



INSTRUCTION
on awarding and terminating mandate

Sarajevo, April 2014

Pursuant to Article 2.9, paragraph (1), point 2 and in regard to Article 1.10, paragraph (3), 9.5, 9.6, 9.8 and 13.5 the Election Law of Bosnia and Herzegovina („Official Gazette of BiH“, no. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13 and 7/14), the Central Election Commission of Bosnia and Herzegovina has at its 19th session held on April 29, 2014 adopted

INSTRUCTION on awarding and terminating mandate

CHAPTER I. INTRODUCTION

Article 1 (Application)

This Instruction shall set forth:

- a) mandate allocation procedure (Article 9.5, 9.6, 9.7 and 9.10 of the BiH Election Law),
- b) lottery draw procedure (Article 9.8, paragraph (1) of the BiH Election Law), and
- c) manner of termination and procedure of determining termination of the term of office of an elected member of a government authority before the expiration of the mandate for which he or she was elected at all levels of direct and indirect elections in Bosnia and Herzegovina set forth in the Election Law of Bosnia and Herzegovina (hereinafter: BiH Election Law) and the procedure of allocating mandate to next qualified candidate from the list of the same political party (Article 1.10 of the BiH Election Law).

Article 2 (Participation in allocation of regular mandate – Article 9.25 of the BiH Election Law)

Political parties, coalitions, lists of independent candidates and independent candidates cannot participate in the allocation of mandates if they do not win more than 3% of the total number of valid ballots in a constituency.

CHAPTER II. LOTTERY DRAW PROCEDURE

Article 3 (Lottery draw– Article 9.8, 9.12, paragraph (3), 9.7, 11.7, 13.5, 13.14, paragraphs (10) and (15) and 19.6 of the BiH Election Law)

The lottery draw shall be conducted if the result of allocation of mandate is the same due to identical quotients, and also when completing representative bodies where allocation of mandates amongst constituent people and the Others is obligatory.

Article 4
(Venue of the lottery)

- (1) The lottery shall be done in the premises of the BiH Central Election Commission.
- (2) Upon determined date of the lottery draw, the BiH Central Election Commission shall inform the political subjects participating in the lottery draw about time and venue of the lottery, no later than 24 hours prior to the lottery draw.
- (3) The notice on time and venue of the lottery draw shall be delivered by telephone, fax, mail or e-mail.

Article 5
(Persons)

The lottery draw shall be done by the civil servants from the Secretariat of the BiH Central Election Commission, who are appointed by the BiH Central Election Commission.

Article 6
(Public nature of the lottery draw)

- (1) The lottery draw is public and can be attended by all interested persons.
- (2) The BiH Central Election Commission shall inform the public on time and venue of the lottery draw by a press release and through its web site www.izbori.ba, no later than 24 hours prior to the lottery draw.

Article 7
(Procedure)

- (1) The lottery draw shall be done in one of the following ways:

a) SEMI-AUTOMATED GENERATION

- 1) an officer or a person appointed by the BiH Central Election Commission shall initiate search of the database of political subjects and/or candidates, and after certain period of time, the same person shall stop the search of the database and by the random sampling a name of political subject and/or candidate shall appear with automatically generated number that corresponds to the order of the draw, along with visual presentation of the complete procedure, or

b) MANUAL GENERATION

- 1) The papers with names of the candidates with identical quotient are placed into identical translucent balls that are then placed in the translucent bowl from which they are subsequently drawn, and
 - 2) an officer or a person appointed by the BiH Central Election Commission shall stir by hand all the plastic balls and shall draw one plastic ball holding name of the political subject or candidate with identical quotient and he/she shall announce the name of the political subject or candidate that has been drawn.
- (2) This procedure shall be used to determine which political subject or candidate with identical quotient won the mandate.
- (3) The lottery draw procedure for awarding the mandate is identical to the procedure of termination of mandate of the lottery draw has to be done for the latter.

Article 8 (Minutes)

Minutes of the lottery draw procedure shall be made in accordance with the provisions of the Law on administrative procedure (“Official Gazette of BiH”, no. 29/02, 12/04, 93/09 and 41/13).

Article 9 (Audio and video recording)

- (1) The course of the lottery draw shall be recorded using audio and video devices, which shall be recorded in the minutes on conducted draw.
- (2) The Minutes shall also contain who and on whose behalf made audio and video recording and the place where the footages will be stored.
- (3) Audio and video recordings of the draw, audio and video documentation on conducted draw shall be kept at the BiH Central Election Commission together with the Minutes.

Article 10 (Complaints)

- (1) An unsatisfied party shall have the right to file a complaint to the BiH Central Election Commission during and after the lottery draw.
- (2) The complaint shall be recorded in the minutes by an authorized person.
- (3) The BiH Central Election Commission shall pass a decision on the filed complaint.

CHAPTER III. TERMINATION OF ELECTED OFFICIAL'S TERM OF OFFICE BEFORE EXPIRATION OF MANDATE

Section A. Termination of mandate

Article 11

(Termination of mandate – Article 1.10, paragraph (1) of the BiH Election Law)

The term of office of an elected member of a government authority at all levels shall terminate before the expiration of the mandate for which he or she was elected in accordance with Article 1.10, paragraph (1) of the BiH Election Law.

Article 12

(Termination form OB-1 – Article 1.10, paragraph (2) of the BiH Election Law)

(1) The BiH Central Election Commission shall produce a form for completing termination of the mandate to an elected member of a government authority OB-1.

(2) The form referred to in paragraph (1) of this Article shall be integral part of this Instruction and shall contain the following information:

- a) Logo of the BiH Central Election Commission,
- b) Name and the address of the body i.e. name and address of the applicant,
- c) Name and the address of the elected member of a government authority for whom the termination of mandate is requested, name of the political subject of which he/she is the member,
- d) Duty of the elected member of a government authority for whom termination of mandate is requested,
- e) The reason for determining termination of mandate to an elected member of a government authority, as defined in Article 16 of the Instruction,
- f) Attachment,
- g) Signature of the applicant,
- h) Signature and seal of the president/chairperson of the competent legislative body of authority, and
- i) Instruction on how to complete the form.

Article 13

(Procedures)

(1) Elected member of a government authority to whom mandate is awarded by the BiH Central Election Commission in accordance with the BiH Election Law, shall submit his/her resignation to the BiH Central Election Commission through the competent legislative body of authority on the OB-1 form. Elected member of a government authority, who is resigning, shall legibly and completely fill in the form and have it signed by the president/chairperson of the competent body of authority, fixing a seal on the form.

(2) If an elected member of a government authority to whom mandate is awarded by the BiH Central Election Commission in accordance with the BiH Election Law, is recalled, the president/chairman of the competent body that conducted the recall procedure shall deliver to the BiH Central Election Commission report of the commission for the conduct of recall procedure with the entire material for the purpose of verifying whether the recall procedure was conducted in accordance with the BiH Election Law.

(3) If the mandate of an elected member of a government authority to whom mandate is awarded by the BiH Central Election Commission in accordance with the BiH Election Law, is terminated due to death, president/chairman of the competent body of authority shall legibly and completely fill out the OB-1 form, affix a seal and deliver it to the BiH Central Election Commission together with the death certificate for the purpose of determining termination of the mandate.

(4) If the mandate of an elected member of a government authority to whom mandate is awarded by the BiH Central Election Commission in accordance with the BiH Election Law, is terminated due to a final and binding court judgement by which he/she has been sentenced to a prison sentence of six months or longer, president/chairman of the competent body of authority, i.e. the elections department of the BiH Central Election Commission shall upon learning about the valid judgement shall legibly and completely fill out the OB-1 form and deliver it to the BiH Central Election Commission together with the valid court judgement for the purpose of determining termination of mandate. The form OB-1 that is filled out by the president/chairman of the competent body of authority shall have a seal affixed on it.

(5) If the mandate of an elected member of a government authority to whom mandate is awarded by the BiH Central Election Commission in accordance with the BiH Election Law, is terminated due to a final and binding court decision by which he or she has been deprived of legal capacity, the elections department of the BiH Central Election Commission shall, based on officially obtained documents, legibly and completely fill out the OB-1 form and deliver it to the BiH Central Election Commission together with the valid court decision for the purpose of determining termination of mandate.

(6) If the mandate of an elected member of a government authority to whom mandate is awarded by the BiH Central Election Commission in accordance with the BiH Election Law, is terminated due election or appointment to an office which is incompatible with the office of an elected member of a certain body, the elections department of the BiH Central Election Commission or the president/chairman of the competent body of authority shall, based on official records or information obtain in other way, legibly and completely fill out the OB-1 form, affix a seal of the competent legislative body and deliver it to the BiH Central Election Commission together with decision on election or appointment for the purpose of determining termination of the mandate.

(7) If the mandate of an elected member of a government authority to whom mandate is awarded by the BiH Central Election Commission in accordance with the BiH Election Law, is terminated due to cancellation of his/her permanent residence on the territory of the electoral unit in which he/she was recorded as a voter in the Central Voters Register and from which he/she was elected, after the end of a six-month-period following the date of cancellation, the elections department of the BiH Central Election Commission shall, based

on official record, legibly and completely fill out the OB-1 form and deliver it to the BiH Central Election Commission together with the residence cancellation form of the elected member of a government authority for the purpose of determining termination of mandate.

(8) If the mandate of an elected member of a government authority to whom mandate is awarded by the BiH Central Election Commission in accordance with the BiH Election Law, is terminated for reasons stipulated by law he or she loses the right to be elected, the elections department of the BiH Central Election Commission shall, based on official record, legibly and completely fill out the OB-1 form and deliver it to the BiH Central Election Commission together with a valid document on disenfranchisement for the purpose of determining termination of mandate.

(9) In other cases elected member to whom mandate is awarded by the BiH Central Election Commission shall submit his/her resignation either to the BiH Central Election Commission or to the competent body, which shall inform the BiH Central Election Commission thereof.

Section B. Procedure of determining termination of mandate

Article

(Decision – Article 2.9, paragraph (1), point 14 of the BiH Election Law)

(1) The BiH Central Election Commission shall pass decision on termination of mandate to elected member of a government authority at all levels of direct and indirect elections in Bosnia and Herzegovina that are included in the BiH Election Law, and shall, if necessary, conduct procedure to determine factual situation (in case when elected official resigned whether he/she done that by his/her own will).

(2) An authorized person from the BiH Central Election Commission's Secretariat shall determine arbitrariness of submitted resignation through a telephone conversation with the elected member of a government authority and shall make notes in the file.

(3) The BiH Central Election Commission shall pass a decision on termination of elected official's mandate and on awarding the mandate to the next qualified candidate from the list of the same political party within deadline that may not exceed 15 days following the day the reasons for termination of mandate occurred, i.e. from the day reason for mandate termination became known. The BiH Central Election Commission shall inform the elected official whose mandate is terminated thereof.

(4) Before the mandate is awarded to the next qualified candidate, the BiH Central Election Commission shall verify with the Appellate Division of the BiH Court whether the dissatisfied party had filed an appeal to the BiH CEC's decision on termination of mandate of the elected official and awarding of mandate to the next qualified candidate from the list within two days following receipt of the decision, except when mandate of elected member of a government authority expired before expiration of mandate for which he or she was elected in line with Article 1.10, point 1 and point 3 of the BiH Election Law.

(5) In case mandate of elected member of a government authority was recalled, the BiH Central Election Commission shall examine competent body's decision on termination of mandate in order to ensure that the mandate of elected official was terminated in line with the BiH Election Law.

Article 15

(Awarding of mandates and Award Certificate – Article 9.10 and 2.9, paragraph (1), point 10 of the BiH Election Law)

(1) After the BiH Central Election Commission's decision on termination of mandate of elected member of a government authority becomes final and binding, the BiH Central Election Commission shall in line with Articles 9.10, 9.12h, 10.8, 10.17, 11.8, 11.14, 13.6 of the BiH Election Law, award mandate to the next qualified candidate and issue an Award Certificate in accordance with Article 2.9, paragraph (1), point 10 of the BiH Election Law.

(2) Before Award Certificate is issue, the qualified candidate shall sign a statement form provided by the BiH Central Election Commission, stating whether he/she accepts or rejects the mandate. The statement shall be delivered to the BiH Central Election Commission within 7 days. If the candidate accepts the mandate, the BiH Central Election Commission shall award the mandate to the qualified candidate, who is obligated to sign a confirmation form, prescribed by the BiH Central Election Commission, acknowledging receipt of the Award Certificate and deliver it to the BiH Central Election Commission within three days. After the mandate is awarded, the BiH Central Election Commission shall deliver a copy of the certificate and valid decision on termination of mandate of an elected member of a government authority and awarding of the mandate to the next qualified candidate on the list to the body of authority in which the qualified candidate received the mandate.

(3) The receipt of registered mail shall be deemed a proof in terms of proving the receipt of the Award Certificate referred to in paragraph (2) of this Article.

Article 16

(Beginning of mandate)

Mandate of member of a government authority to whom mandate was awarded in place of the member of a government authority whose mandate was terminated in line with Article 1.10 of the BiH Election Law shall begin from the day he/she signed the statement on accepting the mandate.

CHAPTER IV. TRANSITIONAL AND FINAL PROVISIONS

Article 17

(Annexes)

The integral part of this Instruction are:

- a) Form OB-1 from Article 15, paragraph (1) of this Instruction;
- b) Statement on accepting or rejecting the mandate, and

- c) Confirmation form on receipt of the Award Certificate.

Article 18
(Ineffectiveness)

The instruction on awarding and terminating mandate ("Official Gazette of BiH", no. 37/10, 71/10, 2/11 and 43/11) shall become ineffective upon entry into force of this Instruction.

Article 19
(Coming into force and publishing in the Official Gazettes)

This instruction shall enter into force on the day following the day of publishing in "The Official Gazette of BiH", and it shall be published in "The Official Gazette of the FBiH", "The Official Gazette of the RS" and the "Official Gazette of the Brčko District" as well as on the web page of the BiH Central Election Commission www.izbori.ba.

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Sarajevo, April 29, 2014

President

Stjepan Mikić