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HR DECISION AMENDING THE CONSTITUTION OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

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The High Representative's Decision Amending the Constitution of the Federation of Bosnia and Herzegovina

April 19, 2002

No. 149/02

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Further bearing in mind that under Article 1.14 of the Election Law of Bosnia and Herzegovina as amended by my Decision of 18 April 2002 the Election Commission has to give notice of elections no later than 169 days prior to the election date in respect of the first elections to be held under the provisions of the said law;

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

Stressing the importance of the fact that the House of Peoples of the Federation of Bosnia and Herzegovina has adopted amendments to the Constitution of the Federation of Bosnia and Herzegovina consistent with the four partial Decisions of the Constitutional Court of Bosnia and Herzegovina in case no. 5/98 and in particular respecting in full the provisions of the 27 March 2002 Agreement;

Regretting that the House of Representatives of the Federation of Bosnia and Herzegovina has on the same day failed to adopt the same;

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 Constitution of the Federation of Bosnia and Herzegovina shall be amended as follows:

AMENDMENT XXVII

Bosniacs, Croats and Serbs as constituent peoples, along with Others, and citizens of the Federation of Bosnia and Herzegovina, which is a constitutive part of the sovereign state of Bosnia and Herzegovina, determined to ensure full national equality, democratic relations and the highest standards of human rights and freedoms, hereby pass the Constitution of the Federation of Bosnia and Herzegovina.

This Amendment shall replace the last line of the Preamble of the Constitution of the Federation of BiH, as amended by Amendment II to the Constitution of the Federation of BiH.

AMENDMENT XXVIII

(1) The Federation of Bosnia and Herzegovina is one of the two entities composing the State of Bosnia and Herzegovina, and has all powers, competence and responsibilities which do not, according to the Constitution of Bosnia and Herzegovina, fall within the exclusive competence of the institutions of Bosnia and Herzegovina.

(2) Bosniacs, Croats and Serbs as constituent peoples, along with Others, and citizens of the Federation of BiH, shall equally organise the Federation of Bosnia and Herzegovina, defined in Annex II to the General Framework Agreement for Peace in Bosnia and Herzegovina.

This Amendment shall replace Article I.1 of the Constitution of the Federation of BiH, as amended by Amendment III to the Constitution of the Federation of BiH.

AMENDMENT XXIX

(1) The official languages of the Federation of Bosnia and Herzegovina shall be: Bosnian language, Croat language and Serb language. The official scripts shall be Latin and Cyrillic.

(2) Other languages may be used as a means of communication and instruction.

This Amendment shall replace Article I.6 of the Constitution of the Federation of Bosnia and Herzegovina.

AMENDMENT XXX

The Ombudsmen of the Federation of Bosnia and Herzegovina

(1) There shall be three Ombudsmen appointed by the Federation Parliament in accordance with Federation law. One Ombudsman shall be appointed from among each of the constituent peoples.

This Amendment shall replace the heading under II.B. and Article II.B.1.1. of the Constitution of the Federation of Bosnia and Herzegovina.

AMENDMENT XXXI

A. The Legislature

a) The legislative authority in the Federation of Bosnia and Herzegovina shall be exercised by the House of Representatives and the House of Peoples.

This Amendment shall be an addition to Article IV.A. of the Constitution of the Federation of BiH.

AMENDMENT XXXII

(1) A minimum number of 4 representatives of one constituent people shall be represented in the House of Representatives.

(2) The House of Representatives shall consist of ninety-eight delegates.

This Amendment shall replace Article IV.A.1.1. of the Constitution of the Federation of BiH.

AMENDMENT XXXIII **Composition of the House of Peoples and Selection of Members**

(1) The House of Peoples of the Federation Parliament shall be composed on a parity basis so that each constituent people shall have the same number of representatives.

(2) The House of Peoples shall be composed of 58 delegates; 17 delegates from among each of the constituent peoples and 7 delegates from among the Others.

(3) Others have the right to participate equally in the majority voting procedure.

This Amendment shall amend Article IV.A.2.6 of the Constitution of the Federation of BiH.

AMENDMENT XXXIV

(1) Delegates to the House of Peoples shall be elected by the Cantonal Assemblies from among their representatives in proportion to the ethnic structure of the population.

(2) The number of delegates to the House of Peoples to be elected in each Canton shall be proportional to the population of the Canton, given that the number, structure and manner of election of delegates shall be regulated by law.

(3) In the House of Peoples there shall be at least one Bosniac, one Croat, one Serb from each Canton which has at least one such delegate in its legislative body.

(4) Bosniac delegates, Croat delegates and Serb delegates from each Canton shall be elected by their respective representatives, in accordance with the election results in the legislative body of the Canton, and the election of delegates from among the Others shall be regulated by law.

(5) No delegate of the House of Representatives or councilor of the Municipal Council may serve as a member of the House of Peoples.

This Amendment shall replace Article IV.A.2.8 of the Constitution of the Federation of BiH.

AMENDMENT XXXV

Article IV.A.2.9. of the Constitution of the Federation of Bosnia and Herzegovina shall cease to be in force.

AMENDMENT XXXVI

(1) Each House shall adopt by a majority vote its Rules of Procedure and elect, from among its members, a Speaker (Chairman) and two Deputy Speakers (Deputy Chairmen) of the Chamber, who may not come from among the same constituent people or from among the Others.

This Amendment shall replace Article IV.A.11 of the Constitution of the Federation of Bosnia and Herzegovina.

AMENDMENT XXXVII
Definition of vital interests

Vital national interests of constituent peoples are defined as follows:

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

(2) and other issues treated as of vital national interest if so claimed by 2/3rd of one of the caucuses of the constituent peoples in the House of Peoples.

This Amendment shall introduce a new heading under 5 and a new Article IV.A.17a after Article IV.A.17 of the Constitution of the Federation of BiH.

AMENDMENT XXXVIII
Parliamentary procedure for the protection of vital interests

(1) Laws or other regulations or acts introduced into the House of Representatives of the Federation of Bosnia and Herzegovina shall also be adopted in the House of Peoples of the Federation of Bosnia and Herzegovina.

(2) A Vital Interest Panel shall be established in the Constitutional Court deciding issues of vital interest, in the procedure in accordance with this Constitution. This Panel shall consider all issues of vital interests.

(3) The Vital Interest Panel shall be composed of 7 members, 2 from each constituent people and 1 from the group of Others. The judges shall be elected by the House of Representatives and the House of Peoples.

This Amendment shall introduce new title under 6. and new Article 17b after Article IV.A.5.17a.

AMENDMENT XXXIX
Procedure for Laws related to a vital interest as defined in the list of amendment XXXVII

1. If more than one Chairman or Vice-Chairman of the House of Peoples claims that a law comes within the list of vital national interest as defined in Amendment XXXVII of the Constitution of the Federation of BiH, the law shall be put on the agenda of the HoP as a vital interest issue.
2. If only one Chairman or Vice-Chairman claims that the law falls within this list, of, a two thirds of the respective caucus of the House of Peoples may declare the issue concerned to be of a vital national interest. In this case the procedure followed is the one outlined under Amendment XL.

3. The Chairman and Vice-Chairmen of the House of Peoples have one week within which to decide.
4. If a majority of each caucus represented in the House of Peoples vote in favour of such laws or other regulations or acts these are deemed to be adopted.
5. If the House of Peoples agrees on amendments, the law, regulation or act is resubmitted to the House of Representatives for approval.
6. If no agreement can be reached in the House of Peoples or if approval is not given to proposed amendments, a Joint Commission composed of representatives of the House of Representatives and the House of Peoples shall be established. The Joint Commission shall be composed on a parity basis and shall decide by consensus. The Joint Commission shall seek to achieve the harmonisation of the terms of the law, other regulation or act. If the terms are harmonised, the law shall be deemed to be adopted.
7. If no such harmonisation can be effected the law shall fail and the document shall be returned to the proponent for a new procedure. In that event the proponent may not resubmit the original law, regulation or act.

This Amendment shall replace Article IV.A.4.18 of the Constitution of the Federation of BiH.

AMENDMENT XL

Procedure for Laws related to a vital interest if so decided by 2/3rd of one of the caucuses of the Constituent peoples in the House of Peoples

1. In the event that two thirds of one of the caucuses of the constituent peoples in the House of Peoples decides that a law, regulation or act affects a vital national interest the law shall be considered by the House of Peoples.
2. If a majority of each caucus represented in the House of Peoples vote in favour of such laws or other regulations or acts these are deemed to be adopted.
3. If the House of Peoples agrees on amendments, the law, regulation or act is resubmitted to the House of Representatives for approval.
4. If no harmonisation can be established by the Joint Commission referred to in Amendment XXXIX, the Constitutional Court of the Federation of Bosnia and Herzegovina shall be addressed to decide finally whether the law in question relates to a vital interest of a constituent people.
5. A Vital Interest Panel of the Constitutional Court of the Federation of BiH shall decide by a 2/3rd majority within one week on the admissibility of such cases. It shall decide within one month on the merits of cases held to be admissible.
6. In the event that the procedure under this Amendment is triggered by a 2/3 majority of one of the caucuses, the vote of at least two judges is needed for the Court to decide that it is a vital interest.
7. If the Court decides in favour of a vital national interest, the law, other 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 resubmit the original law, regulation or act.
8. In the event the Court decides that no vital interest is involved, the law is deemed to be adopted/shall be adopted by simple majority.

This Amendment shall introduce new Article IV.A.4.18a after Article IV.A.18 of the Constitution of the Federation of BiH.

AMENDMENT XLI

The President of the Federation shall have two Vice-Presidents who shall come from different constituent peoples. They shall be elected in accordance with this Constitution.

This Amendment shall amend Article IV.B.1 as amended by Amendment XI to the Constitution of the Federation of Bosnia and Herzegovina.

AMENDMENT XLII

“(1) In electing the President and two Vice-presidents of the Federation, at least one third of the delegates of the respective Bosniac, Croat or Serb caucuses in the House of Peoples may nominate the President and two Vice-presidents of the Federation.

(2) The election for the President and two Vice-presidents of the Federation shall require the joint approval of the list of three nominees, by a majority vote in the House of Representatives, and then by a majority vote in the House of Peoples, including the majority of each constituent people’s caucus.

(3) If no list of the nominees receives the required majority in both Houses the procedure shall be repeated.

(4) If one of the Houses rejects the joint nominees’ list in the repeated procedure as well, it shall be considered that the nominated persons have been elected by approval of the list in only one house.

(5) The President and two Vice-presidents of the Federation shall be elected for a four-year term of office.”

This Amendment shall replace Article IV.B.2 of the Constitution of the Federation of BiH.

AMENDMENT XLIII

In Article IV.B.3.(2) the wording after the first sentence until the end of the Article shall be deleted.

AMENDMENT XLIV

Minimum representation in the Government of the Federation of Bosnia and Herzegovina in a transitional period until Annex 7 is fully implemented

(1) The Government of the Federation (Prime Minister/President of the Government and 16 ministers) shall be composed of 8 Bosniac, 5 Croat and 3 Serb ministers. One Other may be nominated by the Prime Minister/President of the Government from the quota of the largest constituent people. The Government shall have a Prime Minister/president of the Government who shall have two Deputy Prime Ministers from different constituent peoples selected from among the Ministers.

(2) After Annex 7 is fully implemented, a minimum of 15% of the members of the Government must come from one constituent people. A minimum of 35% of the members of the Government must come from two constituent peoples. One member of the Government must come from the group of the Others.

This Amendment shall replace Article IV.B.2.4 of the Constitution of the Federation of BiH, which is amended by Amendment XII to the Constitution of the Federation of BiH.

AMENDMENT XLV

Election of the Government

(1) President of the Federation, in agreement with both Vice-presidents of the Federation, shall appoint the Government of the Federation – upon consultation with the Prime Minister or a nominee for that office. The Government shall be elected after its appointment has been confirmed by a majority vote of the House of Representatives of the Federation. Any vacancy shall be filled under the same procedure.

(2) If the House of Representatives does not confirm the appointment of the Government, the President of the Federation in agreement with the Vice-presidents of the Federation, and upon consultation with the Prime Minister or a nominee for that office, shall repeat the procedure referred to in Paragraph 1 of this Article.

This Amendment shall replace Article IV.B.2.5 (1) of the Constitution of the Federation of BiH, new paragraph 2 added.

AMENDMENT XLVI

Article IV.B.6 of the Constitution of the Federation of BiH shall cease to be in force.

AMENDMENT XLVII

In Article IV.C.2.6. the introductory sentence and Item 6 shall be deleted.

The previous Items b) and c) shall become Items a) and b).

AMENDMENT XLVIII

The Constitutional Court shall be composed of nine judges, of whom at least two come from all three constituent people each and one from the group of the Others.

This Amendment shall amend Article IV.C.3.9 of the Constitution of the Federation of BiH.

AMENDMENT XLIX

Distribution of key functions in the Federation Authority Structure

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

Out of the following positions not more than two may be filled by representatives of any one constituent people or of the group of the Others:

1. Prime Minister/President of the Government
2. Speaker of the House of Representatives
3. Speaker of the House of Peoples
4. President of the Supreme Court
5. President of the Constitutional Court
6. Federation Prosecutor.

This Amendment shall introduce, after Article IV.C.5.18, new heading IV.D. and new Article IV.D.1.

AMENDMENT XL

(1) Amendments to the Constitution may be proposed by the President of the Federation, in agreement with the Vice-presidents, the Federation Government, a majority of delegates in the House of Representatives or a majority of Bosniac delegates, a majority of Croat delegates and a majority of Serb delegates in the House of Peoples.

(2) A proposed amendment shall be adopted:

- (a) in the House of Peoples by a simple majority including a majority of Bosniac delegates, a majority of Croat delegates and a majority of Serb delegates;
- (b) in the House of Representatives by a two-third majority of delegates.

This Amendment shall replace Article VIII.1. of the Constitution of the Federation of BiH.

AMENDMENT LI

Published results of the 1991 census shall be appropriately used for all calculations requiring demographic data until Annex 7 is fully implemented.

This Amendment shall replace Article IX.7. of the Constitution of the Federation of BiH.

AMENDMENT LII

Transitional and Final Provisions

Article 11a

1. Proportionate representation in all public authorities including courts

Constituent peoples and members of the group of the Others shall be proportionately represented in public institutions in the Federation of Bosnia and Herzegovina.

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 and the Cantons.

Public institutions as mentioned above are the ministries of the Government of the Federation of BiH and of Cantonal Governments, municipal governments, Cantonal and Municipal Courts in the Federation of Bosnia and Herzegovina.

Article 11b

2. Harmonisation of principles with regard to the Cantons of the Federation

Within nine months from the adoption of these amendments, the principles contained therein shall be applied to the Cantons.

Vital interest protection bodies shall be established in the Cantons and minimum representation has to be guaranteed with regard to the Cantonal Governments.

Article 11c

3. Tasks of the House of Peoples

As from the date of the adoption of the amendments to the Constitution of the Federation of Bosnia and Herzegovina, the House of Peoples of the Federation of Bosnia and Herzegovina shall follow the principles contained therein.

Article 11d

Within nine months as from the adoption of these amendments, the Constitutions of the Cantons, laws, other regulations and acts and judicial rules shall be harmonised with the Constitution of the Federation of Bosnia and Herzegovina.

Article 11e

Within three months as from the adoption of these amendments, the provisions of this Constitution related to the Human Rights Court of the Federation of Bosnia and Herzegovina shall be repealed.

The issues of taking over of tasks, equipment, archives and other assets as well as the issue of employment status of the staff of the Human Rights Court of the Federation of Bosnia and Herzegovina shall be regulated in law.

This Amendment introduces new Articles 11a, 11b, 11c, 11d and 11e, after Article IX.1.

AMENDMENT LIII

In Article V.5.2 the term “two years” shall be replaced by the term “four years”.

AMENDMENT LIV

In Article VI.3.2 the term “two years” shall be replaced by the term “four years”

Sarajevo, 19 April 2002

Wolfgang Petritsch
High Representative