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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

OPINION

**of the Venice Commission Working Group
on the interpretation of certain provisions
of the Constitution of the Republika Srpska**

On 8 July 1997, the Office of the High Representative in Bosnia-Herzegovina sent a letter to the European Commission for Democracy through Law (the Venice Commission) asking the following questions:

1. Does the President of the Republika Srpska have the power to dissolve the National Assembly without first having obtained the opinion of the Prime Minister and the President of the Assembly?
2. Does the President of the Republika Srpska have the authority to appoint a government following dissolution of the National Assembly on the basis of Article 94 of the Constitution?
3. Can the Government, pursuant to Article 114 of the Constitution, suspend the decision taken by the President of the Republika Srpska to dissolve the National Assembly?

The rapporteurs appointed, Mr G. Malinverni (Switzerland) and Mr C. Economides (Greece), assisted by Mr C. Giakoumopoulos (Deputy Secretary of the Venice Commission), held a meeting in Geneva on 10 July 1997.

On the basis of the information available to them and within the very short space of time at their disposal, the rapporteurs gave the following opinion which could be approved by the Commission at its next plenary meeting.

Question 1

Under the terms of Amendment LX to Article 72 of the Constitution, the President of the Republic may dissolve the National Assembly after consulting the Prime Minister and the President of the National Assembly.

The wording of this provision states that the President is required to seek the opinion of the Prime Minister and the President of the Parliament, but that such an opinion is purely advisory. The decision to dissolve Parliament falls to the President of the Republic alone. Accordingly, the position taken by the Prime Minister and the President of the Assembly is in no way binding on the President of the Republic.

In the circumstances in question, the President of the Republic, in accordance with the aforementioned provision, requested the opinion of the Prime Minister and the President of the Assembly. The latter, however, did not reply within the requested time. Nevertheless, such a situation need not prevent the President from lawfully taking her decision, given that the opinion of the Prime Minister and the President of the Assembly is not binding. To make the President's decision subject to receiving the opinion of the Prime Minister and the President of the Assembly would serve to halt the dissolution process and render the provision ineffective.

The deadline given for their opinion may appear tight. However, the Constitution does not specify any deadline and decisions of this importance must often be taken urgently. In any case, a deadline of some 20 hours seems sufficient to enable the two persons consulted to express their opinion or at least ask for more time, which they did not do.

Question 2

In accordance with Amendment XXXIX as amended by Amendment LX, the Government's mandate ends upon the dissolution of Parliament.

However, pursuant to Article 94 para. 9, a government whose mandate has been revoked following the dissolution of the National Parliament shall remain in office until the appointment of a new government.

Article 94 para. 10, which the President claims allows her to form a new government, at this point cannot be regarded as a constitutional basis for this purpose. This provision clearly stipulates that the President must propose a candidate for the position of Prime Minister. The very fact that the President may only "propose a candidate" implies that this nomination must be approved by another organ of the state. It is clear from this provision that the candidate must secure the confidence of Parliament.

Consequently, this provision cannot be applied if there is no parliament, which is the case at present, since the previous parliament has been dissolved and the new parliament has not yet been elected.

Clearly, Article 94 para. 10 is not intended to apply until after the elections of 1 September 1997. Until then, the present government must remain in office to deal with routine business, as specified moreover in Article 94 para. 9.

Question 3

Pursuant to Article 114 of the Constitution, the Government does not have the authority to suspend the decision taken by the President of the Republic to dissolve Parliament. In fact, Article 114 refers exclusively to the *"enforcement of a regulation, general or specific enactment"*, ie legislative or administrative acts. Clearly, the decision to dissolve Parliament, which is of an obvious political nature, does not fit into the category of acts referred to in Article 114.

Furthermore, the dissolution of Parliament requires no intervention whatsoever by the Government. As an executive organ, the Government should not intervene with regard to a presidential act concerning the Parliament in any way other than that provided for in Amendment LX of the Constitution (opinion of the Prime Minister at the request of the President).

Accordingly, the Government cannot rely on Article 114 of the Constitution to suspend the President's decision to dissolve Parliament.