



Strasbourg, 9 March 2007

CDL(2007)042*

Opinion no. 405/2006

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**CONSTITUTIONAL LAW
ON THE IMPLEMENTATION
OF THE CONSTITUTION
OF THE REPUBLIC OF SERBIA**

* This document has been classified restricted at the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.

Pursuant to Article 134, paragraph 3 of the Constitution of the Republic of Serbia,

At the Second Extraordinary Session of the National Assembly of the Republic of Serbia of the year 2006, held on November 10, 2006 the National Assembly of the Republic of Serbia adopted the following

D E C I S I O N
ON PROCLAMATION OF THE CONSTITUTIONAL LAW
ON IMPLEMENTATION OF THE CONSTITUTION
OF THE REPUBLIC OF SERBIA

The Constitutional Law on Implementation of the Constitution of the Republic of Serbia adopted by the National Assembly of the Republic of Serbia at the Second Extraordinary Session of the year 2006, held on November 10, 2006 is hereby proclaimed.

RS No. 38
Belgrade, November 10, 2006

THE NATIONAL ASSEMBLY OF THE REPUBLIC OF SERBIA

PRESIDENT

Predrag Marković

Application of the Constitution of the Republic of Serbia

Article 1

The Constitution of the Republic of Serbia (hereinafter: the Constitution) shall apply as of the day of its proclamation by the National Assembly, unless otherwise provided under this Law in respect of application of particular provisions therein.

Implementation of Constitutional provisions relating to Republic's bodies

Article 2

Republic bodies, organizations and agencies shall continue their work until they are constituted or elected in accordance with the Constitution, unless otherwise provided by this Law.

Elections of members of the National Assembly, the President of the Republic, members of the Assembly of the Autonomous Province, and members of Assemblies of Local Self-Government Bodies

Article 3

Election of people's representatives to the National Assembly shall be called and to be held no earlier than 60 and no later than 120 days from the effective date of this Law.

Election of the President of the Republic shall be called by the President of the National Assembly by December 31, 2007, that is, no later than 60 days from the effective date of the last of the laws that regulate the status and elections of the President of the Republic, defense and the Army of Serbia, foreign affairs and security services.

Election of members of the Assembly of the Autonomous Province of Vojvodina shall be called by the President of the National Assembly by December 31, 2007 or no later than 60 days from the effective date of the law which regulates territorial organization of the Republic of Serbia.

Election of members of Assemblies of local self-government bodies shall be announced by the President of the National Assembly by December 31, 2007, that is, no later than 60 days from the effective date of the laws that regulate territorial organization of the Republic of Serbia, local self-government, local elections, and the status of the capital city.

First session of the newly elected National Assembly

Article 4

The first session of the newly elected National Assembly shall last until the National Assembly adopts the Law on Ministries and elects the Government.

Work of the National Assembly after the election of the Government

Article 5

During the first session after the appointment of the Government, the newly elected members of the National Assembly shall harmonize with the constitution the laws that regulate the Ombudsman and the implementation of the citizens' rights to be informed, elect the Ombudsman, elect the body authorized to monitor the implementation of citizens' rights to be informed, elect the Governor of the National Bank of Serbia, and elect bodies of the National Auditing Agency.

During the second session after the appointment of the Government, the National Assembly shall harmonize with the Constitution the laws that regulate implementation of Constitutional provisions on courts and public prosecutors' offices, as follows: laws that regulate the organization and jurisdiction of courts, appointment and cessation of function of judges and court presidents, the High Judicial Council, the organization and jurisdiction of public

prosecutors' offices, appointment and cessation of function of public prosecutors and deputy public prosecutors, and the State Prosecutorial Council.

Application of Constitutional provisions on Courts and Public Prosecution

Article 6

Courts and public prosecutors' offices shall continue their work until the harmonization with the Constitution of laws that regulate their organization and jurisdiction, status of Judges, and status of public prosecutors and deputy public prosecutors, unless otherwise provided by this Law.

Courts that have not begun their work by the day this Law comes into effect, shall commence work within timeframes set by laws harmonising their organization and jurisdiction with the Constitution.

Within 90 days from the effective date of the law under Article 5, Paragraph 2 hereof, the National Assembly shall elect elective members of the High Judicial Council and the State Prosecutorial Council, with the proviso that members from the ranks of judges and/or public prosecutors and deputy public prosecutors for the first for the first make-up of the High Judicial Council and/or the State Prosecutorial Council shall be appointed from the ranks of judges and/or public prosecutors and deputy public prosecutors holding at time of election judgeship and/or prosecutor or deputy prosecutor office.

Until the appointment of the President of the Supreme Court of Cassation, the President of the Supreme Court of Serbia shall, by function, serve as a member of the High Judicial Council.

Constitutive session of the High Judicial Council, and/or the State Prosecutorial Council, shall be held within seven days from the day of election of the elective members.

Election of Judges and Court Presidents

Article 7

Election of the President of the Supreme Court of Cassation and the first election of the Judges of the Supreme Court of Cassation shall take place no later than 90 days from the date of the constitution of the High Judicial Council.

Judges and presidents of other courts shall be elected no later than one year from the date of the constitution of the High Judicial Council.

Appointment of Public Prosecutors and Deputy Public Prosecutors

Article 8

Republic's Public Prosecutor shall be appointed within 90 days from the effective date of the law that regulates the organization and jurisdiction of the Public Prosecutors' Offices as well as appointment and cessation of function of public prosecutors and deputy public prosecutors.

Other public prosecutors shall be appointed within 6 months from the effective date of the law that regulates the organization and jurisdiction of the Public Prosecutors' Offices as well as appointment and cessation of function of public prosecutors and deputy public prosecutors.

Deputy public prosecutors shall be appointed no later than one year from the date of the constitution of the State Prosecutorial Council.

Application of Constitutional provisions on the Constitutional Court

Article 9

Judges of the Constitutional Court shall be elected/appointed, no later than at the end of the first regular sitting of the National Assembly.

If by the expiration of the time period of election/appointment of judges of the Constitutional Court, the High Judicial Council and the State Prosecutorial Council are not constituted, or if the first election of judges for the Supreme Court of Cassation is not performed, judges of the Constitutional Court shall be elected/appointed from the list of candidates of the President of the Republic and the list of candidates of the National Assembly, while appointments from the joint list of the High Judicial Council and the State Prosecutorial Council shall be made within 30 days from the day of the first appointment of judges of the Supreme Court of Cassation.

The Constitutional Court shall be deemed constituted when selection/appointment of two thirds of the total number of judges of the Constitutional Court is completed, at which time mandates of the President and judges of the Constitutional Court appointed in accordance with the previous Constitution shall cease.

The National Assembly shall adopt the Law on organization of the Constitutional Court, proceedings before the Constitutional Court, and the legal effect of its decisions at the session at which it shall appoint judges to the Constitutional Court.

Implementation of Constitutional provisions on provincial autonomy

Article 10

Until the effective date of the new statute of an autonomous province, provincial bodies and agencies shall continue their work in accordance with the provisions of the existing statute and decisions of the Assembly of the autonomous province, while financing shall be executed in accordance with Article 184, Paragraph 4, of the Constitution.

The newly elected Assembly of the Autonomous Province of Vojvodina is required to submit to the National Assembly the new Draft Statute of the Autonomous Province of Vojvodina for approval before its adoption, no later than 90 days from the date of its constitution.

Bodies and agencies of the Autonomous Province of Vojvodina shall take over the competencies provided in the Constitution when the new Statute and laws that regulate issues of provincial significance come into effect.

Implementation of Constitutional provisions on local self-government

Article 11

Until statute of the local self-government bodies is harmonized with the Constitution and the laws that regulate the territorial organization of the Republic, local self- government bodies and local elections, bodies and agencies of the local self-government units shall continue their work in accordance with provisions of the existing statute and decisions made by the assembly of the local self-government unit, unless otherwise provided by this Law.

Mandate of municipal executive bodies shall cease on the day when the newly elected municipal assembly is constituted. Termination of mandates of the executive bodies in the cities, and the City of Belgrade, shall be regulated by law.

Elections of executive bodies of the local self-government unit shall be regulated by law, in accordance with the Constitution.

The newly elected assembly of the local self-government unit shall harmonize the Statute no later than 90 days from the day of its constitution.

Validity of the Republic's regulations**Article 12**

Laws and other Republic regulations shall remain in effect until their harmonization with the Constitution within the period provided under this Law, unless this Law renders them ineffective.

Validity of the provincial regulations and regulations of bodies of local self-government units**Article 13**

The provincial regulations and regulations of local self-governments shall remain in effect until the harmonization or until the adoption of appropriate laws and other Republic's regulations, in accordance with the Constitution, and shall cease to be in effect after a period determined by these laws or other Republic's regulations.

Abrogation of laws**Article 14**

On the day this Law shall come into effect, the Constitutional Law on Implementation of the Constitution of the Republic of Serbia («The Official Gazette of the RS» No. 1/90, 18/91, 41/91, 59/91, 63/91, 9/92, 50/92, 70/92, 77/92 i 20/93) shall cease to be in effect.

General deadline for harmonization of laws with the Constitution**Article 15**

Any and all laws not in accordance with the Constitution shall be harmonized by December 31, 2008.

Harmonization of other Republic's regulations**Article 16**

Republic's regulations adopted for enforcement laws to be harmonised with the provisions of the Constitution, shall be harmonised no later than 90 days from the day of coming into effect of relevant laws.

Harmonisation of the status of holders of public office**Article 17**

Persons holding public office pursuant to current regulations at the time this Law comes into force in a body, organization, or agency of the Republic, autonomous province, or local self-government unit, are required to harmonize their status with Constitutional provisions governing incompatibility of functions, no later than 90 days from the effective date of this Law.

Mandate of the President of the Republic**Article 18**

Election of the President of the Republic under Article 3, Paragraph 2, of this Law shall be deemed first election in terms of Article 116 Paragraph 3 of the Constitution.

Final provision**Article 19**

This Law shall become effective on the day of its proclamation at the session of the National Assembly.