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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**CONSTITUTION  
OF REPUBLIKA SRPSKA<sup>1</sup>**

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<sup>1</sup> Translation provided by the Legal Department of the Office of the High Representative.

**PREAMBLE**

*(as amended by Amendment LXVI)*

**“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.”**

**I. BASIC PROVISIONS****Article 1.**

*Article 1 has been replaced by Amendment LXVII, reading as follows:*

**“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”.**

**Article 2.**

*Paragraph 1 of Article 2 has been replaced by Amendment XLV, reading as follows:*

**“The territory of the Republic shall be unique, indivisible and inalienable”.**

*Paragraph 2 of Article 2 has been replaced by Amendment LV, LXVIII reading as follows:*

**“The Agreement on the change of the inter-entity boundary line between Republika Srpska and the Federation of Bosnia and Herzegovina may be taken out for the confirmation by way of a referendum in the Republic”.**

**Article 3.**

*Article 3 has been replaced by Item 1 of Amendment LV, reading as follows:*

**“All State functions and powers shall belong to the Republic, with exception of those which were by the Constitution of Bosnia and Herzegovina explicitly transferred to its institutions”.**

**Article 4.**

*Article 4 has been replaced by Item 2 of Amendment LV, reading as follows:*

**“The Republic may, according to the Constitution of Bosnia and Herzegovina, establish special parallel relations with the Federal Republic of Yugoslavia and its member republics”.**

#### **Article 5.**

The constitutional arrangement of the Republic shall be based upon the following:

- guarantee and protection of human freedoms and rights in accordance with international standards;

*Article 5 line 2 has been supplemented by Amendment LXIX, reading as follows:*

- assurance of national equality **“and protection of vital interests of the constituent peoples”**;
- social justice;
- market economy
- multi-party political system;
- parliamentary democracy and division of authority;
- free elections;
- local self-government;
- protection of the rights of ethnic groups and other minorities.

#### **Article 6.**

*Paragraph 1 of Article 6 has been replaced by Amendment XLVII, reading as follows:*  
**“Citizens of the Republic shall have citizenship of Republika Srpska”.**

*Article 6 has been replaced by Amendment LXX, reading as follows:*  
**“A citizen of the Republika Srpska may not be deprived of citizenship”.**

#### **Article 7.**

*Paragraph 1 of Article 7 has been replaced by Amendment LXXI, reading as follows:*  
**“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.”**

In regions inhabited by groups speaking other languages, their languages and alphabet shall also be in official use, as specified by law.

#### **Article 8.**

The Republic shall have the flag, the coat-of-arms and the anthem.  
The flag, the coat-of-arms and the wording of the national anthem shall be determined by constitutional law.

#### **Article 9.**

The capital of the Republic shall be Sarajevo.

## **II. HUMAN RIGHTS AND FREEDOMS**

#### **Article 10.**

Citizens of the Republic shall be equal in their freedoms, rights and duties; they shall be equal before the law and they shall enjoy equal legal protection irrespective of their race, sex, language, national origin, religion, social origin, birth, education, property status, political and other beliefs, social status and other personal attributes.

**Article 11.**

Human life shall be inviolable.  
Death penalty may be pronounced exclusively for capital crimes.

**Article 12.**

Freedom and personal safety of man are inviolable.  
No one may be deprived of his liberty or restricted in it, save for the case and according to the procedure as specified by law.

**Article 13.**

Human dignity, physical and spiritual integrity, personal privacy, personal and family life shall be inviolable.

**Article 14.**

No one may be subjected to torture, cruel, inhuman or degrading treatment or punishment.  
Any extortion of confession or statement shall be forbidden and punishable.  
It shall be forbidden to conduct medical and other scientific experiments upon any person without his or her consent.

**Article 15.**

Unlawful deprivation of liberty shall be punishable.  
Deprivation of liberty may only last as long as there are legal conditions for it.  
A person reasonably suspected of having committed an offence may be arrested and detained only when it is necessary for the purpose of the conduct of criminal proceedings or for reasons of the safety of people.  
Detention shall be determined by a decision of the Court, and only as an exception, under the conditions stipulated by law, by a decision of another organ authorised by law and not later than up to three days.  
The person detained has to be presented the decision explained in writing at the moment of detention. The person detained has the right to appeal against the decision.

**Article 16.**

Everyone shall be entitled to the equal protection of his rights in the proceedings before the court and other State bodies and organisation.  
Everyone shall be guaranteed the right to appeal or other legal remedy against the decision concerning his right or interest determined by law.

**Article 17.**

Everyone shall be entitled to a compensation for the damage inflicted on him by unlawful or irregular work of an official or a State agency or a body vested with public powers.  
A person convicted unjustifiably or deprived of his liberty unlawfully or with no grounds shall have the right to rehabilitation, compensation for damage, a public apology and other rights determined by law.

**Article 18.**

A person charged with a criminal offence shall be guaranteed a fair trial.  
A person charged with a criminal offence has to be informed of the cause of accusation within the shortest period prescribed by law.

No proceedings before the court may be conducted in the absence of the accused person. Proceedings before the court may be conducted against an accused person who is inaccessible to the court only in cases determined by law.

**Article 19.**

The right to defence shall be guaranteed.

The right to the free choice of a defence attorney and free communication with him shall be guaranteed.

The defence attorney may not be held responsible for actions undertaken in the process of defence.

**Article 20.**

No one may be sentenced for any act, which did not constitute a criminal offence under law at the time when it was committed. Nor may the penalty be imposed which was not prescribed by law for such an act.

No one may be held guilty for a criminal offence until proved so by a final decision of the court.

**Article 21.**

Citizens shall be guaranteed freedom of movement, residence and staying on the territory of the Republic, and the freedom to leave and return on the territory.

Freedom of movement may be restricted by law only if necessary for the purpose of the conduct of criminal proceedings or for reasons of the protection, safety and health of people.

No restrictions may be introduced for political reasons.

**Article 22.**

*In Article 22 the words: "and of Yugoslavia" (Item 4 of Amendment LVII) have been deleted:*

Freedom and secrecy of correspondence and other forms of communication shall be inviolable.

Exception from the principle of inviolability of freedom and secrecy of correspondence and other forms of communication may only be prescribed by law, subject to a court decision, if it is indispensable for the purpose of the conduct of criminal proceedings or for reasons of the safety of the Republic.

**Article 23.**

Protection of secrecy of personal data shall be guaranteed. Collection, processing and the purpose of the use of personal data shall be regulated by law.

The use of personal data contrary to the determined purpose of their collection shall be prohibited.

Citizens shall be entitled to demand and receive all data on them contained in acts of State bodies and other official registers.

**Article 24.**

Homes shall be inviolable.

On the basis of a court warrant as prescribed by law may an official person enter a home or other premises without consent from the tenant and carry out a search. The search shall be carried out in the presence of two witnesses.

Subject to conditions spelled out by law, an official person may without a court warrant enter a home or other premises and carry out a search, if this is indispensable to apprehend an offender or to save persons and property.

**Article 25.**

Freedom of thought and orientation, conscience and conviction, as well as of public expression of opinion shall be guaranteed.

**Article 26.**

Freedom of press and other media of communication shall be guaranteed.

*In Paragraph 1, Article 26 the word "independent" has been replaced by the word "newspaper" (Amendment XLIII).*

Free establishment of newspaper and publishing houses, publishing of newspapers and public information by other media in accordance with law shall be guaranteed.

Censorship of press and other public information media shall be forbidden.

Public information media shall be obliged to inform the public on time, truthfully and impartially.

The right to correction of incorrect information shall be guaranteed to anyone whose right or legally determined interest has been violated, as well as the right to a compensation for damage arising therefrom.

**Article 27.**

Freedom of scientific, cultural and artistic creativity shall be guaranteed.

Protection of moral and property rights deriving from scientific, cultural, artistic and other intellectual creative creativity shall be guaranteed.

**Article 28.**

Freedom of religion shall be guaranteed.

Religious communities shall be equal before the law and shall be free to perform religious affairs and services. They may open religious schools and perform religious education in all schools at all levels of education; they may engage in economic and other activities, receive gifts, establish legacies and manage them, in conformity with law.

The Serbian Orthodox Church shall be the church of the Serb people and other people of Orthodox religion.

*Paragraph 4 of Article 28 has been deleted by Amendment LXXII.*

**Article 29.**

A citizen who has reached the age of eighteen years shall have the right to vote and to be elected.

The right of suffrage shall be universal and equal, elections shall be direct and by secret ballot.

*Article 29 has been amended by Item 5 of Amendment LVII, reading as follows:*

**"A person shall acquire the right of suffrage, subject to Article 29, after having resided in a certain place for the period determined by law."**

**Article 30.**

Citizens shall have right to peaceful assembly and public protest.

Freedom of association shall be restricted by law only for the purpose of protection of the safety of persons and property.

**Article 31.**

Freedom of political organisation and activities in conformity with law shall be guaranteed.

Political organisation and activities threatening democracy, jeopardising integrity of the Republic and violating constitutionally guaranteed freedoms and rights and inciting national, racial or religious hatred and intolerance shall be prohibited.

**Article 32.**

Citizens shall have the right to publicly express their opinion on the work of State agencies and other bodies, to submit petitions, complaints and proposals to them and to receive answers thereto.

No one may be held responsible or suffer other adverse consequences because of the public expression of his opinion on the work of State agencies or his statements publicly presented in a complaint, petition and proposal, unless thus committing a criminal offence.

**Article 33.**

Citizens shall have the right to take part in the conduct of public affairs and have access to public service under equal conditions.

**Article 34.**

Citizens shall be guaranteed freedom of profession of national affiliation and culture and the right to use their language and alphabet.

No one shall be obliged to declare national affiliation.

*Paragraph 3 of Article 34 has been deleted on the basis of Item 6 of Amendment LVII.*

**Article 35.**

Everyone shall have the right to a healthy environment. Everyone shall be bound, in accordance with law and within his possibilities, to protect and improve the environment.

**Article 36.**

The family, mother and child shall enjoy special protection.

- Marriage and legal relations in marriage and family shall be regulated by law.
- Everyone shall have the right to decide freely to have children.
- Parents shall have the right and duty to take care of the upbringing and education of their children.
- Children shall be bound to take care of their parents needing help.
- Children born out of wedlock shall have the same rights and duties as those born in wedlock.
- Minors who are parentally neglected and persons unable to look after themselves and the protection of their rights and interests shall enjoy special protection.

**Article 37.**

Everyone shall be entitled to health care.

The right to health care shall be guaranteed in conformity with law.

Children, pregnant women and elderly persons shall be entitled to health care financed out of the public funds, while other persons shall enjoy such a care under the conditions spelled out in a law.

**Article 38.**

Everyone shall be entitled to education under equal conditions.

Primary schooling shall be compulsory and free.

Everyone shall have access, under the same conditions, to secondary and higher education.

*In Paragraph 4 of Article 38 the words "teaching institutions" have been deleted (Item 2 of Amendment XLIII).*

Citizens may open private schools under conditions specified by law.

**Article 39.**

- Everyone shall have the right to work and to freedom of work.
- Forced labour shall be prohibited.
- Everyone shall be free to choose his vocation and occupation and all work places and duties shall be accessible to everyone under the same conditions.
- Employment may be terminated contrary to the will of employed persons in the manner and under conditions specified by law and collective agreements.
- Every employed person shall have the right to remuneration in accordance with law and collective agreements.

**Article 40.**

Employed persons shall be entitled to limited working hours, daily and weekly rest and annual holiday and leave with pay, in accordance with law and collective agreements.

Employed persons shall have the right to safety at work, in accordance with law.

Young people, mothers and disabled persons shall be entitled to special protection at work.

**Article 41.**

Freedom of forming trade unions and organisation and activities related to them shall be guaranteed.

**Article 42.**

Employed persons shall have the right to strike under conditions specified by law.

**Article 43.**

The right of employed persons and of members of their families to social security and social insurance shall be regulated by law and collective agreements.

The right to relief during temporary unemployment shall be guaranteed, under conditions specified by law.

Citizens who are partially disabled shall be guaranteed the training for a suitable job and are provided conditions for their employment, in accordance with law.

The Republic shall ensure the assistance and social security to citizens incapable to work and unprovided-for.

**Article 44.**

Aliens shall have the human rights and freedoms determined by the Constitution and other rights specified by law and international agreements.

*Paragraph 2 of Article 44 has been deleted by Amendment LXXIII.*

**Article 45.**

Everyone shall be bound to abide by the Constitution and law.

Everyone shall be bound to perform conscientiously and responsibly the public function assigned to him.

**Article 46.**

Everyone shall be bound to assist a person in danger and to take part in elimination of general danger.



**Article 47.**

*Article 47 has been deleted on the basis of Item 7 of Amendment LVII.*

**Article 48.**

The rights and freedoms guaranteed by this Constitution may not be denied or restricted.

*Paragraph 2 of Article 48 has been deleted on the basis of Item 8 of Amendment LVII.*

The court protection of the rights and freedoms guaranteed by this Constitution shall be ensured.

Everyone violating the human rights and fundamental freedoms guaranteed by this Constitution shall be held personally responsible for it and may not be justified by having obeyed somebody's order to that effect.

**Article 49.**

Freedoms and rights shall be exercised, and duties fulfilled directly pursuant to the Constitution, unless the Constitution provides that conditions for exercising particular freedoms and rights are spelled out by law.

The manner of exercising particular rights and freedoms may be determined by law only when it is necessary for their exercise.

*Paragraph 3 of Article 49 has been replaced by Item 3 of Amendment XXXV.*

*The Chapter on Human Rights and Fundamental Freedoms has been supplemented by Items 1 through 3 of Amendment LVII, reading as follows:*

**“In the case there are differences between the provisions on rights and freedoms of the Constitution of Republika Srpska and those of the Constitution of Bosnia and Herzegovina, the provisions which are more favourable for the individual shall be applied.**

**The provisions of Articles 10, 21, 30, 32, 33, 34, 38 and 43 of the Constitution on rights and freedoms of citizens shall be considered the provisions on human rights and fundamental freedoms and shall apply to all, not only to citizens.**

**The provisions of Articles 13, 22, 23, 24, 25, 26, 28 and 30 of the Constitution on rights and freedoms shall be exercised in conformity with related provisions of Articles 8 through 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.”**

### **III. ECONOMIC AND SOCIAL ORDER**

**Article 50.**

The economic and social order shall be based on the equality of all forms of ownership and free enterprise, the independence of enterprises and other forms of organisation on management and appropriation of profit and free movement of goods, labour and capital in the Republic as a single economic territory.

**Article 51.**

Through measures of economic and social policy the Republic shall stimulate the economic development and the increase of social welfare of citizens.

**Article 52.**

Free enterprise may exceptionally be restricted by law for the purposes of protecting the interest of the Republic, the human environment, health and security of people. Monopolies shall be forbidden.

**Article 53.**

The Republic shall ensure consumers protection.

**Article 54.**

All forms of ownership shall enjoy the equal protection of law.

**Article 55.**

The right to inheritance shall be guaranteed in accordance with law.

**Article 56.**

The right to ownership may be restricted or taken away by law against fair indemnity.

*Article 56 has been supplemented by Item 1 of Amendment XXXI, reading as follows:*

**“During the state of war, the imminent war threat or the state of emergency, law may restrict the disposal of or define a special method of the use of a part of assets belonging to legal and natural persons.”**

**Article 57.**

*Article 57 has been replaced by Amendment XLVIII, reading as follows:*

**“Foreign persons may acquire the right to property and the rights through the investment of capital in accordance with law.**

**Property and other rights of a foreign investor acquired through the capital invested may not be lessened or denied by law nor by any other legal act.**

**Foreign persons shall be guaranteed to conduct economic or any other activities and rights arising from business transfers under the conditions which cannot be changed to his detriment.**

**Foreign investors shall be guaranteed to take freely the profit and the invested capital out of the Republic.**

**The establishment of private enterprises by foreign persons concerning certain activities and fields may exceptionally be restricted by law when required by the general social interest.”**

**Article 58.**

Property rights and obligations relating to socially owned resources and the conditions of transforming the resources into other forms of ownership shall be regulated by law.

*Paragraph 2 of Article 58 has been replaced by Item 2 of Amendment XXXI, reading as follows:*

**“Socially- or State-owned property may as a rule be alienated only according to the market criteria.“**

**Article 59.**

*Paragraph 1, 2 and 3 of Article 59 have been deleted by Amendment LXXIV.*

The use and exploitation of property of special cultural, scientific, artistic or historical significance, or significant for the protection of nature or the environment, may be restricted against a full compensation to the owner.

The protection, use, improvement and management of the property of general interest, as well as the payment of compensation for the use of property of general interest and urban construction sites shall be regulated by law.

**Article 60.**

Natural and legal entities shall exercise their ownership rights to real estate according to its nature and purpose and in accordance with law.

The ownership of farming land shall be guaranteed, while the framework of ownership of forests and forest land shall be specified by law.

**Article 61.**

The Republic shall guarantee to citizens a minimum of social security and it shall provide for functioning of public services, in accordance with law.

Public services shall be financed through funds and budgets, in accordance with law.

**Article 62.**

The Republic and municipalities shall establish public revenues and expenditures by means of a budget.

Budget resources shall be raised from taxes, fees and other levies specified by law.

**Article 63.**

The duty to pay taxes and other levies shall be universal and it shall be defined in accordance with taxpayer's income bracket.

**Article 64.**

The Republic shall protect and encourage the following:

- the rational use of natural resources with the view of protecting and improving the quality of life and protecting and reviving the environment to the general benefit;
- conservation and enrichment of historical, cultural and artistic wealth;
- scientific research;
- economising of all kinds, in particular the one pertaining to economic activities and the purchase of apartments;
- co-operative societies and general co-operation;
- crafts;
- physical culture and sports.

**Article 65.**

Employees shall have the right to participate in the company management in accordance with law.

The citizens' influence on the management of State-owned funds and property shall be specified by law.

**IV. RIGHTS AND DUTIES OF THE REPUBLIC**

**Article 66.**

The rights and duties of the Republic shall be exercised by the republican bodies specified by the Constitution.

Human rights and freedoms, the equality before the law, the independence and the equal status of enterprises and other organisations, the constitutional status and the rights of local self-government units shall be the basis and the measurement for powers and responsibilities of republican bodies.

**Article 67.**

Within the rights and duties of the Republic laid out by the Constitution, the republican bodies shall formulate the policy, enact and enforce laws, other regulations and general acts and carry out the protection of the constitutionality and legality.

The bodies and organisations in municipalities may be assigned the enforcement of laws and other regulations and general acts from within the framework of the rights and duties of the Republic.

The responsibility for the enforcement of laws, other regulations and general acts shall be regulated by law.

**Article 68.**

*Article 68 has been replaced by Amendment XXXII, reading as follows:*

**“The Republic shall regulate and ensure:**

**1. integrity, constitutional order and territorial unity of the Republic;**

*In Sub-item 1 of Amendment XXXII the words: “sovereignty, independence” have been replaced by the words: “integrity, constitutional order” (Item 1 of Amendment LVIII).*

**2. defence and security;****3. measures in case of the state of, imminent threat of war and the state of emergency;****4. constitutionality and legality;****5. implementation and protection of human rights and freedoms;****6. property and obligation relations and protection of all forms of property, legal status of enterprises and other organisations, their associations and chambers, economic relations with foreign countries, which have not been transferred to institutions of Bosnia and Herzegovina, market and planning;**

*In Sub-item 6 of Amendment XXXII after the words: “economic relations with foreign countries” the words: “which have not been transferred to institutions of Bosnia and Herzegovina, market and planning” (Item 2 of Amendment LVIII) have been added.*

**7. banking and tax system;**

*In Sub-item 7 of Amendment XXXII, the words: “monetary”, “foreign exchange” and “customs” have been deleted (Item 3 of Amendment LVIII).*

**8. main objectives and directions of economic, scientific, technological, demographic and social development, the development of agriculture and the village, the use of space, politics and measures for direction of the development and commodities;****9. control of legality of the disposal of means of legal entities and the collection of statistical and other data of general interest;****10. organisation, competence and the work of State bodies;****11. public services system;****12. work relations, safety at work, employment, social insurance and other forms of social care, health care, soldiers and invalid protection, child and youth care, education, culture and cultural resources protection, physical culture;****13. environmental protection;****14. public information system;****15. international co-operation, with the exception of the one transferred to institutions of Bosnia and Herzegovina.**

*In Sub-item 15 of Amendment XXXII, the words: "with the exception of the one transferred to institutions of Bosnia and Herzegovina" (Item 4 of Amendment LVIII) have been added.*

**16. Item 16 of Article 68 has been deleted by Amendment LXXV.**

**17. financing the exercise of the rights and duties of the Republic;**

**18. other relations relevant for the Republic, in accordance with the Constitution".**

## **V. ORGANISATION OF THE REPUBLIC**

### **Article 69.**

The State government in the Republic shall be organised according to the principle of the separation of powers.

*Paragraph 2 of Article 69 has been supplemented by Item 1 of Amendment LXXVI, reading as follows:*

The constitutional and legislative powers shall be exercised by the National Assembly. **"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."**

*Paragraph 3 of Article 69 has been replaced by Amendment XXXII, reading as follows:*

**"The Republic is represented and its national unity symbolised by the President of the Republic."**

The executive power shall be vested in the Government.

The judicial power shall belong to the courts.

The protection of constitutionality and legality shall be provided by the Constitutional Court.

Article 69 has been supplemented by Amendment LXXVI, reading as follows:

**"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"**

### **1. The National Assembly**

#### **Article 70.**

The National Assembly shall:

1. decide on amending the Constitution;
2. enact laws, other regulations and general enactments;
3. adopt a development plan, urban plan, budget and annual balance sheet;
4. determine the territorial organisation of the Republic;
5. call for the republic referendum;
6. float the public loan of the Republic and decide on contracting debts by the Republic;
7. call for the elections for Assembly deputies and the President of the Republic;
8. elect, appoint and dismiss the officials, in accordance with the Constitution and the laws;
9. exert control over the work of the Government and other bodies responsible to it, in accordance with the Constitution and law;
10. grant amnesty;
11. carry out other activities in accordance with the Constitution and law.

*Article 70 has been supplemented by Amendment LIX, reading as follows:*

**“ National Assembly shall:**

- 1. elect delegates from the Republic to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina ;**
- 2. ratify the agreements concluded between the Republic and the states and international organisations with the consent of the Parliamentary Assembly of Bosnia and Herzegovina ”**

*Article 70 has been amended by Amendments XXXV and Amendment LXI, reading as follows:*

**“ The National Assembly, in accordance with law, shall declare**

- 1. the state of war in the case of an armed attack of the Republic**
- 2. imminent threat of war in case of a serious threat of war**
- 3. state of emergency for the Republic or a part of Republic if the security, human rights and freedoms and normal functioning of the constitutional institutions are threatened”**

*Article 70 has also been amended by Item 3 of Amendment XXXV (see Article 81 of the Constitution).*

*Article 70 has been supplemented by Amendment LXXVII, reading as follows:*

**“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.”**

## **Article 71.**

*Paragraph 1 of Article 71 has been replaced by Amendment LII, reading as follows:*

**“The National Assembly shall have 83 deputies”.**

*Paragraph 1 of Article 71 has been supplemented by Item 1 of Amendment LXXVIII, reading as follows:*

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

*Paragraph 2 of Article 71 has been replaced by Item 2 of Amendment XXXVI, reading as follows:*

**“The electoral laws shall establish the electoral units and the system of the distribution /allocation of mandates ensuring that all municipalities are appropriately represented in the National Assembly.”**

Assembly deputies shall be elected directly and by secret ballot.

The election and the termination of mandates of Assembly deputies and the forming of electoral units shall be determined by law.

*Article 71 has been supplemented by Items 2 to 5<sup>2</sup> of Amendment LXXVIII, reading as follows:*  
**“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.**

**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.”**

#### **Article 72.**

Assembly deputies shall be elected for a term of four years.

*Article 72 has been supplemented by Amendment XXXIX, Amendment LX and Amendment LXXIX, reading as follows:*

**“At the proposal of a minimum of 30 deputies, the National Assembly may shorten its mandate by a two-thirds majority of the total number of deputies.**

**During the state of war and imminent threat of war, the mandate of the national Assembly shall be prolonged for the duration of such a state.**

**The National Assembly may not shorten its mandate during the war and imminent threat of war .**

**Should the National Assembly shorten its mandate or should it be dismissed, elections for a new National Assembly must be held within 60 days from the day of issuance of decision on the shortening of mandate. The elections shall be scheduled by the President of the Republic.**

**By the shortening of mandate of the National Assembly the mandate of the Government shall also stop.**

**The President of the Republic may, after he has heard the opinion of the President of the Government and the President of the National Assembly decide to dismiss the National Assembly .“**

**“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.”**

#### **Article 73.**

*Article 73 has been replaced by Amendment XCIX reading as follows:*

**“Deputies of the National Assembly and members of the Council of Peoples shall not be held criminally or civilly liable for any acts carried out within the scope of their duties in the National Assembly or Council of Peoples respectively.”**

#### **Article 74.**

The National Assembly shall sit in a continuous session.

The President of the National Assembly shall convene and chair sessions.

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<sup>2</sup> Note by OHR consolidator: the numbering of Amendment LXXXIII and the instructions are incomplete. It probably should read in Item 6: Items 2 to 5 instead of Items 2 and 3. This has to be finalized by the RS legislator.

The President shall be obliged to convene a session upon the request of one third of the total number of deputies, or on the demand by the President of the Republic or the Government.

#### **Article 75.**

*Article 75 has been replaced by Amendment XXXVII, reading as follows:*

**“The National Assembly shall decide by a majority vote of all Assembly deputies, unless the Constitution provides a special majority.”**

#### **Article 76.**

*Article 76 has been replaced by Amendment XXXVIII, reading as follows:*

**“The President of the Republic, the Government, every Assembly deputy or a minimum of 3,000 voters shall have the right to propose laws, other regulations and general enactments.”**

*Paragraph 2 of Article 76 has been deleted by Amendment LXXXI.*

#### **Article 77.**

The National Assembly may decide to make a decision on some issues falling within its competence after a referendum of citizens has been held.

#### **Article 78.**

The National Assembly shall regulate its work and organisation and the manner of exercising the rights and duties of deputies.

#### **Article 79.**

The National Assembly shall have the President and two Vice-Presidents elected for a four year term.

#### **Article 79.a**

*Article 79.a has been introduced by Amendment LXXXII, reading as follows<sup>3</sup>:*

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 paragraph b below shall be followed.**

**The Chairman and the Vice Chairmen 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.**

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<sup>3</sup> Note by OHR consolidator: the instruction how to proceed with Am. LXXXII is missing. The version will be finalized once the place of this Amendment is clarified by the RS legislator.



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.<sup>4</sup>

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.”

## 2. The President of the Republic

### **Article 80.**

The President of the Republic shall:

1. represent the Republic;
2. propose to the National Assembly a candidate for the Prime Minister;

*Item 3 of Paragraph 1 of Article 80 has been substituted by Amendment XCIII, reading as follows:*

3. “nominate to the National Assembly candidates for the president and judges of the Constitutional Court upon proposal by the High Judicial and Prosecutorial Council;”

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<sup>4</sup> Note: Shall this be one sentence or two?

4. propose to the National Assembly candidates for the president and judges of the Constitutional Court;

*Item 4 of Paragraph 1 of Article 80 has been substituted by Item 2 of Amendment XL, reading as follows:*

5. **“The President of the Republic shall promulgate laws by decree within seven days from the day of their adoption by the National Assembly. The President of the Republic may, within that timeline, request that the National Assembly make decision on the law anew.**

The President of the Republic is obliged to promulgate the law which has been readopted by the National Assembly”;

6. grant pardons;
7. confer decorations and awards specified by law;
8. perform other tasks in accordance with the Constitution;

*Article 80 has been supplemented with Item 1 of Amendment XL, reading as follows:*

**“The President of the Republic shall:**

1. **perform, in accordance with the Constitutions of Bosnia and Herzegovina and Republika Srpska and other relevant law<sup>5</sup>, tasks related to defence, security and relations of the Republic with other countries and international organisations,”**

*Sub-item 2 of Item 1 of Amendment XL has been substituted by Amendment L, reading as follows:*

2. **“the President of the Republic shall, at the proposal of the Government, by decree appoint and recall heads of missions of Republika Srpska in foreign countries, and shall nominate ambassadors and other international representatives of Bosnia and Herzegovina from Republika Srpska.**
3. **form advisory bodies and expert agencies for performing tasks falling within his competence.”**

*In Paragraph 2 of Article 80 the word “Vice-presidents” has been replaced by “two Vice-presidents of the Republic” by Item 1 of Amendment LXXXIII:*

**“Two Vice-Presidents of the Republic shall assist the President of the Republic in performing tasks entrusted to them by the President of the Republic.**

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

*Paragraph 3 of Article 80 has been substituted by Item 3 of Amendment XL, reading as follows:*

**“The President of the Republic shall decide which of the vice-presidents of the Republic shall replace him in case he is temporary prevented from performing his duties.”<sup>6</sup>**

## **Article 81.**

When the National Assembly, due to a State of emergency, is not able to convene, the President of the Republic shall, upon obtaining the opinion of the Government, establish the

<sup>5</sup> Item 1 of Amendment XL to Article 80 of the Constitution of Republika Srpska has been amended by Amendment CIV.

<sup>6</sup> Note by OHR consolidator: Item 2 of Am. LXXXIII, reading as follows: “2. In Item 3 of the Amendment XL to the Constitution the words “and Vice-Presidents” shall be deleted.” shall change Am. XL. Such a change in this phrase does not make sense. Obviously, it should read as follows: “2. In Item 5 of the Amendment XL to the Constitution the words “and Vice-President” shall be replaced by the words “and Vice-Presidents” and thus concern Article 83 as amended by Items 4 and 5 of Am. XL, not Article 80.

existence of the State of emergency and order that measures be taken for their remedy, in accordance with the Constitution and law.

*Paragraph 2 of Article 81 has been substituted by Item 2 of Amendment XXXV reading as follows:*

**“If not possible to convene a session of the National Assembly, which is ascertained on the basis of a statement given by the President of the National Assembly, a state of war or imminent threat of war shall be declared by the President of the Republic.**

**If the National Assembly cannot convene during a state of war or imminent threat of war, the President of the Republic shall, at the proposal of the Government or at his own initiative after he has heard the opinion of the President of the National Assembly, pass decrees with the force of law regarding the issues falling under the competence of the National Assembly, and appoint and recall officials which are normally appointed and recalled by the National Assembly.**

**The President of the Republic shall submit these decrees or decisions on the appointment and recall for approval to the National Assembly as soon as it is able to convene.**

*Article 81 has been supplemented with Item 3 of Amendment XXXV, reading as follows:*

**Exceptionally, during a state of war or imminent threat of war, enactments passed by the National Assembly, i.e. enactments by the President of the Republic in case the National Assembly could not convene, may, while such State is in effect, suspend certain provisions of the Constitution relating to the adoption of laws, other regulations and general enactments, to the undertaking of measures by republican bodies, and to certain human freedoms and rights, except for the freedoms and rights laid down in Articles 10, 11, 13, 14, 15, 17, 18, 19, 20, 24 and 25 of the Constitution, change the organisation and powers of executive, managing and judicial bodies and their personnel, as well as the territorial organisation in the Republic.”**

#### **Article 82.**

The President of the Republic may request that the Government presents its stance on certain issues of importance for the Republic, convene a session of the Government and put on the agenda issues falling under its competence.

#### **Article 83.**

*Article 83 has been substituted by Items 4 and 5 of Amendment XL and Amendment XCII, reading as follows:*

**“Only one Vice-President of the Republic shall be elected at the first direct elections.**

*In Item 5 of Amendment XL the words “and Vice-President” have been replaced by the words: “and Vice-Presidents” by Item 2 of Am. LXXXIII:<sup>7</sup>*

**The President and Vice-Presidents of the Republic shall be elected for a four-year mandate by the citizens through direct and secret ballot.**

*Paragraph 3 of Article 83 has been deleted by Item 3 and supplemented with Item 4 of Amendment LXXXIII, reading as follows:<sup>8</sup>*

**“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**

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<sup>7</sup> Note by OHR consolidator: The instructions are meant to be this way, but read as follows: In Item 3 of Am. XL the words “and Vice-Presidents” shall be deleted. Cf. also footnote to Article 80.

<sup>8</sup> Note by OHR consolidator: The instruction on how to proceed with Item 4 of Am. LXXXIII was missing. Comment of Sanja Stefanovic: *As I learned from Mr Stevanovic Paragraph 3. Should not exist any more and this Article will be supplemented with item 4 A, LXXXIII. I believe that this is the thing we have to leave to RS legislator to decide.*

be elected candidates from the other two constituent peoples who win the highest number of votes after the elected President of the Republic.”

*Paragraph 4 of Article 83 has been substituted by Items 4 and 5 of Amendment XL and Amendment XCII, reading as follows:*

**“The same person may be elected President or Vice-President of the Republic no more than twice in a row.”**

#### **Article 84.**

When assuming the office, the President of the Republic and the Vice-Presidents of the Republic shall take an oath before the National Assembly.

#### **Article 85.**

In case of an imminent threat of war or state of war, the mandate of the President of the Republic shall be extended as long as such state is in effect, i.e. until conditions are created for the election of the President of the Republic.

*Article 85 has been supplemented with Item 6 of Amendment XL, reading as follows:*

**“Provisions set forth in Articles 85 through 89 of the Constitution, concerning the President of the Republic, shall also apply to the Vice-President of the Republic.”**

#### **Article 86.**

Article 86 has been deleted by Amendment C.

#### **Article 87.**

The term of office of the President of the Republic shall cease before the expiry of the period he was elected for, in case of his resignation or recall.

*Article 87 has been supplemented with Item 6 of Amendment XL, reading as follows:*

**“Provisions set forth in Articles 85 through 89 of the Constitution, concerning the President of the Republic, shall also apply to the Vice-President of the Republic.”**

#### **Article 88.**

The President of the Republic shall be responsible to citizens and they can recall him following the same procedure by which they elected him.

*Article 88 has been supplemented with Item 6 of Amendment XL, reading as follows:*

**“Provisions set forth in Articles 85 through 89 of the Constitution, concerning the President of the Republic, shall also apply to the Vice-President of the Republic.”**

#### **Article 89.**

The procedure for nominating, electing and recalling the President of the Republic shall be regulated by the law.

*Article 89 has been supplemented with Item 6 of Amendment XL, reading as follows:*

**“Provisions set forth in Articles 85 through 89 of the Constitution, concerning the President of the Republic, shall also apply to the Vice-President of the Republic.”**

*Provisions set forth in the Constitution concerning the President of the Republic have been supplemented with Amendment LIII, reading as follows:*

**“The advisory body of the highest constitutional institutions in Republika Srpska shall be the Senate.**

**The Senate shall discuss issues of particular importance for the political, national, economic and cultural development of Republika Srpska, and shall forward its opinion to the highest constitutional institutions concerning the issues falling within their competence.**

**The Senate shall consist of 55 members appointed by the President of the Republic.<sup>9</sup>**

**The Senate members shall enjoy the same immunity as the Assembly deputies.  
Sessions of the Senate shall be convened and chaired by the President of the Republic.  
The Organisation and the mode of operation of the Senate shall be regulated by law.”**

### **3. The Government and the Administration of the Republic**

Article 90.

The Government shall:

1. propose laws, other regulations and general enactments;
2. propose the development plan, urban plan, budget and the annual balance sheet;
3. ensure the implementation and enforce the laws, other regulations and general enactments;
4. pass decrees, decisions and other enactments necessary for the enforcement of law;
5. express its opinion on drafts of laws, other regulations and general enactments submitted to the National Assembly by another proposer;
6. define principles of the internal organisation of the ministries and other administrative bodies and organisations of the Republic, appoint and recall officials at the ministries, other bodies and administrative organisations of the Republic;
7. guide and co-ordinate the work of ministries and other bodies and administrative organisations of the Republic;
8. carry out supervision of the work of the ministries and other bodies and administrative organisations of the Republic, and annul or cancel their enactments which are in contravention of law or some other regulation passed by the Government
9. carry out other tasks in accordance with the Constitution and law.

*Article 90 has been supplemented with Item 1 of Amendment XLI and changed by Amendment LXI, reading as follows:*

**“The Government shall decide on the establishment of the Republic’s missions abroad.”**

**Article 91.**

The Government shall be elected for a term of four years.

A new Government shall be elected each time a new National Assembly is elected.

**Article 92.**

The Government shall consist of the Prime Minister, Deputy Prime Minister and ministers.

*Paragraph 2 of Article 92 has been substituted by Item 2 of Amendment XLI, reading as follows:*

**“A member of the Assembly who has been nominated for the post of Prime Minister, Deputy Prime Minister or Minister cannot take part in deciding on the election of Government, while a member of the Assembly who has been elected to those positions cannot take part in a vote of no confidence to the Government, in a vote on his recall, on a report made by the Government or the ministry he runs.”**

*Article 92 has been supplemented by Amendment LXXXIV, reading as follows:*

**“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.**

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<sup>9</sup> Paragraph referring to the immunity of Senate members has been deleted by Amendment CI.

**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 have two deputies from the ranks of different constituent peoples, to be elected from the ranks of the ministers.”**

#### **Article 93.**

The candidate for the Prime Minister shall present his program to the National Assembly and propose a list of ministers of the Government.

The Government shall be elected if the majority of the total number of deputies of the Assembly have voted for it.

#### **Article 94.**

The Government and its members shall be responsible to the National Assembly.

The National Assembly may vote no confidence to the Government.

The proposal for a no confidence vote to the Government may be submitted by at least 20 representatives.

The Government itself may ask for a vote of confidence at the National Assembly.

The Prime Minister may propose to the National Assembly a dismissal of individual members of the Government.

A decision on the dismissal of the Government or any of its members shall be considered adopted if it has been voted by the majority of the total number of deputies.

The Government and each of its members may submit their resignations to the National Assembly.

The resignation or dismissal of the Prime Minister shall entail the resignation of the entire Government.

A Government which has been voted no confidence, which has resigned or whose mandate has been revoked because of dissolution of the National Assembly, shall remain in office until a new Government is elected.

*Article 94 has been supplemented with Items 3, 4 and 5 of Amendment XLI, reading as follows:*

**“The President of the Republic shall propose a candidate for the Prime Minister within 10 days from the day his resignation was accepted, no confidence voted or the mandate of the previous Government expired due to the dissolution or the shortening of the mandate of the National Assembly. The new Government must be elected within 40 days from the day the candidate for the new Prime Minister was nominated.**

**During the mandate of the Government, the Prime Minister may, based on the opinions of the President of the Republic and the President of the National Assembly, make changes in the composition of the Government, of which he shall inform the National Assembly.**

**If he assesses that there has been a crisis in the work of the Government, the President of the Republic may, at the initiative of at least 20 Assembly representatives and after obtaining the opinion of the President of the National Assembly and the Prime Minister, demand that the Prime Minister resigns. Should the Prime Minister refuse to resign, the President of the Republic may dismiss him.**

**During a state of war or imminent threat of war, the National Assembly may vote no confidence to the Government by the majority of votes at the session attended by the majority of the deputies.”**

#### **Article 95.**

**Article 95 has been deleted by Amendment CII.**

**Article 96.**

The organisation and mode of operation of the Government shall be regulated by law.

**Article 97.**

The affairs of the State administration shall be conducted by the ministries and other administrative bodies of the Republic.

The ministries and other administrative bodies of the Republic shall implement laws and other regulations and general enactments of the National Assembly and Government, as well as enactments by the President of the Republic, shall decide in administrative matters, carry out supervision and other administrative affairs prescribed by law.

The ministries and other administrative bodies of the Republic shall be independent in exercising their competencies prescribed by the Constitution and law.

Certain administrative powers may be entrusted by law to enterprises and other organisations.

*Article 97 has been supplemented by Amendment LXXXV of the Decision of the High Representative No. 150/02<sup>10</sup>, reading as follows:*

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.

**4. The National Bank**

**Article 98.**

*Article 98 has been deleted by Amendment LXXXVI.*

**5. Agency for Payment Operations and Financial Control**

**Article 99.**

*Article 99 has been deleted by Amendment LXXXVI.*

**VI. TERRITORIAL ORGANIZATION**

**Article 100.**

The territorial organisation of the Republic shall be regulated by law.

**Article 101.**

*(Article 101 has been deleted by Amendment XXXII)*

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<sup>10</sup> Replacing Item 1 of Am. LXXXV adopted by the RS NA, reading as follows: “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.”

**Article 102.**

The municipality shall, through its bodies, and in accordance with the law:

1. enact a development program, urban planning, budget and annual balance sheet;
2. regulate and ensure performing of the municipal activities;
3. regulate and ensure the use of urban construction sites and business premises;
4. take care of construction, maintenance and use of local infrastructure, and other public facilities of importance to the municipality;
5. take care of meeting specific needs of citizens in the areas of culture, education, health and social welfare, physical culture, public information, handicrafts, tourist trade and catering services, environment protection and other areas;
6. execute laws, other regulations and general enactments of the Republic whose execution is entrusted to the municipality, provide for the execution of regulations and general enactments of the municipality;
7. establish agencies, organisations and services to meet the needs of the municipality, and regulate their organisation and work;
8. attend to other business as established by the Constitution, the law and the statute of the municipality.

The system of local government shall be regulated by law.

The performance of tasks of local government may be entrusted to the city by law.

*Article 102 has been supplemented by Item 2 of Amendment LXXXV, reading as follows:*

**“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.”**

**Article 103.**

The city and municipality shall be entitled to revenues as established by law, and resources for administering the tasks entrusted to them.

**VII. DEFENCE****Article 104.**

The defence and protection of the territory and constitutional order of Republika Srpska is the right and duty of all citizens.

*The words “sovereignty” and “independence” have been deleted from Paragraph 1 of Article 104 (Amendment LXIII).*

The rights and duties regarding defence shall be set out in a separate law.

**Article 105.**

Republika Srpska shall have its own Army, consisting of standing units and reserve units.

Permanent units shall consist of professional soldiers and soldiers serving the Army.

A separate law shall be passed on the Army of the Republika Srpska.

**Article 106.****Article 106 has been supplemented by Amendment CV**

At war and at peacetime, the Army of Republika Srpska shall be commanded by the President of the Republic, according to the Constitution and law **subject to the provisions on civilian command in Article V.5(a) of the Constitution of Bosnia and Herzegovina.**



The President of the Republic shall nominate, promote and recall the officers of the Army of Republika Srpska in accordance with law, he shall nominate and recall the president, judges and members of the jury of the military courts as well as the Army prosecutors.

**Article 107.**

Military courts and Army prosecutors shall be established by law.  
Military courts shall be independent and shall adjudicate in accordance with the law.

## VIII. CONSTITUTIONALITY AND LEGALITY

**Article 108.**

Laws, statutes, other regulations and general enactments must be in conformity with the Constitution.

Regulations and other general enactments must be in conformity with the law.

**Article 109.**

Laws, other regulations and general enactments shall enter into force not earlier than on the eighth day after the day of their publication, unless, for particularly justified reasons, it is stipulated that they enter into force at an earlier date.

Before entering into effect, laws, other regulations and general enactments of State agencies shall be published in an appropriate official gazette.

**Article 110.**

Laws, other regulations and general enactments may not have retroactive effect.

If so required by public interest established in the procedure of enactment of the law, the law may stipulate that some of its provisions shall have a retroactive effect.

Punishable offences shall be prescribed and punishments for their commission pronounced according to law or other regulation which was in force at the time of the commission of the offence, unless the new law, i.e. regulation, is more favourable for the perpetrator.

**Article 111.**

State agencies and organisations exercising public powers may decide in individual cases on rights and duties of citizens or, apply coercive measures and restrictions only in a procedure prescribed by law, in which everyone is provided with the opportunity to defend his rights and interests and to appeal against the issued act or apply any other legal remedy prescribed by law.

**Article 112.**

In the proceedings before a court or other State agency or organisation which, in exercise of public powers rules on his rights and duties, each person shall be guaranteed the right to use his own language and to familiarise himself with the facts of the proceedings in his language.

**Article 113.**

An appeal may be lodged with a competent body against the individual rulings issued in the first instance by judicial, administrative and other State bodies, as well as by organisations exercising public powers.

Exceptionally, an appeal may be disallowed by law if the right to legal remedy and protection of legality have been secured in some other way.

The legality of final and binding individual acts by which State agencies and organisations exercising public powers decide on rights and duties, shall be decided upon by a court in the administrative dispute proceedings, unless another kind of judicial protection has been provided for the specific matter.

By way of exception, the administrative dispute proceedings may be excluded only by law in specific kinds of administrative matters.

#### **Article 114.**

The Government of the Republic shall have the right to suspend the implementation of a regulation, a general or individual enactment, which it considers to be unconstitutional or unlawful, until the Constitutional Court has reached a decision.

The Republic shall have the right and duty to ensure the enforcement of laws and other regulations directly through the agencies of the Republic, if the agencies and organisations of the Republic do not enforce them themselves.

### **IX. THE CONSTITUTIONAL COURT**

#### **Article 115.**

*Paragraph 1 of Article 115 has been amended by Item 1 of Amendment LXXXVIII, reading as follows<sup>11</sup>:*

**“The Constitutional Court shall decide on:**

1.

Conformity of laws, other regulations and general enactments with the Constitution;

**1.a 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. conformity of regulations and general enactments with the law;

3. conflict of jurisdictions between bodies of legislative, executive and judicial branch;

4. *In Item 4 of Paragraph 1 of Article 115 the word “region” has been deleted (Item 3 of Amendment XLIII,).*

5. conflict of jurisdiction between agencies of the Republic, city and municipality;

6. conformity of programmes, statutes and other general enactments of political organisations with the Constitution and the law.

*Article 115 has been supplemented with Items 1 and 2 of Amendment XLII, reading as follows:*

“The Constitutional Court shall monitor events of interest for the achievement of constitutionality and legality, and inform the highest constitutional bodies of the Republic on the status and problems in that area, offering them opinions and proposals for adopting laws and undertaking other measures for the purpose of ensuring constitutionality and legality, as well as the protection of freedoms and rights of citizens, organisations and communities.

**The Constitutional Court may assess the constitutionality of laws and both the constitutionality and legality of regulations and general enactments, which have ceased to be effective, provided that not more than one year has elapsed from the date of the cessation of validity to the date of initiating the proceedings.”**

*Article 115 has been supplemented with Amendment CIII, reading as follows:*

The Constitutional Court shall decide questions concerning immunity, which arise under legislation regulating the same in the Republika Srpska.

<sup>11</sup> Note by OHR consolidator: It remains unclear in which way Item 1 of Am. LXXXVIII, reading as follows: “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,“ shall be added to Article 115.

#### **Article 116.**

The Constitutional Court shall have seven judges.

Constitutional Court judges shall be elected for the period of eight years, and may not be re-elected.

The same person may not be elected twice to the office of the president of the Constitutional Court.

*Article 116 has been supplemented with Item 2 of Amendment LXXXVIII, reading as follows:*

**“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.”**

#### **Article 117.**

A judge of the Constitutional Court may not hold another public function.

*Paragraph 2 of Article 117 has been substituted by Item 5 of Amendment XLII, reading as follows:*

**“The President and judges of the Constitutional Court shall enjoy the same immunity as the Assembly deputies. The Constitutional Court shall decide on immunity.”**

#### **Article 118.**

A judge of the Constitutional Court shall terminate his office at his own request.

*Paragraph 2 of Article 118 has been substituted by Item 6 of Amendment XLII, which reads:*

**“A judge of the Constitutional Court shall be relieved of his duty if he is convicted of a crime which makes him unworthy of performing his function, if he becomes permanently incapable of performing the function, as well as due to other reasons prescribed by the Constitution and law.”**

#### **Article 119.**

The decisions of the Constitutional Court are universally binding and enforceable **in the territory of the Republic.**

*The words “in the territory of the Republic” have been added after the word “enforceable” in Paragraph 1 of Article 119 (Amendment LXIV).*

The execution of the decisions of the Constitutional Court shall be ensured by the Government.

#### **Article 120.**

The proceedings before the Constitutional Court, the legal effect of its decisions and other issues regarding its organisation and work shall be regulated by law.

*Article 120 has been supplemented with Items 3 and 4 of Amendment XLII, reading as follows:*

**“Anyone can give an initiative to start the proceedings for assessing the constitutionality and legality.**

**Proceedings with the Constitutional Court may, without restriction, be initiated by the President of the Republic, by the National Assembly and by the Government, while other bodies, organisations and communities may do so under conditions prescribed by law.**

**The Constitutional Court may initiate the proceedings itself to assess the constitutionality and legality.**

**When the Constitutional Court assesses that a law is not in accordance with the Constitution, or that another regulation or general enactment is not in accordance with the Constitution or law, such law, regulation or general enactment shall cease to be effective on the day of the publication of the Constitutional Court's decision."**

## **X. COURTS AND PUBLIC PROSECUTOR'S OFFICES**

### **Article 121.**

Judicial power shall be exercised by courts.

The courts shall be autonomous and independent and shall adjudicate on the basis of the Constitution and laws.

The courts shall protect human rights and freedoms, the established rights and interests of legal subjects and legality.

#### **Article 121.a**

**Article 121.a. has been added by Amendment XCIV, reading as follows:**

**"The Judiciary is autonomous and independent from the executive and legislative powers of Republika Srpska.**

**The High Judicial and Prosecutorial Council of Republika Srpska shall ensure the autonomy, independence, impartiality, competence and efficiency of the Republika Srpska judiciary and of the prosecutorial service. The responsibilities of the High Judicial Council shall include, but shall not be limited to, the appointment, discipline and removal of judges, apart from the Judges of the Constitutional Court of the Republika Srpska, and shall also include public prosecutors and deputy public prosecutors in the Republika Srpska. The composition and additional responsibilities of the High Judicial and Prosecutorial Council shall be defined by law."**

### **Article 122.**

The establishment and jurisdiction of courts, as well as the procedure before the courts, shall be specified by law.

### **Article 123.**

The Supreme Court of the Republic, as the highest court in the Republic, shall ensure a unified enforcement of law.

### **Article 124.**

Court hearings shall be public.

The public may be excluded from a court hearing in the cases specified by the law for the purpose of protecting special interests of the Republic, preserving a secret, protecting moral and interest of juveniles, private life of the parties to the proceedings and protecting other public interest.

### **Article 125.**

The court shall sit in panels.

Matters to be adjudicated by a single judge shall be specified by law.

Lay judges shall also take part in the trial, in a manner prescribed by the law.

It may be prescribed by law that in specific courts and in particular matters only judges shall participate in adjudication.

#### **Article 126.**

*In Article 126 the words: "in criminal or civil procedure" have been inserted and the words "National Assembly" have been replaced by the words "High Judicial and Prosecutorial Council" by Amendment XCV.*

No one participating in the trial shall be held responsible in criminal or civil procedure for an opinion expressed in the passing of a court decision, nor can anyone be detained in proceedings instituted because of a criminal offence committed in performing the judicial function without the approval of the High Judicial and Prosecutorial Council.

#### **Article 127.**

*Article 127 has been substituted by Amendment XCVI, reading as follows:*

**"Judges, apart from reserve judges shall, save as hereinafter set out, be appointed for life subject to resignation, retirement or removal for cause by the High Judicial and Prosecutorial Council in accordance with the law. Judges may likewise exceptionally cease to hold office pursuant to a selection process following court restructuring during the transitional period to be defined in the Law establishing the High Judicial and Prosecutorial Council. The mandatory age for judges shall be determined by Law. Terms of service, including immunity of judges shall be determined by law. The salary and other emoluments of a judge may not be diminished during the period of his/her judicial office except as a result of disciplinary proceedings in accordance with law.**

**A judge may not hold a public office or pursue any form of gainful employment defined by law as incompatible with the judicial function."**

#### **Article 128.**

Public prosecutor's office is an independent State body which prosecutes the perpetrators of criminal offences and other criminal acts which are punishable under the law, and applies legal remedies in order to protect constitutionality and legality.

The establishment, organisation and jurisdiction of a public prosecutor's office shall be regulated by the law.

A public prosecutor's office performs its function on the basis of the Constitution and law.

#### **Article 129.**

*Article 129 has been substituted by Amendment XCVII, reading as follows:*

**"Public Prosecutors and Deputy Public Prosecutors shall be appointed for such period as may be determined by Law subject to resignation, retirement or removal for cause by the High Judicial and Prosecutorial Council in accordance with the law. Public Prosecutors and Deputy Public Prosecutors may exceptionally cease to hold office pursuant to a selection process following restructuring of Public Prosecutor's Offices in the transitional period to be defined in the Law establishing the High Judicial and Prosecutorial Council. The mandatory age for public prosecutors and deputy public prosecutors shall be defined by Law. Terms of service, including immunity of public prosecutors and deputy public prosecutors shall be determined by law.**

**A Public Prosecutor or a deputy public prosecutor may not hold any office or pursue any form of gainful employment defined by law as incompatible with his function."**

#### **Article 130.**

*Article 130 has been substituted by Amendment XCVIII, reading as follows:*

“Judges, including the Court Presidents, public prosecutors and deputy public prosecutors are selected, appointed, disciplined and removed by the High Judicial Council in accordance with the law.”

**Article 131.**

Law practice shall be an autonomous and independent activity and service which renders public assistance.

The organisation and work of law practice shall be regulated by the law.

## **XI. AMENDING THE CONSTITUTION**

**Article 132.**

A proposal to amend the Constitution of the Republic may be submitted by the president of the Republic, the Government, and at least 30 deputies of the National Assembly.

A proposal to amend the Constitution shall be decided upon by the National Assembly by the majority of votes of the deputies.

**Article 133.**

Draft Amendment to the Constitution shall be set forth by the National Assembly by the majority of votes of the total number of deputies.

Draft Amendment to the Constitution shall be open for a public debate.

**Article 134.**

After a public debate on the Draft Amendment to the Constitution has been held, the National Assembly Commission for Constitutional Issues shall set forth a Proposal Amendment to the Constitution.

**Article 135.**

*Paragraphs 1 and 2 of Article 135 have been replaced by Amendment LXXXIX, reading as follows*

**“The National Assembly and the Council of Peoples shall decide on the proposal of the act on changes to the Constitution.**

**A change of the Constitution shall be adopted should at least two thirds of the total number of the assembly deputies and a majority of the members of the Council of Peoples from each constituent people and Others vote in favor of it.”**

**Article 136.**

The Amendment to the Constitution shall be promulgated by the National Assembly.

**Article 137.**

The Constitution of the Republic may be amended by constitutional amendments.

In case of a state of war or an imminent threat of war, the National Assembly may draft a proposal to amend the Constitution and adopt constitutional amendments at the same session (without holding a public debate).

## **XII. FINAL PROVISIONS**

### **Article 138.**

*Article 138 has been substituted by Amendment LI, supplemented by Amendment LXV, deleted by Amendment XC and re-introduced by Amendment XCI, reading as follows:*

- 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.”**

### **Article 139.**

This Constitution shall enter into force on the day of its promulgation.

### **Article 140.**

A constitutional law shall be enacted for the enforcement of this Constitution.