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COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT
(COMMISSION DE VENISE)

A V I S
SUR LES NOUVEAUX AMENDEMENTS*
À LA CONSTITUTION DE LA FÉDÉRATION
DE BOSNIE-HERZÉGOVINE
EN MATIÈRE DE POUVOIRS LOCAUX

Adopté par la Commission
lors de sa 60^e Session plénière
(Venise, 8-9 octobre 2004)

sur la base des observations de
M. J.-C. SCHOLSEM (membre, Belgique)

* Lors de sa 58^e Session plénière en mars 2004 la Commission a adopté un avis sur une version précédente des amendements (voir doc. CDL-AD(2004)014).

1. Par lettre du 30 juillet 2004, les Présidents de la Commission constitutionnelle et de la Commission pour l'autonomie locale de la Chambre des Représentants du Parlement de la Fédération de Bosnie-Herzégovine ont soumis pour avis, notamment au Conseil de l'Europe, divers amendements constitutionnels ainsi qu'un projet de loi sur les principes de l'autonomie locale dans la Fédération de Bosnie-Herzégovine.

La dite demande d'avis a été transmise à la Commission de Venise.

2. Les projets de textes -constitutionnels et légaux- forment un ensemble. Les amendements constitutionnels ont trait exclusivement à divers aspects de l'autonomie locale. Ils servent de fondement au projet de loi qui est déposé en parallèle.

Seuls les amendements constitutionnels seront directement commentés dans le présent avis, bien que leur portée soit souvent éclairée par le projet de loi qui les met en œuvre.

3. Les amendements numérotés 1 à 5 reprennent très largement la substance des amendements déjà commentés par la Commission de Venise et numérotés à l'époque CIII (actuel amendement 1), CIV (actuel amendement 2), CV (actuel amendement 3), CVI (actuel amendement 4), CVII (actuel amendement 5).

En ce qui concerne ces amendements, il n'existe -sous réserve de ce qui sera dit plus loin- entre les projets de texte actuels et ceux déjà soumis antérieurement pour avis à la Commission de Venise que des différences mineures de forme (qui peuvent d'ailleurs être dues à la traduction). On peut donc se référer sur ces points à l'avis adopté par la Commission lors de sa 58^{ème} réunion plénière des 12-13 mars 2004 et à son annexe (CDL-AD (2004)-014).

4. L'importance capitale de ces amendements en ce qui concerne la répartition générale et l'équilibre des compétences entre Fédération, cantons et municipalités a déjà été soulignée par la Commission de Venise (voir points 3 à 5 de l'avis CDL-AD (2004)-014).

La Commission a notamment manifesté son souci d'éviter toute confusion ou chevauchement entre les compétences des cantons et celles des municipalités.

De ce point de vue, le texte de l'amendement 3 apporte une clarification bienvenue en précisant que les compétences des municipalités ne peuvent être limitées que par une loi fédérale (et non simplement, comme dans la version antérieure, par la loi, ce qui était ambigu).

De même, l'amendement 4 c) (ancien amendement CVI c)) relatif aux ressources financières des municipalités tient compte des observations précédentes de la Commission de Venise (Avis CDL-AD (2004)-014, point 6) en précisant qu'une loi fédérale doit intervenir pour organiser le système de financement des entités locales et que cette loi doit respecter le principe de solidarité.

5. L'amendement 6 se donne pour objet de remodeler en profondeur l'article VI-A-(I) relatif aux villes (*city authorities*). Les compétences de ces *city authorities*, qui étaient limitées à 5 points (art. VI-A-(1)) passent à 15 chefs de compétence (art. VI-A-(2)) a) à o)) en projet). Cette liste de compétences très élargie et par ailleurs passablement complexe doit être mise en parallèle avec celle des compétences dévolues aux municipalités (art. VI – 1 en projet – voir amendement 3). La comparaison de ces deux listes fait ressortir la possibilité de nombreuses interférences potentielles, notamment en matière d'aménagement du territoire, d'enseignement, de culture, de

tourisme, etc. La ligne de partage entre les compétences des *municipalities* et des *cities* nous semble devoir être précisée, en vue d'éviter de nombreux conflits entre ces entités.

De manière assez étonnante l'amendement 6 semble envisager la possibilité de constituer une *city* à partir du territoire d'une seule municipalité (for the area of *one* or more municipalities that make a single urban...). Il s'agit peut-être là d'une erreur matérielle. Nous ne disposons d'aucun exposé des motifs ou document similaire. Les *cities* semblent avoir été considérées jusqu'à présent comme des organes de superposition (for the areas of *two* or more municipalities...). Si municipalité et *city* coïncident territorialement, on peut se poser la question de savoir s'il ne convient pas de fusionner purement et simplement leurs organes.

A P P E N D I X**NEW AMENDMENTS (AS OF 30/7/04)
TO THE CONSTITUTION OF THE FEDERATION
OF BOSNIA AND HERZEGOVINA
CONCERNING LOCAL SELF-GOVERNMENT**

Pursuant to Article VIII.1. of the Constitution of the Federation of Bosnia and Herzegovina, and having been authorized to propose amendments to the Constitution of the Federation of Bosnia and Herzegovina, hereby we propose to the Parliament of the Federation BiH the following amendments to the Constitution of the Federation BiH, to be adopted in accordance with the prescribed procedure:

AMENDMENT 1

After item “h)” in Article III. 1., a new item “i)” shall be added and shall read:

“i) establishment of principles of a local self-governance system”

AMENDMENT 2

In Article III.4., paragraph 1., the first sentence shall be amended to read as follows:

“Cantons shall be specifically responsible for:”

At the end of this Article, a new sentence shall be added and shall read:

“Cantons shall also have other competencies not expressly granted to the Federation authorities, or which are not expressly granted to municipal or city authorities by this Constitution and/or Federation law.”

AMENDMENT 3

After the title of the Chapter VI. Municipal Authorities, a new Article 1 shall be added and shall read:

Article 1

Within a law, municipalities shall be responsible to regulate and perform public operations of interest for a local population. They shall be specifically responsible for:

1. Spatial planning, land development and construction
2. Management and disposal of local land
3. Organization of utility and other service activities
4. Establishment and work of institutions for pre-school and primary education
5. Management of public goods and goods in a general use
6. Management of tourist resources
7. Land survey and real estate cadastre
8. Creating conditions in order to meet the needs of the population in the field of culture, physical culture and sport
9. Protection of environment

Municipalities may transfer their competencies to a city or canton. Competencies granted to municipalities shall not be denied or limited by the Federation or cantonal authorities, except in the cases prescribed by the Federation law.

AMENDMENT 4

Current Article 1 shall become Article 2, and shall be amended to read as follows:

In performing their responsibilities, municipalities shall:

- a) undertake necessary measures in order to ensure the protection of human rights and fundamental freedoms;
- b) be entitled to associate with other local authorities in order to perform operations of common interest, as well as to belong to domestic and international associations of local authorities, and shall be entitled to cooperate with appropriate local authorities of other countries;
- c) be entitled to sources of funding that will be appropriate for their competencies, and a part of these funds shall come from local taxes and fees, for which municipalities shall be entitled to determine rates. The Federation law shall regulate the system for financing the local self-governance. If higher levels of authorities transfer competencies, they shall be obliged to also transfer sources of financing for the performance of those operations. In regulating these issues, a principle of solidarity shall be respected;
- d) be entitled to be consulted in the procedure of passing regulations, which regulate issues under a competence of a municipality and/or its financing, as well as be entitled to adjust their implementation to local conditions;
- e) constituent peoples and those belonging to Others shall be proportionally represented in the municipal authorities. Such representation shall reflect a census from 1991 until the full implementation of Annex 7, in accordance with Article IX.12 of this Constitution.

Articles 2,3,4,5,6, and 7 shall become articles 3,4,5,6,7 and 8.

AMENDMENT 5

In Article VI.2, after paragraph (1), new paragraphs (2) and (3) shall be added and shall read as follows:

- “(2) A municipality shall be a unit of local government and self-governance.
- (3) The Federation Law on Local Self-Governance shall be adopted in accordance with the European Charter on Local Self-governance.

Current paragraph (2) shall be deleted.

AMENDMENT 6

In Article VI.A.1, paragraph (1) shall be amended to read:

- (1) “For the area of one or more municipalities that make a single urban, cultural, economic and administrative territorial entity linked with daily needs of citizens, a city shall be formed as a unit of local government and self-governance in accordance with the Federation law.
- (2) Responsibilities of a city shall comprise:

- a) issuance of regulations on the use of local land within the framework of zoning as stipulated by the cantonal law,
- b) issuance of regulations on the improvement of local business operations and charity activities,
- c) issuance of regulations on local electricity generating plants and ensuring their accessibility,
- d) conducting social policy and establishment of social welfare services and in particular services dealing with care of elderly, sickly and poor persons,
- e) construction and maintenance of joint infrastructure,
- f) managing the city public property and property used for fulfilling public needs (streets, squares, parks, playgrounds etc.)
- g) hygiene and local public health,
- h) creation of material and other conditions for the development of culture, educational, health, social, sports and other needs of local population,
- i) establishment of municipal tourism policy and taking care of tourist resources of the city,
- j) founding public institutions and other legal persons (secondary and primary education schools, homes for social welfare and care as well as cultural, utility and other institutions of interest to and for the needs of population,
- k) finances and tax policy, in line with the Federation and cantonal laws,
- l) establishment of urbanism policy and housing policy of importance for the city and its development,
- m) physical and urban development planning – issuance of urban development and regulation plans;
- n) public transportation,
- o) other competencies entrusted to the city by the canton i.e. transferred by the municipalities.

After paragraph (2), a new paragraph (3) shall be added and shall read:

- (3) In performing their responsibilities, cities shall:
 - a) undertake necessary measures in order to ensure the protection of human rights and fundamental freedoms;
 - b) be entitled to associate with other local authorities in order to perform operations of common interest, as well as to be a member of domestic and international associations of local authorities, and shall be entitled to cooperate with appropriate local authorities of other countries
 - c) be entitled to sources of funding that will be appropriate for their competencies, and a part of these funds shall come from local taxes and fees, for which cities shall be entitled to determine rates. If higher levels of authorities transfer competencies, they shall be obliged to also transfer sources of financing for the performance of such operations.
 - d) Be entitled to be consulted in the procedure of passing regulations, which regulate issues under a competence of cities and/or its financing, as well as be entitled to adjust their implementation to local conditions.
 - e) Constituent peoples and those belonging to others shall be proportionally represented in the municipal authorities. Such representation shall reflect a census from 1991 until the full implementation of Annex 7, in accordance with Article IX.12 of this Constitution.

In the same Article, paragraph (3) shall become paragraph (4) and shall be amended to read as follows:

“(4) A City shall have a City Council and a Mayor.

Number of councillors, election procedure, as well as duration of mandate, shall be regulated by the Statute.

Unless otherwise prescribed by the Constitution, City councillors and a Mayor shall be elected by voter in direct and secret elections in the whole area of the city in the manner prescribed by the law.

In paragraph (4), which shall become paragraph (5), provision under b. shall be deleted.

Paragraphs (5) and (6) shall become paragraphs (6) and (7).

AMENDMENT CX

Article VI.B.1. shall change and read as follows:

“(1) In the Sarajevo Canton the City of Sarajevo shall be established as a unit of local government and self-governance, in accordance with the Federal Law.

The area of the City of Sarajevo shall compose of the territory of Stari Grad, Centar, Novo Sarajevo and Novi Grad.

(3) The composition and the manner of decision making of the bodies of the City of Sarajevo shall reflect the multiethnic composition and multicultural particularity of Sarajevo as the Capital of the Federation of Bosnia and Herzegovina. Constituent people and members of Others shall be proportionally represented in municipal bodies of authority. Such representation shall reflect the 1991 Census until the full implementation of the Annex 7. in accordance with Article IX.12. of this Constitution.

(4) The competencies, organizational structure, composition and the manner of decision making of the bodies of the City of Sarajevo shall be defined by the Federation Law, in accordance with this Consitution and Protocol on organization of Sarajevo.

(5) This amendment shall replace Amendment XXVI to the Constitution of the Federation BiH in its entirety.”