



# Croatian American Association

November 8, 2018

Dear Mr. Hahn,  
Dear Mr. Juncker,  
Dear Mrs. Mogherini,  
Dear Mr. Tajani,  
Dear Mr. Tusk,

On behalf of the Croatian American Association (CAA), a non-profit, non-partisan membership organization, we are compelled to write this letter to address the numerous fallacies advanced by Mr. Komšić in his letter to you, dated October 30, 2018.

In his letter, Mr. Komšić makes many dubious, politicized and divisive claims, without any evidence backing them. His letter is written to promote his own political agenda, while completely disregarding the rule of law, the Constitution of Bosnia and Herzegovina (BiH) and the rulings of the Constitutional Court of BiH. We are concerned that Mr. Komšić's letter signals the approach he will take in leading a country that is facing many challenges.

CAA's primary goal is to support democratic developments in Bosnia and Herzegovina, especially enhancing the rule of law, supporting BiH's full integration into Euro-Atlantic organizations, ensuring political equality of constituent nations, protecting national minorities and curbing corruption. CAA supports a prosperous and politically sustainable Bosnia and Herzegovina based on the principles of democracy, federalism, and power-sharing. We emphasize that the CAA believes EU membership for Bosnia and Herzegovina is in the vital national interests both of Croats in Bosnia and Herzegovina and of the Republic of Croatia. Our policy positions are all prepared with that ultimate goal in mind.

We now turn to the various accusations Mr. Komšić makes in his letter.

Mr. Komšić claims in his letter that representatives of the Republic of Croatia have "expressed the political tendency of violating the provisions of the General Framework Peace Agreement for Peace in BiH." This is simply not correct, and Mr. Komšić provides no evidence to back up this serious allegation. As guarantor of the Dayton Peace Agreement and a Member of the European Union, the Republic of Croatia and its political representatives have an obligation to defend the interest of Croats in BiH and to uphold the Dayton Agreement. This obligation is also enshrined in Croatia's Constitution. Croatian MEPs were simply pointing out that the Constitutional Court of BiH ruling in the "Ljubić" case must be implemented and the overarching principle of the DPA on the mutual equality of the three constituent nations upheld.

Mr. Komšić claims that his election as the Croat member of the Presidency is constitutional and legal. This is not true. As the Constitutional Court of BiH has clearly stated in the Ljubić ruling from December of 2016, political representatives of constituent nations and Others must be elected by the group they are representing and whose interests they are protecting, at all administrative-political levels. Mr. Komšić does not have that legitimacy. Mr. Komšić was overwhelmingly elected by Bosniak voters and received less than 5% of the Croat vote. He does not have the support of Croats, which would give him the electoral legitimacy to represent Croats in the Presidency of BiH and to protect their interests through the "entity veto" mechanism, as outlined in the Article V 2. d) of the BiH Constitution. He is elected thanks to an electoral loophole which Bosniak politicians refuse to fix. Therefore, his election is both unconstitutional

and illegal, violating the overarching principle of the BiH's constitution on the mutual equality of the three constituent nations.

Mr. Komšić claims that the Ljubić ruling only covers the House of Peoples of the FBiH. Although the ruling was explicitly about the election of delegates in the FBiH House of Peoples, the court set a clear constitutional standard for legitimate political representation at "all political-administrative levels," as outlined in paragraphs 47 and 49 of the ruling. Therefore, this constitutional standard is applicable not only to the House of Peoples of the FBiH, the House of Peoples of BiH and the Council of Peoples of Republika Srpska, but also for the Presidency of BiH. The role of a Croat Member of the Presidency is twofold. The Croat Member represents both the citizens of the FBiH in general, as well as the Croats as the constituent nation in particular, as he is tasked with protecting their vital national interest in the Presidency through the institution of the "entity veto." The Croat Member cannot legitimately represent Croats and protect their "vital national interest" if he has not been elected by them, but by another constituent nation, as is the case with Mr. Komšić.

Contrary to Mr. Komšić's claim, the Central Election Committee (CEC) does not have the constitutional authority to implement the Ljubić ruling and to fully implement the indirect election of the delegates to the FBiH House of Peoples. The election law of BiH, which is missing provisions pertaining to the election of delegates to the FBiH House of Peoples, can only be reformed by the Parliamentary Assembly of BiH. CEC cannot constitutionally implement the election results if there is no legal basis for their implementation. CEC might attempt to do so through a by-law, but such an act will likely be successfully challenged before the Constitutional Court of BiH.

Mr. Komšić falsely states that Croatia's MEPs have an "aim of imposing a segregation proposal on changes to the Election Law in the neighboring country of BiH, on the anticivilization and anti-European principle of ethnic representation." This claim is offensive and completely off-base. The legitimate political representation of communities is a European legal tradition. One only needs to look at the political system in Belgium, Switzerland or South Tyrol to see this principle in action. We agree that the European Court for Human Rights rulings must be implemented. However, the rulings do not provide carte blanche to anyone to deny the equality of the constituent nations guaranteed in the Constitution. The ECHR rulings and Ljubić rulings are not mutually exclusive. A framework that satisfies all rulings is the solution.

Therefore, Mr. Komšić's claims are meritless. His policy goes directly against the Constitution, the rule of law, the Dayton Agreement, EU parliament's resolutions on BiH and principles of legitimate representation in any complex, federal state. It is Mr. Komšić and his politics that are destabilizing Bosnia and Herzegovina. CAA hopes that with the help of the international community, BiH will stabilize and become a prosperous and politically sustainable country based on the principles of democracy, federalism, and power-sharing. Such a Bosnia and Herzegovina would rightly find its place as a member of the European Union.

Sincerely,



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