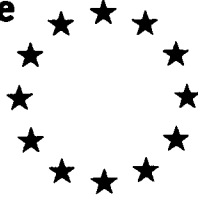


Council of Europe  
Conseil de l'Europe



COE273153

Strasbourg, 21 août 1996  
<s:\cd\doc\96\cd\pdg>  
N° 022/96

607  
96/3010

Restricted  
CDL (96) 60 rev.  
Engl.Only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**AMENDEMENTS  
OF THE CONSTITUTIONS OF THE ENTITIES  
OF BOSNIA AND HERZEGOVINA**

**POSITION  
OF THE PARLIAMENT  
OF BOSNIA AND HERZEGOVINA**

*Constitution*

REPUBLIC OF BOSNIA AND HERZEGOVINA  
PARLIAMENT  
OF REPUBLIC OF BOSNIA AND HERZEGOVINA  
No: 01-011-16/96  
Sarajevo, August 2, 1996

- **Mr. Carl Bildt, UN High Representative for Bosnia and Herzegovina**
- **Mr. Robert Frowick, OSCE Mission Chief for Bosnia and Herzegovina and  
Chairman of the Provisional Election Commission**

The Parliament of the Republic of Bosnia and Herzegovina, on its session on August 2, 1996, discussed the Report on Bringing Into Accordance Constitution of the Federation of Bosnia and Herzegovina and the Constitution of Republika Srpska With the Constitution of Bosnia and Herzegovina. On that occasion, the Parliament adopted Conclusions in which, among other things, it is estimated need to inform you about opinions of the RBH Parliament regarding this issue.

Attached you may find Conclusion of the RBH Parliament and the Report of the Commission for Constitutional Issues in regard of bringing into harmony Constitutions of entities with the Constitution of Bosnia and Herzegovina.

With the best regards,

**PRESIDENT OF ASSEMBLY**  
**Miro Lazovic**

Regarding discussion on the Report on Bringing Into Accordance Constitution of the Federation of Bosnia and Herzegovina and the Constitution of Republika Srpska With the Constitution of Bosnia and Herzegovina, on basis of Article 146, Paragraph 1., of the Rules of Procedure of Parliament of the Republic of Bosnia and Herzegovina, Parliament of the Republic of Bosnia and Herzegovina on its session held on August 2, 1996, adopts

## CONCLUSIONS

1. The Parliament states that entities did not bring their constitutions entirely into accordance with the Constitution of Bosnia and Herzegovina, although this obligation should have been fulfilled ultimately till March 14, 1996.

2. The Parliament estimates that by Amendments 1. to 24. on the Federation Constitution, the Federation has mostly harmonized its Constitution with the Constitution of Bosnia and Herzegovina, and that the remaining open issues are not issues of crucial significance so to prevent that this obligation of the Federation cannot be finalized in a recent period of time.

3. By Amendment 1. to 48., Republika Srpska has just opened process of bringing its Constitution into harmony with the Constitution of Bosnia and Herzegovina. Fulfillment of the obligation presumes totally new conceptual approach, in which Bosnia and Herzegovina is the only sovereign state. Republika Srpska is only one of entities in composition of Bosnia and Herzegovina, and special or parallel relations with neighboring states are limited institutionally and functionally. Only Bosnia and Herzegovina has full international legal subjectivity and as a state with federal structure, has its original competencies defined by the Constitution of Bosnia and Herzegovina.

4. The Parliament fully accepts the Opinion of the Venetian Working Group and the Report of the Commission for Constitutional Issues of Republic Parliament, and it considers that they can be reliable basis for entities to completely bring their Constitutions into accordance with the Constitution of Bosnia and Herzegovina. Related to that, we welcome idea of the High Representative that the Venetian Expert Group offers direct assistance in this task both to the Constituent Assembly of the Federation of Bosnia and Herzegovina and the National Parliament of Republika Srpska.

5. The Parliament estimates that harmonization of Constitution of Entities with the Constitution of Bosnia and Herzegovina represents not only precondition for implementation of overall General Framework, but also unavoidable precondition for scheduled elections and it is impossible to have elections on September 14, this year, or August 25, when electoral activities are supposed to start, and in the same time to leave open question of bringing into accord Constitution of Entities with the Constitution of Bosnia and Herzegovina.

6. On basis of the Report of the Commission for Constitutional Issues and parliamentary discussion, the Parliament will inform the High Representative, OSCE and other international institutions involved in the implementation of the Peace Agreement, pointing on special importance in confirmation of peace on the territory of Bosnia and Herzegovina and necessity of establishment of unique constitutionally-legal system of Bosnia and Herzegovina, and it will energetically demand from both entities to harmonize

their constitutions with the Constitution of Bosnia and Herzegovina in the shortest possible period of time.

7. Commission for Constitutional Issues is obliged to follow realization of these conclusions and to inform the Parliament of the Republic of Bosnia and Herzegovina about that, and it will consider this issue on its session in the beginning of September 1996. Whether on this session the RBH Parliament will call political parties on boycott of elections scheduled for September 14, 1996 or not, will depend from the fact whether Constitutions of Entities will be brought into harmony with the Constitution of Bosnia and Herzegovina.

PRESIDENT OF ASSEMBLY  
Miro Lazovic

**REPORT OF  
COMMISSION OF CONSTITUTIONAL ISSUES OF RBH PARLIAMENT  
REGARDING HARMONIZATION OF ENTITIES CONSTITUTION  
WITH CONSTITUTION OF BOSNIA AND HERZEGOVINA**

**1. PROVISIONS OF THE CONSTITUTION OF THE FEDERATION OF  
BOSNIA AND HERZEGOVINA WHICH ARE NOT HARMONIZED WITH  
THE CONSTITUTION OF BOSNIA AND HERZEGOVINA**

The following provisions in the Constitution of the Federation of Bosnia and Herzegovina are not harmonized with the Constitution of Bosnia and Herzegovina:

**III. Division of Competencies Between Federal and Cantonal Authorities**

It is necessary to add provisions in this Article that will implement Articles III.4. and III.5. of the BH Constitution and Annex VII and VIII of the Dayton Agreement, as well as general provision that will direct to cooperation of FBH with bodies composed from competent institutions of BH that will have responsibility for implementation of the Constitution and other annexes of the Dayton Agreement.

**Article III.2. (Amendment IX)**

This provision should be harmonized with responsibilities of BH Administration for Policy Towards Foreigners and Immigration, Refugees and Policy Toward Persons in Asylum. (Article III.1.(f) of the BH Constitution).

**IV. Structure of Federal Authorities**

**Article IV.B 7.**

The stipulation that says that the President of FBH is competent for appointment of diplomatic mission chiefs and Army officers and performing function of Supreme Commander of Armed Forces of FBH is necessary to be brought into accordance with the BH Constitution.

**Article IV.B 8.**

Provision that the President of FBH, in accord with the Vice-president of FBH, appoints diplomatic mission chiefs and Army officers is necessary to be harmonized with the Article V. 3. (b) of the BH Constitution.

**Articles IV.C 12, 16 and 20**

Stipulations of these Articles determine that verdicts of the Constitutional Court, the Supreme Court and the Human Rights Court of FBH are final, which is in contradiction with the Article VI. 3. Of the BH Constitution, so that finality of FBH court decisions should be limited on questions which are not under jurisdiction of BH courts.

**2.PROVISIONS OF THE CONSTITUTION OF REPUBLIKA SRPSKA  
WHICH ARE NOT HARMONIZED WITH THE CONSTITUTION  
OF BOSNIA AND HERZEGOVINA**

The following provisions of the Constitution of Republika Srpska are not brought into accordance with the Constitution of Bosnia and Herzegovina:

**Preamble:**

**Paragraph 1.-** Provision on right of Bosnian Serbs on self-determination, is necessary to be erased, because this question is in the field of individual citizen rights and freedoms.

**Paragraph 2.-** Stipulation on state independence is necessary to be erased, because it is completely opposite to the BH Constitution and the Dayton Agreement.

**Paragraph 3.**- the characteristic "sovereign" used with the word "state" needs to be deleted. Barrier of sovereignty and statehood is exclusively the state of Bosnia and Herzegovina.

**Paragraph 4.** - the provision concerning unification with other states of Serb people, needs to be deleted. The relations of RS with other states must be in compliance with sovereignty and territorial integrity of BiH.

Also, according to the paragraph 6. of preamble of the RS Constitution, the commitment for sovereignty, territorial integrity and political independence needs to be added.

### **Basic provisions**

#### **Article 1. par.1. (Amendment 44.)**

In accordance with Art.I.3. of the Constitution BH, it needs to be added that RS is an entity within BH.

#### **Article 2. par.1. and Amendment 45.**

New provision to be included, according to which the boundary lines between RS and Federation BH have been determined within Annex II of the General Framework.

#### **Article 2.par.2. (Amendment XXVIII)**

The provision concerning the procedure for the change of the borders needs to be deleted.

#### **Article 3.(Amendment 46)**

The words "sovereign" and "common interests" need to be deleted, and this Article needs to be brought into conformity with the Constitution of BH and with the competencies of the institutions of BH.

It needs to be determined that RS may establish special and parallel relationships with the neighbouring countries only in accordance with sovereignty and territorial integrity of Bosnia and Herzegovina, and with an approval by Parliamentary Assembly of BH.

#### **Article 4.**

Arrangement needs to be done for establishing special parallel relationships with neighbouring countries in a way that they are in accordance with sovereignty and territorial integrity of Bosnia and Herzegovina. (Article II.2a. of the BH Constitution).

#### **Article 5.**

It is needed to invoke an Article II of BH Constitution and Annex of the Constitution BH concerning the instruments of the protection of human freedoms and rights, and to guarantee the rights of Bosniaks and Croats as constitutive peoples in BiH.

#### **Article 6.(Amendment 3.)**

Provisions on the citizenship of BiH need to be included according to the Art.I.7. of BH Constitution.

Deprivation of citizenship needs to be complied with BH Constitution. (Art.I.7.)

Ban on candidature or exercising of any public function needs to be explicitly regulated to those who have been accused or convicted by the International Court for former Yugoslavia in accordance with Art.IX.1. of BH Constitution).

**Article 9.**

The provision that Sarajevo is the capital of RS needs to be deleted, because Sarajevo is in the territory of the Federation of BH.

**II Human rights and freedoms**

All rights and freedoms which have been guaranteed by BH Constitution and Annex of BH Constitution and not by RS Constitution, particularly those concerning refugees and displaced persons, need to be included. The rights and freedoms guaranteed by RS Constitution are guaranteed only for the citizens of RS. Any limitation put on the principle of non-discrimination, equality of citizens, freedom of movement and right on peaceful assembling of RS citizens is in the contrary with Article II.2,II.3 and II.4 of BH Constitution, which gives the guarantees to all persons in BiH.

**Article 21.**

Limitation of freedom of movement for the citizens is directly against the Article II.3.(m) of BH Constitution.

**Article 22.**

The provision from the paragraph 2. Of this Article, concerning the principle of inviolability of the freedom and confidentiality of correspondence and other ways of communication, needs to be adjusted with international documents on human rights which are the part of BH Constitution and Annexes I and VI of the General Framework.

The provision concerning the safety of Yugoslavia needs to be deleted.

**Article 28.par.3 and 4.**

The provision in which the orthodox church is the church of Serb people is against the international documents which are part of BH Constitution and Annexes I and VI of the General Framework concerning the freedom of religion and freedom of national determination.

The obligation of the state to provide material support for the orthodox church and not for the other religious institutions is against the international documents, because it proclaims inequality of religious institutions in RS.

**Article 29.**

It needs additional provisions concerning the limitation of electoral rights for those accused and convicted by the International court for former Yugoslavia



**Article 34.par.3.**

Convention on national minorities (Framework), which is a part of Annex I of the BH Constitution, guarantees freedom of expressing national affiliation and non-discrimination.. The provision on the right of the citizens of RS to declare themselves as Yugoslavians , also needs to be deleted, because otherwise this category is privileged compared to the other nationalities and national minorities.

**Article 44.**

The provisions which determine the rights of foreigners and people in asylum also need to be deleted, because this is within the competencies of the institutions of Bosnia and Herzegovina.

RS Constitution should guarantee the highest standards of human rights, and define the cooperation with the Commission for human rights, according to the Annex 6. of the General Framework, and also needs to include the obligation for the cooperation with international institutions for protection of human rights, particularly the cooperation with the International Court for war crimes, according to the Article II 8. of BH Constitution.

**Articles 47. and 48.**

They are against the European convention on human rights, which can not be limited by "a need for protection of universal human values and democratic achievements". It is needed to more clearly define the provision that "violation of human rights is inconsistent and punishable", because it is not clear what such a misuse is based on.

### **III Economic and social organization**

#### **Article 50**

It is necessary to amend it by the provisions on the economic organization in BiH in accordance to the BiH Constitution, especially regarding the freedom of movement, foreign trade, communications and other.

#### **Article 56**

Repeal provision on private property limitation.

#### **Article 57**

Guaranty that property and other investor's rights gained on the basics of invested capital can not be limited, since it is violation of the European Convention on Human Rights ( the first additional protocol )

### **IV Rights and duties of the Republic**

#### **Article 66, point 2**

To call upon provisions of the Article III of the BiH Constitution, as the basics for regulating authority and responsibilities of the RS bodies.

#### **Article 68**

Provisions which need to be repealed from the RS competencies are the ones by which RS organize and provide :

**point 1.** - sovereignty, independence and territorial entirety of RS, which is in the direct contravention to the article I.3. of the BiH Constitution.

**point 2.** - competencies in defense should be limited by the sovereignty and territorial integrity of Bosnia and Herzegovina and by obligatory cooperation with the Permanent Commission for Military Issues ( Article V.5. of the BiH Constitution )

**point 6.** - economic relationships with foreign countries should be repeal, since they were established, by the BiH Constitution, as the responsibility of the BiH institutions

point 7.- it is necessary to repeal : monetary, banking, foreign currency, customs (system ), which is contravention to the Article III.1.d) and VII of the BiH Constitution, by which the Central Bank is authorized for money emission and leading of the monetary policy.

point 15.- international cooperation should be limited on international agreements, with the approval of the Parliament Assembly of BiH ( Art.III 2. (d) of the BiH Constitution )

point 16.- bring into conformity with Article III 1. (a ) of the BiH Constitution, by which entities have right to establish special parallel relations with the neighboring countries, in accordance with the sovereignty and integrity of Bosnia and Herzegovina.

By the RS Constitution is necessary to :

- guaranty the freedom of movements of goods, services and capital.
- open the possibility of agreeable transfer of the entity competencies to the BiH, in accordance with the Articles II.5.a. and V. 3. I. of the BiH Constitution.

## V Organization of the Republic

### **Article 69.**

Provision that RS is represented and that it's state unity is expressed by the President of RS, needs to be limited by sovereignty, territorial integrity and international-legal subjectivity of Bosnia and Herzegovina and it's institutions.

### **Article 70. ( Amendment 34. )**

Paragraph 1. Point1. Regulating of the National Assembly proposal on changes of the border lines, entering confederation and other state alliances should be repealed.

Paragraph 1. Point 2. Provision on establishing foreign policy and ratification of international contracts should be repealed and brought into conformity with the BiH Constitution.

**Amendment 36.**

Provision in which is said that the National Assembly decides upon war and peace, proclaims war state, confirms direct war threat, state of alert, provision that it is within the competencies of the RS President in the case that the National Assembly is not able to meet, should be repealed.

**Articles 71. and 72.**

Provisions on elections should be brought in conformity with the BiH Constitution and Annex 3 of the General Framework Agreement.

**Article 80. ( Amendment 40. and 49. )**

Provision by which the President of RS is performing, according to the Constitution and Law, duties from the field of defense and RS relations with the other states and international organizations should be repealed. Provision on ambassador assignment should be also repealed, since it is exclusive responsibility of the BiH Presidency ( Article V.3. (b) of the BiH Constitution ).

**Article 90.**

Provision by which the Government decides upon establishing diplomatic-consular and other missions abroad should be repealed.

It is necessary to establish an obligation for cooperation with the BiH Government in fulfilling international obligations in accordance to the Art.II 2. B. of the BiH Constitution.

**Article 98.**

Provision on the National Bank should be repealed, since those jobs are within the responsibility of the BiH institutions. International relations should be brought into conformity with the Article II. 2. D. of the BiH Constitution.

**VII Defense****Article 104.**

The words " sovereignty " and " independence " should be repealed. ( provision on rights and duties in the RS defense ).

Introduce obligations on defense from the BiH Constitution ( Article V.5. a and b )

**Article 106. P 2.**

Change provisions on civil command in armed forces, since it is, in according to the provision of the Article V.5. of the BiH Constitution within the authority of the BiH Presidency, which has full authorization to command the armed forces. Competencies of the Permanent Commission for Military Issues, which is coordinating activities of the armed forces, are of importance as well.

**VIII Constituency and legality**

Within this chapter it is necessary to establish supremacy of the BiH Constitution, laws and regulations of the BiH common institutions over the entities regulations, in accordance with the Art. II 3.b. of the BiH Constitution.

**Article 108. and others**

Regulate obligatory conformity of the RS Constitution and other regulations with the BiH Constitution.

Regulate obligation regarding BiH Ombudsmen and the Human Rights Chamber.

Regulate obligation on implementing decisions of the BiH Constitutional Court.

Election of judges from RS to the BiH Constitutional Court should be brought within the field of the RS National Assembly in accordance to the Article VI.1.a. of the BiH Constitution.

**IX Constitutional Court**

**Article 138. ( Amendment 50 )**

Measures stipulated for the protection of the RS interests in relation to the BiH and FBiH, should be repealed, since they are direct contravention to the BiH Constitution by which the numerous instruments of national and inter-entity equality were regulated. These issues are within direct and original responsibility of the BiH institutions.