

BOSNA I HERCEGOVINA
CENTRALNA IZBORNA KOMISIJA
SREDIŠNJE IZBORNO POVJERENSTVO



БОСНА И ХЕРЦЕГОВИНА
ЦЕНТРАЛНА ИЗБОРНА КОМИСИЈА

CENTRAL ELECTION COMMISSION

INSTRUCTION
on adjudication of complaints and appeals filed with the BiH Central Election
Commission and election commissions

Sarajevo, May 2008

Pursuant to Article 2.9 paragraph (1) item 2., and Article 6.3 paragraph (4) of 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 and 37/08), the BiH Central Election Commission, at its 23rd session held on May 29, 2008, adopted the following

INSTRUCTION
on adjudication of complaints and appeals filed with the BiH Central Election Commission and election commissions

CHAPTER I GENERAL PROVISIONS

Article 1
(Application)

The Instruction on adjudication of complaints and appeals filed with the BiH Central Election Commission and election commissions (hereinafter: Instruction) shall determine the general principles of the decision-making procedure regarding complaints and appeals, the competence and the decision-making procedure, the deadlines and other queries relevant to the protection of the electoral right.

Article 2
(Definitions)

Certain terms used in the Instruction shall have the following meaning:

- a) **voter** signifies a BiH citizen who has the right to vote;
- b) **political subject** signifies a political party, an independent candidate, a coalition or a list of independent candidates certified for participation in the elections in accordance with the Election Law of Bosnia and Herzegovina;
- c) **election commission** signifies a municipal election commission, a city election commission and the Election Commission of the BiH District of Brčko;
- d) **authorized representative** of a political party signifies a political party or a person authorized to represent the political party in front of the BiH Central Election Commission, further the President of the municipal organizational form of a political party, or a person authorized by the Statute. In case a municipal organizational form of the political party has not been formed on the municipal level, the President of the organizational form of the party on the next higher level is considered to be the authorized representative. The President of the municipal organizational form of one of the political parties who are members of a coalition is considered to be the authorized representative of the coalition, or a person authorized by the Statute;
- e) **a party in the procedure** signifies a voter or a political subject, who has initiated a complaint or appeal or who is a party that a procedure is initiated against, or a voter who, for his/her protection of rights or legal interests, has the right to participate in the procedure;
- f) **employee or a person otherwise engaged in the election administration** signifies a person working for a body conducting the elections;

g) **body conducting the elections**, in the sense of this Instruction, signifies, besides the bodies conducting the elections established by the provisions of the BiH Election Law, also a voters register center, a votes counting center and the Main Counting Center, if the latter is established.

CHAPTER II FIRST INSTANCE PROCEDURE

Article 3 (Ex Officio Procedure)

(1) Upon receiving information concerning the violation, the BiH Central Election Commission may institute proceedings by virtue of its authority against a political subject, a candidate or a supporter of a political subject, an employee or a person otherwise engaged in the election administration, because of the violations of the Code of Conduct set out in Article 7.3 paragraph (1) items 3) and 7), Article 7.3 paragraph (2) and Article 7.4 paragraph (1) item 3. of the Election Law of BiH.

(2) Upon receiving information concerning the violation, the election commission may institute proceedings by virtue of its authority against a political subject, a candidate or a supporter of a political subject, an employee or a person otherwise engaged in the election administration, because of the violations of the Code of Conduct set out in Article 7.3 paragraph (1) items 1), 2), 4), 5) and 6) and Article 7.4 paragraph (1) items (1), (2), (4) and (5) of the Election Law of BiH.

(3) The initiative for instituting proceedings, in the sense of paragraphs (1) and (2) of this Article, may likewise be launched by any legal entity or natural person whose right established by the BiH Election Law is violated.

Article 4 (Subject and Deadline for Submitting Complaints)

A voter and a political subject whose right established by the Election Law of Bosnia and Herzegovina (hereinafter: BiH Election Law) is violated, may submit a complaint to the Central Election Commission of Bosnia and Herzegovina (hereinafter: BiH Central Election Commission) or to the election commission, within the deadline of no later than 48 hours from the committed violation.

Article 5 (Form and Contents of the Complaint Form)

(1) The complaint shall be filed on a form containing:

- a) place, time, and a brief description of the committed violation, the perpetrator, and the evidence that confirms the allegations of the complaint;
- b) the provisions of the Election Law of BiH which the complainant believes to be violated, and
- c) Signature of the complainant.

(2) The evidence shall be attached to the complaint in writing. If the hearing of a witness is suggested as evidence, their signed statements are submitted in writing.

(3) If the complainant is a political party or a coalition, the complaint is signed by the President or the authorized representative of the political party or the coalition with attached authorization.

Article 6
(Form of Deposit Signatures)

The signatures of authorized representatives shall be found on the form for deposit signatures of the authorized representatives of political parties/coalitions for filing complaints and appeals, which shall be submitted to the competent election commission.

Article 7
(Manner of Submitting Complaints)

(1) A complaint shall be submitted in person or by fax.

(2) When the BiH Central Election Commission or the election commission adjudicates the complaint submitted by fax and determines that it is necessary, it may request from the complainant to submit the original of that complaint in person or by mail.

Article 8
(Receiver Stamp)

(1) An authorized person in the BiH Central Election Commission shall be obliged to enter the date, the time and the manner the complaint or appeal were received into the impression of the stamp.

(2) In case that the authorized person in the election commission does not dispose of the stamp referred to in paragraph (1) of this Article, she/he shall be obliged to write down the date, the time and the manner the complaint or appeal were received on the complaint or appeal paper, together with her/his signature.

Article 9
(First Instance Competence of the BiH Central Election Commission)

(1) The BiH Central Election Commission shall have first instance competence to decide on complaints submitted for the violation referred to in:

a) Chapter 16 of the BiH Election Law, committed by a political subject;

b) Article 7.3 paragraph (1) items 3 and 7., Article 7.3 paragraph (2) and Article 7.4 paragraph (1) item 3. of the BiH Election Law.

(2) The BiH Central Election Commission shall have first instance competence to decide on complaints submitted for the violation of the BiH Election Law for which sanctions may be pronounced set out by the following provisions:

a) Article 19.8 paragraph (1) items a), b), c), d), e), f), k) and s);

b) Article 19.9 paragraph (1) items a), f), j), k), n), r), s), t) and u), and

c) Article 19.10 paragraph (1) item a) and b).

(3) In case that the election commission does not institute proceedings, or does not reach a decision regarding complaints in cases where it has first instance competence and within the deadlines foreseen by the BiH Election Law, the BiH Central Election Commission shall institute and conclude proceedings, i.e. it shall adjudicate the complaint.

Article 10 **(First Instance Competence of the Election Commission)**

(1) The election commission shall have first instance competence to decide on complaints filed because of a violation of the Code of Conduct referred to in Chapter 7 of the BiH Election Law, except in the case of violations referred to in Article 7.3 paragraph (1) items 3. and 7., Article 7.3 paragraph (2) and Article 7.4 paragraph (1) item 3. of the BiH Election Law.

(2) The election commission shall have first instance competence to decide on complaints submitted for the violation of the BiH Election Law for which sanctions may be pronounced set out in the following provisions:

a) Article 19.8 paragraph (1) items a), g), h), i), j), l) m), n), o), p) and r), and

b) Article 19.9 paragraph (1) item b), j), c), d), e), g) h), i), l), m), o), and p).

Article 11 **(Decision-Making Procedure)**

(1) The BiH Central Election Commission or the election commission shall reject an illegal, untimely and incomplete complaint as well as a complaint which has been filed by an unauthorized person.

(2) A complaint shall also be rejected if it is incomprehensible as well as if the complainant cannot be identified.

(3) If the complaint is not rejected for the grounds stated in paragraphs (1) and (2) of this Article, the BiH Central Election Commission or the election commission shall adjudicate the complaint.

(4) The BiH Central Election Commission or the election commission shall send the complaint by fax without delay to all the parties indicated in the complaint. The parties indicated in the complaint may respond to the allegations from the complaint in writing within 24 hours from receiving the complaint. The response shall be submitted in person or by fax.

(5) The BiH Central Election Commission or the election commission may summon the complainant, witnesses, or other persons to the session for a hearing, if it determines that it is necessary in order to correctly establish the relevant facts from the complaint and for its proper adjudication. Minutes shall be taken on the verbal hearing or on another important activity in adjudication proceedings and on the statements of parties or witnesses, in accordance with the provision of the Law on administrative procedure.

(6) The BiH Central Election Commission or the election commission shall adjudicate the complaint and reach a decision within 48 hours from the expiration of the deadline referred to in paragraph (4) of this Article. The BiH Central Election Commission or the election commission shall immediately notify (by fax) the complainant and other parties indicated in the complaint of its decision. The election commission shall also forward its decision to the

BiH Central Election Commission.

(7) The BiH Central Election Commission or the election commission may reject the complaint as groundless or may accept it and order measures or pronounce a sanction.

Article 12 (Decisions on Complaints)

(1) The BiH Central Election Commission or the election commission shall issue a decision in writing, which shall include: the name of the BiH Central Election Commission or the election commission that made the decision, an introduction, the dispositive, a statement of grounds, instruction on legal remedy, signature of the authorized official and a stamp.

(2) The introduction of the decision shall include: the name of the BiH Central Election Commission or the election commission making the decision, the names of the parties in the proceedings and a brief description of the subject-matter of the proceedings.

(3) The dispositive shall decide on the subject of the procedure.

(4) The statement of grounds of the decision shall include a brief description of the allegations from the complaint, derived evidence and the assessment of the derived evidence.

(5) The instruction on legal remedy shall inform the parties concerned about the right to appeal:

- a) in case the decision on the complaint has been made by the BiH Central Election Commission, the appeal may be submitted to the Appellate Division of the Court of Bosnia and Herzegovina within two days from the reception of the decision of the BiH Central Election Commission, through the BiH Central Election Commission.
- b) in case the decision on the complaint has been made by the election commission, the appeal may be submitted to the BiH Central Election Commission within the deadline of 48 hours from the reception of the decision of the election commission, through the election commission.

Article 13 (Measures and Sanctions of the Election Commission)

(1) When deciding on complaints, the election commission may order the undertaking of measures which shall remove irregularities to which the complaint referred to in Article 10 paragraph (1) of this Instruction relates, which includes but is not limited to adding or deleting names of voters from the Central Voters Register, initiating the dismissal of a person who works in a voters register center or of a member of a polling station committee, or ordering a person or a party to suspend the activities which violate the provisions of the Election Law of BiH or pronouncing a monetary fine.

Article 14 (Sanctions of the BiH Central Election Commission)

(1) When deciding *ex officio* or on complaints and appeals, the BiH Central Election Commission may order the election commission, the voters register center or the polling station committee to impose the following measures and sanctions as stipulated by the Election Law of BiH:

- a) to undertake measures which shall remove the established irregularities;
- b) a monetary fine which shall not exceed the amount of 10.000 Convertible Marks;
- c) the removal of a candidate from the list of candidates if it is determined that the candidate is personally responsible for the violation;
- d) de-certification of a political party, coalition, list of independent candidates or independent candidate;
- e) prohibition to an individual to work at a polling station, the voters register center or the election commission.

(2) When the BiH Central Election Commission decides on the complaint regarding a violation pursuant to Article 7.4 paragraph (1) item 3. and the rules of Chapter 16 of the Election Law of BiH, it may fine the political subject in an amount not exceeding 10.000 Convertible Marks.

CHAPTER III SECOND INSTANCE PROCEDURE (APPEAL PROCEDURE)

Article 15 (Competence)

(1) The BiH Central Election Commission has second instance competence to decide on appeals on decisions of the election commission.

(2) The appeal shall be submitted within the deadline of 48 hours from receiving the first instance decision.

Article 16 (Content of the Appeal)

The appeal shall contain the following:

- a) full name and the contact of the appellants;
- b) number and title of the decision to which the appeal is submitted;
- c) statements to which part of the decision the appeal is submitted;
- d) reasons for the appeal, and
- e) signature of the appellant.

Article 17 (Appeal Procedure)

(1) The decisions of all election commissions may be appealed to the BiH Central Election Commission, through the election commission, within the deadline of 48 hours from the reception of the decision of the election commission.

(2) If the appeal is submitted directly to the BiH Central Election Commission, it shall be forwarded by fax to the election commission immediately in order for it to establish whether the appeal is admitted, sent in a timely manner and submitted by an authorized person. An appeal that according to Article 6.2 of the BiH Election Law was submitted by an unauthorized person, or that was not submitted in a timely manner, shall be rejected.

(3) If the election commission that made a first instance decision does not reject the appeal pursuant to paragraph (2) of this Article, it may accept the appeal and change its decision, or forward the appeal to the BiH Central Election Commission with all documents concerning the matter and with a statement on the appeal, within 24 hours from the reception of the appeal.

(4) In case that the appeal is not admitted, not in a timely manner, or submitted by an unauthorized person, and the election commission did not reject it on those grounds, the BiH Central Election Commission shall reject it by its decision.

(5) The BiH Central Election Commission shall immediately forward the appeal by fax to all the parties named in the appeal. Parties named in the appeal may within 24 hours from receiving the appeal, in writing, state their standpoint on the appeal and submit it by fax.

(6) When adjudicating an appeal, the BiH Central Election Commission may proceed based on the established facts or may conduct discussions. The BiH Central Election Commission may allow parties to present new evidence or base its decisions on the written records of the election commissions.

(7) The BiH Central Election Commission shall reach a decision within 48 hours from the expiration of the deadline referred to in paragraph (5) of this Article, except in the case referred to in paragraph (6) of this Article, and it is obliged to inform the complainant, as well as the other parties named in the appeal, of its decision immediately by fax.

(8) When adjudicating an appeal, the BiH Central Election Commission may reject the appeal, annul the first instance decision completely or partially, or change it.

Article 18 **(Component Parts of the Decision on the Appeal)**

(1) The BiH Central Election Commission shall reach a decision in writing, which shall contain: the number of the session and the date, an introduction, the dispositive, a statement of grounds, instruction on legal remedy, signature and a stamp.

(2) The introduction of the decision shall contain: the name of the BiH Central Election Commission, the names of the parties in the proceedings and a brief description of the subject-matter of the proceedings.

(3) The dispositive shall decide on the subject of the procedure.

(4) The statement of grounds of the decision shall include a brief description of the allegations from the appeal, derived evidence and the established factual state, the reasons due to which the appeal is denied, rejected, or accepted.

(5) The instruction on the legal remedy shall inform the parties concerned about the right to appeal which may be submitted to the Appellate Division of the Court of BiH within two days from the reception of the decision of the BiH Central Election Commission, through the BiH Central Election Commission.

Article 19 **(Measurement of the Fine)**

When measuring a monetary fine, the BiH Central Election Commission and the election commission in the framework of its authority shall consider, but not be limited by, the following circumstances as aggravating:

- a) in case language which could provoke or incite someone to violence or to spread hatred was used, or if pictures, symbols or any other materials that could have such an effect were published or used;

- b) frequency of committed violations, including repeated violations;
- c) time and place of the committed violation;
- d) violation of the electoral silence, and
- e) the attitude of the perpetrator towards the committed violation.

Article 20
(Joining and separation of the procedure)

(1) In cases when one political subject commits more of the same or similar violations stipulated by Chapter 7 of the Election Law of BiH, the BiH Central Election Commission may decide to conduct one joint procedure on the committed violations and decide on one joint fine.

(2) In the case when allegations from a complaint or an appeal indicate more violations of the Election Law of BiH committed by one political entity, the BiH Central Election Commission may decide to conduct a separate procedure on the committed violations or to conduct a joint procedure.

Article 21
(Report of a Criminal Act)

(1) If the BiH Central Election Commission or the election commission believes that a criminal act related to the electoral process has been committed, it is obligated to report that act to the prosecutor's office in charge, in accordance with the law.

(2) When submitting the report, the BiH Central Election Commission or the election commission referred to in paragraph (1) of this Article shall refer to the known evidence, and undertake the necessary measures to preserve the traces of the alleged criminal act, objects with which or by use of which the alleged criminal act has been committed, and other evidence.

CHAPTER IV FINAL PROVISIONS

Article 22
(Ineffectiveness)

The employment of the Instruction on adjudication of complaints and appeals ("Official Gazette BiH", no. 69/06) shall be terminated on the day of entry into force of this Instruction.

Article 23
(Constituent Part of the Instruction)

Constituent parts of this Instruction are:

- a) The form of the complaint referred to in Article 5 of this Instruction, and
- b) A form for the deposit signatures of the authorized representatives of political parties/coalitions for filing complaints and appeals referred to in Article 6 of this Instruction.

Article 24
(Entry into Force and Publishing in Official Gazettes)

This Instruction shall enter into force on the day of its enactment and it shall be published in the “Official Gazette of BiH”, the “Official Gazette of RS”, the “Official Gazette of the FBiH” and the “Official Gazette of the BiH District of Brčko” and on the website of the BiH Central Election Commission.

No: 05-1-02-2-1464/08
Sarajevo, 29.05.2008

President

Dr. Suad Arnautović

Pursuant to Article 2.9 paragraph (1) item 16. and Article 6.3 paragraph (1) of the Election Law of BiH ("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 and 37/08), the Central Election Commission of Bosnia and Herzegovina has established the following

FORM

FOR FILING COMPLAINTS WITH THE BiH CENTRAL ELECTION COMMISSION AND THE ELECTION COMMISSION¹

| | |
|---|---|
| 1. Name: BiH Central Election Commission / Election commission | |
| 2. Name and last name, or name of the complainant ² : | |
| 3. Date and time of filing the complaint: | |
| 4. Date, time and place of committed violation: | |
| 5. Who and in which way has committed the violation: | |
| 6. Short description of the committed violation: | |
| 7. Appendix- proof that confirms the allegations in the complaint: | |
| 8. Name and last name of the witness-eye witness and their address: | |
| | |
| | |
| 9. Other possible facts and proofs that might be relevant to adjudicate the complaint correctly: | |
| 10. Place, date and time and legible signature of the complainant (voter, authorized representative of the political subject ³) | 11. Signature of the official authorized for receiving the complaint and stamp: |
| STAMP | STAMP |

- ¹ Election commission signifies a municipal election commission, a city election commission and the Election Commission of the BiH District of Brčko (Article 2. paragraph (1) item c) of the Instruction on adjudication of complaints and appeals filed with the BiH Central Election Commission and election commissions no. 05-1-02-2-1464/08 from May 29, 2008).
- ² In accordance with Article 6.2 paragraph (1) of the Election Law of BiH, a voter and a political subject whose right established by this law was violated, can file a complaint with the election commission no later than 48 hours after the violation occurred.
- ³ An authorized representative of a political party signifies a political party or a person authorized to represent the political party in front of the BiH Central Election Commission, further the President of the municipal organizational form of a political party, or a person authorized by the Statute. In case a municipal organizational form of the political party has not been formed on the municipal level, the President of the organizational form of the party on the next higher level is considered to be the authorized representative. The President of the municipal organizational form of one of the political parties who are members of a coalition is considered to be the authorized representative of the coalition, or a person authorized by the Statute. The data on the authorized representative of the political party shall be deposited at the competent election commission (Article 2. paragraph (1) item d) and Article 6. of the Instruction on adjudication of complaints and appeals filed with the BiH Central Election Commission and election commissions no. 05-1-02-2-1464/08 from May 29, 2008).

Note: In accordance with Article 6.3 paragraph (3) of the Election Law of BiH, the complaint shall be sent to all parties named in the complaint without delay. The parties named in the complaint shall have the opportunity to respond in writing to the allegations within twenty-four (24) hours after receiving the complaint. The competent bodies may set a hearing of the parties.

In accordance with Article 6.3 paragraph (6) of the Election Law of BiH, the complaint shall be rejected if it cannot be established who the complainant is. The submitted complaint or appeal shall not delay the performing of electoral activities prescribed by this Law in the procedure of protecting the electoral right.



Pursuant to Article 2.9 paragraph (1) item 17., and having regard to Article 6.3 paragraph (2) of the Election Law of BiH ("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 and 37/08), the Central Election Commission of BiH has established the following

**FORM FOR DEPOSIT SIGNATURES OF AUTHORIZED REPRESENTATIVES
OF POLITICAL PARTIES/COALITIONS FOR FILING COMPLAINTS AND APPEALS¹**

Political party/coalition _____

Hereby submits the signatures of the authorized representatives of the party/coalition:

| No | Last name | First name | President of the organizational form of the political party/coalition ² | Person authorized by the Statute of the political party/coalition ³ | ID Number: | Signature ⁴ |
|----|-----------|------------|--|--|------------|------------------------|
| 1. | | | | | | |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. | | | | | | |

Note: This form shall be submitted to the Municipal Election Commission (Article 6.3 paragraph (2) of the Election Law of BiH).

¹If the number of authorized representatives is larger than the number foreseen in the form, it shall be allowed to copy this form and each copy shall be certified with the stamp of the election commission in the bottom right-hand corner.

² Name the organizational form of the political party/coalition.

³ If the authorized representative of the political party/coalition is a person authorized by the Statute, mark this field with X.

⁴ The signature of the authorized representative must be equal to the signature on the identification document.