

33rd SESSION

Report
CPL33(2017)03
8 September 2017

Information note on the Congress' mission to Bosnia and Herzegovina in the framework of the post-electoral dialogue and further to the 2 October 2016 local elections (25-26 May 2017)

1. Introduction

1. Pursuant to its Rules and Procedures,¹ on 25 and 26 May 2017, the Congress of Local and Regional Authorities organised a mission in the framework of its post-electoral dialogue with the authorities of Bosnia and Herzegovina and its mechanism to assess local and regional democracy. The mission aimed at following up on Congress Recommendation 399(2017) on the observation of the 2 October 2016 local elections in Bosnia and Herzegovina as well as on the post-electoral Conference organised by the Council of Europe in February 2017 in Sarajevo.² Moreover, the mission focused on the situation in the City of Mostar, where no elections have been held since 2008.

2. The delegation included Congress Vice-President Anders KNAPE (Sweden, EPP-CCE), the Chair of the Monitoring Committee Leen VERBEEK (Netherlands, SOC) and the Rapporteur on the 2 October 2016 local elections in Bosnia and Herzegovina, Stewart DICKSON (United Kingdom, ILDG).

3. During this mission, the delegation held high-level meetings in Sarajevo, notably with Mr Marinko ČAVARA, President of the Federation of BiH, Mr Šefik DŽAFEROVIĆ, Speaker of the House of Representatives of the BiH Parliamentary Assembly, representatives of the Government of Republika Srpska, Ms Irena HADZIABDIC, President of the Central Election Commission of Bosnia and Herzegovina as well as with Mr Bruce BERTON, Principal Deputy of the High Representative for Bosnia and Herzegovina.

4. In the City of Mostar, meetings with major stakeholders, notably the acting Mayor of Mostar, Mr Ljubo BEŠLIĆ, took place. The delegation met with representatives of the major political parties in the Federation of BiH, including the Party of Democratic Action (SDA), the Croatian Democratic Union of Bosnia and Herzegovina (HDZ), the Social Democratic Party of Bosnia and Herzegovina (SDP) and the Union for a Better Future of Bosnia and Herzegovina (SBB).

¹ In particular, Rule 87 on « the post-electoral dialogue » of the Rules and Procedures adopted on 22 October 2015 (Resolution 395(2015)).

² See "2016 Local Elections – Lessons Learned", proceedings of the Conference held in Sarajevo on 23/24 February 2017, co-organised by the Central Election Commission of Bosnia and Herzegovina and the Directorate of Democratic Governance of the Council of Europe. Ms Carla DEJONGHE (Belgium, ILDG) participated in the Conference on behalf of the Congress.

5. The delegation wishes to thank all the interlocutors for their availability and readiness for an open dialogue with the Congress. Special thanks go to Ambassador Drahoslav ŠTEFÁNEK, Head of the Council of Europe Office in Sarajevo, and his team for the support provided in preparing this mission.

2. General political context

6. The 2 October 2016 local elections in Bosnia and Herzegovina were held in the context of a difficult economic situation in the entire country and continuing tensions between the Entities and the central State as evidenced by the contentious referendum organised on 25 September 2016 in Republika Srpska.³ This referendum was organised after President of Republika Srpska Milorad DODIK, who is close to Russia, repeatedly raised, in the last years, the possibility of organising a referendum on the Entity's independence from Bosnia and Herzegovina in 2018.

7. At the same time, the latest step toward EU integration was taken in September 2016, when the EU Commission handed over its questionnaire to the BiH authorities, which will be used to prepare an opinion on the country's membership application.

8. Against this backdrop, the political environment has continued to prove difficult, in particular given the disagreement between the Party of Democratic Action (SDA, Bosniak) and the Croatian Democratic Union of Bosnia and Herzegovina (HDZ, Croat), which had formed a coalition until mid-2015 in the Federation of BiH. Recently, a legislative proposal submitted by the HDZ in May 2017 notably included the division of the Federation into three different areas on an ethnic basis. This proposal was seen as an attempt to create a *de facto* third entity in Bosnia and Herzegovina and fuelled the divisions in the country.

9. The general lack of trust is a major issue in a country where ethnic divisions are deep and constantly stirred up for political purposes, not least in view of the Parliamentary elections scheduled for 2018. In such context, the ability of political forces to find consensus on major political issues, in particular in electoral matters, is particular low.⁴

3. Follow-up on Congress Recommendation 399(2017) on the observation of the 2 October 2016 local elections in Bosnia and Herzegovina

10. At this stage, possible amendments to the Election Law have been primarily discussed within the Inter-Agency Working Group on changes to election legislation in the Parliament of Bosnia and Herzegovina. This Working Group has been set up in March 2017, to examine the options with regard to general changes of the Election Law and in particular to the implementation of different rulings of the Constitutional Court and the European Court of Human Rights.⁵

11. The Working Group is composed of 12 members, including three representatives of the House of Peoples of BiH, three representatives of the House of Representatives of BiH, three representatives of the Council of the Ministers and three representatives of the Central Election Commission. The Central Election Commission, building on the work carried out in the last years and in particular for the 2 October 2016 local elections, put forward a number of proposals to improve the electoral process.⁶

12. For the time being, the general lack of political will did not enable the Working Group to make any significant decision, as the most sensitive and complex political issues relate to the implementation of the Courts' rulings. In this context, the Congress' delegation noticed a high risk that more consensual

3 After the Constitutional Court of BiH declared Republika Srpska's annual holiday unconstitutional as it was discriminatory against non-Serb residents of the entity in November 2015, the authorities of the Entity organised a referendum on this issue on 25 September 2016, despite the negative opinions of the Constitutional Court, of the High Representative for Bosnia and Herzegovina and of the Central Election Commission. The 25 September 2016 referendum in Republika Srpska was seen as another attempt to undermine the legitimacy of the Constitutional Court of Bosnia and Herzegovina, which jurisdiction over the whole country is disputed by the authorities of Republika Srpska.

4 As the Congress' delegation noticed during its mission to Sarajevo and Mostar on 25-26 May 2017.

5 Notably the 2010 Decision of the Constitutional Court of Bosnia and Herzegovina on the Statute of the City of Mostar, the 2016 Decision of the Constitutional Court on the election to the House of Peoples of BiH and the 2009 and 2016 judgements of the European Court of Human Rights in the cases *Sejdic and Finci cases vs. Bosnia and Herzegovina* and *Ilijaz Pilav vs. Bosnia and Herzegovina*.

6 Among other issues, the CEC unanimously proposed the revision of modalities of appointment of polling stations commissions, the strengthening of sanctions in cases of violation of the Election Law and the introduction of a system of early voting.

technical improvements to the electoral process could be overshadowed by overly politicised issues. According to the Congress, it should be avoided to make all changes to the Election Law conditional to an overall political deal but rather to adopt a strategy of incremental changes in order to achieve, at least, some progress.

13. The Congress is convinced that such strategy could result in bringing substantial amendments to the Election Law, especially since many interlocutors agree on some of the proposals included in Congress' Recommendation 399(2017). Regarding electoral fraud in particular, the sanctions imposed by the Central Election Commission in the context of the 2 October 2016 local elections showed that there is a real will to fight against violations of the Election Law. The implementation of sanctions should be made more systematic and remain proportionate to proven infringements, in particular with regard to vote-buying and instances of misuse of administrative resources by incumbent candidates.

14. The quality of voters' lists has also been a long-standing matter of concern for the Congress, especially with regard to voters residing *de facto* abroad. As understood by many interlocutors, the Congress position formalised in Recommendation 369(2015) aims at ensuring that there is a genuine link between voters and the place where they cast their ballot at local level. Such good practice would increase the legitimacy of local elected officials and would also be beneficial to prevent electoral fraud. In the context of Bosnia and Herzegovina, as observed in the previous local elections, voters residing abroad can ask to vote through "tendered ballots", which is known for being prone to fraud.

15. Other topics on which further discussion is needed include the development of a real level playing field for all candidates at local level, including strengthening the position of independent candidates and ensuring an equal access to the media. Developing the level playing field would also increase the degree of competition in local elections, thus shifting the political conversation from narrow ethnicity-related issues to other topics of broader significance.

16. Congress Recommendation 399(2017) also pointed out the need to revise the conditions of appointment and dismissal of polling stations commissions. Most of the Congress' interlocutors acknowledged the need for a reform since the politicisation of the election administration causes difficulties in electoral management on Election Day. This, however, remains a sensitive issue for political parties, which are in charge of appointing and dismissing polling stations commissions.

17. Another Working Group in the Parliament of BiH focused on new technologies in the field of elections and submitted a report in April 2017. The issues put forward by the Working Group included the use of transparent ballot boxes, improvements in voters' identification process and electronic registration for candidates and for voters residing abroad. Such propositions generally aim at increasing the level of integrity and transparency of electoral processes in Bosnia and Herzegovina, and are therefore supported by the Congress.

4. Situation of local democracy in the City of Mostar

4.1. Current political situation in Mostar

18. The City of Mostar was granted an Interim Statute in 1996 on the basis of the Dayton Agreement. The Statute of the City of Mostar was finally enacted in 2004 by the High Representative Paddy ASHDOWN⁷ and local elections in the City were last organised in 2008.

19. In 2010, the Caucus of Croat People in the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina filed a case before the Constitutional Court with regard to the Election Law, the Constitution of the Federation of Bosnia and Herzegovina and the Statute of the City of Mostar. The Court established that the electoral system in Mostar was discriminating against voters residing in the Central Zone of Mostar – who are Croats in majority – and that, in general, the boundaries of the electoral districts in the City did not ensure the equality of representation among all residents of Mostar. As a consequence, the Constitutional Court requested the Parliamentary Assembly of Bosnia and Herzegovina to change the Election Law within six months following the publication of the Decision.

⁷ <https://www.mostar.ba/statut-181.html>

20. However, given the fact that no amendment to the Election Law and the Statute of the City of Mostar had been adopted within the time frame set up by the Court, local elections could not be held in 2012. The same situation occurred in 2016 and the City of Mostar is currently administered by the acting Mayor Ljubo BEŠLIĆ,⁸ without a City Council. The acting Mayor still relies on decisions made by the City Council in 2012, before the mandates of Local Councillors expired. Therefore, Mostar is currently locked in a stalemate where no new decisions on urban projects can be taken.

21. The Central Election Commission has no competence over the electoral system in the City of Mostar as changes in the Election Law have to be adopted by the Parliamentary Assembly of Bosnia and Herzegovina. Moreover, as there has been no official prolongation of the mandate of acting Mayor BEŠLIĆ after 2012, the legal situation of the acting Mayor is precarious, accentuating his lack of democratic legitimacy.

22. The absence of accountability of the acting Mayor of Mostar raises particular questions in the context of the current composition of the City population. The 2013 population census, that was finally published in 2016,⁹ showed a drop in the proportion of Serbs in the City – from 18.8% in 1991 to 4.2% in 2013 – while the proportion of Croats and Bosniaks rose – in 2013, they were respectively 48.4% and 44.2% of the population. Because none of the Constituent Peoples have a majority in the City, the usual institutional setting based on the distribution of positions among the Constituent Peoples as a central element of the Dayton Agreement is not in use in Mostar.¹⁰

23. According to the meetings held by the Congress delegation, the interplay between the acting Mayor (a Croat) and the Head of Finances in the City Administration – who is the civil servant who supervises the implementation of the budget (a Bosniak) – could be a reason for the long-standing deadlock in the sense that neither the Bosniak parties nor the Croat parties have a serious reason to hold elections which could potentially lead to changes in the current distribution of powers without control.

24. The lack of control over decisions made by the acting Mayor and the City Administration is of particular concern when such decisions are politically controversial. The Congress also highlights that the absence of transparency in decision-making is directly related to higher risks of corruption and other malpractices, in particular in the field of public procurement.

25. It should be, however, noted that, despite not having a City Council for about five years, the general situation in the City of Mostar with regard to infrastructure projects and the provision of basic services to residents seems to be acceptable, and to have even improved in the past few years.¹¹

26. Despite its relative weakness, the civil society in Mostar regularly expresses its concern with regard to the situation of local democracy in the City. Most recently, a coalition of local NGOs organised the initiative “Elect Mostar” on 2 October 2016, date of the local elections in other Municipalities in the country. The initiative aimed at raising awareness about the absence of local democracy in the City, in particular among young people.

4.2. Overall situation related to ethnicity in electoral matters in BiH

27. The current situation in Mostar also needs to be seen in the broader context of an overall political conflict over changes in electoral legislation in Bosnia and Herzegovina. The needed amendments to the Statute of Mostar have been politicised as part of a broader political debate which notably includes the implementation of two judgements of the European Court of Human Rights and a recent Decision of the Constitutional Court of Bosnia and Herzegovina.

⁸ Elected Mayor in 2004, re-elected in 2008. He is a member of the Croatian Democratic Union of Bosnia and Herzegovina (HDZ) and was a member of the Congress until October 2016.

⁹ The last census had been conducted in 1991 and even though the Dayton Agreement foresaw a post-war census, it had never been carried out because of the sensitivity of ethnic matters. The 2013 census was initially to be released in 2015 and was finally published on 30 June 2016 without the consent of the Institute for Statistics of Republika Srpska.

¹⁰ According to the Constitution of Bosnia and Herzegovina, followed by a 2010 Decision of the Constitutional Court, the Constituent Peoples of Bosnia and Herzegovina are Bosniaks, Croats and Serbs. It also formalises the existence of a fourth group, the “Others”.

¹¹ According to the interlocutors met by the Congress’ delegation during its mission to Sarajevo and Mostar on 25-26 May 2017.

28. In 2009 and 2016, the European Court of Human Rights (ECHR) delivered two judgements in the cases *Sejdic and Finci cases vs. Bosnia and Herzegovina* and *Ilijaz Pilav vs. Bosnia and Herzegovina*. In both cases, the applicants contested their ineligibility, respectively because they did not belong to a Constituent People and because of a combination of ethnic and residence requirements for standing for election. Such restrictions in eligibility rights were considered as discriminatory by the ECHR and the implementation of the Court's judgements are still awaited.

29. More recently, in December 2016, the Constitutional Court of Bosnia and Herzegovina ruled, in the so-called Ljubic case, that the current electoral system for the House of Peoples of the FBiH was inconsistent with the Constitution of Bosnia and Herzegovina as ethnic quotas distorted the right to representation of the Constituent Peoples. The six-month delay set up by the Constitutional Court for changing the legislation is to expire in June 2017 and should be implemented prior to the 2018 Parliamentary elections.

30. In view of implementing such rulings, the Croat Caucus – led by the HDZ – in the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina made a formal legislative proposal in May 2017. The proposal foresaw the election of a 45-member City Council in Mostar, including 26 members elected in five City Areas and nine members elected in a City-wide constituency. Each Constituent People would have a minimum of four members and a maximum of 15 members in the City Council.

31. This proposal also included amendments related to the election of the Croat member of the three-member Presidency of BiH, who is currently elected by all residents of the Federation of Bosnia and Herzegovina, no matter their ethnic group. According to the Croat Caucus, Bosniaks in the Federation should only vote for the Bosniak member of the Presidency and so should Croats for the Croat member.

32. The HDZ proposal called, *inter alia*, for the division of the Federation into three different areas, among which one would be in majority Croat, another one in majority Bosniak and a third one mixed. Their opponents claimed this proposal would lead to the creation of a *de facto* third entity in Bosnia and Herzegovina. Moreover, given that the emergency Parliamentary procedure had been used for putting forward this proposal in the House of Peoples, no amendment and therefore no consensus could be reached.

5. Conclusions

33. The Congress calls upon all stakeholders, notably those participating in the Inter-Agency Working Group on changes to election legislation, to take action in order to ensure that consensual amendments are adopted in a timely manner. The complexity of the overall situation with regard to the Election Law should not be taken as an excuse not to put forward technical improvements to the electoral processes.

34. Along these lines, it urges authorities at all levels to work on a sustainable solution to restore local democracy in the City of Mostar. In particular, amendments to the Election Law and the Statute of the City should be negotiated separately and the obstacles to achieve progress with regard to amendments of the Election Law should not be used as a pretext not to find a solution for the City of Mostar. In this process, the interests of the residents of Mostar should be fully and accurately taken into account.

35. It also invites the authorities of Bosnia and Herzegovina to submit draft amendments to the Election Law and to the Statute of Mostar to the European Commission for Democracy through Law (Venice Commission), in order to assess the compliance of such amendments with the European standards in electoral matters in due time.

36. It encourages and supports the local NGOs and the civil society in general to continue their efforts in raising awareness about the absence of local democracy in the City of Mostar and in initiating dialogue with the political stakeholders to find a solution that takes into account the interests of the local population.

37. Moreover, the Congress commits to keep the issue of local democracy in the City of Mostar on its political agenda until a suitable solution is found.¹²

¹² The Congress Bureau decided at its meeting held on 16 June 2017 to organise a Round Table on the situation in Mostar, Bosnia and Herzegovina, during the 33rd Session of the Chamber of Local Authorities on Thursday, 19 October 2017.

APPENDIX

CONGRESS POST-ELECTORAL DIALOGUE
Further to the 2 October 2016 local elections in Bosnia and Herzegovina
Final programme

Wednesday 24 May 2017

Various times **Arrival of the Congress Delegation in Sarajevo**

Thursday 25 May 2017
Meetings in Sarajevo

- 08:30 – 08:45 Breakfast briefing for the Delegation
 Venue: Hotel Europe in Sarajevo, breakfast room
- 09:00 – 09:30 Background briefing with the Head of the Council of Europe Office in Sarajevo,
Ambassador Drahoslav STEFANEK on the overall political situation in Bosnia
 and Herzegovina and the situation in Mostar
 Venue: Hotel Europe in Sarajevo, Mezzanine meeting room
- 9:30 – 10:30 Briefing with representatives of the international community:
 • **HE Anders HAGELBERG**, Ambassador - **Embassy of Sweden**,
 • **Ms Christine McNEILL**, Acting Deputy Head of Mission and
Mr Julian MILLER, 1st Sec Political – **Embassy of the United Kingdom**
 • **Mr Kenneth ZURCHER**, Deputy Political Counselor – **Embassy of the USA**
 • **Mr Joeri MAAS**, Chief of Policy and Planning – **OSCE Mission to Bosnia
 and Herzegovina**
 • **Ms Maja RIBAR**, EUSR Political Adviser, Delegation of the European Union
 Venue: Hotel Europe in Sarajevo, Mezzanine meeting room
- Coffee break
- 11:00 – 12:00 Meeting with the President of the Central Election Commission of BiH,
Ms Irena HADZIABDIC on the post-electoral situation/ follow-up on Congress'
 REC
 Venue: CEC, Danijela Ozme 7
- 12:15 – 13:15 Meeting with **Mr Šefik DŽAFEROVIĆ**, Speaker of the House of Representatives of
 the BiH Parliamentary Assembly on the post-electoral situation/follow-up on
 Congress' REC
 Venue: BiH Parliamentary Assembly, Trg BiH 1, VIP entrance
- Lunch break
- 14:30 – 15:15 Meeting with **Mr Marinko ČAVARA**, President of Federation of Bosnia and
 Herzegovina on the overall situation of local democracy in the FBiH and the
 specific situation in Mostar
 Venue: Office of the President of FBiH, Titova street, entrance of the Presidency
 BiH
- 15:30 – 16:00 Meeting with **Ms Vesna TRAVLJANIN**, Director of the Association of
 Municipalities and Towns of the Federation of Bosnia and Herzegovina on the
 overall situation of local democracy in the FBiH and the specific situation in Mostar
 Venue: Premises of the Association, Musala 5/1
- Coffee break

- 16:15 – 16:45 Meeting with the representatives of the Ministry for Administration and Local Self-Government of Republika Srpska, **Ms Milanka SOPIN**, Assistant Minister for Local Self-Government and **Ms Gordana LUKIC**, Adviser to Minister Lelja RESIC, on the overall situation of local democracy in Republika Srpska
Venue: Hotel Europe in Sarajevo, Mezzanine meeting room
- 17:30 – 18:30 Meeting with the Principal Deputy of the High Representative for Bosnia and Herzegovina **Mr Bruce BERTON** on the overall political situation in Bosnia and Herzegovina and the situation in Mostar
Venue: Emerika Bluma 1, Sarajevo
- 18:30 Transfer from Sarajevo to Mostar (approx. 2 hours)
- Dinner in Mostar – restaurant Divan, Oneščukova, Mostar

Friday 26 May 2017
Meetings in Mostar

- 09:00 – 9:45 Meeting with the acting Mayor of Mostar, **Mr Ljubo BEŠLIĆ**
Venue: City Hall of Mostar, Hrvatskih branitelja no. 2
- 10:00 – 10:30 Meeting with the President of the City Board of HDZ Mostar, **Mr Damir DZEBA** and the Secretary of the City Board of HDZ Mostar, **Ms Ana LEZENIC**
Venue: Hotel Bristol in Mostar, Meeting room 1
- 10:45 – 11:15 Meeting with the Vice President of the City Board of SDA Mostar, **Mr Alija SUNJE** and the Chairman of the SDA caucus in the City Council of Mostar elected in 2008, **Mr Adil SUTA**
Venue: Hotel Bristol in Mostar, Meeting room 1
- Coffee break
- 11:30 – 12:00 Meeting with representatives of the Social Democratic Party of BiH (SDP) in Mostar, the President of the Cantonal Board of the SDP, **Mr Zoran MIKULIC**, the President of the City Board of SDP Mostar **Mr Edin ZAGORCIC** and Legal Adviser **Mr Milan RACIC**
Venue: Hotel Bristol in Mostar, Meeting room 1
- 12:15 – 12:45 Meeting with representative of the Alliance for a Better Future (SBB) in Mostar, President of the City Board of SBB, **Mr Anel KLJAKO**
Venue: Hotel Bristol in Mostar, Meeting room 1
- Lunch break
- 14:45 – 15:30 Meeting with representatives of the coalition of NGOs which organised “Elect Mostar” (unofficial vote) on 2 October 2016:
- Local Democracy Agency Mostar
- Youth Cultural Centre “Abrasevic”
- Center for psychological support “Sensus” (former Association of Young Psychologists)
- Youth City Council
Venue: Hotel Bristol in Mostar, Meeting room 1
- Coffee break
- 16:00 Transfer from Mostar to Sarajevo (approx. 2 hours)
- Debriefing and dinner in Sarajevo

Saturday 27 May 2017

Various times **Departure of the Congress' Delegation**

Delegation

Congress members

Anders KNAPE, Sweden (L, EPP-CCE), President of the Chamber of Local Authorities

Leen VERBEEK, Netherlands (R, SOC), Chair of the Monitoring Committee

Stewart DICKSON, United Kingdom (R, ILDG), Rapporteur on the 2 October 2016 local elections in BiH

Congress Secretariat

Renate ZIKMUND, Head of Service a.i., Department of Statutory Activities

Ségolène TAVEL, Election Observation Officer

Advisor to Congress members

Eleonore PARK-EDSTRÖM, Advisor to Anders KNAPE

Alain HUBERS, Advisor to Leen VERBEEK