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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS

**ON THE NEW DRAFT AMENDMENTS*
TO THE CONSTITUTION OF
THE FEDERATION OF BOSNIA AND HERZEGOVINA
CONCERNING LOCAL GOVERNMENT**

by
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* At its 58th Plenary session in March 2004 the Commission adopted an opinion on a previous version of the amendments (see doc. CDL-AD(2004)014).

1. By letter of 23 August 2004, the Presidents of the Constitutional Commission and the Commission for Local Self-Government of the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina submitted various constitutional amendments to the FBiH Constitution in the area of local self governance to the Venice Commission for opinion. These constitutional amendments were submitted together with amendments to the draft Law on local self governance.

2. The draft constitutional and legislative texts form a whole. The constitutional amendments relate solely to various aspects of local self-government. They provide the basis for the draft law which is being presented simultaneously.

Only the constitutional amendments will be commented on directly in this opinion, although their scope is often clarified by the draft law which implements them.

3. Amendments 1 to 5 very largely reproduce the substance of the amendments already commented upon by the Venice Commission, which at the time were numbered CIII (current amendment 1), CIV (current amendment 2), CV (current amendment 3), CVI (current amendment 4) and CVII (current amendment 5).

Subject to the points made below, as far as these amendments are concerned, there are only minor stylistic differences (which may be the result of translation) between the current draft texts and those previously submitted to the Venice Commission for opinion. Reference may therefore be made here to the opinion adopted by the Commission at its 58th plenary session (12-13 March 2004) and the appendix thereto (CDL-AD (2004) 014).

4. The Venice Commission has already underlined the crucial importance of these amendments regarding the general distribution and balance of powers between the Federation, cantons and municipalities (see points 3 to 5 of the opinion, CDL-AD (2004) 014).

In particular, the Commission indicated its desire to avoid any confusion or overlapping of the powers of the cantons and those of the municipalities.

From this point of view, the text of amendment 3 provides welcome clarification in stating that the powers of municipalities may only be limited by a federal law (and not simply, as in the previous version, by law, which was ambiguous).

Similarly, amendment 4 c) (formerly amendment CVI c)) on municipalities' financial resources takes account of the Venice Commission's previous comments (opinion CDL-AD (2004) 014, point 6) in providing that a federal law shall regulate the system for financing local self-government and that this law must respect the principle of solidarity.

5. Amendment 6 substantially alters Article VI-A-(I) on city authorities. The city authorities' areas of responsibility, which were previously limited to five in number (Art. VI-A-(1)), are extended to a total of 15 (Art. VI-A-(2)) a) to o)) in the draft). This very broad and, indeed, rather complex list of responsibilities needs to be set against the list of responsibilities assigned to municipalities (Art. VI – 1 in the draft, see amendment 3). Comparison of the two lists shows that there is potential for a significant degree of overlapping, in particular with regard to spatial planning, education, culture and tourism, etc. In our view, the dividing line between the responsibilities of the municipalities and of the cities needs to be clarified so as to avoid frequent conflict between the two entities.

Rather surprisingly, amendment 6 appears to provide for the possibility of establishing a city on the territory of a single municipality (for the area of *one* or more municipalities that make a single urban...). This is perhaps a material error. We have no explanatory memorandum or similar document. Hitherto, cities seem to have been regarded as higher bodies (for the areas of *two* or more municipalities...). If the territories of a municipality and a city coincide, one might ask whether their organs should not just be merged.

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.”