

Association of Law Institute in Bosnia and Herzegovina



CONSTITUTIONAL REFORM OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

Explanation of proposed Constitutional reforms

Canton Map

New Constitution of the Federation of Bosnia and Herzegovina

Sarajevo, November 2012.

Working Group of Lawyers:

Maja Sahadžić, Muhamed Mujakić, Josip Dolić, Nedim Kulenović, Davor Trlin, Jasmin Pilica,
Nedim Hogić, Dejan Ružić, Lana Ačkar i Jelena Serdar

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Executive Summary

Association Law Institute in Bosnia and Herzegovina established a Working Group of Lawyers for constitutional reform of the Federation of Bosnia and Herzegovina for the purpose of suggesting amendments to the Constitution of the Federation of Bosnia and Herzegovina in order to increase functionality of the Federation and reduce expenses of this Entity. The primary intention of the Working Group was to suggest reform solutions. The Working Group concluded that most of recent, though few, discussions on the possible changes to the Constitution of the Federation of Bosnia and Herzegovina were based on partial or incomplete approach referring only to certain issues. After considering the existing constitutional arrangement in the Federation of Bosnia and Herzegovina the Working Group concluded that it was inevitable to make a comprehensive analysis of the Constitution of the Federation of Bosnia and Herzegovina by indicating its deficiencies and proposing new ideas. This is a local initiative supported by the Embassy of the United States in BiH. Opinions expressed in this document do not express official view of the United States.

The significance of **the proposal of the new Constitution** of the Federation of Bosnia and Herzegovina is even greater since it was drafted in accordance with the standard normative and legal technique and legal and methodological principles which are used in drafting regulations in Continental-European legal systems to whose tradition Bosnia and Herzegovina belongs to. The structure, systematics, language, style and way of drafting of the Constitution of the Federation thus conform to the legal and constitutional tradition of Bosnia and Herzegovina.

Areas such as human rights and fundamental freedoms, Ombudsman of the Federation of Bosnia and Herzegovina, distribution of key functions in the structure of the Federal power, Canton authorities, local self-government, amendments, adoption of the Constitution and its entering into force, transitional solutions and transitional and final provisions were discussed in details by the Working group and the group thoroughly having considered them it turned special attention to the consideration of the following areas: territorial organization, competences, legislation, executive power, judicial power, constitutional judiciary and constitutional terminology.

Basic **results** reached by the Working group include, among other things, some important changes. Firstly, the group has recognized the **inevitability of the reorganization of the Federation** of Bosnia and Herzegovina by merging cantons in accordance with demographic, economic and geographic, and to the extent necessary, the multiethnic criteria. By the proposal of the new Canton map, the number of cantons would decrease from 10 to 6 thus reducing the costs of public expenditures and enormous administration in the Federation. The proposal which was also considered is to arrange Sarajevo Canton as Sarajevo District on the basis of reorganization of a part of the territories of the Federation of Bosnia and Herzegovina and Republika Srpska. It is also necessary to make **a redistribution of competences between the Federation and Cantons** in such a way as to determine a presumption of competences in favor of the Federation by explicitly stating the exclusive competences of the cantons, and the shared competences of the Cantons and the Federation which would only confirm factual situation. Some of the competences such as **health care, university education and local self-government** need to be assigned to the level of the Federation of Bosnia and Herzegovina. The working group's proposal is also to increase the number of members in the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina to 68, that is the increase of the number of so called *Others* to 17 thus equalizing their number with the number of members coming from constituent peoples and to guarantee participation of so called *Others* in the procedures of election of the President and Vice President of the Federation and adoption of the amendments to the Constitution of the Federation which has not been case so far. It is also essential to more precisely determine the constitutional provisions relating the concrete time designations contrary to undefined terms such as „reasonable deadline“ or „unjustified prolonging“. The Working group holds an opinion that the Federal level should be opened for forms of direct decision making in line with the same arrangements in Republika Srpska entity. When considering the executive power in the Federation it is proposed that provisions are to be defined in such a way as to provide a possibility for so called *Others* to participate in the executive power by being elected as Vice Prime Ministers and to guarantee that at least one Minister in the Government of the Federation has to be a member of the group of the so called *Others*. It is also important to define that the Office of the High Representative in Bosnia and Herzegovina is the authority which determines when the “full implementation of Annex VII” of the General Framework Agreement for Peace in Bosnia and Herzegovina has taken place. A new chapter is also added to the Constitution of

the Federation with the title „Judicial power of the Federation of Bosnia and Herzegovina“, which would unite the provisions on the Supreme court of the Federation, cantonal and municipal courts and the separation of the heading with the title “The Constitutional Court of Federation of Bosnia and Herzegovina”. Besides this, it is necessary to add a chapter on the budget of judicial institutions of the Federation of Bosnia and Herzegovina and thus **enhance independence of the judiciary from the executive and legislative power**. The term „Others“ is replaced with „**nationally uncommitted and national minorities**“, the term „županija“ is **standardized** in the constitution of the Federation in Croatian language and term „vital national interest“ is replaced with more adequate term „**vital interest**“ and other terminological discrepancies in the Constitution are specified.

This Document presents the authors' effort as lawyers to give their personal contribution to a debate on constitutional reform in Bosnia and Herzegovina, particularly in the Federation of BiH, with the purpose of achieving a more efficient Federation which would be to the benefit of its peoples and citizens.

INTRODUCTION

Asymmetrical governance structure of Bosnia and Herzegovina (BiH) as a state is reflected in the fact that its entities are not organized in the same manner – Republika Srpska (RS) is a unitary entity whilst the Federation of Bosnia and Herzegovina (FBiH) is a federally organized entity, with the District of Brčko of BiH as a separate self-government unit under the sovereignty of Bosnia and Herzegovina. The present state structure of Bosnia and Herzegovina is a consequence of the circumstances in 1994 under which the Constitution of the Federation of BiH was adopted, and which should have served as a constitutional framework for the cantonization of the entire territory of (R)BiH after the end of the armed conflict. Since the agreement on this issue was not reached during the peace negotiations in Dayton, FBiH has become (or remained) only one of the entities in a complex governance structure of BiH. Nearly two decades after the adoption of the Constitution of the Federation of BiH, it has become obvious that this organization on 51% of BiH territory is not efficient. Constitutional structure of the FBiH requires enormous contributions to finance a large administration, it results in different treatment of FBiH citizens in the exercise of their fundamental rights, and various aspects of the constitutional structure are not appropriate in the current circumstances.

In the last two decades the Constitution of the FBiH went through numerous changes¹ as consequence resulting in a Constitution which is overburdened with amendments since an official consolidated text was never drafted. At the same time, the changes have not seriously treated already recognized deficiencies of the constitutional organization of the FBiH. In relation to that the Working group considers that any reform of the structural problems of the FBiH needs to begin by changing the fundamental legal document of the FBiH, meaning its Constitution, but also it is important to deal with the statutory issues such as the one relating to the territorial organization of the FBiH.

1. TERMINOLOGY

1.1. Statement of Facts

The Constitution of the FBiH contains inappropriate terminology which is a consequence of prevailing ethnicization of the constitutional law in BiH or of the inconsistencies due to numerous changes to the contents of the Constitution. Term „Others“ is particularly problematic since it degradingly addresses a part of the FBiH citizens and its usage in this and other constitutional documents cannot be considered legitimate. An adequate replacement can be a term „national minorities and nationally uncommitted“. The Working group is aware that the term „nationally uncommitted“ is not the best alternative since it denotes persons who do not make a self-determination in relation to „(constituent) peoples“ and not in relation to „nationality“, however, it is proposed since there is no adequate term (in local languages) and due to the fact that this term is not unknown in

¹ Total amount of amendments to the Constitution FBiH was 109 on December 30, 2008.

constitutional terminology of BiH. The Preamble of the Constitution of the FBiH is also imprecise since it indicates the citizens of the FBiH as one of the separate sovereigns and not as a neutral term which relates to all the listed holders of sovereignty. The terms „President of the Government“ is used alternately with the term „Prime Minister“ which is not consistent. Finally, the title of the institute „vital national interest“ is not adequate since it does not differentiate between the public law standards of „peoples“ and „nationality“. Similar reform interventions are also proposed for the Constitution of the Republic of Srpska and other levels of government in BiH since they use the same terminology. In addition, although the term „županija“ is not a constitutional category having into consideration the decisions of the Constitutional Court of the FBiH², it is a term which is common in Croatian language in Bosnia and Herzegovina. Since there is nothing disputable about using the term „županija“, the Working group considers that this term should be inserted in the Constitution of the FBiH as an equal term to the „canton“.

1.2. Reform proposals:

- the term „Others“, in every place in the Constitution document, should be replaced with the term „national minorities and nationally uncommitted“;
- in the Constitutional text the term „President of the Government“ or the phrase „Prime Minister/President of the Government“ should be replaced with the term „Prime Minister“;
- in the Preamble of the Constitution of the FBiH, subparagraph 6, the words „and citizens“ should be replaced with the words „as the citizens“;
- in the Constitutional text the phrase „vital national interest“ should be replaced with the phrase „vital interest“;
- in the Constitutional text in Croatian language the term „canton“ should be replaced with the term „županija“.

2. TERRITORIAL REORGANIZATION OF THE FEDERATION

2.1. Statement of Facts

The FBiH is currently divided in ten cantons. As explained in the introduction this is not a appropriate solution so the Working group considered that FBiH needs to be reorganized with the purpose of reducing the number of cantons, through the merger of the some of the cantons with an emphasis that all interventions within this area must take into account the demographic, economic and geographic, and to the degree necessary the ethnic criteria with the purpose of establishing multiethnic and economically viable cantons. The Working group is not in a position to offer a final proposal for the reorganization of the FBiH since the proposed methodology requires multidisciplinary approach and cooperation of lawyers, economists, geographers and other experts. However, having in mind the given guidelines, the Working group made a Draft of possible reorganization of the FBiH (see Appendix 1 – Canton map). The Draft was made with the purpose of providing possible solutions of this issue and for initiating further discussion that would involve experts from other fields and the public, thus resulting in a more suitable and long-lasting solution.

In our opinion, one of the possible solutions for territorial reorganization of the FBiH is the following:

- a) Drvar municipality, from the current Canton 10, is added to **Una-Sana Canton** which retains the same name;
- b) Remaining municipalities of the current Canton 10 are added to West-Herzegovina Canton and that Canton is named **Livno-Herzegovina Canton**;
- c) **Herzegovina-Neretva Canton** retains its name and its current borders;
- d) Posavina Canton is added to Tuzla Canton along with Olovo municipality from Zenica-Doboj canton and changes its name to **Tuzla-Posavina Canton**;
- e) A part of the existing Middle Bosnia Canton, except Kreševo and Kiseljak municipalities, is added to the current Zenica-Doboj Canton which is renamed as the **Middle Bosnia Canton**;
- f) Municipalities Visoko and Breza from the current Zenica-Doboj Canton are added to Sarajevo Canton as well as the municipalities Kreševo and Kiseljak and Bosnian-Podrinje Canton. **Sarajevo Canton** remains its name.

² Examples: Decisions of the Constitutional Court of the FBiH no. U 7/98, par. 8; U 24/98, par. 7; U 25/98, par. 7; U 29/98, par. 5; U 39/98 par. 4; etc.

The Working group believes that Sarajevo Canton should be established as *Sarajevo District* of Bosnia and Herzegovina. In connection to future constitutional and territorial reform of the entire Bosnia and Herzegovina the Working group is of the opinion that a part of the town of East Sarajevo (municipalities: East New Sarajevo, East Ilidža, East Old Town and Pale) which are currently within the Republic of Srpska territory should be added to Sarajevo District, along with Kiseljak and Kreševo municipalities which are currently within the territory of Federation. Implementation of this proposal would help to avoid current problems of many governance levels (city and canton) and competence overlapping (town and canton).

2.2. Reform proposals:

- New paragraph should be added to Article I.2. of the Constitution of the FBiH: Cantons should be established in accordance with economic-functional principle, natural-geographic principle and communication principle and by taking into consideration demographic, ethnic, historical and cultural relations.

3. HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

3.1. Statement of Facts

The basic issue of effective protection of human rights and freedoms currently guaranteed under the Constitution of FBiH is related to the legal nature of the Constitution of the FBiH and ratified international documents relevant for the protection of human rights and freedoms. The fact is that the Constitution of the FBiH was drafted during the armed conflict with the assistance of international community. Thereby some of the international documents, as the instruments for protection of human rights and freedoms in Annex to the Constitution of the FBiH, are the integral part of the Constitution of the FBiH. Notwithstanding the broad protection of human rights and freedoms guaranteed in international documents of the Annex to the Constitution of FBiH, provisions on human rights and freedoms in the constitutional text do not comprise regular and logical constitutional unit. Therefore it is necessary to rearrange the constitutional text that refers to human rights and freedoms. In addition, we find that some of the provisions referring to human rights are redundant, or have become obsolete, for example those relating to refugees and displaced persons. The Working group considers that there is no such category as refugees and displaced persons having in mind the time distance from the ending of the armed conflict since the status of refugees or displaced persons cannot last indefinitely. The Federation of BiH, through its corresponding Ministry, has to finally solve the issue of the persons who resided in the territory of RS before the armed conflict and currently reside in the territory of the Federation of BiH. The corresponding Ministry also needs to work in coordination with the corresponding Ministry of RS in order to examine the needs of return of the persons who before the armed conflict had resided in the territory of FBiH and currently reside in RS territory. When treating this issue the social and economic living conditions of this category of population should be considered.

3.2. Reforms proposals:

- the provisions on non-discrimination and equality before the law should be defined in detail;
- the provisions on the restrictions of human rights and freedoms should be define;
- the scope of guaranteed human rights and freedoms should be expanded in order to establish a complete constitutional framework for the implementation and protection of human rights and freedoms and at the same time a logical unit when defining them;
- Article II.A.3. should be deleted;
- Article II.A.6. and II.A.7 should be deleted.

4. OMBUDSMEN OF THE FBiH

4.1. Statement of Facts

The entire chapter on ombudsmen in FBiH needs to be deleted from the Constitution of the FBiH since the powers of the ombudsman in the FBiH were fully transferred to the Institution of Human Rights Ombudsman of BiH.

4.2. Reforms proposals:

- section II.B. of the Constitution of the FBiH (Ombudsmen in FBiH) should be deleted.

5. COMPETENCES

5.1. Statement of Facts

The Constitution of the FBiH provides for the presumption of competences in favor of the cantons, and explicitly lists exclusive competences of the FBiH and shared competences of the FBiH and the cantons. This part of the Constitution contains numerous inappropriate solutions. Some competences were transferred from the current list of the exclusive competences of FBiH to BiH level, and thus they need to be deleted. Having in mind current competence arrangement and the explicit stating of the exclusive and shared competences it can also be concluded that numerous laws enacted by FBiH do not have a clear constitutional basis, which presents serious legal uncertainty. Provisions on shared competences use imprecise terminology, by inadequately providing for both concurrent and parallel competencies, and do not treat these issues in acceptable manner. The Working group considers that the adoption of a model of concurrent competencies, with adequate restriction of scope, would remedy this problem. Furthermore, the allocation social and health insurance competence within shared competences of the cantons and FBiH is not appropriate since it places citizens of FBiH in an unequal position in the enjoyment of basic rights, and, therefore, it is necessary to transfer these competences to exclusive competency of the FBiH. The provision on exclusive competences of the cantons provides examples of such competences but not in an inadequate way since it emphasizes that in certain areas the cantons only determine the policies, while in other they also have competence to adopt regulations.

5.2. Reform proposals:

The Working group proposes rearrangement of competences between the FBiH and the Cantons in such a way as to provide for the presumption of competencies in favour of the FBiH (so that the constitutional provision would state: „The Federation has all the competences which are not by this Constitution given to the cantons and which were not transferred to the Institutions of BiH“) with explicit listing of exclusive competences of the cantons and the shared competences of the cantons and the FBiH. This would be solution for the problem of legal uncertainty and transferred competences. The FBiH would not inadequately assume the competences of cantons – the Federation FBiH has already acted in number of areas whose regulation was necessary on Federal level - but rather the present situation would be codified.

The Working group's proposal is that the Federation and the cantons have competences for: promotion and implementation of human rights; social policy; entrepreneurship and crafts; enforcement of the laws and other regulations on citizenship and travelling documents of BiH citizens from the territory of the Federation; communication and transport infrastructure in accordance with the Constitution of Bosnia and Herzegovina; determining educational policies; determining cultural policies; sport; tourism; environment protection policy; use of natural resources; waste management; procurement and keeping of weapons and ammunition; determining policies and enforcement of regulations in the area of spatial planning; collection of archives; and librarian activities.

The exclusive competencies of the cantons would be determined in a way to reflect real needs of the cantons. These reforms would also follow current trends in the comparative federalism. The Working

group concluded that the exclusive competences of the cantons would comprise: establishing and monitoring the Police which will have unique federal uniforms with the cantonal insignia; implementation of social policy and establishing of services for social protection; adoption of regulations on education and ensuring education in areas of pre-school, primary and high-school level; adopting regulations and implementation of cultural policy; public gathering; adopting and implementation of canton tourism policy and the development of tourist resources policy; determining housing policy including adoption of regulations relating arrangement and construction of housing facilities; determining policy relating to the regulations and insurance of the public services; adoption of regulations on local land use including zoning; adopting regulations on local business improvement and charitable activities; adopting regulations on energy generation plants and ensuring their availability; determining policy on television and radio including adoption of regulations on ensuring their work and construction; and financing of the activities of the cantonal powers or its agencies through taxation, loans or other means.

Some of the specific competences, such as health care and university education, which were in the exclusive competency of the cantons, need to be assigned to the Federation of BiH. Health care should be available under the same conditions to all the citizens of the FBiH and the present state indicates that not all citizens of the FBiH enjoy the same access to quality healthcare. University education, as a specific competence from a wider area of education competences in FBiH, should also be made an exclusive competence of FBiH which would imply the guaranty and establishing rights of the public universities and the equal manner of financing according to the number of students. That would enhance autonomy of the academic community since now the universities are dependent on lower governance levels. The lower governance levels influence the academic independence of the universities through their establishing rights, financing and procedures.

Apart from these, an important question was considered which relates to the competence within local self-government which should be assigned exclusively to the FBiH. That should be done in such a manner that, apart from the general constitutional standardization, the competence in the area of local self-government be regulated in one statute for the level of FBiH.

6. LEGISLATIVE POWER IN THE FBiH

6.1. Statement of Facts

The Parliament of the FBiH, which consists of the House of Representatives and the House of Peoples, performs legislative authority in the FBiH. Both houses of the Parliament of the FBiH are in principle equal in the exercise of the functions of the Parliament of the FBiH, and the Constitution provides that the Houses are obliged within a „reasonable deadline“ to approve or reject law proposals adopted by the other House and that the Prime Minister *can*, in the case of assessment of „unjustified delay“, establish a joint commission for the determination of a law proposal which is acceptable to both Houses. The President of the FBiH *can*, with the consent of the Vice-Presidents, dissolve one or both Houses in case they are not able to adopt „necessary“ laws. It is important to define constitutional provisions which relate to the procedure of adoption of statutes equally at both Houses in a manner to replace the terms such as „reasonable deadline“ or „unjustified delay“ with more precise temporal indications. Since there is a standing need for the consolidation of the draft texts from both Houses, within areas where they legislate equally, it is not enough to provide the Prime Minister with a discretionary right to set a joint commission only when there is an „unjustified delay“. That provision also suggests that there is no possibility of there not being a political will for the adoption of certain acts by one House after being adopted by the other. Therefore, it is not justified that the President of the FBiH has the authority to dissolve the Houses of Peoples when „they are not able to adopt the necessary laws“, except the budget.

Besides the cantonal organization of FBiH, the House of Peoples is primarily - due to the manner of its election, its structure, and the role in the decision process on vital national interests - the representation of the constituent peoples and not of the cantons. A radical reform of the Constitution of the FBiH would demand an abolishment of the existing House of Peoples and its replacement with the House of Cantons with a possibility of protection of the „vital national interests“ in the House of Representatives. The Working group is aware that presently there is no political willingness for such

interventions in the constitutional text and indicates this as a long-term solution. Currently the equality of the Houses can be justified by the fact that there is an inadequate protection of the interests of cantons in the upper house of Parliament, and the interventions in division of competencies between the FBiH and the Cantons.

The list of vital national interests is inadequate, due to its open-ended nature and the unacceptability of some of them. Procedure for the protection of vital national interest in the House of Peoples is complex and it is inconsistent in the use of terminology. However, since the Constitution of RS has the same provisions, the Working group believes that it is necessary to make the revisions of both texts simultaneously in order to avoid asymmetric solutions.

In relation to the structure, it should be emphasized that there are no quotas for the national minorities and the nationally uncommitted in the House of Representatives, unlike the Constituent Peoples who are mandatorily represented by at least four members, while in the House of Peoples the national minorities and nationally uncommitted are not adequately presented (presently there are 7 delegates from „Others“ and 17 delegates from the Constituent Peoples). The Working group proposal is to increase the number of delegates to 68, namely the number of delegates of the national minorities and nationally uncommitted to 17 (equalizing the number of delegates of the national minorities and the nationally uncommitted with the number of delegates of each Constituent Peoples). Apart from these rights, national minorities and nationally uncommitted are guaranteed a right to participate in election of the President and the Vice-President of the FBiH and participation in adoption of the amendments to the Constitution of the FBiH which has not been the case by now.

Although the Election law stipulates that the members of the House of Representatives are to be elected among the candidates of political parties, coalitions and independent members, the Constitution of the FBiH proscribes that the electors can vote „for any registered party“ (IV.A.3.(1)). The Working group is of an opinion that instead of the term provided a phrase „political subject“ should be used since it encompasses a wider concept, in accordance with the provisions of the Election law in BiH and Article III.3.b of the Constitution BiH, which stipulates that all the provisions of the Constitution of BiH, as well as the decisions of BiH institutions, have priority over the constitutional and legal provisions of the entities.

The Working group agreed that it would be reasonable to open the FBiH level for forms of direct decision making in accordance with analogous solutions in the Constitution of RS and we propose the calling of a referendum on the FBiH level as one of the competencies of the Parliament of the FBiH.

6.2. Reform proposals:

- Article IV.A.3.13 should be deleted;
- in Article IV.A.2.6.(2) the number of delegates should be increased to 68, namely the number of national minority and nationally uncommitted delegates to 17;
- The term „registered party“ in the entire Constitutional text should be replaced with the term „political subject“;
- A provision for the calling of a referendum on FBiH level should be added;
- Article IV.A.3.14. should be changed so that it stipulates that each House needs to adopt or reject the required laws within 30 days from their adoption by the other House, while the remaining part of the provision should be deleted;
- Article IV.A.3.15.(1) should be adjusted to the provision of the revised Article IV.A.3.14.

7. EXECUTIVE POWER IN THE FBIH

7.1. Situation Description

The Executive power in the FBiH consists of the President, two Vice-Presidents and The Government of the FBiH. Provisions on Vice-presidents are discriminatory against the national minorities and the nationally uncommitted since those positions can be occupied only by the members of the

Constituent Peoples. Similar situation is with the provision on deputies of the Prime Minister of the Government of FBiH. The provisions of Article IV.B.1.3.(2) unnecessarily leave a political vacuum during a period of 30 days in case of President's or one of the Vice-presidents' of the FBiH permanent or temporary inability to serve their functions. This is especially problematic in a situation when the President is not able to serve his function. In that situation it would be opportune to provide for a provision under which the President would be substituted by the eldest Vice-President until the decision on the appointment of a new President.

The provision on the distribution of the ministerial seats in the Government of the FBiH „after full implementation of Annex VII“ is also inappropriate because of imprecision, and it would be appropriate to obtain the final answer by OHR.³ In relation to the competences of the executive power in FBiH, it is necessary to delete the competences relating the institutions that were abolished at the FBiH level. The Working group considers that the competence of President in relation to amnesty should be removed since this institute in practice proved to be extremely controversial and it is disputable whether there is any grounding for it, especially in a situation when the President was elected indirectly. If it turns out that this institute should be kept, the Working group suggests that its managing is assigned to a specific, expert and collegial body. The competence of the deputy of Prime Minister to seek an opinion from the Constitutional Court of the FBiH is also not adequate because it creates legal uncertainty due to the disputable legal nature of such an opinion. Finally, it is necessary to revise the provision of the Article which determines the enactment of regulations with the force of law it uses inadequate terms, namely mentions the institutions which no longer exist.

7.2. Reform proposals:

- Article IV.B.1.1.(2) should indicate that two Vice-Presidents cannot be from the same Constituent People or from the national minorities or the nationally uncommitted;
- Article IV.B.1.3.(2) should indicate that the President, in case of permanent or temporary inability to perform his function, will be substituted by the eldest Vice-President until new President is elected;
- Article IV.B.2.4.(1) should indicate that the Prime Minister's Deputies cannot be from the same constituent people or from the national Minorities or the nationally uncommitted;
- Article VI.B.2.3.(1) should indicate that OHR determines a moment of „full implementation of Annex VII“;
- in Article IV.B.4.6.a) items II and IV should be deleted, as well as the item III in Article IV.B.4.6.d);
- in Article IV.B.4.7 words „dangers to the state“ should be replaced with words „dangers to the entity of the FBiH“, while the phrase „cannot derogate rights and freedoms guaranteed under this Constitution“ should be deleted along with the last sentence of the first paragraph.

8. JUDICIAL POWER IN THE FEDERATION

8.1. Statement of Facts

The Chapter in the Constitution of the FBiH establishing the Judicial power in the FBiH (Article IV.C), in the general provisions on the courts, apart from the judicial institutions of the FBiH also includes the Constitutional Court of the FBiH which is not appropriate since it is not a judicial institution but a unique institution primarily entrusted with the control of constitutionality and legality. The current Constitution does not deal with the issue of judicial power in one place but in specific parts, including those of canton and municipal powers. The Constitution does not include a provision on the budget for the judicial institutions which is a significant failure in guaranteeing the independence of the judiciary. The Working group considers that the greater independence for the Judiciary in the Federation of BiH would be achieved if the courts in the whole Federation are financed through a single budget of the Federation.

³ The Working group also considered the possibility of the Parliament of FBiH to revise all these provisions after the population census in 2013, namely to acknowledge the census' list and need for protection of interests of the Constituent Peoples and Others (national minorities and nationally uncommitted).

8.2. Reform proposals:

- a new Chapter in the Constitution should be added with the title "Judicial authority in the FBiH", which will include the provisions on the Supreme Court of the FBiH, and the cantonal and municipal courts;
- a new Chapter on the budget of judicial institutions, and on the Prosecutor's office in the FBiH, should be added;
- Article IV.C.1.3. should be deleted;
- a new Chapter with the title „Constitutional Court of the FBiH“ should be added.

9. DISTRIBUTION OF THE KEY FUNCTIONS IN THE STRUCTURE OF THE FEDERAL POWER

9.1. Statement of Facts

Provisions of Article IV.D. were enacted as an implementation of the decision of the Constitutional Court of BiH in the case U-5/98 from the year 2000, and they regulate the distribution of key function positions in the FBiH in relation to Constituent Peoples or *Others*. The Working group holds this provision inadequate in relation to the functions of the President of the Supreme Court of the FBiH, the President of the Constitutional Court of the FBiH, and the Federal Prosecutor, because it believes that the main criteria for the exercise of these functions should be the competence and qualifications. As the Constitution of RS (Article 69, item 2) has similar provisions, the Working group proposes simultaneous interventions in both constitutional texts after the change of the respective provision of Article 43 of the Law on the High Judicial and Prosecutorial Council since it gives priority to the principle of equal representation of the Constituent Peoples in the process of distribution of the key functions in the Federation of BiH.

9.2. Reform proposals:

- Article IV.D.2 should be deleted.

10. CANTONAL POWERS

10.1. Situation Description

Due to a possible intention of maintaining the symmetry, the Constitution of the FBiH contains unusually detailed provisions on the governmental arrangements in its federal units. Some provisions from this part of the Constitution are not appropriate. Thus it is stated that each Canton will „realize its competences taking into account the national composition of the population in each town and municipality“, which is a very imprecise provision and it is not clear how it is to be implemented. The provision of the transfer of competence to a municipality or a town is not precisely defined since each Canton can only transfer its authorities for performing duties to those local self-government units. According to the Constitution, the legislative body of the canton has the number of delegates as determined in relation to „the national composition of the population“ which is imprecise solution and it is at least necessary to emphasize that their number is also determined in relation to the number of the Canton's population. The part on the Canton Judiciary is moved to the Chapter on Judiciary in the FBiH.

10.2. Reforms proposals:

- Article V.1.1.b) should be deleted;
- in Article V.1.2.(1) phrase „transfer its competences“ should be replaced with words „transfer its authorities for performing duties“;
- in Article V.2.5.(1) a full stop should be deleted and words „and the number of citizens of that Canton“ should be added;
- Article V.5. should be deleted;

11. LOCAL SELF-GOVERNMENT IN THE FEDERATION

11.1. Statement of Facts and Reform Proposals

In the current Constitution of the FBiH Chapter VI (municipal power), Chapter VII (city power), Chapter VIII (Organization of Sarajevo) and Chapter IX (Organization of Mostar) are moved to a single Chapter on local self-government. This Chapter provides basic provisions on municipality as the lowest unit of local self-government and on a city and conditions for its establishment. Issues related to the organization of the city of Sarajevo and the city of Mostar and any other cities which can be established in accordance with the Constitution of the FBiH and the Law on principles of local self-government in the FBiH will be regulated under specific laws (for example the Law on the city of Mostar). We also consider that the local self-government, as being the authority level nearest to the citizens and where they realize their needs, should be further empowered not only in the FBiH but in the territory of entire BiH. Special attention should be given to cooperation between the political subjects and the citizens in multiethnic municipalities of the FBiH.

12. AMENDMENTS TO THE CONSTITUTION OF THE FEDERATION

12.1. Statement of Facts

The Constitution of the FBiH adopted an amending technique for the revision of the Constitution, so that both Houses are included in an adoption of an amendment: the House of Representatives by a two-thirds majority and the House of Peoples by a simple majority which includes the majority of the delegates' votes from each of the three Constituent Peoples. Regulations on revision of the Constitution of FBiH are inadequate since they exclude from this process the members of national minorities and nationally uncommitted.

12.2. Reforms proposals:

- in Article XI.1.(1), in a part of amendment proposal in the House of Peoples, it should be provided that apart from requiring the majority votes of the delegates of Constituent Peoples, the majority votes of the national minorities and nationally uncommitted is also required;
- in Article XI.1.(2), item a), it should be provided that a proposed amendment in the House of Peoples is adopted by majority of votes, including the delegates of each club in the House of Peoples.

13. ADOPTION AND ENTRY INTO FORCE OF THE CONSTITUTION AND TRANSITIONAL SOLUTIONS / TRANSITIONAL AND FINAL REGULATIONS

13.1. Statement of Facts and Reform Proposals

Since the provisions of these chapters are either obsolete or the provided measures were implemented, it is necessary to delete them from the text of the Constitution of the FBiH.

Appendix 1. Canton Map



1. Una-Sana Canton,
2. Livno-Herzegovina Canton,
3. Herzegovina-Neretva Canton,
4. Tuzla-Posavina Canton,
5. Middle Bosnia Canton,
6. Sarajevo Canton.

Appendix 2. New Constitution of the Federation of BiH