# A proposal for the implementation of the Constitutional Court of BiH "Ljubić" ruling for the House of Peoples of the Parliament of the Federation of BiH

The Institute for social and political research (IDPI) Mostar has prepared a proposal for the implementation of the Constitutional Court of BiH Ljubić ruling for the House of Peoples of the Parliament of the Federation of BiH. This proposal ensures the complete implementation of the General elections held on October 7, 2018, or in other words, it allows the formation of the House of Peoples of the Parliament of the FBiH (DN PFBiH) and Bosniak and Croat club in the House of Peoples of the Parliamentary Assembly of BiH (DN PS BiH). This would mean full implementation of the results of indirect elections and it would allow the establishment of the legislative and executive power in the FBiH, as well as the legislative power at the BiH level.

IDPI has created a wider proposal which, in addition to the implementation of the Constitutional Court of BiH "Ljubić" ruling, also implements all rulings of the European Court of Human Rights: "Sejdić-Finci," "Zornić," "Šlaka" and "Pilav." This is the only such proposal in BiH which was completely developed and presented by a local nongovernmental organization. IDPI supports a full implementation of all five mentioned rulings for all levels of government in BiH (the Presidency of BiH, DN PS BiH, DN PFBiH) through a comprehensive electoral reform in the Parliamentary Assembly of BiH which would also require constitutional amendments.

However, given that the elections were held without the implementation of the Ljubić ruling, it is necessary to first implement this model in order to form the PS BiH. Then, PS BiH should continue election reform and should implement the Ljubić ruling for the Presidency of BiH, as well as all the rulings of the European Court of Human Right: Sejdić-Finci, Zornić, Šlaka and Pilav, for both the DN PS BiH and the Presidency of BiH.

IDPI supported the implementation of the Ljubić ruling within the six-month deadline which the Constitutional Court of BiH gave to the PS BiH for the implementation. The ruling should have been implemented by May 1, 2017. Given that the PS BiH did not implement the Ljubić ruling within the six-month deadline, the Constitutional Court of BiH erased unconstitutional provisions of the Election law of BiH on July 6, 2017.

IDPI then supported that the ruling should be implemented and that the Election law of BiH should be reformed by the end of 2017, in order to respect the recommendation of the Venice commission that the Election law should not be changed during the election year.

When this was not done, IDPI supported the implementation of the Ljubić ruling by May 8, 2018, the date that the General elections of 2018 were announced. Despite the fact that there was not full Election law of BiH, the elections were still announced. This partially brought their legitimacy and legality into question.

IDPI then supported the notion that the Ljubić ruling should be implemented and the Election law of BiH reformed by the election date – October 7, 2018, so that the indirect elections for the four clubs in the DN PFBiH can be implemented within the legal deadline.

When this too did not happen, IDPI suggested that the PS BiH, while it still is in the 2014-2018 convocation, should reform the Election law which should be retroactively applied to the

General elections of 2018. Given that some delegates from the DN PS BiH were elected in the new convocation of the House of Representatives of the PS BiH, after December 6, 2018 when the new House of Representatives of the PS BiH is formed, this too will not be possible anymore.

The only solution in the current situation is to implement the Ljubić ruling for the DN PFBiH as quickly as possible. Then, once the new DN PS BiH is formed, PS BiH should do a comprehensive Election law reform, and implement the Ljubić ruling for the Presidency of BiH, as well as to implement all the rulings of the European Court of Human Right: Sejdić-Finci, Zornić, Šlaka and Pilav, for both the DN PS BiH and the Presidency of BiH, for which amendments to the Constitution of BiH are necessary.

We repeat, IDPI made its own comprehensive reform Proposal of the Election law of BiH which ensures the implementation of both the Ljubić and all four rulings of the European Court of Human Right: Sejdić-Finci, Zornić, Šlaka and Pilav, for all levels of government that these rulings apply to. The model of the implementation of the Ljubić ruling for the DN PFBiH which we present in this text is a part of the comprehensive proposal which IDPI put forward.

### The basic principles for the implementation of the Ljubić ruling for the DN PFBiH

IDPI's proposal is based on the Constitution of BiH, the Constitutional Court of BiH Ljubić ruling and the overarching principle of the Constitution of BiH – the constituency and mutual equality of all three constituent nations.

The Constitutional Court of BiH Ljubić (U-23/14) ruling orders that legitimate representation of all constituent nations at all political and administrative levels of BiH must be secured. This means that the implementation of the principle of the legitimate political representation must be secured through the Election law of BiH.

In ruling U 5/98-III from July 1, 2000, the Constitutional Court of BiH has declared the constituency of the three nations: *Bosniaks, Croats and Serb*, "overarching principle" of the Constitution of BiH, and therefore, of also the Dayton Peace Agreement in general. The principle of the constituency as the "overarching principle" of the Constitution of BiH, is made up of and requires the following, for the DN PFBiH:

1) **Legitimate representation of the three constituent nations** in the DN PFBiH.

   In order for this requirement to be fulfilled for the DN PFBiH, the constituent nations and Others must be able to independently and freely elect their own political representatives in their clubs in the DN PFBiH, without the interference of other constituent nations (or Other) in the election process. Legitimate political representatives of constituent nations are those candidates which won the most votes from their specific constituent nation (or Others) as separate virtual election units. For example, this means that Croats in FBiH are a specific demos which gives electoral legitimacy to the delegates in the Croat club of the DN PFBiH. The same is true for Bosniaks, Serbs and Others.

2) **The mutual equality of the three constituent nations** in the DN PFBiH through three clubs with 17 delegates.

In order to fulfill this requirement for the <u>DN PFBiH</u>, constituent nations must have parity, or in other words, the same number of delegates in their clubs in the DN PFBiH, but at the same time these delegates must be <u>legitimate political representatives</u>, elected by the members of that constituent nation, without the interference from two other constituent nations in the electoral process.

**3)** **Equal value of the electoral vote within each constituent nation and Others as separate virtual election units** for four clubs in the DN PFBiH.

In order to fulfill this requirement, the representatives of constituent nations must have the same value of their vote for the election of their legitimate political representatives, no matter where they live in the FBiH. A Croat in Sarajevo must have the same value of their vote as a Croat in Široki Brijeg, while a Bosniak in Zenica must have the same value of their vote as a Bosniak in Ljubuški.

In order for a proposal to implement the Ljubić ruling for the DN PFBiH, that proposal must fulfill all three requirements outlined above.

<u>IDPI's proposal for the implementation of the Constitutional Court of BiH Ljubić ruling for the House of Peoples of the Parliament of the Federation of BiH:</u>

1) **Ensures legitimate representation of the three constituent nations and Others in the DN PFBiH.**
2) **Ensures the mutual equality of the three constituent nations in the DN PFBiH.**
3) **Ensures the equal value of the electoral vote within each constituent nation and Others as separate virtual election units for clubs in the DN PFBiH.**
4) **Does not establish any new electoral units.**
5) **It allows all voters in the FBiH to elect and to be elected in the appropriate club in the DN PFBiH, no matter in which canton they live.**

## IDPI's proposal for the implementation of the Ljubić ruling for the DN PFBiH

**The House of Peoples of the Parliament of the FBiH** is made up of four clubs: Bosniak club, Croat club, Serb club and Others club. Like until now, **58 delegates** (17 Bosniaks, 17 Croats, 17 Serbs and 7 Others) are still elected.

Instead of the current method in which in each canton the clubs of the constituent nations and Other, among themselves via a secret ballot, elect a fixed number of delegates to their own club in the DN PFBiH, a new system is introduced, which is based on:

1) **Bosniak, Croat, Serb and Others Coefficient of election points (KIB - Koeficijenti izbornih bodova) for each canton.**
2) **Personal election coefficient (OIK - Osobni izborni koeficijent) of elected assemblymen which the Central Electoral Commission assigns to each assemblyman in all ten cantonal assemblies after indirect elections.**
3) **Four grand electoral colleges (veliki izborni kolegij) which elects delegates to their own club in the DN PFBiH using OIK.**

## 1) Coefficient of election points - KIB

Each canton is assigned a specific Coefficient of election points (KIB) for Bosniak, Croat, Serb and Others delegates. The Coefficient of election points **(B, C, S and O)** is calculated by dividing the number of members of one specific constituent nation (or Others) in a specific canton by the number of members of that specific constituent nation (or Others) in the FBiH, and it is updated after every census.

According to the results of the 2013 census, B, C, S and O KIB in each canton are:

|  | **B** KIB | **C** KIB | **S** KIB | **O** KIB |
|---|---|---|---|---|
| **Una-Sana Canton** | 15.75 | 1.02 | 14.95 | 13.40 |
| **Posavina Canton** | 0.53 | 6.75 | 1.47 | 0.75 |
| **Tuzla Canton** | 25.11 | 4.74 | 12.48 | 21.50 |
| **Zenica-Doboj Canton** | 19.17 | 8.80 | 9.80 | 15.25 |
| **Bosnian-Podrinje Canton** | 1.43 | 0.01 | 1.57 | 0.50 |
| **Central Bosnia Canton** | 9.39 | 19.60 | 5.38 | 7.19 |
| **Hercegovina-Neretva Canton** | 5.89 | 23.76 | 11.37 | 5.15 |
| **West Herzegovina Canton** | 0.04 | 18.82 | 0.18 | 0.35 |
| **Sarajevo Canton** | 22.18 | 3.52 | 23.52 | 35.34 |
| **Canton 10** | 0.51 | 12.98 | 19.28 | 0.57 |
| **Total** | **100** | **100** | **100** | **100** |

## 2) Personal election coefficient - OIK

Coefficient of election points (B,C,S and O) in each canton is divided by the number of elected Bosniak, Croat, Serb and Others assemblymen in that specific canton, so that the B Coefficient of election points for that canton is dived with the number of Bosniak assemblymen elected to that cantonal assembly (the same is true for Croats, Serbs and Other). The result of this division are **Personal election coefficients** (**OIK**) which are assigned to the assemblymen and which assemblymen use to vote in the grand electoral college (Bosniak assemblymen in the Bosniak grand electoral college, Croat assemblymen in the Croat grand electoral college, Serb assemblymen in the Serb grand electoral college and Others assemblymen in the Others grand electoral college).

For example, if the **B** Coefficient of election points in Una-Sana Canton is **15.75, C 1.02, S 14.95 and O 13.40**, and in the cantonal assembly there is **25 Bosniaks, 1 Croat, 2 Serbs and 2 Others** elected, then:

- Each member of the **Bosniak club in the Una-Sana cantonal assembly** has 15.75/25 = **0.63 personal election coefficient** which they are assigned and with which they enter

the Bosniak grand electoral college which elects delegates to the Bosniak club in the House of Peoples.

- Each member of the **Croat club in the Una-Sana cantonal assembly** has 1.02/1 = **1.02 <u>personal election coefficient</u>** which they are assigned and with which they enter the Croat grand electoral college which elects delegates to the Croat club in the House of Peoples.
- Each member of the **Serb club in the Una-Sana cantonal assembly** has 14.95/2 = **7.48 <u>personal election coefficient</u>** which they are assigned and with which they enter the Serb grand electoral college which elects delegates to the Serb club in the House of Peoples.
- Each member of the **Others club in the Una-Sana cantonal assembly** has 13.40/1 = **6.70 <u>personal election coefficient</u>** which they are assigned and with which they enter the Others grand electoral college which elects delegates to the Others club in the House of Peoples.

OIK represents vote value which that assemblyman will bring to their grand electoral college. All Bosniak assemblymen from Una-Sana Canton will, together, bring 15.75 OIK to the Bosniak grand electoral college, which is proportional to the number of Bosniaks in the Una-Sana Canton out of the total number of Bosniaks in the FBiH. This ensures the equal vote value within each constituent nation and Others as separate virtual electoral unit for the House of Peoples of the FBiH, as one Bosniak, no matter in which canton he live, will have the exactly the same value of their vote as any other Bosniak in other cantons. The same is true for Croats, Serb and Others.

This system also ensures that Other can elect their delegates from all cantons, while according to the old system, they could only elect delegates in five cantons.

**3) Grand electoral colleges**

After the Central Electoral Commission (CEC) calculates and assigns OIK to every cantonal representative in the FBIH for their specific electoral college, the **four grand electoral colleges for the election of delegates to the four clubs in the DN PFBiH** are formed.

- **Bosniak grand electoral college** is made of all Bosniak assemblymen from all ten cantonal assemblies and it elects 17 delegates to the **Bosniak club** of the DN PFBiH. The total sum of OIKs from all assemblymen in the grand electoral college is 100.
- **Croat grand electoral college** is made of all Croat assemblymen from all ten cantonal assemblies and it elects 17 delegates to the **Croat club** of the DN PFBiH. The total sum of OIKs from all assemblymen in the grand electoral college is 100.
- **Serb grand electoral college** is made of all Serb assemblymen from all ten cantonal assemblies and it elects 17 delegates to the **Serb club** of the DN PFBiH. The total sum of OIKs from all assemblymen in the grand electoral college is 100.
- **Others grand electoral college** is made of all Others assemblymen from all ten cantonal assemblies and it elects 17 delegates to the **Others club** of the DN PFBiH. The total sum of OIKs from all assemblymen in the grand electoral college is 100.

The assemblymen in the grand electoral colleges shall meet on the day which the CEC determines in the Parliament of the FBiH, and one by one, according to the alphabetical order, first Bosniak, then Croat, then Others, then Serb grand electoral college will, by secret ballot, elect 17 delegates to the club of the constituent nation to the DN PFBiH, or 7 delegates in the case of Others.

Before voting, political parties, coalitions and independent assemblymen will decide on their ranked electoral lists. Every elected assemblyman can form their own list or join the electoral list of a group of independent assemblymen, political parties or coalitions. Multiple parties can form a list together, and assemblymen of any party do not have to join the list of that party, but instead, they can form their own list, if they want to. The electoral list is made up of ranked names of assemblymen (from 1 to 17, but if the list is formed by less than 17 assemblymen, then from 1 up to the number of assemblymen which are forming this list).

CEC then produces ballots with all lists and OIK of the specific assemblyman who votes with that ballot, and it hands the ballot to that specific assemblyman. Then the assemblyman chooses to which electoral list on the ballot he wants to give his OIK, and then he returns the filled ballot to the CEC. This ensures that a Croat from Sarajevo or a Bosniak from Livno can be elected to the DN PFBiH.

Voting is still secret, as only the members of CEC will add all the ballots, while other assemblymen will not know who voted for the which list. CEC adds all OIKs for all electoral list and makes a table in which all the lists are ranked by the number of OIK that they won.

Then, using OIK and the D'Hondt method (dividing with 1,2,3,4,5,…) CEC calculates won mandates. For example, if a specific list won six mandates, then the first six assemblymen ranked on this list will become delegates in that club in the DN PFBiH.

If a certain grand electoral college does not have at least 17 assemblymen (or 7 in the case of Others), and it therefore cannot elect all 17 (or 7 in the case of Others) delegates to this club in the DN PFBiH, then as many delegates as possible are elected (all assemblymen in that grand electoral college automatically go to that club in the DN PFBiH). For example, if only 13 out of 17 Serb delegates are elected, the other four delegates shall be elected by an *ad hoc* electoral college made up of all municipal councilmen which are members of that specific constituent nation (Serbs in this case) in FBiH. Then, they among themselves, using the secret ballot and the principle "one councilman – one vote" elect the rest of the delegates to the DN PFBiH.