

**Letter to the Council of Europe from Speaker of the Bosnia and Herzegovina Parliamentary Assembly House of Representatives, Dr Milorad Živković**

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Dear Secretary General of the Council of Europe, Mr. Davis, colleague parliamentarians,

I would like to address you as representatives of the countries represented in the highest legislative institution of the European Union. I am writing to you hoping that I will succeed to objectively present to you the current crisis situation which has escalated in a serious crisis of authority in Bosnia and Herzegovina, both of executive and legislative one.

As you all know, since OHR has imposed its measures on 19 October 2007, Bosnia and Herzegovina has been facing a 'state of emergency' which hasn't stopped until this day.

Since I believe that the High Representative has gone beyond the framework of his mandate, that imposed decisions violate the Constitution of BiH and especially that there hasn't been any objective reason for taking this decision or any justified reason for asking for this kind of communication on amending and supplementing Rules of Procedure of the Parliamentary Assembly of BiH, I have decided to address you and using facts which I will present in this letter, explain my attitude and offer contra-arguments for the reasons of this action of the High Representative.

I will try to present this issue from a legal point of view and in chronological order as follows:

- 1) The High Representative is the final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement, but only for Annex X of the Dayton Peace Agreement. No other article of this document gives even theoretical possibility to the High Representative to act as a framer of the Constitution and a legislator, since it is a matter treated by the Annex IV of the Agreement. Despite this very explicit provision, there has been unscrupulous imposition of laws on the entity and state levels, as well as imposition of amendments to the constitutions both of Republic of Srpska and Federation of Bosnia and Herzegovina. I will refrain of further elaboration of the issue of possible human rights violations which have been caused by the measures of the High Representative.
- 2) Powers additionally added to the abovementioned Agreement by conclusions of the Peace Implementation Council in Bonn in 1997, also known as the "Bonn Powers" don't give any possibility to the High Representative to make decisions which are the competence of the Parliamentary Assembly. Venice Commission Opinion no. 004 CDL-AD of 11 March 2005 gives the contribution to this attitude. On the other hand, it is a fact that since 1996 more than 100 laws from the competence of Parliamentary Assembly have been imposed, 300 regulations have been introduced or, in other words, powers have been exercised on more than 800 occasions.

- 3) Most recent decision on amending and supplementing the Law on the Council of Ministers has caused a storm of disapproval between citizens, and it has caused reasonable academic debates. At the same time, I would like to emphasize that so far none of the High Representative's decisions have affected the very sensitive issue of the protection of vital national interests, or, in other words, the voting method in BiH institutions.

With regard to this issue, I will briefly specify the Constitutional provisions which are, in my opinion, in contradiction to the Decision:

A) According to the Constitution of BiH (Article V, Point 4), Council of Ministers has its Chair and only two Ministers – Minister of Foreign Affairs and Minister of Foreign Trade with in addition “other ministers if needed”. It means that pursuant to the constitutional authorities of BiH, the initial structure of the Council of Ministers could have remained the same. However, in the previous 12 years period, the number of members of the Council of Ministers has been increased to 10.

B) According to the Constitution of BiH, two thirds of all ministers may be appointed from the territory of the Federation of BiH, and 1/3 may be appointed from the Republic of Srpska. Apart from ministers, deputy ministers are also appointed and they cannot be of the same constituent people as their minister. This is a very significant provision because the Constitution has established the national structure of the Council of Ministers, with all the rights provided to the constituent and other peoples.

C) Provision of the Constitution of BiH in Article IX.3 is in line with the abovementioned, and it reads as follows: ‘Officials appointed to positions in the institutions of Bosnia and Herzegovina shall be generally representative of the peoples of Bosnia and Herzegovina.’

D) According to this provision the composition of the Presidency and Council of Ministers is also determined.

Bosnia and Herzegovina has so far had the Law on the Council of Ministers. First Law was adopted in 1997. According to that Law, Council of Ministers had two Co-chairs, one Vice chair, Minister of Foreign Affairs, Minister of Foreign Trade and Economic Relations and Minister of Civil Affairs and Communications, the total of six members. The 1997 Law has been replaced with a new Law in 2000 also with six members. Then, in 2002 High Representative Paddy Ashdown imposed a new Law on the Council of Ministers of Bosnia and Herzegovina.

With this Law, High Representative abolished the Law from 2000 which was adopted by constitutionally authorized bodies of Bosnia and Herzegovina. By that Law the High Representative enlarged the Council of Ministers to 9 members – the Chair and 8 Ministers. The High Representative increased, with the imposed Law, the number of members in the Council of Ministers, from six to nine with the right to vote, and defined the holding of sessions and voting “having in mind Article IX.3 of the Constitution of BiH, at least two from each constituent people”.

More detailed explanations of the abovementioned provisions may be found in documents attached to this letter.

- 4) However, the most important reason for my letter, dear colleagues, is an inappropriate, undemocratic and non-European way of communication with the highest legislative institution in the country through blackmailing Parliament of BiH by the OHR, which introduces a new way of relations unknown to parliamentary and diplomatic practice in the world. We have been asked to consider and adopt in identical texts Amendments and Supplements of the Rules of Procedure of both Houses in the Parliamentary Assembly by the 1 December 2007. Otherwise, they would be imposed by the High Representative. You will understand that this objectively doesn't contribute to the discussion atmosphere, especially for adopting any kind of document. At the same time, myself as the Speaker am facing 'mission impossible' of negotiation with people with different political views who are satisfied with these measures and are not interested in any compromise. As in the previous item, I will stick to the legal norms which determine abovementioned issue. Please allow me to name them:

A) Parliamentary Assembly of Bosnia and Herzegovina has two houses: House of Representatives (HoR) and House of Peoples (HoP). The Quorum is differently determined in both houses. According to Point 1 b, Article IV, of the Constitution of Bosnia and Herzegovina, out of 15 members of the House of Peoples, 9 of them comprise a quorum, provided that at least three members of each constituent people are present – 3 Bosniac, 3 Croat and 3 Serb delegates. Point 2 determines decision making in the House of Representatives. Out of the total of 42 members of the House of Representatives, out of which two-thirds are elected from the territory of the Federation of BiH, and one-third from the territory of the Republic of Srpska, the general quorum is comprised by the majority of all elected members, meaning 22 members. Point 3, procedures: All decisions shall be made if the majority consists of one third of votes of members from the territory of both entities. The Constitution doesn't indicate whether it refers to those present and voting. If the Constitution says that there has to be a one third majority from the territory of both entities, there is no way it can refer to those present and voting as the High Representative interprets it now, asking for such a solution to be incorporated in the Rules of Procedure by 1 December or he will impose it.

I quote the High Representative: "Constitution prescribes that majority of votes includes votes of at least one third of members from the territory of each entity. The present Rules of Procedures interpret this as one third of elected members from each entity, instead of one third of those voting from each entity." This is why the High Representative has given his proposal which will be imposed, if not adopted. Amendment to the Rules of Procedure should, as demands Mr Lajčák, resolve quorum issue for holding sessions of the HoR of the Parliamentary Assembly of Bosnia and Herzegovina. Article IV.2.b of the Constitution of Bosnia and Herzegovina simply defines general quorum as a majority of all members of the House of Representatives, i.e. 22 out of 42 members. It must be said that out of 42 members, 22 are of Bosniac nationality and two of them are Bosniacs from the

territory of Republic of Srpska, from the lists of the Party of Democratic Action and Party for Bosnia and Herzegovina.

According to the current constitutional settlement, Parliamentary Assembly of Bosnia and Herzegovina makes decisions in the first round of voting by majority votes including entity majority, that is at least one third of members from each entity territory. According to the interpretation of OHR, Rules of Procedure wrongly states that majority implies all members from the territory of each entity, so the High Representative requires an interpretation of the Constitution which implies that majority is made up of one third of those present and voting.

B) This directly conflicts the interpretation of the OHR given on 25 February 2000. The OHR then stated: 'For this component of the test – one-third of the votes from members of each entity's territory is again the absolute rule the basis of which is the **total elected membership** of that house, regardless of how many members are present or how many of the present members have voted.' End of quote.

C) What could happen if required changes of the Rules of Procedures of the HoR were adopted? Here is an example: If 33 members are present at the session, the general constitutional quorum is met (at least 22 members) and HoR may hold a session. Out of 33 members, 28 members may be from the Federation of BiH and 5 members from Republic of Srpska. Should the decision be made according to Lajcak's Rules of Procedure, the decision should have the support of 22 votes and a majority of at least one third of members from each entity present and voting. Let's suppose that 5 members from Republic of Srpska are present and they're all voting. Only 2 members from Republic of Srpska voting for a certain decision make one third of members from the territory of Republic of Srpska. The rest 28 members are from Federation of BiH and 20 of them are Bosniacs and only Bosniacs are voting for a decision. Totally, there are 22 votes – 20 from Federation of BiH and 2 from Republic of Srpska. It means that only 2 members from Republic of Srpska could make a decision on behalf of Republic of Srpska. When we go back to the fact that currently there are two Bosniac members from Republic of Srpska, you will notice that there is a possibility that only Bosniac votes could make a decision in the House of Representatives. All decisions could be made in the first round of voting, there would be no need for harmonization or need for a second round of voting, which makes Article IV.3.d. of the Constitution of BiH redundant. All the details on this subject can also be found in attached documents.

Esteemed colleagues, with this part of the letter I have tried to elaborate the legal repercussions of recent measures taken by the High Representative and I would now like to comment on the parliamentary and political aspect of this problem.

The letter addressed to the Collegium (see attachment), says that some provisions regarding decision making and quorum go beyond the constitutional framework of BiH. Since these provisions have never been changed and the OHR hasn't had any complaints so far and didn't think of them as being unconstitutional

(referring to the OHR Opinion from February 2000), there is an emerging question regarding continuity in the work of the OHR and legal insecurity in the future and questions regarding some 'new interpretation', or even more important, some issue concerning constitutionality of the parliamentary work done so far!?

There is also a justified reason to bring the question of the reputation and status of the Constitutional Court which is in every democratic country, except Bosnia and Herzegovina, the only body with competence to protect the Constitution. Decisions of the Constitutional court have often been the result of outvoting, mostly by 5:4. Constitutional Court of Bosnia and Herzegovina has rejected every initiative to give its opinion on whether the High Representative has the authority to impose laws in BiH, but it has been giving opinions on whether laws and other documents of the High Representatives are in line with the Constitution of BiH. Even on those occasions, the Constitutional Court has by outvoting given the opinion that those documents weren't in contradiction with the Constitution.

Reaction of the OHR to one of the decisions of the Constitutional Court is absolutely defeating. 'An Instruction on Implementation of the Decision of the Constitutional Court' has been enacted which declared as unacceptable any procedure in front of any court in BiH which challenges decisions of the High Representative. At the end it reads that these decisions are not subject to procedure in front of any court of Bosnia and Herzegovina, its entities nor elsewhere, and that no court could ever start a procedure on obligations deriving from the decisions of the High Representative.

Furthermore, the High Representative says that his most recent measures practically prevent possible delays and blockade of the Parliament's functioning. Even the cursory insight in the number of sessions held and members present (see the attachment) bring us to the conclusion that this reason wasn't determinant in taking these measures.

In his letter addressed to the Collegium, High Representative said that his measures had to be taken because of the results of this convocation of the Parliament. It is quite brave to make this kind of contestation without previously having considered statistics of the work of the Assembly which shows different results (see the attachment).

Finally, as the top act of blackmailing and pseudo-democracy, we have received an appeal to consider, discuss and adopt proposed amendments and supplements which should go into effect on 1 December 2007, and if this is not done by the deadline in a satisfactory way, the High Representative won't hesitate to use his powers in order to solve the situation.

I believe that it is beneath the dignity of every parliamentarian to comment on this!

Distinguished president, colleague parliamentarians, I urge you to act as your conscience tells you, using your positions and authority and help us in protecting democracy and parliamentary dimension of social life in our country.

Your support would have a double influence on our citizens and corrective influence on the Office of the High Representative.

Hoping that our call for the protection of justice and democracy won't be left without answer, I kindly ask you to receive assurances of my highest gratitude and respect!

Respectfully,

Speaker of the House of Representatives  
Parliamentary Assembly of Bosnia and Herzegovina  
Dr Milorad Živković

Sarajevo, 21.11.2007.

#### ANNEXES

- 1) Letter of the High Representative addressed to the Collegium of both Houses of the Parliamentary Assembly of Bosnia and Herzegovina on 19 October 2007
- 2) Decision of the High Representative on Amending and Supplementing the Law on the Council of Ministers of Bosnia and Herzegovina of 19 October 2007
- 3) Dayton Peace Agreement (Annex IV- Constitution of B&H)
- 4) Rules of Procedure of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina
- 5) Summary of the Conclusions of the Peace Implementation Conference, Bonn, 1997
- 6) Legal Opinion of the OHR on the application of Article IV.3. (d) of the Constitution of Bosnia and Herzegovina of 25 February 2000
- 7) OHR's Explanation of the taken decisions, 24 October 2007
- 8) Opinion of the Government of Republic of Srpska on the decisions taken by High Representative, 29 October 2007
- 9) Address by the president of the Government of RS to the National Assembly of Republic of Srpska on the occasion of the OHR measures
- 10) Declaration of the National Assembly of Republic of Srpska on the occasion of the most recent measures and requirements of the High Representative for BiH, 29 October 2007
- 11) Letter of the Speaker of the House of Representatives of the Parliamentary Assembly addressed to the High Representative, 31 October 2007
- 12) List of sessions of the House of Representatives together with the list of members present at the session
- 13) List of the decisions imposed by the High Representative in previous period