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

Honouring of obligations and commitments by Bosnia and Herzegovina

Information note by the co-rapporteurs on their fact-finding visit to Sarajevo, Mostar and Banja Luka (3-7 June 2012)¹

Co-rapporteurs: Ms Karin S. WOLDSETH, Norway, European Democrat Group, and Mr Egidijus VAREIKIS, Lithuania, Group of the European People's Party

¹ This information note has been made public by decision of the Monitoring Committee dated 4 September 2012.

1. We travelled to Bosnia-Herzegovina from 3 to 7 June 2012. This was the first visit to the country of the newly appointed co-rapporteur, Mr Egidijus Vareikis. We wish to thank the delegation of Bosnia and Herzegovina to the Parliamentary Assembly of the Council of Europe and the Council of Europe office in Sarajevo for their help in organising the visit. The programme of the visit is appended.
2. We had been happy to hear that on 31 May 2012, just before our visit, the House of Representatives finally adopted the State budget for 2012, totalling 1.3 billion KM (around 650 million Euros).
3. However on arrival in **Sarajevo**, we heard that the SDA (the biggest Bosniak party), one of the main partners in the coalition formed by the SDP (the officially multi-ethnic party), together with two small Croat parties (the HSP and the NSRzB) had voted against the budget.
4. The SDA's refusal to vote for the budget was apparently the straw that broke the camel's back, given the increasingly strained relations between SDA and SDP since the formation of government at State level in February 2012.
5. SDP's leader and current Foreign Affairs Minister Zlatko Lagumdžija called for the resignation of the three SDA Ministers at State level, where they are holding the Ministry of Security, the Ministry of Defence and a position of Deputy Minister of Finance. He also announced that the coalition agreement with the SDA and the two small Croat parties was equally no longer valid for the Federation Government and in the ten cantons of the Federation.
6. We note that, for almost 15 months after the October 2010 elections, the SDP did its absolute best to shun the two major Croat parties (HDZ and HDZ 1990), refusing to give them any ministerial positions in the State Government as well as in the Federation Government.
7. At State level, the HDZ and HDZ 1990 were eventually given the three ministerial positions they were claiming, including the post of Chairman of the Council of Ministers. But at Federation level, both HDZ's did not get a single ministerial post: they were distributed either to the SDA or to the two small Croat parties (HSP and NSRzB), part of the so-called Platform Coalition. The President of the Federation is, for example, from the HSP and one of the vice-presidents is from the SDA.
8. Now, in a complete U-turn, the SDP is going into coalition with the two main Croat parties (HDZ and HDZ 1990) and with the SBB (Party for a Better Future), headed by Fahrudin Radončić, a media mogul and owner of the biggest circulation daily, Dnevni Avaz. Out of 42 seats in the House of Representatives at State level, the two HDZ's together and the SBB would command four seats each, and the SDP eight, i.e. a total of 16 seats. The previous coalition commanded 17 seats, including the seven seats of the SDA.
9. Although government re-shuffling has taken place already in a number of cantons in the Federation, neither the SDA Ministers at State level nor the Federation President (HSP), Vice-President (SDA) or ministers from the former coalition parties have been willing to resign. Forcing them out will be legally complicated and will take time. Time that Bosnia-Herzegovina does not have: loans to the International Monetary Fund (IMF) will require repayment of around 500 million Euros this year and the economic situation is very bad.
10. Mr Lagumdžija, however, was confident that the reshuffling (or reconstruction as he calls it) would be finished very soon, in any event before the meeting of the six party leaders in Brussels on 27 June 2012. He was also confident that by 27 June, the new coalition and the Serb parties (SNSD and SDS) would be able to come to a compromise to implement the *Sejdić and Finci* ruling of the European Court. We were also told that appointments to Council of Europe bodies by the Presidency would be done after the election of the judge of Bosnia-Herzegovina to the European Court of Human Rights, scheduled for the Parliamentary Assembly of the Council of Europe June part-session.²
11. We will have to wait and see but we are not very optimistic: the Joint Interim Working Group of both houses of parliament, tasked with preparing amendments to implement the *Sejdić and Finci* case, has not met since March 2012 because they are waiting for a political agreement between the party leaders. We also spoke to the members of the Intersectoral Working Group that was supposed to come up with amendments to the election law, the law on conflict of interest and the law on political party financing. No agreement was reached there either.

² The election had to be postponed since one of the candidates withdrew.

12. In **Mostar**, our meetings focused on the implementation of the decisions of the Constitutional Court of Bosnia-Herzegovina that had cancelled in November 2011 and February 2012 a number of provisions specific to the election system in Mostar.³ Mostar is a divided city⁴ and its Statute was imposed by the High Representative in 2004. It is, with Sarajevo and Brcko, the only city in Bosnia-Herzegovina where the mayor is indirectly elected.

13. Local elections are slated throughout the country for October 2012 but, given the existing legal vacuum, the Central Election Commission considered it could not organise elections in Mostar. We spoke to the current mayor, the City Council, the cantonal Prime Minister and the Mostar Mufti. The situation is very tense: the Bosniaks are unwilling to accept the Croat proposal to amend the election law to make the city a single electoral constituency, because the Croats would then have the majority (which was Bosniak before the war).

14. The Croats consider that the decisions of the Constitutional Court can only be implemented by giving each vote the same weight. There is no agreement in sight: the Working Group established by the City Council has not been able to reach a consensus and the Intersectoral Working Group at State level, whose mandate ended on 1 May 2012, also failed to agree on amendments.

15. One positive development is the first instance judgment of 27 April 2012 of the Mostar Municipal Court: municipalities and schools in Stolac and Caplijna were ordered to end the practice of two schools under one roof and to provide children with an integrated and joint curriculum by 1 September 2012. It will probably be appealed but the NGO Vasa Prava intends to file other law suits.

16. In **Banja Luka**, we met the Speaker of the Republika Srpska (RS) National Assembly, two opposition party leaders and Transparency International. RS President Milorad Dodik cancelled our meeting at the very last moment.

17. Our main topic concerned the failure, on 26 April 2012, to adopt the amendments to the Constitution of Republika Srpska. Work on these amendments started in 2006, the European Commission for Democracy through Law (Venice Commission) provided an Opinion in 2008, the National Assembly voted in favour in 2009. But the 29 amendments ultimately failed in the RS Council of Peoples where, in order to pass, they had to get the majority of each caucus (Serb, Croat, Bosniak and Others). In the Bosniak caucus, the SDA voted against each of the 29 amendments, including the one abolishing the death penalty. We were told by the RS National Assembly Speaker that for the time being the RS Government had no intention of restarting the constitutional reform process.

18. We also discussed local elections in Srebrenica, which today is located in Republika Srpska. In 2008, an exception was made to the election law: voters could register to vote in Srebrenica even if they no longer lived there. This was very important for the Bosniaks, because they could not accept that the mayor of a city where genocide had been committed could be a Serb. Serbs are now a majority in Srebrenica, as opposed to the pre-war population. No exception will be made for the 2012 local elections. We urged the RS authorities to present a consensual Serb candidate and to avoid any move that could fuel ethnic resentment, such as building an orthodox church in full view of the Potocari memorial to the victims in Srebrenica.

19. Our discussions with the opposition leaders from the PDP (Mladen Ivanić, a member of our Committee, and Dragan Cavić from the DP) focused on the slide towards authoritarianism of the RS ruling party, Dodik's SNSD, their total control of the media and the very high level of corruption.

Subsequent developments

20. On 27 June 2012, the representatives of the executive authorities and the main political parties attended the launch of the "High Level Dialogue on the EU Accession Process" in Brussels upon the invitation of the European Commissioner for Enlargement and European Neighbourhood Policy, Štefan Füle. This new initiative aims to help Bosnia and Herzegovina to move forward in the EU accession process by explaining the requirements and the methodology of accession negotiations and concretely what is expected from Bosnia and Herzegovina in the EU accession process.

³ Mostar is divided into six city zones and a central zone: each city zone elects three councillors, independently of the size of the constituency, while the residents in the so-called central zone can only vote for the 17 councillors elected in a city-wide electoral constituency.

⁴ The 2004 Statute was supposed to achieve reunification of the city. We were told that administrative and institutional reunification had been achieved, at least to some extent, but that most utilities (water, sewage, electricity, fire brigades) remained divided between Mostar East and Mostar West.

21. All participants agreed to a roadmap which, if timely and successfully implemented, could – hopefully – lead the country to submit a credible membership application to the EU before the end of the year.

22. The authorities and political parties from Bosnia and Herzegovina agreed: to ensure a political agreement on the implementation of the 2009 *Sejdić and Finci* judgment of the European Court of Human Rights, to put constitutional amendment proposals before parliament by 31 August 2012 and to change the Constitution by November.

23. They also agreed: to ensure that positions communicated to the EU Institutions reflect the discussions with all competent Institutions and authorities in Bosnia and Herzegovina, following effective coordination. A functioning coordination mechanism needs therefore to be put in place by 31 October 2012; to improve and strengthen the efficient functioning of the administration at all levels of government in order for Bosnia and Herzegovina to be in a position to adopt, implement and enforce the laws and rules of the EU; to ensure that Bosnia and Herzegovina coordinates well and replies no later than 31 October 2012 to the list of questions on selected chapters, which were discussed at the meeting as an illustration of the necessary requirements to prepare for the EU accession process- Public Procurement (Chapter 5) and Environment (Chapter 27).

24. The leaders of seven political parties met in Banja Luka on 13 July 2012 to discuss implementation of the roadmap but, once again, no agreement was reached with regard to the constitutional amendments.

25. At State level, the procedure for removing the three SDA ministers is still ongoing: on 25 June 2012, the Chairman of the Council of Ministers formally requested parliament to confirm their dismissal. This requires a simple majority in both Houses. On 5 July 2012, the House of Representatives voted in favour of dismissal. Things were more tricky in the House of Peoples where the SDA holds three seats out of the five reserved for Bosniaks. At its session on 19 July 2012.. the Bosniak caucus invoked “vital national interest” to block the voting on the removal of its ministers. The question will ultimately be decided by the Constitutional Court of Bosnia and Herzegovina. The new coalition agreement is not only opposed by the SDA, it has also created havoc within the SDP party itself. On 23 July, Mr Zejko Komsic, vice-President of the SDP, who had been re-elected in October 2010 to the Croat seat in the Presidency of the country, announced that he was leaving the SDP. Komsic, the most popular politician in the country, will probably set up his own multiethnic party.

26. In the Federation, the SDA Speaker of the House of Representatives was dismissed with a simple majority vote. However, a two-thirds majority is required to dismiss the President and the Vice-Presidents of the Federation and the new coalition partners will probably not be able to muster 66 votes out of 98. It will also be difficult to find a replacement for the ministers as the Federation government must be composed of eight Bosniaks, five Croats and three Serbs. Canton 10 (Livno) still has no government almost 20 months after the October 2010 elections.

27. In view of the ongoing political bickering and the upcoming local elections, it remains to be seen if any progress will be made within the deadlines specified by the European Union. Frankly, we doubt it.

28. We intend to visit the country again towards autumn 2012 in order to gather more information for the preparation of a full monitoring report on the fulfilment of obligations and commitments by Bosnia and Herzegovina, which we intend to submit to the Assembly in 2013.

APPENDIX

Programme of the fact-finding visit to Sarajevo, Mostar and Banja Luka (3-7 June 2012)

Ms Karin S. WOLDSETH, member of the Parliament

Mr Egidijus VAREIKIS, member of the Parliament

Ms Caroline RAVAUD, Head of Department of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe

Sunday, 3 June 2012

Evening Arrival of the delegation

Monday, 4 June 2012 Sarajevo

- 10:00-10:30 Meeting with Presidency of Bosnia and Herzegovina
- 10:30-11:15 Meeting with the Minister of Foreign Affairs
Mr Zlatko LAGUMDŽIJA
- 12:15-13:15 Meeting with the Ombudsman of Bosnia and Herzegovina
- 15:00-16:00 Meeting Office of the High Representative
Mr Valentin INZKO, High Representative for Bosnia and Herzegovina
- 16:15-17:15 Meeting with Mr Tobias FLESSENKEMPER, EUPM Senior Policy Officer
- 17:30-18:45 Meeting with the representatives of the NGOs
- HCHR BiH (Ms Vera JOVANOVIĆ, Mr Muhamed DŽEMIDŽIĆ)
- Human Rights House (Mr Srdjan DIZDAREVIĆ)
- Center for Civic Initiative (Mr Zlatan ORHANOVIĆ)
- Vaša Prava (Our Rights) (Mr Emir PRCANOVIC)
- 19:30 Dinner hosted by HE Mr Bosse HEDBERG, Ambassador of Sweden
Ambassadors of Norway, Switzerland and USA

Tuesday, 5 June 2012 Sarajevo (continued) & Mostar

- 09:00-10:00 Meeting with the Central Election Commission of Bosnia and Herzegovina
- Mr Branko PETRIĆ, President of the Central Election Commission of Bosnia and Herzegovina - Ms Irena HADZIABDIĆ, member of the Central Election Commission of Bosnia and Herzegovina
- 10:00-11:15 Meeting with the Collegiums of the Parliament of Bosnia and Herzegovina
- Mr Milorad ŽIVKOVIĆ, House of Representatives, Speaker
- Mr Denis BEĆIREVIĆ, House of Representatives, Deputy Speaker
- Mr Božo LJUBIĆ, House of Representatives, Deputy Speaker
- Mr Ognjen TADIĆ, House of Peoples, Deputy Speaker
- 11:30-12:15 Meeting with Deputy Minister of Civil Affairs of Bosnia and Herzegovina
Ms Denisa SARAJALIC-MAGLIC
- 12:15-13:30 Meeting with representatives of BHPA Legal-Constitutional committees of both houses and working group on *Sejdić and Finci* and Head of Commission for the Amendments to the Election Law and Law on Conflict of Interest
- Mr Šefik DZAFEROVIĆ, Chairman
- Mr Halid GENJAC, Chairman
- Ms Aleksandra PANDUREVIĆ
- Ms Borjana KRIŠTO
- Mr Krstan SIMIĆ
- Mr Mate FRANJEVIĆ

- 13:30-15:00 Working lunch with the members of the delegation of Bosnia and Herzegovina to the Parliamentary Assembly of the Council of Europe
- Mr Mladen IVANIĆ
- Mr Mladen BOSIĆ
- Ms Borjana KRIŠTO
- 15:15-17:30 Departure to Mostar
- 18:00-18:45 Meeting with representatives of NGO
Youth Forum Stolac (Mr Nerin DIZDAR, Mr Demir MAHMUTČEHAJIĆ)
- 19:00-21:00 Working dinner with Mr Chris BENNETT, Office of the High Representative, Mostar

Wednesday, 6 June 2012 Mostar (continued) & Banja Luka

- 09:00-10:00 Meeting with representatives of Mostar City Council
- Mr Murat ĆORIĆ, President
- Ms Slađana GOTOVAC, Deputy President
- Mr Danijel VIDOVIĆ, Deputy President
- 10:00-11:00 Meeting with the Mayor of Mostar
Mr Ljubo BESLIĆ
- 11:15-12:15 Meeting with Mostar Mufti, Mr Seid Efendija SMAJKIĆ
- 12:15-13:15 Meeting with representative of the Herzegovina-Neretva Canton Government
Prime Minister, Mr Denis LASIĆ
- 14:00-18:00 Departure to Banja Luka
- 19:30-21:00 Working dinner (with representative of Transparency International)

Thursday, 7 June 2012 Banja Luka (continued) & Zagreb

- 09:00-10:00 Meeting with Mr Igor RADOJIČIĆ, Speaker of the National Assembly of the Republika Srpska
- 11:15-12:00 Meeting with Mr Mladen IVANIĆ, President of PDP
- 12:00-12:45 Meeting with Mr Dragan ČAVIĆ, President of DP
- Afternoon Departure to Zagreb