



Croatian American Association

December 12, 2018

Dear Mrs. Mogherini,

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. Ashdown, Mr. Bildt and Mr. Schwarz-Schilling in their letter to you dated December 6, 2018.

CAA's primary goal is to support democratic developments in Bosnia and Herzegovina (BiH), 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 BiH based on the principles of democracy, federalism, and power-sharing. We emphasize that the CAA believes EU and NATO membership for BiH is in the vital national interests both of Croats in BiH and of the Republic of Croatia. Our policy positions are all prepared with that ultimate goal in mind.

In their letter, the three former High Representatives in BiH make dubious claims. They claim that Croatia is "continually meddling in the political affairs of BiH" which is, according to them, exemplified by the recent attempts "to deny the legitimacy of the election of Željko Komšić to the BiH Presidency."

First, Croatia is not meddling in the political affairs of BiH. Croatia is a guarantor of the Dayton Peace Accords (DPA), and as such, it has the duty to monitor the implementation of the DPA and ensure that all three constituent nations are equal. Croatia is also a guarantor of the DPA, inter alia, through its membership in the EU and EU's role on the Steering Board of the PIC. As a member state of the EU, Croatia is entirely within its rights to express its views to the internal institutions of the EU, including the Presidency, the Commission, and the European Parliament. Moreover, Article 10 of the Constitution of Croatia obligates Croatia to "guarantee particular care and protection to those portions of the Croatian nation in other countries." Accordingly, the Croatian government has a constitutional obligation to protect the rights of Croats in BiH, many of whom are also Croatian citizens.

Secondly, Željko Komšić was elected by a majority of Bosniak voters and with miniscule Croat support. No one denies this fact. Bildt, Ashdown and Schwarz-Schilling claim that it is constitutional and legal for the Bosniaks to elect both the Bosniak and the Croat member of the Presidency. However, that is neither constitutional nor legal.

As the Constitutional Court of BiH 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. 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. There is no room for “cross-voting” between Bosniaks and Croats in the FBiH. If that was the case, then the Croat Member of the Presidency would not have to get their “entity veto” approved by the Croat club in the House of Peoples of the FBiH. It would get approved in the House of Representatives. It is clear that the role of the Croat Member of the Presidency is to protect the rights of Croat as a constituent nation, which he cannot legitimately do if he does not have support from a majority of Croats.

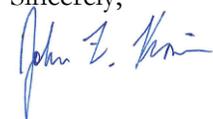
Mr. Komšić does not have the support of Croats, which would give him the electoral legitimacy to represent Croats in the Presidency of BiH and to protect their interests through the “entity veto” mechanism, as outlined in Article V 2. d) of the BiH Constitution. He is elected thanks to an electoral loophole which Bosniak politicians refuse to fix. His election is thus both unconstitutional and illegal, violating the overarching principle of BiH’s constitution on the mutual equality of the three constituent nations.

It is true that both Čović and Komšić got elected by the same election law. However, the mere fact that an otherwise unconstitutional election law can sometimes be legitimately applied does not make it constitutional when it is illegitimately exploited on different occasions. There is no doubt that when Čović was elected, he had the overwhelming support of Croat voters. In contrast, when Komšić was elected, he got less than 5% support of Croat voters and was elected by Bosniak voters. Čović’s election was constitutional and legal because he was elected by the constituency he is supposed to represent. On the other hand, Komšić’s election was unconstitutional and illegal because he was not elected by the constituency he is supposed to represent. The fact that they were both elected according to the same election law only demonstrates that the election law needs to be reformed in order to fulfill the legal standard of legitimate representation of constituent nations, as outlined in the Ljubić ruling. The loophole which allows the Bosniaks to elect the Croat member of the Presidency of BiH needs to be fixed.

We agree with the three former High Representatives that any electoral reform should make BiH more cohesive and functional. However, allowing Croats to elect their legitimate political representatives does not divide BiH further along ethnic lines. Quite the contrary, it fulfills the Constitution and it allows all three constituent nations in BiH to be properly represented, which is a prerequisite for any grand coalition and cooperation between the three nations.

Moreover, we support the formation of a government in BiH as soon as possible. However, in order for government to be functional, the election law must be reformed in order for the delegates to be elected to the House of Peoples of the FBiH and the House of Peoples of BiH. We also fully support the borders of BiH and remind the three former High Representatives that Croatia does not have any pretensions on BiH’s territory. 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 country would rightly find its place as a member of the European Union.

Sincerely,



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