral process, judiciary, agriculture, science and technology, environment and local self-government). In a similar manner as the 2006 “April package”, the proposals for constitutional amendments included an EU integration clause, according to which responsibility for negotiating agreements with and undertaking commitments to the EU would be the responsibility of the State (although the Entities would advise and consent in advance to such negotiations and agreements) and the implementation of agreements and commitments would be a shared responsibility between the State and the Entities.

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<sup>10</sup> See Doc. AS/Mon (2009) 33rev

<sup>11</sup> Report of the High Representative to the United Nations Security Council. 6 November 2009. Doc. S/2009/588

<sup>12</sup> For example, see “Bosnia’s Dual Crisis”, International Crisis Group Briefing n°57, 12 November 2009.

<sup>13</sup> CDL-AD(2006)019 adopted on 7 April 2006 and endorsed by the Venice Commission at its 67<sup>th</sup> Plenary Session, Venice, 10 June 2006.

<sup>14</sup> CDL-AD(2005)004 adopted by the Venice Commission at its 62nd Plenary Session, Venice, 11-12 March 2006.

<sup>15</sup> See our report on the Honouring of obligations and commitments by Bosnia and Herzegovina, Doc. 11700, paragraph 84. The five objectives are: 1) acceptable and sustainable apportionment of State Property between state and other levels of government; 2) acceptable and sustainable resolution of defence property; 3) completion of the Brcko Final Award; 4) fiscal sustainability; and 5) entrenchment of the Rule of law. The five conditions were supplemented by two conditions as follows: 1) signing of the Stabilisation and Association Agreement; and 2) positive assessment of the situation in Bosnia and Herzegovina by the Steering Board of the Peace Implementation Council based on full compliance with the Dayton Peace Agreement.



23. In terms of institutions, the proposed amendments would strengthen the Parliamentary Assembly and modify its structure: the House of Representatives would have 87 members (instead of the current 42) and be responsible for legislative activity. The House of Peoples would have 21 (instead of the current 15) members appointed from among the members of the House of Representatives and would see its role limited exclusively to deciding on issues of "vital national interests". The key novelty is that, out of 87 seats in the House of Representatives, three seats would be "reserved" for representatives who do not define themselves as members of the Constituent peoples (i.e. those belonging to the group of "Others"). For the purposes of nominating candidates to the Presidency of Bosnia and Herzegovina, these three representatives would be allowed to join the "ethnic" caucuses in the House of Peoples, provided that no caucus has more than 8 members.

24. The proposed amendments would change the structure of the Presidency, which would be composed of one President and two Vice-Presidents and be elected by the House of Representatives. The President and the Vice-Presidents may not be members of the same Constituent peoples. The candidates for the Presidency would be nominated by the House of Peoples. The President's and the Presidency's powers would be decreased in favour of the Council of Ministers, which, according to the proposed amendments, would be presided over by a real Prime Minister.

25. The proposed amendments do not touch the entity voting system in the Parliamentary Assembly.

26. It appears that the proposed package of amendments is to a large extent coherent and straightforward. The Venice Commission was informally involved in the drafting. The proposed amendments appear to resolve the problem of compatibility of Bosnia and Herzegovina's constitutional order with the requirements of the ECHR and of its Additional Protocols 1 and 12 relating to the right to free elections and the prohibition of discrimination.<sup>16</sup>

27. We, therefore, believe that the adoption of the proposed package of constitutional amendments would constitute an adequate response to the Assembly recommendations, in that it would strengthen the State institutions, bring Bosnia and Herzegovina's legal framework closer to European standards and enable the country to hold the forthcoming parliamentary elections, foreseen for October 2010, according to rules which are in line with the standards of the ECHR.

28. After the initial negotiations on 20-21 October 2009, the proposed constitutional amendments failed to generate agreement between the key domestic political stakeholders. The "Butmir process" thus became open-ended and negotiations on the proposed reform package continued.

29. Following a new round of talks and negotiations, an amended "Butmir package" of proposals was handed over to the leaders of the key political parties on 24 November 2009. The leaders of major political parties were given the deadline of the end of 2009 to reach an agreement on the revised proposal.

30. Reportedly, with the exception of the Party for Democratic Action (SDA), all other major parties rejected the revised "Butmir package". The Social Democratic Party (SDP) and the Party for Bosnia and Herzegovina (SBiH), have openly declared that the revised package is unacceptable to them. Reportedly, the leader of SDP Zlatko Lagumdžija stated that "the offered package does not envisage establishment of more efficiently functioning institutions of the State of BiH, and it also introduces some new ambiguous proposals which can only lead to different, if not opposite, interpretations". The Legal Adviser to the Bosniak Member of the Presidency of Bosnia and Herzegovina (leader of SBiH Haris Silajdžić) was quoted saying that "the offered package was far below the minimum acceptable" for his party.<sup>17</sup> The Executive Secretary of SNSD ("Alliance of Independent Social Democrats") was quoted saying that the "Butmir process" had failed because the amendments aimed at building a "centralised, unitary state"<sup>18</sup>.

31. We have no detailed and official information about the revised package of constitutional amendments and, therefore, we cannot take position on them. We wish to stress, however, that, in our opinion, any proposals which would not be endorsed by the Venice Commission and / or open the room for ambiguous interpretations would be a "bad compromise". The "Butmir process" is the third attempt to implement a badly needed constitutional reform in Bosnia and Herzegovina. Therefore, it has no right to fail.

<sup>16</sup> We have to note, however, that the reasoning of the European Court of Human Rights in the forthcoming judgement in the case *Sejdic and Finci v. Bosnia and Herzegovina* by (Applications no. 27996/06 and 34836/06) should provide final guidance on this matter. The judgment is expected in the nearest future.

<sup>17</sup> *Oslobođenje*, 25 November 2009

<sup>18</sup> *Dnevni List*, 4 December 2009

32. We call upon all domestic and international stakeholders to continue meaningful negotiations with a view to reaching agreement on a comprehensive package of reform proposals. A “piece-meal approach” based on short-term compromises is not going to resolve the challenges Bosnia and Herzegovina has to face. Moreover, it may undermine the credibility of the whole reform process and produce diverging and misleading interpretations of the proposals tabled. With the campaign for the 2010 parliamentary elections starting, this scenario should be avoided at all costs.

33. With this in mind, we hope that the key stakeholders, with the advice of the international partners, will be able to reach an agreement on a comprehensive reform package within the set deadline. We have to stress that time is of the essence. If the 2010 parliamentary elections are to be held according to rules which comply with the standards of the ECHR, the constitutional reform has to be implemented now, to leave enough time for adopting the necessary amendments to the electoral legislation. We urge all parties involved to intensify efforts in order to reach an agreement.

*ii. Other related reforms*

*a. Reform of the Ombudsperson's office*

34. In Resolution 1626 (2008), the Assembly called upon the authorities of Bosnia and Herzegovina to “*complete promptly the procedure of appointment of the three state ombudspersons*” in order to comply with one of the key outstanding accession commitments.<sup>19</sup>

35. The three Ombudspersons were appointed by the Parliamentary Assembly on 4 December 2008 (in the meantime, since December 2008, one of the three ombudspersons resigned but a replacement was elected on 1 October 2009). However, their Office has yet to become fully operational.

36. In fact, the law on the Ombudsperson's institution has not been fully implemented because Ombudspersons continue to operate at Entity level. According to the law, the Entity ombudspersons were required to cease to exist within one month of the adoption of the law. The Parliament of the Federation of Bosnia and Herzegovina adopted a law in 2007 on provisional measures for disbanding the Federation Ombudsperson's Office, but the Federation Office continues to operate because its closure was made conditional on the cessation of the activities of the Ombudsperson's Office in the Republika Srpska. The Republika Srpska (RS), for its part, has not yet adopted the Law on the cessation of activities of the RS Ombudsperson.

37. We raised the issue of the adoption of this law with RS Prime Minister Milorad Dodik and the Speaker of the RS National Assembly Igor Radojicic during our visit to Bosnia and Herzegovina in September 2009. Prime Minister Dodik explained to us that the RS Government had prepared and tabled the relevant draft law and, therefore, has completed its obligations. According to the RS Prime Minister, the adoption of the law was now in the hands of the RS National Assembly whose members questioned the constitutionality and legality of disbanding the RS Ombudsperson's Office.

38. We do not find this explanation acceptable. The creation of a unified Ombudsperson institution at the level of the State of Bosnia and Herzegovina is expressly provided for in a State law adopted by the Parliamentary Assembly, with the MPs coming from both Entities voting in favour of it. Therefore, this law has to be implemented by the Entities. Moreover, the creation of a unified Ombudsperson institution is an express international commitment of Bosnia and Herzegovina, as established in Assembly Opinion 234 (2002) and voluntarily accepted by Bosnia and Herzegovina.

39. We therefore call upon the National Assembly of Republika Srpska to adopt without further delay the law on the cessation of activities of the RS Ombudsperson's Office, in order to complete the establishment of a single Ombudsperson's Office at State level.

*b. Local government reform in the Federation of Bosnia and Herzegovina and in the Republika Srpska*

40. In Resolution 1626 (2008), the Assembly called upon the authorities of Bosnia and Herzegovina to “*implement a comprehensive local government reform, with a view to harmonising local government*”

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<sup>19</sup> See paragraph 15.v.c. of Assembly opinion 234 (2002), in which the authorities of Bosnia and Herzegovina committed themselves to “*to work towards establishing multi-ethnic ombudsmen and to consider establishing, in the long term, a single, unified human rights ombudsman's office at state level, which would include the present ombudsmen institutions at Entities level*”.

*legislation at entity level and, in the Federation of Bosnia and Herzegovina, between the different cantons, with a view to effectively devolving sectoral competences to local authorities, strengthening fiscal decentralisation, building up the capacity of local authorities and promoting cross-entity inter-municipal co-operation”.*

41. Regrettably, no steps have been taken by the authorities to implement this recommendation and the competences and resources of municipalities in the Federation of Bosnia and Herzegovina as well as in the Republika Srpska remain weak. This problem is especially serious in the Federation of Bosnia and Herzegovina where local government is formally a competence of the Cantons, although a law on the principles of local self-government was adopted in 2006 at the Federation level. The implementation of this law has yet to be completed because sectoral reforms have to be co-ordinated between the responsible ministries of ten Cantons, responsible for harmonising cantonal legislation with the Federation law establishing basic principles. The Department of the Federation Ministry of Justice responsible for local government has insufficient capacity to co-ordinate this process effectively.

42. We reiterate our opinion expressed in our previous report on the Honouring of obligations and commitments by Bosnia and Herzegovina: the efficient functioning of local self-government in Bosnia and Herzegovina would require, in the medium term, a degree of harmonisation of the basic and sectoral legislation of the Republika Srpska, the Federation of Bosnia and Herzegovina as well as the Cantons, in order to establish the basis for cross entity co-operation between municipalities in service provision. Such harmonisation would, of course, be easier to implement within the framework of a wide constitutional reform at the level of the State.

*c. Reforms relating to the Rule of Law*

43. Three key issues have to be addressed under this section: a) the implementation of the National War Crime Strategy; b) the implementation of the National Judicial Sector Reform Strategy, as well as c) the extension of the mandate of the international judges and prosecutors. Regrettably, very little progress can be reported on these three issues.

44. The implementation of the National War Crimes Strategy, adopted at the end of 2008, is lagging behind. Although the Supervisory Board of the Strategy has been set up according to the envisaged timetable, the Strategy has yet to produce concrete results. So far, the only visible result of the implementation of the Strategy has been the adoption by the Council of Ministers of the necessary amendments to the Criminal Procedure Code. The Parliamentary Assembly has yet to enact them. The central database bringing together information about war crimes has not been compiled yet. In the absence of this essential element, the implementation of the Strategy appears to be difficult, if not almost impossible.

45. The National Justice Sector Reform Strategy is performing poorly. Although the technical secretariat of the Strategy is now in place, the implementation of the planned activities is lagging behind. According to an assessment made by the second national inter-ministerial conference in May 2009, between 40% and 50% of planned projects have registered no progress at all. The implementation rates of the activities averaged less than 20% over the previous months. A third inter-ministerial conference is scheduled to be held in December 2009.

46. The imminent departure of international judges and prosecutors working in the war crimes as well as in the organised crime and corruption chambers of the State Court and the Bosnia and Herzegovina's Prosecutor's Office is a serious concern. The President of the State Court and the Chief Prosecutor of Bosnia and Herzegovina requested earlier this year the extension of the mandate of international judges and prosecutors beyond December 2009, in order to complete ongoing trials.

47. On 23 July 2009, the Council of Ministers adopted an amendment which aims at extending the term of office of international judges and prosecutors working on war crime cases only. The Constitutional and Legal Affairs Committee of the House of Representatives approved additional amendments which aim at extending the term of office of both judges and prosecutors working on war crimes and on economic crime and corruption. However, the delegates to the House of Peoples from the Republika Srpska blocked the adoption of the proposal tabled by the Council of Ministers, thus making its adoption as well as the adoption of the additional amendments proposed by the Constitutional and Legal Affairs Committee impossible.

48. The refusal of the RS delegates to approve the proposal on the extension of mandates of international judges and prosecutors puts the State Court of Bosnia and Herzegovina and the Chief Prosecutor's Office in an extremely difficult situation. In fact, the House of Representatives did not approve additional funding for 2010 to hire national judges and prosecutors in replacement of the international judges and prosecutors.

Therefore, the work of the State Court and of the Chief Prosecutor's Office in 2010 will be seriously hampered. Moreover, according to domestic legislation, in case of changes in the three-judge trial chambers hearing war crime cases, a new composition of the chamber has to be appointed and the trial should start anew. In practice, this means that delays in completing war crime trials will become quite substantial. Ultimately this will undermine the implementation of the closure strategy of the International Criminal Tribunal for the former Yugoslavia (ICTY), which aims at referring war crime cases to national courts for trial.

49. Given the failure of the national authorities to address this problem, the High Representative had no other choice than to use the Bonn Powers and adopt, on 14 December 2009, a decision extending until 31 December 2012 the mandate of international judges and prosecutors working in the war crimes chambers of the State Court and of the Chief Prosecutor's Office. The presence of judges and prosecutors working on organised crime and corruption cases was also prolonged. However, they will not exercise judicial powers any more and will stay in Bosnia and Herzegovina in an advisory capacity. The national authorities are obliged to provide for the replacement of international judges and prosecutors as from 1 January 2013. This decision was unanimously supported by the Steering Board of the Peace Implementation Council. While welcoming the extension of the mandate of international judges and prosecutors working on war crime cases, we regret that the national authorities failed, yet again, to assume their responsibilities, thus obliging the High Representative to impose appropriate decision using the Bonn Powers. We urge the authorities to comply with the High Representative's decision and secure the necessary funding as well as train appropriate staff in order to hire, in 2013, national judges and prosecutors to replace international officials. At the same time, we urge the national judges and prosecutors to make full use of the expertise and experience of their former international colleagues who had worked on organised crime and corruption cases, with a view to ensuring continuity of the ongoing investigations and trials.

*d. Implementation of the Brcko Final Award*

50. Although the constitutional amendment on the District of Brcko was adopted in March 2009, following negotiations within the framework of the "Prud Process", the international Supervisor of Brcko is still not in a position to inform the Arbitral Tribunal of the completion of the Brcko Final Award.

51. In June 2009, the Brcko Supervisor informed the Steering Board of the Peace Implementation Council that District institutions "function effectively and apparently permanently", and recommended termination of supervision at the November meeting of the Steering Board of the Peace Implementation Council, provided that the Entities and State fulfilled their remaining obligations towards Brcko by 15 September. These remaining obligations were: settlement of mutual debts; the creation of the possibility for District residents to choose, declare and change their entity citizenship; the District's inclusion in the legal regulatory framework of the BiH electricity market; and provision to the District of succession funds from the Socialist Federal Republic of Yugoslavia.

52. In order to assist the Entity authorities to deal with these complex and rather technical matters, the Office of the High Representative prepared specific amendments which were shared with the Chairman of the Council of Ministers of Bosnia and Herzegovina, the Entity Prime Ministers and the Brcko Mayor in July 2009. However, according to the High Representative, the stakeholders did not take any action to deal with their remaining obligations before the set deadline (i.e. 15 September).<sup>20</sup> In this context, the High Representative resorted to his executive powers and enacted the relevant legislation on 18 September 2009.

53. The State authorities and the Entities are obliged by law to publish the legislation enacted by the High Representative in their official gazettes, in order to put it into effect. The authorities of the State, of the Federation of Bosnia and Herzegovina and of the Brcko District complied with their obligations and published the relevant legislation. The authorities of the Republika Srpska, for their part, publicly rejected the decision of the High Representative and refused to publish it in the RS official gazette. The Government and National Assembly of the Republika Srpska justified their inaction by the fact that, in their opinion, the High Representative has no authority to impose legislation under the General Framework Agreement for Peace (Dayton Agreement). In our opinion, this constitutes a direct defiance of the so-called "Bonn powers", which were conferred on the High Representative by the Peace Implementation Council meeting in Bonn, in December 1997, in accordance with Annex X of the Dayton Peace Agreement.<sup>21</sup>

54. Consequently, as a result of the failure by Republika Srpska to fulfil its legal obligations, the Brcko Supervisor was not in a position to recommend the closure of supervision at the meeting of the Steering

<sup>20</sup> See Report of the High Representative to the United Nations Security Council, 6 November 2009. Doc. S/2009/588.

<sup>21</sup> See Conclusions of the Peace Implementation Council Meeting held in Bonn, December 1997. [http://www.ohr.int/pic/default.asp?content\\_id=5182](http://www.ohr.int/pic/default.asp?content_id=5182)

Board of the Peace Implementation Council held on 18-19 November 2009. The Supervisor has reserved the right to refer the matter of non-compliance by the Repulika Srsпка with the Final Award to the Arbitral Tribunal.

*e. Implementation of Annex VII to the Dayton Peace Agreement*

55. No substantial progress in the implementation of Annex VII to the Dayton Peace Agreement has been achieved since our last report on the honouring of obligations and commitments by Bosnia and Herzegovina of September 2008. At present, there are still 120,000 displaced persons registered inside Bosnia and Herzegovina, of which over 7000 live in squalid conditions in collective centres.

56. On 30 January 2009, the Council of Ministers adopted the Revised Strategy for the Implementation of Annex VII of the Dayton Peace Agreement. The Strategy was adopted by the House of Representatives in May 2009. The Strategy contains specific action plans and provides an opportunity to renew efforts to resolve the problem of displaced persons. However, on 6 June 2009, the Serb caucus in the House of Peoples rejected the Strategy, which was sent back to the Ministry of Human Rights and Refugees for revision.

*f. Organisation of a nation-wide population census*

57. We are seriously concerned by the blockage in the adoption of the Revised Strategy for the Implementation of Annex VII of the Dayton Peace Agreement, not only because it prevents the effective return of displaced persons, but also because it puts at risk the organisation of the population census in Bosnia and Herzegovina in 2011. The organisation of the population census is one of the key Assembly demands.<sup>22</sup> The data about the distribution of the population is important because it is used to ensure proportional distribution of jobs and positions according to ethnic criteria. So far, in accordance with the Dayton Peace Agreement, the data from the 1991 census is being used for this purpose, in order to avoid the “freezing” of the results of the movements of the population which occurred during the war (including as a result of ethnic cleansing) and give an effective possibility to all displaced persons to return to their pre-war place of residence. In this context, the implementation of a new census should proceed in parallel with the implementation of Annex VII to the Dayton Peace Agreement.

58. Earlier during the year, within the framework of the “Prud process”, agreement was reached between the key stakeholders on the organisation of the census, which would include questions related to the ethnic and religious background as well as to the language spoken by the respondents. According to this agreement, data from the 2011 census would be used for the purposes of ensuring proportional representation of ethnic groups in the distribution of jobs only as from 2014. In the meantime, efforts to ensure the implementation of Annex VII would continue. In the present context, the Serb veto on the Revised Strategy for the Implementation of Annex VII leaves no other choice for the Bosniak parties than block the adoption of the law on the census.

59. If this deadlock is not resolved in the coming months and since a pilot census should be implemented already in April 2010, Bosnia and Herzegovina will not be in a position to conduct a nation-wide census in 2011. We, therefore, urge the key stakeholders to resume meaningful and constructive negotiations with a view to adopting the law on the census at the earliest opportunity.

**IV. Escalation of political tensions and inflammatory rhetoric**

60. We have to note that, since the adoption of our last report on the honouring of obligations and commitments by Bosnia and Herzegovina in September 2008, not only did the authorities of Bosnia and Herzegovina fail to accelerate the implementation of the remaining commitments and obligations, but also the political tensions and divisive rhetoric continued and, at times, intensified. The State institutions are still unable to find an agreement on the appointment of candidates to key positions. Moreover, we are particularly concerned by the fact that the authorities of the Republika Srpska have challenged the constitutional and legal order of Bosnia and Herzegovina, as well as the Dayton Peace Agreement. The situation in the Federation of Bosnia and Herzegovina also remains tense and the normal functioning of institutions continues to be hampered by disagreements along ethnic lines. Of particular concern is the situation in Mostar, where the City Council has so far failed to elect a Mayor, more than one year after the local elections of October 2008.

<sup>22</sup> See paragraph 13 of Resolution 1626 (2008)

*i. Appointments to key positions at the level of the State of Bosnia and Herzegovina*

61. We note that, for several months, the Council of Ministers has been unable to reach an agreement on the appointment of candidates to key positions at State level. In fact, this summer, the Council of Ministers was supposed to appoint the directors of three key State institutions: the Directorate for European Integration, the Indirect Taxation Authority and the Communications Regulatory Agency. The Bosniak members of the Council of Ministers claimed that Bosniak representatives were under-represented in key positions in public administration at State level. In response to their statement, the Chair of the Council of Ministers (Mr Nikola Spiric, who is a Serb), with the support from the main board of his political party (the "Alliance of independent social-democrats"), blocked the appointment of a Bosniak candidate supported by the Party for Democratic Action to the position of State Minister for Security.

62. We also note that, contrary to previous Assembly recommendations<sup>23</sup>, the authorities of Bosnia and Herzegovina have not yet appointed the country's representatives and members in several Council of Europe monitoring and consultative bodies, in particular, in the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT), the Advisory Committee of the Framework Convention for the Protection of National Minorities, the European Commission Against Racism and Intolerance (ECRI), as well as the Venice Commission. This situation has lasted for too long and we call upon the authorities to proceed with the nomination of Bosnia and Herzegovina's members and representatives to these bodies, as a matter of urgency.

*ii. The situation in the Republika Srpska*

63. On 14 May 2009, the National Assembly of the Republika Srpska adopted conclusions that called into question the constitutional basis and legality of State competences which were considered by the Government of the Republika Srpska and the National Assembly as "transferred" from the Republika Srpska to the State institutions of Bosnia and Herzegovina. In these conclusions, the National Assembly suggested initiating lawsuits challenging the constitutionality of such transfers before domestic and international courts. According to the National Assembly, only 3 of the 68 "transferred" competences were not "stolen", seized or surrendered under false pretences, usually as a result of alleged intervention by the High Representative. In reality, a number of the allegedly "illegally transferred competences" are expressly listed in the Constitution established by the Dayton Peace Agreement (e.g. matters related to immigration and asylum, import and export of arms, and international and inter-entity criminal law enforcement). Other competences listed by the RS National Assembly have already been challenged before the Constitutional Court, which has supported their exercise by State institutions.

64. On 25 May 2009, the High Representative wrote a letter to the Speaker of the RS National Assembly requesting to nullify these conclusions by 11 June 2009. He considered that "the conclusions undermined the division of responsibilities between the State and entities established by the Dayton Constitution and subsequent decisions of the Bosnia and Herzegovina Constitutional Court." They were also [...] "misleading, erroneous and therefore unacceptable".<sup>24</sup> As the RS National Assembly did not nullify its conclusions by 11 June, the High Representative had no choice but to repeal them on 20 June 2009, using the "Bonn powers". In reaction to the decision of the High Representative, the Government of the Republika Srpska issued on the same day a communiqué protesting against this decision as an assault on democratic principles and freedoms, as well as "yet another proof" that the Office of the High Representative had "lost any reason to exist".

65. The adoption of the conclusions from 14 May 2009 on the challenging of the exercise by the State of a number of competences was just the first step by the RS authorities in challenging the constitutional and legal order of Bosnia and Herzegovina. As mentioned earlier (see paragraph 50), the Government of the Republika Srpska and the National Assembly refused to publish the decisions adopted by the High Representative on 18 September on the enactment of the legislation necessary to fulfil the requirements of the Brcko Final Award.

66. Moreover, on 24 September 2009, the RS government issued a new set of conclusions challenging the legality of the "Bonn powers" of the High Representative. On 1 October 2009, the RS National Assembly declared all decisions by the High Representative null and void, illegal and a violation of the Dayton Peace Agreement. It is worth noting that only the members of the RS governing coalition voted in favour of these conclusions. The RS National Assembly mandated lawsuits against all High Representatives but did not

<sup>23</sup> See paragraph 11.3. of Resolution 1626 (2008)

<sup>24</sup> See Report of the High Representative to the United Nations Security Council, 6 November 2009, Doc. S/2009/588. Paragraph 10.

instruct further immediate action. Later on, it did pass new conclusions threatening to organise a referendum on the High Representative's decisions, as well as a walk-out by RS representatives from State institutions, should the High Representative use his executive powers again in the future. To our knowledge, no steps have been taken so far to challenge the decisions adopted by the High Representatives in courts of law.

67. The ongoing conflict over the legal status of the Bosnia and Herzegovina electricity transmission company "Elektroprijenos/Elektroprenos" has heated up the confrontation between the RS authorities and the High Representative. This public company, jointly owned by both Entities as shareholders, is responsible for electricity transmission on the whole territory of Bosnia and Herzegovina. Reportedly, the High Representative learned of a plan by the Republika Srpska to dismantle "Elektroprijenos/Elektroprenos" and create a separate RS electricity transmission company. This plan was to enter into effect on 19 September, upon the expiration of the mandate of the General Manager. Not only would such action be illegal, but it would place at risk all electricity transmission inside BiH, and could potentially destabilise regional electricity supplies. Due to the ongoing RS boycott of the governing board, no steps were taken to replace the General Manager. Given the threat to the electricity transmission system reform, to the continuity of the business operations of "Elektroprijenos/Elektroprenos" in accordance with the relevant legislation and, most of all, the public interest, the High Representative issued a decision on 18 September 2009, which reaffirmed the principle of continuity of function under which the mandate of the General Manager of "Elektroprijenos/Elektroprenos" continues until a replacement is appointed, except if otherwise provided by law.

68. The authorities of the RS and, in particular, its Prime Minister, vigorously protested against the decision of the High Representative and, later on, formally challenged it, addressing, on 2 October, the Management Board of "Elektroprijenos/Elektroprenos" to demand that all its activities be ended. Reportedly, the RS Energy Minister publicly warned the Management Board that any decision taken by the Board without the participation of its RS members would trigger the adoption of the so-called "Special Conditions for Electricity Transmission in the RS" which would delegate all responsibilities of "Elektroprijenos/Elektroprenos" to its Banja Luka, Sarajevo and Mostar operational centres (three out of four), thus *de facto* instructing them to act as independent electricity transmission companies whose areas of responsibility do not cross the inter-entity boundary line.

69. However, on 6 November 2009, the Prime Ministers of the Republika Srpska and of the Federation of Bosnia and Herzegovina agreed to a five-point declaration with the aim of making "Elektroprijenos/Elektroprenos" and its bodies operational. Reportedly, none of the points agreed in the declaration have yet been implemented.

70. The consequences of the conflict over "Elektroprijenos/Elektroprenos" were serious and led to approximately 20 failures of the electricity transmission grid between 25 September and 15 October. Sarajevo was among those affected. Most of the city's neighbourhoods – including hospitals – were subject to power blackouts. Electricity failures were also registered in other parts of the Federation, as well as in the Republika Srpska.

71. Of particular concern are also statements recently made by the Prime Minister of Republika Srpska concerning wartime atrocities. On 11 September 2009, he claimed that evidence existed that Bosniaks had staged the massacres in the Markale Market in Sarajevo in February 1994 and August 1995, as well as in Tuzla in May 1995. While similar statements have been previously made by RS politicians about the Markale Market massacre, comments relating to the Tuzla Kapija massacre, in which more than 70 mostly young people were killed, represents a new departure. In all three cases, the ICTY as well as the War Crimes Chamber of the Bosnia and Herzegovina Court have confirmed convictions of Serbs as being responsible.

72. We strongly condemn these statements as unacceptable and irresponsible. In our opinion, they are in direct defiance of our previous calls to Bosnia and Herzegovina's politicians to refrain from inflammatory rhetoric.

### *iii. The situation in the Federation of Bosnia and Herzegovina*

73. Since our last report, the situation in the Federation of Bosnia and Herzegovina remains difficult. At the end of May 2009, the Federation Prime Minister, Nedžad Branković, who is facing criminal charges for abuse of office in the late 1990s, resigned under pressure from his political party (SDA – Party for Democratic Action). The Federation Finance Minister, Vjekoslav Bevanda, assumed most of the responsibilities pending the appointment of a new Prime Minister. The Federation Government faced a major challenge in rebalancing the 2009 budget and fulfilling the conditions set by the International Monetary Fund in order to receive its share of the €1,2 billion three-year standby arrangement negotiated on 5 May 2009. Strikes,

hunger strikes, road and border blockades and threats of demonstrations by trade unionists, war veterans and farmers multiplied and culminated, on 18 June, in a major demonstration of some 7,000 war veterans, civilian war victims and non-war invalids in front of the Federation Government building in Sarajevo. In response, the caretaker government promised to remove the planned 10% cut in benefits.

74. The Federation House of Representatives appointed a new Prime Minister on 25 June 2009. The new Prime Minister tried to maintain the implementation of the Entity's commitments to IMF, but also faced demonstrations as well as a number of disputes with Croat ministers frustrated over being outvoted in government sessions. A new crisis in the Federation Government emerged on 27 August, when four Croat ministers announced that they would take no further part in the work of the Government because of a disagreement on a proposed law that would alter the course of a planned motorway through Herzegovina. A special working group to look into the plans of the motorway was set up, but the Minister of Transport (a Bosniak) resigned in protest. A new crisis emerged on 12 October when the Government had to urgently decide, in the absence of Croat Ministers, to provide a financial injection and appoint the new management of the company responsible for managing the Federation-owned oil terminals in the port of Ploče.

75. Overall, according to the assessment of the High Representative, the Federation Government remains "disunited, weak and often dysfunctional".<sup>25</sup>

*iv. The situation in the city of Mostar*

76. More than a year after the local elections, Mostar remains without a mayor (and a budget) due to the inability of Croats and Bosniaks to come to an agreement. The temporary financing of the city budget extended until 30 September, as *per* decision of the High Representative, ended on that date without any decision being taken by the City Council. On 30 October, the High Representative ordered the Council to elect a Mayor within the next 30 days, using the secret ballot procedure provided for in the Mostar City Statute. So far, no new election has been held and, without a budget for 2010, the city administration faces an extremely difficult situation.

77. Given the failure of the City Council to implement the High Representative's decision of 30 October concerning the election of the City Mayor, the High Representative had no other choice than to use the Bonn Powers again and adopt, on 14 December 2009, a decision modifying the City Statute. According to this decision, the rules for the election of the Mayor are changed: in the third round of voting, a simple majority of councillors present and voting is sufficient to elect the Mayor (provided that the quorum requirement, i.e. presence of 18 councillors at the session, is met). All political parties represented on the City Council are called upon to ensure the participation of their members in the voting. At the same time, the High Representative's decision modified the deadlines for the adoption of the budget of the City and authorised the Mayor to enact the budget, should the Council fail to adopt it within the set deadline. These amendments should resolve the deadlock in the City Council and enable the City administration to move forward. We call upon all stakeholders to comply with the decision of the High Representative and unblock the situation as quickly as possible

## **V. Conclusions and proposals**

78. It follows from our analysis that, since the Assembly's last debate on the honouring of obligations and commitments by Bosnia and Herzegovina (September 2008), very little progress has been achieved in implementing the country's remaining commitments and obligations towards the Council of Europe. We are particularly concerned by the fact that our repeated recommendations concerning the constitutional reform have not been implemented yet: the locally-driven "Prud process" has produced limited concrete results and the internationally-gearred "Butmir process" has so far failed to secure the agreement of key domestic stakeholders on a comprehensive package of constitutional amendments, improving the functioning of State institutions and bringing the Constitution into line with the requirements of the ECHR.

79. The lack of constitutional reform negatively affects the functioning of the country's democratic institutions as well as the implementation of reforms in a number of areas, in particular, the reform of the State Ombudsperson's Office, the reform of the judicial sector, the implementation of the National War Crimes Strategy and the implementation of the Revised Annex VII Strategy. Given the ongoing discussions about the closure of the Office of High Representative and the implementation of the five objectives and two conditions necessary to achieve it, as established by the Steering Board of the Peace Implementation Council, the inability of State institutions to function effectively and deliver results prevents the country from

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<sup>25</sup> See Report of the High Representative to the United Nations Security Council. 6 November 2009. Doc. S/2009/588. Paragraph 13.



moving forward. Bosnia and Herzegovina is already lagging behind its neighbours in the field of European integration, as exemplified by the decision of the European Commission not to include Bosnia and Herzegovina in the “first wave” of countries to benefit from a visa-free regime as of end 2009. Concrete and comprehensive reforms of the country’s constitutional and institutional framework must be implemented now to catch up with and prevent further delays.

80. We are aware of the fact that negotiations over the constitutional reform are still ongoing, as the local stakeholders were given until end of 2009 to reach an agreement on the proposed “Butmir package” of amendments. We hope very much that a last minute agreement will be reached. That said, we consider that the discussions and ongoing negotiations should aim at reaching an agreement on a comprehensive set of reform proposals, supported and agreed upon with the Venice Commission and complying with the standards of the ECHR. A “piece-meal” approach based on short-term compromises and ambiguous formulas will hide rather than resolve the problems Bosnia and Herzegovina has to face, especially, in the wake of the parliamentary elections which are to be held in October 2010.

81. The closure and transformation of the Office of the High Representative (OHR) should also not be seen as an aim in itself. We believe and hope that, in the near future, Bosnia and Herzegovina’s institutions will function effectively and will be capable of handling the challenges arising from the process of European integration. The Office of the High Representative will then have no reason to exist and its transformation will come as a “natural” process. Until that moment, we believe that the authority and powers of the High Representative should be supported, especially in the current context of escalation of political tensions and anti-Dayton rhetoric. The High Representative should remain the final authority to enforce the Dayton peace accords and support the necessary reforms, under the political guidance and with the backing of the Peace Implementation Council.

82. Maintaining and unequivocally supporting the authority of the High Representative does not prevent the interested stakeholders from discussing the future transformation of the OHR. However, this discussion should take place in a wider context of assessment of the state of implementation of the objectives of the Dayton Agreement and of its Annexes.

83. Fourteen years after the signing of the peace accords, new challenges to the stability of Bosnia and Herzegovina’s institutions have emerged and new approaches and solutions should be found. Of course, this is primarily the responsibility of Bosnia and Herzegovina’s local stakeholders, but the members of and participants in the Peace Implementation Council (and especially, the Council of Europe, the European Union institutions, as well as Bosnia and Herzegovina’s neighbours) have also a role to play. Therefore, in our opinion, it may be thought appropriate to hold a multilateral conference, with the participation of key local and international stakeholders, to discuss the current challenges Bosnia and Herzegovina has to face and the means to overcome them.

84. This conference could be jointly organised by the Parliamentary Assembly, the Committee of Ministers and the Secretary General of the Council of Europe and involve the key international partners, in particular, the European Union. It would build upon the expertise of and benefit from the contribution of the Venice Commission and aim at suggesting practical steps to overcome the current institutional and legal challenges, in order to speed up Bosnia and Herzegovina’s advancement on the path of Euro-Atlantic integration.

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

*Reference to committee:* Resolution 1115 (1997)

*Draft resolution and draft recommendation* adopted unanimously by the committee on 17 December 2009

*Members of the committee:* Mr Serhiy **Holovaty** (Chairperson), Mr György Frunda (1<sup>st</sup> Vice-Chairperson), Mr Konstantin Kosachev (2<sup>nd</sup> Vice-Chairperson), Mr Leonid **Slutsky** (3<sup>rd</sup> Vice-Chairperson), Mr Aydin Abbasov, Mr Pedro Agramunt Font de Mora, Mr Miloš Aligrudić, Mrs Meritxell Batet Lamaña, Mr Ryszard Bender, Mr József Berényi, Mr Mevlüt **Çavuşoğlu**, Mr Sergej Chelemendik, Ms Lise Christoffersen, Mr Boriss **Cilevičs**, Mr Georges Colombier, Mr Telmo Correia, Mrs Herta Däubler-Gmelin, Mr Joseph **Debono Grech**, Mr Juris Dobelis, Mrs Josette Durrieu, Mr Mátyás Eörsi, Ms Mirjana **Ferić-Vac**, Mr Giuseppe Galati, Mr Jean-Charles Gardetto, Mr József Gedei, Mr Andreas Gross, Mr Michael Hagberg, Mr Holger Haibach, Ms Gultakin Hajibayli, Mr Michael Hancock, Mr Davit **Harutyunyan**, Mrs Olha **Herasym'yuk**, Mr Andres **Herkel**, Mrs Sinikka **Hurskainen**, Mr Kastriot **Islami**, Mr Mladen **Ivanić**, Mr Michael Aastrup Jensen, Mr Miloš **Jevtić**, Mr Hakki Keskin, Mr Haluk **Koç**, Mrs Katerina Konečná, Mr Jaakko **Laakso**, Mrs Sabine Leutheusser-Schnarrenberger, Mr Göran Lindblad, Mr René van der Linden, Mr Eduard Lintner, Mr Pietro Marcenaro, Mr Bernard Marquet, Mr Dick **Marty**, Mr Miloš **Melčák**, Mrs Nursuna Memecan, Mr Jean-Claude Mignon, Mr João Bosco **Mota Amaral**, Mr Adrian **Năstase**, Mrs Yuliya **Novikova**, Mrs Elsa Papadimitriou, Mr Alexander **Pochinok**, Mr Ivan **Popescu**, Mrs Zaruhi **Postanjyan**, Mrs Marietta **de Pourbaix-Lundin**, Mr Christos Pourgourides, Mr John Prescott, Mrs Mailis Reps, Mr Andrea Rigoni, Mr Ilir **Rusmali**, Mr Armen **Rustamyan**, Mr Indrek Saar, Mr Kimmo **Sasi**, Mr Samad **Seyidov**, Mr Sergey Sobko, Mr Yanaki **Stoilov**, Mr Christoph Strässer, Mrs Chiora **Taktakishvili**, Mrs Özlem **Türköne**, Mr Egidijus Vareikis, Mr José Vera Jardim, Mr Piotr Wach, Mr Robert **Walter**, Mr David **Wilshire**, Mrs Renate Wohlwend, Mrs Karin S. Woldseth, Mrs Gisela Wurm, Mr Andrej Zernovski.

N.B.: The names of the members who took part in the meeting are printed in **bold**

*Secretariat of the committee:* Mrs Chatzivassiliou, Mr Klein, Ms Trévisan, Mr Karpenko