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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 on the electoral system**

#### **Prepared by the Secretariat under the responsibility of the rapporteurs**

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#### **1. Introduction**

1. On becoming a member of the Council of Europe on 24 April 2002, Bosnia and Herzegovina undertook "to review within one year, with the assistance of the European Commission for Democracy through Law (Venice Commission), the electoral legislation in the light of Council of Europe standards, and to revise it where necessary".<sup>2</sup>

2. The Parliamentary Assembly has periodically reminded Bosnia and Herzegovina of this obligation and urged it to adopt a new constitution with a view to replacing the mechanisms of ethnic representation by representation based on the civic principle, notably by ending the constitutional discrimination against citizens who have not declared themselves members of one of the constituent peoples.<sup>3</sup>

3. In 2009, in the judgment in *Sejdić and Finci v. Bosnia and Herzegovina*,<sup>4</sup> the European Court of Human Rights held that the rules restricting the possibility of standing in certain elections in accordance with ethnic criteria amounted to discrimination in breach of the Convention. Bosnia and Herzegovina has therefore been in breach of its obligations since 2009.

4. The Committee of Ministers of the Council of Europe has adopted numerous decisions and four interim resolutions calling on the authorities and political leaders to bring Bosnia and Herzegovina's constitutional and legislative framework into line with the Convention. In spite of these measures and the significant support offered to the authorities by the Council of Europe and the European Union, three general elections were held under discriminatory rules, in 2010, 2014 and 2018. And on 4 May, the Central Election Commission of Bosnia and Herzegovina called general elections for 2 October 2022 without it having been possible to implement the necessary reforms. For the fourth time in 13 years, general elections are therefore going to be held in Bosnia and Herzegovina pursuant to constitutional provisions in breach of the Convention.

<sup>1</sup> Document declassified by the Monitoring Committee at its meeting on 23 June 2022.

<sup>2</sup> [Opinion No 234 \(2002\)](#) on Bosnia and Herzegovina's application for membership of the Council of Europe, adopted by the Parliamentary Assembly of the Council of Europe on 22 January 2002, paragraph 15 iv) b).

<sup>3</sup> [Resolution 1383 \(2004\)](#), paragraph 3, [Resolution 1513 \(2006\)](#), paragraph 20, [Resolution 1626 \(2008\)](#), paragraph 8.

<sup>4</sup> Case of *Sejdić and Finci v. Bosnia and Herzegovina*, 15/12/2009.

5. These elections are taking place against a worrying background. Many observers agree that Bosnia and Herzegovina is going through its worst political crisis since the end of the war.<sup>5</sup> The National Assembly of Republika Srpska passed several bills committing the Entity to a secessionist path in December 2021, while the main party representing Croat voters is boycotting the operation of certain institutions because of disagreements regarding electoral reform.

6. Bosnia and Herzegovina's institutions are known for their complexity. Before the holding of elections that will be of vital importance for the country and the region, we believed it would be useful briefly to take stock of the current electoral system and the various reform options that have been proposed.

## 2. Bosnia and Herzegovina's institutions: one State, two Entities, three constituent peoples

7. The details of how Bosnia and Herzegovina's institutions operate have already been described and analysed at length,<sup>6</sup> so there is no need to go over them again here. We will only consider the institutions whose composition will be determined by the general elections.



8. Bosnia and Herzegovina is a federal State which comprises two Entities – the Federation of Bosnia and Herzegovina (FB-H) and the Republika Srpska (RS) – and a separate territory, Brčko district. Each Entity has its own constitution, government and bicameral parliament, its own police force, its own judiciary (including supreme and constitutional courts) and legal system, as well as its own education system and tax system. In the Federation, each canton also has its own constitution, government and cantonal assembly and exclusive competences. There are therefore a constitution of the State of Bosnia and Herzegovina, two Entity constitutions and 10 Federation canton constitutions.

<sup>5</sup> See: [61st report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations](#).

<sup>6</sup> See, in particular, Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative, Venice Commission, [CDL-AD\(2005\)004](#); and report [Doc. 14465](#) of 8 January 2018 on The honouring of obligations and commitments by Bosnia and Herzegovina.

## 2.1. Demographic data

9. The only population census since the end of the war was conducted in 2013. The total population stood at some 3.5 million. Bosnians declaring themselves “Bosniaks” made up 50.11% of the total, Bosnian “Serbs” 30.78%, Bosnian “Croats” 15.43% and “other” Bosnians 2.73%. In Republika Srpska, 81% of the population declared themselves to be Serbs, 14% Bosniaks and 2.4% Croats. In the Federation, 70% of the population declared themselves to be Bosniaks, 22% Croats and 2.5% Serbs.

10. In the Preamble to the Constitution of Bosnia and Herzegovina, Bosniaks, Croats and Serbs are described as “constituent peoples”. As has been stated by the European Court of Human Rights, classification between “Croats”, “Bosniaks” and “Serbs” is not based on a precise criterion. “In the former Yugoslavia, a person’s ethnic affiliation was decided solely by that person, through a system of self-classification. Thus, no objective criteria, such as knowledge of a certain language or belonging to a specific religion were required. There was also no requirement of acceptance by other members of the ethnic group in question. The Constitution contains no provisions regarding the determination of one’s ethnicity: it appears that it was assumed that the traditional self-classification would suffice.”<sup>7</sup>

11. According to Judge Ljiljana Mijović, “in the context of Bosnia and Herzegovina, ethnic affiliation is not to be taken as a legal category, since it depends exclusively on one’s self-classification, which represents *stricto sensu* a subjective criterion. It actually means that everyone has a right to declare (or not) his or her affiliation with one ethnic group. It is not obligatory to do so. There is neither a legal obligation to declare one’s ethnic affiliation, nor objective parameters for establishing such affiliation.”

12. Ethnic affiliation therefore boils down to voluntary declaration of membership of a constituent people or of the “Others” category. Such declarations are made by parents for their children when they are registered in the civil register. Upon reaching adulthood (18 years), citizens can have the entries in the registers changed by means of simple declarations.<sup>8</sup> In the case of candidates for election, membership of the constituent people is indicated when the electoral lists are submitted and cannot be altered during the electoral cycle<sup>9</sup> (four years).

13. The Constitutional Court of B-H has ruled that the three peoples – Bosniaks, Serbs and Croats – are constituent and equal throughout the country. The principle of the equality of the constituent peoples prohibits any special privileges for one or two of these peoples, any domination in government structures or any ethnic homogenisation through segregation based on territorial separation.<sup>10</sup>

## 2.2. Common features of Bosnia and Herzegovina’s institutions: collegiate presidencies, bicameral parliaments and voting systems

14. There are a range of legal sources for the electoral system: the Constitution of Bosnia and Herzegovina; the Constitutions of the Entities; the constitutions of the 10 cantons in the Federation; the Election Law of Bosnia and Herzegovina and the election laws applied in each of the Entities. In spite of the range of sources, some common features do exist.

15. The three Constitutions provide for the representation of the three constituent peoples at the head of the executive: a collegial presidency at the State level and a president and two vice presidents at the Entity level. The State Presidency and the RS Entity Presidency are elected directly in first-past-the-post votes. In the FB-H Entity, the Presidency is elected by Parliament.

16. The State and the Entities have bicameral parliaments comprising a house representing the constituent peoples and a house representing the population. The composition of the houses representing the constituent peoples<sup>11</sup> is determined according to strict ethnic criteria: each constituent people has equal representation.<sup>12</sup> The representatives are elected indirectly.

17. The houses representing the population<sup>13</sup> are all elected by the same system of proportional representation, with two tiers of seat allocation. The territory is divided into constituencies – which differ for

<sup>7</sup> European Court of Human Rights, Sejdić and Finci v. Bosnia and Herzegovina, [Judgment of 22/12/2009](#), paragraph 11.

<sup>8</sup> See, for example, Article 45a of Law 47/2018, Official Gazette of Republika Srpska.

<sup>9</sup> Cf. Election Law of Bosnia and Herzegovina, Article 4.19, paragraphs 4, 5 and 6.

<sup>10</sup> Decision of the Constitutional Court of Bosnia and Herzegovina, case U 5/98.

<sup>11</sup> House of Peoples of the State, RS Council of Peoples, House of Peoples of the Federation.

<sup>12</sup> The Entity Constitutions also provide for the presence of representatives of “Others”, but that of the State of B-H does not do so.

<sup>13</sup> The House of Representatives of the State, the RS National Assembly and the House of Representatives of the Federation.

each election – in each of which proportional list votes are held. The number of seats for each constituency is determined by the Election Law.<sup>14</sup> The allocation of seats according to the number of votes received is calculated using the “Sainte-Laguë” method.

18. Thereafter, some seats are allocated as “compensatory” seats. These are distributed between the lists which received more than 3% of the votes, with account being taken of residual votes that did not give rise to seats being won in the constituencies on account of threshold effects.

19. This system ensures very high proportionality between the votes cast and the breakdown of seats, guaranteeing that all parties which won more than 3% of the votes are represented.

### 2.3. Role of the Central Election Commission

20. The holding of elections has been entrusted to an institution which is independent of the Entities. The legal framework for elections is set at the level of the State of B-H, and the Entities can decide on certain limited adjustments while complying with the rules set at central level.

21. The Election Law was adopted in 2001 and has been amended several times. It assigns very broad responsibilities to the Central Election Commission (CEC), the significance and scale of whose powers make it unique. In addition to its electoral responsibilities, it is also tasked with implementing the law on Conflicts of Interest and the Law on Financing of Political Parties. The CEC is composed of seven members: two representatives of each of the constituent peoples and a representative of other citizens. They are elected by the House of Representatives of B-H from a list drawn up by a special parliamentary committee.

22. The funding for the CEC comes from the budget of the State of B-H. The CEC independently manages the funds for the exercise of its powers and the administration of elections, within the limits of its approved budget. The Council of Ministers of B-H is statutorily required to provide the CEC with the funds within 15 days of elections being called but has been unable to do so because of political obstruction, which is calling the holding of the elections into question. On 7 June, the High Representative imposed three decisions to ensure the funding of the elections, in place of the Council of Ministers. The High Representative’s decisions provide the CEC with the sums required to resolve the funding issues for the 2022 elections, while also ensuring “automatic and continuous” election funding as well as temporary financing should similar situations arise in which the budget is not adopted in the future.<sup>15</sup>

## 3. The institutions of the Republika Srpska Entity

23. The Constitution of Republika Srpska, which was adopted in 1992 and has been amended several times, was aimed at the establishment of a unitary state.

24. Executive power is vested in a President and two Vice-Presidents and the government headed by a Prime Minister. Legislative power is vested in a bicameral parliament comprising the National Assembly of Republika Srpska and the Council of Peoples.

### 3.1. Election of the President and the Vice-Presidents of the Entity

25. The President and the two Vice-Presidents are elected directly. Each constituent people must have a member in the presidency.

Candidate	Votes	%	Mandate
<b>CVIJANOVIĆ ŽELJKA (SNSD)</b>	<b>319 699</b>	<b>47.04</b>	<b>President (Serb)</b>
GOVEDARICA VUKOTA (Savez Za Pobjedu)	284 195	41.82	
<b>SALKIĆ RAMIZ - ZAJEDNO ZA BIH</b>	<b>21 292</b>	<b>3.13</b>	<b>Vice-President (Bosniak)</b>
DURAKOVIĆ ČAMIL (Nezavisni Blok)	10 299	1.52	
LUKIĆ RADOMIR (SDS)	6 021	0.89	
<b>JERKOVIĆ JOSIP (HDZ BIH)</b>	<b>5 881</b>	<b>0.87</b>	<b>Vice-President (Croat)</b>
MATIJAŠEVIĆ DARKO (SNS)	4 346	0.64	
(...)	(...)	(...)	

Results of the last presidential election in RS: Mr Cvijanovic was elected President with 47.04% of the votes. Mr Salkic (3.3 %) and Mr Jerkovic (0.87%) were elected Vice-Presidents.

<sup>14</sup> Article 9.2 of the Election Law of Bosnia and Herzegovina.

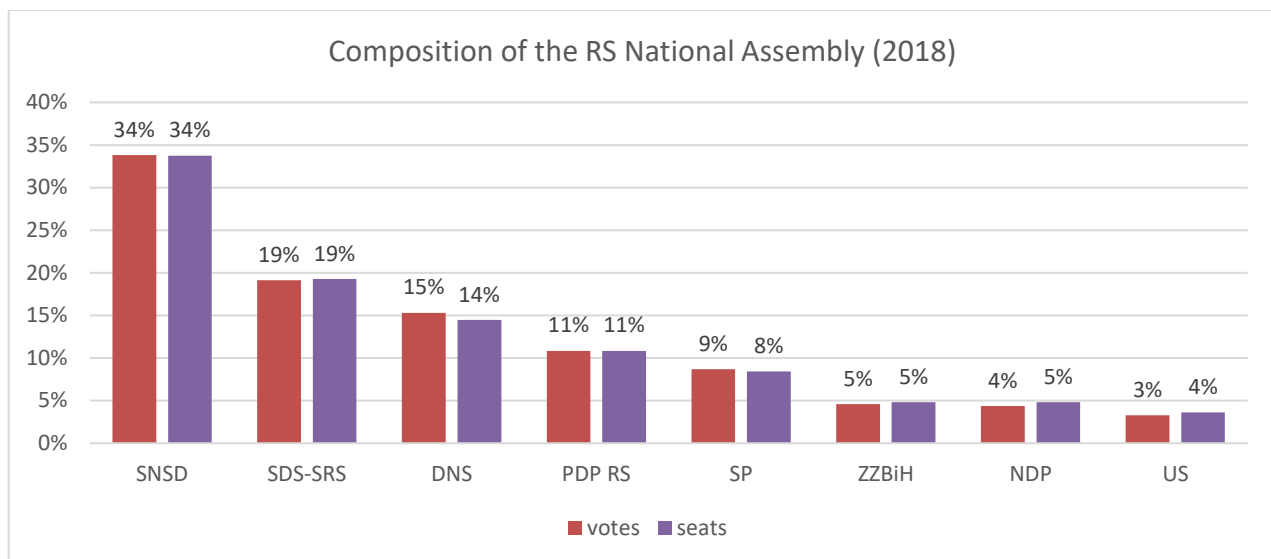
<sup>15</sup> [Statement by the HR Christian Schmidt on the financing of 2022 General Elections in BiH | Office of the High Representative \(ohr.int\)](#)

26. Each registered voter in RS votes for a candidate, regardless of the constituent people they belong to. The candidate of each constituent people receiving the most votes is elected. The person among the three elected candidates with most votes is appointed president, while the other two are vice-presidents.

### 3.2. National Assembly of Republika Srpska

27. The National Assembly of RS consists of 83 members; 62 are elected in 12 multi-member constituencies under the proportional representation system, with the remaining 21 seats being allocated as compensatory seats. The Assembly must include at least four representatives of each constituent people.

28. Constituency boundaries and the number of seats are determined by the laws of the RS Entity. Since 2012, the Entity has been divided into nine constituencies. The electoral register for the 2022 elections was validated by the Central Election Commission when the elections were announced: the least populated constituency has 69 983 voters and elects four representatives, while the most populated has 276 958 voters and elects 12 representatives to the Assembly.



29. The National Assembly of RS has held three ordinary sessions and nine extraordinary sessions over the past 12 months.

### 3.3. The Council of Peoples of Republika Srpska

30. The Council of Peoples, which was established in 2003, has 28 members, i.e., eight from each constituent people and four representatives of the “Others” group. They are appointed by the representatives of each respective constituent people in the National Assembly.

## 4. The institutions of the Federation of Bosnia and Herzegovina Entity

31. The Federation of Bosnia and Herzegovina Constitution, which was adopted in June 1994, is based on a compromise between Bosniaks and Croats. It establishes a highly decentralised state divided into 10 cantons.

32. Executive power is vested in a President and two Vice-Presidents and a government. Legislative power is vested in a bicameral parliament comprising the House of Representatives and the House of Peoples. Each canton elects a cantonal assembly.

33. The federal structure of the Entity produces a system of cascading indirect elections, with the cantonal assemblies appointing the House of Peoples of the Entity, which takes part in the appointment of the House of Peoples of the State and that of the Presidency of the Entity. Because of a boycott by some of the Croat representatives, these bodies have been deadlocked since the last elections in 2018 and the government has been confined to dealing with day-to-day business for four years.



#### 4.1. The cantonal assemblies

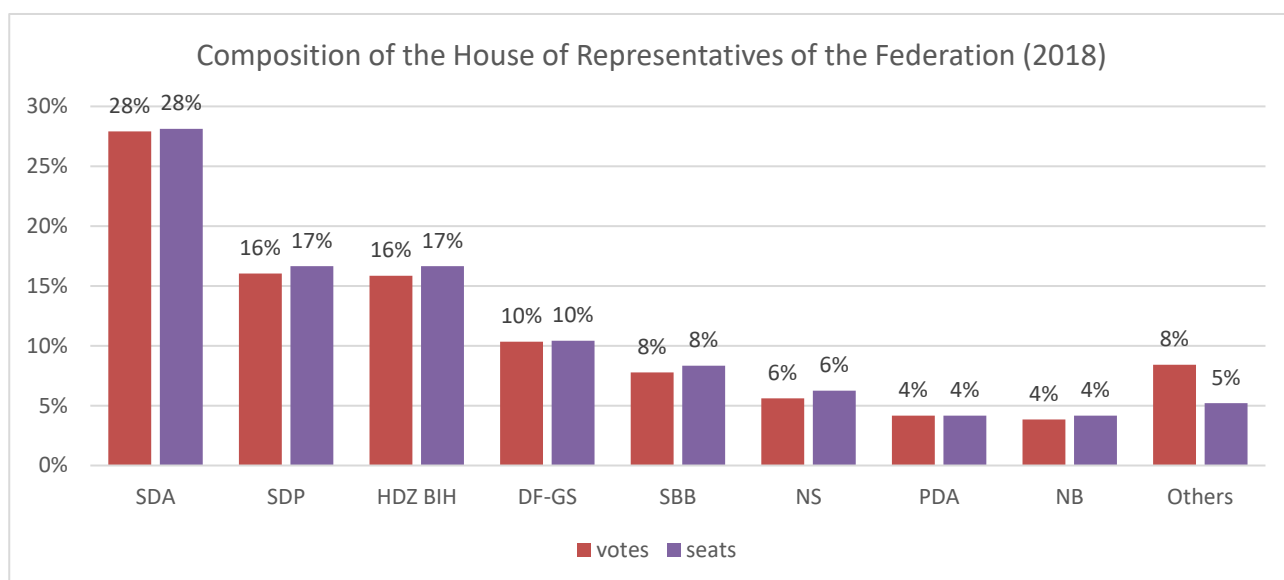
34. The cantonal assemblies of the 10 cantons in the Federation are elected under the proportional list system, with use of the Sainte-Laguë method. No provision is made for compensatory seats or for specific representation for the constituent peoples. The canton boundaries are such that five are Bosniak majority, three are Croat majority and two are mixed.

35. The cantonal assemblies have between 20 and 35 members depending on the number of voters registered in the cantons.

#### 4.2. The House of Representatives of the Federation

36. The House of Representatives is composed of 98 members directly elected for four-year terms. Constituency boundaries and the number of seats in each are determined by the laws of the Entity, in line with the rules set in the national election law.

37. In 2022, three quarters of the seats will be distributed among 12 multi-member constituencies.



#### 4.3. The House of Peoples of the Federation

38. The House of Peoples is composed of 58 delegates, who are indirectly elected by the cantonal assemblies of the 10 cantons in the Federation. It must include 17 delegates for each constituent people and seven for the “Others” category.

39. The electoral colleges of the Bosniak, Croat and Serb representatives and “Others” representatives in each canton put forward candidates. The number of delegates for each people elected in each canton is determined by the Central Election Commission on the basis of data from the last population census available, i.e. from 2013. The number of delegates and the breakdown between constituent peoples is determined in proportion to the population of each canton. The Sainte-Laguë method is again used to ensure the best possible proportional representation.

40. The election of the House of Peoples must take place after the cantonal assemblies have been constituted and no later than one month after validation of the election results.

#### 4.4. The Federation President and vice-president

41. The Federation President and vice-presidents are elected indirectly by the House of Peoples. The electoral colleges of the representatives of each constituent people put forward candidates for the presidency. Lists of three candidates, one from each constituent people, are put to the vote in the House of Representatives. The list which receives the majority of votes in the House of Representatives must then obtain a majority in the House of Peoples, with a majority within each constituent people electoral college. If

this is not obtained, a fresh attempt is made. If it is still impossible to obtain the dual majority in the House of Peoples, the House of Representatives has the final say.

#### **4.5. Functioning of the institutions**

42. The Federation was unable to form a government following the general elections in 2018. The government elected for the period from 2014 to 2018 has remained in place to deal with day-to-day business.<sup>16</sup> This situation is directly related to the dispute surrounding the election law: the HDZ BiH, the leading Croat party in the House of Representatives, is refusing to nominate government members until an agreement has been reached on electoral reform.

43. The two Houses of Parliament have done very little work: 10 sessions have been held over the past 12 months.<sup>17</sup>

44. This deadlock is affecting the composition of the Constitutional Court of the Federation: only five of the nine members are still in post. Four posts remain vacant because of the refusal of the Federation President (HDZ BiH) to submit proposed nominations to the House of Peoples. There is only just a quorum and decisions have to be taken unanimously. Moreover, the panel tasked with ruling on disputes involving a vital national interest of one of the constituent peoples can no longer operate (the quorum rules there are different).

### **5. The institutions of the State of Bosnia and Herzegovina**

45. The Constitution of the State of Bosnia and Herzegovina comes on top of the those of the two Entities. It was negotiated in the context of the Dayton Peace Agreements between the representatives of the warring factions. It has never been put to the citizens of Bosnia and Herzegovina for approval and is the only case of a constitution that has never been officially published in the official languages of the country concerned.

46. The Constitution provides for a tripartite Presidency consisting of one Bosniak and one Croat, elected from the Federation, and one Serb elected from Republika Srpska. There is a Council of Ministers of the State of Bosnia and Herzegovina. Its Chair is appointed by the tripartite Presidency and confirmed by the House of Representatives.

47. Legislative power is vested in a bicameral parliament comprising a House of Representatives and a House of Peoples. While the name is the same as for the parliament of the Federation Entity, they are separate institutions.

#### **5.1. The Presidency of Bosnia and Herzegovina**

48. Each of the three members of the Presidency is elected in a first-past-the-post vote from among the candidates from the same constituent people.

49. The Serb member of the Presidency is elected by voters registered in Republika Srpska, regardless of their ethnic affiliation. Only candidates who have declared themselves to be Serbs can stand. The election is held in a single round throughout Republika Srpska, and the candidate with the most votes is elected.

50. The Bosniak member and the Croat member of the Presidency are elected by voters registered in the territory of the Federation of Bosnia and Herzegovina. In practice, this involves two parallel elections in the same constituency: voters are presented with two lists of candidates, i.e. Croat candidates and Bosniak candidates. Each voter is free to vote either for a Croat candidate or for a Bosniak candidate. The candidate from each list with most votes is elected.

<sup>16</sup> 13 of the 16 ministers are still in post. Two ministers have died and one resigned; they have not been replaced.

<sup>17</sup> Cf. 61st report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations, paragraph 66.

Entity	Candidate	Votes	Percentage	Result
RS	<b>Milorad Dodik (SNSD)</b>	<b>368 210</b>	<b>53.88 %</b>	<b>Elected</b>
	Mladen Ivanić (Savez Za Pobjedu)	292 065	42.74 %	
	Mirjana Popović (Srpska Napredna Stranka)	12 731	1.86 %	
	Gojko Kličević (SDS)	10 355	1.52 %	
FB-H Bosniak lists	<b>Šefik Džaferović (SDA)</b>	<b>212 581</b>	<b>36.61 %</b>	<b>Elected</b>
	Denis Bećirović (SDP)	194 688	33.53 %	
	Fahrudin Radončić (SBB)	75 210	12.95 %	
	Mirsad Hadžikadić (Platforma Za Progres)	58 555	10.09 %	
	Senad Šepić (Nezavisni Blok)	29 922	5.15 %	
	Amer Jerlagić (Stranka Za Bosnu I Hercegovinu)	9 655	1.66 %	
FB-H Croat lists	<b>Željko Komšić - Demokratska Fronta</b>	<b>225 500</b>	<b>52.64 %</b>	<b>Elected</b>
	Dragan Čović (HDZ BiH)	154 819	36.14 %	
	Diana Zelenika (HDZ 1990)	25 890	6.04 %	
	Boriša Falatar (Naša Stranka)	16 036	3.74 %	
	Jerko Ivanković-Lijanović (Narodna Stranka Radom Za Boljitak)	6 099	1.42 %	

51. There is therefore no link between the constituent people of the voters and that of the candidates they choose. Serb voters in the FB-H Entity cannot elect the Serb member of the Presidency, while Bosniak and Croat voters resident in the RS Entity cannot elect the Bosniak or Croat member of the Presidency. However, Serb voters in the FB-H Entity can vote for the Croat or Bosniak member of the Presidency and Bosniaks and Croats in RS can vote for the Serb member. The combined effect of the ethnic affiliation criterion to be entitled to stand and of the residence criterion to be entitled to vote excludes many individuals from the election process. Voter turnout in the 2018 election was 54% in Republika Srpska and 48% in the Federation.

52. According to the Venice Commission, “if the members of the Presidency elected from an Entity represent all citizens residing in this Entity and not a specific people, it is difficult to justify that they must identify themselves as belonging to a specific people. Such a rule seems to assume that only members of a particular ethnicity can be regarded as fully loyal citizens of the Entity capable of defending its interests. The members of the Presidency have a veto right whenever there is a violation of vital interests of the Entity from which they were elected. It cannot be maintained that only Serbs are able and willing to defend the interests of the RS and only Croats and Bosniacs the interests of the Federation. The identity of interests in this ethnically-dominated manner impedes the development of a wider sense of nationhood.”<sup>18</sup>

53. When the issue was put to it directly, the Court of Human Rights held these constitutional provisions to be in breach of the Convention.<sup>19</sup> The inability of citizens to stand in elections to the Presidency of the State of Bosnia and Herzegovina because they had not declared affiliation with one of the constituent peoples or on account of a combination of their affiliation to a constituent people and their place of residence amounted to unjustified discrimination.

54. Conversely, the HDZ BiH (the majority party of the Croat Bosnians in the House of Representatives) wishes to strengthen the ethnic nature of voting so that each member of the Presidency is elected solely by voters from the same constituent people.

55. The Presidency of Bosnia and Herzegovina is supposed to seek consensus, so its operation depends greatly on the people that make it up. The term coming to an end has been marked by opposition on almost all issues between the Serb member of the Presidency (Milorad Dodik) and the Bosniak (Šefik Džaferović) and Croat (Željko Komšić) members. In recent months, the Presidency has held only three ordinary sessions and four emergency sessions. According to the High Representative, Mr Dodik has blocked the Presidency’s work either by not attending sessions or by voting against all agenda items, including adoption of agendas.<sup>20</sup>

## 5.2. The Parliament of Bosnia and Herzegovina

56. The Constitution provides for a bicameral system with a House of Representatives and a House of Peoples, both having the same legislative powers.

57. According to the Venice Commission, “bicameral systems are typical for federal states and it is therefore not surprising that the BiH Constitution opts for two chambers. However, the usual purpose of the second

<sup>18</sup> CDL-AD(2005)004, paragraph 69.

<sup>19</sup> Judgments in *Sejdić and Finci v. Bosnia and Herzegovina* (2009), *Zornic v. Bosnia and Herzegovina* (2014), *Slaku v. Bosnia and Herzegovina* (2016), *Pilav v. Bosnia and Herzegovina* (2016), *Pudaric v. Bosnia and Herzegovina* (2020).

<sup>20</sup> Cf. 61st report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations, paragraph 48.



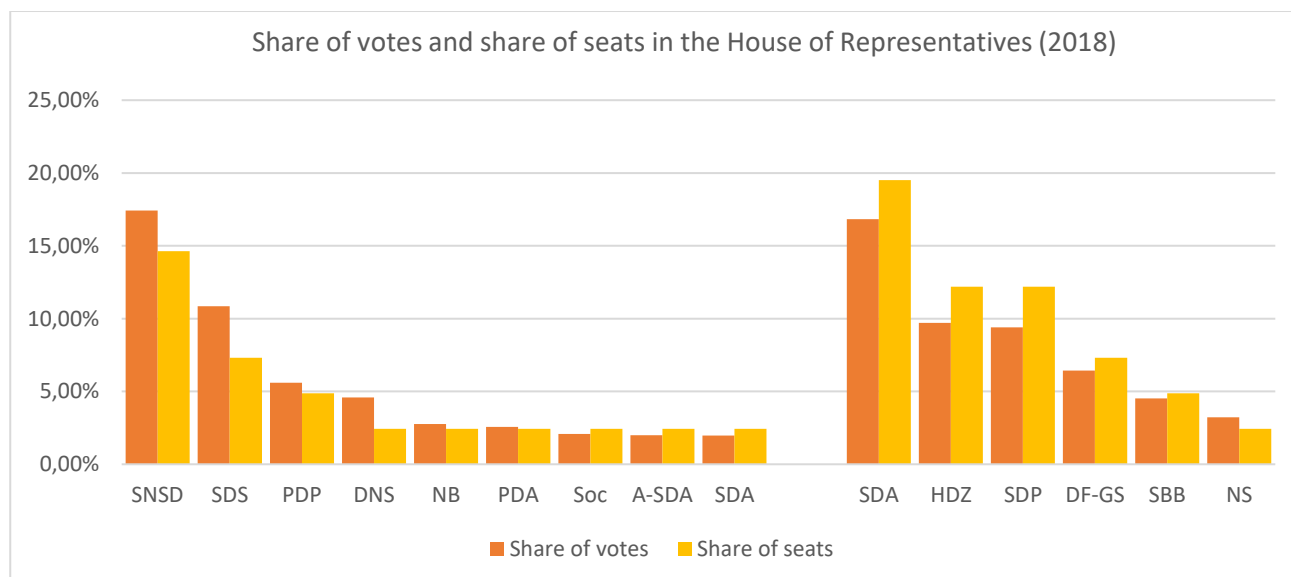
chamber in federal states is to ensure a stronger representation of the smaller entities. (...) In BiH this is quite different: in both chambers two-thirds of the members come from the FBiH, the difference being that in the House of Peoples only the Bosniacs and Croats from the Federation and the Serbs from the RS are represented. The House of Peoples is therefore not a reflection of the federal character of the state but an additional mechanism favouring the interests of the constituent peoples. The main function of the House of Peoples under the Constitution is indeed as the chamber where the vital interest veto is exercised.”<sup>21</sup>

### 5.3. The House of Representatives of Bosnia and Herzegovina

58. The House of Representatives is made up of 42 members, i.e. 28 from the FB-H Entity and 14 from the RS Entity. Among the 28 members from the Federation, 21 are elected in five multi-member constituencies, and seven are compensatory seats. In RS, nine are elected in three constituencies and five are compensatory seats.

59. Constituency boundaries and the number of seats allocated to each constituency are determined by the Election Law.

60. The breakdown of seats between the two Entities (2/3 for the Federation, 1/3 for RS) follows the approach of representation of the constituent peoples, not representation of the population (voters registered in Republika Srpska make up 37.4% of the total electorate). This results in slight under-representation of voters from RS in the House of Representatives.



61. Operation of the House of Representatives is being severely disrupted by the boycott decided by the parties from RS. The House has held only four ordinary sessions and one emergency session over the past 12 months, usually without the attendance of the members from RS.

### 5.4. The House of Peoples of Bosnia and Herzegovina

62. The House is made up of 15 members, i.e. five from each constituent people. The members of the Serb electoral college are elected by the Serb members of the RS National Assembly. The Croat members are elected by the Croat delegates in the House of Peoples of the FB-H and the Bosniak members by the Bosniak delegates.

63. People who do not identify as Bosniaks, Croats or Serbs are therefore totally excluded from standing for the House of Peoples. Moreover, only Serbs resident in RS and Croats and Bosniaks resident in the Federation may be elected. No Serbs from the FB-H and no Croats or Bosniaks from RS may sit in the House of Peoples. A significant share of the population of B-H therefore does not have the right to stand for elections to the House of Peoples.<sup>22</sup> The Strasbourg Court has held that these provisions were discriminatory and were a violation of the right to free elections (violation of Article 14 in conjunction with Article 3 of Protocol No. 1).

<sup>21</sup> [CDL-AD\(2005\)004](#), paragraph 35.

<sup>22</sup> *Ibidem*, paragraph 79.

64. On account of the House of Peoples' composition, its operation is still more dependent on the participation of all the representatives of the constituent peoples. Its activity has been very meagre: it has held only two ordinary sessions and two emergency sessions over the past 12 months and has passed only one piece of legislation, concerning customs duties.