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**Revision of the Constitution of the
Federation of Bosnia and Herzegovina**

STRENGTHENING PARLIAMENTARY CONTROL

**by Mr Jean-Claude Scholsem
(member, Belgium)**

**REVISION OF THE CONSTITUTION OF THE
FEDERATION OF BOSNIA AND HERZEGOVINA**

(Doc. CDL (2000) 52)

STRENGTHENING PARLIAMENTARY CONTROL

Preliminary opinion by Mr Jean-Claude Scholsem, member of the Commission (Belgium)

1. An initial working meeting on the proposed amendments to the Constitution of the Federation of Bosnia and Herzegovina was held in Strasbourg on 10 and 11 July 2000 (Doc. CDL (2000) 52).

These proposals included one that was particularly aimed at increasing the effectiveness of parliamentary control over the Government of the Federation.

This proposal was not worded in specific terms. It merely indicated that an additional power should be added to those listed in Article IV-A-20 of the Constitution of the Federation, in order to state clearly the principle of parliamentary control over the Federation's executive bodies.

The argumentation for this proposal noted that the "parliamentary control" in question was not disputed, since the members of the government were elected by Parliament and consequently answerable to it.

However, the argumentation also noted that, given the executive's tendency to behave with ever-greater independence and to increase its powers, a clear and unequivocal provision asserting its accountability to Parliament seemed to be called for.

This opinion sets out to indicate some means whereby parliamentary control could be strengthened within the Federation of Bosnia and Herzegovina. This requires, firstly, a brief summary of the current relationship between the assemblies and the executive as determined by the Constitution at present.

2. Brief summary of the current situation

The authors of the proposed amendment do not challenge the principle of the government's political accountability to the Legislature.

Taken as a whole, the constitutional texts in fact support this principle, although in practice there are shortcomings that justify the proposed amendment. Analysis of these texts reveals a number of important points.

Under Article IV-A-20, the Legislature, i.e. the two Houses (Art. IV-A-17), have responsibility for approving the composition of the Cabinet (c). Other powers enable the assemblies, by various means, to exercise broad control over government activity. In particular, this applies to the exercise of legislative power (d), approval of treaties (h) or the use of military force (e), as well as budgetary questions (j).

These provisions should be read in conjunction with those of Article IV-B-5.

The President, acting with the agreement of the Vice-President, is responsible for appointing the Cabinet, after consultation with the Prime Minister or the nominee for that position. These appointments require approval by a majority in the House of Representatives (Art. V-B-5(1)): this seems to contradict Article IV-A-20(2), which requires the approval of the Legislature, that is, of both Houses.

Article V-B-5 (2) provides for the removal of the Cabinet and ministers. The Cabinet is obliged to resign either at the request of the President, acting in agreement with the Vice-President, or following a vote of no confidence by each House of the Legislature.

Ministers and deputy ministers are dismissed by the President at the proposal of the Prime Minister (see also Art. IV-B-7-c(ii)).

These provisions seem to imply that the Government as a whole is answerable both to the President (in conjunction with the Vice-President) and to the assemblies. Under the Constitution, a vote of no confidence by the two assemblies would be required. Individual ministers would appear not to be obliged to resign following a vote of no confidence by the assemblies. The President, acting on a proposal from the Prime Minister, is responsible for dismissing them.

The President also has various means of applying pressure on the assemblies. Under Article IV-A-16(1), he may, with the agreement of the Vice-President, dissolve one or other House when the Legislature is unable to adopt necessary legislation. The President alone is responsible for dissolving the two Houses when they fail to adopt the budget of the Federation before the beginning of the financial year (Art. IV-A-16(2)). The Prime Minister and individual ministers are apparently responsible for initiating legislation (Art. IV-B-7-c (iii) and IV-B-7-f (“proposing and making recommendations concerning legislation”). The Constitution would appear to be silent on the matter of parliamentary initiatives to introduce legislation.

3. The role of parliamentary control in the Constitution of the Federation of Bosnia and Herzegovina

3.1 The above summary of the relevant constitutional provisions suggests, firstly, a need for internal co-ordination.

Thus, Article IV-A-20-c entrusts the two Houses with powers to approve the Cabinet’s composition. However, Article IV-B-5 seems to indicate that this composition need only be approved by the House of Representatives.

Equally, Article IV-B-5(2) provides that only a vote of no confidence by both Houses may entail the Cabinet’s resignation. Are these rules logical? Furthermore, why is the Legislature’s power with regard to appointment of the Cabinet explicitly mentioned in Article IV-A-20, when its powers with regard to a vote of no confidence are not referred to at this point?

Other provisions in the current Constitution of the Federation merit consideration. These include the rule mentioned above whereby the President shall dissolve the two Houses if they do not adopt the budget in time. Bearing in mind the role of the vote on the budget in ensuring parliamentary control, this rule seems to go too far. In addition, it does not indicate how, or by whom, the budget is to be adopted in such circumstances.

In our opinion, the assemblies' right to initiate legislation should be clarified.

3.2 The current Constitution of the Federation of Bosnia and Herzegovina explicitly identifies only one means of control available to the Legislature, namely committees of inquiry (Article IV-A-21). This provision does not appear to be sufficiently clear. It merely states the principle whereby the Houses may, for the purposes of investigation, require the production of documents and testimony. More specific provisions and clearer identification of the committees' investigatory powers would be desirable. For example, in many countries these committees are endowed with powers similar to those of an investigating judge. The principle underlying such powers should be set out in the Constitution or, at least, by statute, together with the principle of penalties for failure to produce the documents demanded by the select committee or to testify, for false testimony, etc. In some countries, eg Germany, Greece and Portugal, parliamentary investigations may be instigated at the request of a parliamentary minority. This has clear benefits in terms of control, since committees of inquiry can be set up at the request of the opposition. However, a minimum number of signatures should be required in order to launch parliamentary inquiries, so as to avoid their undue proliferation.

3.3 In order to fulfil the objectives of the authors of the proposed constitutional amendment, it would be appropriate to take up their suggestion of adding a new item to the listed powers listed in article IV-A-20. This text should clearly assert the right of the assemblies to put any questions to the Prime Minister, ministers or deputy ministers and to request any required explanation. Similar wording could be introduced in article IV-B-7 concerning the obligations of members of the Executive (note that article IV-B-7-f-vi already contains a similar clause referring to the ministers "responding to inquiries from either House of the Legislature concerning matters within their ministries or any other matters assigned to them by the Prime Minister").

In some countries, equally general provisions have served as the basis for effective parliamentary control, which has largely been built up through practice.

However, it is possible that more specific texts may be necessary, depending on a country's particular circumstances. Examples of some classic mechanisms for strengthening the status of parliamentary assemblies in relation to the Executive and for providing them with effective control instruments are considered below, without claiming that all of them are transposable to the Federation of Bosnia and Herzegovina.

4. Various mechanisms for strengthening parliamentary control

4.1 One of the first problems is to determine whether the two Houses are to be placed on an equal footing with regard to control of government activity. The overall construction of the Constitution of the Federation suggests that they should be. Nevertheless, a certain de facto specialisation, agreed between the assemblies, may be appropriate, particularly in view of the House of Peoples' small size.

4.2 Article IV-A-11 refers in passing to the assemblies' rules of procedure ("shall adopt its internal rules"). Is this text adequate? In many countries, the Legislature's rules of procedure codify the methods of supervising the Executive (written questions, oral questions, motions, etc). For example, it is important that the rules provide for the setting

up of specialised committees, since the task of parliamentary control can be carried out more effectively at this level.

If necessary, the Constitution itself could be used to institute certain specialised committees in particularly important fields (see, for example, the German Constitution, art. 45a and 45b). The Constitution could also outline the general rules governing the composition of parliamentary committees (proportional representation of parties, for example: see the Portuguese Constitution, art. 181).

4.3 The Constitution of the Federation sets the date on which the assemblies meet following elections (art. IV-A-5 and IV-A-10) but appears not to regulate the question of parliamentary sessions *per se* (although article IV-B-9 provides for situations where the Legislature is not in session).

In many countries, the Constitution fixes an official opening date for the parliamentary session and its duration. In other states, the assemblies themselves decide on the dates of their sessions. This point should be clarified in the Constitution of the Federation.

The official opening of parliamentary sessions is frequently the occasion for a statement by the Prime Minister on the general policies that his or her government intends to pursue; this is followed by a debate. If appropriate, this custom could be formalised in the Constitution.

Equally, the date for tabling the general budget could be fixed by the Constitution or pursuant to it, so that the time required for its discussion by the assemblies can be set aside. Approval of the budget is the supreme method of parliamentary control (however, we have seen in this respect that the Constitution of the Federation mentions only the possibility that the President may dissolve the assemblies in the event of non-adoption of the budget).

The date for closure of state accounts could also be set by the Constitution or pursuant to it. Approval of the accounts also presents an opportunity for control by the Legislature.

4.4 Many constitutions expressly state ministers' obligation to attend assembly sittings at which their presence is required in person, for the purpose of replying to the questions put to them.

The mechanism of parliamentary questions is increasingly used. Some constitutions even provide that a minimum time be set aside for oral questions (art. 48(2), French Constitution; art. 111, Spanish Constitution; art. 180 (2), Portuguese Constitution).

Questions may also be put in written form. In the event of failure to reply within a given time, the list of questions to which the relevant ministers have not replied may be published.

4.5 With regard to specialised committees, almost all countries have a petitions committee, responsible for examining citizens' complaints. Contacts frequently exist between these committees and ombudsmen, via general or specific reports. It would appear that this kind of contact is absent at the level of the Federation. For example, the ombudsmen's annual reports are not forwarded to the assemblies (art. II-B-8). Links should be strengthened between the ombudsmen's activities and the Legislature.

4.6 Financial control is by its nature highly technical. In many countries, a specialised institution (eg the *Cour des Comptes*) assists parliamentary assemblies in exercising this control. There would appear to be a shortcoming in the Federation's institutions in this regard. At the very least, specialised committees should be set up to deal with financial matters and should be able to call on the services of financial experts.

4.7 The Legislature's rights to initiate legislation and to introduce amendments should be clearly set out. In many countries, an independent institution provides legal opinions to assemblies, either when they have to examine government proposals or when they are using their right to initiate legislation. Such an institution could be set up at Federation level. Without it, the assemblies are often at a disadvantage in relation to the executive. At the least, one could suggest that specialised independent legal experts be assigned to assist the parliamentary assemblies, and more particularly the committees responsible for examining draft legislation.

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