



Emerika Bluma 1, 71000 Sarajevo
Tel. 28 35 00 Fax. 28 35 01

Department for Legal Affairs



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

May 23, 2002

n. 161/02

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 the 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 implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities”;

Recalling further paragraph I.2.a. of the Conclusions of the said Bonn Conference which recognized “that an impartial and independent judiciary” was “essential to the rule of law and reconciliation within Bosnia and Herzegovina”, that the judicial appointment process must be based on merit, that a judicial training facility must be established, and that the monitoring of the judicial system was an essential element of the aforesaid process;

Mindful of paragraph II.2 of the Annex to the Declaration of the Peace Implementation Council (Madrid, 16 December 1998) which “emphasize[d] the importance of intensified judicial reform efforts, co-ordinated by the High Representative, to support the efforts of the authorities in BiH [Bosnia and Herzegovina]” and “urge[d] the High Representative to further develop a comprehensive judicial reform strategic plan, identifying short and longer-term priorities, in consultation with the authorities, the Council of Europe, OSCE, UNMIBH and other organizations”;

Bearing in mind that a truly independent and impartial judicial and prosecutorial system is essential to ensure the Rule of Law in all criminal, civil and commercial matters and guarantee the advancement of human rights and freedoms and reconciliation within Bosnia and Herzegovina, and the establishment of a functioning market economy;

With the objective of ensuring that international standards contained in the "Basic Principles of Court Independence" of the UN of 1985, Council of Europe Recommendation No. R (94) 12 of the Committee of Ministers of Member States on the “Independence, Efficiency and the Role of Judges” and the Council of Europe’s European Charter on the “Statute for Judges” are respected and that a professional, efficient and impartial selection, appointment, disciplinary and dismissal process of Judges and Prosecutors in the Federation of Bosnia and Herzegovina is established;

Observing that the Judicial and Prosecutorial appointment, disciplinary and dismissal process must be conducted according to objective criteria based on proper professional qualifications and transparent procedures to ensure a Judiciary that is the legitimate guardian of the Rule of Law in the Federation of Bosnia and Herzegovina;

With the objective of guaranteeing the development of an independent and unbiased judiciary, and of the prosecutorial service in the Federation of Bosnia and Herzegovina;

Having considered and borne in mind all the aforesaid matters, 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 is hereby amended as follows:

Amendment LVI

In Article IV.B.7.a (I) of the Federation Constitution, the words “judges of Federation courts” shall be replaced by the words “judges of the Constitutional Court of the Federation upon proposal of candidates by the High Judicial and Prosecutorial Council.”

Amendment LVII

In Article IV.C. 3, after the words “of all courts” the words “and organization of all courts” shall be added.

Amendment LVIII

In Article IV.C. 4, after Paragraph 2., new Sub-Paragraphs 3. and 4. shall be added, reading as follows:

- "3) The Judiciary is autonomous and independent from the executive and legislative powers of the Federation.
- 4) The High Judicial and Prosecutorial Council of the Federation of Bosnia and Herzegovina shall ensure the autonomy, independence, impartiality, competence and efficiency of the judiciary and of the prosecutorial service in the Federation. The responsibilities of the High Judicial and Prosecutorial 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 Federation, and shall also include prosecutors and deputy prosecutors in the Federation. The composition and additional responsibilities of the High Judicial and Prosecutorial Council shall be defined by law.”

Sub-Paragraph 3. shall become Sub-Paragraph 5.

Amendment LIX

Article IV.C.6. of the Federation Constitution is amended to read:

- "1. The Judges of the Supreme Court, including the Court President, shall be selected, appointed, disciplined and removed by the High Judicial and Prosecutorial Council in accordance with law.
2. The Judges of the Constitutional Court shall be nominated by the President of the Federation with the concurrence of the Vice-Presidents, and shall require for appointment the approval of a majority of the present and voting members of the House of Peoples.
3. Judges of the Supreme Court, 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 of the Supreme Court may likewise exceptionally cease to hold office pursuant to a selection process following restructuring of the Supreme Court during the transitional period to be defined in the Law establishing the High Judicial and Prosecutorial Council of the Federation. The mandatory retirement age for Judges of the Supreme Court shall be defined by Law.

4. The Judges of the Constitutional Court shall serve until 70 years of age, unless they resign or they are removed for cause by consensus of the Judges of the same Court.”

Amendment LX

Article IV.C.7. is amended to read:

- “1) 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.
- 2) The salaries and other terms of service, including the immunity of all the Judges of the Courts of the Federation shall be determined by law.”

Amendment LXI

Item c) of Article V.6. shall be deleted.

Amendment LXII

Article V.11. of the Federation Constitution is amended to read:

- "1. Cantons shall have courts, which shall have appellate jurisdiction over the courts of their Municipalities and original jurisdiction over matters not within the competence of those courts and as provided in legislation.
2. Judges of Cantonal Courts, including the Court Presidents, shall be selected, appointed, disciplined and removed by the High Judicial and Prosecutorial Council in accordance with the law.
3. Judges of Cantonal Courts, apart from reserve judges, shall be appointed for life subject to resignation, retirement or removal for cause by the High Judicial and Prosecutorial Council in accordance with the law of the Federation. Judges of Cantonal Courts may likewise exceptionally cease to hold office pursuant to a selection process following restructuring of cantonal courts during the transitional period to be defined in the law establishing the High Judicial and Prosecutorial Council. The mandatory retirement age for Judges of Cantonal Courts shall be defined by Law of the Federation. Terms of service, including immunity, of the Judges of Cantonal Courts shall be determined by the law of the Federation. 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.”

Amendment LXIII

Article VI. 7. of the Federation Constitution is amended to read:

- "1. The Municipal courts, which may be established for the territory of one or more municipalities, shall have jurisdiction over all civil and criminal matters, except to the extent that the original jurisdiction is assigned to another court by this or the Cantonal Constitution or by a law of the Federation or of the Canton.
2. Municipal Courts shall be established by the Cantonal legislation and be funded by the Cantons.
3. Judges of Municipal Courts, including Presidents of the Courts, shall be selected, appointed, disciplined and removed by the High Judicial and Prosecutorial Council of the Federation in accordance with the law.
4. Judges of Municipal Courts, apart from reserve judges, shall 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 of Municipal Courts may likewise exceptionally cease to hold office pursuant to a selection process following restructuring of municipal courts during the transitional period to be defined in the law establishing the High Judicial and Prosecutorial Council. The mandatory retirement age for Judges of Municipal Courts shall be defined by Law. Terms of service, including immunity, shall be determined by Law of the Federation. 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.”

Sarajevo, 23 May 2002

Wolfgang Petritsch
High Representative