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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**PROVISIONS
CONCERNING THE JUDICIARY
IN THE CONSTITUTION
OF THE FEDERATION
OF BOSNIA AND HERZEGOVINA**

**Extract from
the Washington Agreements**

C. The Judiciary

1. General Provisions Concerning All Courts

Article 1

(1) The judicial functions in the Federation shall be exercised by the courts of the Federation specified in paragraph (2), by the Cantonal courts specified in Article V.11 and by the Municipal courts specified in Article VI.8.

(2) The Courts of the Federation shall be:

- (a) The Constitutional Court;
- (b) The Supreme Court; and
- (c) The Human Rights Court.

Article 2

All organs of government shall carry out and assist in implementing judgments and orders of all courts referred to in this Constitution.

Article 3

Except as otherwise specified in this Constitution, such rules of procedure as may be necessary to ensure uniformity with regard to due process and the basic principles of justice in the proceedings of all courts shall be established by laws of the Federation; a Cantonal legislature may adopt any complementary rules to govern the courts of that Canton and of Municipalities therein. Subject to such rules, each court may organize itself and adopt any subsidiary rules.

Article 4

(1) All judicial power in the Federation shall be exercised independently and autonomously.

(2) Courts shall ensure that all parties to legal proceedings are treated equally.

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(3) Unless otherwise provided by legislation for certain exceptional situations, all court proceedings shall be open. All judgments shall be announced publicly.

2. General Provisions Concerning the Courts of the Federation

Article 5

(1) All Judges of all the Courts of the Federation shall be distinguished jurists of the highest moral standing.

(2) Judges of the Federation shall not be held criminally or civilly liable for any acts carried out within the scope of their respective authority.

Article 6

Except as specifically otherwise provided:

(a) There shall be an equal number of Bosniac and Croat Judges on each Court of the Federation. Others shall also be appropriately represented on each such Court.

(b) The Judges of all the Courts of the Federation shall be nominated by the President with the concurrence of the Vice-President and shall require the approval of a majority of the House of Peoples;

(c) The Judges of all Courts of the Federations shall serve until age 70, unless they resign or they are removed for cause by the consensus of the Judges of the same Court. However, those Judges appointed initially under this Constitution shall serve for a term of five years unless they reach age 70 sooner, but shall be eligible for reappointment.

Article 7

(1) The Legislature of the Federation shall by law provide for the salaries and other terms of service of all the Judges of the Courts of the Federation, which shall be equal except that special emoluments may be specified for the Presidents of each of the Courts.

(2) The salaries and other emoluments of a Judge may not be diminished during the period of his service on one of the Courts of the Federation.

Article 8

(1) There shall be established a Judicial Police to assist each Federation Court in securing information, in ensuring the presence of witnesses and the transport of accused persons, in maintaining the decorum of courtrooms and the security of court premises, and in carrying out court orders.

(2) The overall composition of the Judicial Police shall reflect that of the population of the Federation, and for any local units that of the relevant Canton or Municipality.

(3) The President of the Supreme Court shall be responsible for the management of the Judicial Police.

(4) The President of the Supreme Court shall promulgate arrangements under which the Judicial Police may assist any Ombudsman, at his request, in the performance of his duties.

3. The Constitutional Court

Article 9

The Constitutional Court shall consist of nine Judges.

Article 10

(1) The primary function of the Constitutional Court shall be to resolve disputes:

(a) between any Cantons;

(b) between any Canton and the Federation Government;

(c) between any Municipality and its Canton or the Federation Government; and

(d) between or within any of the institutions of the Federation Government.

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(2) The Constitutional Court shall:

(a) At the request of the President, of the Vice-President, of the Prime Minister, of the Deputy Prime Minister, or of one-third of the members of either House of the Legislature, determine whether any proposed law that has been adopted by either House of the Legislature, or any law or proposed law that has been adopted by each House of the Legislature, is in accord with this Constitution;

(b) At the request of the Prime Minister, of the Deputy Prime Minister, of the Cantonal President concerned, or of one-third of the members of the Legislature of a Canton, determine whether any law or proposed law that has been adopted by that Legislature (including the Cantonal Constitution and any amendments thereto), is in accord with this Constitution.

(c) At the request of the President, of the Vice-President, of the Prime Minister, of the Deputy Prime Minister, determine whether any regulation enacted or proposed regulation to be enacted by any organ of the Federation Government is in accord with this Constitution.

(d) At the request of the Prime Minister, the Deputy Prime Minister, or of the Cantonal President concerned, determine whether any regulation enacted or proposed regulation to be enacted by any organ of the Cantonal or Municipal government is in accord with this Constitution.

(3) The Constitutional Court shall also decide constitutional questions presented by the Supreme Court or the Human Rights Court or a Cantonal court that arise in the course of a proceeding currently pending before that Court.

Article 11

Whenever the Supreme Court, the Human Rights Court or a Cantonal court should consider, in the course of a proceeding currently pending before such court, that an applicable law is not in accord with this Constitution, it shall stay the proceeding and present the question to the Constitutional Court in accordance with Article 10(3).

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Article 12

Decisions of the Constitutional Court shall be final and binding. In particular:

(a) If the Court decides a dispute pursuant to Article 10(1), all parties to the dispute shall abide by that decision and comply with any orders of the Court issued in the course of or at the end of the proceeding;

(b) If the Court determines that a law or regulation or proposed law or regulation of the Federation or of any Canton or of any Municipality is not in accord with this Constitution, such law or proposed law shall not remain or enter into force, except if altered in such a manner as specified by the Court or unless the Court specifies some transitional arrangements which may not extend to a period in excess of six months;

(c) If the Court decides a constitutional question presented to it pursuant to Article 10(3), its response shall be binding on the Court that presented the question in respect of the proceeding in the course of which it arose and shall also have the effect specified in (b).

Article 13

(1) In any proceeding pursuant to Article 10(1), both parties to the dispute are entitled to be represented. The Court may also permit other governmental entities that it considers as interested in the dispute to participate in the proceeding.

(2) In any proceeding pursuant to Article 10(2), the person or persons who requested the Court's determination are entitled to be represented, as well as a representative of the House or Legislature that has adopted the law in question.

(3) In any proceeding pursuant to Article 10(3), all parties to the proceeding that gave rise to the constitutional question at issue are entitled to be represented.

4. The Supreme Court

Article 14

The Supreme Court shall have a number of Judges determined from time to time by Federation legislation but no fewer than nine.

Article 15

(1) The Supreme Court shall be the highest court of appeals of the Federation, including appeals from Cantonal courts, in respect of matters involving questions concerning the Constitution, laws or regulations of the Federation and others as provided for in Federation legislation, except those within the jurisdiction of the Constitutional Court or of the Human Rights Court.

(2) The Supreme Court shall also have such original jurisdiction as is provided by Federation legislation.

Article 16

Judgments of the Supreme Court shall be final and binding. In particular Judgments as well as any orders of the Court in respect to appeals submitted pursuant to Article 15(1) shall be binding on the parties to the proceeding as well as on the court from which the appeal in question was taken.

Article 17

When the Court is exercising original jurisdiction pursuant to Article 15(2) it shall have, in addition to any powers specifically provided by the legislation pursuant to which it is acting, the same powers that other courts of original jurisdiction have pursuant to the laws referred to in Article 3(1) of this Sub-Chapter.

5. The Human Rights Court

Article 18

(1) The Human Rights Court shall consist of three Judges, one Bosniac, one Croat and one Other.

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(2) If the Court concludes that its business requires the participation of more judges to avoid undue delays in the disposition of cases, the Federation Legislature shall by legislation provide for the appointment of additional judges, in accordance with the above-specified proportion.

Article 19

The competence of the Human Rights Court shall extend to any question concerning a constitutional or other legal provision relating to human rights or fundamental freedoms or to any of the instruments listed in the Annex. The Court shall have jurisdiction over cases commenced after 1 January 1991.

Article 20

Any party to an appeal in which another court of the Federation or any Canton has pronounced a judgment that is not subject to any other appeal (for a reason other than the lapse of a time limit for which the moving party is responsible), may appeal such judgment to the Court on the basis of any question within its competence. The Court may issue orders or other relief it deems appropriate. The decision of the Court shall be final and binding.

Article 21

(1) An appeal may also be taken to the Court if a proceeding is pending for an unduly long time in any other court of the Federation or any Canton.

(2) The Court shall decide whether to accept such an appeal after a preliminary consideration of whether the proceeding in the other court has been pending too long and whether the subject of the appeal is within its competence.

(3) The Court may make other provisions for expediting proceedings.

Article 22

The Constitutional Court and the Supreme Court or any Cantonal court may, at the request of any party to an appeal pending before it, or on its own motion in relation to such an appeal, address to the Human Rights Court a question arising out of the appeal if the question relates to any matter within the competence of that Court. The response of the Court is binding on the requesting court.

Article 23

(1) The Human Rights Court shall regulate its own procedures and its organization.

(2) Each panel of the Court is to have the composition specified for the Court in Article 18(1).

(3) The Court shall allow written and oral pleadings in every proceeding pursuant to Articles 20-22.