

Decision Amending the Constitution of the Federation of Bosnia and Herzegovina

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

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

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

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

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

Recalling that the High Representative adopted a Decision on 19 April 2002 (Decision no. 149/02 Official Gazette of the Federation of Bosnia and Herzegovina no. 16/02 of 28 April 2002) amending the Constitution of the Federation of Bosnia and Herzegovina;

Convinced that there is a need for an urgent harmonization of the provisions of the Federation Constitution necessary for the formation of new Governments following the 5 October 2002 elections in accordance with the four partial Decisions of the Constitutional Court of Bosnia and Herzegovina in case no. 5/98;

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

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

DECISION

Amending the Constitution of the Federation of Bosnia and Herzegovina

The Amendments set out hereunder form an integral part of this Decision.

Such amendments shall have precedence over any inconsistent provisions of Cantonal Constitutions, laws,

regulations and acts. No further normative act is required to ensure the legal effect of such amendments in the said Cantons, the Governments of which nevertheless remain under the obligation to harmonize the Constitutions of the same with the Constitution of the Federation of Bosnia and Herzegovina.

This Decision and the amendments integral thereto shall enter into force forthwith and shall be published without delay in the Official Gazette of the Federation of Bosnia and Herzegovina.

Sarajevo, 6 October 2002

Paddy Ashdown

High Representative

AMENDMENTS TO THE CONSTITUTION OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

LXVIII - LXXXVII

AMENDMENT LXVIII

In Article II.B.3.8. paragraph 1, the words "Deputy Prime Minister" shall be changed to "Deputy Prime Ministers" and the words "to each Cantonal President" shall be deleted.

AMENDMENT LXIX

In Article IV.A.7.20, formerly IV.A.5.20 prior to amendments XXXVII and XXXVIII, the word "Vice-President" in paragraph 1, item a) shall be changed to "two Vice-Presidents".

In Article IV.A.7.20, formerly IV.A.5.20 prior to amendments XXXVII and XXXVIII, item b) the word "Vice-President" shall be changed to "one of the Vice-Presidents."

AMENDMENT LXX

In Article IV.B.1.3, as amended by amendment XLIII, in paragraphs 1 and 2, the word "Vice-President" shall be changed to "a Vice-President".

AMENDMENT LXXI

In Article IV.B.2.5, paragraph 3, formerly IV.B.2.5 paragraph 2 prior to amendment XLV, the words "and Deputy Ministers" shall be deleted.

AMENDMENT LXXII

In Article IV.B.3.7, the word "Vice-President" in item b) shall be replaced with "Vice-Presidents".

In Article IV.B.3.7, the words "Deputy Prime Minister" in item e) shall be replaced with the words "Deputy Prime Ministers".

Article IV.B.3.7, item g) shall be deleted.

AMENDMENT LXXIII

In Article IV.C.3.10, paragraph 2, items b) and d), the words "of the Deputy Prime Minister" shall be deleted.

In Article IV.C.3.10, paragraph 2, item b), the words “Cantonal President concerned” shall be replaced with the words “canton concerned”.

In Article IV.C.3.10, paragraph 2, item d), the words “or of the Cantonal President concerned” shall be replaced with the words “of the canton concerned.”

AMENDMENT LXXIV

After Article IV.D.1, which was added by amended by XLVIX, a new Article IV.D.1.a shall be added, which shall read as follows:

“Following the election of the Legislature of the Federation and appointment of the Prime-Minister, the Speaker of the House of Representatives, the Speaker of the House of Peoples, the President of the Constitutional Court, the President of the Supreme Court and the Prosecutor of the Federation of Bosnia and Herzegovina shall be chosen in accordance with the distribution of functions provided in Article IV.D.1.”

AMENDMENT LXXV

In Article V.1.1, a new item c) shall be added, which shall read as follows:

“ensure that constituent peoples and members of the group of Others shall be proportionally represented in Ministries of the Cantons. Such proportionate representation shall follow the 1991 census until Annex 7 is fully implemented.”

AMENDMENT LXXVI

In Article V.1.3, the words “with a Bosniac-majority or a Croat-majority population” shall be deleted.

AMENDMENT LXXVII

In Article V.2.5.1, there shall be a full stop after the word “population”, and the words “but no fewer than thirty and no more than fifty” shall be deleted.

AMENDMENT LXXVIII

In Article V.2.6, items b) and d) shall be deleted.

AMENDMENT LXXIX

In Article V.2.7, paragraph 1 shall be deleted and the following paragraphs shall be inserted:

“ (1)Each Cantonal Legislature shall, by a majority vote, adopt rules of procedure.

(2) A caucus of a constituent people shall be established, provided there is at least one delegate of such constituent people in the Cantonal Legislature.

(3) Each caucus shall nominate one candidate from among its members for the post of Chairman or Vice-Chairman, who must be confirmed by the Cantonal Legislature.

(4) The Cantonal Legislature shall confirm the candidates in accordance with its Rules of Procedure. In the event that a constituent people is not represented in the Legislature, one of the positions of Vice-Chairman shall remain vacant.

(5) The three candidates confirmed by the Cantonal Assembly shall decide among themselves who shall occupy the post of Chairman.”

Existing paragraphs 2 through 5 shall become 6 through 9, respectively.

AMENDMENT LXXX

After Article V.2.7, a new title and Articles V.2.7.a and b shall be added, to read as follows:

“Vital interest protection mechanism

Article V.2.7a

- 1) Vital interests of constituent peoples to be protected in the Cantons shall be those defined in Article IV.5.17.a of this Constitution. The caucuses referred to in Article IV.5.17.a of this Constitution shall, for the purpose of the Cantons, be the caucuses established in accordance with Article V.2.7., paragraph 2 of this Constitution.
- 2) If more than one Chairman or Vice-Chairman of a Cantonal Legislature claims that a law comes within the list of vital interests as defined in the list of Article IV.5.17.a of this Constitution, adoption of such law shall require:
 - a majority vote within each caucus of the constituent peoples represented in the given Cantonal Legislature.
- 3) The Chairman and Vice-Chairmen of the Cantonal Legislature must decide, within one week, whether a law, regulation or act comes within the list referred to in Paragraph 2 of this Article.
- 4) If only one Chairman or Vice-Chairman claims that a law, regulation or act falls within the list of vital interests, a two-thirds majority of the respective caucus of one of the constituent peoples of the given Cantonal Legislature may declare the issue concerned to be an item within the list of vital interests.”

Article V.2.7b

- 1) In case atwo-thirds majority of one of the caucuses of the constituent peoples in the Cantonal Legislature decides that a law, regulation or act affects a vital national interest, adoption of such law, regulation or act shall require a majority vote within each caucus of constituent peoples represented in the Cantonal Legislature.
- 2) If the majority referred to in Paragraph 1 of this Article is not reached, the issue shall be referred to the Constitutional Court of the Federation of Bosnia and Herzegovina, which shall take a final decision whether the law, regulation or act in question relates to a vital interest of a constituent people.
- 3) In such a case as described in this Article, the Constitutional Court of the Federation shall proceed in the manner provided for in Article IV.6.18.a of this Constitution.
- 4) If the Court decides in favour of a vital interest, the law, regulation or act shall fail and the document shall be returned to the proponent for a new procedure. In that event, the proponent may not re-submit the original text of the law, regulation or act.
- 5) In the event that the Constitutional Court decides that no vital interest is involved, the law, regulation or act is deemed to be adopted / shall be adopted by simple majority.

AMENDMENT LXXXI

Article V.3.8 shall be amended by deleting the present text and replacing the same so as to read as follows:

“(1) Constituent peoples and members of the group of Others shall be proportionately represented in the Government. Such proportionate representation shall follow the 1991 census until Annex 7 is fully implemented, in accordance with Article IX.11.a of this Constitution”.

(2) A Cantonal Prime Minister candidate shall be nominated by the Chairman of the Cantonal Legislature in consultation with the Vice-Chairmen. The Prime Minister-candidate shall propose Ministers. There shall be no Deputy Ministers.

(3) Ministers, together with the Prime Minister, constitute the Cantonal Government. Approval of the Cantonal Government by the Cantonal Legislature shall be by majority vote.

(4) Notwithstanding paragraph 3 of this Article, in cantons where two or more constituent peoples each constitute greater than 30 percent of the cantonal population according to the last census, the Government shall be approved by the Cantonal Legislature by a two-thirds majority.

(5) The Government shall take office after approval by the Cantonal Legislature.

AMENDMENT LXXXII

After Article V.3.8, a new Article V.3.8.a shall be added, which shall read as follows:

“Ministers shall be responsible to the Prime Minister and to the Cantonal Legislature. The Prime Minister shall also be responsible to the Cantonal Legislature.

Ministers shall have ultimate responsibility for the work of their respective Ministries.

The Government shall resign if, at any time, a vote of no confidence is passed by the Cantonal Legislature.”

AMENDMENT LXXXIII

In Article V.3.9.d, the following words shall be deleted: “the investigation and prosecution of crimes against Cantonal Law, as well as”

The following language shall be added after item e) of Article V.3.9:

“ f) All decisions taken by the Government shall be by simple majority of those present and voting.”

AMENDMENT LXXXIV

In Article V.4.11, as amended by amendment LXII a new paragraph 4 shall be added after paragraph 3, which shall read as follows:

“4) Constituent peoples and Others shall be proportionately represented in cantonal and municipal courts. Such representation shall follow the 1991 census until Annex 7 is fully implemented, in accordance with Article IX.11. of this Constitution.”

AMENDMENT LXXXV

Article V.5.including Article V.5.12 shall be deleted.

AMENDMENT LXXXVI

Article VI.1 shall be amended by the addition of a new item c), which shall read as follows:

“Constituent peoples and Others shall be proportionately represented in municipal authorities. Such representation shall follow the 1991 census until Annex 7 is fully implemented, in accordance with Article IX.11.a of this Constitution.”

AMENDMENT LXXXVII

In Article VI.A., paragraph 2 shall be deleted.