

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(3) and Article 80 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 in Case No. **U 44/01**,
Adopted at the session of 22 September 2004 the following

DECISION

The names which ceased to be in force shall, until the inconsistencies established in Decision No. U-44/01 of 27 February 2004 have been removed, be temporary replaced with the following names:

- The name "Town of Srpsko Sarajevo" shall be replaced with the name "Town of Istočno Sarajevo",
- the name "Srpski Drvar" shall be replaced with the name "Istočni Drvar",
- the name "Srpski Sanski Most" shall be replaced with the name "Oštra Luka",
- the name "Srpski Mostar" shall be replaced with the name "Istočni Mostar",
- the name "Srpsko Goražde" shall be replaced with the name "Ustiprača",
- the name "Srbinje", shall be replaced with the name "Foča",
- the name "Srpski Ključ" shall be replaced with the name "Ribnik",
- the name "Srpska Kostajnica" shall be replaced by the name "Bosanska Kostajnica"

- the name "Srpski Brod" shall be replaced with the name "Bosanski Brod";

- the name "Srpska Ilidža" shall be replaced with the name "Kasindo",

- the name "Srpsko Novo Sarajevo" shall be replaced with the name "Lukavica",

- the name "Srpski Stari Grad" shall be replaced with "Istočni Stari Grad",

- the name "Srpsko Orašje" shall be replaced with the name "Donji Žabar".

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

1. The Constitutional Court of Bosnia and Herzegovina ("the Constitutional Court") established by its Decision No. U-44/01 of 27 February 2004 that 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 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, 33/97) in relation to the names of: 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, were not consistent with Article II(4) in conjunction with Articles II(3) and II(5) of the Constitution of Bosnia and Herzegovina.

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

3. The said decision was published in the Official Gazette of Bosnia and Herzegovina No. 18/04 of 11 May 2004. The three-month period for harmonization of the aforementioned provisions with the Constitution of Bosnia and Herzegovina started running from that date.

4. Pursuant to Article 75 para 5 of the Constitutional Court's Rules of Procedure, the National Assembly of the Republika Srpska informed the Constitutional Court, act no. 02-1450/04 of 6 August 2004, that it enacted a Law on Amendments to the Law on Territorial Organization and Local Self-Government and a Law on Amendments to the Law on the Town of Srpsko Sarajevo at its 19th session held on 28 July 2004. The National Assembly of the Republika Srpska also informed the Constitutional Court, letter no. 02-1473/04 of 18 August 2004, that it referred the aforesaid laws to the Council of Peoples of the Republika Srpska, in pursuance of Article 70 of the Constitution of the Republika Srpska as amended by Amendment LXXXII. On 5 August 2004 the Council of Peoples of the Republika Srpska informed the National Assembly of the Republika Srpska that the said laws fell within the scope of issues of violation of vital national interests of the constituent peoples and that these laws would be considered, at the request of Chair or Deputy Chair of the Council of Peoples, at the session of this Council as an issue of the vital national interest.

5. Article 69 para 2, as supplemented by sub-paragraph 1 of Amendment LXXXVI of the Constitution of the Republika Srpska, reads as follows: "The legislative authority in the Republika Srpska shall be performed by the National Assembly and the Council of Peoples. The laws and other regulations approved by the National Assembly concerning the vital national

interest issues of any of the constituent peoples shall come into force only after their adoption in the Council of Peoples".

6. According to Article 70 as amended by Amendment LXXXII of the Republika Srpska, "laws or other regulations or acts passed by the National Assembly shall be referred to and considered by the Council of Peoples if they concern the vital interest defined in Amendment LXXVII. In the event more than one Chair or Deputy Chair of the Council of Peoples considers that the law falls within the scope of issues of the vital interest defined in Amendment LXXVII, that law shall be included on the agenda of the Council of Peoples as an issue of the vital interest [...] In the event the majority of each caucus which has delegates in the Council of Peoples votes for such laws or other regulations or acts, they shall be considered to be adopted. [...] If no agreement is reached, the law shall not be adopted and it shall be referred back to the proponent to undergo a new procedure. In that case, the proponent cannot submit the same text of the law, regulation or other act".

7. According to Article 109 of the Constitution of the Republika Srpska, "laws, other regulations and general enactments shall enter into force not earlier than on the eighth day after the day of their publication, unless, for particularly justified reasons, it is stipulated that they enter into force at an earlier date. Before entering into effect, laws, other regulations and general enactments of State agencies shall be published in an appropriate official gazette".

8. Having regard to Articles 70 and 109 of the Constitution of the Republika Srpska and the quoted acts of the National Assembly of the Republika Srpska, the Constitutional Court has found that the National Assembly of the Republika Srpska failed to remove the established inconsistencies within the three-month period anticipated for the harmonization, which expired on 12 August 2004.

9. Acting in accordance with the aforesaid provisions of its Rules of Procedure, the Constitutional Court specified, within the bounds of the applicant's request and in accordance with its Decision No. U 44/01 of 27 February 2004 and the legal position expressed in the reasoning of that decision, in the enacting clause of the decision on cessation of application of the provisions inconsistent with the Constitution of Bosnia and Herzegovina No. U- 44/01 of 22

September 2004 the provisions which are not consistent with the Constitution of Bosnia and Herzegovina and which, as such, ceased to be in force.

10. When deciding to adopt this Decision, the Constitutional Court took account of an undisputed fact of occurrence of a legal gap when the contested provisions ceased to be in force, the need for an undisturbed functioning of the town and the municipalities whose names have been determined by the provisions of the laws that ceased to be in force, the need for respect of the General Framework Agreement for Peace in Bosnia and Herzegovina and the inter-Entity municipal demarcations, the need for distinguishing the names of towns and municipalities from similar names of towns and municipalities in the territory of the Federation of Bosnia and Herzegovina and the inability of application of former laws in respect of all names. Consequently, the Constitutional Court determined, until the National Assembly of the Republika Srpska removes the established inconsistencies in accordance with the Constitutional Court's Decision No. U 44/01 of 27 February 2004, temporary names set out in the enacting clause above taking into consideration the names of the largest inhabited settlement in the area of the municipalities whose names ceased to be in force according to the statistical data of the 1991 census, the geographic location and the ethnically neutral names.

11. Given the temporary character of this Decision and with the aim of avoiding legal chaos on the territory of the Republika Srpska pending adoption of an appropriate law by the legislative bodies of the Republika Srpska in accordance with Decision of the Constitutional Court No. U-44/01 of 27 February 2004, and taking into account the fact that the contested provisions ceased to be valid, the Constitutional Court points out that, in the view of its overall constitutional role as a guardian of the Constitution of Bosnia and Herzegovina, it did not assume the role of a legislator in the present case.

12. Pursuant to Article 80 of the Rules of Procedure of the Constitutional Court, the Constitutional Court decided by the majority of votes as set out in the enacting clause above.

13. 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