



## Resolution 1855 (2012)<sup>1</sup>

# The functioning of democratic institutions in Bosnia and Herzegovina

Parliamentary Assembly

1. The Parliamentary Assembly recalls its [Resolution 1701 \(2010\)](#) on the functioning of democratic institutions in Bosnia and Herzegovina, in which it called on the key political stakeholders to engage, before the October 2010 parliamentary elections, in a constructive dialogue about concrete proposals for constitutional amendments, with a view to adopting a comprehensive package eliminating, in particular, the constitutional discrimination found by the European Court of Human Rights in its judgment of 22 December 2009 in the case of *Sejdić and Finci v. Bosnia and Herzegovina*, with regard to the right of the so-called “others” to stand for election to the presidency and the House of Peoples.
2. The Assembly also recalls its [Resolution 1725 \(2010\)](#) on the urgent need for constitutional reform in Bosnia and Herzegovina, in which it expressed its serious concern about the non-adoption, prior to the 2010 elections, of the necessary amendments to the constitution and the election law. These elections, albeit globally free and fair, were thus held on the basis of a constitutional and legal framework which is in violation of the European Convention on Human Rights (ETS No. 5) and its protocols.
3. The Assembly strongly regrets that no credible efforts were undertaken by the authorities to set up, before the elections, a serious institutionalised process for the preparation of a comprehensive package of constitutional amendments, in consultation with civil society and a broad range of legal experts, to be adopted as a matter of priority as soon as possible after the elections. The mixed working group for the implementation of the *Sejdić and Finci* judgment, composed of three ministers and nine parliamentarians, was paralysed by absenteeism. By the end of its work in June 2010, it had not reached a consensus on the mandate and composition of the body to be set up after the elections.
4. The Assembly regrets that a whole year was lost and that the new Joint Interim Committee of the Parliamentary Assembly of Bosnia and Herzegovina was set up only in October 2011. Its task was to prepare constitutional amendments by 30 November and amendments to the election law by 31 December 2011. On 1 December, the Joint Interim Committee officially announced the failure of its work. The Assembly regrets that, once again, it was not possible to reach even a minimum consensus and to submit constitutional amendment proposals to parliament.
5. The Assembly reiterates that the *Sejdić and Finci* judgment is legally binding and must be implemented. If the necessary amendments are not adopted in good time before the next elections in 2014, the Assembly warns that Bosnia and Herzegovina’s continued membership of the Council of Europe may be at stake.
6. The Assembly therefore:
  - 6.1. urges the Parliamentary Assembly of Bosnia and Herzegovina to continue its work and adopt constitutional amendments without further delay. It reiterates that the execution of the *Sejdić and Finci* judgment is a first step in the comprehensive constitutional reform that is needed in order to move away from the institutional straightjacket created by the Dayton Constitution, towards a modern, Euro-compatible and functional democracy in which every citizen, regardless of his or her ethnic affiliation,

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1. Assembly debate on 24 January 2012 (3rd Sitting) (see [Doc. 12816](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteurs: Mr Mignon and Ms Woldseth). Text adopted by the Assembly on 24 January 2012 (3rd Sitting).

enjoys the same rights and freedoms. The Assembly considers, in particular, that the restrictive quorum rules, the excessive use of entity voting (a double qualified majority used for all decision-making in parliament) and the vague definition of the so-called “vital national interest” – instead of preventing outvoting by any of the ethnic groups through dialogue and search for compromise – have been systematically abused and now hamper all decision-making processes;

6.2. reiterates that a blueprint for constitutional reform was provided by the European Commission for Democracy through Law (Venice Commission) already in 2005 and calls on the authorities of Bosnia and Herzegovina to take into account its recommendations;

6.3. recalls that constitutional reform is indispensable for the functioning of the State but that it also necessary to carry out constitutional reform at entity level and therefore calls on both Republika Srpska and the Federation of Bosnia and Herzegovina to finalise as a matter of urgency the adoption of amendments to their constitutions, in line with the recommendations made by the Venice Commission, notably with regard to the abolition of the death penalty in Republika Srpska and the deletion of the constitutional provisions on the Federation’s ombudsman.

7. The Assembly deeply regrets that, more than a year after the general elections were held at all levels except for municipal level on 3 October 2010, no government has yet been formed. Despite the serious economic and financial situation of Bosnia and Herzegovina, the leaders of the six main political parties continued their bargaining about the ethnic distribution of posts in the Council of Ministers until 28 December 2011, when they finally reached an agreement, notably on the appointment of a Croat from the HDZ (Croatian Democratic Union) as Chairman of the Council of Ministers.

8. The Assembly takes note of the nomination by the tripartite presidency on 5 January 2012 of a candidate for the position of Chairman of the Council of Ministers and of his confirmation by the House of Representatives on 12 January. The new chairman now urgently needs to complete forming the government in order to get the country back on track.

9. The Assembly considers that the democratic will of the voters must be respected and that democratically elected institutions, such as the Parliamentary Assembly and the tripartite presidency, should not be under instructions of political party leaders, but should work according to the four-year mandate they received from the voters. The Assembly expects the new Council of Ministers to carry out its work in a responsible way and to put the interests of all the citizens of Bosnia and Herzegovina first, regardless of their ethnicity. Without co-operation, co-ordination and communication between all levels of authority and all political stakeholders it will not be possible to achieve progress.

10. The Assembly also stresses the importance of the full co-operation of Bosnia and Herzegovina with the Council Europe. This requires the active presence of Bosnia and Herzegovina representatives in the various bodies and institutions of the Organisation. Regrettably, for almost ten years now, the presidency has been unable to nominate candidates for key positions in the Venice Commission, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the European Commission against Racism and Intolerance (ECRI), the bodies of the Framework Convention on National Minorities, and other bodies. The presidency also needs to send a list of candidates, by 10 February 2012, for the seat of judge at the European Court of Human Rights, since the current judge resigned well before the end of her term. The Parliamentary Assembly of Bosnia and Herzegovina also urgently needs to elect the chairperson of the country’s delegation to the Parliamentary Assembly of the Council of Europe.

11. The Assembly also strongly regrets the long delay in the constitution of the two houses of the Parliamentary Assembly of Bosnia and Herzegovina: the House of Representatives only started to function towards end of May 2011, and the House of Peoples at the beginning of June 2011. This has significantly delayed the adoption of legislation, such as the Census Bill and the State Aid Bill, that are required by Bosnia and Herzegovina’s European Partnership Agreement with the European Union.

12. The Assembly urges the authorities of Bosnia and Herzegovina to adopt as soon as possible amendments to the election law in order to create mechanisms to sanction the unconstitutional behaviour of some cantonal assemblies, which blocked the constitution of the State House of Peoples by not sending their delegates within the required deadlines to the Federation House of Peoples, which in turn sends delegates to the House of Peoples at State level.

13. The April 2012 part-session marks the 10th anniversary of Bosnia and Herzegovina's accession to the Council of Europe. The current situation hampers the completion of much needed reforms in key sectors, such as democratic institutions, the rule of law and human rights, and slows down the country's advancement on the path to European integration. The Assembly notes that, since 2006, very little progress has been achieved in the implementation of Bosnia and Herzegovina's key outstanding commitments to the Council of Europe.

14. In order to end the perpetual cycle of deadlock and confrontation, the Assembly once again calls on the authorities of Bosnia and Herzegovina and the key political stakeholders to shoulder their responsibilities, stop obstructionism and work constructively at the level of State institutions.

15. The Assembly resolves to closely follow the situation in Bosnia and Herzegovina and to take stock of the progress achieved in the implementation of this and previous resolutions. If no progress is made on the issues mentioned in this resolution before 15 March 2012, the Assembly will consider any further action that might be required at its April 2012 part-session, on the occasion of the 10th anniversary of the accession of Bosnia and Herzegovina to the Council of Europe.