

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(a) of the Constitution of Bosnia and Herzegovina, Article 59 para 2(2) and Article 61 paras 1 and 3 of the Rules of Procedure of the Constitutional Court of Bosnia and Herzegovina – New Amended Text (Official Gazette of Bosnia and Herzegovina no. 2/04), in Plenary and composed of the following judges:

Mr. Mato Tadić, President,
Mr. Ćazim Sadiković, Vice-President,
Mr. Tudor Pantiru, Vice-President,
Mr. Miodrag Simović, Vice-President,
Ms. Hatidža Hadžiosmanović,
Mr. David Feldman,
Ms. Valerija Galić,
Mr. Jovo Rosić,

Having deliberated on the request of **Mr. Beriz Belkić** in Case no. U 42/01,
Adopted at the session of 26 March 2004 the following

DECISION ON MERITS

It is hereby established as follows:

- The Agreement on the Establishment of Special Parallel Relationships between the Federal Republic of Yugoslavia and the Republika Srpska of 5 March 2001 (Official Gazette of the Republika Srpska no. 26/01) was concluded in accordance with Article III(2)(a) of the Constitution of Bosnia and Herzegovina.

- Article 2, lines 1, 2, 4, 11 and 12 of the Agreement on the Establishment of Special Parallel Relationships between the Federal Republic of Yugoslavia and the Republika Srpska is consistent with the Constitution of Bosnia and Herzegovina.

- The Agreement on the Establishment of Special Parallel Relationships between the Federal Republic of Yugoslavia and the Republika Srpska was not published in the official languages of the Republika Srpska.

The Government of the Republika Srpska is hereby ordered to provide publication of the Agreement on the Establishment of Special Parallel Relationships between the Federal Republic of Yugoslavia and the Republika Srpska in the Bosnian and Croat languages and in the Latin alphabet, within a period of 30 days as from the date of publication of the present Decision in the Official Gazette of the Republika Srpska.

This Decision shall be published in the Official Gazette of Bosnia and Herzegovina, the Official Gazette of the Federation of

Bosnia and Herzegovina and the Official Gazette of the Republika Srpska.

REASONING

I. Introduction

1. On 2 July 2001 Mr. Beriz Belkić, Member of the Presidency of Bosnia and Herzegovina at that time ("the applicant"), filed with the Constitutional Court of Bosnia and Herzegovina ("the Constitutional Court") a request for review of conformity of the Agreement on the Establishment of Special Parallel Relationships between the Federal Republic of Yugoslavia and the Republika Srpska ("the Agreement") (Official Gazette of the Republika Srpska no. 26/01) with the Constitution of Bosnia and Herzegovina.

II. Procedure before the Constitutional Court

Pursuant to Article 21 para 1 of the Rules of Procedure of the Constitutional Court, the National Assembly of the Republika Srpska was requested on 7 August 2001 to submit a reply to the request within a period of 30 days after receipt of the letter of the Constitutional Court.

2. On 3 September 2001 the National Assembly of the Republika Srpska transmitted to the Constitutional Court an authorization for Prof. Dr Radomir Lukić to represent the National Assembly of the Republika Srpska in the case of review of conformity of the Agreement with the Constitution of Bosnia and Herzegovina.

3. On 7 January 2002 the Constitutional Court addressed a letter to Prof. Dr Radomir Lukić, the representative of the National Assembly of the Republika Srpska, to submit relevant documents and notices as to whether any Annexes to the Agreement were concluded in the meantime.

4. On 22 May 2002 the Constitutional Court addressed a letter to Mr. Mirko Šarović, President of the Republika Srpska and the signatory to the Agreement, to submit his reply to the statements made in the request.

5. On 20 May 2002 a new letter was addressed to the National Assembly of the Republika Srpska to submit its reply to the request.
6. The National Assembly of the Republika Srpska did not submit a reply to the request.

III. Request

7. The applicant submitted that the Agreement was not consistent with the Constitution of Bosnia and Herzegovina for the following reasons:

- Article III(2(d) of the Constitution of Bosnia and Herzegovina provides that each Entity may also enter into agreements with states and international organizations with the consent of the Parliamentary Assembly. The Parliamentary Assembly may provide by law that certain types of agreements do not require such consent.

The Parliamentary Assembly of Bosnia and Herzegovina did not enact a law providing that the Agreement or any other agreements of this type did not require such consent. According to the Decree on Promulgation of the Law on Ratification of the Agreement, it is evident that no consent was given by the Parliamentary Assembly of Bosnia and Herzegovina in that respect.

8. The applicant maintained that the consent of the Parliamentary Assembly should have been requested prior to the ratification of the Agreement as this is also provided in the Constitution of the Republika Srpska. According to Article 70 of the Constitution of the Republika Srpska, as amended by Amendment LIX, "the National Assembly shall: 2. ratify the agreements concluded between the Republika Srpska and the states and international organizations with the consent of the Parliamentary Assembly of Bosnia and Herzegovina".

An explicit constitutional obligation to obtain the consent of the Parliamentary Assembly has a special justification in the present case, particularly for the following reasons: the constitutional practice of "special parallel relationships" implies that the relations between Bosnia and Herzegovina and a neighbouring state have already been established and that they are operating successfully. Unfortunately, this is not the case here.

Bosnia and Herzegovina and the Federal Republic of Yugoslavia established diplomatic relations as late as five years after the General Framework Agreement for Peace in Bosnia and Herzegovina ("the Peace Agreement") was signed. Neither at the time of conclusion of the Agreement nor at the moment of filing of the request with the Constitutional Court were the

ambassadors of these two states appointed. Furthermore, from that time onwards Bosnia and Herzegovina and the Federal Republic of Yugoslavia have not concluded a single contract for establishment of inter-state relations. Taking into account such circumstances, the requirements necessary for the establishment of special parallel relationships have not been met since the elementary inter-state relations between these two countries have not been established.

Only the representatives of the Serb people participated in the preparations for the conclusion of the Agreement, which took place without any transparency. This occurred after the Constitutional Court adopted the Decision on the Constituent Status of the Serb, Croat and Bosniac peoples which read that the said three peoples were constituent at the level of the Entities as well.

Article 2 of the Agreement provides that "the Parties to the Agreement shall particularly foster operation in the following spheres: (...) curbing all forms of crime, and defence in a completely transparent manner".

The Constitution of Bosnia and Herzegovina sets forth the responsibilities of the institutions of Bosnia and Herzegovina. Such responsibilities cannot be the subject of special relationships of the Entities with the neighbouring states. Article III(1) of the Constitution of Bosnia and Herzegovina provides as follows: "The following matters are the responsibility of the institutions of Bosnia and Herzegovina: g) International and inter-Entity criminal law enforcement, including relations with Interpol." It is obvious that the Agreement's provision on "curbing all forms of crime", which has a general wording, is in contravention with the quoted provision of the Constitution of Bosnia and Herzegovina for it interferes with the exclusive responsibility of the institutions of Bosnia and Herzegovina.

Furthermore, co-operation in the field of defence is prescribed in general terms and can surely affect the principle of sovereignty, territorial integrity and political independence of Bosnia and Herzegovina, which is guaranteed by the Constitution of Bosnia and Herzegovina and the Peace Agreement. In addition, Article III(5) of the Constitution of Bosnia and Herzegovina explicitly provides that Bosnia and Herzegovina shall assume responsibility for such other matters necessary to preserve sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina. The same principle is enunciated in respect of defence in Article V(5)(a) of the Constitution of Bosnia and Herzegovina, which, in its relevant part, reads as follows: "... All armed forces in Bosnia and Herzegovina shall operate consistently with the sovereignty and territorial integrity of Bosnia and Herzegovina."

A non-selective provision relating to co-operation in the field of defence does not provide guarantees that the aforementioned fundamental constitutional principles and the responsibilities of the institutions of Bosnia and Herzegovina would not be affected. That provision of the Agreement is in contravention with the quoted provisions of the Constitution of Bosnia and Herzegovina.

Article 2 line 1 of the Agreement provides for co-operation in the field of "economy and utilisation of natural resources". The Constitution of Bosnia and Herzegovina provides that within six months of the entry into force of the Constitution of Bosnia and Herzegovina, the Entities shall begin negotiations with a view to including in the responsibilities of the institutions of Bosnia and Herzegovina other matters, including utilization of energy resources and cooperative economic projects (Article III(5)(b) of the Constitution of Bosnia and Herzegovina). Instead of fulfilling its constitutional obligation, the Republika Srpska undertook to exercise such co-operation with a neighbouring state. That co-operation is with prejudice and limitations to fulfilment of the obligations under the Constitution of Bosnia and Herzegovina. The quoted provision is therefore inconsistent with the provision of Article III(5)(b) of the Constitution of Bosnia and Herzegovina.

The provisions of Article 2 of the Agreement in respect of "privatization and denationalization" as well as "planning" are not consistent with the principles of the Constitution of Bosnia and Herzegovina relating to a single economic space, protection of private property, promotion of a market economy and full-scale freedom of movement of persons, goods, services and capital (fourth line of Preamble, Article I line 4 and Article II para 3(k) of the Constitution of Bosnia and Herzegovina). Co-operation of an Entity with a neighbouring state in the field of planning, privatization and denationalization could create a situation which discriminates against the citizens and legal persons on the territory of the other Entity. The quoted provisions of the Agreement are therefore inconsistent with the quoted provisions of the Constitution of Bosnia and Herzegovina.

Article 11 para 2 of the Agreement provides that the Agreement is "drawn up in the official languages of the Federal Republic of Yugoslavia and of the Republika Srpska". In view of the fact that the provision of the Constitution of Republika Srpska concerning the languages and alphabets in official use was no longer in force according to a Decision of the Constitutional Court and no new provision has yet been enacted, there is no constitutional arrangement which the Agreement could invoke. However, the Agreement was published in the Serb language of ekavian dialect and in the Cyrillic alphabet in the Official Gazette of the Republika Srpska. This is inconsistent with the Decision of the Constitutional Court of Bosnia and Herzegovina, which also guarantees the

constituent status of all the three peoples at the level of the Entities in the manner so as to include the equality of the Bosnian, Croat and Serb languages as well as the equality of the Cyrillic and Latin alphabets.

9. The applicant therefore requested that the Constitutional Court should establish that the contested Agreement is not consistent with the Constitution of Bosnia and Herzegovina. Alternatively, the Constitutional Court should adopt a decision according to which the provisions of Article 2 lines 1, 2, 4, 11 and 12 of the Agreement were not consistent with the Constitution of Bosnia and Herzegovina.

IV. The Agreement

The Law on Ratification of the Agreement and the text of the Agreement itself were published in the Official Gazette of the Republika Srpska no. 26/01 in the Serb language and the Cyrillic alphabet.

1. The contested Agreement reads as follows:

Pursuant to Amendment XL, sub-paragraph 2 to the Constitution of the Republika Srpska (Official Gazette of the Republika Srpska No. 28/94), I hereby pass a

DECREE

on Promulgation of the Law on the Ratification of the Agreement on the Establishment of Special Parallel Relationships between the Federal Republic of Yugoslavia and the Republika Srpska

I hereby promulgate the Law on Ratification of the Agreement on the Establishment of Special Relationships between the Federal Republic of Yugoslavia and Republika Srpska, which was enacted by the National Assembly of the Republika Srpska at its session held on 6 and 7 July 2001.

No. 01-560/01

Banja Luka

13 June 2001

Mirko Šarović

President of the Republika Srpska

Law on Ratification of the Agreement on the Establishment of Special Parallel Relationships between the Federal Republic of Yugoslavia and the Republika Srpska

Article 1

The Agreement on the Establishment of Special Parallel Relationships between the Federal Republic of Yugoslavia and the Republika Srpska signed in Banja Luka on 5 March 2001 is hereby ratified in the original in the official languages of the Federal Republic of Yugoslavia and of the Republika Srpska.

Article 2

The text of the Agreement in the original in the Serb language reads as follows:

AGREEMENT on the Establishment of Special Parallel Relationships between the Federal Republic of Yugoslavia and the Republika Srpska

The Federal Republic Yugoslavia and the Republika Srpska ("the Parties") shall establish special parallel relationships on the basis of:

Conviction that consistent, comprehensive and accelerated implementation of the General Framework Agreement for Peace in Bosnia and Herzegovina and its Annexes ("the Peace Agreement") is the basis for creating conditions for permanent coexistence of peoples and citizens in the Republika Srpska and Bosnia and Herzegovina as a whole,

That establishment of such special parallel relationships is fully in accordance with the Peace Agreement signed in Paris on 14 December 1995,

Conviction that the establishment of a durable peace and stability in this part of Europe is in the mutual interest,

Respect for sovereignty, territorial integrity and political independence of Bosnia and Herzegovina,

Acknowledgement of distribution of competencies between Bosnia and Herzegovina as a State and its Entities as defined by the Constitution of Bosnia and Herzegovina,

Respect for the powers and responsibilities of the States Signatories to the Peace Agreement, and

Conviction that thereby they would contribute to the social, democratic and economic development of the Federal Republic of Yugoslavia, the Republika Srpska, Bosnia and Herzegovina as a whole and this region.

AIMS

Article 1

By establishing special parallel relationships between the Parties, the Parties, pursuant to the Peace Agreement, wish to secure:

*Development of institutional and all other forms of co-operation within the framework of general political and economic conditions, with respect to special interests, and
Development of a transparent co-operation between executive, legislative and other institutions.*

Article 2

The Parties shall particularly foster co-operation in the following spheres:

- *economy and utilisation of natural resources,*
- *marketing¹,*
- *legislation*
- *privatisation and denationalisation,*
- *science and technology,*
- *education, culture and sport,*
- *health care and social policy,*
- *tourism and environmental protection,*
- *information,*
- *protection of freedoms and rights of the citizens in line with the highest internationally recognized standards,*
- *curbing of crime, and*
- *defence, in a fully transparent manner.*

IMPLEMENTATION OF THE AGREEMENT

Article 3

For the purpose of implementation of the Agreement, the Parties shall establish a Council for Co-operation between the Federal Republic of Yugoslavia and the Republika Srpska ("the Council").

The Council shall comprise the President of the Federal Republic of Yugoslavia, the President of the Republika Srpska and Vice-President of the Republika Srpska.

Article 4

The work of the Council shall be governed by its Rules of Procedure.

The Council shall, as a rule, meet once in three months alternately in the Federal Republic of Yugoslavia and the Republika Srpska.

¹ The term "planning" was used instead of the term "marketing" in the text of the Agreement published in the Official Gazette of the FRY No. 1/01, International Agreements (see www.propisi.com)

Article 5

The Council shall appoint a six-member Permanent Committee.

Members of the Permanent Committee shall be:

- *The Prime Minister of the Federal Republic of Yugoslavia,*
- *The Deputy Prime Minister of the Federal Republic of Yugoslavia,*
- *The competent Minister of the Federal Government of the Federal Republic of Yugoslavia (rotating member),*
- *The Prime Minister of the Republika Srpska,*
- *The Deputy Prime Minister of the Republika Srpska, and*
- *The competent Minister of the Government of the Republika Srpska (rotating member).*

Article 6

The Council and the Permanent Committee shall make proposals and recommendations to the competent bodies and institutions of the Parties by consensus.

Article 7

The Council shall appoint two Secretaries of the Council, one from the Federal Republic of Yugoslavia and the other from the Republika Srpska.

The scope of activities of the Secretaries of the Council includes the following:

- *Coordination of preparations for the Council's sessions,*
- *Monitoring of implementation of recommendations and proposals,*
- *Preparation of activities from the Council's scope of work,*
- *Other related activities.*

Article 8

With a view to establishing co-operation in the field of legislation, regular contacts shall be maintained between the Federal Assembly of the Federal Republic of Yugoslavia and the National Assembly of the Republika Srpska at the level of Speakers and working bodies.

Article 9

The OHR shall be consulted regarding preparation of Annexes to this Agreement and it shall oversee their implementation.

Article 10

Annexes to be endorsed by the Parties for the purpose of implementation of this Agreement shall be deemed integral parts thereof.

FINAL PROVISIONS

Article 11

The Agreement and Annexes referred to in Article 10 hereof shall enter into force on the date of the second notice whereby the Parties inform one other that conditions for their entry into force stipulated by their respective internal legislations have been met.

The Agreement is drawn up in Banja Luka on 5 March 2001 in two original copies in the official languages of the Federal Republic of Yugoslavia and of the Republika Srpska.

*For the Federal Republic of Yugoslavia
Dr Vojislav Koštunica
President*

*For the Republika Srpska
Mirko Šarović
President*

Article 3

This Law shall enter into force on the eighth day after its publication in the Official Gazette of the Republika Srpska.

*No. 01-718/01
Banja Luka
7 June 2001*

*Dr Dragan Kalinić
Speaker of the National Assembly of the Republika Srpska*

V. Admissibility

10. The Constitutional Court invoked the provisions of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina in the examination of the admissibility of the present request.

Article VI(3)(a) of the Constitution of Bosnia and Herzegovina reads as follows:

The Constitutional Court shall uphold this Constitution.

(a) The Constitutional Court shall have exclusive jurisdiction to decide any dispute that arises under this Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina, including but not limited to:

- *Whether an Entity's decision to establish a special parallel relationship with a neighbouring state is consistent with this Constitution, including provisions concerning the sovereignty and territorial integrity of Bosnia and Herzegovina.*

- *Whether any provision of an Entity's constitution or law is consistent with this Constitution.*

Disputes may be referred only by a member of the Presidency, by the Chair of the Council of Ministers, by the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, by one-fourth of the members of either chamber of the Parliamentary Assembly, or by one-fourth of either chamber of a legislature of an Entity.

11. The applicant sought review of conformity of the Agreement with the Constitution of Bosnia and Herzegovina.

12. At the time of filing of the instant request, the applicant was a Member of the Presidency of Bosnia and Herzegovina.

13. It follows from the aforementioned constitutional competencies and responsibilities that the Constitutional Court is competent to adjudicate this dispute.

14. In view of the provision of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina and Article 16 para 2 of the Constitutional Court's Rules of Procedure, the Constitutional Court finds that the request at issue was filed by an authorized person and that the formal requirements referred to in Article 16 para 2 of the Constitutional Court's Rules of Procedure have been met.

VI. Merits

15. According to the applicant's request, the following constitutional and legal questions arise:

- Whether the consent of the Parliamentary Assembly of Bosnia and Herzegovina should have been sought prior to the ratification of the Agreement;

- Whether the conditions for establishment of special parallel relationships were met since inter-state relations were not established at the time of the ratification of the Agreement (ambassadors to the two states were not appointed) and that only the representatives of the Serb people participated in the preparations for the conclusion of the Agreement;

- Whether the provisions of Article 2 of the Agreement stipulating that the Parties shall particularly foster co-operation in the sphere of economy and utilization of natural resources are consistent with Article II(5)(b) of the Constitution of Bosnia and Herzegovina; whether the provision on co-operation in the sphere of privatization and denationalisation is consistent with the fourth line of the Preamble to the Constitution of Bosnia and Herzegovina, Article I(4) and Article II(3)(k) of the Constitution of Bosnia and Herzegovina; whether the provision on curbing of crime is consistent with Article III(1) of the Constitution of Bosnia and Herzegovina and whether the provision on co-operation in the sphere of defence in a fully transparent manner is consistent with the sixth sub-paragraph of the Preamble to the Constitution of Bosnia and Herzegovina, Article III(5) and Article V(5)(a) of the Constitution of Bosnia and Herzegovina;

- Whether Article 11 para 2 of the Agreement in terms of the wording that it was drawn up in the official language of the Republika Srpska, namely the Serb language, was consistent with the Constitution of Bosnia and Herzegovina.

16. The responsibilities of the Entities in respect of establishment of special parallel relationships with the neighbouring states and entering into agreements with other states and international organizations are based on Article III(2) of the Constitution of Bosnia and Herzegovina, which, in its relevant section, reads as follows:

2. Responsibilities of the Entities

(a) The Entities shall have the right to establish special parallel relationships with neighbouring states consistent with the sovereignty and territorial integrity of Bosnia and Herzegovina.

...

(d) Each Entity may also enter into agreements with states and international organizations with the consent of the Parliamentary Assembly. The Parliamentary Assembly may provide by law that certain types of agreements do not require such consent.

In pursuance of the aforementioned provisions of the Constitution of Bosnia and Herzegovina, an Agreement on Special Parallel Relationships has a constitutional restriction with respect to the sovereignty and territorial integrity whereas agreements with states and international organizations may be entered into (exclusively) with the consent of the Parliamentary Assembly of Bosnia and Herzegovina. Therefore, an Agreement on Special Parallel Relationships succumbs to

the control of the Constitutional Court whereas agreements with states and international organizations require the consent of the Parliamentary Assembly.

17. The Constitutional Court, in view of the aforementioned provisions of the Constitution of Bosnia and Herzegovina and its constitutional competence in respect of an Entity's decision to establish a special parallel relationship with the neighbouring countries, concludes that the consent of the Parliamentary Assembly is not required for the establishment of special parallel relationships with the neighbouring countries. The Agreement was, therefore, concluded in the manner consistent with the Constitution of Bosnia and Herzegovina.

18. Regarding the statements made in the request that the basic inter-state relationships were not established at the time of conclusion and ratification of the Agreement as the basis for the establishment of "special parallel relationships", the Constitutional Court recalls that the diplomatic relations between Bosnia and Herzegovina and the Federal Republic of Yugoslavia were established on 15 December 2000 at which date a Protocol on the Establishment of Diplomatic Relations between Bosnia and Herzegovina and the Federal Republic of Yugoslavia was signed. The ambassadors to both states were appointed in December 2001. Thereafter, other agreements were concluded with the Federal Republic of Yugoslavia: on social insurance, on establishment of an Inter-State Council for Co-Operation, on international transport of persons and goods in road traffic, etc.

Regarding the issues that relate to the successful functioning of the relationships between Bosnia and Herzegovina and a neighbouring state, as well as to the preparations for the conclusion of the Agreement, the Constitutional Court concludes that these issues are not within its competence.

19. A special exercise of co-operation between the Parties (Article 2) is a constitutional matter given the fact that Article III of the Constitution of Bosnia and Herzegovina reads as follows:

The following matters are the responsibility of the institutions of Bosnia and Herzegovina:

(a) Foreign policy.

(b) Foreign trade policy.

(c) Customs policy.

(d) Monetary policy as provided in Article VII.

(e) Finances of the institutions and for the international obligations of Bosnia and Herzegovina.

(f) Immigration, refugee, and asylum policy and regulation.

(g) International and inter-Entity criminal law enforcement, including relations with Interpol.

(h) Establishment and operation of common and international communications facilities.

(i) Regulation of inter-Entity transportation.

(j) Air traffic control.

...

5. Additional Responsibilities

(a) Bosnia and Herzegovina shall assume responsibility for such other matters as are agreed by the Entities; are provided for in Annexes 5 through 8 to the General Framework Agreement; or are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina, in accordance with the division of responsibilities between the institutions of Bosnia and Herzegovina. Additional institutions may be established as necessary to carry out such responsibilities.

(b) Within six months of the entry into force of this Constitution, the Entities shall begin negotiations with a view to including in the responsibilities of the institutions of Bosnia and Herzegovina other matters, including utilization of energy resources and cooperative economic projects.

20. Having examined the text of the contested Agreement, the Constitutional Court observes that the provisions of Article 2 of the Agreement referred to by the applicant are given in general terms and, according to the Constitutional Court, their implementation required drawing up Annexes to the Agreement that shall form an integral part thereof as anticipated by Articles 10 and 11 of the Agreement. The Constitutional Court, knowing that the OHR was directly involved in the "negotiations" for the conclusion of this Agreement, observes that it was envisaged in the

Agreement itself that the OHR shall be consulted regarding the preparation of the Annexes to this Agreement and that it shall oversee its implementation (Article 9). As regards the question of responsibilities of the institutions of Bosnia and Herzegovina and of the Entities, the Constitutional Court points to its view taken in its Second Partial Decision No. U-5/98/II of 18 and 19 February 2000.

Articles III(1) and III(3) of the Constitution of Bosnia and Herzegovina regulate the distribution of powers in principle in so far as responsibilities of the institutions of Bosnia and Herzegovina are enumerated whereas, again in principle, all other functions and powers not specified in the Constitution of Bosnia and Herzegovina rest with the Entities. However, the Constitution of Bosnia and Herzegovina creates powers not only within this general system of distribution of powers in Article III. In creating institutions of the State of Bosnia and Herzegovina, the Constitution of Bosnia and Herzegovina also confers upon them more or less specific powers, as can be seen from Article IV(4) as regards the Parliamentary Assembly of Bosnia and Herzegovina and Article V(3) as regards the Presidency of Bosnia and Herzegovina, which are not necessarily repeated in the enumeration in Article III(1). The Presidency of Bosnia and Herzegovina, for instance, is vested with the power of civilian command over Armed Forces in Article V(5)(a), although Article III(1) does not explicitly refer to military affairs as being within the responsibility of the institutions of Bosnia and Herzegovina. It must then be concluded that matters which are not expressly enumerated in Article III(1) are not necessarily under exclusive competence of the Entities in the same way as the Entities might have residual powers with regard to the responsibilities of the institutions of Bosnia and Herzegovina. Reference can be made, for instance, to the responsibility of the institutions of Bosnia and Herzegovina with regard to foreign policy and foreign trade policy explicitly mentioned in Article III(1)(a) and (b), since the Entities also have, for instance, a right to establish special parallel relationships with the neighbouring states according to Article III(2)(a).

13. In addition, the Constitution of Bosnia and Herzegovina also establishes basic constitutional principles and goals for the functioning of Bosnia and Herzegovina as well as a catalogue of human rights and fundamental freedoms that must be perceived as constitutional guidelines or limitations for the exercise of the responsibilities of Bosnia and Herzegovina and the Entities. According to sub-paragraph 4 of the Preamble of the Constitution of BiH, this Constitution was adopted in order to "promote the general welfare and economic growth through the protection of privately owned property and the promotion of a market economy". Furthermore, Article I(4) of the

Constitution provides for freedom of movement throughout Bosnia and Herzegovina and explicitly states that neither Bosnia and Herzegovina nor the Entities shall "impede full freedom of movement of persons, goods, services and capital throughout Bosnia and Herzegovina" as a necessary prerequisite for the existence of a joint market. And finally, Article II(3)(k) guarantees the right to property in connection with the obligation of the Entities under para 6 of the said Article to "apply and conform to the human rights and fundamental freedoms referred to in para 2 above". Since Article II(3) sub-paragraph 1 reads that "all persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms..." enumerated there, the right to property is not only a right which all authorities of BiH have to respect, but there is also a positive obligation of the State to provide for conditions which are necessary for the enjoyment of this right. Article II(3) therefore gives a general competence to the joint institutions of Bosnia and Herzegovina to regulate all matters enumerated in the catalogue of human rights, which cannot exclusively be left to the Entities since the protection has to be guaranteed to "all persons within the territory of Bosnia and Herzegovina".

22. Consequently and with a view to the constitutional principle providing that all regulations must be interpreted in line with the Constitution to the extent possible, the Constitutional Court finds that the contested provisions insofar as they relate to co-operation in the areas of economy and utilisation of natural resources, planning, privatization and denationalization and crime curbing, can be interpreted in the manner that is consistent with the Constitution of Bosnia and Herzegovina. Given the fact that the aforementioned provisions are of general nature and are not directly applicable, the Constitutional Court particularly points out that their application requires drawing up of Annexes to the Agreement subject to review of constitutionality and conformity with the Constitution of Bosnia and Herzegovina.

23. As regards the issue that relates to the provision of the Agreement on co-operation in the field of "defence, in a fully transparent manner", the Constitutional Court observes that a Law on Defence in Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina No. 43/03) was enacted in the meantime pursuant to Article III(5)(a) of the Constitution of Bosnia and Herzegovina (Additional Responsibilities).

This Law regulates a single defence system of Bosnia and Herzegovina; it establishes and defines the chain of command and the role of all elements in order for Bosnia and Herzegovina to have a full capacity in the civilian supervision and protection of the sovereignty and territorial integrity of Bosnia and Herzegovina, it establishes the rights, obligations and the actions of the

institutions of Bosnia and Herzegovina, the Entity bodies and the Armed Forces of Bosnia and Herzegovina for the protection of the sovereignty and territorial integrity, political independence and international personality of Bosnia and Herzegovina, as well as giving support to the civilian authorities (Article 1).

The Constitutional Court, with the remark that the Law on Defence of Bosnia and Herzegovina was enacted and with the aforementioned reasoning of the Constitutional Court's view with respect to the other provisions of Article 2 of the Agreement, concludes that this provision of the Agreement may be interpreted in the manner consistent with the Constitution of Bosnia and Herzegovina.

24. However, the applicant argues that the Agreement is inconsistent with the decision of the Constitutional Court which guarantees constituent status of all three peoples at the level of the Entities, including the equality of the Bosnian, Croatian and Serbian languages and the Cyrillic and Latin alphabets, as it was made in the "official languages of the Federal Republic of Yugoslavia and the Republika Srpska" and published in the "Official Gazette of the Republika Srpska", in the Serbian language, the ekavian dialect and the Cyrillic script.

Namely, the Constitutional Court recalls its position taken in Decision No. U-5/98-IV of 18 and 19 August 2000 when reviewing the conformity with the Constitution of Bosnia and Herzegovina of Article 7 of the Constitution of the Republika Srpska, which reads: "the Serbian language of iekavian and ekavian dialect and the Cyrillic alphabet shall be in official use in the Republic, while the Latin alphabet shall be used as stipulated by the law", when it established as follows: "32. A wide range of meaning of "official use" of the Serb language and the Cyrillic alphabet and the territorial restriction for the official use of other languages in Article 7 of the Constitution of the Republika Srpska, however, go far beyond *per se* legitimate aim to regulate the use of languages insofar as these provisions have the effect of hindering the enjoyment of the rights under Article II(3)(m) and Article 5 of the Constitution of Bosnia and Herzegovina. Moreover, they are also in contradiction with Article I(4) of the Constitution of Bosnia and Herzegovina. The Constitutional Court thus declares Article 7 para 1 of the Constitution of the Republika Srpska unconstitutional".

According to this decision adopted by the Constitutional Court, "provisions or segments of provisions of the Constitution of the Republika Srpska which the Constitutional Court found to be in contravention with the Constitution of Bosnia and Herzegovina shall cease to be in effect as of

the date of the publication of this decision in the Official Gazette of Bosnia and Herzegovina". Pursuant to Article VI.4 of the Constitution of Bosnia and Herzegovina, the decisions of the Constitutional Court shall be final and binding.

By the decision of the High Representative on Constitutional Amendments in the Republika Srpska of 19 April 2002, the Amendment LXIII reads as follows: "the official languages of the Republika Srpska are: the language of the Serb people, the language of the Bosniac people and the language of the Croat people. The official scripts are Cyrillic and Latin".

25. The text of the Agreement reads that it was made in "the official languages – the Serb language and the Cyrillic script".

26. With a remark that the Agreement was signed on 5 March 2001, thus upon the adoption of the decision by the Constitutional Court and prior to the publication of Amendment LXXI to the Constitution of the Republika Srpska in the Official Gazette of the Republika Srpska, the Constitutional Court concludes that, apart from the legal gap in the Constitution of the Republika Srpska that ensued upon the adoption of the decision of the Constitutional Court, the fact that it was not acted in accordance with the decision and the reasoning of the decision of the Constitutional Court No. U-5/98 is unjustifiable.

In view of the fact that the Amendment referring to official languages in the Republika Srpska was enacted in the meantime, the Constitutional Court considers that the Agreement should be published in the Croat and Bosniac languages and in the Latin script.

27. For these reasons, the Constitutional Court orders the Government of the Republika Srpska to provide publication of the contested Agreement in the Official Gazette of the Republika Srpska in the Bosnian and Croatian languages and in the Latin script as required by Amendment LXXI to the Constitution of Republika Srpska, within a period of 30 days as from the date of publication of this Decision in the Official Gazette of Bosnia and Herzegovina.

VII. Conclusion

28. Pursuant to Article 61 paras 1 and 3 of the Constitutional Court's Rules of Procedure, the Constitutional Court decided by the majority of votes as set out in the enacting clause above.

29. According to Article VI(4) of the Constitution of Bosnia and Herzegovina, the decisions of the Constitutional Court shall be final and binding.

Mato Tadić
President
Constitutional Court of Bosnia and Herzegovina