

Hrvatski narodni sabor Bosne i Hercegovine
Hrvatski Dom Herceg Stjepan Kosača
Trg hrvatskih velikana bb (Rondo)
88000 Mostar
Bosnia and Herzegovina



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LETTER
from the President of the Main Council of the Croat National Assembly
of Bosnia and Herzegovina
on the current political crisis in Bosnia and Herzegovina

Excellences,

As the High Representative stated in his Report to the UN Security Council, Bosnia and Herzegovina (BiH) faces “the greatest existential threat since the end of the war”. Separatists from the Republika Srpska entity (RS), including M. Dodik and Serb mainstream politicians from the RS, are endangering the independence of a part of BiH, whereas the so-called “pro-Bosnian” unitarists respond by threatening war, and mentioning “one hundred tanks” as well as the possibility of arming “100 to 200 thousand soldiers” as “credible arguments”.¹ In order to escape the current crisis, it is necessary to understand why BiH, 26 years after the war and the signing of the Dayton Peace Agreement (DPA), is still “a deeply divided society and an unstable state”, and what should be done to make it more stable and functional.

Strategies, goals and narratives related to the crisis in BiH

From the perspective that dominates the Sarajevo-centered domestic and international public, the situation in BiH appears simple. In the RS, Serb nationalists and separatists led by the SNSD and Milorad Dodik are in power, blocking the work of BiH institutions and taking legal and political steps aimed at dividing BiH, e.g., the independence of the RS. They are supported in this process by Serbia, Russia and China, which are attempting to pursue their strategic interests in the Western Balkans through, allegedly, the RS, assisted by “Croat nationalists” who, under the guise of

¹ “Izetbegović za Hayat: na Darivi neće biti granica Srbije, radimo stvari koje nas mogu učiniti opasnim u odbrani zemlje!” <https://hayat.ba/izetbegovic-za-hayat-na-darivi-neece-biti-granica-srbije-radimo-stvari-koje-nas-mogu-uciniti-opasnim-u-odbrani-zemlje/526624/> (31 October 2021).

advocating for legitimate political representation, are working to establish “a third entity”. Dodik and SNSD’s policies leading to the blockade of the state and the independence of RS are supposedly opposed by the so-called “pro-Bosnian” forces that want an integral and unified BiH. *“O sancta simplicitas”*.

If this viewpoint is accepted, then the solution is also quite simple: weaken and overthrow M. Dodik and SNSD through political pressure and sanctions, and at the same time support the opposition in RS and strengthen the “pro-Bosnian” forces that strive to preserve the state and EU and NATO integration.

Unfortunately, the political situation in BiH is much more complex and requires that other political variables and contexts be taken into account, including the fact that there is a “third party” in BiH. In addition to the RS and the “pro-Bosnian bloc”, there are also Croats, e.g. parties concentrated in the Croat National Assembly of BiH (HNS BiH). As one of the three constituent peoples, in accordance with the DPA and the BiH Constitution, Croats are institutionally and politically equal with Bosniaks and Serbs. Unfortunately, Croats are not only unequal with Bosniaks and Serbs, but the very constitutivity of Croats in BiH is being directly endangered. In addition to direct war consequences, refugee return challenges, and asymmetric solutions within the Constitution, the greatest responsibility for the current situation lies with political parties and stakeholders from the so-called “pro-Bosnian bloc” which have abused the engagements of international representatives in regard to electoral legislation and entity constitutions.

The very name “pro-Bosnian bloc” – composed of nominally national Bosniak and so-called civic parties based in Sarajevo, e.g., SDA, DF, SDP, NS, NiP, SBB – is indicative of the overall political relations in BiH. Namely, the “pro-Bosnian bloc” is an expression of the Bosniak electoral will. Of the total number of votes the “pro-Bosnian bloc” parties receive in the elections, less than 1% of the votes come from BiH citizens who have declared themselves as Croats or Serbs in the valid official census. Therefore, it is more accurate to describe the “pro-Bosnian bloc” as a pro-Bosniak bloc. At the same time, it must be emphasized that Bosniaks are only one of the three constituent peoples mentioned in the DPA and the BiH Constitution.

The source of many political problems in BiH is the fact that the pro-Bosniak political bloc considers itself the only “*pro*” BiH bloc, and the other parties from RS and HNS BiH “*contra*” BiH. That is why they describe themselves “pro-Bosnian”, and not, more accurately: the pro-Bosniak political bloc. The strategic agenda of the “pro-Bosnian bloc” is a so-called civic, e.g., unitary and centralized state based on the electoral principle of “one man - one vote”. The significance of this agenda is simple. If the electoral principle “one man - one vote” is adopted, then the “pro-Bosnian bloc” will have in principle 100% of the power in BiH, because already, the Bosniak electoral body comprises 50.1% of the BiH electorate. It must be underscored here that the DPA guarantees Serb and Croat participation in government. Therefore, regardless of the Bosniaks’ demographic domination, they are prohibited from excluding the remaining two peoples from power. The participation of Croats and Serbs in government is empowered and guaranteed by specific consociational and federalist arrangements contained within the DPA and the BiH Constitution.

In order to realize its political agenda, the “pro-Bosnian” bloc is employing two methods. The first is the weakening of the position and power of the RS entity, and the second the negation and diminishment of Croat constitutivity in the FBiH entity and at the state level. As part of this process, some members of the “pro-Bosnian” bloc have thus far usurped the position of the Croat member of the three-member Presidency of BiH three times by means of electoral engineering (the case of Željko Komšić) and twice assumed complete executive power in FBiH (President and two Vice Presidents of FBiH and FBiH Government). Both times, legitimate Croat representatives in the FBiH executive were expelled, with the collaboration and direct influence of the international community in BiH: in 2000, with the assistance of R. Barry, then head of the OSCE Mission to BiH, and in 2011 with assistance from V. Inzko, the then High Representative in BiH. Thereby, R. Barry and V. Inzko not only violated the DPA and the basic principles of the BiH Constitution, but V. Inzko also violated mathematical law by claiming that five is one third of 17 (the so-called “Inzko postulate”). The constitutional and legal preparation for the “Inzko postulate” was devised by the High Representatives W. Petritsch and P. Ashdown by imposing amendments to the FBiH Constitution. Of the 108 amendments to the FBiH Constitution, only 39 were approved by the FBiH Parliament, and as many as 69 amendments (64%) were imposed by High Representatives W. Petritsch and P. Ashdown between 2002 and 2004.

Consequences of “state-building” as the result of interventions in the Constitution of the FBiH and the Election Law

The afore-mentioned decisions and policies proposed by certain representatives of the international community and the OHR were sought to be legitimized under the so-called state-building argument and a greater degree of integration of the society. It is obvious where these approaches and policies have led us. The RS demands the return of powers they had held within the original DPA and threatens independence and secession from BiH. The “pro-Bosnian” bloc threatens war, bringing up its military industry, tanks and soldiers. The HNS BiH announces a boycott of the 2022 general elections. These are certainly not indicators of a functional state and integrated society.

The consequence of the state-building agenda is that, in practice, it has resulted in the strengthening of the unitarist “pro-Bosnian / pro-Bosniak” political agenda, which perceives the state and its institutions as a means to achieve specific political interests and goals. This has additionally disturbed the balance of institutional and political power among the three constituent peoples, which was established with extreme precision through the basic principles of the DPA.

This has encouraged the “pro-Bosnian / pro-Bosniak” political bloc to consider their policies the sole state-building (“pro-Bosnian”) policy, but also to see enemies and destroyers of BiH in parties from the RS and the Croat National Assembly of BiH (HNS BiH). This has given them a sense of political and moral superiority and encouraged them to be more extreme in their political demands and moves. Such an approach has motivated them to ignore legitimate Croat and Serb political demands and interests. Croat and Serb politicians, each for their own specific reasons and interests, have strongly reacted to attempts to “capture the state” by supporters of the “pro-Bosnian / pro-

Bosniak” political agenda. The so-called “pro-Bosnian” actors are attempting to block and debilitate certain state and entity institutions and authorities.

According to the DPA and the BiH Constitution, “strengthening the state” is a legitimate and desirable political agenda only if these processes take place within the spirit of the DPA, e.g., within the basic principle of the BiH Constitution, constitutivity and mutual institutional and political equality of the three peoples: Bosniaks, Croats and Serbs. Any obstruction to the balance of institutional and political power between the constituent peoples established by the DPA will result in deeper divisions and growing instability in BiH. Instead of devising policies with rational and legitimate goals, the policies of all three constituent peoples, within the conditions of a disproportionate balance of power, are determined and directed largely by fear. The Serb fear is that the RS will be weakened and eventually abolished, the Bosniak fear is that the state of BiH will experience dissolution and that they will become divided and trapped within the two territorial enclaves, and the Croat fear is that they will lose their constitutivity and become a national minority. The goal is to reach solutions that will lead all three nations to create policies that are directed by common interest instead of fear, which in turn leads to a functional and prosperous state that realizes and affirms the legitimate interests of all three constituent peoples.

The inconsistent operationalization and implementation of the basic principles of Dayton have resulted in the resurgence of certain political paradigms that were witnessed during the disintegration of Yugoslavia and the process of BiH’s independence and that are still relevant today. Bosniaks and Serbs also have ambitions to achieve maximalist goals: to transform BiH into a unitary and centralized state in which Bosniaks will be the “fundamental people” (Bosniak unitarism); and the secession of the RS and its transformation into an independent state or its annexation to the Republic of Serbia (Serbian separatism). Both unitarism and separatism consist of two stages in order to achieve their goals. The first phase of Bosniak unitarism is the deconstitution of Croats and the transformation of the FBiH into a Bosniak entity, and the second is the abolition of the RS and the transformation of BiH into a unitary and centralized state. The first phase of Serbian separatism is the strengthening of the RS and the reduction of BiH to a confederation of two entities, and the second is the independence and secession of the RS. If no “middle ground” is found, the conflict between unitarist and separatist narratives and policies could lead to “Cyprusization” and, in under extremely unfavorable geopolitical circumstances, to the “Syrianization” of BiH.

Only Croat politics in BiH lack the capability or potential to dominate, either at the level of the existing entities and the state, or at the level of mutual relations of the constituent peoples. Within this constellation of forces, Croat politics advocates for the most part the “middle way”: the federalist and consociational principles of state organization, e.g., consistent respect and implementation of the spirit of the DPA as the fundamental principles of the BiH Constitution, and the principle of constitutivity and mutual institutional and political equality of Bosniaks, Croats and Serbs.

I would venture to say that Croat politics represents the only possible model for the survival and integrity of BiH.

Who does BiH belong to, or how to get a functional Bosnia and Herzegovina?

After the principled considerations from the first part of this letter, allow me to be more personal and specific in the second. I represent the assessments, attitudes and proposals in this address as someone who considers Bosnia and Herzegovina his homeland and who in his overall social and political activities has done everything possible to make this country acceptable to all its constituent peoples, as well as to all citizens who are not members of the constituent peoples. My experience of Bosnia and Herzegovina is multidimensional. I was born as a Croat from the predominantly Croat Western Herzegovina, and most of my professional career is connected to predominantly Bosniak Sarajevo. I spent the first year of the war in BiH, in besieged Sarajevo, as a war surgeon and head of the Orthopedic Clinic, then the largest war hospital in BiH. The second year of the war I was a military surgeon at the HVO War Hospital in Mostar. The third and fourth years of the war, from the late spring of 1994 until Dayton, I was Minister of Health of the Government of the Republic / Federation of BiH. I held the same position in the FBiH governments until 2001. I have held various, senior political positions and have been a participant in and witness to many talks and negotiations on the future of BiH.

I ended my institutional political career in BiH as the Speaker of the House of Representatives of the Parliamentary Assembly of BiH. This position enabled me to submit a constitutional complaint to the Constitutional Court of BiH on the unconstitutionality of the Election Law in the part related to the election of delegates to the House of Peoples of FBiH. I argued that the Law discriminates against members of the Croat people, as well as Serbs and Others, in the election of their political representatives in the House of Peoples of FBiH. As is well known, the Constitutional Court granted my appeal in December 2016 (Decision U-23/14, the so-called “Ljubić case”). Without being immodest, my political experience, and I might say political instincts, allow me the right to say that BiH, as a divided society and unstable state, can become stable and functional only as a multinational federation organized on the principles and models of consociational and consensual democracy, based on the examples of Belgium, Switzerland, Canada, etc.

In fact, Bosnia and Herzegovina was established on these principles by the Resolution of ZAVNOBiH on November 25, 1943, which is commemorated as the Statehood Day of Bosnia and Herzegovina. The delegates of the National Anti-Fascist Council of the People’s Liberation of Bosnia and Herzegovina (ZAVNOBiH) were conscious of the multinational character and deep national differences and goals that were the origin of tragic past conflicts. Therefore, the ZAVNOBiH Resolution clearly recognized the full equality of Serbs, Muslims and Croats, describing BiH as **“neither Serb nor Croat nor Muslim, but Serb and Croat and Muslim”**.

The constitutivity of its fundamental peoples, established at the session of ZAVNOBiH, was confirmed in the DPA in the preamble of Annex IV - the Constitution of BiH, which clearly states: **“Bosniaks, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina is as follows”**.

BiH was thus established in Dayton as an asymmetric (con)federation; in one dimension as a territorial (con)federation of two entities, one Serb, and the other Bosniak-Croat. This is confirmed by the constitutional provisions which prescribe that a Serb member shall be elected from the RS, and a Bosniak and a Croat member of the Presidency from the FBiH, as well as five Serb delegates to the House of People selected from the RS, and five Bosniak and five Croat delegates from the FBiH.

In the second dimension, BiH was established as an institutional (con)federation of three constituent peoples. The basic principle of the Constitution, including the principle of constitutivity and mutual institutional equality, which was confirmed by the Constitutional Court of BiH in its two decisions (U-5/98 and U-23/14), was operationalized through the House of Peoples, the tripartite Presidency of BiH, and parity in the Council of Ministers of BiH. The DPA thus established the necessary balance of institutional and political power between the three constituent peoples whose armies fought each other under different circumstances and periods in the 1990s.

It would be more advantageous for BiH, as well as for its three constituent peoples and all citizens, if the fundamental principle of the DPA and the BiH Constitution – the principle of constitutivity and mutual equality of Bosniaks, Croats and Serbs – was consistently implemented and operationalized through three entities for three constituent peoples.

What went wrong and why?

Although it placed the three constituent peoples into two entities, the original DPA provided ample opportunities for Bosnia and Herzegovina to become relatively quickly a stable, functional, and prosperous state. As a member of the governments of Bosnia and Herzegovina from spring 1994 until 2001, I can assert with full credibility that the post-Washington and post-Dayton period was a time of painstaking but steady progress toward mutual cooperation and trust between political representatives, and particularly relations between Croats and Bosniaks. This was perhaps the only period in the post-war history of BiH in which the building of autochthonous trust between Bosniaks and Croats was occurring. This increase in trust stemmed from the fact that the existing constitutional and institutional arrangements prevented domination and outvoting and discouraged majoritarianism, thus compelling Bosniak and Croat political representatives to cooperate and agree on a partnership basis.

Everything took a wrong turn in 2000 with the aforementioned OSCE interventions in the BiH Election Law (R. Barry) and subsequently the OHR in the entity constitutions (W. Petritsch and P. Ashdown). Thus, the process of building autochthonous trust and partnership, at least when it comes to Bosniak-Croat relations in BiH, was suddenly interrupted and has not been renewed to this day. Less than five years after the end of the tragic inter-ethnic civil war, certain representatives of the international community, through the OHR and with the assistance and cooperation of the then “pro-Bosnian” unitarists, began the process of “strengthening the state” and introducing elements of majoritarian civic democracy through political, constitutional and institutional marginalization, majoritarianism, and deconstitution of Croats in the FBiH.

The dogmatic and ideological insistence that in a post-conflict, deeply divided society, the model of majoritarian civic democracy based on the “one man - one vote” principle should be implemented without further delay simply produces the opposite effect. Here, it seems appropriate to remind ourselves of an observation based on the experience of the Cypriot case, in which “the alternative to consociation in a post-conflict divided society was not liberal democracy but disintegration” (Kasapović 2005).

Often, and especially in recent months, the subject of division, dissolution, or disintegration of the state has appeared in the political discourse. I doubt this will occur, but not because the integrative elements of BiH society will prevent it. The country disintegrated already during the 1992-1995 war and has remained deeply divided. I do not think that this will be prevented by “pro-Bosnian” patriots, either. The only guarantee is that Annex 1A-B on the military, and Annex 10 on the civilian part of the DPA, as well as the presence of the international community, have become part of the internal system of BiH. It is thanks to this, as well as the huge international financial and technical assistance to BiH that things are functioning at all. However, we cannot rely on it permanently. It is important to take into account the assessments of respected international researchers of divided post-conflict societies who believe that “the so-called peace agreement is in fact a division agreement certified by the departure of external forces” (Kumar 1997).

The fact of the presence of the international community’s organizations as part of the internal political system of BiH should be used to achieve the necessary degree of internal stability by upgrading the BiH Constitution and Election Law. This would be possible only by consensus of the legitimate political representatives of the three constituent peoples and with guarantees from the most important neighbors of Bosnia and Herzegovina – Serbia and Croatia. BiH, as a deeply divided post-conflict society and a multinational state, can be a stable, functional and prosperous state only as a consociational democracy, based on equal co-decision-making of its three peoples on common state interests, and autonomous decisions based on their own national interests. As a first step, it is necessary to adopt amendments to the BiH Election Law that will enable equal rights for each of the three constituent peoples to elect their legitimate political representatives to the institutions provided by the BiH Constitution for this type of representation, and to simultaneously enable candidacy and voting for all positions to all citizens, regardless of their personal, national or any other social (non)affiliation.

Electoral reform - Decisions of the Constitutional Court of BiH and the ECtHR are not mutually exclusive but supplementary

The principle of legality and constitutionality, as one of the foundations of present-day global international order, undeniably requires the subordination of courts in each of the UN member states, which implies the need to implement all decisions of the highest courts in each country.

I hope you will agree that this also applies to the Decision of the Constitutional Court of BiH U-23/14 of 1 December 2016. This Decision is also colloquially referred to as “the Ljubić case” because I was its applicant at the time as the Speaker of the House of Representatives of the PA of BiH. It would be instructive for all who in any way personally participate in the process of

amending the Election Law to read this decision of the Constitutional Court -It is written in English, since foreign judges in the BiH Constitutional Court also participated in its adoption. If you personally do not have time to acquaint yourselves with this Decision, I recommend that a trusted colleague do it for you. The staff of the OHR's legal department is less than trustworthy in this matter, as the OHR has opposed the appeal from the onset, and after finally accepting it, they consistently ignored or devalued it.² Allow me to quote here a few points of the Reasoning to the said Decision which, in my view, express its essence.

47. The Constitutional Court recalls that states enjoy a wide margin of appreciation in establishing and regulating the electoral system to be applied. There are different ways of organizing and administering elections and this variety is conditioned inter alia by the political development of a country. Therefore, the legislation regulating elections must be viewed in light of the political development of the country concerned. In addition, **the Constitutional Court recalls that according to the general principle of democracy, the right to participate in democratic decision-making is exercised through legitimate political representation, which has to be based on the democratic choice by those represented and whose interests are represented.** In this regard, the connection between those who are represented and their political representatives at all administrative-political levels is actually the one that gives the legitimacy to community representatives. Therefore, only the legitimacy of representation creates a basis for actual participation and decision-making.

49. The Constitutional Court recalls once again the general principle of democracy that state power originates from the people and belongs to the people. It follows from the Constitution of Bosnia and Herzegovina that the Constitution of Bosnia and Herzegovina designated, as the people, the constituent peoples who together with Others and the citizens of Bosnia and Herzegovina form a community of citizens, which exercises power equally through its representatives, and the right to participate in democratic decision-making is exercised through legitimate political representation which has to be based on the democratic choice by those represented and whose interests are represented. However, it follows from the mentioned sub-paragraph of the Preamble of the Constitution of Bosnia and Herzegovina that the framers of the Constitution designated the constituent peoples (Bosniacs, Serbs and Croats) as specific collectivities and awarded them equal rights, i.e. "underlined" the specific and equal status of Bosniacs, Serbs and Croats as constituent peoples. In this regard, the Constitutional Court recalls its Decision No. U-5/98 (Decision on the Constituent Status of Peoples), wherein the Constitutional Court pointed out the following: "Again this designation in the Preamble must thus be viewed as an overarching principle of the Constitution of Bosnia and Herzegovina which the Entities, according to Article II (3)(b) of the Constitution of BiH, must fully comply with."

51. The above analysis shows that **the right to participate in democratic decision-making, which is exercised through legitimate political representation, has to be based on the democratic election of the delegates to the House of Peoples of the Federation by the constituent people represented and whose interests are represented.** Bringing into connection

² I believe that the new High Representative should rethink the composition of the OHR expert staff. This applies especially to its legal department. Some of its members act in a biased manner in favor of Bosniak politicians and "political Sarajevo". There are certain indications (although without proof) that they take decisions based on family ties or other similar criteria, which has had a significant impact on the biased reports submitted by High Representatives to the UN Security Council, but also on the OHR's one-sided attitude regarding the amendments to the Election Law.

the aforementioned role of the House of Peoples within the constitutional system of the Federation with the principle of the constituent status of peoples in the Federation, it **undisputedly follows that the principle of the constituent status of peoples in the Federation, in the context of House of Peoples, may be realised only if a seat in the House of Peoples is filled based on precise criteria that should ensure full representation of each constituent people in the Federation.** Otherwise, an inadequate political representation of those represented and whose interests are represented amounts to a violation of the principle of the constituent status of peoples, i.e. leads to inequality between any of the constituent peoples, thereby violating Article I(2) the Constitution of Bosnia and Herzegovina.

(Paragraphs 47, 49, 51, Decision of the Constitutional Court of BiH, U-23/14)

I respect all the relevant Decisions of the European Court of Human Rights (ECtHR) concerning BiH and advocate for their implementation, but I strongly assert that the implementation of Decision U-23/14 (“Ljubić case”) of the BiH Constitutional Court is of fundamental importance for stabilizing the political conditions, functionality and sustainability of BiH. Unitarist forces and representatives of the “pro-Bosnian” bloc are attempting to impose on public opinion and political discourse the narrative that the relevant ECtHR judgments derogate the Decision U-23/14. They argue that the decisions mentioned are mutually exclusive in such a way that the implementation of Decision U-23/14 would prevent the implementation of relevant ECtHR decisions. I claim that this is incorrect – the relevant decisions of the Constitutional Court of BiH and the ECtHR are not mutually exclusive but complementary. The constitutivity of peoples, including their legitimate representation at all administrative-political levels, is a constitutional framework within which all the citizens, also known as the “Others” who are not members of any of the three constituent peoples, can be guaranteed the right to vote and the right to be elected to all legislative and executive bodies at state, entity, canton and municipality levels. It is useful to know that the members of the three constituent peoples, according to the 2013 census, comprise **96.3%**, members of the 17 national minorities and other ethnic groups represent **2.9%**, and BiH citizens who have not declared a national or ethnic affiliation represent **0.8%** of the total population of BiH.

It is exceptionally relevant here to recall that the ECtHR ruled that the state of BiH must provide *active* and *passive* voting rights to each of these applicants: Dervo Sejdić and Jakob Finci as a Roma and Jew, respectively, Azra Zornić who has not declared a nationality but identifies only as a BiH citizen, Samir Šlaku as an Albanian, Esad Pilav as a Bosniak from RS and Svetozar Pudarić as a Serb from FBiH. How this is accomplished is a matter for BiH and its legislation. Therefore, the judgments of the ECtHR do not address the Constitution of BiH as such, or its basic principles, but rather the quite specific rights of the individual (groups) of citizens of BiH to which the judgments refer. Neither was the Constitution of BiH as such the subject of lawsuits, nor were its basic principles the subject of lawsuits, because the ECtHR lacks the competency to make such decisions. No decision supports the abolishment or derogation of the principle of the constitutivity of the three peoples. No applicant has requested this, nor does the ECtHR have the power to bring judgments about it. The ECtHR has only the right to request that the Constitution of BiH be in conformity with its judgments, e.g., that the relevant decisions of the ECtHR be implemented through the legislative system and the electoral process. No more and no less. How to implement these judgments is not within the competence of the ECtHR, but of the Parliamentary Assembly of BiH and the entity parliaments.

In addition, it is important to note that Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 2000), on the basis of which all ECtHR judgments related to BiH have been rendered, was not signed at all by nine member states of the Council of Europe (Bulgaria, Denmark, France, Lithuania, Monaco, Poland, Sweden, Switzerland, and the United Kingdom); that eighteen Council of Europe members signed Protocol 12 but did not ratify it (Austria, Azerbaijan, Belgium, Czech Republic, Estonia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Norway, Moldova, Russia, Slovakia, and Turkey); and that it was signed, ratified, and brought into force by only twenty of them (Albania, Andorra, Armenia, Bosnia and Herzegovina, Croatia, Cyprus, Finland, Georgia, Luxembourg, Malta, Montenegro, Netherlands, Northern Macedonia, Portugal, Romania, San Marino, Serbia, Slovenia, Spain, and Ukraine).

It is also useful to consider that the 2009 judgement in the *Sejdić-Finci* case is the first ECtHR judgment in the history of this court under Protocol No. 12, and that all other mentioned judgments concerning BiH are invoked and based on Protocol No. 12, which entered into force in 2005. Protocol No. 12 has not yet been implemented by many developed and stable democracies, including the leading members of the Council of Europe and the EU. Despite this, they require full and unconditional application of judgments based on Protocol No. 12 from BiH, a former totalitarian and communist country with a extremely weak democratic traditions, and one which has emerged from a bloody and devastating inter-ethnic war. Moreover, the “pro-Bosnian” bloc, with the support of certain international partners, seeks to use the aforementioned judgments of the ECtHR to delegitimize and derogate the constitutional category of the constitutivity of peoples and the right of these peoples to elect their legitimate political representatives in bodies designed by the BiH Constitution to serve as mechanisms for representing the constituent peoples.

These attempts are based on arbitrary and completely unfounded interpretations of the judgments of the ECtHR. However, it should be mentioned that, for instance, the *Sejdić-Finci* judgment contains parts that clearly show that the judgment does not call into question the constitutional category of the constitutivity of peoples, or the right of those constituent peoples to legitimate political representation:

48. In addition, while the Court agrees with the Government that there is no requirement under the Convention to abandon totally the power-sharing mechanisms peculiar to Bosnia and Herzegovina and that the time may still not be ripe for a political system which would be a simple reflection of majority rule, the Opinions of the Venice Commission (see paragraph 22 above) clearly demonstrate that there exist mechanisms of power-sharing which do not automatically lead to the total exclusion of representatives of the other communities. In this connection, it is noted that the possibility of alternative means achieving the same end is an important factor in this sphere (see *Glor v. Switzerland*, no. 13444/04, § 94, ECHR 2009).

Sejdić and Finci v. Bosnia and Herzegovina (Applications nos. 27996/06 and 34836/06)

This paragraph of the *Sejdić-Finci* judgment clearly shows that the ECtHR considers *it unnecessary to change the existing mechanisms of separation of powers specific to BiH*. Therefore, the verdict can be implemented without interfering with the constitutional fact

that constituent peoples have the right to legitimate political representation in bodies which the DPA and the Constitution of BiH intended for this type of representation.

In place of a conclusion

As can be concluded from my remarks here, there exists a clear path to a stable and functional Bosnia and Herzegovina. It is a middle ground between two radical political agendas, separatism and unitarism. It is the establishment of a Bosnia and Herzegovina based on the principles of federalism, decentralization and legitimate representation of the constituent peoples and citizens, as recommended by the European Parliament in its two resolutions (2014 and 2017). These are the views of legitimately elected Croat political representatives associated with the HNS BiH, not of a single party or political leader, as has been falsely represented by “pro-Bosnian” social and political factors. HNS BiH, the umbrella political institution of Croats in BiH, will continue to strongly represent these views; deviating from them would mean not only erasing the constitutional and political subjectivity of Croats in BiH, but would lead to the collapse of the entire constitutional and legal order and be a direct violation of the DPA. This would constitute a threat to the peace and survival of BiH as an integral and independent state. In addition to the above, BiH’s accession to the Euro-Atlantic integration (EU and NATO) also guarantees the long-term sustainability and functionality of Bosnia and Herzegovina.

Therefore, I conclude that the long-term sustainability, stability and functionality of BiH can be built only on the basic principles of the DPA and the BiH Constitution, which are the principles and models of federalism and consociational/consensual democracy. This implies the legitimate representation of constituent peoples and their mutual equality (balance of power), as well as the highest possible level of protection of human and civil rights of all citizens of BiH. The strategic foreign policy determinant should be Euro-Atlantic integrations, including membership in the EU and NATO.

I sincerely and deeply hope that this letter will contribute to a better understanding of the social and political situation in BiH and will provide assistance in reaching and implementing the political, legal and institutional models and solutions that will enable BiH to soon become a stable and functional state, supported and jointly constructed by all three constituent peoples and all its citizens.

Yours sincerely,

Dr. Božo Ljubić



President of the Main Council of the Croat National Assembly of BiH

P.S.: I would mention for the sake of transparency that after the end of my institutional political career in BiH in 2014, I was twice elected to the Croatian Parliament within a fixed quota of three deputies provided for Croats outside the Republic of Croatia. I am currently the President of the Main Council of the HNS BiH, a position that I serve on a voluntary basis. I have not been a member of any political party for the past eight years.

Sent to:

Anthony Blinken

United States Secretary of State
U.S. Department of State

Gabriel Escobar

Deputy Assistant Secretary
Bureau of European and Eurasian Affairs
U.S. Department of State

Matthew Palmer

Special envoy for electoral reform in Bosnia and Herzegovina
U.S. Department of State
Bureau of European and Eurasian Affairs

Gregory W. Meeks

Chairman
Foreign Affairs Committee
United States House of Representatives

Josep Borrell

Vice-President of the European Commission, High Representative of the European Union for Foreign and Security Policy
European Commission

Christian Schmidt

High Representative for Bosnia and Herzegovina
Office of the High Representative

Johann Sattler

Ambassador
Head of the EU Delegation to BiH and EU Special Representative in BiH

Ambassadors of the European Union Member States

Eric Nelson

Ambassador
U.S. Embassy in Bosnia and Herzegovina

Interdepartmental Working Group for Amendments to the BiH Election Law

Copy:

Embassy of the Republic of Serbia in Bosnia and Herzegovina