

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(a) of the Constitution of Bosnia and Herzegovina, Article 59(2)(2), Article 61(1), (2) and (3) and Article 63(2) of the Rules of the Constitutional Court of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina* nos. 60/05, 64/08 and 51/09), in Plenary and composed of the following judges:

Mr. Miodrag Simović, President

Ms. Valerija Galić, Vice-President

Ms. Constance Grewe, Vice-President

Ms. Seada Palavrić, Vice-President

Mr. Tudor Pantiru

Mr. Mato Tadić

Mr. Mirsad Ćeman

Ms. Margarita Tsatsa-Nikolovska

Mr. Zlatko M. Knežević

Having deliberated on the request of **Mr. Sulejman Tihić, the Chairman of the House of the Peoples of the Parliamentary Assembly of Bosnia and Herzegovina**, in case no. U 4/12, at its session held on 26 May 2012, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

The request lodged by **Mr. Sulejman Tihčić**, the Chairman of the House of the Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, is hereby partially granted.

It is hereby established that the provisions of Article 4(1)(1) and Article 6(1) and (3) of the Law Amending the Election Law of the Republika Srpska (*Official Gazette of the Republika Srpska* no. 24/12), are not consistent with Article I(2) and Article III(3)(b) of the Constitution of Bosnia and Herzegovina.

The provisions of Article 4(1)(1) and Article 6(1) and (3) of the Law Amending the Election Law of the Republika Srpska (*Official Gazette of the Republika Srpska* no. 24/12) are herewith repealed in their entirety, pursuant to Article 63(2) of the Rules of the Constitutional Court of Bosnia and Herzegovina.

The repealed provisions of Article 4(1)(1) and Article 6(1) and (3) of the Law Amending the Election Law of the Republika Srpska (*Official Gazette of the Republika Srpska* no. 24/12) shall cease to be in force on the next day from the date this decision is published in the *Official Gazette of Bosnia and Herzegovina*, pursuant to Article 63(3) of the Rules of the Constitutional Court of Bosnia and Herzegovina.

The request lodged by **Mr. Sulejman Tihčić**, the Chairman of the House of the Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, in the part requesting review of the constitutionality of Article 3(2) and (4) and Article 11 of the Law Amending the Election Law of the Republika Srpska (*Official Gazette of the Republika Srpska* no. 24/12), is hereby dismissed as ill-founded.

It is established that the provisions of Article 3(2) and (4) and Article 11 of the Law Amending the Election Law of the Republika Srpska (*Official Gazette of the Republika Srpska* no. 24/12) are consistent with Articles I(2) and III(3)(b) of the Constitution of Bosnia and Herzegovina.

This Decision shall be published in the *Official Gazette of Bosnia and Herzegovina*, the *Official Gazette of the Federation of Bosnia and Herzegovina*, the *Official Gazette of the Republika Srpska* and the *Official Gazette of the Brcko District of Bosnia and Herzegovina*.

REASONING

I. Introduction

1. On 22 March 2012, Mr. Sulejman Tihić, the Chairman of the House of the Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, (“the applicant”), filed the request with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) for review of the constitutionality of Articles 3, 4, 5, 6 and 11 of the Law Amending the Election Law of the Republika Srpska (*Official Gazette of the Republika Srpska* no. 24/12) (“the challenged law”). The applicant also requested that the Constitutional Court issue an interim measure suspending the application of the challenged law pending the issuance of a final decision by the Constitutional Court upon this request.

II. Procedure before the Constitutional Court

2. Pursuant to Article 22(1) of the Rules of the Constitutional Court, the National Assembly of the Republika Srpska was requested on 3 April 2012 to submit its reply to the request.

3. The National Assembly of the Republika Srpska submitted their reply on 27 April 2012. Pursuant to Article 26(2) of the Rules of the Constitutional Court, the reply to the request was transmitted to the applicant on 7 May 2012.

III. Request

a) Allegations in the request

4. The applicant holds Articles 3, 4, 5, 6 and 11 of the challenged Law are inconsistent with Articles I(2), II (2), III(3)(b), IV(2)(a) and V(1)(a) of the Constitution of Bosnia and Herzegovina, with Article 3 of Protocol no. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the European Convention”) and Annex 3 to the General Framework Agreement for Peace in Bosnia and Herzegovina (“Annex 3” and “the Dayton Agreement”).

5. In the reasoning of the request, the applicant alleges that in order to promote free, fair, and democratic elections and to lay the foundation for representative government in Bosnia and Herzegovina, in accordance with relevant documents of the Organization for Security and Cooperation in Europe (“OSCE”), the Parties to the Dayton Agreement have agreed: 1) to ensure that conditions exist for the organization of democratic elections (Article 1 of Annex 3); 2) to establish the OSCE Role (Article 2 of Annex 3); 3) to establish a Provisional Election Commission (Article 3 of Annex 3); 4) to ensure eligibility – qualifications (Article 4 of Annex 3) and 5) to create a permanent Election Commission. The applicant, further, alleges that the Parliamentary Assembly of Bosnia and Herzegovina (“the Parliamentary Assembly of BiH“), having regard to all of the above obligations and pursuant to its constitutional obligations, enacted the Election Law of Bosnia and Herzegovina (“the Election Law of BiH“). Pursuant to its responsibilities as stipulated by that law, the Central Election Commission (“CEC”) issued in 2002 the Decision Establishing the Responsibilities of the Election Commission of the Entities (“the Decision Establishing the Responsibilities”).

6. The applicant, further, alleges that that the Constitution of Bosnia and Herzegovina “afforded great significance to the election process” by explicitly “applying general norms, i.e. the general principles of the election process” in Articles I(2) and II(2) of the Constitution of Bosnia and Herzegovina. Moreover, Articles IV(2)(a) and V(1)(a) of the Constitution of Bosnia and Herzegovina “directly prescribe that the Parliamentary Assembly of BiH as the highest legislative body in Bosnia and Herzegovina shall adopt the Election Law of BiH which shall be applied directly on the entire territory of BiH“. The applicant also alleges that Article III(3)(b) of the Constitution of Bosnia and Herzegovina prescribes the need to harmonize legal acts of lower instance of power with the Constitution of Bosnia and Herzegovina and the decisions of the institutions of Bosnia and Herzegovina in order to adequately insure the rule of law. The applicant,

further, cites the provisions of Article 3 of Protocol No. 1 to the European Convention, items 60 and 61 of III Partial Decision of the Constitutional Court of BiH no. *U 5/98*, the opinion of CEC in respect of the Draft Amendments to the Election Law of RS, no. 05-1-02-1-859-2/11 of 22 June 2011 as well as item 52 of the Decision of the Constitutional Court no. *U 2/11* of 25 August 2011 (published in the *Official Gazette of BiH* no. 99/11).

7. In view of the aforementioned, the applicant explained individual and concrete reasons for his claims of incompatibility of Article 3(2) and (4), Article 4(1)(1), Article 6(1) and (3) and Article 11 of the challenged law with Articles I(2), II(2), III(3)(b), IV(2)(a) and V(1)(a) of the Constitution of Bosnia and Herzegovina and Annex 3 as follows:

a) Allegations of unconstitutionality of the provisions of Article 3(2) and (4) of the challenged Law due to its inconsistency with the provisions of Article 2.5(2), Articles 2.14(1), 2.21 and 20.11 of the Election Law of BiH

8. The applicant alleges in this part that Article 3 of the challenged law amended Article 12 of the Election Law of RS by prescribing, *inter alia*, that the Republic Election Commission (“REC”) was composed of the president and six members appointed by the National Assembly of RS “from amongst the experts in the administration of elections” and that members of REC should be appointed “appointed from persons belonging to all three constitutive peoples, including the Others under the condition that there must be at least one representative of the constitutive peoples, including the Others“. The applicant holds this article to be in contravention of the provisions of Article 2.5 (2), 2.14 (1), 2.21 and Article 20.11 of the Election Law of BiH and, thereby, of the abovementioned provisions of the Constitution of BiH because of incompatibility of lower ranking legal norms with the higher ranking ones.

9. In the reasoning of those allegations, the applicant challenges the possibility prescribed by Article 3(2) of the challenged law regulating that only lawyers experienced in the administration of elections and/or election experts may be candidates for the members of REC. The applicant holds that this amounts to discrimination of experts with experience in the administration of elections without legal background - e.g. political scientists, sociologists, economists, philosophers, etc. In this regard, the applicant points out that Article 2.14(1) of the Election Law of BiH stipulates that composition of an election commission should be multiethnic; reflecting the population of the constituent peoples including others at the electoral unit, for which it is formed, bearing in mind the most recent national Census. Furthermore, the applicant stresses that “a considerable number of

Bosniacs and Croats has not returned to the territory of the Republika Srpska to places where they used to live before the war”. He, therefore, considers such a provision to make it impossible for Bosniacs and Croats as well as Others without legal background to apply for the position of a member of REC. Also, the applicant holds that by such provision of the challenged law directly brings into question and negates the *III Partial Decision of the Constitutional Court of BiH U 5/98 (items 60 and 61, pp. 21 and 22) [...]*“.

10. The applicant further holds that the obligation prescribed in Article 3(4) of the challenged law - the mandatory representation of at least one representative of constituent peoples as well as Others within the composition of the REC is contrary to Article 2.5 (1) of the Election Law of BiH pursuant to which there should be two members from each constituent peoples and one other member. The applicant holds that such provision of the challenged law cannot satisfy the interests of Bosniac and Croat peoples in view of the fact that, pursuant to the last census of 1991, Bosniacs, for example, should have been represented by at least three members in REC. In that regard, the applicant alleges that this obligation of proportionate representation on the basis of the last census “is also [pointed out] in relation to the election of the members of Municipal Election Commission“.

11. In addition, the applicant considers the provision of Article 3 of the challenged law to be also contrary to the provision of Article 2.6 of the Election Law in respect of the position of the president of the election commission. Namely, the Election Law of BiH does not provide for a special function of a president but the president of CEC is one of the members of that commission, *primus inter pares*, and shall each serve as the President for one 21 month rotation in a 7 year period. In that manner, alleges the applicant, the members of constituent peoples and of Others, have the right guaranteed by the Law to chair the Election Commission once in a seven year term. The said provision of the challenged law does not contain such a possibility, “but only one member of one of the three constituent peoples or Others are entitled to such right. The member of which people it shall be, depends upon the political will of the majority in the [RS] National Assembly as they are appointing the president and members of REC“. The applicant emphasizes that previous practice in the application of the election legislation in the Republika Srpska has shown that “discretionary political will of the majority in the National Assembly of RS resulted in electing a Serb, who has been performing the office of the President of REC ever since it was formed“.

12. The applicant reiterates that, in accordance with Article III(3)(b) of the Constitution of Bosnia and Herzegovina, the election law of the Entities has to be harmonized with the solutions established by the Election Law of BiH. That is why it is necessary to bring into line the challenged

solutions contained in Article 3 of the challenged law also with Article 2.21 (2) of the Election Law of BiH. Namely, the applicant reasons, pursuant to the aforementioned provision of the Election Law of BiH, the Entity Election Commissions are established pursuant to the Entity Election Laws and in accordance with the state Election Law and their competencies shall be determined by CEC. The applicant alleges that the manner of election and the composition of all other election commissions shall be determined by Entity law but also in accordance with the Election Law of BiH. The applicant, therefore, holds that “harmonized solutions must be ensured in respect of (a) composition and (b) the competencies of the Entities election commissions” as prescribed by Article 2.21 of the Election Law of BiH.

13. Invoking the provision of Article I(2) of the Constitution of BiH, the applicant highlights that in order to establish the rule of law and the principle of legality it is necessary to secure that legal regulations are harmonized, clear and unambiguous. In the present case that principle, in the opinion of the applicant, has been violated. The applicant also alleges that the provision of Article 3 of the challenged law leaves the possibility, “depending upon the political will of the majority in the National Assembly of [RS]“, for one member to be Bosniac, one Croat, one from the Others and four members to be Serbs, out of the total number of the seven members of REC. The applicant holds this to be directly prejudging the commission’s work for the benefit of one people and to the detriment of two other constituent peoples and the Others.

b) Allegations of unconstitutionality of the provision of Article 4(1)(1) of the challenged Law due to its inconsistency with the provisions of Articles 2.9(1) and 2.21 of the Election Law of BiH

14. The applicant alleges in this part the provision of Article 4(1)(1) of the challenged Law to be contrary to all previously mentioned provisions of the Constitution of BiH because it provides for REC to assume the responsibilities of CEC, which is in contravention of the aforementioned provisions of the Election Law of BiH. Namely, pursuant to the provision of Article 2.9(1)(1) of the Election Law of BiH, CEC shall be solely responsible to “co-ordinate, oversee and regulate the lawful operation of all election commissions and Polling Station Committees“ throughout the entire territory of Bosnia and Herzegovina. The applicant, therefore, invokes the provision of 2.21 of the Election Law of BiH, pursuant to which the competencies of the Entity Election Commissions shall be determined by CEC. With a view to that, CEC adopted its Decision Establishing the Responsibilities of the Election Commissions of the Entities. The applicant holds that, given all this, it clearly follows that “no legislative or executive body in Bosnia and Herzegovina may establish

the responsibilities of Entity Election Commissions” and that, therefore, the National Assembly of the Republika Srpska has no competence to establish the competency of REC “in the part which is outside of the competence of the bodies of the Republika Srpska”. The applicant highlights that the authority to establish the competency of the Entity Election Commissions, pursuant to a higher legal act - the Election Law of BiH, but also under Article V of Annex III is the sole responsibility of CEC.

c) Allegations of unconstitutionality of the provision of Article 6(1) and (3) of the challenged Law due to its inconsistency with the provisions of Articles 3.8(5) and 2.13(1)(8) of the Election Law of BiH

15. The applicant further alleges that Article 6(1) of the challenged law amended the earlier Article 18(1)(2) of the Election Law of RS in that one of the competencies of REC prescribed that it “oversees and controls the Centre for voters’ register“. The applicant holds this provision to be contrary to all previously mentioned provisions of the Constitution of BiH because it is in contravention of the Election Law of BiH. Namely, the applicant alleges, pursuant to the Election Law of BiH, the CEC determines by its regulations the manner, responsibility for work, time-limits for establishment and all other issues of importance for the operation of the Centre for voters’ register. That is why CEC adopted a Rulebook on Keeping the Central Voters Register (*Official Gazette of BiH* no. 37/10) prescribing in detail the obligation under Article 3.8 of the Election Law of BiH. This provision, as the applicant alleges, does not provide for any role of the Entity Election Commissions in that process. The applicant holds that in this manner new powers are given to the Entity election commission, which is contrary to the Election Law of BiH and, thereby, also contrary to all previously mentioned provisions of the Constitution of Bosnia and Herzegovina and Annex 3. The applicant particularly stresses that such legal solution “would not ensure functioning of BiH as a democratic state in accordance with law and based upon free and democratic elections” as required by Articles I(2) and II(2) of the Constitution of Bosnia and Herzegovina.

16. Moreover, the applicant holds the provision of Article 6(3) of the challenged law to be inconsistent with Article 2.13(1)(8) of the Election Law of BiH because it prescribes that municipal commission shall compile the results of elections from all Polling Stations in the municipality and forward the results REC and CEC. The applicant alleges that such provision if applied would “entail unforeseeable consequences for the legitimacy and legality of the election process” because “compiled results from all the municipalities [in RS] would be submitted to it for ‘the verification’” to REC. Namely, as he further alleges, after the counting of ballots at every polling station, they are

delivered to Municipal Election Commission for compiling and delivering to CEC for final verification. In that process, the Election Law does not provide for any role of the Entity Election Commissions and the involvement of REC into that process is contrary to the Election Law of BiH and, therefore, unconstitutional. In addition, the applicant alleges that Articles 3.2, 3.6 and 3.7 of the Election Law of BiH specifically regulate the manner of keeping of the Central Voters Register which is the competency of CEC. The applicant, therefore, holds that by such solution as adopted in Article 6(3) of the challenged law “the competencies of the CEC are under attempt to be overtaken, which will lead to confusion and overlapping and even conflict of competencies between the CEC and REC” and that by such legal solution the principle of subsidiarity and legal order are violated.

d) Allegations of unconstitutionality of the provision of Article 11 of the challenged Law due to its inconsistency with the provisions of Article 20.13(2) and (3) of the Election Law of BiH

17. The applicant alleges that Article 11 of the challenged law by which Article 39 of the Election Law of BiH is amended by having nine instead of six existing constituencies organized, goes to direct detriment of Bosniac and Croat Peoples in the Republika Srpska. These constituencies, the applicant further alleges, are established without clear and precise criteria with broadly and generally defined principles” expressed in Article 39a of the challenged law as the “principle of geographic restriction based on democratic principles and especially on the principle of proportionality between the number of mandates and number of registered voters”. The applicant holds, however, that the principle of proportionality applied in defining nine multi-member constituencies in a number of constituencies, as stipulated by the challenged law, substantially differs from such proclamation.

18. The applicant, further, alleges that Article 11.2(4) of the Election Law “stipulates the manner of determination (mathematical) of the number of mandates on the basis of number of registered voters”. However, this legal solution, the applicant alleges, is not applied when the number of mandates in the constituencies in the Republika Srpska was established. In this respect, the applicant holds, the geographic restriction is also questionable “which goes to the detriment of Bosniacs in this case, and it is unsustainable in the application of the proportionality of the number of mandates with the number of registered voters”. The applicant, further, alleges that the Republika Srpska is authorized to determine a number of mandates and the boundaries of constituencies, but it does not have the authority to modify a number of multi-member constituencies prescribed by the Election Law of BiH, i.e. it is under obligation to maintain six constituencies “until the Election

Law of BiH is amended”. On the other hand, the Republika Srpska may, as further alleged, modify borders of these constituencies every four years in that it may decrease a number of municipalities of one constituency and increase it in another one and to modify a number of deputy mandates elected from these constituencies by decreasing it in a multi-member constituency and increasing the number of delegates “directly elected in the National Assembly of [RS]” in another.

19. The applicant also alleges that nine constituencies for the election of delegates to the National Assembly of RS became established by dividing in halves the constituencies 1, 3 and 5, thus dividing the votes of “smaller political parties participating in the elections, whose seat is mostly situated in the Federation of BiH, and which used to get one mandate in the National Assembly of RS till now”. The applicant considers that by such division the Republika Srpska “prepared legal framework for those parties not to obtain a single mandate all in favor of larger political parties with the seat in the Republika Srpska to obtain larger number of mandates for them”. In view of this, the applicant alleges that this is an artificial cutting of constituency borders with the aim of securing desirable electorate known as “gerrymandering” which, in the present case, will “refer exclusively to the ethnic principle”. The applicant then gives as example detailed election results of SNSD and SDA in the 2010 elections (number of mandates and number of votes) and a simulation of results which these parties would achieve if the challenged solution relating to the number of constituencies were to remain in force.

20. The applicant also states that such cutting of constituencies which were established by the Election Law of BiH and creating of new ones would also violate the principle of proportionality between the number of voters and mandates due to individual constituency. He, therefore, supplied in detail the data on the number of voters and number of mandates in some of the constituencies. The applicant holds that such solution in the challenged law has been adopted “with the aim of narrowing the circle of representation of Bosniacs both on the local level and the level of the RS institutions in legislative bodies and executive bodies” and that, in this manner, “Bosniac people is brought into the position of the smallest constitutionally guaranteed quota of representation instead of clear representation in accordance with the precise criteria securing equal participation in the government formation”. Furthermore, the applicant presents, referring to the Information on the implementation of Article 3 of the Law on Local Self-government of June 2011, the examples relating to the national composition in the municipalities of Podrinje area, where, he alleges, the application of the challenged law and establishment of a new number of constituencies will diminish the possibility of presence of Bosniacs on all levels of power.

21. The applicant also alleges that “an additional problem” is that “a substantial number of citizens has not been registered yet, as the process of return has not been finalized”, on account of which he holds that “the number of delegates should not be decreased”. He further alleges that by the challenged amendments and the introduction of the number of registered voters but only on the level of municipalities the number of delegates is also decreased especially in the municipalities of Podrinje “and the existing results of participation of Bosniacs in the authorities, especially in the forthcoming period, are brought to question [...] having regard to the decreased number of delegates under the new solution”. Moreover, the applicant holds that Article that Article 42.v), relating to the participation of national minorities in the elections for delegates in the municipality or city assemblies should have be determined as mandatory quota “in all municipalities with a view to equality of the constituent peoples with the minorities, as well as special quota of representation for all constituent peoples in accordance with the solutions given in the Constitution of the Republika Srpska for the National Assembly of the Republika Srpska”. He alleges that it follows from the aforementioned Information, adopted by the National Assembly of RS, that “in the large number of municipalities the members of minorities have not been represented as well (the condition is the existence of candidates on the election lists of the political parties)”. On the other hand, Article 13.4 of the Election Law of BiH defines the participation of national minorities in the municipality or city assemblies, i.e., of the national minorities of that constituency, according to the last census, as their presence in the 3% guarantees them at least one position. Based on the aforementioned, the applicant holds that “the constitutional principle of collective equality of the constituent peoples” as confirmed by III Partial Decision of the Constitutional Court of BiH in the case U-5/98 (paragraphs 60 and 61,) is completely violated, on account of which “it could be held that the aforementioned Article also violates Article III(3)(b) of the Constitution of BiH because it involves inconsistency of the entity regulation with the decisions of the BiH institutions”.

22. In view of the aforementioned, the applicant finally proposes to the Constitutional Court to grant the request and establish that Articles 3, 4, 5, 6 and 11 of the challenged law are inconsistent with Articles I(2), II(2), III(3)(b), IV(2)(a), V(1)(a) of the Constitution of Bosnia and Herzegovina and order the National Assembly of RS to harmonize the challenged law on the whole with the Election Law of BiH.

b) Reply to the request

23. In the reply to the request, the National Assembly of RS states that the request is “as a whole is unclear, confusing, based upon illogical and inappropriate legal constructions on constitutionality

and containing assumptions on conceivable future violations of the Constitution of Bosnia and Herzegovina”. The National Assembly of RS first challenges the possibility of review of consistency of the provisions of the challenged law with Annex 3, alleging the said Annex is a part of the international agreement and that “the only ones competent, in addition to the High Representative, to deal with its interpretation” are its signatories. Moreover, it is further highlighted, this Annex has been completely implemented by meeting the obligations under Article V of that document, i.e. by adoption of the Election Law of BiH and the election of CEC and, therefore, referring to Annex 3 in the request is pointless.

24. Moreover, the National Assembly of RS also challenges the applicant’s invocation of the Decision of CEC because, as alleged, that Decision explicitly prescribes that “the Entity Election Commissions are established pursuant to the Entity Election Laws and the Election Law of BiH”. It is also stipulated that “in case the Entity Election Law establishes the competency of the Entity Election Commission in contravention of this decision, this decision will apply”. Therefore, as further stated in the reply, pursuant to the aforementioned Decision, the competency of an Entity to enact election law is not called into question, while CEC is the one deciding whether any of the provisions of the Entity Election Laws is to be applied or the CEC Decision. The relationship between these two legal acts is regulated by Article II of the respective Decision in view of the distribution of competencies between CEC and the Entity Election Commissions. The National Assembly of RS holds the applicant’s referral to the Opinion of CEC of 22 June 2011 “cannot be the reason and the basis for referring to the unconstitutionality” of the challenged law.

25. In addition, the National Assembly of RS holds that the applicant’s allegations relating to the Decision of the Constitutional Court no. *U 2/11* of 25 August 2011 is incorrect because that decision dismissed as ill-founded the request for review of constitutionality of the Law on Enforcement of the Budget of RS. It is further alleged that paragraph 52 of the decision concerned, referred to by the applicant, relates to the enactment of a law of the Federation of BiH “in contravention of the procedure prescribed by the law of Bosnia and Herzegovina which as interpreted by the Court has the character of ‘the decision of the institutions of Bosnia and Herzegovina’ under Article III(3)(b) of the Constitution of Bosnia and Herzegovina”. The National Assembly of RS further alleges that case U 14/04 of the Constitutional Court, also referred to by the applicant, involved the competencies transferred to the level of the institutions of BiH, and that “in that sense the invocation of the analogy in this request was not appropriate”. It is particularly important to note, it is further alleged, that Article 1.1 of the Election Law of BiH provides that it

“shall regulate the election of the members and the delegates of the Parliamentary Assembly [of BiH] and of the members of the Presidency [of BiH] and shall stipulate the principles governing the elections at all levels of authority in Bosnia and Herzegovina”. Also, Article 2.21 of the Election Law of BiH stipulates that the Entity Election Commissions shall be created by Entity law in accordance with the Election Law of BiH and that the manner of election and the composition of all other election commissions shall be determined by Entity law and in accordance with the provisions of the Election Law of BiH. Having this in mind, as alleges the National Assembly of RS, it is not clear on the basis of request whether, by invoking the aforementioned decision by the Constitutional Court, the applicant challenges the competencies of the Entities to enact their own election laws or objects to the contents of individual provisions of the law because the “concerned decision of the Constitutional Court [...] only deliberates on the procedure”.

26. Furthermore, the National Assembly of RS alleges that the request is based upon “strained jurists’ constructions relating to violation of constitutionality through the violations of individual provisions of the Election Law of BiH”, and that such request is inconsistent with Article VI(3)(a) of the Constitution of Bosnia and Herzegovina. Moreover, given the provisions of the Election Law of BiH, the National Assembly of RS holds that any conceivable inconsistency of individual provisions of the law “may only concern the competencies under Article 1.1 of the Election Law [of BiH], i.e. the principles applicable to elections at all levels of power in [BiH]”. It is therefore opined that the applicant “wanders between two options: the competencies of the Entities to regulate specific matter (formal aspect) and the contents of the legal norms of the challenged law (substantive aspect)”.

27. In respect of the allegation of violations of Articles I(2), II(2), III(3)(b) of the Constitution of Bosnia and Herzegovina, the National Assembly of RS holds that the request does not contain valid argumentation for the presented allegations and that they are not in the position to state their observations as it is not clear in which way the Entity law provisions have endangered the constitutional provisions at issue. It is also stated that the provisions of Articles IV(2)(a) and V(1) (a) of the Constitution of Bosnia and Herzegovina have not been cited correctly because they do not stipulate, as alleged by the applicant, that “the Parliamentary Assembly [of BiH] as the highest legislative body [in BiH] shall adopt the Election Law [of BiH] which shall be applied directly on the entire territory [of BiH]“. Moreover, it is alleged that neither the applicant's claim that “Article III(3)(b) of the Constitution of Bosnia and Herzegovina prescribes the need to harmonize legal acts of lower level of power with the Constitution of BiH and the decisions of the institutions of BiH in

order to adequately insure the rule of law” nor the allegations stated about the principle of normative hierarchy are true. In that regard, the National Assembly of RS points out that the applicant “is neglecting the complex state structure of Bosnia and Herzegovina and the distribution of competencies between its institutions and the Entities as well as the relationship between their legal acts and their legal systems“. Namely, the National Assembly of RS highlights that, given the distribution of responsibilities, it is not “a classic relationship of hierarchy and that is why exactly the Constitution of Bosnia and Herzegovina is the right controlling standard”. It is also alleged in the reply that invoking of Article 3 of Protocol No. 1 to the European Convention is not adequately reasoned and that it is beyond comprehension why the applicant refers to that provision. In view of everything aforementioned, the National Assembly of RS holds that the request ought to be rejected.

28. However, it is further stated, if the Constitutional Court decides that the request is admissible, the National Assembly of RS challenges its being well-founded. In that regard, it is alleged, the applicant’s claim in relation to the violation of Article 2.5(2) of the Election Law of BiH is ill-founded because the concerned provision of the Election Law of BiH only deals with the members of CEC, not with the members of Entities election commissions. The National Assembly of RS refers in that regard to a Decision of the Constitutional Court of the Republika Srpska (“the Constitutional Court of RS“) no. Uv-1/12 (published in the *Official Gazette of RS* no. 19/12), whereby it was evaluated that the challenged law did not contain the provisions which offend the vital national interests of any of the constituent peoples, and that none of the provisions of the challenged articles prescribed any prohibition or impossibility for the Bosniacs as well as members of other peoples “to participate in the electoral process equally”. Furthermore, the National Assembly of RS alleges that the allegations of violation of Article 2.14(1) of the Election Law of BiH are “absurd as the provision at issue [...] relates to the composition of the Municipal Election Commissions while Article 3 of the challenged law regulates the composition of the Election Commission of RS [...] with the respect of multi-ethnic composition of Bosnia and Herzegovina”. The National Assembly of RS holds that “it is in the best democratic interest to enable public competition in the election of the members of the Commission”, also stating that the challenged law prescribes a minimal number of representatives of the constituent peoples and Others that needs to be represented in REC while not setting the upper limit and, therefore, it “is clear that this number could even be higher”. Also, the National Assembly of RS alleges that the claims concerning the alleged violation of Article 2.6 of the Election Law of BiH in relation to Article 3 of the challenged law in respect of the position of the President of REC are ill-founded because “the Election Law of

BiH does not prescribe any special principles or norms regarding this issue”. The National Assembly of RS holds that the arguments substantiating this issue are based upon hypothetical claim as the challenged law does not afford any privileges for one people.

29. Furthermore, the National Assembly of RS also holds that claims of unconstitutionality of Article 4(1)(1) of the challenged law, on account of its being inconsistent with Article 2.9(1) of the Election Law of BiH are ill-founded. In respect of that, it is alleged, erroneous is the claim of the applicant that the said provision of the challenged law directly interferes with the responsibilities of CEC as prescribed by Article 2.9(1) of the Election Law of BiH as well as the allegation that CEC is solely responsible for establishing the competencies of the Entity election commissions. The National Assembly of RS highlights that it cannot be seen “by what in particular, from the substantive aspect”, this Article of the Election Law of BiH has been violated. It is further alleged that the aforementioned challenged Article of the challenged law establishes the competencies of REC “and the intention of the legislator was to consolidate all of its competencies which have already existed”. The National Assembly of RS holds that it is “obvious that the applicant wants to prove that the Entities cannot have competencies in the field of the election system“.

30. The National Assembly of RS also challenges the applicant’s claims relating to the unconstitutionality of Article 6 of the challenged law concerning the Centre for Voters’ Register because the fact that the CEC Rulebook “had not provided for the competencies of the Entity election commissions does not indicate that they cannot or rather may not exist”. It is also alleged that Article 2.13(1)(8) of the Election Law of BiH prescribes for the obligation that the results of the election shall be forwarded to CEC but it does not prohibit forwarding the results to the Entity Election Commissions.

31. As for the allegations of unconstitutionality of Article 11 of the challenged law, the National Assembly of RS alleges that they are hypothetical and the “result of an arbitrary construction and assumptions as was also concluded by the Panel for the Protection of Vital Interest [of the Constitutional Court of RS]“. Namely, the National Assembly of RS alleges that by the adoption of this Law, in accordance with its constitutional and legislative competencies, “it fulfilled its obligation to review every four years the constituencies and the number of mandates awarded to each of the constituencies taking into account the geographic restrictions and considering the democratic principles which serve to secure the proportionality principle between the number of mandates and the number of registered voters in relation to the defining of multimember constituencies”. Namely, the National Assembly of RS alleges, Article 11.9 of the Election Law of

BiH obliges it to review the constituencies and the number of mandates allocated to each of them. Additionally, “[the challenged law] is harmonized with the provisions of the Law on Territorial Organization of the Republika Srpska and the Decision of the Constitutional Court of BiH no. U-4/11 by Article 11 (names of municipalities)”. It is particularly emphasized that Article 20.13(1) of the Election Law of BiH reads: “Until the Entities form multimember constituencies, the following multimember constituencies shall exist...” and, therefore, Article 11 of the challenged law “exactly complies with this provision” of the Election Law of BiH.

32. It is further alleged that reference to the constitutional principle of collective equality of constitutive peoples in case U 5/98 belongs to “the sphere of assumptions and speculations”. Namely, it is further alleged, “the proportionality of the number of voters with the number of mandates is completely framed by the provisions of the Election Law of BiH which provides for the minimal and maximal number of direct mandates per constituency and the minimal and maximal number of direct and compensational mandates which, taking into account the existing geographic formation, prevents better connecting of the number of voters with the number of direct mandates”. The National Assembly of RS alleges that possible acceptance of these claims of the applicant by the Constitutional Court of BiH would require the Constitutional Court to “annul all the provisions on all the constituencies for the Parliamentary Assembly of Bosnia and Herzegovina, the National Assembly of the Republika Srpska and the Parliamentary Assembly of the Federation of Bosnia and Herzegovina, as they are essentially created by the Rules of the OSCE which were later on taken over by the Election Law of BiH with no respect for proportionality, and currently, they are even more disproportionate because of the demographic tendencies”. The National Assembly of RS points out that “the realization of the principle of full proportionality between the number of mandates and the number of voters would require amendments to provisions of the Election Law of BiH which read that ‘geographic restrictions shall be taken into account’ and to annul or substantively modify the provisions of the same law which regulate the number of direct and compensational mandates and upper and lower limits for the largeness of the constituencies”. The National Assembly of RS holds that “the estimation of the number of Bosniac or any other voters are arbitrary and incorrect as the last census was made in 1991 and no reliable data exists on the ethnic structure anywhere in Bosnia and Herzegovina”. The National Assembly of RS also considers to be irrelevant the allegations in the request relating to the number of representatives in some of the municipalities that are brought into connection with the ethnic representation “as the law cannot regulate the election results for any of the parties, not even SDA, and this has no connection with the decrease/increase of the number of representatives (delegates)”. The request for

establishment of national quota in the municipality assemblies has no constitutional-legal basis and reference to the above decision of the Constitutional Court is inappropriate.

33. Pursuant to all stated above, the National Assembly of RS holds that the request, “because of inappropriate legal constructions, which are not based on the Constitution of Bosnia and Herzegovina”, should be rejected as inadmissible. However, if the Constitutional Court still decides to consider the merits, it proposes the request be dismissed in its entirety as ill-founded because “the Entities, under the Constitution of Bosnia and Herzegovina, have the right to regulate the election matters in accordance with the distribution of competencies between them and the Institutions of [BiH]” and that “the artificial construction on the unconstitutionality of the challenged law through the Election Law of BiH is completely inappropriate as the applicant does not give any valid argument for his claims in relation to the possible unconstitutionality”.

IV. Relevant Law

34. The **Constitution of Bosnia and Herzegovina**, in the relevant part, reads:

Article I

Bosnia and Herzegovina

[...]

2. Democratic Principles

Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections.

Article II

Human Rights and Fundamental Freedoms

[...]

2. International Standards

The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.

Article III

*Responsibilities of and Relations Between
the Institutions of Bosnia and Herzegovina and the Entities*

[...]

3. Law and Responsibilities of the Entities and the Institutions

[...]

b. The Entities and any subdivisions thereof shall comply fully with this Constitution, which supersedes inconsistent provisions of the law of Bosnia and Herzegovina and of the constitutions and law of the Entities, and with the decisions of the institutions of Bosnia and Herzegovina. The general principles of international law shall be an integral part of the law of Bosnia and Herzegovina and the Entities.

Article IV

Parliamentary Assembly

[...]

2. House of Representatives

The House of Representatives shall comprise 42 Members, two-thirds elected from the territory of the Federation, one-third from the territory of the Republika Srpska.

a. Members of the House of Representatives shall be directly elected from their Entity in accordance with an election law to be adopted by the Parliamentary Assembly. The first election, however, shall take place in accordance with Annex 3 to the General Framework Agreement.

[...]

Article V

Presidency

[...]

1. Election and Term

a. Members of the Presidency shall be directly elected in each Entity (with each voter voting to fill one seat on the Presidency) in accordance with an election law adopted by the Parliamentary Assembly. The first election, however, shall take place in accordance with Annex 3 to the General Framework Agreement. Any vacancy in the Presidency shall be filled from the relevant Entity in accordance with a law to be adopted by the Parliamentary Assembly.

35. The **Election Law of Bosnia and Herzegovina** (*Official Gazette of Bosnia and Herzegovina* 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08 and 32/10; an unofficial consolidated version was used for the purposes of this decision, published at www.izbori.ba), in the relevant part, reads:

Article 1.1

This law shall regulate the election of the members and the delegates of the Parliamentary Assembly of BiH and of the members of the Presidency of BiH and shall stipulate the principles governing the elections at all levels of authority in BiH.

Article 2.2(2) and (3)

(2) Member of the election commission and polling station shall be a person with appropriate expertise and experience in the administration of elections.

(3) The Central Election Commission of BiH shall determine what the required qualifications are for Member of the election commission and polling station established in paragraph (2) of this Article.

Article 2.5(1) and(2)

(1) The Central Election Commission of BiH shall consist of seven (7) members: two (2) Croats, two (2) Bosniacs, two (2) Serbs, and one (1) other member.

(2) The nominees for the Central Election Commission of BiH shall be jointly nominated by the members of the Commission for Selection and Nomination. The Central Election Commission of BiH nominees shall be legal experts with experience in the administration of elections and/or electoral experts and may not hold any office in the bodies of a political party, association or foundations organizationally or financially related to the political party, and may not be involved in any political party activity.

Article 2.6

The President of the Central Election Commission of BiH shall be elected from amongst its members. One Croat, one Bosniac, one Serb and the other member of the Central Election Commission of BiH shall each serve as the President for one 21-month rotation in a seven-year period.

Article 2.9(1)

The Central Election Commission of BiH is an independent body, which derives its authority from and reports directly to, the Parliamentary Assembly of BiH. The Central Election Commission of BiH shall:

1. co-ordinate, oversee and regulate the lawful operation of all election commissions and Polling Station Committees in accordance with this law;

2. issue administrative Regulations for the implementation of this law;

[...]

4. be responsible for accuracy, update and overall integrity of the Central Voters Register for the territory of BiH; [...]

9. determine and verify election results for all direct and indirect elections covered by this Law, certify that elections were conducted in accordance with this Law and publish results of all direct and indirect elections covered by this Law; [...]

11. notify an election commission or Polling Station Committee or any other competent authority responsible for the conduct of elections that it does not comply with or violates a provision of this law and order the remedial action required to be taken by the competent body;

Article 2.11

(1) The administrative, technical and professional duties for the Central Election Commission of BiH shall be conducted by the Secretariat of the Central Election Commission of BiH, established by the Central Election Commission of BiH.

(2) The Central Election Commission of BiH Secretariat shall have a General Secretary who is appointed by the Election Commission of BiH and according to the procedure and in the way provided by the Law.

(3) The Central Election Commission of BiH shall enact the Rulebook on Internal Organization of the Secretariat of the Central Election Commission of BiH, following a proposal submitted by the Secretary General, subject to the approval of the Council of Ministers of BiH.

Article 2.13(1)(8)

The Municipal Election Commission shall:

8. compile the results of elections from all Polling Stations in the municipality, separately for each body for which elections were administered and forward the results to the Central Election Commission of BiH;

Article 2.14(1) and (2)

(1) The composition of an election commission shall be multiethnic, reflecting the population of the constituent peoples including others, bearing in mind the most recent national Census at the electoral unit for which it is formed. The composition of the election commission shall, as a rule, reflect the equivalent gender representation.

(2) If the election commission is not composed in accordance with the previous paragraph, the Central Election Commission of BiH shall annul the appointment of the members and inform the appointing body. The appointing body shall within 15 days of the decision of the Central Election Commission of BiH reappoint the body in compliance with the criteria established in paragraph (1) of this Article.

Article 2.21

(1) Entity Election Commissions shall be created by Entity law in accordance with this law. Their competencies shall be determined by the Central Election Commission of BiH in accordance with this law.

(2) The manner of election and the composition of all other election commissions shall be determined by Entity law and in accordance with the provisions of this law.

Article 3.8(1) and (5)

(1) In each municipality, the competent municipal authority shall establish a Voters Register Center.

[...]

(5) The Central Election Commission of BIH shall issue detailed regulations to provide for the manner, the responsibility for the work, the deadline for the establishment and other issues relevant to the functioning of the Voters Register Center.

Article 11.2

(1) The National Assembly of the Republika Srpska shall determine, based solely on the guidelines set forth in this article, the number of mandates and boundaries for multi-member constituencies and the number of compensatory mandates.

(2) Of the eighty-three (83) mandates for the National Assembly, between twenty-three percent (23%) and twenty-seven percent (27%) shall be compensatory mandates. The remaining mandates shall be allocated in multi-member constituencies.

(3) There shall be a minimum of six (6) multi-member constituencies. A multi-member constituency shall have a minimum of four (4) members and a maximum of fifteen (15) members. The Brcko District shall be included in one of the multi-member constituencies.

(4) The number of mandates for a constituency shall be determined as follows: The number of registered voters for the Republika Srpska, as determined by the Election Commission of Bosnia and Herzegovina, shall be divided by the total number of constituency mandates to be allocated. The number of registered voters for a constituency shall be divided by the quotient resulting from the previous division to determine the number of mandates to which the constituency is entitled. Mandates which cannot be allocated based on whole numbers shall be allocated to constituencies on the basis of the highest remainders.

Article 11.9

The constituencies and the number of mandates allocated to each constituency established in this chapter shall be reviewed every four (4) years by the National Assembly of the Republika Srpska to ensure that they are drawn, bearing in mind geographical constraints, in a manner that complies with democratic principles, notably proportionality between the number of mandates and the number of registered voters.

Article 20.11

The Entities shall bring their laws and regulations in compliance with this law within forty-five (45) days after the entering into force of this law.

Article 20.13(2) and (3)

(1) Until the Entities form multi-member constituencies, the following multi-member constituencies shall exist:

a) Of the ninety eight (98) members of the House of Representatives of the Federation of Bosnia and Herzegovina who shall be directly elected by voters registered to vote for the territory of the Federation of Bosnia and Herzegovina, seventy three (73) shall be elected from among twelve (12) multi-member constituencies, and twenty five (25) shall be compensatory mandates elected from the territory of the Federation of Bosnia and Herzegovina as a whole. The mandates shall be distributed in accordance with Articles 9.6 to 9.9 of this law.

b) The seventy three (73) multi-member constituency mandates for the House of Representatives of the Federation of Bosnia and Herzegovina shall be allocated according to the following:

1) Constituency 1 consists of Canton 1 and elects nine (9) members.

2) Constituency 2 consists of Canton 2, part of Canton 3 (Gradačac, Gračanica, Doboj-East) and voters from Brčko District who have registered to vote for to the Federation of Bosnia and Herzegovina and elects five (5) members.

3) Constituency 3 consists of part of Canton 3 (Lukavac, Srebrenik, Tuzla, Čelić) and elects seven (7) members.

4) Constituency 4 consists of part of Canton 3 (Teočak, Banovići, Živinice, Kalesija, Sapna and Kladanj) and elects four (4) members.

5) Constituency 5 consists of part of Canton 4 (Doboj-South, Tešanj, Maglaj, Žepče, Zavidovići, Zenica and Usora) and elects eight (8) members.

6) Constituency 6 consists of part of Canton 4 (Kakanj, Vareš, Olovo, Visoko and Breza) and elects four (4) members.

7) Constituency 7 consists of Canton 5 and part of Canton 9 (Novi Grad-Sarajevo, Ilidža, Hadžici and Trnovo) and elects six (6) members.

8) Constituency 8 consists of Canton 6 and elects nine (9) members.

9) *Constituency 9 consists of Canton 7 and elects eight (8) members.*

10) *Constituency 10 consists of Canton 8 and elects three (3) members.*

11) *Constituency 11 consists of part of canton 9 (Ilijaš, Vogosća, Centar-Sarajevo, Stari Grad-Sarajevo, Novo Sarajevo) and elects seven (7) members.*

12) *Constituency 12 consists of Canton 10 and elects three (3) members.*

(2) Of the eighty three (83) members of the National Assembly of the Republika Srpska who shall be directly elected by voters registered to vote for the territory of the Republika Srpska, sixty two (62) shall be elected from among six (6) multi-member constituencies and twenty one (21) shall be compensatory mandates elected from the territory of the Republika Srpska as a whole. The mandates shall be distributed in accordance with Articles 9.5 to 9.8 of this law.

(3) The sixty-two (62) multi-member constituency mandates for the National Assembly of the Republika Srpska shall be allocated according to the following:

a) Constituency 1 consists of municipalities Bosanska Krupa/Krupa na Uni, Bosanski Novi/Novi Grad, Bosanska Dubica/Kozarska Dubica, Prijedor, Bosanska Gradiška/Gradiška, Laktaši, Srbac, Prnjavor, Sanski Most/Oštra Luka, and Kostajnica and elects thirteen (13) members.

b) Constituency 2 consists of municipalities Bosanski Petrovac/Petrovac, Banja Luka, Čelinac, Drvar/Istočni Drvar, Ključ/Ribnik, Mrkonjić Grad, Jajce/Jezero, Skender Vakuf/Kneževo, Kotor Varoš, Šipovo and Kupres/Kupres and elects twelve (12) members.

c) Constituency 3 consists of municipalities Derventa, Bosanski Brod/Brod, Odžak/Vukosavlje, Modriča, Doboј, Gračanica/Petrovo and Teslić and elects ten (10) members.

d) Constituency 4 consists of municipalities Bosanski Šamac/Šamac, Orašje/Donji Žabar, Gradačac/Pelagićevo, Bijeljina, Lopare, Ugljevik, and voters from Brčko District of BiH who have registered to vote for the Republika Srpska and elects nine (9) members.

e) *Constituency 5 consists of municipalities Kalesija/Osmaci, Zvornik, Šekovići, Vlasenica, Bratunac, Srebrenica, Sokolac, Han Pijesak, Ilidža/Istočna Ilidža, Stari Grad/Istočni Stari Grad, Novo Sarajevo/Istočno Novo Sarajevo, Trnovo (RS), Pale (RS), Rogatica, and Milići and elects eleven (11) members.*

f) *Constituency 6 consists of municipalities Višegrad, Mostar/Istočni Mostar, Nevesinje, Kalinovik, Gacko, Foča/Foča, Goražde/Novo Goražde, Čajniče, Rudo, Stolac/Berkovići, Ljubinje, Bileća, and Trebinje and elects seven (7) members.*

36. The **Decision Establishing the Responsibilities of the Entity Election Commissions** (*Official Gazette of BiH* no. 23/01), in its relevant part, reads:

I

The Entity Election Commissions, established pursuant to the Entity Election Laws, shall be responsible for performing the following tasks:

- 1. Take care of the correct application of the Entity Election Law and the Election Law of Bosnia and Herzegovina;*
- 2. Ensure that all applications for certification to participate in the elections for the President and Vice President of the Republika Srpska, deputies in the RS National Assembly, deputies in the House of Representatives of the Parliament of the Federation of BiH and cantonal assemblies, have been composed in accordance with the Election Law of Bosnia and Herzegovina and submit them to the Election Commission of Bosnia and Herzegovina for approval;*
- 3. Propose budget for conducting of elections at the level which is the responsibility of the Entity, in accordance with Article 1.2 of the Election Law of Bosnia and Herzegovina;*
- 4. Accredite certified political parties, coalitions, lists of independent candidates or an independent candidate as observers at the Polling Station where those political parties, coalitions, lists of independent candidates or independent candidates are nominated;*

5. *Issue accreditation identification for the observers monitoring the work of the Entity Election Commissions;*
6. *Determine the amount of compensation to the members of Election Commissions and the members of the Polling Station Committees;*
7. *Perform other assignments, upon request of the Election Commission of Bosnia and Herzegovina.*

II

In case the Entity Election Law establishes the competency of the Entity Election Commission in contravention of this decision, this decision will apply.

37. **The Law Amending the Election Law of the Republika Srpska** (*Official Gazette of the Republika Srpska* no. 24/12), in its relevant part, reads:

Article 3

Article 12 shall be amended to read:

“Republic Election Commission is an independent body composed of the president and six members.

The President and members of the Republic Election Commission shall be appointed by the National Assembly of the Republika Srpska at the proposal of the Commission for the Election and Appointment, in accordance with the Election Law of BiH, after conducting a procedure of public competition, from amongst the legal experts in the administration of elections.

Members of the Republic Election Commission may not be elected from persons who perform any duties in the bodies of a political party, citizens’ association or a foundation organizationally or financially connected to the political party.

Members of the Republic Election Commission shall be appointed from persons belonging to all three constitutive peoples, including the Others, under the condition that there must be at least one representative of the constitutive peoples, including the Others.

Members of the Republic Election Commission shall be appointed for the period of seven years.

The Republic Election Commission shall submit once a year a work report to the National Assembly of the Republika Srpska.”

Article 4

Article 13 shall be amended to read:

“The Republic Election Commission shall:

supervise the work of the City Election Commissions, the Municipal Election Commissions and Polling Station Committees, indicating any violations of election regulations to those bodies, giving appropriate instructions and requesting taking of measures in accordance with the law in cooperation with and under the authority of the Central Election Commission of Bosnia and Herzegovina, [...] .”

Article 5

Article 17 shall be amended to read:

“The Municipal Election Commission consists of either 3, 5 or 7 members depending on the number of voters registered in the Central Voters Register and the size of a municipality.

A member of the Municipal Election Commission may be the President or judge of the regular court, the secretary of a municipal assembly, a person professionally employed in the municipal administrative body and other persons meeting the requirements determined by the Election Law of Bosnia and Herzegovina.

The Municipal Election Commission members and its President shall be appointed by the Municipal Assembly with the consent of the Central Election Commission of Bosnia and Herzegovina.

The municipal election commission consisting of 7 members might have a secretary for the performance of administrative-technical tasks.”

Article 6

In Article 18 paragraph 1 subparagraph 2 shall be amended to read:

“shall oversee and control the Centre for voters register;”.

[...]

Subparagraph 10 shall be amended to read:

“ shall compile the results of elections from all Polling Stations in the municipality, separately for each body for which elections were administered and forward the results to the Republic Election Commission and the Central Election Commission of Bosnia and Herzegovina;

Article 11

Article 39 shall be amended to read:

“For election of 63 deputy mandates into the National Assembly, the nine (9) multimember constituencies are determined as follows:

1. Constituency 1 consists of the municipalities: Krupa na Uni, Novi Grad, Kozarska Dubica, Prijedor, Oštra Luka and Kostajnica.

- This constituency elects seven (7) deputy mandates.

2. Constituency 2 consists of the municipalities: Gradiška, Laktaši, Srbac, Prnjavor.

- This constituency elects seven (7) deputy mandates.

3. Constituency 3 consists of the city of Banja Luka and the municipalities: Petrovac, Čelinac, Istočni Drvar, Ribnik, Mrkonjić Grad, Jezero, Kneževo, Kotor Varoš, Šipovo and Kupres.

- This constituency elects twelve (12) deputy mandates.

4. Constituency 4 consists of the municipalities: Derventa, Brod, Vukosavlje, Modriča.

- This constituency elects four (4) deputy mandates.

5. Constituency 5 consists of the municipalities: Doboj, Petrovo and Teslić.

- This constituency elects six (6) deputy mandates.

6. Constituency 6 consists of the municipalities: Šamac, Donji Žabar, Pelagićevo, Bijeljina, Lopare, Ugljevik, and voters from Brčko District being registered for voting in Republika Srpska.

- This constituency elects nine (9) deputy mandates.

7. *Constituency 7 consists of the municipalities: Osmaci, Zvornik, Šekovići, Vlasenica, Bratunac, Srebrenica and Milići.*

- This constituency elects seven (7) deputy mandates.

8. *Constituency 8 consists of the municipalities: Sokolac, Han Pijesak, Istočna Ilidža, Istočni Stari Grad, Istočno Novo Sarajevo, Trnovo, Pale, Rogatica.*

- This constituency elects four (4) deputy mandates.

9. *Constituency 9 consists of the municipalities: Višegrad, Istočni Mostar, Nevesinje, Kalinovik, Gacko, Foča, Novo Goražde, Čajniče, Rudo, Berkovići, Ljubinje, Bileća and Trebinje.*

- This constituency elects seven (7) deputy mandates.

Remaining 20 deputy mandates are compensational mandates which are allocated in accordance with this Law and the Election Law of Bosnia and Herzegovina.

Article 12

After Article 39 there shall be added a new Article 39a which reads:

“Article 39a.

The National Assembly of the Republika Srpska, upon a proposal by its competent working body shall review the constituencies and number of mandates allocated to every constituency under the election laws in order to ensure the principle of geographic restriction based on democratic principles and especially on the principle of proportionality between the number of mandates and number of registered voters.”.

V. Admissibility

38. When reviewing the admissibility of the request, the Constitutional Court first takes into account the provisions of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina.

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

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 neighboring 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.

39. The request for review of Constitutionality of the challenged law was lodged by the Chairman of the House of the Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, which means that the request was filed by an authorized person in terms of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina.

40. Taking into account the provisions of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina and Article 17(1) of the Rules of the Constitutional Court, the Constitutional Court establishes that the request is admissible as it has been filed by an authorized person and there is no single formal reason under Article 17(1) of the Rules of the Constitutional Court, which would render the request inadmissible.

VI. Merits

41. The applicant holds that the provisions of Articles 3, 4, 5, 6 and 11 of the challenged law are inconsistent with Articles I(2), II(2), III(3)(b), IV(2)(a) and V(1)(a) of the Constitution of Bosnia and Herzegovina. The essence of the allegations of unconstitutionality of the aforementioned provisions of the challenged law relate to the allegations that those provisions are in direct contravention of the provisions of the Election Law of BiH, as the applicant argues, which does not only violate the provision of Article III(3)(b) but also infringed the principle of the rule of law under Article I(2) of the Constitution of Bosnia and Herzegovina.

42. In respect of the request specified in this manner, the Constitutional Court highlights that the Election Law of BiH was adopted in 2001, having undergone amendments on several occasions, the reason being, *inter alia*, the complex constitutional, institutional and political concept in Bosnia and Herzegovina. The Election Law of BiH, as stipulated by the provision of Article 1.1, prescribes the elections at the state level and “stipulate the principles governing the elections at all levels of authority in Bosnia and Herzegovina”. Pursuant to the evaluation of various international organizations and institutions (e.g. OSCE and the Venice Commission), the Election Law of BiH is comprehensive and, in general, provides a sound basis for administration of democratic elections. On the other hand, given the number and nature of the laws applied in relation to the elections and having in mind the complex legal system in Bosnia and Herzegovina, the legal framework for administration of elections in Bosnia and Herzegovina can also be considered as complex. Namely, in addition to the Election Law of BiH, there also exist the Election Law of RS and the Election Law of the Brčko District of Bosnia and Herzegovina (*Official Gazette of BDBiH* nos. 17/08 and 43/08), whereas in the Federation of BiH a Law on Establishing Bodies for the Administration of Elections in the Federation of Bosnia and Herzegovina (*Official Gazette of FBiH* no. 26/02) has been enacted. With a view of administering fair and democratic elections, therefore, the special need exists, for the complex electoral legislative framework to be harmonized and for all the laws in that area to follow the fundamental principles and standards established by the Election Law of BiH.

43. In that regard, the Constitutional Court notes that the Election Law of BiH is the framework law determining, as already stated, not only the elections for state-level authorities but also the principles upon which election laws and regulations on other levels of power must be based. The first question arising before the Constitutional Court, upon with the applicant is basing his request for review of constitutionality of the challenged law, is whether the inconsistency of the provisions of the challenged law, in the particular case of the challenged law enacted by the National Assembly of RS, leads to their incompatibility with the Constitution of Bosnia and Herzegovina, primarily with Article III(3)(b) thereof and, consequently, with the principle of the rule of law under Article I(2) of the Constitution of Bosnia and Herzegovina.

44. In this respect, the Constitutional Court notes that a similar issue has already been addressed in its case-law. Namely, in its Decision no. *U 14/04*, the Constitutional Court adopted a principled position that “enacting of Entity laws in contravention of the procedure prescribed by the state legislation raises the issue of constitutionality of such laws in terms of the provisions of Article III(3)(b) of the Constitution of Bosnia and Herzegovina and that obligations imposed by state-level

laws must be complied with” (see, *mutatis mutandis*, the Constitutional Court, Decision on Admissibility and Merits no. *U 14/04* of 29 October 2010, published in the *Official Gazette of BiH* no. 23/05). This position was reaffirmed in the Constitutional Court’s Decision no. *U 2/11*, wherein it was reiterated that “the law of Bosnia and Herzegovina adopted by the Parliamentary Assembly of Bosnia and Herzegovina shall be viewed as [...] ‘the decision of the institutions of Bosnia and Herzegovina’ under Article III(3)(b) of the Constitution of Bosnia and Herzegovina and that enactment of laws of the Entities or other administrative units in Bosnia and Herzegovina contrary to the procedure prescribed by state-level laws may arise to the issue of compliance with the provisions of Article III(3)(b) of the Constitution of Bosnia and Herzegovina, pursuant to which the Entities and other administrative units in Bosnia and Herzegovina are under obligation to comply with, *inter alia*, (i) the decision of the institutions of Bosnia and Herzegovina. If opposite were to be held, in addition to completely undermining the authority of the institutions of Bosnia and Herzegovina, the principle under Article I(2) of the Constitution of Bosnia and Herzegovina would also be brought into question pursuant to which: ‘*Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law...*’ In that case, a question as to the purpose of state-level laws could be rightfully posed (e.g., laws in the privatization field, the insurance companies operations or indirect taxation field, etc.) if the Entities or other administrative units in Bosnia and Herzegovina would be able to enact laws in violation or evasion of the obligations imposed upon the Entities or other administrative units in Bosnia and Herzegovina by the provisions of state-level laws, i.e. the laws enacted at the level of the institutions of Bosnia and Herzegovina. Therefore, the Entities (or other administrative units in Bosnia and Herzegovina) have to comply with the obligations imposed upon them by the laws enacted by the institutions of Bosnia and Herzegovina. The fact that those obligations have not been complied with may lead to violations of the provisions of the Constitution of Bosnia and Herzegovina.” (See, the Constitutional Court, Decision on Admissibility and Merits no. *U 2/11* of 27 May 2011, paragraph 52, published in the *Official Gazette of BiH* no. 99/11).

45. In the present case, the Constitutional Court holds it beyond dispute that the Election Law of BiH amounts to a “decision of the institutions of Bosnia and Herzegovina” in terms of Article III(3) (b) of the Constitution of Bosnia and Herzegovina and that the said law establishes, *inter alia*, the principles upon which election laws and regulation on all other levels of power must be based. Naturally, the Constitutional Court is completely aware that the Constitution of Bosnia and Herzegovina limits its jurisdiction to the review of constitutionality of laws, i.e. that the Constitution of Bosnia and Herzegovina does not provide for the possibility for the Constitutional Court to review

the lawfulness of Entity laws in relation to the laws enacted by Bosnia and Herzegovina. Therefore, in the present case, taking into account its already taken positions on necessity to comply with “the obligations imposed upon the Entities or other administrative units in Bosnia and Herzegovina by the provisions enacted by the institutions of Bosnia and Herzegovina” (*ibid.*), the Constitutional Court shall examine the constitutionality of the challenged law in the present case exclusively in the light of compliance with the obligations and principles as established by the Election Law of BiH as “the decision of the institutions of Bosnia and Herzegovina” with a view of the administration of fair and democratic elections on the entire territory of Bosnia and Herzegovina.

46. The applicant contests several provisions of the challenged law, alleging that they are all incompatible with Article III(3)(b) of the Constitution of Bosnia and Herzegovina, being in contravention of the counterpart articles of the Election Law of BiH, and that, therefore, those provision of the challenged law are also in violation of the principle of the rule of law under Article I(2) of the Constitution of Bosnia and Herzegovina. Those issues, in brief, concern: a) the composition and professional background (qualifications) of the members of REC and the position of its President; b) the competencies of REC to monitor the operation of city and municipal election commissions and polling station committees; c) the REC’s responsibility to control the Voters Register Center and obligating municipal commissions to compile the results of elections from all polling stations and forward them to REC and CEC; and d) the increased number of constituencies resulting in violation of the principle of proportionality between the number of voters and the number of mandates of every individual constituency.

a) Allegations of unconstitutionality of Article 3(2) and (4) of the challenged law

47. Regarding Article 3(2) of the challenged law (the issue of professional background of the members of REC), the Constitutional Court notes that, pursuant to Article 2.21(2) of the Election Law of BiH, it is beyond dispute that “the manner of election and the composition of all other election commissions” shall be determined by Entity law and “in accordance with the provisions of [the Election Law of BiH]”. It is, therefore, beyond dispute, that the competency of the Entity legislator to regulate this issue by Entity law exists, but also the obligation that the Entity laws, regarding this issue, have to be harmonized with the Election Law of BiH. In this connection, the Constitutional Court notes that Article 2.2(1) of the Election Law of BiH stipulates that a member of the election commission and polling station may be a person “with appropriate expertise and experience in the administration of elections”, whereas paragraph 3 of the same article provides that

CEC “shall determine what the required qualifications are for Member of the election commission and polling station established in paragraph (2) of this Article”. The Constitutional Court, further, notes that Article 2.5(2) of the Election Law of BiH prescribes qualifications for the members of CEC who “shall be legal experts with experience in the administration of elections and/or electoral experts”. However, the Constitutional Court notes that the Election Law of BiH does not contain any explicit provision on the specific qualification necessary for the members of the Entity Election Commission.

48. Correlating the aforementioned provisions of the Election Law of BiH with the provision of Article 3(2) of the challenged law, the Constitutional Court notes that the Entity legislator decided that a member of REC may only be elected “from amongst the legal experts in the administration of elections“. In view of the provision of Article 1.1 of the Election Law of BiH, which will, *inter alia*, “stipulate the principles governing the elections at all levels of authority in Bosnia and Herzegovina”, the Constitutional Court holds that the provision of Article 3(2) of the challenged law and the reducing of qualifications of the REC members to legal experts with experience in the administration of elections does not violate the principles established by the Election Law of BiH which, in its Article 2.2(2), stipulates as a principle “the appropriate expertise and experience in the administration of elections”, and not the explicit professions or qualifications of the members of election commissions and polling committees. In addition, the applicant did not refer to any decision of other regulation, possibly issued by CEC in terms of Article 2.2(3) of the Election Law of BiH concerning explicit qualifications needed for a member of an election commissions and a polling committee. Instead, the applicant finds the argument on inconsistency of the provision of Article 3(2) of the challenged law in Article 2.5(2) of the Election Law of BiH, stipulating qualifications for members of CEC. However, even if such comparison would be accepted, the Constitutional Court notes that the provision of Article 2.5(2) of the Election Law of BiH prescribes that members of CEC may be “legal experts [...] and/or electoral experts”, the determinant “and/or” leaves the possibility for persons of deferent professional background to become members of CEC but not providing for explicit obligation that it must be so.

49. Moreover, the Constitutional Court holds that standards contained in Article 3(2) of the challenged law do not, in any way, raise the issue of discrimination, as alleged by the applicant, of “experts with experience in the administration of elections without legal background”, for the reasons already stated in the previous paragraph of this decision. In addition, the Constitutional Court holds that neither the issue of discrimination of Bosniacs, Croats and Others “without legal

background” has been raised, because the challenged provision equally relates to all, regardless of their ethnic background, including Serbs. Therefore, in respect of this issue, it is not possible to accept the allegations of the violation of the constitutional principle of collective equality referred to in the III Partial Decision by the Constitutional Court no. *U 5/98*, invoked by the applicant, because the challenged provision does afford any privileges neither to any of the constituent peoples or Others nor any dominance or ethnic homogenization is established in this way.

50. Furthermore, the applicant holds that the provision of Article 3(2) of the challenged law is also unconstitutional because it stipulates that the president of REC shall be appointed by the National Assembly of RS. The applicant alleges that it is contrary to the solution contained in the Election Law of BiH, pursuant to which members of CEC will be rotated on the position of the president. The Constitutional Court holds that these allegations are also ill-founded and do not raise the issue of constitutionality of the aforementioned provision because of its inconsistency with the principles of the Election Law of BiH. Namely, Article 2.6 of the Election Law of BiH explicitly regulates the manner of election of the President of CEC and the rotation amongst its members within specified period, which means that it is only on that level that the right is guaranteed to all the constituent peoples and Others to be rotated in the position of the president of CEC. Such solution, in the opinion of the Constitutional Court, is justified by broad competencies and powers of CEC afforded to this institution by the Election Law of BiH for the entire territory of the State and by the obligation of the Entity legislators to harmonize their legal solutions with the principles of the Election Law of BiH. However, the Constitutional Court holds that the obligation of the Entity legislators does not involve literal copying of the CEC model in the Entity laws as long as those laws comply with and follow the principles of the Election Law of BiH. In that regard, the Constitutional Court notes that the applicant has not mentioned any provision in the Election Law of BiH which orders the same model as adopted for CEC to be transferred in the same manner into the Entity laws, but his arguments are that the decision of the National Assembly of RS about who will be elected for the President of REC will depend on the political will of the majority within that body. However, the Constitutional Court holds that the issue of who has the majority in the legislative body of the Entity is primarily a political issue which, *per se*, does not bring into question the issue of consistency of Article 3(2) of the challenged law with the principles established by the Election Law of BiH.

51. In view of the aforementioned, the Constitutional Court holds that Article 3(2) of the challenged law is not in contravention of the principles established by the Election Law of BiH and

that it does not raise the issue of constitutionality of that provision under Article III(3)(b) of the Constitution of Bosnia and Herzegovina and, thereby, under Article I(2) of the Constitution of Bosnia and Herzegovina.

52. Furthermore, the applicant challenged the provision of Article 3(4) of the challenged law providing that the composition of the REC shall be multiethnic and that members of the REC shall be appointed from persons belonging to all three constitutive peoples, including the Others, under the condition that there must be “at least one representative of the constituent peoples, including the Others”. However, the Constitutional Court holds that this provision of the challenged law cannot be considered contrary to the principle set forth in the provision of Article 2.14(1) of the Election Law of BiH. In particular, given provision regulates, as principle, the composition of an election commission which should be “multiethnic, reflecting the population of the constituent peoples including Others [...] bearing in mind the most recent Census at the State level”. The Constitutional Court holds that Article 3(4) of the challenged law does not bring into question the aforementioned principle only merely because it determines the minimum number, and not the final number, of representatives of each constituent people and Others. The applicant’s prejudgment that the National Assembly of RS shall not take into account the most recent Census may not be the basis for establishing the unconstitutionality of the aforementioned provision, all the more so since the application of Article 2.21 of the Election Law of BiH is called into question in no way, which provides that “the Entity Election Commissions shall be created by Entity law in accordance with [the Election Law of BiH]”. In addition to this, the ethnic composition of the National Assembly of RS, to which the applicant refers, is the result of the political activity and, consequently, the success of political parties in the elections, so, this argument of the applicant cannot call into question the constitutionality of the contested provision.

53. Taking into account the aforesaid, the Constitutional Court holds that the provision of Article 3(4) of the challenged Law relating to the minimum representation of the constituent peoples and Others in the REC is not contrary to the principles set out in the provisions of Article 2.14(1) and 2.21 of the Election Law of BiH and that this provision does not bring into question its constitutionality relating to Article III(3)(b) and, thus, Article I.2 of the Constitution of Bosnia and Herzegovina.

b) Allegations on the unconstitutionality of Article 4(1)(1) of the challenged law

54. The applicant holds that the provision of Article 4(1)(1) of the challenged law is contrary to Article III(3)(b) of the Constitution of Bosnia and Herzegovina on account of its being inconsistent with Article 2.9(1) and 2.21 of the Election Law of BiH as it empowers the REC to supervise the work of the City Election Commissions, the Municipal Election Commissions and Polling Station Committees, indicating any violations of election regulations to those bodies, giving appropriate instructions and requesting taking of measures in accordance with the law in cooperation with and under the authority of the CEC.

55. In this connection, the Constitutional Court notes that Article 2.9 of the Election Law of BiH provides for the exclusive competence of the CEC to “co-ordinate, oversee and regulate the lawful operation of all election commissions and polling station committees in accordance with this law” and to “notify an election commission or polling station committee or any other competent authority responsible for the conduct of elections that it does not comply with or violates a provision of this law and order the remedial action required to be taken by the competent body”. Furthermore, the Constitutional Court notes that the Election Law of BiH does not prescribe any role of other election commissions to implement these competencies of the CEC, nor does it prescribe the possibility for the CEC to transfer these competencies to any other election commission. Furthermore, the Constitutional Court notes that Article 2.21 of the Election Law of BiH provides that the CEC has the exclusive competence to determine the competence of the Election Commissions of the Entities and, the Entities were obliged, based on Article 20.11 of the Election Law of BiH, to bring their laws and regulations in compliance with the Election Law of BiH. Furthermore, the Constitutional Court notes that based on the provision of Article 2.21 of the Election Law, the CEC made the Decision Establishing the Responsibilities of the Entity Election Commissions wherein the competencies of the Election Commissions of the Entities are specified. Furthermore, the aforementioned decision provides that in case the Entity Election Law “establishes the competency of the Entity Election Commission in contravention of this decision”, this decision will apply.

56. Taking into account the aforesaid and the principles which the Constitutional Court established in its previous case-law and which are noted in paragraph 44 of this Decision providing that the Entities (and other administrative units of Bosnia and Herzegovina) shall respect the obligations imposed by the laws enacted by the institutions of Bosnia and Herzegovina (*op. cit. u 14/04 and U 21/11*), the Constitutional Court notes that the challenged law cannot prescribe the possibility of taking over any of these competencies of the CEC, nor can the Entity law prescribe

the possibility for the CEC to transfer certain competencies to other election commissions as such possibility is not explicitly prescribed by the Election Law of BiH being the only act which may prescribe the competencies and responsibilities of the CEC, nor is it provided for by the Decision Establishing the Responsibilities of the Entity Election Commissions, which the CEC issued on the basis of its powers referred to in Article 2.21 of the Election Law of BiH.

57. Taking into account all the aforesaid, the Constitutional Court holds that the provision of Article 4(1)(1) of the challenged law is contrary to Article III(3)(b) of the Constitution of Bosnia and Herzegovina for not being in compliance with the obligations and limitations determined with regards to the issue of responsibilities of the Entity Election Commissions in the Election Law of Bosnia and Herzegovina as being a “decision of the institutions of Bosnia and Herzegovina”. Consequently, the aforementioned provision has been violating the principle of rule of law under Article I(2) of the Constitution of Bosnia and Herzegovina.

c) Allegations on unconstitutionality of Article 6(1) and (3) of the challenged law

58. The applicant made similar allegations with regards to the provision of Article 6 of the challenged law in the part relating to the responsibilities of the REC to oversee and control the Centre for Voters Register (Article 6(1)(1) of the challenged law) and the part providing that the municipal election commissions shall compile the results of elections from all polling stations in the municipality, separately for each body for which elections were administered and forward the results to the REC and the CEC of Bosnia and Herzegovina (Article 6(1)(3) of the challenged law). With regards to these allegations, the Constitutional Court notes that it is beyond any doubt that Article 2.9(1)(4) of the Election Law of BiH provides that the CEC is exclusively responsible for “the accuracy, update and overall integrity of the Central Voters Register for the territory of BiH”. Furthermore, Article 3.8(5) of the Election Law of BiH provides that the CEC “shall issue detailed regulations to provide for the manner, the responsibility for the work, the deadline for the establishment and other issues relevant to the functioning of the Voters Register Center”. Therefore, it is beyond any doubt that the CEC is the only one that has the competence to regulate all issues relating to the Central Voters Register. The *ratio* of such solution is to ensure the legal certainty relating to the accuracy of data and regularity of the work of the Central Voters Register on the whole territory of Bosnia and Herzegovina, all with the aim of ensuring fair and democratic elections. Similarly to the analysis of the previous issue, the Constitutional Court notes that the Election Law of BiH as a “decision of the institutions of Bosnia and Herzegovina” does not provide

for any other role of the Election Commissions of Entities in supervising and controlling the work of the Central Voters Registers.

59. Furthermore, Article 2.13(1)(8) of the Election Law of BiH explicitly provides that results of elections compiled from all Polling Stations in the municipality, separately for each body for which elections were administered, shall be forwarded to the CEC, which shall after that, based on Article 2.9(1)(9) of the Election Law of BiH “determine and verify election results for all direct and indirect elections covered by this Law, certify that elections were conducted in accordance with this Law and publish results of all direct and indirect elections covered by this Law”. Therefore, it is beyond any doubt that neither the Election Law of BiH nor the Decision Establishing the Responsibilities of the Entity Election Commissions prescribes any role of the Entity Election Commissions in the procedure for submission of compiled results or the obligation of the municipal election commissions to submit such results to the Entity Election Commissions. The Constitutional Court holds that such norms would constitute non-respect of the explicit obligation of the Entities under Article 20.11 of the Election Law of BiH to bring their laws in compliance with the Election Law of BiH as a “decision of the institutions of Bosnia and Herzegovina” within the meaning of Article III(3)(b) of the Constitution of Bosnia and Herzegovina.

60. Therefore, in applying the same principles and views as those set out in the analysis of the previous issue, the Constitutional Court holds that the provision of Article 6(1) and (3) of the challenged law, which provides for the competence of the REC to supervise and control the work of the Central Voters Register and obligation of the municipal commission to compile the results of elections from all Polling Stations in the municipality, separately for each body for which elections were administered and forward the results to the REC and the CEC of BiH, constitutes introducing norms contrary to the principles of the Election Law of BiH as a “decision of the institutions of Bosnia and Herzegovina”. For these reasons, the Constitutional Court holds that the provision of Article 6(1) and (3) of the challenged law is contrary to Article III(3)(b) of the Constitution of Bosnia and Herzegovina and thus jeopardizes the principle of the rule of law under Article I(2) of the Constitution of Bosnia and Herzegovina.

d) Allegations on the unconstitutionality of Article 11 of the challenged law

61. The applicant disputed the constitutionality of Article 11 of the challenged law because, as he stated, the establishment of nine multi-member constituencies is contrary to Article 20.12(2) and

(3) of the Election Law although, in the reasoning of the decision, he directed his arguments to the provisions of Article 11.2(3) of the Election Law of BiH which provides for the determination of six multi-member constituencies. The Constitutional Court notes that under Article 1.1.a item 3 the multi-member constituency shall mean a constituency “where more than one but less than the total number of representatives for a certain level of authority is elected”. In this respect the Constitutional Court indicates that Article 11.1 of the Election Law of BiH, amongst other things, provides for “a certain number of members shall be elected from multi-member constituencies under the proportional representation formula set forth in Article 9.5 of [the Election Law of BiH]” as well as that the National Assembly of RS “shall determine, based solely on the guidelines set forth in Article 11.2 of [the Election Law of BiH], what shall be the number of mandates and boundaries for multi-member constituencies and the number of compensatory mandates”.

62. Further, Article 11.2(3) of the Election Law of BiH regulates that “there shall be a minimum of six of multi-member constituencies” while paragraph 1 of the same Article regulates that the National Assembly of RS is authorized to determine “based solely on the guidelines set forth in this Article” the number of mandates and boundaries for multi-member constituencies and the number of compensatory mandates, which represents reaffirmation of these competencies of the Republika Srpska which are already mentioned in the same manner in Article 11.1 of the Election Law of BiH. Moreover, Article 11.9 of the Election Law of BiH prescribes that “the constituencies and the number of mandates allocated to each constituency [...] shall be reviewed every four years by” the National Assembly of RS “to ensure that they are drawn, bearing in mind geographical constraints, in a manner that complies with democratic principles, notably proportionality between the number of mandates and the number of registered voters”. Furthermore, Article 20.13(1) prescribes that until the Entities “form multi-member constituencies, the following multi-member constituencies shall exist [...]”, while in paragraph 2 it is again prescribed that 62 members of the National Assembly of RS shall be elected “from among six multi-member constituencies”, which are then divided by paragraph 3 of the same Article in the manner which the provision concerned describes in detail.

63. The Constitutional Court notes that the Election Law of BiH explicitly regulates the minimum of six multi-member constituencies and that it establishes which multi-member constituencies are concerned, but only until the Entities form their multi-member constituencies by their legislation. On the basis of principles established in this manner in the Election Law of BiH, the Constitutional Court holds that the entity legislator has the obligation to review every four years

the constituencies and the number of mandates allocated to each constituency, in accordance with the provisions of the Election Law of BiH, but that there is no restriction whatsoever as to providing a larger number of multi-member constituencies than the minimum prescribed by the Election Law of BiH. Certainly, the entity legislator must take into account that this would be in accordance with “democratic principles, notably proportionality between the number of mandates and the number of voters registered in the Central Voters Register”. In this respect the Constitutional Court notes that by Article 12 of the challenged law the National Assembly of RS directly incorporated the principles of Article 11.9 of the Election Law of BiH in its Election Law, i.e. that it took over the principles of geographical constraints and proportionality in such manner that it incorporated these into the challenged law. Having in mind all stated above, the Constitutional Court holds that the fact that Article 11 of the challenged law provides for the larger number of multi-member constituencies than the minimum regulated by the Election Law of BiH could not lead to the conclusion that some of the relevant principles of the Election Law of BiH have been violated by this provision of the challenged law and even more so for the reason that these principles are directly overtaken into the challenged law.

64. Having in mind this conclusion, the Constitutional Court of Bosnia and Herzegovina holds that there are no valid reasons to go into consideration of the extensive allegations of the applicant which concern his prognoses (perspectives) of the number of mandates that would, as the applicant alleged, “smaller political parties, the seat of which is mostly in the Federation of BiH” would get or lose in the case that the solution as regulated by Article 11 of the challenged law would be kept. Namely, the Constitutional Court stresses that its task is to secure, in the particular case, that the standardization of election rules on the level of entities complies with the Constitution of BiH and the “decisions of the Institutions of Bosnia and Herzegovina”, i.e. the Election Law of BiH, to preserve the conditions for conduct of fair and democratic elections on the whole territory of Bosnia and Herzegovina which are established by that law, and the issue of which political party in the democratic political game will get more votes is not the constitutional issue but the issue of political performance of political parties. Moreover, the Constitutional Court will not consider the arguments which were presented by the applicant in this part either, regarding the participation of national minorities, which is regulated by Article 15 of the challenged law, as the applicant did not dispute the provision concerned.

65. In view of the aforementioned, the Constitutional Court holds that Article 11 of the challenged law is not contrary to the provisions established by the Election Law of BiH and that in

this manner the issue of constitutionality of that provision in relation to Article III(3)(b) of the Constitution of BiH and, therefore, also in relation to Article I(2) of the Constitution of BiH has not been raised.

e) Other allegations

66. The Constitutional Court notes that the applicant also mentioned Article 5 of the challenged law amongst other provisions that he challenges. However, in relation to this provision which regulates the issue of election and composition of the municipal election commission, the applicant did not present any arguments or reasons for which he holds that this provision is unconstitutional and why he seeks the Constitutional Court to consider it separately. Having regard to this, the Constitutional Court does not hold it necessary to enter into consideration of the constitutionality of Article 5 of the challenged law as it is only arbitrarily mentioned amongst other provisions the consideration of which the applicant requested and in relation to which he submitted the extensive arguments.

67. Furthermore, having in mind the conclusions it reached, the Constitutional Court holds that it is not necessary to consider the constitutionality of challenged provisions of the challenged law in relation to Annex 3 of the Dayton Agreement either. Namely, this Annex regulated the issue of organization and conduct of the first postwar elections, and the principles and standards of the fair and democratic elections that are contained in that Annex were fundamentals on which the Election Law of BiH was issued and with which the Entity Election Laws have to be harmonized.

68. Moreover, the Constitutional Court notes that the applicant also challenged the constitutionality of the analyzed provisions of the challenged law in relation to Article II(2) (Human Rights and Fundamental Freedoms) and in that conjunction with Article 3 of Protocol No. 1 to the European Convention then Article IV(2)(a) of the Constitution of BiH which regulates the issue of election and composition of the House of Representatives of the Parliamentary Assembly of BiH and in relation to Article V(1)(a) of the Constitution of BiH which regulates the issue of election of the members of the Presidency of Bosnia and Herzegovina. As to the request in relation to Article II(2) of the Constitution of BiH and Article 3 of Protocol No. 1 to the European Convention, the Constitutional Court holds that, having in mind previously adopted conclusions, there is no need to consider these allegations separately.

69. As far as reference to Articles IV(2)(a) and V(1)(a) of the Constitution of BiH is concerned, the Constitutional Court notes that the applicant did not reason in any way where he sees the

connection between the challenged provisions of the challenged law and the above provisions of the Constitution of BiH and the Constitutional Court could not conclude where such connection would exist either, especially having in mind the content of challenged provisions of the challenged law, except that he stated that it is the competence of the Parliamentary Assembly of BiH to issue the Election Law of BiH. Therefore, the Constitutional Court holds that the applicants reference to Articles IV(2)(a) and V(1)(a) of the Constitution of BiH is arbitrary, therefore, the examination of challenged provisions of the challenged law in relation to these provisions is unnecessary.

70. In view of the aforementioned, and having in mind the need to secure that the following local elections are held unhindered and in accordance with the Constitution of BiH and the Election Law of BiH, the Constitutional Court decided, pursuant to Article 63(2) of the Rules of the Constitutional Court of BiH, to annul provisions of Article 4(1)(1) and Article 6(1)(3) of the challenged law. The Constitutional Court especially emphasizes that such decision would not be to the detriment of the existing election process, as the provisions of the former Election Law of the Republika Srpska shall remain in force after the annulment of the aforementioned provisions.

VIII. Conclusion

71. The Constitutional Court concludes that the provisions of Article 4(1)(1) and Article 6(1)(3) of the Law Amending the Election Law of the Republika Srpska (*Official Gazette of the RS* no. 24/12) are not consistent with Articles I(2) and III(3)(b) of the Constitution of Bosnia and Herzegovina as these provisions have been violating the constitutional principle that the Entities and other administrative units in Bosnia and Herzegovina are obliged to adhere, amongst other things, to the “decisions of the Institutions of Bosnia and Herzegovina”, and in the particular case, to the principles of corresponding provisions of the Election Law of Bosnia and Herzegovina, by which the principle of the rule of law under Article I(2) of the Constitution of Bosnia and Herzegovina has been violated as well.

72. However, the Constitutional Court concludes that Articles 3(2)(4) and 11 of the Law Amending the Election Law of the Republika Srpska (*Official Gazette of the RS* no. 24/12) are consistent with Articles I(2) and III(3)(b) of the Constitution of Bosnia and Herzegovina since the content of these provisions follows the general principles established by the Election Law of Bosnia and Herzegovina as a “decision of the Institutions of Bosnia and Herzegovina”, which does not bring to doubt the principle of the rule of law.

73. Pursuant to Article 61(1) and (3) and Article 63(2) of the Rules of the Constitutional Court, the Constitutional Court decided as in the enacting clause of the present Decision.

74. Having regard to the decision of the Constitutional Court in this case, there is no need to separately consider the applicant's motion for the issuance of the interim measure.

75. According to Article VI(5) of the Constitution of Bosnia and Herzegovina, the decisions of the Constitutional Court shall be final and binding.

Prof Dr Miodrag Simović
President
Constitutional Court of Bosnia and Herzegovina