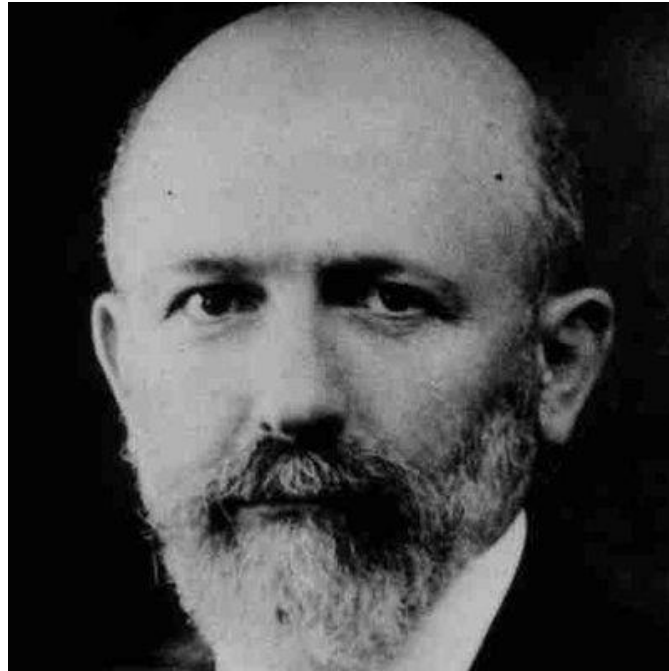


Don't believe the Hype
Why Bosnian democracy will not end this October



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In fairness we trust – André Sainte-Laguë

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Will Bosnian democracy end in October?

In December 2016 the Constitutional Court of Bosnia and Herzegovina declared parts of the national election law unconstitutional.¹ Since then leading Bosnian Croat politicians have warned that this might make the implementation of the results of the upcoming October 2018 elections impossible. They claim that only a last-minute agreement on a new election law might prevent a deep crisis. These warnings are misleading. Bosnian democracy will not end in October. There is no institutional crisis. There is no reason to adopt changes to the Bosnian election law in a hurry a few months before elections.

This short paper explains the background to Bosnia's latest fake crisis – what it is about and why there is no need to intervene – in simple answers to seven questions.

Heading for “paralysis”?

In recent months a number of Bosnian politicians have suggested a dark scenario for Bosnian democracy following the upcoming national elections in October 2018.

Dragan Covic, leader of the Croatian Democratic Union (HDZ) and member of Bosnia's tripartite presidency, warned in June 2017:

“Formally elections can be held, but the implementation of election results is impossible. There is no point in starting the election process if the results cannot be implemented ... changes to the election law are needed.”²

Bozo Ljubic of the HDZ 1990, a former Bosnian minister, claimed in August 2017 that without changes to the election law, the 2018 elections would trigger an institutional crisis.³ He also called the 2016 constitutional court decision “the single most important positive event since the Dayton agreement”, explaining that it will prevent Bosniaks and Serbs, larger in size, from outvoting Croats.⁴

Borjana Kristo (HDZ), speaker of the Bosnian House of Representatives, explained in September 2017 that failure to change the election law immediately would lead to “full paralysis of all of Bosnia and Herzegovina” and that the “interpretation by some parties that elections can be conducted and election results can be implemented without changes to the election law is harmful and wrong.”⁵

On 24 January 2018 Bakir Izetbegovic, the Bosniak member of Bosnia's presidency, called for the active involvement of the Office of the High Representative [OHR].⁶ In fact, High Representative Valentin Inzko had noted on 17 January 2018 that “the international community stands united in calling on Bosnian authorities to take all necessary steps so that the conduct and the implementation of the results of the 2018 national elections become possible.”⁷ And OHR was ready to help. After meeting the president of Croatia, Inzko

¹ Constitutional Court of Bosnia and Herzegovina, “[Predmet broj U 23/14](#)”, 1 December 2016.

² *Vecernji list*, “[Dijele nas na hercegovacke, posavske i bosanske kako bi lakse vladali nama](#)”, 23 June 2017.

³ *Radio Ljubuski*, “[Ili novi Izborni zakon ili nema institucija](#)”, 10 August 2017.

⁴ *Vecernji list*, “[Presuda o Domu naroda najznacajnija od Daytonu za Hrvate](#)”, 29 December 2016.

⁵ *NI TV*, “[Borjana Kristo: Ocekujem usvajanje izmjena Izbornog zakona](#)”, 10 September 2017.

⁶ *NI*, “[Izetbegovic o Izbornom zakonu: OHR mora da ucestvuje](#)”, 24 January 2018.

⁷ *NI*, “[Inzko zahvalio predsjednici za potporu BiH prema EU i NATO-u](#)”, 17 January 2018.

announced that “the international community is actively involved in drafting [the election law in Bosnia and Herzegovina].”⁸ He said he was taking advice from a Belgian expert in this field who was talking to all the parties in Bosnia and Herzegovina, and that the expert had already outlined several options. “But it is still too early to talk about details,” said Inzko.⁹

This is the trajectory of many of the debates in Bosnian politics in the past decade. Parties declare their unhappiness about something. Dark warnings follow about the end of democracy and institutional melt-down. Before long international organisations step in, claiming a mandate to mediate where local institutions cannot cope on their own. In this way everyone has a role to play. Bosnia lives up to the cliché of a helpless society with a hapless elite. As the news portal Balkan Insight summed up the latest Bosnian crisis:

“Bosnia is due to hold a general election in 2018 amid fears that, without a new law, it may be impossible to form the House of Peoples [the upper chamber], either at state level or in the country’s Federation entity. Formation of a government in the Federation entity is also in doubt.”¹⁰

Why does the Federation House of Peoples matter (for Croats)?

Bosnia has a federal structure with three levels. There is the state level; two entities (the “Federation” and “Republika Srpska”) plus one autonomous district (Brcko); and, within the Federation, ten cantons.

Both the state and the two entities have bicameral legislatures with one lower and one upper house. The three lower houses are directly elected by proportional representation. The three upper houses are called “House of Peoples” or (in the RS) “Council of Peoples”. This refers to the three constituent peoples: Bosniaks, Serbs and Croats.

The Federation House of Peoples has 58 members: 17 Bosniaks, 17 Croats, 17 Serbs and 7 Others. All laws in the Federation have to obtain the approval of a majority in both the upper and the lower house.

A simple majority is 30 of 58 members. However, the speaker and the two deputy-speakers – always one Bosniak, one Croat and one Serb – can declare a matter a “vital national interest” for one of the ethnic groups. In this case, the law under consideration also requires a *simple majority within each ethnic caucus* of the three constituent peoples (9 out of 17). The vital interest clause can be triggered in two ways: first, if two of the speaker/deputy-speakers demand it; second, if only one of them demands it with the support of at least two-thirds of his own caucus, and obtains confirmation by the Federation Constitutional Court that indeed a “vital national interest” is at stake.¹¹

⁸ Klix, [“Inzko: Kolindi je stalo do BiH, a Izbornim zakonom niko neće biti potpuno zadovoljan”](#), 17 January 2018.

⁹ Ibid.

¹⁰ Balkan Insight, [“Pressure Mounts on Bosnia to Change Electoral Law”](#), 10 January 2018.

¹¹ See also Centar za političke studije (CPS), [“Šta je vitalni interes naroda i kome on pripada? Ustavpravna i politička dimenzija”](#), 2014.

Federation population – self-declared ethnicity (2013 census)¹²

	Population	Percentage
Bosniaks	1,562,000	70.4
Croats	498,000	22.4
Serbs	57,000	2.5
Others	102,000	4.7
Total	2,219,000	100.0

For the HDZ, the dominant Croat party in Bosnia, this provision means that it has control over *all* legislation in the Federation as long as it controls 12 of the 17 seats of the Croat caucus. This also means that it has to be consulted on legislation in the Federation even if it is not part of the government.

In fact, according to Izmir Hadziavdic who has been serving as secretary of the Federation House of Peoples since 2003, the vital interest provision has been used “rationally and rarely.”¹³ In 2014 he noted that from 1994 until 2013 it was used only 14 times (11 times demanded by Croats and 3 times by Bosniaks). The Federation Constitutional Court has so far had to decide on whether something is a vital national interest only six times (4 times demanded by the Croat and two times by the Bosniak caucus).¹⁴

How were the 17 Croat members elected until now?

Two million registered voters in the Federation elect the 289 members of ten cantonal assemblies. These in turn elect among themselves 58 members of the Federation House of Peoples. The election law, adopted by the state parliament in 2001, regulates precisely how many of the 58 members are elected by each canton, and how many of the 17 Bosniaks, Croats and Serbs, and how many of the 7 Others, have to come from which canton.

Article 10.12. (2) of the election law stated that “each constituent people shall be allocated one seat in every canton.”¹⁵ A precise allocation formula is also part of the law:

2001 formula: distribution of seats in the Federation House of Peoples

Canton	Bosniaks	Croats	Serbs	Others	Total
Tuzla	3	1	2	2	8
Sarajevo	3	1	5	2	11
Zenica-Doboj	3	2	2	1	8
Una-Sana	2	1	2	0	5
Central Bosnia	1	3	1	1	6
Herzegovina-Neretva	1	3	1	1	6
West Herzegovina	1	2	1	0	4
Canton 10	1	2	1	0	4
Posavina	1	1	1	0	3
Gorazde	1	1	1	0	3
Total	17	17	17	7	58

¹² Federation Institute for Statistics, [“Konacni rezultati Popisa 2013.”](#)

¹³ See also Centar za politicke studije (CPS), [“Sta je vitalni interes naroda i kome on pripada? Ustavopravna i politicka dimenzija”](#), 2014.

¹⁴ Constitutional Court of the Federation of Bosnia and Herzegovina, [“Odlucivanje o vitalnom nacionalnom interesu na nivou Federacije”](#).

¹⁵ Central Election Commission of Bosnia and Herzegovina, [“Election Law of Bosnia and Herzegovina”](#).

After the 2010 elections, HDZ had 48 of the 289 seats in the ten cantonal assemblies. In the Croat caucus of the Federation House of Peoples, HDZ had 9 out of 17 members.¹⁶

Since 2014 HDZ has had 51 of the 289 seats in the ten cantonal assemblies. In the Croat caucus of the Federation House of Peoples, 13 out of the 17 members were HDZ.¹⁷

Who are the four non-HDZ Croat members of the Federation House of Peoples today? One, Zeljko Josic, comes from the (largely Croat) HDZ 1990 party and was elected by the Posavina cantonal assembly. Ana Babic is a member of the Sarajevo cantonal assembly for the Bosniak dominated SBB party of Fahrudin Radoncic. Mirvet Beganovic was elected by the Una-Sana cantonal assembly and is a member of *Laburisti* (a regional party founded by the daughter of influential local power broker Fikret Abdic). Edim Fejzic was elected to the (overwhelmingly Bosniak) Gorazde cantonal assembly as a member of the Diaspora party.

What changed in 2016?

In December 2016 the Constitutional Court of Bosnia and Herzegovina in Sarajevo declared that the election law was in accordance with the constitution concerning the Federation House of Peoples *except in two cases*: concerning the provision that each constituent people should be allocated one seat in every canton, and – following from this – the precise formula which determines how many members from each ethnic group are elected by each canton to the Federation House of Peoples.¹⁸

However, most of the election law is unaffected. The following provision remains in force:

“The Election Commission will determine, after each new census, the number of delegates elected from each constituent people and from the group of Others that will be elected from each canton legislature.”¹⁹ (Article 10)

The 2014 formula was based on the census of 1991. As the law puts it: “until a new census is organised, the 1991 census shall serve as a basis” (Article 20).²⁰ However, a new census took place in 2013, and the results were officially published in June 2016.²¹ As a result *the House of Peoples election formula has to be recalculated in any case*.

It is clear who has the mandate to do this: the Central Election Commission (CEC). And the law is precise about how the CEC is to go about it: the CEC should apply a commonly used method for allocating seats, developed by the French mathematician Andre Sainte-Lague. Born in 1882 in a small village in south-western France, he published his research on fair

¹⁶ Parliament of the Federation of Bosnia and Herzegovina, [“Dom naroda – Klubovi \(Delegatski saziv 2010.-2014.\)”](#).

¹⁷ Parliament of the Federation of Bosnia and Herzegovina, [“Dom naroda – Delegati \(saziv 2014.-2018.\)”](#).

¹⁸ The Court has nine judges – four elected by the Federation House of Representative, two by the Repulika Srpska National Assembly and three foreigners appointed by the President of the European Court of Human Rights. Six months after the December 2016 judgement the Constitutional Court deleted the respective provisions of the election law. See also Constitutional Court of Bosnia and Herzegovina, [“Predmet broj U 23/14”](#), 1 December 2016.

¹⁹ Central Election Commission of Bosnia and Herzegovina, [“Election Law of Bosnia and Herzegovina”](#).

²⁰ Ibid.

²¹ *Balkan Insight*, [“Census Reveals Bosnia’s Changed Demography”](#), 30 June 2016.

methods for seat allocation in 1910. One of his methods became popular and is today used for allocating seats in the German Bundestag, the Swedish Riksdag and the Norwegian Storting.

In addition, despite the deletion of the paragraph in the election law that guarantees that each canton has to elect one Serb, one Croat and one Bosniak to the House of Peoples, the CEC has to take into account a similar provision in the Federation constitution (Article 8):

“In the House of Peoples there shall be at least one Bosniak, one Croat, one Serb from each *canton which has at least one such delegate in its legislative body.*”²²

Given these clear guidelines it is in fact possible to calculate the seat allocation for 2018, even if the final allocation depends on whether each canton has at least one Bosniak, Croat and Serb delegate. Assuming that this will be the case, one arrives at the following:

ESI: likely seat allocation in 2018

Canton	Bosniaks	Croats	Serbs	Others	Total
Tuzla	3	1	2	2	8
Sarajevo	3	1	3	2	9
Zenica-Doboj	3	1	1	1	6
Una-Sana	1	1	2	1	5
Central Bosnia	2	3	1	1	7
Herzegovina-Neretva	1	3	2	0	6
West Herzegovina	1	3	1	0	5
Canton 10	1	2	3	0	6
Posavina	1	1	1	0	3
Gorazde	1	1	1	0	3
Total	17	17	17	7	58

Which raises an obvious question: where is the crisis many Bosnian politicians, and some foreign officials, talk about?

Is HDZ loosing its influence in 2018?

If one compares the 2014 and the likely 2018 allocation formulas the only difference of interest to the HDZ is that there would be *one less* Croat member of the House of Peoples elected from the Zenica-Doboj cantonal assembly and *one more* Croat member elected from the West Herzegovina cantonal assembly.

In April 2017 HDZ presented its own proposal for a formula.²³ Its recommendation was the same as far as these two cantons are concerned. In other words: the ESI formula for 2018 is a step in the direction of what HDZ wants to achieve.

²² [“Constitution of the Federation of Bosnia and Herzegovina”](#).

²³ NI, [“Procitajte prijedlog HDZ-a za izmjene Izbornog zakona BiH”](#), 28 April 2017.

Electing the Croat members of the House of Peoples – 2014 vs. 2018 formulas

Canton	Used in 2014	Likely in 2018
Tuzla	1	1
Sarajevo	1	1
Zenica-Doboj	2	1
Una-Sana	1	1
Central Bosnia	3	3
Herzegovina-Neretva	3	3
West Herzegovina	2	3
Canton 10	2	2
Posavina	1	1
Gorazde	1	1
Total	17	17

What more does HDZ want?

Of course, this is not the only change HDZ would like to see. Its proposal from April 2017 suggested in addition:

- that *no* Croat members of the House of Peoples should ever be elected from the three (overwhelmingly Bosniak) cantonal assemblies in Sarajevo, Una Sana and Gorazde;
- that two additional Croat members would be elected from the (mixed) Herzegovina-Neretva canton and one additional Croat member from the (mixed) Central Bosnia canton.

This cannot, however, be achieved by changing the election law, as it would violate the provision in the Federation constitution that “in the House of Peoples there shall be at least one Bosniak, one Croat, one Serb from each canton which has at least one such delegate in its legislative body.”

The main argument of HDZ is that it is unfair that a canton like Gorazde elects one of the 17 Croat member of the House of Peoples. The entire Croat population of this canton is 24 people, according to the latest census. So it argues that the Croat delegate from Gorazde (who also happens to have a Bosniak-sounding name) is not a representative of Croat voters.

In fact, this is very similar to the argument made by the Constitutional Court in 2016 about the provisions it did strike out, which ...

“give a member of the constituent people the opportunity to be elected to the House Peoples even in the extreme but possible case that this person is the only member of one of the constituent peoples in one of the cantons, provided he is elected to the legislative body of that canton ... The Constitutional Court finds that this is contradicting the principle of constituent peoples, equality of the constituent peoples, and thus violates the Constitution of Bosnia and Herzegovina.”²⁴

But can the same argument be applied to the 5,073 Croats in Una-Sana canton or to the 17,520 Croats in Sarajevo? Combined, these two constitute 5 percent of the total Croat

²⁴ Constitutional Court of Bosnia and Herzegovina, “[Predmet broj U 23/14](#)”, 1 December 2016.

population in the Federation. They would deserve to provide at least one member of the Croat caucus in the House of Peoples.

Be that as it may, this is not a matter of the election law, but of the Federation constitution. It is extremely unlikely that the constitution can be changed before October 2018, and it makes no practical difference to Bosnian politics, the influence of Croats or even the influence of the HDZ in the Federation.

Electing the Croat members of the House of Peoples – what HDZ wants

Canton	Likely in 2018	HDZ proposal
Tuzla	1	1
Sarajevo	1	0
Zenica-Doboj	1	1
Una-Sana	1	0
Central Bosnia	3	4
Herzegovina-Neretva	3	5
West Herzegovina	3	3
Canton 10	2	2
Posavina	1	1
Gorazde	1	0
Total	17	17

Conclusion

Mladen Ivanic, the Serb member of the presidency, warned on 8 January 2018:

“Sadly ... I am no optimist ... and I fear that Bosnia and Herzegovina is slowly but surely entering into a serious political crisis that could, after the elections, turn all of Bosnia and Herzegovina into Mostar.”²⁵

In Mostar, OHR had imposed new local election rules in 2004, which the Bosnian Constitutional Court declared unconstitutional in November 2010.²⁶ In January 2012 the court deleted these provisions. Since then the City of Mostar has been without a city council. The (Croat) mayor, elected in 2009, has remained in charge. He cannot be deposed or replaced as there is no elected council. As local politicians have failed to agree on new statutes, democracy has effectively come to an end in the fourth largest city of the Federation.

It is with the Mostar scenario in mind that observers have been alarmed about the latest Bosnian crisis. As this paper points out, they do not need to worry:

- The election law has always envisaged changes to the election formula for the Federation House of Peoples.
- The election law is precise about how the formula is to be changed (using the Sainte-Lague method).
- There is clarity about which institution is to do this: the Central Election Commission.

²⁵ *Al Jazeera Balkans*, “[Ivanic: Cijela BiH bi nakon izbora mogla postati Mostar](#)”, 8 January 2018.

²⁶ Constitutional Court of Bosnia and Herzegovina, “[Slučaj U 9/09](#)“, 26 November 2010.

- The predictable outcome is a formula that goes in the direction of what the HDZ has been asking for.
- HDZ's influence depends on winning the majority support of Bosnian Croat voters, not on an election formula. This has always been the case, and it remains true now.

So why all the warnings of crisis?

Already in March 2017 one of the members of the Central Election Commission, Branko Peric, who was involved in the administration of the last three general and local elections, noted:

“... I am convinced that the elections will be called and conducted democratically and completely. There are enough resources to do so. According to the election law, it is the Central Election Commission (CEC) that is competent to determine, after each census, the number of delegates from each canton, proportionate to the population and ethnic structure of the cantons.”²⁷

Irena Hadziabdic, the CEC president and one of its members for more than a decade, made the same point in December 2017, noting that elections will take place in October 2018 with or without changes to the election law.²⁸ She also pointed out that the deadline for calling for the elections was 8 May and that if no agreement on changing the election law is reached “the CEC will focus ... on the existing legal possibilities to act.”²⁹

There is no reason to doubt the CEC's professionalism. The October 2018 elections will be the eighth general elections since 1996. The CEC was established in 2001 and has performed well since then.³⁰ All recent general elections were also monitored by the OSCE/ODIHR mission.³¹ The final report on the 2014 elections concluded that “the CEC enjoyed confidence among most electoral stakeholders regarding its professionalism and capacity to organize elections according to the law.”³²

In short: Bosnian democracy is safe. This should have been obvious all along. But then again, many obvious things have often been obscured when it comes to the work of Bosnian institutions. On this, as on previous occasions, the rational approach is the same: don't believe the hype. Bosnian democracy will not end in October.

²⁷ Central Election Commission of Bosnia and Herzegovina, [“Clanovi Centralne izborne komisije Bosne i Hercegovine”](#); *Nezavisne novine*, [“Interresorna radna grupa bez prijedloga za izmjenu Izbornog zakona BiH”](#), 28 March 2017.

²⁸ *Al Jazeera Balkans*, [“Opci izbori u BiH u oktobru 2018. i bez izmjena Izbornog zakona”](#), 13 December 2017.

²⁹ Ibid.

³⁰ Central Election Commission of Bosnia and Herzegovina, [“Centralna izborna komisija Bosne i Hercegovine”](#).

³¹ OSCE, [“General Elections, 12 October 2014”](#).

³² OSCE, [“Bosnia and Herzegovina General Elections 12 October 2014 – OSCE/ODIHR Election Observation Mission Final Report”](#), 7 January 2015.

ANNEX A: 10 cantons in the Federation: Population and self-declared ethnicity³³

Tuzla	Population	Percentage
Bosniaks	392,356	88.2
Croats	23,592	5.3
Serbs	7,058	1.6
Others	22,022	4.9
Total	445,028	100.0

Zenica-Doboj	Population	Percentage
Bosniaks	299,452	82.2
Croats	43,819	12.0
Serbs	5,543	1.5
Others	15,619	4.3
Total	364,433	100.0

Central Bosnia	Population	Percentage
Bosniaks	146,652	57.6
Croats	97,629	38.3
Serbs	3,043	1.2
Others	7,362	2.9
Total	254,686	100.0

West Herzeg.	Population	Percentage
Bosniaks	718	0.8
Croats	93,725	98.8
Serbs	101	0.1
Others	354	0.3
Total	94,898	100.0

Posavina	Population	Percentage
Bosniaks	8,252	19.0
Croats	33,600	77.3
Serbs	831	1.9
Others	770	1.8
Total	43,453	100.0

Sarajevo	Population	Percentage
Bosniaks	346,575	83.8
Croats	17,520	4.2
Serbs	13,300	3.2
Others	36,198	8.8
Total	413,593	100.0

Una-Sana	Population	Percentage
Bosniaks	246,012	90.0
Croats	5,073	1.9
Serbs	8,452	3.1
Others	13,724	5.0
Total	273,261	100.0

Herzeg.-Neretva	Population	Percentage
Bosniaks	92,005	41.4
Croats	118,297	53.3
Serbs	6,432	2.9
Others	5,237	2.4
Total	222,007	100.0

Canton 10	Population	Percentage
Bosniaks	8,037	9.6
Croats	64,604	76.8
Serbs	10,905	13.0
Others	581	0.6
Total	84,127	100.0

Gorazde	Population	Percentage
Bosniaks	22,313	94.0
Croats	24	0.1
Serbs	885	3.7
Others	512	2.2
Total	23,734	100.0

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 Institute for Statistics of the Federation of Bosnia and Herzegovina, "[Census 2013 Final Results](#)", April 2017.

ANNEX B: Relevant ESI Reports

[“Wine, dog food and Bosnian clichés – False ideas and why they matter”](#), 5 November 2017.

This document is also available in [Bosnian](#).

[“Escaping the first circle of hell or the secret behind Bosnian reforms”](#), 10 March 2016.

This document is also available in [Croatian](#).

[“Bosnia as Wunderkind of Doing Business. Outline of 14 steps to take – A Proposal to the presidency of Bosnia and Herzegovina”](#), 19 March 2015.

[“Protests and Illusions – How Bosnia and Herzegovina lost a decade”](#), 23 December 2014.

This document is also available in [Bosnian](#).

[“Houdini in Bosnia. How to unlock the EU accession process”](#), 17 October 2013.

[“Lost in the Bosnian labyrinth. Why the Sejdic-Finci case should not block an EU application”](#), 7 October 2013.

[“Discussion paper: The worst in class. How the international protectorate hurts the European future of Bosnia and Herzegovina”](#), 8 November 2007.

This document is also available in [Bosnian](#).