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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**AMENDMENTS TO THE
CONSTITUTION OF REPUBLIKA SRPSKA**

- I. DECISION OF THE HIGH REPRESENTATIVE OF
19 APRIL 2002**
- II. AMENDMENTS COMMUNICATED TO THE HIGH
REPRESENTATIVE ON 18 APRIL 2002**

I. DECISION ON CONSTITUTIONAL AMENDMENTS IN REPUBLIKA SRPSKA

In the exercise of the powers vested in me by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1.(d) of the last said Agreement, according to the terms of which the High Representative shall “Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation”;

Recalling paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on Civilian implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid “by making binding decisions, as he judges necessary” on certain issues including (under sub-paragraph (c) thereof) measures to ensure the Peace Agreement throughout Bosnia and Herzegovina and its Entities;

Considering the four partial Decisions of the Constitutional Court of Bosnia and Herzegovina in case no. 5/98 being Constitutional Court Decision of 28, 29 and 30 January 2000 (Official Gazette of Bosnia and Herzegovina, no 11/00 of 17 April 2000), of 18 and 19 February 2000 (Official Gazette of Bosnia and Herzegovina, no. 17/00 of 30 June 2000), of 30 June and 1 July 2000 (Official Gazette of Bosnia and Herzegovina no. 23/00 of 14 September 2000) and of 18 and 19 August 2000 (Official Gazette of Bosnia and Herzegovina, no. 36/00 of 31 December 2000);

Considering further that these four partial Decisions relate to numerous provisions of the Constitutions of the Entities of Bosnia and Herzegovina which have been found to be in contravention of the Constitution of Bosnia and Herzegovina as contained in Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina of 14 December 1995 (the Constitution of Bosnia and Herzegovina);

Bearing in mind that the Entities of Bosnia and Herzegovina are under an obligation set out in Article XII of Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina of 14 December 1995 (the Constitution of Bosnia and Herzegovina) according to which “(w)ithin three months from the entry into force of this Constitution, the Entities shall amend their respective constitutions to ensure their conformity with this Constitution in accordance with Article III(3)(b) (of this constitution)”;

Further bearing in mind that as at the date hereof full compliance with the obligation contained in the aforesaid Article has not been effected in either Entity;

Noting further that the Constitutional Court ruled in its third partial Decision in case no. 5/98 of 30 June and 1 July 2000 (Official Gazette of Bosnia and Herzegovina no. 23/00 of 14 September 2000) that exclusion of one or other constituent people from the enjoyment not only of citizens’ but also of peoples’ rights throughout Bosnia and Herzegovina was in clear contradiction with the non-discrimination rules contained in the said Annex 4, which rules are designed to re-establish a multi-ethnic society based

on equal rights of Bosniacs, Croats and Serbs as constituent peoples and of all citizens;

Bearing in mind that the Entities of Bosnia and Herzegovina have hitherto failed to take any steps to implement the said four partial Decisions of the Constitutional Court of Bosnia and Herzegovina in case no. 5/98;

Recalling that the High Representative adopted a Decision on 11 January 2001 (Decision no. 81/01 Official Gazette of Bosnia and Herzegovina no. 2/01 of 29 January 2001) to establish Constitutional Commissions in the Federation of Bosnia and Herzegovina and in Republika Srpska composed on a parity basis involving Bosniacs, Croats, Serbs and members of the group of Others in order to facilitate the implementation in particular of the said third partial Decision of the Constitutional Court with the participation of the three constituent peoples and the group of Others;

Noting the fruitful work of the said Commissions culminating in their Reports of 21 December 2001 (Constitutional Commission of Republika Srpska) and of 2 February 2002 (Constitutional Commission of the Federation of Bosnia and Herzegovina);

Noting further that a number of the major political parties of the Federation of Bosnia and Herzegovina and of Republika Srpska accepted thereafter the invitation of the High Representative to come together in the course of the month of March 2002 to negotiate under his auspices on a number of sensitive constitutional issues;

Welcoming the efforts undertaken by the political parties involved in the said negotiations which led to an Agreement on 27 March 2002 on various key elements which are necessary to implement the said third partial Decision of the Constitutional Court of Bosnia and Herzegovina;

Convinced that the said Agreement embodies the broadest possible consensus throughout the Federation of Bosnia and Herzegovina and Republika Srpska as to the inclusion of those key elements which provide for the equal protection of the rights of Bosniacs, Croats and Serbs as constituent peoples, and of the Others, and all citizens of Bosnia and Herzegovina in both Entities;

Considering that in the event of any question arising hereafter as to the interpretation or implementation of the language or terminology of the constitutional Amendments henceforth applicable to the Republika Srpska, the language employed in the Sarajevo Agreement of 27 March 2002 shall be referred to in order to resolve issues as to interpretation or implementation related to the matters contained in the said Agreement;

Considering that the said Agreement ensures in addition compliance with the requirement stipulated in the Communiqué issued by the Steering Board of the Peace Implementation Council on 21 June 2001 that there should be symmetry in substance with regard to the protection provided for all peoples and citizens of Bosnia and Herzegovina;

Stressing the need to hold democratic elections in Bosnia and Herzegovina and bearing in mind that such elections have prior here to been planned for 5 October 2002 and that logistic provision including security measures have been established by IPTF and SFOR for such date;

Further bearing in mind that under Article 1.14 of the Election Law of Bosnia and Herzegovina as amended by my Decision of 18 April 2002 the Election Commission

has to give notice of elections no later than 169 days prior to the election date in respect of the first elections to be held under the provisions of the said law;

Considering the length of time available to the Entity Governments prior to the date hereof to implement the four partial Decisions of the Constitutional Court of Bosnia and Herzegovina in case 5/98;

Noting the fact that changes are required to the text of certain of the amendments to the Republika Srpska Constitution which have been communicated to the High Representative, and that a further amendment relating to the length of presidential and vice presidential mandates requires to be made;

Stressing the necessity of such full implementation of the political consensus reached on 27 March;

Having considered and borne in mind all the matters aforesaid, I hereby issue the following

DECISION AMENDING THE CONSTITUTION OF REPUBLIKA SPRSKA

The amendments to the Constitution of Republika Srpska numbered LXVI to XCI communicated to the High Representative by the President of the National Assembly of the Republika Srpska, Dr Dragan Kalinic, on 18 April 2002 (authenticated with the round seal of the Republika Srpska) are hereby authorised and required to be published with the changes to Amendments LXXI, LXXXII and LXXXV hereinafter set out, together with additional Amendment XCII.

All such Amendments (original, changed and further) shall be deemed duly proclaimed and promulgated by the Republika Srpska National Assembly pursuant to and in full compliance with Article 136 of the Constitution of the Republika Srpska and shall enter into force as at the date hereof, and the full text thereof including the changed text of Amendments LXXI, LXXXII, LXXXV and further Amendment XCII as hereinafter set out shall be published without delay in due form and pursuant to my Decision herein in the Official Gazette of the Republika Srpska.

Amendment LXXI

The official languages of the Republika Srpska are: the language of the Serb people, the language of the Bosniak people and the language of the Croat people. The official scripts are Cyrillic and Latin.

This Amendment shall replace paragraph 1 of Article 7 of the RS Constitution.

Amendment LXXXII

In the last sentence of the third alinea of paragraph a) the term "Article 5.b" shall be replaced by "paragraph b".

Amendment LXXXV

Constituent peoples and members of the group of Others shall be proportionally represented in public institutions in Republika Srpska.

As a constitutional principle, such proportionate representation shall follow the 1991 census until Annex 7 is fully implemented, in line with the Civil Service Law of Bosnia and Herzegovina. Further and concrete specification of this general principle

shall be implemented by Entity legislation. Such legislation shall include concrete time lines and shall develop the aforementioned principle in line with the regional ethnic structure in the Entities.

“Public institutions” as mentioned above are the ministries of the RS Government, municipal governments, District courts in Republika Srpska and municipal courts in Republika Srpska.

This Amendment shall be added to Article 97 of the RS Constitution.

Amendment XCII

In paragraph 2 of Article 83 as amended by items 4 and 5 of Amendment XL the term “five-year mandate” shall be replaced by “four-year mandate”.

This Amendment shall change Article 83 of the RS Constitution.

Sarajevo, 19 April 2002

Wolfgang Petritsch
The High Representative

II. AMENDMENTS LXVI-LXXXI TO THE CONSTITUTION OF THE REPUBLIKA SRPSKA

These amendments shall make an integral part of the Constitution of the Republika Srpska and shall become effective on the day of their proclamation.

Amendment LXVI

1. "Respecting the will of its constituent peoples and citizens to establish and preserve the Republika Srpska and to base the constitutional establishment of the Republic upon the respect for human dignity, freedom and equality, national equality, democratic institutions, rule of law, social justice, pluralistic society, guarantees for and protection of human freedoms and rights, as well as the rights of minority groups, in line with the international standards, ban on discrimination and respect for the rules of market economy;

Wishing to provide peace, tolerance and general welfare;

Intending to contribute to the development of friendly relations among the peoples and states;

Expressing determination of the Republika Srpska to fully respect and consistently implement the General Framework Agreement for Peace in Bosnia and Herzegovina, which unambiguously accepts, confirms and guarantees the constitutional and legal position of the Republika Srpska, as one of two entities within Bosnia and Herzegovina, the National Assembly of the Republika Srpska shall pass."

2. This Amendment shall replace Amendment XXVI and Amendment LIV to the Constitution.

Amendment LXVII

1. The Republika Srpska shall be unique and indivisible constitutional and legal entity. The Republika Srpska shall independently perform its constituent, legislative, executive and judicial functions.

The Republika Srpska is one of the two equal entities in Bosnia and Herzegovina.

The Serbs, Bosniaks, Croats, as constituent peoples, Others and citizens shall participate in executing the functions of authority in the Republic equally and without discrimination.

2. This Amendment shall replace Amendment XLIV to the Constitution.

Amendment LXVIII

1. The word "border" in item 1 of Amendment LV shall be replaced by the words "inter-entity boundary line".

2. This Amendment shall change Amendment LV to the Constitution.

Amendment LXIX

1. The words "and protection of vital interests of the constituent peoples" shall be added in line 2 of Article 5 of the Constitution after the words "provision of national equality".
2. This Amendment shall be a supplement to Article 5 of the Constitution.

Amendment LXX

1. A citizen of the Republika Srpska may not be deprived of citizenship
2. This Amendment shall replace Amendment XXX to the Constitution.

Amendment LXXI

1. The Serb, Croat and Bosniak languages, Cyrillic and Latin script, shall be equally used in the Republika Srpska. The manner of official use of language and script shall be regulated by the law.
3. This Amendment shall replace paragraph 1 of Article 7 of the Constitution.

Amendment LXXII

1. Paragraph 4 of Article 28 of the Constitution shall be deleted.
2. With this amendment mentioned provision of the Constitution shall be revoked.

Amendment LXXIII

1. Paragraph 2. of Article 44. Of the Constitution shall be deleted.
2. With this amendment mentioned provision of the Constitution shall be revoked.

Amendment LXXIV

1. Paragraph 1,2. And 3 of the Article 59. of the Constitution shall be deleted.
2. With this amendment mentioned provision of the Constitution shall be revoked.

Amendment LXXV

1. Item 16. Of the Article 68. of the Constitution shall be deleted.
2. With this amendment mentioned provision of the Constitution shall be revoked.

Amendment LXXVI

1. The legislative authority in the RS shall be performed by the National Assembly and the Council of Peoples. The laws and other regulations approved by the National Assembly concerning the vital national interest issues of any of the constituent peoples shall come into force only after their adoption in the Council of Peoples.
2. Of the below mentioned positions no more than two may be filled from the ranks of one constituent people or from the ranks of Others
 - 1) Prime Minister
 - 2) Chair of the National Assembly of the Republika Srpska
 - 3) Chair of the Council of Peoples,
 - 4) President of the Supreme Court
 - 5) President of the Constitutional Court
 - 6) The Republic Public Prosecutor
3. Item 1 shall be added to Paragraph 2 of Article 69 of the Constitution, and Item 2 shall added to Article 69 of the Constitution.

Amendment LXXVII

1.
The vital national interests of the constituent peoples are defined in the following manner:

- exercise of the right of constituent peoples to be adequately represented in the legislative, executive and judicial bodies;
- identity of a constituent people;
- constitutional amendments;
- organization of the bodies of public authority;
- the equal rights of the constituent peoples in decision making process;
- education; religion; language; promotion of culture; tradition and cultural heritage;
- territorial organization;
- public information system

and other issues which would be treated as vital national interest issues if it is so considered by two-thirds of one of the caucuses of the constituent peoples in the Council of Peoples.

3. This Amendment shall be a supplement to Article 70. of the Constitution.

Amendment LXXVIII

At least four members of one constituent people shall be represented in the National Assembly.

NO deputy/poslanik/ of the National Assembly/Municipal Assembly may perform the function of a delegate to the Council of Peoples.

The composition of the Council of Peoples shall be based on parity so that each constituent people has the same number of the representatives.

The Council of Peoples shall have eight members from each of the constituent peoples and four members from the ranks of Others. Others shall have the right to equal participation in the procedure of majority vote.

5. The members of the Council of Peoples shall be elected by the respective caucus in the National Assembly.

In the event that the number of the members of one Caucus in the Council of Peoples is bigger than the number of representatives in the respective caucus of the National Assembly the additional number of delegates shall be elected by the caucus which shall be established to that purpose from the councilors in the Municipal Assemblies in the Republika Srpska.

6. Item 1 of this Amendment shall replace Amendment LXII to the Constitution, and Items 2, 3 shall be added to Article 71 of the Constitution.

Amendment LXXIX

1. The mandate of members of the Council of Peoples shall last four years.

As a result of shortening of the mandate of the National Assembly and dissolving of the National Assembly the mandate of the Council of Peoples shall cease.

2. This Amendment shall be added to Article 72 of the Constitution.

Amendment LXXX

1. A member of the Council of Peoples shall enjoy immunity just like a people's deputy.

2. This Amendment shall be added to Article 73 of the Constitution.

Amendment LXXXI

1. Paragraph 2. of the Article 76 of the Constitution shall be deleted.

2. With this amendment mentioned provision of the Constitution shall be revoked.

Amendment LXXXII

a) The procedure for the laws related to the vital interest as it is defined in the list from Amendment LXXVII.

The laws or other regulations or acts adopted by vote of the National Assembly shall be submitted to and considered by the Council of Peoples if they refer to the vital interest defined in the amendment LXXVII.

If more than one Chairman or Vice Chairmen, of the Council of Peoples, deem that a law, falls within the issues of vital interest defined in the Amendment LXXVII the law shall be put onto the agenda of the Council of Peoples as the vital interest issue.

If only one Chairman or Vice Chairman claims that the law falls within vital interest issues the two-thirds majority of the respective caucus may declare that it is the issue from the vital interest list. In that case the procedure described in Article 5b below shall be followed.

The Chairman and the Vice Chairmen of the Council of Peoples must make this decision within one week.

If the majority of each caucus having delegates to the Council of Peoples votes in favor of such laws or other regulations or acts, they shall be considered as adopted.

If the agreement on the amendments is reached within the Council of Peoples such a law, regulation or act shall be re-submitted to the National Assembly for approval.

If the agreement is not possible in the Council of Peoples or if the proposed amendments are not approved A joint commission shall be formed of the representatives of the National Assembly and the Council of Peoples. The joint commission shall be based on parity and shall make decision by consensus. The joint commission shall consolidate the text of the law. If the text of the law is consolidated the law shall be considered as adopted.

If no agreement is reached, the law shall fail and shall be returned to the proponent for a new procedure.

In that case the proponent may not re-submit the same text of the law, regulation or act.

b) Procedure for the laws related to vital national interest

If the decision was made by two-thirds majority of one of the caucuses of the constituent peoples in the Council of Peoples.

In case that two-thirds of one of the caucuses of the constituent peoples in the Council of Peoples decides that the law, act or regulation refers to the vital interest, the law shall be considered by the Council of Peoples.

If the majority of each caucus represented in the Council of Peoples votes in favor of that law, another regulation or act, it shall be considered as adopted.

If the Council of Peoples reaches its agreement on the amendments the law, regulation or act shall be re-submitted to the National Assembly for approval.

If the joint commission from Item a. fails to reach an agreement, the issue shall be referred to the Constitutional Court of the Republika Srpska for a final decision as to whether the law concerned refers to the vital interest of one of the constituent peoples.

The Panel for the protection of vital interest within the Constitutional Court of the Republika Srpska shall decide on the admissibility of such cases by two-thirds majority within one week, and shall decide on the merits of the cases which are deemed admissible within one month.

In case the procedure under article Amendment LXXII b. is ignited by two-thirds majority of one of caucuses the vote of at least two judges are necessary in order for the Court to decide that it refers to vital interest.

If the Court decides positively on vital interest, that law shall be considered to have failed and the document shall be returned to the proponent who needs to institute a new procedure.

In that case the proponent may not submit the same text of the law, regulation or act.

In case the Court decides that the law concerned does not refer to vital interest the law shall be considered adopted/shall be adopted by simple majority.

3.

Amendment LXXXIII

1. In Paragraph 2 of Article 80 of the Constitution the word "Vice-presidents" shall be replaced by words "two Vice-presidents of the Republic."

The President shall have two Vice-presidents from among different constituent peoples.

2. In Item 3 of the Amendment XL to the Constitution the words "and Vice-Presidents" shall be deleted.

3. Paragraph 2, Item 5 of the Amendment XL to the Constitution shall be deleted. 4. The President of the Republic and Vice-presidents of the Republic shall be directly elected from the list of the candidates for the President of the Republika Srpska so that a candidate who wins the highest number of votes shall be elected President while the Vice-presidents shall be elected candidates from the other two constituent peoples who win the highest number of votes after the elected President of the Republic.

5.5. Item 1 shall amend Article 80 of the Constitution and Items 2 and 3 shall change Amendment XL to the Constitution.

Amendment LXXXIV

1. The Prime Minister and Deputy Prime Ministers may not be from the same constituent people.

After the full implementation of Annex 7 at least 15% of the members of the Government must be from one constituent people. At least 35% of the members of the Government must be from two constituent peoples. One member of the Government must be from the ranks of Others.

In the transitional period until the full implementation of Annex 7, the Government of the Republika Srpska (Prime Minister and 16 ministers) shall be comprised of eight ministers from the ranks of the Serb, 5 from the ranks of the Bosniak and 3 from the ranks of the Croat people. One Minister from the ranks of Others may be appointed by the Prime Minister from the quote of the largest constituent people. The

Government shall also have its Prime Minister who shall two deputies from the ranks of different constituent peoples, to be elected from the ranks of the ministers.

2. This Amendment shall be added to Article 92 of the Constitution

Amendment LXXXV

1. The proportional representation of members of the constituent peoples and Others shall be provided on the positions of elected officials in the Ministries based on the last census of the population in accordance with the law.
2. In the municipal authority bodies the representation of the members of the constituent peoples and Others shall be provided in proportion to the ethnic composition of the population based on the last census and composition of the Municipal Assembly.
3. When electing judges of the district and basic courts in the Republic, representation of members of the constituent peoples and Others shall be provided proportionally to the ethnic composition of the population based on the last census.
4. Item 1 shall be added to Article 97, Item 2 shall be added to Article 102 of the Constitution, whereas Item 2 of this Amendment shall be added to Article 127 of the Constitution.

Amendment LXXXVI

1. Article 98 of the Constitution shall be deleted.
2. With this amendment the mentioned provision of the Constitution shall be revoked.

Amendment LXXXVII

1. Article 99. Of the Constitution shall be deleted.
2. With this amendment mentioned provision of the Constitution shall be revoked.

Amendment LXXXVIII

1. The Constitutional Court:
 1. Shall decide on the compliance of laws , other regulations and enactment of the National Assembly with the provisions of the Constitution on the protection of vital interests of the constituent peoples,
 2. The Constitutional Court shall have maximum of nine judges.
The Panel for the protection of vital interest of the Constitutional Court of the Republika Srpska shall be established in order to decide the issues of vital interest in the procedure described in Amendment LXXXII. This panel shall consider all issues which are of vital interest.
The Panel for the protection of vital interest shall be composed of seven members, two from each constituent people and one members from the ranks of Others. The

judges shall be elected by the National Assembly of Republika Srpska and the Council of Peoples.

Item 1 shall be added to Article 115, Item 2 shall be added to Article 116 of the Constitution.

Amendment LXXXIX

1. The National Assembly and the Council of Peoples shall decide on the proposal of the act on changes to the Constitution.
2. A change of the Constitution shall be adopted should at least two thirds of the total number of the people's deputies and a majority of the members of the Council of Peoples from each constituent people and Others vote in favor of it.
3. This Amendment shall replace Paragraphs 1 and 2 of Article 135. of the Constitution.

Amendment LXXXX

1. Article 138. Of the Constitution shall be deleted.
2. With this amendment mentioned provision shall be revoked.

Amendment LXXXXXI

1. As from the adoption of the amendments to the Entity constitutions, the Constitutional Commission of the Republika Srpska (as established by the High Representative) shall follow the principles contained in this document.
2. After the next municipal elections, the final manner of election of the members of the Council of Peoples shall be regulated by the National Assembly and the Council of Peoples.

