TO ALL AMBASSADORS ACCREDITED TO BIH

OPEN LETTER

The RS’s Referendum on the January 9 Holiday

On 25 September, Republika Srpska will hold a referendum to ascertain its citizens’ views about whether 9 January should be marked and celebrated as the Day of Republika Srpska. The referendum is fully in accord with applicable law and concerns an issue of profound importance to RS citizens. The referendum will inform the RS National Assembly as it considers how to implement the BiH Constitutional Court’s 26 November 2015 decision concerning Republic Day. That decision left to Republika Srpska the authority and responsibility to implement the decision to ensure that the celebration of the Day of Republika Srpska was in harmony with the BiH Constitution. The decision did not forbid Republika Srpska from celebrating the date of its founding.

The referendum is fully in accord with applicable law.

On 15 July 2016, the RS National Assembly voted, in accordance with the 2010 RS Law on Referendum and Civic Initiative, to hold a referendum asking RS citizens whether Republic Day should continue to be observed on January 9.

The RS Constitution has long specifically provided for referenda at Articles 70 and 77. The Council of Europe’s Venice Commission has thoroughly scrutinized the consistency of the RS Constitution with the BiH Constitution,¹ and it has never objected to the RS Constitution’s referendum provisions. The RS’s 2010 Law on Referendum and Civic Initiative was drafted in light of the Code of Good Practice of the Venice Commission² and the Recommendations of the Council of Europe’s Committee of Ministers on citizens’ participation in public life at the local level.³

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¹ See, e.g., Venice Commission, Compatibility of the Constitution of the Republika Srpska with the Constitution of Bosnia and Herzegovina following the Adoption of Amendments LIV – LXV by the National Assembly of Republika Srpska, Secretariat Memorandum on the basis of the Commission’s opinion appearing in document CDL(96)56 final.
² CDI AD 2007-2008.
³ Rec (2001) 19; Memorandum from Jasna Brkić, Minister of Economic Relations and Regional Cooperation, Republika Srpska, to Zoran Lipovac, Minister of Administration and Local Self-Government, Republika Srpska, 21 Jan. 2010.
Referenda are fully consistent with the BiH Constitution and the practice of democratic states throughout Europe and around the world. The Dayton Accords contain no provisions that could possibly be interpreted as prohibiting or restricting referenda.

Moreover, as the Council of Europe’s Parliamentary Assembly said in a 2007 resolution, “Referendums are an instrument of direct democracy which belong to the European electoral heritage.”4 The Council of Europe’s Congress of Local and Regional Authorities recognized in a 2007 resolution that “referendums, whether at national, local or regional level, constitute one of the main instruments of direct democracy giving citizens the possibility to take part in political decision making as well as in public matters which directly concern them . . . .”5

The referendum concerns an issue—RS public holidays—that is squarely within the competence of Republika Srpska. Republic Day is deeply important to RS citizens because the creation of Republika Srpska is widely seen as vital to the protection of Serbs’ interests. Republic Day, as it marks the birth of Republika Srpska, is a celebration of Republika Srpska’s existence—an existence that the BiH Constitution, Annex 4 of the Dayton Accords, welcomes and accepts. Confronted by the decision of the Constitutional Court, the RS Government has a legitimate interest in obtaining RS citizens’ views on when and how this important historical event should be celebrated.

The referendum is a step toward implementing the Constitutional Court’s decision.

Although Republika Srpska disagrees with the Constitutional Court’s decision in important respects, the referendum is nonetheless intended as a step toward implementing it. The decision’s only express order is that the RSNA “harmonize” Article 3(b) of the Law on Holidays with the BiH Constitution. It does not state that the RSNA must abolish the 9 January holiday or otherwise specify what is required for harmonization. Republika Srpska is confident that Republic Day can be celebrated without discriminating against any religion or ethnic group.

The first step toward harmonizing the law is for Republika Srpska to determine whether its citizens wish to retain 9 January as the date of the holiday. Once the citizens express their view, the RSNA will then take their views into consideration in any efforts to ensure harmonization of Article 3(b) of the Law on Holidays with the Constitution.

The Constitutional Court’s decision cannot possibly mean Republika Srpska is forbidden from observing the date of its founding.

It is important to note that the Constitutional Court’s decision cannot reasonably be interpreted to forbid Republika Srpska from celebrating 9 January as the anniversary of its founding. The Constitutional Court’s concerns about Republic Day stem, first, from the fact that it coincides with the Orthodox feast of St. Stephen’s Day and, second, that the 9 January holiday, given the nature of the declaration that it commemorates, allegedly privileges Serbs over other ethnicities.

But the decision cannot possibly stand for the proposition that Republika Srpska is constitutionally forbidden from celebrating January 9 Republic Day holiday, either because it coincides with a religious feast or because it allegedly privileges one ethnic group over others. If that were the case, as explained below, every public holiday in both Republika Srpska and the Federation would be unconstitutional.

Religious feasts

If the Constitutional Court’s decision were to be interpreted as forbidding the January 9 Republic Day holiday because it coincides with the Orthodox feast of St. Stephen, that would require all public holidays that mark religious feasts—or even coincide with religious feasts—to be banned. For example, the public holidays marking Muslim feasts like Eid al-Fitr and Eid al-Adha, observed

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5 Council of Europe, Congress of Local and Regional Authorities Res. 235 (2007).
in Bosniak-majority cantons of the Federation, would have to be abolished. Public holidays marking Catholic feasts like Christmas and St. Stephen’s Day, observed in Croat-majority cantons of the Federation, would have to be abolished. It would be peculiar indeed if the Catholic St. Stephen’s Day (26 December) were permitted as a public holiday while the 9 January Republic Day holiday is forbidden merely because it coincides with Orthodox St. Stephen’s Day.

If the 9 January holiday were unconstitutional because it coincides with St. Stephen’s Day, even holidays that are at least partially secular, such as New Year’s Day, Independence Day, Labor Day, Statehood Day, Victory Day, and Dayton Day would have to be forbidden as well. Each of these days coincides with Orthodox and Catholic feasts.

Republika Srpska has no desire to see any of these secular, Muslim, Catholic, or Orthodox holidays abolished. But all are unconstitutional if the Constitutional Court’s decision is to be interpreted as forbidding the celebration of Republic Day because it coincides with a religious feast.

Secular holidays favoring certain ethnic groups

If the Constitutional Court’s decision were interpreted as forbidding the Republic Day holiday because it allegedly favors one ethnic group over others, it would certainly also require forbidding the Federation’s 1 March celebration of “Independence Day.”

The Federation’s 1 March public holiday marks the anniversary of the 1992 referendum through which Bosniaks and Croats voted for Bosnia and Herzegovina to unilaterally secede from Yugoslavia. Serbs strongly objected to the referendum and did not participate in the referendum itself. Today, Serbs consider 1 March to be the anniversary of an illegitimate referendum that tore the Serbs of Bosnia and Herzegovina away from their country, Yugoslavia, and led to the outbreak of war. The Federation’s 1 March holiday “favors” Bosniaks and Croats at least as much as Republika Srpska’s 9 January holiday “favors” Serbs.

Despite Serbs in the Federation (and throughout BiH) choosing not to participate in the celebration of the Federation’s 1 March holiday, Republika Srpska is not advocating the Constitutional Court to forbid its celebration. But if the Constitutional Court’s November 2015 decision is interpreted as forbidding the celebration of Republic Day because of its particular significance for Serbs, the Federation’s 1 March holiday must equally be forbidden because of its particular significance for Bosniaks and Croats.

Also, Croatian people in BiH regularly celebrate August 28 as the Day of Herzeg-Bosnia and day which marks declaration of the so called Croatian Republic of Herzeg-Bosnia (CRHB), which seized existing upon execution of the Washington Agreement in 1994, when it was joined into the Croat–Bosniak federation forming FBiH. Although CRHB was formally abolished in 1996, transferring all its competencies to FBiH, this day of its declaration is marked until today, and is celebrated by wreath laying ceremonies honoring the Croatian war veterans and victims, followed by religious ceremonies and serving of Mass, in the presence of many Croatian senior officials. During this year’s celebration of Day of CRHB, Croatian officials have called upon preservation of this holiday, stating that “Herceg-Bosna was never extinguished or abandoned”, that it “still lives as legal and political fact”, as well as that it “lives today in many laws and public companies” given that, based on the claim of the President of the General Council of the Croatian National Congress of BiH “all HRHB laws are still in force in all those areas that are not regulated at the state level. This involves, among other things, its Law on public holidays and celebrations, on the basis of which we now celebrate this anniversary”. Even so, celebration of this holiday has never

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as well as „Božo Ljubić openly: Heceg Bosna was never extinguished or abandoned“ at: http://www.klix.ba/vijesti/bih/bozo-ljubic-otvoreno-herceg-bosna-nikada-nije-ugasena-niti-napustena/160828014
caused Republic of Srpska to condemn it in any way. Even when it is impossible to reach a consensus among all parties, the Republic of Srpska democratically recognizes each people’s right to celebrate and mark any day it considers important for its history and culture.

To the extent that the Constitutional Court’s decision places a stigma on the date of the RS’s founding it stigmatizes the Republika Srpska’s very existence. Given that the BiH Constitution, Annex 4 of the Dayton Accords, accepts Republika Srpska as one of the two Entities that comprise BiH, that cannot possibly be what the decision means. The RS was indeed a party, recognized by international law, to Annex 4 and all Annexes that comprise the Dayton Accords.

Stigmatizing the Serbs’ creation of Republika Srpska while not equally stigmatizing the Bosniaks and Croats’ unilateral declaration of independence from Yugoslavia would constitute unlawful discrimination against Serbs. Again, that cannot be what the Constitutional Court intended. Whatever the legal implications and consequences of the Constitutional Court’s November 2015 decision, they must be applied fairly to every Constituent People.