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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

# JOINT OPINION ON AMENDMENTS TO THE ELECTION LAW OF BOSNIA AND HERZEGOVINA

**by the Venice Commission**
**and**
**OSCE/ODIHR**

**adopted by the Council for Democratic Elections**
**at its 24th Meeting**
**(Venice, 15 March 2008)**
**and by the Venice Commission**
**at its 75th Plenary Session**
**(Venice, 13-14 June 2008)**

**on the basis of comments by**

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**Mr Hjörtur TORFASON (Member, Iceland)**
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## *I. Introduction*

*1. This joint opinion on the amendments[1] to the Election Law of Bosnia and Herzegovina (Election Law) is prepared by the Organization for Security and Cooperation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Council of Europe's European Commission for Democracy Through Law (Venice Commission).*

*2. The joint opinion considers only the amendments to the Election Law and, therefore, must be considered with previous assessments of the Election Law by the Venice Commission[2] and the OSCE/ODIHR. Of particular relevance are the Final Report of the OSCE/ODIHR Election Observation Mission for the 1 October 2006 General Elections (Warsaw, 6 February 2007), Venice Commission Opinion on Different Proposals for the Election of the Presidency of Bosnia and Herzegovina (Strasbourg, 20 March 2006) (CDL-AD(2006)004), OSCE/ODIHR Assessment of the Election Law for the 5 October 2002 Elections in Bosnia and Herzegovina (Warsaw, 25 July 2002), and Venice Commission Opinion on the Electoral Law of Bosnia and Herzegovina (Strasbourg, 24 October 2001) (CDL-INF(2001)21). These documents contain important suggestions on how to improve the Election Law in order to maintain a legal framework for elections consistent with international standards.*

*3. In the obviously difficult constitutional, institutional and political context of Bosnia and Herzegovina, the election law has already been subject to quite frequent reforms. For the major part, the current amendments are addressed towards technical issues, for purposes of clarification and improvement, and mainly with positive results. They also do address some previous recommendations of more substantive nature and may be considered as positive to that extent. However, the amendments do not address certain significant issues previously noted regarding the national and entity election systems, which are based on ethnicity, the right to be elected, and transparency in the determination of rights in electoral dispute proceedings.*

*4. It must be kept in mind that the legal setting for Bosnia and Herzegovina is unique. The constitution is Annex 4 of what is commonly known as the Dayton Peace Agreement.[3] In addition to being a state constitution, the document is part of a peace accord, whose annexes qualify as international treaties under the Vienna Convention on the Law of Treaties. The Election Law (adopted in 2001 and amended on several occasions in 2002, 2004, 2005, and 2006) regulates elections at the state level and "stipulates the principles governing the elections at all levels of authority". Due to the number and nature of the applicable laws, the legal framework for elections in Bosnia and Herzegovina can be considered as complex.[4] Thus, any opinion must be cognizant of the unique legal setting of the country.*

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1 The amendments reviewed consisted of 79 proposed articles in an unofficial translation of text (CDL-EL(2008)003). These 79 proposed articles were further amended by the Constitution and Legal Affairs Commission of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina on 29 February 2008, but these further amendments were not adopted by the Parliamentary Assembly. Any opinion based on translated laws may be affected by issues of interpretation resulting from translation. A law can be considered only on the literal translated text that is available. The examined amendments were adopted by the Parliamentary Assembly of Bosnia and Herzegovina in March 2008. The original full text of the law appears in doc. CDL(2001)089.

2 See also Comments on the 2005 draf law on amendments to the Election law of Bosnia and Herzegovina by Mr A. J. Sanchez Navarro CDL-EL(2006)014.

3 The Constitution of the State of Bosnia and Herzegovina was agreed at Dayton, Ohio, in the United States of America, as Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina, initialled at Dayton on 21 November 1995 and signed in Paris on 14 December 1995.

4 *See, e.g.*, European Commission for Democracy Through Law (Venice Commission) Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative (11 March 2005), CDL-AD(2005)004.

*5. The present opinion, which was prepared on the basis of comments by Messrs A. Sanchez Navarro and H. Torfason, members of the Venice Commission, Jessie V. Pilgrim, expert for the OSCE/ODIHR, was adopted by the Council for Democratic Elections at its 24th meeting (Venice, 15 March 2008) and by the Venice Commission at its 75th plenary session (Venice, 13-14 June 2008).*

## II. Discussion of amendments

### 1. General limitations on the right to be elected

6. Article 25(b) of the International Covenant on Civil and Political Rights (ICCPR), which is part of the Constitution of Bosnia and Herzegovina, provides that every citizen, without unreasonable restrictions, has the right "to be elected". Both the OSCE/ODIHR and the Venice Commission have previously expressed concerns about limitations on the right to be elected.[5] However, the issue is virtually moot as most of the limitations expired on 31 December 2007. Regardless, an additional limitation on the right to be elected has been introduced by the amendments. Article 6 provides an additional limitation by expanding the current limitations in Article 1.8 of the Election Law. This amendment adds the category of "notary" as a person who cannot be a candidate until the person resigns the position of notary. The legislation regulating the powers of a notary has not been reviewed. It is *recommended* that careful consideration be given to whether this prohibition is a reasonable restriction on the right to be elected.[6]

### 2. Specific limitations on the right to be elected

7. Both the OSCE/ODIHR and the Venice Commission have expressed concern on numerous occasions regarding the specific limitations on the right to be elected that are based on ethnicity. These ethnically based limitations include Articles 8.1 (Presidency of Bosnia and Herzegovina) and 12.3 (Presidency and Vice Presidency of the Republika Srpska) of the Election Law. These limitations are based in part on Article V of the Constitution. None of the proposed amendments address this problem. However, it must be recognized that this problem can only be addressed by amending both the Constitution and the Election Law. Constitutional change in Bosnia and Herzegovina has made no progress.

8. The OSCE/ODIHR and the Venice Commission have previously expressed concerns over the exclusion of "others" (any person who is not a Bosniac, Croat, or Serb) from elective executive office.[7] The constitutional ethnicity-based limitations to the right to stand for office violate several international documents, including the ICCPR, European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and of the commitments made to the Council of Europe, as well as article 7.3 of the OSCE 1990 Copenhagen Document. None of the amendments address this issue. It is *recommended* that provisions of the constitution and of the Election Law that discriminate against certain citizens on the basis of their ethnicity should be eliminated. All citizens of Bosnia and Herzegovina should have the right to stand for any office or to vote on equal terms.

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[5] OSCE/ODIHR Election Observation Mission Report, Bosnia and Herzegovina Municipal Elections on 2 October 2004, at page 23; European Commission for Democracy Through Law (Venice Commission) Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative (11 March 2005), CDL-AD(2005)004, at ¶100.

[6] The *Case of Ahmed and Others v. The United Kingdom*, Nos. 65/1997/849/1056 in the European Court of Human Rights (2 September 1998), provides a good discussion on limitations on the right to be a candidate.

[7] Final Report of the OSCE/ODIHR Election Observation Mission for the 1st October 2006 General Elections (Warsaw, 6 February 2007), page 1; OSCE/ODIHR Final Report on General Elections in Bosnia and Herzegovina on 5 October 2002, page 23.

### 3. Equal suffrage

9. The election systems for the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, the Parliament of the Federation of Bosnia and Herzegovina, and the National Assembly of the Republika Srpska provide for the election of some members in multi-member constituencies. Although Articles 9.11, 10.9, and 11.9 of the Election Law require a review of multi-member constituencies every four years to ensure that they are established "in a manner that complies with democratic principles", the OSCE/ODIHR observed in the 2006 elections that there was significant variance in voting populations of multi-member constituencies.[8] Article 25(b) of the ICCPR provides that elections shall be conducted through the exercise of universal and equal suffrage. Equal suffrage means that the vote of each voter counts the same as other voters and has equal weight. Equal suffrage is not respected if the weight of a voter's vote is diminished due to significant variance in constituency voting populations.

10. None of the amendments address the above issue. It is *recommended* that Articles 9.11, 10.9, and 11.9 of the Election Law be amended to include the principles of universal and equal suffrage and that these principles be implemented when the boundaries of multi-member constituencies are reviewed by the competent authorities.

### 4. Right to be elected and vote in local elections

11. The Election Law conditions the right to be elected and to vote in all elections upon citizenship. The growing trend is for extension of the right to elect and be elected in local elections to non-citizens who have had lawful residence on the national territory of the country for a sufficient period of time. The period of five years is usually considered sufficient. Further, this right is guaranteed to foreign nationals residing in States that have ratified the Maastricht Treaty (Treaty on European Union). The Parliamentary Assembly of the Council of Europe (Recommendation 1500 (2001)) and the Committee of Ministers (Recommendation R (2001) 19) have taken similar positions in urging member States to adopt the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144).

12. None of the amendments address the above issue. The OSCE/ODIHR and the Venice Commission *recommend* that consideration be given to amending the legal framework to include suffrage rights in local elections for those non-citizens who have had-long term lawful residence on the national territory of the country for a period of five years. It is also recommended that consideration be given to including specific factors or criteria in law that should be evaluated in determining the length of residency.

### 5. Central Voters Register

13. Chapter 3 of the Election Law regulates the Central Voters Register. All of Chapter 3 was amended in 2006 and several articles are again amended by the latest amendments. These amendments incorporate by reference several other laws regulating citizen identification numbers and cards, residency registration, data exchange, maintenance of records on citizens, and the activities of other state authorities. To some extent, the degree to which an accurate list of voters will be established depends on other legislation and state authorities other than the

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[8] For the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, constituency no. 1 in the Republika Srpska had almost two times more voters than constituency no. 3 but the same number of mandates - three. The Parliament of the Federation of Bosnia and Herzegovina constituency no. 8 elected 9 deputies with less voters than constituency no.11, which had only 7 elected deputies. Final Report of the OSCE/ODIHR Election Observation Mission for the 1st October 2006 General Elections (Warsaw, 6 February 2007), page 25.

Election Commission of Bosnia and Herzegovina. Any significant deficiencies, if they exist in other legislation, will be highlighted by efforts to implement the legislation. No obvious deficiencies, however, appear from the text of the proposed amendments.

**6. Participation of National Minorities in local elections**

14. The amendments (Article 64) make a significant change in the election system for national minority candidates in local elections. Previously, the election system for local elections was a proportional representation system that required mandates to be allocated to candidates on lists in accordance with special rules to ensure that members of a national minority received a number of mandates corresponding to census population strength. The amendments raise concerns about equal suffrage and non-discrimination as they create separate electoral systems on the same ballot. One system is a proportional representation system for the general population of election contestants and the second system is a plurality or "first-past-the post-system" (FPTP) for national minority candidates. Under the proposed new Article 13.14 of the Election Law, a voter has one vote and chooses an election, either the PR election or FPTP election for national minorities, in which the voter will participate. The "weight" of vote and "equality" of suffrage depends on which election the voter opts for when the voter marks the ballot. This joint opinion does not provide a mathematical analysis of the potential consequences of the hybrid PR/FPTP two elections/one vote ballot system. However, in general, it can be seen that there may be some issues presented concerning equal suffrage and non-discrimination in the exercise of suffrage rights. It is *recommended* that there be careful consideration before this system is adopted and that potential adverse consequences, both mathematically and legally, are evaluated fully.

15. It should be noted that the Constitution and Legal Affairs Commission of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina further amended Article 64 (Amendment IX) by adding the following text to paragraph (2): "whereby the members of all national minorities who make over 3% of the total population of that constituency, according to the last census, shall be guaranteed at least one seat". Thus, national minorities constituting at least 3% of the total population of the constituency are ensured the allocation of least one mandate.

**7. Participation of women**

16. Article 4.19 of the Election Law requires that every list of candidates shall contain a certain number of minority gender candidates.[9] Article 4.19 is intended to increase the number of women candidates at the top of every candidates list and, thereby, increase the number of women elected. Reaching this goal, however, is made difficult by the present system of open list voting (Articles 9.9, 10.7, 11.7, and 13.5), which allows voters to ignore the order of candidates on the list. This fact was specifically observed in the 2006 elections, where more than 30 women lost seats to men who had been placed lower on the lists of candidates.[10] As none of the amendments address this issue, it is *recommended* that consideration be given to introducing a system ensuring a minimal percentage of each gender in the elected body to achieve the goal of Article 4.19.

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[9] Article 4.19 provides: "Every candidates list shall include candidates of male and female gender. The minority gender candidates shall be distributed on the candidates list in the following manner. At least one (1) minority gender candidate amongst the first two (2) candidates, two (2) minority gender candidates amongst the first five (5) candidates, and three (3) minority gender candidates amongst the first eight (8) candidates et seq. The number of minority gender candidates shall be at least equal to the total number of candidates on the list, divided by three (3) rounded up to the highest integer."

[10] Final Report of the OSCE/ODIHR Election Observation Mission for the 1st October 2006 General Elections (Warsaw, 6 February 2007), page 18.

17. Article 8 of the amendments attempts to increase the participation of women in the election administration. This amendment adds a new paragraph to Article 2.2 of the Election Law, requiring "efforts" to ensure that at least one-third of the membership of election commissions and polling stations consists of the less represented gender. This is a positive amendment.

**8. Verification of supporting signatures for candidacy**

18. The relevant articles in the Election Law, regulating the number of signatures needed for candidacy, provide for 5% in some instances and a fixed number in others. Although this issue has been raised previously, none of the amendments addresses signature support for candidates. Consideration should be given to revising the number of support signatures required for candidacy. A commonly accepted maximum is one percent (1%) of the total number of voters in the relevant constituency.[11] It is *recommended* that the 5% should be reduced to 1% and it should be verified where fixed numbers are used that the fixed number does not exceed 1% of the registered voters.

19. Article 4.11 of the Election Law states that a voter "may support only one political party or independent candidate on the signature support form". The signature support process is not an election itself and there does not appear to be a justifiable reason for limiting the right of voters to support the ballot access efforts of more than one candidate. A voter should be able to support more than one candidacy with the voter's signature. It is *recommended* that Article 4.11 be amended to remove this restriction on voters.

20. The Election Law does not state how the CEC is to verify signatures. Article 4.11 only states that the CEC "shall regulate how the signatures of support shall be checked and verified". It is *recommended* that a detailed and transparent procedure for verifying support signatures by the CEC be legally provided, ensuring consistency and uniformity of the verification process.

**9. De-certification of political party or candidacy**

21. Articles 6.7 and 6.10 both provide that the CEC has authority to impose, when deciding any complaint or appeal, the following penalty: "de-certification of a political party, coalition, list of independent candidates or independent candidate(s)". These articles also grant the CEC authority to decree the "removal of a candidate from a candidates list when it is determined that the candidate was responsible for the violations". None of the amendments addresses signature support for candidates, although this issue has been raised previously.

22. The powers in Articles 6.7 and 6.10 are not limited to a violation that threatens peace and security or the integrity of the election processes, but apply generally to any violation of the law. This allows room for potential abuse and disproportionate punishment. It is *recommended* that candidate/party registration revocation be limited to cases where legal requirements for candidacy are not fulfilled. Articles 6.7 and 6.10 should be amended accordingly.

**10. Mandate allocation**

23. An amendment introduced by the Constitution and Legal Affairs Commission of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina (Amendment VII) changes the rules for mandate allocation in cantonal assemblies and municipal assemblies/councils. This amendment revises Article 13.5 of the existing law. This

[11] One percent (1%) is recognized as a maximum needed for signature support. *See* Venice Commission *Code of Good Practice in Electoral Matters*, page 25.

amendment provides that, in cases not regulated by city statutes or specific provisions of the Election Law, distribution of mandates must ensure that at least one mandate is allocated to a "representative of each constituent people which, according to the last census in BiH, represents more than 3% of the total population of the city". This provision is similar to mandate allocation rules for the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina (Article 10.8A), National Assembly of the Republika Srpska (Article 11.8A), and the City Council of Mostar (Articles 19.5 and 19.6), as it ensures at least one mandate for each constituent people that constitutes at least 3% of the city population. However, the text of this amendment is not as detailed as the text of the existing articles specifying similar allocation rules. It is recommended that Article 13.5 be further amended to provide greater detail for each step of the allocation process. Although the intent and goal of the article is apparent, the allocations procedures could be stated with greater detail and specificity[12].

24. On a positive note, the amendments in Articles 33 and 35 address a problem observed in the 2006 elections when not all mandates could be allocated due to the legal limit that had been placed on the number of candidates permitted on a list of candidates.[13] Article 33 increases the maximum number of names on a list of candidates for a multi-member constituency from two to five in Article 4.19 of the Election Law. Article 35 adds a new paragraph in Article 4.24 of the Election Law that clarifies the maximum number of candidates permitted on a compensatory list of candidates. This is a positive development that addresses a previous recommendation.

25. However, Article 9.9 of the Election Law, which governs vacancies where an independent candidate held a mandate, remains unaddressed. Under Article 9.9, if the mandate of an independent candidate terminates, then the mandate remains vacant until the next regularly scheduled general elections. It is r*ecommended* that the law should contain some mechanism for filling a vacancy in the mandate held by an independent candidate if the next regularly scheduled general elections are to be conducted later than 12 months of the date of the vacancy.[14] This is especially important for the Bosnia and Herzegovina House of Representatives, which has only 42 members.

**11. Election administration bodies**

26. The OSCE/ODIHR final report on the 2006 elections noted that there were some difficulties observed in the implementation of the voting and counting processes.[15] Article 8 of the amendments does seem to have a positive effect in relation to this problem, as it requires continued training for members of elections commissions as a condition for remaining a member of the commission. This requirement is added as a new paragraph in Article 2.2 of the Election Law.

27. Another potentially positive amendment is Article 13, which provides that the number of members for a Municipal Election Commission can be as many as seven (Article 2.12). The increase from five to seven as the maximum number could result in more efficient

[12] After the law was adopted in March 2008, the rapporteurs were informed that the amendment to the law that regulated a quota for constituent peoples in municipal assemblies was not adopted.

[13] Final Report of the OSCE/ODIHR Election Observation Mission for the 1st October 2006 General Elections (Warsaw, 6 February 2007), page 24.

[14] This recommendation also applies to the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina (Chapter 10) and the National Assembly of the Republika Srpska (Chapter 11), as Chapters 10 and 11 incorporate Article 9.9.

[15] Final Report of the OSCE/ODIHR Election Observation Mission for the 1 October 2006 General Elections (Warsaw, 6 February 2007), pages 1 and 2.

administration of election processes. This amendment also requires that members be appointed after and based on public advertisement for positions. The Election Commission of Bosnia and Herzegovina determines the procedure for public advertisement under a separate regulation.

28. Article 16 of the amendments changes the timeframe for appointment of members of polling station committees. Initial appointment of members has been changed from 30 days before the election to 45 days before the election. This change would allow additional time for the training of members of the polling station committees and should be viewed as positive.

**12. Postal ballots**

29. Article 41 of the amendments clarifies an ambiguity in the text of Article 5.28 of the Election Law regulating postal ballots. Currently, Article 5.28 requires that a by mail ballot be postmarked by Election Day in order to be counted. However, Article 5.28 is not clear whether the postmark is the postmark of the country from which the ballot has been mailed. Article 41 makes it clear that the envelope containing the ballot must be postmarked by the post office of the country from which the ballot was cast. This is a positive amendment.

**13. Announcement and publication of results**

30. Article 43 of the amendments introduces a new Article 5.29a, which requires the Election Commission of Bosnia and Herzegovina to publish preliminary, unofficial and incomplete results of elections for each level of authority. Results are to be published at 00:00 hours on the first Sunday in October; twice during the next 24 hours; every 24 hours during the next five days; and in the days following every 48 hours until the final, official and complete results of the elections are published. This amendment should increase transparency and trust in the election results. However, greater trust and transparency could result if the new Article 5.29a specifically required that "publication" of this information include posting at the website of the Commission. It is *recommended* that this requirement is included in Article 5.29a and the Commission publish all protocols on its website as soon as they are electronically documented.

**14. Election complaints and appeals**

31. There are seven amendments to Chapter 6 of the Election Law, which regulates protection of electoral rights. The OSCE/ODIHR and the Venice Commission have previously expressed previous concerns about shortcomings in this area. However, the amendments do not address previous concerns.

32. There is no express right to a public hearing under the Election Law. Under Articles 6.3, 6.6, and 6.9, a public hearing may be held if the adjudicating commission or tribunal decides that a hearing is necessary. The OSCE/ODIHR has stated that the law should "enable parties to present their argumentation and evidence in public hearings. Such a measure would further contribute to the transparency of dispute resolution."[16]

33. Transparency in the adjudication of electoral rights is required under international standards. Proceedings to determine rights under a state's law:

[16] Final Report of the OSCE/ODIHR Election Observation Mission for the 1st October 2006 General Elections (Warsaw, 6 February 2007), page 25.

> *"…must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large. Courts must make information regarding the time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, inter alia, the potential interest in the case and the duration of the oral hearing."*[17]

34. The right to present evidence is a component of the right to file a complaint. However, it is apparent from Articles 6.3, 6.6, and 6.9 that the right to present evidence may in fact be limited. Thus, there is no provision for a meaningful right to present evidence and a complainant may become limited to the "evidence" presented in the complaint. The complainant is told to provide a "brief description" in the complaint (Article 6.3), while at the same time having no solid guarantee of the right to present evidence in support of the complaint at a public hearing. This puts a complainant in a difficult position. It is also contrary to the principle of equality before courts and tribunals. "The principle of equality between parties applies also to civil proceedings, and demands, inter alia, that each side be given the opportunity to contest all the arguments and evidence adduced by the other party."[18]

35. It is of concern that there is no express right to a public hearing. It is also of concern that there is no clear guarantee of a meaningful right to present evidence in support of a complaint. Protection of the right of suffrage requires that procedural and substantive legal guarantees are available to a citizen, including the right to a public hearing and the right to present evidence.[19]

36. It is *recommended* that the Election Law be amended to ensure that complainants have the right to a public hearing and the right to present evidence at the hearing. Affording these rights to complainants would not be an administrative burden. Nor do costs and time considerations justify ignoring these rights. It should be a relatively easy matter for an adjudicating tribunal to set aside a slot of time, on a daily basis, for complainants to have their "say" about their complaints in a public hearing and to present evidence in support of their complaints.

37. An amendment to Article 6.7 of the Election Law grants the Central Election Commission of Bosnia and Herzegovina power to impose penalties "ex officio" as well as when "adjudicating" complaints. The OSCE/ODIHR final report on the 2006 elections noted that the "adjudicating authorities could also initiate investigations ex officio."[20] The "ex officio" powers of the Commission should be considered carefully as the Commission must not only be an impartial tribunal, but must also appear to be impartial. As noted by the UN Human Rights Committee in General Comment 32:

> "*The requirement of impartiality has two aspects. First, judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial*."[21]

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[17] *See* General Comment 32, Paragraph 28. The United Nations Human Rights Committee has adopted a General Comment (General Comment 32) interpreting the right to equality before courts and tribunals and to a fair trial set forth in Article 14 of the ICCPR.

[18] *See* General Comment 32, Paragraph 13.

[19] *See* Articles 8 and 10 of the Universal Declaration of Human Rights; Paragraph 13.9 of the OSCE 1989 Vienna Document, Paragraphs 5.9 through 5.12 of the OSCE 1990 Copenhagen Document, and Paragraphs 18 through 21 of the OSCE 1991 Moscow Document.

[20] Final Report of the OSCE/ODIHR Election Observation Mission for the 1st October 2006 General Elections (Warsaw, 6 February 2007), page 15.

[21] *See* General Comment 32, Paragraph 21.

38. The appearance of impartiality of the Commission may be damaged if the Commission acts both as an executive function prosecutor as well as in the capacity as judicial function adjudicator.

39. The OSCE/ODIHR has previously recommended that "clear deadlines for the adjudication of media-related complaints should be considered, as there is currently a gap in the legislation regarding this issue."[22] None of the amendments address this recommendation.

## III. Conclusion

40. This joint opinion on the amendments to the Election Law of Bosnia and Herzegovina shows that, while the amendments primarily address technical issues for purposes of clarification and improvment they also address some previous substantive recommendations and should be considered as positive. However, the amendments fail to address some significant issues previously noted regarding the national and entity election systems, which are based on ethnicity, the right to be elected, and transparency in the determination of rights in electoral dispute proceedings.

[22] Final Report of the OSCE/ODIHR Election Observation Mission for the 1st October 2006 General Elections (Warsaw, 6 February 2007), page 26.