

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), Article 61 para 2 and Article 63 para 2 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. Miodrag Simović, Vice-President,

Ms. Hatidža Hadžiosmanović,

Mr. David Feldman,

Ms. Valerija Galić,

Mr. Jovo Rosić,

Having deliberating on the request of **Mr. Sejfudin Tokić**, Deputy Chair of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina at the time of filing of the present request, in Case No. **U 44/01**,

Adopted at the session of 27 February 2004 the following

DECISION ON MERITS

It is hereby established that a part of Article 11 of the Law on Territorial Organization and Local Self-Government (Official Gazette of the Republika Srpska nos. 11/94, 6/95, 26/95, 15/96, 17/96, 19/96, and 6/97) and the title itself of the Law on the Town of Srpsko Sarajevo as well as its Articles 1 and 2 (Official Gazette of the Republika Srpska nos. 25/93, 8/96, 27/96, and 33/97) with respect to the names: Town of Srpsko Sarajevo, Srpski Drvar, Srpski Sanski Most, Srpski Mostar, Srpsko Goražde, Srbinje, Srpski Ključ, Srpska Kostajnica, Srpski Brod, Srpska Ilidža, Srpsko Novo Sarajevo, Srpski Stari Grad and Srpsko Orašje are not consistent with Article II(4) in conjunction with Articles II(3) and II(5) of the Constitution of Bosnia and Herzegovina.

The National Assembly of the Republika Srpska is ordered, pursuant to Article 63 para 2 of the Rules of Procedure of the Constitutional Court of Bosnia and Herzegovina, to harmonize Article 11 of the Law on Territorial Organization and Local Self-Government and the title itself of the Law on the Town of Srpsko Sarajevo as well as its Articles 1 and 2 with the Constitution of Bosnia and Herzegovina, within a period of three months after the date of publication of the present Decision in the Official Gazette of Bosnia and Herzegovina.

It is hereby established that Article 11(a) of the Law on the Territorial Organization and Local Self-Government is consistent with the Constitution of Bosnia and Herzegovina.

The remainder of the request relating to Article 11 of the Law on Territorial Organization and Local Self-Government is hereby dismissed.

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 30 July 2001 Mr. Sejfudin Tokić, Deputy Chair of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina at the time of its filing request ("the applicant"), filed with the Constitutional Court of Bosnia and Herzegovina ("the Constitutional Court") a request for a review of constitutionality of Articles 11 and 11(a) of the Law on Territorial Organization and Local Self-Government (Official Gazette of the Republika Srpska Nos. 11/94, 6/95, 26/95, 15/96, 17/96, 19/96, and 6/97) and the title itself of the Law on the Town of Srpsko Sarajevo as well as its Articles 1 and 2 (Official Gazette of the Republika Srpska Nos. 25/93, 8/96, 27/96 and 33/97).

II. Procedure before the Constitutional Court

2. Having regard to Article 21 para 1 (previously Article 16 para 1) of the Rules of Procedure of the Constitutional Court, the Speaker of the National Assembly of the Republika Srpska was

requested by a letter of 13 August 2001 to submit his reply to the request, within 14 days after the date of receipt of the letter.

3. By the letter no. 01-927/01 of 3 September 2001, the National Assembly of the Republika Srpska submitted to the Constitutional Court a decision (no. 01-925/01 of 3 September 2001) authorizing Prof. Dr Radomir Lukić ("the representative") to represent the National Assembly of the Republika Srpska in this case before the Constitutional Court. Based on this decision, the representative "was authorized to take all procedural actions pending termination of the proceedings".

4. Thereupon, on 25 October 2001, the Constitutional Court requested that the representative submit his reply to the request at issue, within 21 days after the receipt of the letter.

5. Furthermore, in view of the fact that the representative failed to submit his reply to the aforementioned request, the Constitutional Court requested on 3 December 2001 that the representative act accordingly within a subsequent period of eight days.

6. In view of the fact that no reply was received after expiration of the extended period, the Constitutional Court communicated to the National Assembly of the Republika Srpska a letter of urgency on 5 December 2001 requesting therein submittal of a reply in this case.

7. On 7 February 2002, the Constitutional Court informed the representative that a session of the Constitutional Court was scheduled to take place on 25 and 26 February 2002 and that the request for a review of constitutionality would be discussed on that occasion. The Constitutional Court requested once again that a reply to the request be submitted by no later than 12 February 2002.

8. The representative sent a fax to the Constitutional Court on 22 February 2002 in which he requested that a public hearing be held. He also expressed his willingness to answer all disputable issues that may arise in the course of discussion of the case. In this fax, the representative informed the Constitutional Court that the applicant had also instituted proceedings before the Constitutional Court of the Republika Srpska "in respect of the same norms and acts as those which he already challenged in this case". The representative submitted that it was "necessary

that the Constitutional Court obtain information on the matter as this could affect its work and decision in this case".

9. At the session of the Constitutional Court of 25 and 26 February 2002, it was decided that examination of the case be postponed for the next session. In the meantime, it was agreed that information would be obtained from the Constitutional Court of the Republika Srpska regarding whether the applicant had instituted proceedings for a review of constitutionality of the same norms and acts before the Constitutional Court of the Republika Srpska. It was also decided that the same information should be requested from the applicant.

10. On 12 March 2002 the Constitutional Court sent letters to the applicant and the Constitutional Court of the Republika Srpska requested therein information on the case to be submitted together with the information on the proceedings before the Constitutional Court of the Republika Srpska.

11. On 14 March 2002, the Constitutional Court of the Republika Srpska informed the Constitutional Court that the proceedings for a review of constitutionality of Articles 1 and 2 of the Law on Amendments of the Law on the Town of Srpsko Sarajevo during the State of War or Imminent Danger of War (Official Gazette of the Republika Srpska No. 8/96) were pending before the Constitutional Court of the Republika Srpska and that an initiative for this review was launched by Mr. Sejfudin Tokić and Mr. Dragi Stanimirović, representatives in the Parliamentary Assembly of Bosnia and Herzegovina. This initiative is registered with the Constitutional Court of the Republika Srpska under no. U-67/01 of 2 August 2001.

12. By a letter of 19 March 2002, the applicant informed the Constitutional Court that his initiative launched to the Constitutional Court of the Republika Srpska related to a different law and legal question from the request filed with the Constitutional Court and that "possible proceedings before the Constitutional Court of the Republika Srpska could not affect the proceedings pending before the Constitutional Court of Bosnia and Herzegovina".

13. Following the discussion on the proposal of the Judge Rapporteur at the session of the Constitutional Court held on 10 and 11 May 2002, it was concluded that the adjudication of the

case should be postponed for the next session of the Constitutional Court because the majority of judges voted against the proposal.

III. Request

14. In his request, the applicant submitted that the provisions of Articles 11 and 11(a) of the Law on Territorial Organization and Local Self-Government and title itself of the Law on the Town of Srpsko Sarajevo as well as its Articles 1 and 2 were not consistent with Articles II(3), II(4) and II(5) of the Constitution of Bosnia and Herzegovina.

15. The applicant pointed out that Annex 2 (Agreement on Inter-Entity Boundary Line and Related Issues) to the General Framework Agreement for Peace in Bosnia and Herzegovina explicitly provided that the boundary between the Federation of Bosnia and Herzegovina and the Republika Srpska (the Inter-Entity Boundary Line) shall be as delineated on the map at the Appendix (Article I). According to Annex 7 (Agreement on Refugees and Displaced Persons) the Parties undertake to create in their territories the political, economic and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group (item 1).

16. The applicant invoked Article I of the Constitution of Bosnia and Herzegovina, which reads that Bosnia and Herzegovina, as a democratic state, shall continue its legal existence under international law as a state, with its internal structure modified as provided in the Constitution; Article II of the Constitution of Bosnia and Herzegovina, which reads that Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms anticipated in the European Convention on Protection of the Human Rights and Fundamental Freedoms ("the European Convention") or in the international agreements listed in Annex I to the Constitution and that the enjoyment of these rights shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. According to Article II(5), all refugees and displaced persons shall have the right to return freely to their homes of origin. The applicant also pointed out that all courts, institutions, authorities and instrumentalities operated by

or within the Entities shall apply and conform to human rights and fundamental freedoms. The applicant also invoked Article III(2)(c), which reads that the Entities shall provide a safe and secure environment for all persons in their respective jurisdictions, by maintaining civilian law enforcement agencies operating in accordance with internationally recognized standards and with respect for the internationally recognized human rights and fundamental freedoms, and by taking such other measures as appropriate.

17. The applicant listed the former names of the cities and municipalities which were altered by the contested Article 11 of the Law on Territorial Organization and Local Self-Government in the course of and following the war in Bosnia and Herzegovina in the following manner:

Srpski Drvar – previously Drvar (part of it)

Srpski Sanski Most – previously Sanski Most (part of it)

Srpski Mostar – previously Mostar (part of it)

Srpsko Goražde – previously Goražde

Srbinje – previously Foča

Srpski Ključ – previously Ključ

Srpska Kostajnica – previously Bosanska Kostajnica

Srpski Brod – previously Bosanski Brod

Srpska Ilidža – previously Ilidža (part of it)

Srpsko Novo Sarajevo – previously Novo Sarajevo (part of it)

Srpski Stari Grad – previously Stari Grad (part of it)

Town of Srpsko Sarajevo – previously Sarajevo

Srpsko Orašje - previously Orašje (part of it)

18. Based on the aforesaid, the applicant concluded that the adjective "bosanski" (Bosnian) was deleted in the names of the towns that previously contained that word (e.g. Bosanski Brod), and that the adjective "srpski" (Serb) was added to the names of a certain number of towns.

Furthermore, the name of the town of Foča was changed to Srbinje, which is associated with the prefix "srpski".

19. In the applicant's opinion, the contested provisions of the Law on Territorial Organization and Local Self-Government and the Law on the Town of Srpsko Sarajevo were inconsistent with the Constitution of the Bosnia and Herzegovina, particularly with the provisions of Articles II(3), II(4) and II(5) thereof.

20. As to the Law on the Town of Srpsko Sarajevo, the applicant argued that ever since its foundation up until April 1992, the City of Sarajevo represented a historical entity in which persons belonging to different peoples and practising different religions lived together. Throughout its history, the ethnic structure of its population changed but an ethnic prefix designating it as a city of one people or one religious group was never added to the name of Sarajevo. Indeed, Sarajevo had always been a city of its citizens.

21. Such prefix would, in the applicant's view, mean that the Town of Srpsko Sarajevo would be a city of only one people. In that way, members of other constituent peoples and other citizens are put on an unequal and discriminatory footing.

22. The applicant pointed out that the legislator's intention to privilege the Serb people also appears from the Statute of the Town of Srpsko Sarajevo (Official Gazette of the Town of Srpsko Sarajevo no. 10/00 of 13 October 2000) as well as from the symbols and attributes of the town, which exclusively represent the Serb history and tradition. According to Article 5 of the said Statute, the symbol of the town shall be the coat-of-arms that symbolizes the historical and cultural values of Srpsko Sarajevo. According to Article 7 of the same Statute, the Patron Saint of the town is the Saint Petar Zimonjić of Sarajevo.

23. On the other hand, before the war a great number of citizens of non-Serb origin lived in the area that covered the town of Srpsko Sarajevo. Such citizens even constituted the majority in some municipalities such as Rogatica and Trnovo whereas today their number is negligible. It was therefore evident that the citizens of Srpsko Sarajevo of non-Serb origin were not only discriminated against as individuals but also as members of their constituent peoples.

24. The applicant argued that the fact that even nowadays more Serb people live in the area of Sarajevo than in the area of "Srpsko Sarajevo" proves the extent to which the contested provisions are against with any rational criteria.

25. The applicant referred to the Constitutional Court's Decision no. *U 5/98* (Official Gazette of Bosnia and Herzegovina no. 23/00), in which the position was taken that "the constitutional principle of collective equality of constituent peoples following from the designation of Bosniacs, Croats and Serbs as constituent peoples prohibits any privilege for one or two of these three peoples, any domination in governmental structures or any ethnic homogenization through segregation based on territorial separation. Despite the territorial delimitation of Bosnia and Herzegovina by the establishment of the two Entities, this territorial delimitation could not provide constitutional legitimacy for ethnic domination, national homogenization or a right to uphold the effects of ethnic cleansing".

26. The applicant took the view that although the constituent peoples were in reality in a majority or minority position in the Entities, the explicit recognition of the Bosniac, Croat and Serb peoples as constituent peoples in the Constitution of Bosnia and Herzegovina can only mean that none of them is recognized as a majority, i.e. they enjoy equality as groups. Therefore, it is a constitutional obligation not to discriminate in particular against those constituent peoples that are in reality in a minority position in the respective Entity. It is not only a clear constitutional obligation not to discriminate constituent people that is in reality in a minority position in the respective Entity and it is not only a clear constitutional obligation not to violate, in a discriminatory manner, the individual rights provided for in Article II(3) and II(4) of the Constitution of Bosnia and Herzegovina, but also a constitutional obligation of non-discrimination in respect of the rights of groups. For instance, there would be discrimination if one or two constituent peoples had a privileged treatment through the legal systems of the Entities.

27. The applicant pointed out that Article II(5) of the Constitution of Bosnia and Herzegovina referred explicitly to Annex VII, which reads in Article I as follows: "The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina". It follows from the context of these provisions that it was an overall objective of the Dayton Peace Agreement to ensure the return of refugees and displaced persons to their

homes of origin and thereby re-establish a multi-ethnic society which had existed before the war without any territorial separation on ethnic grounds.

28. Therefore, the prohibition of discrimination represents, in the applicant's view, a starting-point and a fundamental principle in both international and national law. The prohibition of discrimination is provided for in Articles 2 and 7 of the Universal Declaration on Human Rights, Articles 2 and 26 of the International Covenant on Civil and Political Rights and Article 14 of the European Convention.

29. Regarding the part of Article 11 of the Law on Amendments to the Law on Territorial Organization and Local Self-Government stipulating that the status of some municipalities belonging to the Federation of Bosnia and Herzegovina shall be determined by a decision of the National Assembly and Article 11(a) para 1 stipulating that certain municipalities transferred to the Federation shall temporarily stop functioning, the applicant contended that the issue of the Inter-Entity Boundary Line was regulated in Annex 2 to the General Framework Agreement and that an usurpation of powers with respect to municipalities that belonged to the territory of the Federation of Bosnia and Herzegovina undoubtedly followed from the contested provision. In the appellant's opinion, this was in contravention with the Constitution of Bosnia and Herzegovina.

30. The applicant also pointed out that the changes of names by adding the prefix "srpski" (Serb) after the signing of the Dayton Agreement at the time when it was necessary to ensure that all refugees and displaced persons return freely to their homes of origin (Article II(5) of the Constitution of Bosnia and Herzegovina) created an atmosphere of "fear and distrust among the refugees who were forced to abandon their homes for being persecuted on ethnic grounds".

31. Therefore, in the applicant's view, the contested provisions were discriminatory and inconsistent with Articles II(3), II(4) and II(5) of the Constitution of Bosnia and Herzegovina.

32. Given the importance of the issues raised, the applicant suggested that the Constitutional Court should decide the case after holding a public hearing.

IV. Relevant law

33. **Law on Territorial Organization and Local Self-Government** (Official Gazette of the Republika Srpska No. 11/94):

Article 11

The Republika Srpska shall have the following municipalities: Banja Luka, Bijeljina, Bileća, Bihać, Bratunac, Brod, Brčko, Višegrad, Vlasenica, Vogošća, Gacko, Glamoč, Goražde, Gradačac, Gradiška, Grahovo, Derventa, Doboj, Srbobran, Drvar, Zavidovići, Zvornik, Ilijaš, Iliđza, Jajce, Kalesija, Kalinovik, Ključ, Kneževo, Kozarska Dubica, Konjic, Kotor Varoš, Krupa na Uni, Kupres, Laktaši, Lopare, Lukavac, Ljubinje, Maglaj, Milići, Modriča, Mostar, Mrkonjić Grad, Nevesinje, Novi Grad, Novo Sarajevo, Olovo, Orašje, Odžak, Pale, Pelagićevo, Petrovac, Petrovo, Prijedor, Prnjavor, Rajlovac, Rogatica, Rudo, Sanski Most, Skelani, Sokolac, Srbac, Srbinje, Srebrenik, Srpska Kostajnica, Stari Grad, Stolac, Teslić, Trebinje, Trnovo, Tuzla, Ugljevik, Han Pijesak, Hadžići, Centar Sarajevo, Čajniče, Čelinac, Šamac, Šekovići and Šipovo.

On obtaining an opinion of the Municipal Assembly concerned, the Government shall be authorized to identify the settlements composing the area of the Municipality and/or the cadastral municipalities included in that municipality.

Law on Amendments to the Law on Territorial Organization and Local Self-Government
(Official Gazette of the Republika Srpska No. 6/95):

Article 1

In Article 11 of the Law of Territorial Organization and Local Self-Government (Official Gazette of the Republika Srpska No. 11/94), the words "Brod" and "Odžak" shall be replaced with, respectively, "Srpski Brod" and "Vukosavlje".

Law on Amendments to the Law on Territorial Organization and Local Self-Government
(Official Gazette of Republika Srpska No. 15/96):

Article 2

Article 11 is amended and shall read as follows:

The Republika Srpska shall have the following municipalities: Banja Luka, Bijeljina, Bileća, Berkovići, Bratunac, Brčko, Višegrad, Vlasenica, Vukosavlje, Gacko, Gradiška, Derventa, Doboj, Zvornik, Jezero, Kalinovik, Kneževo, Kozarska Dubica, Kotor Varoš, Krupa na Uni, Kupres, Laktaši, Lopare, Ljubinje, Milići, Modriča, Mrkonjić Grad, Nevesinje, Novi Grad, Osmaci, Pale, Pelagićevo, Petrovo, Prijedor, Prnjavor, Rogatica, Rudo, Skelani, Srpski Drvar, Srpska Sana, Srebrenica, Sokolac, Srpski Mostar, Srpsko Goražde, Srbac, Srbinje, Srpski Ključ, Srpska Kostajnica, Srpski Brod, Srpska Ilidža, Srpsko Novo Sarajevo, Srpski Stari Grad, Teslić, Trebinje, Trnovo, Ugljevik, Han Pijesak, Čajniče, Čelinac, Šamac, Šekovići and Šipovo.

The areas of the municipalities Srpska Ilidža, Srpsko Novo Sarajevo, Pale, Sokolac, Srpski Stari Grad and Trnovo shall constitute the Town of Srpsko Sarajevo.

The status of municipalities or territories of municipalities which become part of the Federation of Bosnia and Herzegovina in accordance with the General Framework Agreement for Peace in Bosnia and Herzegovina shall be determined by a decision of the National Assembly of the Republika Srpska.

Article 3

Article 11(a) shall be added after Article 11, reading as follows:

Article 11 (a)

The following municipalities of the Republika Srpska shall temporarily stop functioning: Bihać, Vogošća, Glamoč, Gradačac, Grahovo, Drvar, Zavidovići, Ilijaš, Jajce, Konjic, Lukavac, Maglaj, Olovo, Orašje, Petrovac, Rajlovac, Srebrenik, Srbobran, Tuzla, Hadžići and Centar Sarajevo.

Those parts within the municipalities which have temporarily stopped functioning shall be included in the territories of the following municipalities: part of the Glamoč Municipality shall be included in the territory of the Šipovo Municipality, parts of the Gradačac Municipality shall be included in the territories of the Modriča and Pelagićevo Municipalities, part of the Ilijaš Municipality shall be included in the territory of the Sokolac Municipality, parts of the Konjic Municipality shall be included in the territory of the Nevesinje Municipality, parts of the Kladanj

Municipality shall be included in the territory of the Šekovići Municipality, parts of the Lukavac Municipality shall be included in the territory of the Petrovo Municipality, parts of the Maglaj Municipality shall be included in the territory of the Doboј Municipality, parts of the Olovo Municipality shall be included in the territory of the Sokolac Municipality, parts of the Orašje Municipality shall be included in the territory of the Brčko Municipality, parts of the Petrovac Municipality shall be included in the territory of the Ključ Municipality, parts of the Srbobran Municipality shall be included in the territory of the Šipovo Municipality, parts of the Tuzla Municipality shall be included in the territory of the Lopare Municipality.

Article 2 para 2 of the Law on Amendments of the Law on Territorial Organization and Local Self-Government (Official Gazette of the Republika Srpska No. 15/96) is rectified as follows:

- The wording "Srpski Sanski Most" shall be used instead of "Srpska Sana". "Srpsko Orašje" shall be inserted after the wording "Srpski Stari Grad". In Article 3 para 1 the words "Drvar, Jajce, Orašje and Petrovac" shall be deleted. In Article 3 para 2 the words "parts of the Orašje Municipality shall be included in the territory of the Brčko Municipality, parts of the Petrovac Municipality shall be included in the territory of the Ključ Municipality" after the word "Sokolac" shall be deleted.

34. Law on the Srpski grad Sarajevo (Serb Town of Sarajevo) during the State of War and Imminent Threat of War (Official Gazette of the Republika Srpska No. 25/93):

Article 1

This Law shall establish the area of the Srpski Grad Sarajevo (hereinafter: the Town), its bodies and their respective competences, finances and the constitution of the Town Assembly.

During the state of war or imminent threat of war, the Town shall exercise all those functions relating to the local self-government in its area except those assigned to the municipal bodies by the Town Assembly.

Article 2

The area of the Town shall consist of areas of the following municipalities of the Republika Srpska: Centar, Hadžići, Ilidža, Ilijaš, Novo Sarajevo, Stari Grad, Rajlovac, Vogošća and Trnovo.

Law on Amendments of the Law on the Srpski grad Sarajevo (Serb Town of Sarajevo) during the State of War or Imminent Threat of War (Official Gazette of the Republika Srpska No. 8/96):

Article 1

In the Law on the Srpski Grad Sarajevo during the State of War or Imminent Threat of War (Official Gazette of the Republika Srpska No. 25/93), the name of the Law shall be changed to read "Law on the Town of Srpsko Sarajevo.

Article 2

In Article 1, para 1 the wording: "Srpski Grad Sarajevo" shall be replaced with the wording "Town of Srpsko Sarajevo".

The words "during the state of war or imminent threat of war" shall be deleted from Article 1 para 2.

Article 3

Article 2 shall be amended to read as follows:

The area of the Town shall be composed of the areas of the following municipalities of the Republika Srpska: Srpska Ilidža, Srpsko Novo Sarajevo, Pale, Sokolac, Stari Grad and Trnovo.

Para 2 shall be added after para 1 of Article 2, reading as follows: The statute of the municipalities Centar Sarajevo, Hadžići, Rajlovac and Vogošća, i.e. the areas which belonged to the Federation of Bosnia and Herzegovina in accordance with the General Framework Agreement, shall be determined by a statute of the Town of Srpsko Sarajevo.

35. Law on Replacement of the Name of the Municipality of Foča and of the Name of the Town of Foča with the Name Srbinje (Official Gazette of the Republika Srpska No. 25/93):

Article 1

The name of the Municipality of Foča shall be replaced with the name Srbinje.

Article 2

The name of the Town of Foča shall be replaced with the name Srbinje.

V. Admissibility

36. The Constitutional Court invoked Article VI(3)(a) of the Constitution of Bosnia and Herzegovina in examining the admissibility of the present appeal.

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.

37. The applicant requested a review of conformity with the Constitution of Bosnia and Herzegovina of Articles 11 and 11(a) of the Law on Territorial Organization and Local Self-Government and Articles 1 and 2 of the Law on the Town of Srpsko Sarajevo.

38. At the time of filing of the instant request, the applicant was the Deputy Chair of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina.

39. In view of Article VI(3)(a) and Article 16 para 2 of the Constitutional Court's Rules of Procedure, the Constitutional Court established that the request was filed by an authorized person and that the requirements set out in Article 16 para 2 of Constitutional Court's Rules of Procedure have been met in the case concerned.

40. Consequently, the present request is admissible.

VI. Merits

41. The Constitutional Court is called upon to examine whether Article 11 of the Law on Territorial Organization and Local Self-Government and the title itself of the Law on the Town of Srpsko Sarajevo as well as its Articles 1 and 2 of are consistent with Article II(4) in conjunction with II(3) and II(5) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention.

42. The Constitutional Court is also called upon to examine whether para 2 of Article 11(a) of the Law on Territorial Organization and Local Self-Government insofar as it provides temporary termination of functioning of certain municipalities which are now part of the Federation of Bosnia and Herzegovina is consistent with the Constitution of Bosnia and Herzegovina.

43. Articles II(4) and II(5) of the Constitution of Bosnia and Herzegovina read as follows:

4. Non-Discrimination

The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

5. Refugees and Displaced Persons

All refugees and displaced persons have the right freely to return to their homes of origin. They have the right, in accordance with Annex 7 to the General Framework Agreement, to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void.

44. Article II(2) of the Constitution of Bosnia and Herzegovina provides that the rights and freedoms guaranteed under the European Convention and its Protocols thereto shall apply directly in Bosnia and Herzegovina and have priority over all other law.

Article 14 of the European Convention provides as follows:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

45. According to the case-law of the European Court for Human Rights, Article 14 of the European Convention cannot be applied autonomously. It follows from the wording of Article 14 of the European Convention that it only prohibits discrimination with respect to the rights and freedoms protected by the European Convention. The Constitutional Court refers to the practice of application of Article 14 expressed, *inter alia*, in the *Belgian Linguistic case* (European Court for Human Rights, Judgment of 23 July 1968, Series A, vol. 6), insofar as it sets out the criteria for the concept of discrimination.

The Constitutional Court recalls that it has been using the criteria of non-discrimination established by the European Court for Human Rights, which includes the constitutional rights and rights set forth in the European Convention coupled with the rights under international human rights agreements listed in Annex I to the Constitution of Bosnia and Herzegovina. It follows from the aforementioned case-law of the Constitutional Court that Article II(4) of the Constitution of Bosnia and Herzegovina provides a more extensive protection from discrimination than Article 14 of the European Convention.

46. In the present case, the Constitutional Court considers that a question of discrimination arises with regard to the right to return guaranteed by Article II(5) of the Constitution of Bosnia and Herzegovina and the prohibition of discrimination based on ethnic origin as well as ensuring equal treatment with regard to freedom of movement within the state borders.

47. The Constitutional Court also refers to its third Partial Decision in Case no. 5/98 in which it pointed out that the constitutional principle of collective equality of constituent peoples following from the designation of Bosniacs, Croats and Serbs as constituent peoples prohibits any special privilege for one or two of these peoples, any domination in governmental structures or any ethnic homogenization through segregation based on territorial separation (Third Partial Decision no. 5/98 III of 1 July 2000 – Bulletin of the Constitutional Court of Bosnia and Herzegovina Sarajevo 2001, para 60).

48. According to the aforementioned case-law of the European Court of Human Rights, an act or regulation is discriminatory if it makes a distinction between individuals or groups who are in a similar situation and if this distinction lacks objective and reasonable justification, or if there is no reasonable proportionality between the means used and the aim sought to be realized.

49. The groups which are to be compared are in this case the Bosniac, Croat and Serb citizens of Bosnia and Herzegovina who should, according to a basic constitutional principle, be granted equal treatment throughout the territory of Bosnia and Herzegovina. However, the change of names by adding the adjective "srpski" before the names of certain towns or municipalities, by replacing a previous name with a new name indicating a Serb affiliation, or by eliminating in some cases the prefix "bosanski" demonstrates a clear intention and a wish to make it clear that the towns and municipalities concerned are to be regarded as exclusively Serb. In this regard, a question therefore arises whether this unequal treatment can be considered to have an objective and reasonable justification within the meaning of Article II(4) of the Constitution of Bosnia and Herzegovina.

50. Although the instant request was filed with the Constitutional Court on 30 July 2001, the National Assembly of the Republika Srpska, except for appointing a representative in the proceedings who then proposed holding a public hearing regarding the subject matter in question, has so far failed to advance any arguments that there existed an objective and reasonable

justification for the change of the names of the aforementioned cities and municipalities. However, this fact does not prevent the Constitutional Court from examining whether there might have been reasons whereby the contested legal provisions contained such justification.

51. The Constitutional Court therefore interprets the reasons that lead to the change of the names as being primarily a wish to emphasize the fact that the towns and municipalities at issue are located within the territory of the Republika Srpska and that they have at present a majority of inhabitants of the Serb origin. However, such reasons cannot be accepted as being objective and reasonable as they stand against the basic constitutional principle of the equality of the constituent peoples throughout the territory of Bosnia and Herzegovina.

52. It is also evident that placing an emphasis on the "Serb" character of certain towns and municipalities would be in disregard of the fact that in many cases the present population structure is the result of the war and migration caused by the war and it did not correspond to the situation before the war. The provision of Article II(5) of the Constitution of Bosnia and Herzegovina was aimed at enabling "the annulment of consequences caused by the war and creating the political, economic, and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group. Furthermore, it is necessary to provide all possible assistance to refugees and displaced persons and work to facilitate their voluntary return in a peaceful, orderly and phased manner" (Article II of Annex 7 to the Dayton Peace Agreement – Agreement on Refugees and Displaced Persons). To choose names on the basis of the present population structure cannot therefore be consistent with one of the fundamental aims of the Constitution of Bosnia and Herzegovina and Annex 7 to the Peace Agreement enunciated in Article II(5) of the Constitution of Bosnia and Herzegovina and Article II of Annex 7 to the Peace Agreement – facilitating and encouragement of the return of refugees and displaced persons to their homes of origin.

53. Another reason for renaming of the towns and municipalities could in some cases be viewed as an attempt to distinguish their names from similar names of towns or municipalities located within the territory of the Federation of Bosnia and Herzegovina. However, the Constitutional Court notes that this aim could easily be achieved by choosing prefixes or names which are ethnically neutral. In any case, the constitutional arguments against the choice of

names indicating a specific Serb affiliation are so strong that in this case no reasonable proportionality exists between the means used and the aim sought to be realized.

54. It is beyond dispute that some of the changes of names were made already in place before the present Constitution of Bosnia and Herzegovina entered into force. Nevertheless, the fact that these names are not consistent with the principles set out in the Constitution of Bosnia and Herzegovina and the fact that they were confirmed by subsequent laws are, in themselves, in contravention with the Constitution of Bosnia and Herzegovina.

55. The Constitutional Court therefore concludes that the contested legal provisions are not consistent with the constitutional principle of the equality of the constituent peoples in Bosnia and Herzegovina. Moreover, they constitute discrimination contrary to Article II(4) in conjunction with Article II(5) of the Constitution of Bosnia and Herzegovina. In view of the fact that the provision of Article II(5) is an integral part of certain rights under Article II(3) of the Constitution of Bosnia and Herzegovina, the Constitutional Court concludes that this Article was also violated in the present case.

Article 11 (a) of the Law on Territorial Organization and Local Self-Government

56. As regards para 3 of Article 11 and para 1 of Article 11(a) of the Law on Territorial Organization and Local Self-Government, which provide that the status of certain municipalities belonging to the Federation of Bosnia and Herzegovina shall be determined by the National Assembly of the Republika Srpska and that certain municipalities which, wholly or partly, have been transferred to the Federation of Bosnia and Herzegovina shall temporarily stop functioning, the Constitutional Court finds that these provisions should be interpreted within the context of para 2 of Article 11(a).

57. Although the meaning of the contested provisions is not sufficiently clear, the Constitutional Court assumes that they anticipate that the National Assembly of the Republika Srpska may decide that the municipalities concerned have no longer any status within the Republika Srpska and that the previous organization of these municipalities shall no longer exist, it being left to the Federation of Bosnia and Herzegovina to decide on the future administration of those municipalities and parts of municipalities which were transferred to the Federation of

Bosnia and Herzegovina. While there may be argument-supported reasons to conclude that the wording of these provisions, including the use of the word "temporarily" in Article 11(a), to be inadequate in this provision, the Constitutional Court considers that a conclusion on its unconstitutionality does not follow from the meaning of the contested provision.

VII. Conclusion

58. Pursuant to Article 61 para 2 and Article 63 para 2 of the Constitutional Court's Rules of Procedure, the Constitutional Court adopted a unanimous decision as set out in the enacting clause above.

59. The Constitutional Court did not find it necessary to examine the issues of importance for the adoption of this decision directly at a public hearing. The Constitutional Court took this view proceeding from the provision of Article 46 para 1 of its Rules of Procedure.

60. 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