

Notice on the Conclusion in relation to the Law on Non-Application of the Decisions of the Constitutional Court of Bosnia and Herzegovina adopted by the Republika Srpska National Assembly at its session held on 27th June 2023

02/23

The Conclusion in relation to the Law on Non-application of the Decisions of the Constitutional Court of Bosnia and Herzegovina, which was adopted by the Republika Srpska National Assembly at its session held on 27th June 2023, contains instructions that are clearly in violation of the Constitution of Bosnia and Herzegovina.

The Conclusion instructs the Republika Srpska Government and commits the Republika Srpska National Assembly to take specific, unconstitutional actions. In paragraph 2 the Republika Srpska National Assembly tasks the Republika Srpska Government to submit to the Republika Srpska National Assembly *“a Proposed Law on Amendments to the RS Criminal Code, which will prescribe a special criminal offense to incriminate any those actions that might be taken contrary to the provisions of the Law on Non-application of Decisions of the BiH Constitutional Court.”* Paragraph 3 of the same conclusion

commits the Republika Srpska National Assembly to enact the necessary laws or other relevant legal acts containing measures and actions, including the measures for their immediate dissolution, to be against institutions and authorities that *“act contrary to the provisions of the Law on Non-application of Decisions of the BiH Constitutional Court”*.

Let me remind that the Constitutional Court of Bosnia and Herzegovina is among the highest institutions of the State of Bosnia and Herzegovina, established by the Constitution of Bosnia and Herzegovina as an independent guardian of the Constitution of Bosnia and Herzegovina, vested with exclusive jurisdiction to decide any dispute that arises under the Constitution of Bosnia and Herzegovina between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina.

Under the Constitution of Bosnia and Herzegovina, the Entities and any subdivisions thereof are obliged to comply fully with the Constitution of Bosnia and Herzegovina and with the state-level legislation. Under Article I.2 of the Constitution, Bosnia and Herzegovina “shall be a democratic state which shall operate under the rule of law,” whereas article VI.5 of the Constitution provides that “decisions of the Constitutional Court shall be final and binding,” and article III.3(b) requires the Entities and any subdivisions thereof to fully comply with the Constitution of Bosnia and Herzegovina and with the decisions of its institutions.

The instructions contained in the two cited paragraphs of the Conclusion are therefore in clear violation of the explicit provisions of the Constitution of Bosnia and Herzegovina. Clear obligations and commitments which all authorities of Republika Srpska have under the Constitution of BiH must be followed.

Therefore any attempt to adopt laws referred to in the Conclusion would be clearly unconstitutional and cannot alter

obligations under the Constitution of BiH insofar as a law of Republika Srpska cannot derogate clear and unequivocal provisions of the Constitution of Bosnia and Herzegovina.

Finally, the implementation of any of the instructions contained in the two paragraphs of the Conclusion could fall within the ambit of the criminal offences prescribed by the Law on Amendments to the Criminal Code of Bosnia and Herzegovina and enacted by Decision of the High Representative of 1 July 2023 and the BiH Criminal Code.

Sarajevo, 1 July 2023

Christian Schmidt

High Representative