

## FAQ for IDPI proposal for BiH election law reform

1. Was the legitimate representation of the constituent peoples really promised and demanded in Dayton?
2. Does the IDPI proposal include people who are not constituent, and does it respect their status? Does it include and respect the electoral rights of ethnic/nationally undeclared citizens?
3. Do you think that the Constitution of Bosnia and Herzegovina stands for the idea that only the Croats (or Serbs, or Bosniaks) get to elect their member of the Presidency? Does the IDPI proposal stand for that idea?
4. Komšić won the most votes in elections for the Croat Member of the Presidency of Bosnia and Herzegovina, i.e. for “one Croat” from the Federation of Bosnia and Herzegovina 2006 and 2010. Was he a legitimate representative of the Croat people to the Presidency of Bosnia and Herzegovina?
5. Why should the candidates sign a statement on representing the majority electoral and political will of appropriate constituent peoples or group of the Other peoples and citizens? What should that statement look like?
6. Is the Decision of the Constitutional Court of Bosnia and Herzegovina U-23/14 (Ljubić) opposed to the decisions of the ECHR in the cases Sejdić-Finci, Zornić and Pilav? Do these decisions exclude each other?
7. Could the ECHR decision in the Sejdić-Finci case be implemented without constitutional changes? Does the IDPI proposal resolve other decisions from the ECHR (Zornić and Pilav) and how?
8. Does the IDPI proposal support the principle of legitimate representation and the principle of the equal (proportional) value for every vote?
9. Does the IDPI proposal exclude the Croat candidates for the House of Peoples of the Parliament of the Federation for Bosnia and Herzegovina with candidacies in majority Bosniak cantons, and Bosniak candidates in cantons with Croat majority? For example, does the IDPI proposal have the elements of electoral discrimination on the administrative-territorial basis?
10. This proposal requires usage of the last Population Census instead of the 1991 version. Why?
11. Does the IDPI require any changes to the existing internal administrative-territorial boundaries, i.e. boundaries of the existing constituencies?
12. Why do you claim that the IDPI proposal is a compromise solution?

## IDPI's answers

### 1. Was the legitimate representation of the constituent peoples really promised and demanded in Dayton?

Yes, the legitimate representation of constituent peoples was promised and demanded in Dayton. Throughout the entire Dayton Peace Accords and the Constitution of BiH, as shown in Annex 4, the principle of legitimate representation of constituent peoples is operationalized. Therefore, denying the principle of legitimate representation of constituent peoples is an unconstitutional and anti-Daytonian act. The principle of legitimate representation of constituent peoples **means that a constituent people should not elect political representatives to the other constituent people**. It means that legitimate political representatives of a constituent people are only those representatives elected by the constituent people's majority will.

**The constituency of peoples and their mutual equality is the very essence of the Constitution of BiH and the Dayton Agreement.**

**Constitution BiH, Article I.2.:** *“Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections.”*

The basic principle of democracy is: **the power derives from the people and belongs to the people**. In accordance with Article I.2. *Bosnia and Herzegovina shall be a democratic state*, i.e., a state in which **power derives from the people and belongs to the people**. The people, as the authority of the power and through the process of free and democratic elections, choose their political representatives and empower them to represent and rule in their name. This form of democracy, also defined by the Article I.2. of the Constitution of BiH, in law and political theories terms is called **“representative democracy”**.

**From the Preamble of the BiH Constitution**, it is evident that the constitution-writers named/appointed Bosniaks, Croats and Serbs as *the constituent peoples*. Thus, the Constitution of BiH gave each of the constituent peoples the status of **“demos”** or **“the people from which democratic and legitimate power derives”**. Therefore, **each constituent people constitutes a separate constituency, a separate demos**, from which the political representatives of that constituent people are elected to the institutions that – under the Constitution of BiH and the Dayton Agreement – are intended for legitimate representation of constituent peoples: the Presidency of BiH and the House of Peoples of the Parliamentary Assembly of BiH.

The unquestionable conclusion, that legitimate representation/advocacy of constituent peoples was promised and demanded in Dayton, is confirmed by the **“Daytonian” bodies** of state legislature aimed at legitimate representation/advocacy of constituent peoples: the **Presidency of BiH** and the **House of Peoples of the Parliamentary Assembly of BiH**.

When the principle of legitimate representation of constituent peoples would not be valid, BiH would not have a **three-member (tripartite) BiH Presidency** but would have one President. From the constitutional and Daytonian norm that there exist three constituent peoples (Bosniaks, Croats and Serbs) in Bosnia and Herzegovina, derives the second constitutional and daytonian norm, which states that the BiH Presidency consists of three members: **“one Bosniak”** or “Bosniak member of the Presidency,” **“one Croat”** or “a Croat member of the Presidency”, and **“one Serb”** or “a Serb member of the Presidency”. The aforementioned example is, legally and logically, irrefutable proof of the existence of a link between the status of “constituent people” and the function of “BiH Presidency Member”, i.e., **the connection between Bosniaks as constituent people and “one Bosniak” as member of the Presidency of BiH (the same is valid for Croats and for Serbs)**.

The second example is the **House of Peoples of the Parliamentary Assembly of BiH**. When there would not be three constituent peoples in BiH, but only one (constituent) nation and a nation-state, the Parliament of BiH would have only one house: the House of Representatives. From the constitutional norms which define that there are three constituent peoples (Bosniaks, Croats and Serbs) in Bosnia and Herzegovina, it derives the second constitutional norm which explains that the Parliamentary Assembly of BiH consists of two houses: the **House of Representatives** (as lower house) and the **House of Peoples** (as upper house).

Due to this **three-constituency** of peoples, the House of Peoples of the Parliamentary Assembly of BiH consists of three equal Clubs: Bosniak (Club of Bosniaks), Croat (Club of Croats) and Serb (Club of Serbs). The equality of Clubs is reflected in the fact that all three Clubs have the same number of delegates and that decisions at the level of the House of Peoples are taken by majority. The House level must have a qualified majority in each Club of the House of Peoples, has the right to institute the protection of the vital national interest of the people it represents and whose interests it represents. From the aforementioned, derives **legal and logical** irrefutable proof of the existence of a link between the status of “constituent peoples” and “the House of Peoples of the PS BiH”, i.e., the undeniable link between the Bosniaks as a constituent people and the Club of Bosniaks at the House of Peoples of the Parliamentary Assembly (the same is valid for Croats and Serbs).

This connection is further manifested by the fact that **only the Club of Bosniaks can initiate the protection of the vital national interest of Bosniaks** (the same is valid for Croats and Serbs). It is not possible for the Club of Croats or the Club of Serbs to initiate the protection of the vital national interest (veto) of Bosniaks (and vice-versa). It is therefore logical and correct to conclude that the protection of the vital national interest of a particular constituent people is intended only for that Club of the House of Peoples of the Parliamentary Assembly BiH which represents the people concerned and whose interests are represented. Thus, the **Club of Bosniaks represents Bosniaks in the House of Peoples and cares about their vital national interests**, i.e., when it assesses the vulnerability of the people it can request the protection of the vital national interests/veto (the same is valid for Croats and Serbs).

**Legitimacy of representation is gained following elections results.** According to representative democracy, the legitimacy of the authorities derives from those who choose, and not from those who are elected. Therefore, given that the Club of Bosniaks in the House of Peoples of the Parliamentary Assembly of BiH represents Bosniaks as a constituent people and represents their (vital national) interests, in legal terms it is logical that the delegates in that Club **must have** an electoral legitimacy obtained from the people that they represent and whose (vital national) interests they defend (the same is valid for delegates in the Club of Croats and the Club of Serbs).

Consequently, it is **necessary** for each Club of the House of Peoples of the Parliamentary Assembly of BiH to have an electoral legitimacy obtained from the constituent peoples that it represents and whose (vital national) interests it defends in the House of Peoples. **Analogously, this is also valid for three members of the BiH Presidency and three constituent peoples that they represent and whose (vital) national interests they defend.** Additional evidence for this claim is the fact that, according to the Dayton constitution, a clear link between the protection of vital national interests exists between “one Bosniak” member in the Presidency of BiH and the Club of Bosniaks in the Parliamentary Assembly of BiH (the same is valid for “one Croat” and “one Serb”). Moreover, there is no such a constitutional relationship between “one Croat” or “one Serb” and the Club of Bosniaks at the House of Peoples of the Parliamentary Assembly BiH (and vice-versa).

Therefore, it can be undeniably concluded that there is a constitutional-legal relationship between:

- **Bosniaks** as constituent peoples and **“one Bosniak”** in the Presidency of BiH and the Club of Bosniaks in the House of Peoples of the Parliamentary Assembly of BiH
- **Croats** as constituent peoples and **“one Croat”** in the Presidency of BiH and the Club of Croats in the House of Peoples of the Parliamentary Assembly of BiH
- **Serbs** as constituent peoples and **“one Serb”** in the Presidency of BiH and the Club of Serbs in the House of Peoples of the Parliamentary Assembly of BiH

This constitutional-legal relationship has been established and defined within the framework of the Dayton Peace Agreement, i.e. the Constitution of BiH as Annex 4 of the mentioned Agreement. From the mentioned Dayton constitutional and legal ties, it is necessary to have a legitimate representation of constituent peoples in the Presidency of BiH and the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina.

**There is no constitutional-legal or logical sense** to enable Bosniaks as a constituent people to elect political representatives of Croats as constituent peoples in the Presidency of BiH and the House of Peoples of the Parliamentary Assembly of BiH, i.e. to enable Bosniaks to participate in the election of “one Croat” in the

Presidency of BiH when they have the right and the possibility to choose the “one Bosniak” in the Presidency of BiH (the same is valid for Croats and Serbs). It does not make sense to allow Bosniaks to participate in the election of the delegates to the Club of Croats in the House of Peoples of the Parliamentary Assembly when they already have the right and the possibility to choose delegates to the Club of Bosniaks (the same goes for Croats and Serbs).

The irrationality of the claim that the BiH Constitution allows Bosniaks to participate in the election of “one Croat” in the BiH Presidency or a delegate in the Club of Croats of the House of Peoples of the Parliamentary Assembly is most obvious in the fact that the BiH Constitution has granted the power to “one Croat” in the Presidency of BiH and to the Club of Croats in the House of People the constitutional right to protect the vital national interest of Croats as a constituent people. The interpretation that “one Croat” is a legitimate member of the BiH Presidency, even when more than 50% of its electoral votes are obtained from Bosniaks (in the case of Komšić in 2010 more than 90% of votes) is illogical as it creates an unconstitutional and illegitimate situation where **the vital national interests of Croats are protected by the BiH Presidency member chosen by Bosniaks**. This is obviously not what was intended by the Dayton Constitution.

In addition, the fact that Bosniaks, due to their superior number of voters over the Croats in FBiH and the existing electoral model, can choose two members of the BiH Presidency (both “one Bosniak” and “one Croat”), whereas Croats, because of their small number and the existing electoral model, have no guarantees to choose a member of the Presidency of BiH (neither “one Bosniak” nor “one Croat”), leads to the undeniable conclusion that in the relation between Bosniaks and Croats within the Presidency of BiH, there is **a violation of the principle of mutual equality between the constituent peoples**. Therefore, such violation must necessarily be considered as unconstitutional.

Support for this conclusion is found in the judgment of U-5/98 (constituent peoples) by the Constitutional Court of BiH. This judgment explicitly states that “constituency of the peoples” is **“the overriding principle of the Constitution of BiH,”** i.e., a principle by which all other constitutional principles and legal norms must be harmonized, even entities’ constitutions and the Electoral Law of BiH.

The core rights of constituent peoples consist of the constituent peoples’ right to independently and freely choose their own political representatives for those institutions that under the Constitution of BiH and the Dayton Agreement are intended to represent constituent peoples. As we have previously seen and proved, according to the Constitution of BiH and the Dayton Agreement, these institutions are the Presidency of BiH, the House of Peoples of the Parliamentary Assembly of BiH, and the entities’ house of peoples. Therefore, Croats as a constituent people have the guaranteed right, according to the BiH Constitution and the Dayton Agreement, to independently and freely vote and nominate “a Croat” in the BiH Presidency, as well as all delegates to the Club of Croats in the House of Peoples. If they are not able to do so, then Croats are de facto not constituent people in BiH, although according to the BiH Constitution and the Dayton Agreement they are. Therefore, such a state must be defined as unconstitutional.

**In the same way, this is applicable for both Bosniaks and Serbs.** Croats are only mentioned in most examples as they are the smallest of the Constituent People and thus feel the impact of this unconstitutional situation most severely. Indeed, members of the other constituent people (in this case Bosniaks) over voted and nominated delegates to the other constituent people in several election cycles. As a result, they became their (Bosniak) electoral representatives in the Presidency of BiH and the House of Peoples of the Parliamentary Assembly of BiH. As we have already said and proved, this is a rough and direct violation of the “overriding principle of the Constitution of BiH”. **The principle of the constituency of peoples and the principle of their equality has derived from the Constitution of BiH.**

To reiterate, **the constituency of all three constituent peoples** is written in the Preamble of the BiH constitution, and by U 5/98 ruling of the Constitutional Court of BiH declared the “overarching principle” of the whole constitution, and therefore, of the whole Dayton Agreement. Moreover, **mutual equality of all three constituent peoples** within the framework of the Constitution of BiH and the Dayton Agreement is enforced through **three members of BiH Presidency who are equal and who have equal rights and obligations, as well as through three clubs in the House of Peoples of BiH who have equal rights and obligations.**

Thus, according to the arguments and explanations set above, it is justified and undeniably correct to state that the constituency of peoples and their mutual equality is the very **essence**, i.e. the “**spirit**” of the Constitution of BiH and the Dayton Agreement. Also, it should be added that individuals who deny the constituency of the peoples and their mutual equality **deny the Constitution and destroy the Dayton Agreement**.

Because of the possibility of misunderstandings and malicious interpretations of our interpretations about the constitutional principles and norms presented in this response, it is important to note that in the above-mentioned examples and interpretations it was **solely** about the Daytonian and constitutional principle of legitimate representation of constituent peoples, i.e. the principle of mutual equality of constituent peoples.

Our interpretation of the rights and status of Others and all BiH citizens are presented in the answers to other issues below and in other materials that serve as explanation of the Institute for Social and Political Research (IDPI)’s proposal necessary for the changing of the electoral legislation of BiH. Finally, we want to mention here that we believe that **the rights of constituent peoples**, on the one hand, and the **group rights of Others and citizens**, as well as the **individual human and civil rights of all citizens of BiH**, on the other hand, do not exclude or endanger each other. The IDPI Expert team argues that its Proposal’s amendments of the electoral legislation prove that all these rights can be satisfied and operationalized within the “spirit and letter” of the BiH Constitution and the Dayton Agreement.

## **2. Does the IDPI proposal include people who are not constituent, and does it respect their status? Does it include and respect the electoral rights of ethnic/nationally undeclared citizens?**

Yes, the IDPI proposal for the change of electoral legislation includes members of non-constituent peoples as well as nationally unregistered citizens and recognizes their status and their electoral rights, i.e., their human, individual-civil and group-collective rights. The IDPI Proposal on electoral rights does not discriminate against any citizen of BiH or any member of any of the three constituent peoples.

### **Explanation**

Apart from the three constituent peoples in BiH named by the Daytonian constitution, there are other non-constituent peoples as well as citizens who are ethnically/nationally undecided. They together form a **group of Others Peoples and Citizens (abbreviated: Others)**.

In addition to the constituent and non-constituent peoples, Bosnia and Herzegovina as an independent and sovereign state of all its citizen-nationals has a common, **comprehensive civil-state demos**. Every citizen has his or her human and individual civic political rights that, among other things, are reflected in the fact that every citizen can participate in the elections in a way that he can run and choose.

Due to the constitutional fact of the existence of three constituent peoples as three specific demos from which the representatives in the institutions, who are nominated by the Dayton Constitution for representation of constituent peoples and individual civic political rights of members of a comprehensive civic-state demos, the Parliamentary Assembly of BiH consists of two houses:

- **House of Representatives** as a lower house for legitimate representation of All Citizens independently of their ethnic/national identity
- **House of Peoples** as an upper house for legitimate representation of three constituent peoples

According to the last officially valid 2013 Population census, citizens who independently and freely declare themselves as members of one of the three constituent peoples make up 96.4% of the population of BiH. It is undeniably true that the existing electoral model ensures to 96.4% of BiH citizens the right to vote and run as candidates in the election process for both houses of the BiH Parliamentary Assembly, as well as in the process of electing the three-member BiH Presidency. All members of three constituent peoples, or 96.4% of BiH citizens, participate as citizens in the elections for the House of Representatives of the Parliamentary Assembly of BiH, while in the elections for the Presidency of BiH and the House of Peoples of the Parliamentary Assembly of BiH they participate as one of the three constituent peoples.

What is the status of the Others who make up 3.6% of BiH's population, and what are their rights in the electoral process? Each member of the Others is an integral and equal part of a comprehensive civil-state demos and as such can, without any restrictions, be elected and nominated for a representative in the Assembly's House of Representatives (the same is valid for the entities' representative houses, as well as for cantonal assemblies and municipal councils).

Thus, Others can, without limitation, participate in the election process (to be nominated and elected) for the House of Representatives of the Parliamentary Assembly and for representative houses of entities' parliaments, as well as for cantonal assemblies and municipal councils. However, it remains to explain the status and rights of Others regarding the election of members of the BiH Presidency and of the House of Peoples of the Parliamentary Assembly of BiH and entities' houses of peoples.

At the entities' level, in the case of the Federation of Bosnia and Herzegovina and Republika Srpska, **the question of electoral rights of Others in the upper houses** was resolved by the establishment of the Club of Others in the House of Peoples of the FBiH's Parliament and the Club of Others in the Council of Peoples of Republika Srpska.

However, the question of the status and the electoral rights of Others is not resolved at the Presidency of BiH and the House of Peoples of the Parliamentary Assembly of BiH. In accordance with the BiH Constitution and the Dayton Agreement, this problem can be solved in two ways:

- 1) Enable members of the Others to run for any of the three members of the BiH Presidency and be eligible to be elected to any of the three Clubs of the House of Peoples of the Parliamentary Assembly of BiH, i.e. to be able to choose which BiH Presidency Member to run and in which Club of the House of Peoples of the Parliamentary Assembly of BiH they want to be eligible and able to be elected. Of course, it also implies that they can vote for the positions they are running for. This option also requires and implies that members of the Others need not declare themselves as members of one of the three constituent peoples in order to gain the right to run for a member of the BiH Presidency or a delegate of the House of Peoples of the Parliamentary Assembly of BiH. Therefore, this right should also be allowed to citizens who are ethnically/nationally undeclared (Zornić) and to citizens who are members of non-constituent peoples (Sejdić and Finci).
- 2) Add a fourth member to the tripartite Presidency of BiH who would primarily be a legitimate representative of the group of Others at the Presidency of BiH, and similarly, a fourth Club which would primarily be intended for legitimate representation of the group of Others to the House of Peoples of the Parliamentary Assembly.

The IDPI Expert team is generally supportive of both ways of solving the status and the rights of Others and all citizens. We think **Option 1 is simpler and easier to implement** because it requires a smaller "depth" of constitutional and legal changes, and it is therefore easier to reach the consensus of interested parties. Therefore, within the framework of IDPI's proposal for reform of BiH electoral legislation, **we have elaborated and applied only Option 1** and split its implementation into two phases i.e. two proposals: Proposal A that does not require constitutional changes and Proposal B that cannot be implemented without constitutional changes. So, not only do we think Option 1 is simpler and easier to implement than Option 2, but we also consider it optimal for Option 1 to go through two phases: the first phase through the implementation of Proposal A and the second phase through the implementation of Proposed B.

**IDPI Proposal A (Model P 1 + Model DN 1)** - fully resolves the implementation of the Ljubić judgment, and the execution of Sejdić-Finci and Zornić judgments for the Presidency of BiH, but not for the House of Peoples of the Parliamentary Assembly of BiH—it requires only amendments to the BiH Election Law without amendments to the Constitution of BiH and the Constitution of the FBiH.

**IDPI Proposal B (Model P 2 + Model DN 2)** – completely resolves the implementation of Ljubić, Sejdić-Finci, Zornić and Pilav judgments – it requests changes of the BiH Election Law and the Constitution of BiH and the Constitution of the FBiH.

**3. Do you think that the Constitution of Bosnia and Herzegovina stands for the idea that only the Croats (or Serbs, or Bosniaks) get to elect their member of the Presidency? Does the IDPI proposal stand for that idea?**

Our view is that the Constitution of Bosnia and Herzegovina and Dayton Agreement **established very clear and causal relationship** between, for example, the Croats as a constituent people and “one Croat”, i.e. “the Croat Member” of the Presidency of Bosnia and Herzegovina (the same being true for Bosniaks and Serbs).

We also consider that the Constitution of Bosnia and Herzegovina and Dayton Agreement provided to each of three constituent peoples the status of **“the people from which the legitimate and democratic power comes from”** for one of three Members of the Presidency of Bosnia and Herzegovina. Regarding the principle of the equality of constituent peoples, it means that, for example, Bosniaks as a constituent people should and could participate only in the election of their own legitimate representative in the Presidency of Bosnia and Herzegovina, i.e. in election of “one Bosniak”, or Bosniak member of the Presidency of Bosnia and Herzegovina (the same being true for Croats and Serbs).

Thus, we consider that the Constitution of Bosnia and Herzegovina and the Dayton Agreement **support the principle** that one constituent people should not elect the political representatives of another constituent people; **this principle is also supported by IDPI proposal**. Added value of IDPI proposal is **securing the implementation of mentioned principle by mathematical formulas** so there is **no need** for official personal national self-declaration of the candidates for the Presidency of Bosnia and Herzegovina, the same being true also for voters, in order to prevent members of one constituent people to elect political representatives of another constituent people. The IDPI proposal for changes to the legal framework for elections in Bosnia and Herzegovina enables all the members of all constituent peoples to be candidates for any Member of the Presidency of Bosnia and Herzegovina without their obligation to change or abandon their national affiliation declared in the last official Population Census, and also provides opportunity to all of them, through the model of “electoral points”, to vote in their electoral units for candidates for any of three Members of the Presidency without relevant distortion of the principle of legitimate representation of constituent peoples in the Presidency of Bosnia and Herzegovina.

Regarding the **status and rights of the group of Other peoples and citizens** situation is significantly different. While the Others have no primary their Member of the Presidency of Bosnia and Herzegovina, they should be enabled to freely choose for which among three members of the Presidency of Bosnia and Herzegovina will they be candidates. Of course, they have no obligation to support their candidacy with official statement on belonging to one among three constituent peoples. So, as members of non-constituent peoples, or citizens of Bosnia and Herzegovina without national affiliation, they can be candidates for any of three Members of the Presidency of Bosnia and Herzegovina. That way, any Member of the Presidency of Bosnia and Herzegovina becomes a representative of a particular constituent people, but also, at the same time, a representative of the Others who voted for him/her. For example, “one Croat,” or “Croat Member” of the Presidency of Bosnia and Herzegovina becomes the legitimate representative of the Croats as a constituent people and Others who voted for him/her (the same being true for “one Bosniak” and “one Serb”).

Thus, we consider as **logical and in accordance with the Constitution of Bosnia and Herzegovina and Dayton Agreement** if, for example, **Bosniaks as a constituent people do not elect “one Croat”** because they have a right and an opportunity to elect “one Bosniak” as their own legitimate representative in the Presidency of BiH and not “one Croat.” However, the Others, who do not have primarily their own (Others) representative in the Presidency of BiH, should have the right and opportunity to elect one among three Members the Presidency of BiH. That way, any Member of the Presidency of BiH becomes a legitimate representative of one among three constituent peoples, but also a legitimate representative of the Others who voted for him/her.

It should be secured that every Member of the Presidency of Bosnia and Herzegovina have clearly defined specific demos which elects him/her, and within each specific demos the principle of the legitimate representation and equal (proportional) value of every electoral vote should be secured and implemented.

4. **Komšić won the most votes in elections for the Croat Member of the Presidency of Bosnia and Herzegovina, i.e. for “one Croat” from the Federation of Bosnia and Herzegovina 2006 and 2010. Was he a legitimate representative of the Croat people to the Presidency of Bosnia and Herzegovina?**

No, the IDPI expert team considers that Željko Komšić was not a legitimate Croat Member of the Presidency of Bosnia and Herzegovina in both his mandates from 2006-2010 and 2010-2014. **The main and only reason** of his non-legitimacy is the fact that within the structure of the votes he received in General Elections 2006 and 2010 **more than 50% of the votes were received from the members of another constituent people** (Bosniaks). This was particularly evident in the 2010 elections when Bosniak votes constituted more than 90% of his votes.<sup>1</sup> Given that, in the representative democracy, political **representatives do represent those who elected them and represent their interests**, in mandates 2006-2010 and 2010-2014, **Željko Komšić was the Bosniak Member of the Presidency of Bosnia and Herzegovina**. Thus, in these two mandates Bosniaks, as a constituent people, had two of their Members of the Presidency of Bosnia and Herzegovina, Serbs one and Croats did not have any Member of the Presidency of Bosnia and Herzegovina. As a result, the principle of the status of the constituent peoples and their equality was severely violated and threatened, so such a state of affairs can and should be clearly characterized as **non-legitimate, non-constitutional and anti-Dayton**.

As an example of this in the US context, receiving of the majority of votes in a US Presidential election is not a decisive factor, and two out of three last US Presidents received lower numbers of the votes than their rivals. Like in the USA, Bosnia and Herzegovina also applies the **overarching principle** which decisively influences defining the value of every vote. In the USA. such a principle is the moderation of inequality among the States, and in Bosnia and Herzegovina it is the principle of the status of the constituent peoples and their equality.

### Explanation

Since the Presidency of Bosnia and Herzegovina has **three Members** and they are elected in direct elections, it is without doubt that **three specific electorates (demoses)** do exist, with each electing their own democratic and legitimate representative in the Presidency of Bosnia and Herzegovina. The fact that there are three specific electorates (demoses) from which democratic and legitimate tripartite Presidency of Bosnia and Herzegovina comes from, is clearly defined by the constitutional norm “one Bosniak,” “one Croat” and “one Serb,” i.e. in our interpretation “Bosniak Member,” “Croat Member” and “Serb Member”.

If we relate the mentioned constitutional norm with the Preamble of the Constitution which defines that **Bosniaks, Croats and Serbs have the status of the constituent peoples**, which means the specific peoples (demoses) from which the democratic and legitimate authority comes out, then one could undoubtedly and undeniably conclude that there is the **relation of election and representation** between, for example, “Croats as a constituent people” and “one Croat” as a Member of the Presidency of Bosnia and Herzegovina. Democratic legitimacy of “one Croat” does not originate from the fact that he/she is/is not **declared as a Croat**, but whether he/she is **elected by the members of the specific Croat demos** providing him/her with legitimacy to represent them and their political interests.

The necessary condition for “one Croat” to be a democratic and legitimate Member of the Presidency of Bosnia and Herzegovina is that his/her legitimacy comes **from majority electoral political will of the specific Croat demos**, while, as we already noted, “one Croat” **can** be self-identified as ethnically Croat, but that fact is not, and **does not have** to be, a precondition of his/her legitimacy – it is possible that Croat member of the Presidency is ethnically Croat, but it is definitely **not necessary** condition for legitimacy of “one Croat” as a Member of the tripartite Presidency of Bosnia and Herzegovina. So the candidate for the position of “one Croat” in the tripartite Presidency of Bosnia and Herzegovina can be any citizen of the Federation Bosnia and Herzegovina **regardless of his/her** declaring as a member of one of three constituent peoples, as a member of any people from the group of Others and citizens, or simply declares him/her as a nationally non-declared, i.e. “citizen of Bosnia and Herzegovina”. Thus, candidates for “one Croat” can also be Dervo **Sejdić** and Jakob **Finci** and Azra **Zornić**.

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<sup>1</sup> Vukoja, Ivan (2013): *Primjeri ne-konstitutivnosti i ne-jednakopravnosti Hrvata u FBiH*, Status br. 16, str. 95.



By analogy, the same is also true for Bosniaks and Serbs, i.e., “one Bosniak” and “one Serb”. We elaborated upon the example of “one Croat” because the Croats, as a constituent people, are significantly less numerous than Serbs, and especially less numerous than Bosniaks, with whom they are sharing the same Entity which is the electoral unit for election of “one Bosniak” and “one Croat”. The fact that Bosniaks consist **70.40 % of the population/voters** in Federation Bosnia and Herzegovina and Croats only **22,44 %** enables Bosniaks, in accordance with the Electoral Law of Bosnia and Herzegovina (abolished in some articles, but still valid in all the rest articles), to elect in the Presidency of Bosnia and Herzegovina both “one Bosniak” and “one Croat” from the Entity Federation Bosnia and Herzegovina. Even in the situation when **all the Croats** from the Federation of Bosnia and Herzegovina would vote for, for example, Candidate A for “one Croat”, he/she could not be elected if Bosniaks decide to vote for, for example, Candidate B for “one Croat”. In such a situation, Croats could not influence the election of “one Bosniak” – since it is enough for Bosniaks to give 32% of their votes to one candidate for “one Croat”, and to share the remaining 68% of their votes among the remaining candidates for “one Bosniak” Thus, without anybody else’s ability to relevantly influence the process, Bosniaks can elect **two of three** Members of the Presidency of Bosnia and Herzegovina, and Croats have no ensured opportunity to elect **any member**.

This scenario already happened twice, with the presidential mandates of 2006 - 2010 and 2010 - 2014. Bosniaks had two of their representatives in the tripartite Presidency of Bosnia and Herzegovina, Serbs one, and Croats were without any representative. As a result, **“the overarching principle”** of the Constitution of Bosnia and Herzegovina, **the principle of the constituent status of the peoples** was severely violated because the constituent status of certain people is ensured exactly in opportunity to **freely and independently** elect its own legitimate political representatives, which also means that the principle of the mutual **equality** of the constituent peoples was severely violated because the Bosniaks, as one of constituent peoples defined by Constitution of Bosnia and Herzegovina, can elect two their Members in the tripartite Presidency of Bosnia and Herzegovina. However, Croats, as equally named by Constitution of Bosnia and Herzegovina as constituent people, cannot elect even one Member.

Despite required representation of **majority electoral political will** of the Croats as a constituent people, “one Croat” as a Member of the tripartite Presidency of Bosnia and Herzegovina **is not only a representative of the Croats** from Federation Bosnia and Herzegovina, but **also the Serbs and the members of the group of the Other** peoples and citizens from the territory of the Federation Bosnia and Herzegovina. Since the Bosniaks in the Federation of Bosnia and Herzegovina practice their constituent status by electing “one Bosniak” in the Presidency of Bosnia and Herzegovina, and Croats by electing “one Croat”, Serbs and members of the group of Other peoples and citizens from the Federation of Bosnia and Herzegovina also should be given participation in the process of election for the Members of the Presidency of Bosnia and Herzegovina. Since Serbs and Others from the Federation Bosnia and Herzegovina have no **specifically their** representative in the Presidency of Bosnia and Herzegovina (there is no Other Member of the Presidency and Serbs elect their member in RS, so FBiH cannot participate in that election), they **can choose for which** Member of the Presidency of Bosnia and Herzegovina will they vote and which Member will also represent them and their interests. So, the Serbs and Others from the Federation Bosnia and Herzegovina can vote for “one Bosniak” or for “one Croat” in the Presidency of Bosnia and Herzegovina.

Thus, **“specific demos”** for the election of **“one Bosniak”** in the tripartite Presidency of Bosnia and Herzegovina consists of:

- All the Bosniaks from the Entity Federation Bosnia and Herzegovina (70,40 % of total population/voters in Federation Bosnia and Herzegovina)
- Serbs and Others from the Entity Federation of Bosnia and Herzegovina who decide to vote for “one Bosniak” (between 0% and 7,16 % of total population/voters in Federation Bosnia and Herzegovina)
- All the Bosniaks from Brčko District and part of the Others from Brčko District who decide to vote for “one Bosniak”

**“Specific demos”** for election of **“one Croat”** in the tripartite Presidency of Bosnia and Herzegovina consists of:

- All the Croats from the Entity Federation Bosnia and Herzegovina (22,44 % of total population/voters in Federation Bosnia and Herzegovina)

- Serbs and Others from the Entity Federation Bosnia and Herzegovina who decide to vote for “one Bosniak” (between 0% and 7,16 % of total population/voters in Federation Bosnia and Herzegovina)
- All the Croats from Brčko District and part of the Others from Brčko District who decide to vote for “one Croat”

By analogy, “**specific demos**” for the election of “**one Serb**” in the tripartite Presidency of Bosnia and Herzegovina consists of:

- All the Serbs from the Entity Republika Srpska (81,51 % of total population/voters in Republika Srpska)
- All the Bosniaks, Croats and Others from the Entity Republika Srpska (18,49 % of total population/voters in Republika Srpska)
- All the Serbs from Brčko District and part of the Others from Brčko District who decide to vote for “one Serb”

Members of the constituent peoples in the Federation Bosnia and Herzegovina except Serbs can vote **only** for, conditionally said, their Member of the Presidency of Bosnia and Herzegovina, because he/she is primarily the expression of their specific electoral will, while they **should not** vote for Members of another constituent people, because that way they would violate the principle of the constituent status and mutual equality of the constituent peoples. This is not applicable to the Bosniaks and Croats from Republika Srpska, because they cannot vote for, conditionally said, their Member of the Presidency of Bosnia and Herzegovina. Serbs and Others from the Federation Bosnia and Herzegovina can choose will they vote for “one Bosniak” or “one Croat” because they also cannot vote for, conditionally said, their Member of the Presidency of Bosnia and Herzegovina.

Thus, in accordance with **IDPI Proposal A**:

❖ “**one Bosniak**” is the representative of:

- All the Bosniaks from the Federation Bosnia and Herzegovina and Brčko District
- Serbs and Others from the Federation Bosnia and Herzegovina who decide to vote for him/her
- Others from Brčko District who decide to vote for him/her

❖ “**one Croat**” is the representative of:

- All the Croats from the Federation Bosnia and Herzegovina and Brčko District
- Serbs and Others from the Federation Bosnia and Herzegovina who decide to vote for him/her
- Others from Brčko District who decide to vote for him/her

❖ “**one Serb**” is the representative of:

- All the Serbs from the Republika Srpska and Brčko District
- All the Bosniaks and Croats and Others from the Republika Srpska
- Others from Brčko District who decide to vote for him/her

Except Proposal A, IDPI also developed the **Proposal B** in which three specific demoses for election of three Members of the Presidency of Bosnia and Herzegovina are structured on the following way:

“**Specific demos**” for election of “**one Bosniak**” in the tripartite Presidency of Bosnia and Herzegovina consists of:

- All the Bosniaks from the Federation Bosnia and Herzegovina, all the Bosniaks from the Republika Srpska + all the Bosniaks from Brčko District
- All the Others from the Federation Bosnia and Herzegovina, all the Others from the Republika Srpska + all the Others from Brčko District who decide to vote for “one Bosniak”

“**Specific demos**” for election of “**one Croat**” in the tripartite Presidency of Bosnia and Herzegovina consists of:

- All the Croats from the Federation Bosnia and Herzegovina, all the Croats from the Republika Srpska + all the Croats from Brčko District

- All the Others from the Federation Bosnia and Herzegovina, all the Others from the Republika Srpska + all the Others from Brčko District who decide to vote for “one Croat”

“**Specific demos**” for election of “**one Serb**” in the tripartite Presidency of Bosnia and Herzegovina consists of:

- All the Serbs from the Federation Bosnia and Herzegovina, all the Serbs from the Republika Srpska + all the Serbs from Brčko District
- All the Others from the Federation Bosnia and Herzegovina, all the Others from the Republika Srpska + all the Others from Brčko District who decide to vote for “one Serb”

**5. Why should the candidates sign a statement on representing the majority electoral and political will of appropriate constituent peoples or group of the Other peoples and citizens? What should that statement look like?**

Candidates should sign a statement by which they declare and oblige themselves to represent the majority electoral will of a particular constituent people or group of the Other peoples and citizens, so the transparent relation could be established between certain candidates and appropriate bodies and authorities elected in General Elections.

Examples of the statement related to the candidacy for the Member of the Presidency of Bosnia and Herzegovina:

I am the candidate for “one Bosniak” in the Presidency of Bosnia and Herzegovina and I am declaring myself as a representative of Bosniaks in the Presidency of Bosnia and Herzegovina.

I am the candidate for “one Croat” in the Presidency of Bosnia and Herzegovina and I am declaring myself as a representative of Croats in the Presidency of Bosnia and Herzegovina.

I am the candidate for “one Serb” in the Presidency of Bosnia and Herzegovina and I am declaring myself as a representative of Serbs in the Presidency of Bosnia and Herzegovina.

Examples of the statement related to the candidacy for the delegates of the House of Peoples of the Parliament of the Federation Bosnia and Herzegovina:

I am the candidate for the Bosniak club and I am declaring myself as a representative of Bosniaks in the House of Peoples of the Parliament of the Federation Bosnia and Herzegovina.

I am the candidate for the Croat club and I am declaring myself as a representative of Croats in the House of Peoples of the Parliament of the Federation Bosnia and Herzegovina.

I am the candidate for the Serb club and I am declaring myself as a representative of Serbs in the House of Peoples of the Parliament of the Federation Bosnia and Herzegovina.

I am the candidate for the Club of Others and I am declaring myself as a representative of Others in the House of Peoples of the Parliament of the Federation Bosnia and Herzegovina.

**Explanation**

Article 4.19, paragraph 5-7 of the existing Electoral Law of Bosnia and Herzegovina require candidates to sign the statement on belonging to one of three constituent peoples or group of the Others. The purpose of this declaration is to establish a relation between certain candidate and appropriate bodies and authorities elected in General Elections (Presidency of Bosnia and Herzegovina, Entity and State level Parliaments, Cantonal Assemblies).

For example, by the non-official translation of the original English version of the Constitution of Bosnia and Herzegovina, “one Bosniak”, “one Croat” and “one Serb” are elected in the Presidency of Bosnia and Herzegovina. Existing Electoral Law requires that candidates for Members of the Presidency of Bosnia and

Herzegovina declare themselves as “Bosniak”, “Croat” or “Serb” in order to define for which Member of the Presidency of Bosnia and Herzegovina are they candidates: for “one Bosniak”, “one Croat” or “one Serb”.

This request from the Electoral Law, which **does not exist in the Constitution of Bosnia and Herzegovina and in the Constitution of the Federation of Bosnia and Herzegovina**, is officially taking into account personal identity of a candidate and allows candidacy for certain positions only to members of three constituent peoples, i.e. **requires all the candidates for the Presidency of Bosnia and Herzegovina** to declare themselves as the members of one among three constituent peoples. **Such requirement discriminates members of the group of Other peoples and citizens** because it force them to declare themselves as the members of one among three constituent peoples, despite they are not members of constituent peoples but members of other non-constituent peoples or citizens of Bosnia and Herzegovina who refused to nationally declare themselves. If the members of the group of Other peoples and citizens refuse to declare themselves as members of one among three constituent peoples, existing Electoral Law of Bosnia and Herzegovina does not allow them candidacy for the Members of the Presidency of Bosnia and Herzegovina. **European Court for Human Rights (ECHR)** decided **in the cases of Sejdić-Finci and Zorić** that human, civic and electoral rights of Mr. Sejdić and Mr. Finci, as well as Ms. Zorić, i.e. all the members of the group of Other peoples and citizens are violated.

IDPI Expert Team’s position is that this discrimination should be removed from electoral process, so that mentioned decisions of ECHR could be implemented and applied in the legal framework for elections in Bosnia and Herzegovina.

We consider that this problem appeared because a wrong interpretation of certain articles and paragraphs of the Constitution of Bosnia and Herzegovina, i.e. because of interpretations which are not in accordance with the basic and overarching principles of the Constitution of Bosnia and Herzegovina and Dayton Agreement. By analysis of the legal and political context within which a Dayton Agreement was signed and the Constitution of Bosnia and Herzegovina created as its integral part (Annex 4), as well as by logical-rational analysis of the content (text) and internal logics of the Dayton Agreement and Constitution of Bosnia and Herzegovina, it could be undoubtedly found that constituent status of the peoples and their mutual equality are the basic and overarching principles not only of the Constitution of Bosnia and Herzegovina, but also of the entire Dayton Agreement.

In existing Electoral Law of Bosnia and Herzegovina, the non-official translation of English original of Article V of the Constitution of Bosnia and Herzegovina: *“The Presidency of Bosnia and Herzegovina shall consist of three Members: **one Bosniak and one Croat**, each directly **elected** from the territory of the Federation, and **one Serb** directly elected from the territory of the Republika Srpska.”* in a way that “one Bosniak”, “one Croat” and “one Serb” are **members** of constituent peoples and not necessary their **representatives**. Following of that interpretation created the Article 8.1. of the Electoral Law of Bosnia and Herzegovina, as well as the Article 4.19.

We consider the **interpretation** of constitutional principles and certain articles of the Constitution of Bosnia and Herzegovina (which resulted in the articles 4.19. and 8.1. of the Electoral Law) as insufficiently harmonized with the basic principles of the Dayton Agreement and Constitution of Bosnia and Herzegovina, and with the principles of the constituent status of the peoples and their mutual equality, as well as insufficiently harmonized with the decisions of the Constitutional Court of Bosnia and Herzegovina: **U 5/98** (“**constituent status**”) and **U-23/14** (“**Ljubić**”).

In addition, in Article 1.2 of the Constitution of Bosnia and Herzegovina: *“Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections.”* The basic principle of democracy is that the authority belongs to the people and that it originates from the people. This means, in accordance with the Article 1.2 of the Constitution of Bosnia and Herzegovina, that Bosnia and Herzegovina is a representative democracy, not an “affiliation democracy”.

Thus, in accordance with:

- analysis of the legal and political context within which a Dayton Agreement was signed and the Constitution of Bosnia and Herzegovina created as its integral part (Annex 4),

- logical-rational analysis of the content and internal logics of the Dayton Agreement and Constitution of Bosnia and Herzegovina
- decisions of the Constitutional Court of Bosnia and Herzegovina: **U 5/98** (“**constituent status**”) and **U-23/14** (“**Ljubić**”), i.e. basic and overarching principles of the Constitution of Bosnia and Herzegovina, the principles of the constituent status of the peoples and their mutual equality
- the fact that Bosnia and Herzegovina is defined by its own Constitution as a representative democracy, not an “affiliation democracy”

IDPI Expert Team interprets the non-official translation of English original of the Article V of the in a way that “one Bosniak”, “one Croat” and “one Serb” **are primarily representatives** of Bosniaks, Croats and Serbs in the tripartite Presidency of Bosnia and Herzegovina, and not necessarily and only their members.

It means that it is **not necessary** that, for example, candidate for “one Bosniak” is **personally declaring** him/herself as a Bosniak, but that a legitimate candidate for “one Bosniak” in the Presidency of Bosnia and Herzegovina can be **every citizen of Bosnia and Herzegovina** with voting rights **independently** on his/her self-declaration as a Bosniak, Croat, Serb, Roma, Jew, or any other member of the group of Other peoples and citizens. This interpretation is applicable not only to the Members of the Presidency of Bosnia and Herzegovina, but also to the other bodies designed for collective representation (House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, House of Peoples of the Parliament of Federation Bosnia and Herzegovina, Council of Peoples of the Republika Srpska).

By this interpretation of certain constitutional principles and norms (without the changes of the Constitution of Bosnia and Herzegovina) every citizen of Bosnia and Herzegovina with voting rights is allowed, without any obligation to declare their personal national (non)belonging, to be a candidate for position of the Member of the Presidency of Bosnia and Herzegovina, i.e. for “one Bosniak”, “one Croat” and “one Serb” in the tripartite Presidency of Bosnia and Herzegovina, including Dervo **Sejdić** and Jakob **Finci** and Azra **Zornić**, as well as to all the members of the group of Other peoples and citizens.

This constitutional and legal logic leads us to the conclusion that the members of the Presidency of Bosnia and Herzegovina (or members of any other official body designed for collective representation) do not have to be Croat by their personal national affiliation to represent Croats (the same is true for Bosniaks and Serbs). In order to be legitimate, elected Members of the Presidency of Bosnia and Herzegovina should express the majority electoral political will of the constituent people they are representing, which means that they should have, in the structure of their electoral votes, minimum of 50% electoral votes received by the voters who are members of the constituent people which they are representatives of.

To keep the Article 5.2. (d) of the Constitution of Bosnia and Herzegovina applicable, the relation should be preserved between particular Member of the Presidency of Bosnia and Herzegovina and appropriate club in the House of Peoples in the Parliamentary Assembly of Bosnia and Herzegovina. The mentioned Article does clearly establish such a relationship (d) *A dissenting Member of the Presidency may declare a Presidency Decision to be destructive of a vital interest of the Entity from the territory from which he was elected, provided that he does so within three days of its adoption. Such a decision shall be referred immediately to the National Assembly of the Republika Srpska, if the declaration was made by the Member from that territory; to the Bosniac Delegates of the House of Peoples of the Federation, if the declaration was made by the Bosniac Member; or to the Croat Delegates of that body, if the declaration was made by the Croat Member. If the declaration is confirmed by a two-thirds vote of those persons within ten days of the referral, the challenged Presidency Decision shall not take effect.*

Since we cancelled the statement on personal national belonging of the candidates, the only way to preserve the transparent relationship between particular club in the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina and appropriate Member of the Presidency of Bosnia and Herzegovina (which would be in accordance with overarching principles of the Constitution of Bosnia and Herzegovina and other mentioned criteria) would be requirement for the candidates to sign the statement by which they oblige themselves to represent, if elected, the electoral will of the constituent people for which Member of the Presidency they are candidates. Consequently, candidates do not have to personally belong to that constituent people in order to be legally and legitimately elected. In other words, their statement would enable implementation of decisions Sejdić-Finci and Zornić, together with preserving the transparent relationship between a Member of Presidency and

appropriate club in the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, which is in charge of approving the member's decision on harmfulness of decisions or laws for the vital national interest of certain constitutive people. Elected representatives should express the electoral political will of the constituent people they are nominally representing, but also express the electoral political will of the members of the group of the Others who voted for them.

Preservation of the constitutionally defined relation between particular candidates and their position as candidate in a transparent and functional way is possible only by signing a statement that establishes such a relation.

**6. Is the Decision of the Constitutional Court of Bosnia and Herzegovina U-23/14 (Ljubić) opposed to the decisions of the ECHR in the cases Sejdić-Finci, Zornić and Pilav? Do these decisions exclude each other?**

Decisions of the Constitutional Court of Bosnia and Herzegovina in the Ljubić case (U-23/14 and U -3/17) and decisions of the European Court for Human Rights (ECHR) in the cases of Sejdić-Finci, Zornić and Pilav **are not mutually opposed** and their implementations do not exclude each other. IDPI Expert Team considers that it is both **possible and necessary to implement** mentioned decisions of the Constitutional Court of Bosnia and Herzegovina and ECHR **in accordance with overarching principle of the Constitution of Bosnia and Herzegovina**, constituent status of the peoples and their mutual equality which is based on their constituent status. **The 2000 Constitutional Court of Bosnia and Herzegovina ruling (U 5/98 on constituent status)** clearly noted that the constituent status of the peoples is the “overarching principle” of the Constitution of Bosnia and Herzegovina and the principle with which all the other constitutional principles should be put in accordance, as well as all the legal norms based on them. This is why we consider all the attempts for abusing ECHR decisions for derogation and violation of the principle of the constituent status of the peoples as non-legitimate, non-constitutional and anti-Dayton activities.

IDPI Expert Team designed two proposals for implementation of mentioned decisions. **Both proposals respect and implement the overarching principle of the Constitution of Bosnia and Herzegovina**, the principle of the constituent status and mutual equality of the constitutive peoples.

**IDPI Proposal A** fully resolves implementation of the decisions of the Constitutional Court of Bosnia and Herzegovina in the case Ljubić (**U-23/14 and U -3/17**) at all levels and resolves implementation of the decisions of the ECHR in the cases **Sejdić-Finci** and **Zornić** at the level of the Presidency of Bosnia and Herzegovina.

**IDPI Proposal B** fully resolves implementation of the decisions of the Constitutional Court of Bosnia and Herzegovina in the Ljubić case (**U-23/14 and U -3/17**) and also fully resolves implementation of the decisions of the ECHR in the cases of **Sejdić-Finci, Zornić and Pilav**.

### Explanation

These mentioned decisions are not in mutual opposition and different IDPI models and proposals implement some or all of them. Decision of the Constitutional Court of Bosnia and Herzegovina U-23/14 (Ljubić) is essentially related to the **confirmation of the principle of the constituent status of the constituent peoples** as the overarching principle of the Constitution of Bosnia and Herzegovina, which can be implemented by the **legitimate, democratic and proportional representation** of the constituent peoples in appropriate bodies, at the same way as all the citizens of Bosnia and Herzegovina are legitimately, democratically and proportionally represented in other bodies. The mentioned principle and instruments for its implementation by no means oppose the decisions of ECHR Sejdić-Finci and Zornić, which are essentially related to the right of **all the citizens of Bosnia and Herzegovina** to be candidates for **any political position regardless their personal national affiliation**. In domestic and foreign settings, this right of all the citizens is frequently and in a highly biased way opposed to the legitimate representation of the constituent peoples, because such representation was related to the personal national affiliation of the **candidates themselves**, while it is truly based on the national **affiliation of the voters to certain constituent people**. The voters who belong to certain people should **decisively influence the election** that people's representatives by their votes, while the national **affiliation of the candidates is completely irrelevant**, so the candidates for representatives of specific peoples could belong or

not belong to any people. Implementation of the Decision in the Pilav case is **by no means obstructed by representation of the constituent peoples**, rather by **limiting of that representation with entity borders**, and IDPI proposal requires changes of the Constitutions of Bosnia and Herzegovina and Federation of Bosnia and Herzegovina and offers a solution for its implementation.

**7. Could the ECHR decision in the Sejdić-Finci case be implemented without constitutional changes? Does the IDPI proposal resolve other decisions from the ECHR (Zornić and Pilav) and how?**

Yes, the Decision in the case Sejdić-Finci can be implemented without constitutional changes, but only in the case of the Presidency of Bosnia and Herzegovina. The Zornić decision can also be implemented without constitutional changes at the Presidency level.

**IDPI proposal A** fully resolves implementation of the decisions of the Constitutional Court of Bosnia and Herzegovina in the Ljubić case (**U-23/14 and U -3/17**) at all levels and resolves implementation of the decisions of the ECHR in the **Sejdić-Finci and Zornić cases** at the Presidency level of Bosnia and Herzegovina.

**IDPI proposal B** fully resolves implementation of the decisions of the Constitutional Court of Bosnia and Herzegovina in the Ljubić case (**U-23/14 and U -3/17**) and also fully resolves implementation of the decisions of the ECHR in the cases of **Sejdić-Finci, Zornić and Pilav**.

### Explanation

The primary goal of the IDPI proposals is to **ensure legality and legitimacy for the October 2018 General Elections**, so that the elections are in accordance with the Constitution of Bosnia and Herzegovina for all the bodies and levels of authority covered by the General Elections. If the reform of the legal framework for elections will not be accomplished in accordance with the Decision U 23/14 (Ljubić) of the Constitutional Court of Bosnia and Herzegovina, the General Elections could be conducted, but it **will be impossible to fully implement their results** because it will be impossible to constitute the **House of Peoples of the Parliament of the Federation Bosnia and Herzegovina**, and consequently also the **House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina**. Without the House of Peoples of the Parliament of the Federation Bosnia and Herzegovina it will be also impossible to elect the **President and Vice-Presidents of the Federation Bosnia and Herzegovina** and the **Government of the Federation Bosnia and Herzegovina**, and the **Parliament of the Federation Bosnia and Herzegovina** will not legally function without its Upper House. Without the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina also the **House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina** will not work properly, and **Presidency of Bosnia and Herzegovina** and **Council of Ministers of Bosnia and Herzegovina** could not work in full capacity. In the mentioned case, the **only levels of authority with full electoral legality and legitimacy and with functioning in the full capacity would be the Republika Srpska** (National Assembly and the Council of Peoples of the Republika Srpska, President of the Republika Srpska and the Government of the Republika Srpska) **and the Cantons within the Federation of Bosnia and Herzegovina** (cantonal Assemblies and Governments). =

In addition to high security risks and potential danger, this situation could also lead to the complete **legal and institutional vacuum** which could result in a complete destruction of the Dayton structure and threaten not only the functionality and political stability of Bosnia and Herzegovina, but concerning to the viability of Bosnia and Herzegovina as an independent and unified state.

Therefore, we consider it necessary to implement all the available legal and legitimate measures to adapt the legal framework for elections to the **Decision of the Constitutional Court of Bosnia and Herzegovina in the Ljubić case (U 23/14)** and **enable the full implementation of the results of the 2018 General Elections. It is the minimal request** which should be fulfilled by any proposal for reform of the legal framework for elections in Bosnia and Herzegovina. Except fulfillment of the mentioned request, it is also necessary to **include in the reform of the legal framework for elections, at the highest possible extent, the implementation of the ECHR decisions**. As a result, the IDPI proposal of the reform of legal framework for elections in Bosnia and Herzegovina is divided in two parts, i.e. in two proposals: Proposal A and Proposal B.

**IDPI proposal A (Model P 1 + Model DN 1)** – fully resolves implementation of the Ljubić ruling, as well as the Sejdić-Finci and Zornić rulings at the Presidency level but not for the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina – requires only the changes of the Electoral Law of Bosnia and Herzegovina, without changes of the Constitution of Bosnia and Herzegovina and the Constitution of the Federation of Bosnia and Herzegovina.

**IDPI proposal B (Model P 2 + Model DN 2)** – fully resolves implementation of the decisions Ljubić, Sejdić-Finci, Zornić and Pilav – requires the changes of the Electoral Law of Bosnia and Herzegovina, the Constitution of Bosnia and Herzegovina and the Constitution of the Federation of Bosnia and Herzegovina.

Since the Central Electoral Commission should appoint the General Elections not after 8 May 2018, it is necessary to implement reform of the legal framework for elections in accordance with the Decision of the Constitutional Court of Bosnia and Herzegovina in the Ljubić case (U 23/14) before 8 May.

Therefore, IDPI developed two proposals. **Proposal A** does not offer long-term solutions for all the mentioned issues but enables the full implementation of the General Elections and partially implements the decisions of ECHR-a. This would be more easily and quickly applicable since it does not require constitutional changes; only changes to the Electoral Law of Bosnia and Herzegovina. **Proposal B** would resolve the implementation of the Ljubić ruling of the Constitutional Court of Bosnia and Herzegovina, together with implementation of the decisions of ESHR in the cases Sejdić-Finci, Zornić and Pilav. However, this proposal cannot be easily applied as it requires changes to the Electoral Law of Bosnia and Herzegovina and the constitutions of Bosnia and Herzegovina and Federation of Bosnia and Herzegovina.

If, it is not possible to implement the full-scale **Proposal B** during the pre-electoral period because of the numerous changes and wider political and party consensus needed for it, IDPI suggests adoption and implementation of **Proposal A** to enable full implementation of the results of the General Elections. Following the elections, a newly elected and legitimate political representatives could initiate, in more stable political environment and in atmosphere of compromise produced by successful reform of the legal framework for elections and by full implementation of the General Elections results, a wider reform process within which the **Proposal B** would be adopted, enabling the full implementation of all three decisions of ECHR: Sejdić-Finci, Zornić and Pilav.

For operative implementation of all the mentioned decisions, please see the content of IDPI proposals A and B.

#### **8. Does the IDPI proposal support the principle of legitimate representation and the principle of the equal (proportional) value for every vote?**

Yes, IDPI proposals A and B respect and implement the principle of legitimate representation, as well as the principle of the equal (proportional) value of the vote of every voter. However, implementation of mentioned principles first requires defining each specific demos which provides electoral legitimacy to the elected representatives in different bodies. For example, it is necessary to define who has a right to vote for whom. Only after a clear definition of specific demoses which elect representatives at different bodies and positions, it is possible to check are the principles of legitimate representation and of the equal (proportional) value of the vote of every voter within clearly defined specific demoses respected or violated.

For more on the principles of legitimate representation and of the equal (proportional) value of the electoral votes, as well as which are the specific demoses participating in the 2018 General Elections in Bosnia and Herzegovina, please refer to the document: *Constitutional, legal and political science algorithm of IDPI's electoral law reform proposals*, which forms an integral part of IDPI package of proposals for changes of the legal framework for elections in Bosnia and Herzegovina.



9. Does the IDPI proposal exclude the Croat candidates for the House of Peoples of the Parliament of the Federation for Bosnia and Herzegovina with candidacies in majority Bosniak cantons, and Bosniak candidates in cantons with Croat majority? For example, does the IDPI proposal have the elements of electoral discrimination on the administrative-territorial basis?

**IDPI Proposal A** resolves at the Entity level any form of the electoral discrimination on the administrative-territorial basis, both among the members of particular constituent peoples and among the members of the group of Other peoples and citizens. **Proposal B** resolves at the entire State level any form of electoral discrimination on the administrative-territorial basis, both among the members of particular constituent peoples and among the members of the group of Other peoples and citizens.

**Any Croat in the Federation of Bosnia and Herzegovina**, regardless of their canton of residence and voting rights, and how many Croats live in which canton, **has the equal (proportional) value of the vote** and has the opportunity to participate in the process of electing delegates in the House of Peoples of the Parliament of the Federation Bosnia and Herzegovina **both as a candidate and as a voter** (the same also being true for Bosniaks, Serbs and Others in Federation Bosnia and Herzegovina).

For example, **the value of a vote of a Croat from Sarajevo or Tuzla** is the same as the value of a vote of Croats from Mostar or Široki Brijeg. Croats elected in the cantonal assemblies of the Sarajevo Canton and Tuzla Canton **also have an equal opportunity to be elected** in the Club of Croats in the House of Peoples of the Parliament of the Federation Bosnia and Herzegovina, same as Croats elected in the cantonal assemblies of the Western Herzegovina canton or Herzegovina-Neretva canton. This is also valid for Bosniaks in the cantons with Croat majority.

That is achieved by the **mathematical model of electoral points**; each canton has a coefficient (share of the members of particular constituent people or Others in particular canton, in relation with the total number of the members of that constituent people or the Others at the level of the Federation of Bosnia and Herzegovina). **Cantonal coefficients** are divided by the **number of the delegates of each particular constituent people or Others in each canton**, so **every delegate of each cantonal Assembly receives a certain number of the electoral points** for participating, both as a candidate and as an elector, in election of 17 delegates in the club of the constituent people he/she is representing, i.e. 7 delegates in the case of the Club of Others in the House of Peoples of the Parliament of the Federation Bosnia and Herzegovina.

### Explanation

Each of the ten cantons has **four coefficients of the electoral points (Bosniak, Croat, Serb and Others)** provided on the basis of the share (percentage) of particular constituent people or Others in particular cantons, in relation with the total number of the members of that constituent people or the Others at the level of the Federation Bosnia and Herzegovina, according to the results of the last officially valid Population Census. For example, in relation with the total number of Croats in the Federation Bosnia and Herzegovina (100%), in Canton Sarajevo lives 3.52 % of the Croats. So, **Croat coefficient of the Canton Sarajevo is 3.25**.

Coefficients of the electoral points of every canton from the table below are divided by the number of elected Bosniak, Croat, Serb and Others delegates in the assembly of that canton. For example, the Croat coefficient of electoral points of the Sarajevo Canton (3.25) is divided by the number of elected Croat delegates in that Canton's Assembly, so that each Croat delegate in the Assembly of the Sarajevo Canton has the same number of electoral points.

	<b>Bosniak</b> coefficient of electoral points	<b>Croat</b> coefficient of electoral points	<b>Serb</b> coefficient of electoral points	<b>Others</b> coefficient of electoral points
Una-Sana	15.75	1.02	14.95	14.45
Posavina	0.53	6.75	1.47	0.57
Tuzla	25.11	4.74	12.48	22.31
Zenica-Doboj	19.17	8.80	9.80	16.04
Bosnian-Podrinje	1.43	0.00	1.56	0.53
Central Bosnia	9.39	19.61	5.38	6.56
Herzegovina- Neretva	5.89	23.76	11.37	3.83
West-Herzegovina	0.05	18.82	0.18	0.16
Sarajevo	22.18	3.52	23.52	35.16
Canton 10	0.51	12.98	19.28	0.37
Total	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Coefficients of the electoral points for election of the delegates to the House of Peoples of the FBiH assigned to each canton according to the **Model DN 1**.

**Example:** Croat coefficient of the electoral points for Canton Sarajevo is **3.52**. Two Croat delegates are elected in the Assembly of that Canton. Each Croat delegate in the Assembly of Canton Sarajevo has **1.76 electoral votes** for election of the Club of Croats in the House of Peoples of the Parliament of Federation of Bosnia and Herzegovina. The same is also valid for the delegates of Bosniaks, Serbs and Others in Canton Sarajevo, i.e. in all the ten cantons.

All the Croat delegates from all the 10 cantons in Federation of Bosnia and Herzegovina **vote together** for the lists of candidates for the Club of Croats in the House of Peoples of the Parliament of Federation of Bosnia and Herzegovina, and before the voting the Central Electoral Commission provides each of them with the number of the electoral points, depending on the cantonal assembly he/she is elected in, and on the number of other Croat delegates elected in that assembly (the same is also valid for the delegates of Bosniaks, Serbs and Others).

**All the Croat delegates from all the 10 cantons** together have **100 electoral points** (the same is also valid for the delegates of Bosniaks, Serbs and Others).

At least **5.88 electoral points** is required for election of one among **17** delegates in the case of constituent peoples, and **14.28 electoral points** is required for election of one among **7** delegates in the Club of Others in the House of Peoples of the Parliament of Federation of Bosnia and Herzegovina.

#### **10. This proposal requires usage of the last Population Census instead of the 1991 version. Why?**

IDPI proposal of the changes of the legal framework for elections in Bosnia and Herzegovina requires usage of the officially valid Population Census from 2013 because that Census reflects the real situation in the electoral units more efficiently and precisely than Census from 1991, i.e. the 2013 Census fulfills in significantly higher extent the criteria of legitimate representation and equal (proportional) value of the electoral votes.

By decisions of the Commission of Venice, differences lower than 10 % in the values of electoral votes between different electoral units are considered as acceptable. If the data of the Census from 1991 would be used, differences in the value of electoral votes would be higher than 10 % in many electoral units.

Constitution of Bosnia and Herzegovina does not regulate on any way which Census should be used, while the Electoral Law of Bosnia and Herzegovina regulates that the last, officially valid Population Census should be used.

**11. Does the IDPI require any changes to the existing internal administrative-territorial boundaries, i.e. the boundaries of the existing constituencies?**

No. It does not require this, because the electoral units for different executive and legislative bodies according to all IDPI models **are still existing** administrative-territorial units - entities, cantons and the Brčko District. No new constituency is introduced; no cantons or municipalities are grouped; no ad hoc electoral districts are created.

**Neither** IDPI Proposal A **nor** IDPI Proposal B, neither temporarily nor permanently, requires change or create any new internal borders, thus ensuring that the changes to the electoral legislation required for the full implementation of the 2018 general elections do not create any reason for the change of the two-entities structure or the change of the existing administrative-territorial boundaries within the entities.

**12. Why do you claim that the IDPI proposal is a compromise solution?**

Before answering this question, it is necessary to establish certain criteria for evaluating proposals for changes of the electoral legislation of BiH.

**The basic criterion** should be whether a proposal is in accordance with the Constitution of BiH and its overriding principle of constituent status and mutual equality of the constituent peoples, i.e., whether the ruling of the Constitutional Court of BiH U-24/13 and U-3/17 (Ljubić) are guaranteed to be implemented and, consequently, a full implementation of the General Election 2018.

**The second criterion** should be to what extent a proposal resolves the execution of the ECHR Sejdić-Finci, Zornić and Pilav judgments.

**The third criterion** is whether the implementation of proposal asks for constitutional changes, or just the change of the Election Law.

If a proposal **does not meet the basic criterion**, it cannot be even considered as a base to seek a compromise solution. A compromise solution can only be sought in relation to proposals that are in accordance with the Constitution of BiH and the Ljubić judgment of the Constitutional Court of BiH. There is no compromise between constitutional and unconstitutional proposals.

Therefore, **under the notion of compromise solution**, we do not mean a solution that would be some sort of “arithmetical mean” between all the proposals of all interested parties, simply because some proposals are not in the constitutional legal framework, i.e. because some actors have their political interests in retaining existing election models and are opposed to the implementation of the Constitutional Court’s judgment in the Ljubić case. So, they should not be the only ones to seek compromise proposals and solutions.

When we talk about a compromise solution, we think of an optimal solution that takes into account the most constitutional and legal criteria and principles, the most comprehensive solution that meets the most legitimate demands of as many election process participants as possible, a solution whose internal logic is clear, understandable and consistently implemented, and a solution that relies on arguments rather than on the argument of strength or of the number of representative hands in legislative bodies.

**Only through legitimate proposals** we can reach a **compromise proposal** and solution to the existing constitutional-legal and electoral crisis.

In our case, only those proposals that fall within the scope of the overriding principle of the Constitution of BiH, the principles of constituent status and the equality of the constituent peoples can we respond to requests of **the judgments of the Constitutional Court of BiH U-24/13 and U-3/17 (Ljubić)**, as well as of **the ECHR judgments in Sejdić-Finci, Zorić and Pilav cases**.

In accordance with the above criteria, we consider that the IDPI proposal is not only **legitimate**, but also an **optimal**, and therefore a **compromise** proposal for changes of the electoral legislation of BiH.

Below we suggest what we consider to be the essential benefits of the IDPI model.

## **The benefits of IDPI Models (P 1, P 2, DN 1 and DN 2) and IDPI Proposals (A and B) of Election Law of BiH Reform**

(P – Presidency, DN – House of Peoples)

**Proposal A (Model P 1 + Model DN 1)** – fully resolves the **Ljubić** case at all levels and the **Sejdić-Finci** and **Zorić** rulings at the **Presidency level** (but not at the House of Peoples of BiH level). It requires changes to the election law only, **without any amendments to the Dayton constitution**.

**Proposal B (Model P 2 + Model DN 2)** – fully resolves the **Ljubić** case and the **Sejdić-Finci, Zorić** and **Pilav** rulings at **all levels**. It requires changes to the election law and **minimal amendments to the Dayton constitution and the Federation of BiH (FBiH) constitution**.

1. Both **Proposal A** and **Proposal B** allow for the **October 2018 national elections** to be held and **fully implemented**. This prevents a total blockade of the constitutional, legal and political system in BiH, which would result in unforeseeable political and security consequences, which will inevitably happen if the election law of BiH is not reformed according to the U-23/14 (Ljubić) ruling of the Constitutional Court of BiH by 8 May 2018.
2. Both Proposal A and Proposal B require **no ethnic or national identification** of either **voters** or **candidates** in the whole process. Anybody – no matter their ethnicity or nationality – can vote in every election.
3. Both Proposal A and Proposal B allow that **every citizen, no matter their ethnic or national identification**, has a right and possibility to become a candidate for all levels of government and participate in election process for all levels of government during national elections.
4. Both Proposal A and Proposal B respect constituency and equality of all constituent peoples, as well as the right of Others (national minorities and other citizens) to become candidate and participate in election for all levels of government during national elections.
5. Both Proposal A and Proposal B ensure that members of one constituent peoples cannot **decisively** influence election of representatives of two other constituent peoples or the election of representatives of Others.
6. Both Proposal A and Proposal B ensure that all specific demos, which are part of the national election, are guaranteed the fulfillment of **the principle of legitimate representation**, as well as **the principle of the equal value of the vote**.
7. Both Proposal A and Proposal B **does not move nor create any new internal borders**, either temporary or permanently. This ensures that the election law reforms needed for the full implementation of the national elections does not create any reason for the change of the two-entity structure or change in the current administrative and territorial borders within the entities.
8. **Proposal A**, at the entity level, abolishes any form of the electoral discrimination on the administrative and territorial basis, for both the members of the constituent peoples and members of Others. **Proposal B**, at the country level, abolishes any form of electoral discrimination on the administrative and territorial basis, for both

the members of the constituent peoples and members of Others. In practice, this means that a Croat in Sarajevo or Gorazde has the same vote value and ability to elect and be elected as a Croat voter in Mostar or Široki Brijeg. The same is true for Bosniaks, Serbs and Others all across Bosnia and Herzegovina.

9. Both Proposal A and Proposal B promote electoral system with more equality, transparency, and uniformity, **based of mathematical formulas** rather than on national identification of voters or candidates or creating new electoral borders.

10. Both Proposal A and Proposal B stimulate **further democratization, diversity of political thought, and pluralism among political options** within the three constituent peoples. This is especially important for the Croats, who have the least developed political party pluralism, which lead to the pronounced domination of only one political party and one political option.

11. Reaching a political agreement, either for Proposal A or Proposal B, could **relax the ethnic tensions** in the country and allow for election of legitimate representatives of constituent peoples and the Others in October. These representatives could then, with legitimacy gained in the democratic, free and fair elections, build on the election law reform success and **find compromise for other much needed reforms** in BiH, primarily **economic and judicial reforms**.

12. **The reform of the election law**, either through Proposal A or Proposal B, would be the biggest internal political success since the Dayton, which could bring back the faith of BiH's citizens in a democratic and functional country which works on agreements and consensus rather than the current common practice of political bickering exclusiveness and stalling.

13. Due to the complexity, asymmetry and the lack of transparency of the current election law it is hard to establish the system of responsibility of elected officials to those who elected them. Through the implementation of Proposal A or Proposal B, **it would be completely clear who elects who, and who has responsibility to whom**, or in other words, the voters of each specific demos would finally be able to assess whether those who they elected fulfilled their expectations or not, and based on that, either reward or punish them during the next election.

14. **The reform of the election law**, either through Proposal A or Proposal B, would create **exceptionally favorable constitutional, legal and political prerequisites** for BiH's further continuation along the **EU and NATO path**.