

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)(3), Article 63(5) and (6) and Article 74(6) of the Rules of the Constitutional Court of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina* No. 60/05), in Plenary and composed of the following judges:

Ms. Hatidža Hadžiosmanović, President

Mr. David Feldman, Vice-President

Mr. Miodrag Simović, Vice-President

Ms. Valerija Galić, Vice-President

Mr. Tudor Pantiru,

Mr. Mato Tadić,

Ms. Constance Grewe,

In case U 4/04, adopted at its session held on 27 January 2007 the following

RULING

It is hereby established that the Parliament of the Federation of Bosnia and Herzegovina and National Assembly of Republika Srpska failed to enforce the Partial Decision of the Constitutional Court of Bosnia and Herzegovina, no. U 4/04 of 31 March 2006, within a given time limit of six months from the date it was published in *Official Gazette of Bosnia and Herzegovina*.

It is hereby established that Articles 1 and 2 of the Law on Coat of Arms and the Flag of the Federation of Bosnia and Herzegovina (*Official Gazette of Federation of Bosnia and Herzegovina* nos. 21/96 and 26/96) and Articles 2 and 3 of the Constitutional Law on Flag, Coat of Arms and Anthem of the Republika Srpska (*Official Gazette of Republika Srpska* no. 19/92), shall be rendered ineffective.

These provisions shall be rendered ineffective as of the date following the publishing date of this Ruling in *Official Gazette of Bosnia and Herzegovina*.

Pursuant to Article 74(6) of the Rules of the Constitutional Court of Bosnia and Herzegovina, this Ruling shall be remitted to the Prosecutor's Office of Bosnia and Herzegovina.

This Ruling 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 Brčko District of Bosnia and Herzegovina*.

REASONING

1. By its Partial Decision no. *U 4/04* of 31 March 2006, the Constitutional Court of Bosnia and Herzegovina (hereinafter: Constitutional Court) established, *inter alia*, that Articles 1 and 2 of the Law on the Coat of Arms and Flag of the Federation of Bosnia and Herzegovina (*Official Gazette of Federation of BiH* Nos. 21/96 and 26/96) and Articles 2 and 3 of the Constitutional Law on Flag, Coat of Arms and Anthem of Republika Srpska (*Official Gazette of RS* no. 19/92) are not in compliance with Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with Articles 1.1 and Article 2(a) and (c) of the International Convention on the Elimination of All Forms of Racial Discrimination referred to in Annex I to the Constitution of Bosnia and Herzegovina.
2. Pursuant to Article 63(4) of the Rules of the Constitutional Court, the Parliament of the Federation of Bosnia and Herzegovina and the National Assembly of Republika Srpska were ordered to bring Articles 1 and 2 of the Law on the Coat of Arms and Flag of the Federation of Bosnia and Herzegovina and Articles 2 and 3 of the Constitutional Law on the Flag, Coat of Arms and Anthem of the Republika Srpska into line with the Constitution of Bosnia and Herzegovina within six months as from the publishing date of this Decision in the *Official Gazette of Bosnia and Herzegovina*. The Constitutional Court submitted this Decision to the Parliament of the Federation of Bosnia and Herzegovina and National Assembly of the Republika Srpska for enforcement and ordered them to inform the Constitutional Court on the measures taken to enforce this Decision within the time-limit referred to in the preceding paragraph.
3. This Decision was published in *Official Gazette of Bosnia and Herzegovina* no. 47/06 of 20 June 2006. The time limit of six months for bringing these provisions into line with the Constitution of Bosnia and Herzegovina started running as from that date.
4. The Constitutional Court concludes that the time limit for enforcement of Decision no. *U 4/04* of 31 March 2006 has run out on 20 December 2006.
5. The Parliament of the Federation of Bosnia and Herzegovina and National Assembly of Republika Srpska in their letters no. 01-02-413/04 of 8 January 2007 and no. 01-52/07 of 12 January 2007 respectively, informed the Constitutional Court that they failed to act pursuant to its order to bring these provisions into line with the Constitution of Bosnia and Herzegovina.

6. Pursuant to Article 63(2) to (4) of the Rules of the Constitutional Court, in a decision establishing inconformity of the provisions with the Constitution of Bosnia and Herzegovina, the Constitutional Court may grant a time-limit for harmonization, which shall not exceed six months and if the inconformity is not removed within a given time limit, it shall establish with its decision those provisions as no longer in force as of the date of publishing that decision in *Official Gazette of Bosnia and Herzegovina*.

7. In its decision no. *U 4/04* of 31 March 2006, the Constitutional Court ordered the manner and time limit for enforcement of the decision. Pursuant to Article VI(4) of the Constitution of Bosnia and Herzegovina, decisions of the Constitutional Court shall be binding and final. Also, pursuant to Article 74(1) of the Rules of the Constitutional Court, final and binding decisions shall be respected by every physical and legal person. In addition, paragraph 2 of same Article stipulates that all bodies shall be obligated to enforce the decisions of the Constitutional Court within their competences established by the Constitution and law.

8. Having regard to the above and pursuant to Article 74(6) of its Rules, the Constitutional Court established that the Parliament of the Federation of Bosnia and Herzegovina and National Assembly of Republika Srpska failed to enforce final and binding decision of the Constitutional Court no. *U 4/04* of 31 March 2006.

9. Constitutional Court also reminds of its obligation to “uphold this Constitution“and finds that considering the optional character of symbols of the Entities and an option to use the symbols of the state of Bosnia and Herzegovina instead, the fact that challenged provisions of these laws shall be rendered ineffective, will not result in a legal gap or interfere with functioning of the entities and state of Bosnia and Herzegovina. Thus, the Constitutional Court finds that, while not undertaking the legislator’s role, it is not necessary by way of a separate decision to provisionally replace the Entities’ symbols which in accordance with this decision shall be rendered ineffective.

10. Pursuant to Article 74(6) of the Rules of the Constitutional Court, this Ruling shall be remitted to the Prosecutor’s Office of Bosnia and Herzegovina.

11. Pursuant to Article 74(6) of its Rules the Constitutional Court decided as set out in the enacting clause of this Decision.

12. Pursuant Article VI (4) of the Constitution of Bosnia and Herzegovina, the decisions of the Constitutional Court shall be final and binding.

Hatidža Hadžiosmanović
President
Constitutional Court of Bosnia and Herzegovina