The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, Article 18(3)(h), Article 18(4), Article 57(2)(b), Article 58 and Article 59(1) and (3) of the Rules of the Constitutional Court of Bosnia and Herzegovina – consolidated text (*Official Gazette of Bosnia and Herzegovina*, 94/14, 47/23 and 41/24), in plenary and composed of the following judges:

Mr. Mirsad Ćeman, President
Ms. Valerija Galić, Vice-President
Ms. Angelika Nußberger, Vice-President
Ms. Helen Keller,
Mr. Ledi Bianku,
Mr. Marin Vukoja, and
Ms. Larisa Velić,

Having deliberated on the appeals by **Milorad Dodik** in case no. **AP-3722/25**, at the session held on 4 November 2025 adopted the following

DECISION ON ADMISSIBILITY AND MERITS

The appeal lodged by **Milorad Dodik** against the judgement of the Court of Bosnia and Herzegovina, no. S1 2 K 046070 25 Kž 2 of 12 June 2025, with regard to Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 18 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in conjunction with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, is hereby dismissed as ill-founded.

The appeals lodged by **Milorad Dodik** with regard to Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(2) of the European Convention with regard to statements made by public officials during appellant's trial, are hereby rejected as inadmissible for being manifestly (*prima facie*) ill-founded.

The appeal lodged by **Milorad Dodik** against the ruling of the Court of Bosnia and Herzegovina, no. S1 3 Iž 052766 25 Iž of 18 August 2025, and the decision of the Central Election Commission of Bosnia and Herzegovina, no. 06-1-07-939/25 of 6 August 2025, with regard to Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 3 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, is hereby rejected as inadmissible for

being *ratione materiae* incompatible with 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 Bosnia and Herzegovina*, the *Official Gazette of the Republika Srpska* and the *Official Gazette of the Brčko District of Bosnia and Herzegovina*.

REASONS

I. Introduction

1. On 5 August 2025, Milorad Dodik ("the appellant") from Laktaši, represented by Goran Bubić, attorney practising in Banja Luka, lodged an appeal with the Constitutional Court of Bosnia and Herzegovina ("the Constitutional Court") against the judgments of the Court of Bosnia and Herzegovina ("the Court of BiH"), no. S1 2 K 046070 25 Kž 2 of 12 June 2025, and no. S1 2 K 046070 23 K of 26 February 2025. In the appeal, the appellant also requested the adoption of an interim measure "suspending the execution of the judgment with respect to the part whereby the appellant was imposed the security measure of ban on carrying out the duty of the President of the Republika Srpska ("the RS") for the period of six years pending the final decision of the Constitutional Court on the appeal". On 14 and 18 August 2025, 5 and 9 September 2025, and on 1 October 2025, the appellant supplemented the appeal and specified the request for the adoption of an interim measure (see paragraphs 67-72 of this decision). This appeal was registered under number AP-3722/25.

2. On 5 September 2025, the appellant lodged, by and through the same attorney, a new appeal with the Constitutional Court against the ruling of the Court of BiH, no. S1 3 Iž 052766 25 Iž of 18 August 2025, and the decision of the Central Election Commission of Bosnia and Herzegovina ("the CEC"), no. 06-01-07-1-939/25 of 6 August 2025. The appellant also requested from the Constitutional Court the adoption of an interim measure "suspending the implementation of the CEC decision of 6 August 2025 on the termination of the appellant's mandate as the RS President" pending the final decision of the Constitutional Court on the appeal (see paragraph 73 of this decision). This appeal was registered under number AP-4095/25.

II. Proceedings before the Constitutional Court

AP-3722/25

3. Pursuant to Article 23 of the Rules of the Constitutional Court, on 18 August 2025, the Court of BiH and the Prosecutor's Office of Bosnia and Herzegovina ("the BiH Prosecutor's Office") were requested to submit their responses to the appeal and the supplement to the appeal of 14 August 2025 . On 21 August 2025, the Constitutional Court also requested the Court of BiH to submit its detailed rulings regarding the appellant's petitions for disqualification of S. U., judge of the Court of BiH.

4. On 26 August 2025, the Court of BiH submitted to the Constitutional Court response to the appeal and the ruling of the Court of BiH on the appellant's petition for disqualification of S. U., judge of the Court of BiH (see paragraphs 22 and 31 of this decision), while, on 28 August 2025, the BiH Prosecutor's Office submitted its response to the appeal. On 28 August 2025, the Constitutional Court communicated to the appellant the responses to the appeal and the supplement to the appeal of 14 August 2025 for observations.

5. On 28 August 2025, the Constitutional Court requested the BiH Prosecutor's Office, the Court of BiH and the appellant to submit detailed documentation regarding the 2021 initiative by a certain number of prosecutors of the BiH Prosecutor's Office to prosecute the appellant. On 2 September 2025, the BiH Prosecutor's Office submitted the requested documentation to the Constitutional Court (see paragraph 13 of this decision).

6. On 12 September 2025, the Constitutional Court requested the Court of BiH to submit a decision on the appellant's petition for disqualification of S. U., judge of the Court of BiH. On 29 September 2025, the Court of BiH submitted the requested documentation to the Constitutional Court (see paragraph 19 of this decision).

7. Pursuant to Article 23 of the Rules of the Constitutional Court, on 15 September 2025, the Court of BiH and the BiH Prosecutor's Office were requested to submit responses to the supplements to the appeal. On 23 September 2025, the Court of BiH and the BiH Prosecutor's Office submitted their responses, which the Constitutional Court communicated to the appellant on 24 September 2025 for observations.

8. Pursuant to Article 23 of the Rules of the Constitutional Court, on 1 October 2025, the Court of BiH and the BiH Prosecutor's Office were requested to submit responses to the supplement to the appeal of 1 October 2025. On 9 and 13 October 2025, the BiH Prosecutor's Office and the Court of BiH submitted their respective responses to the supplement to the appeal of 1 October 2025, which the Constitutional Court communicated to the appellant on 13 and 14 October 2025 for observations. The appellant did not to submit observations to the supplement to the appeal of 1 October 2025 within a given deadline.

AP-4095/25

9. Pursuant to Article 23 of the Rules of the Constitutional Court, on 9 September 2025, the Court of BiH and the CEC were requested to submit responses to the appeal. On 15 and 16 September 2025, the Court of BiH and the CEC submitted their respective responses to the appeal, which the Constitutional Court communicated to the appellant on 17 September 2025 for observations. The appellant did not submit any observation to the responses to the appeal no. AP-4095/25 within the set deadline.

10. In view of the fact that the referenced appeals were lodged by one and the same appellant and that the contested decisions concern the same legal matter, the Constitutional Court, pursuant to Article 32(1) of its Rules, has decided to join the appeals, conduct a single set of proceedings and take a single decision under number AP-3722/25.

III. Facts

11. In order to examine all allegations by the appellant, which are contained in the appeals (AP-3722/25 and AP-4095/25) and the supplements to the appeal no. AP-3722/25, the Constitutional Court will list in chronological order the circumstances relevant to its final decision on the appeal. The facts of the case, as they appear from the appellant's allegations, the documents submitted to the Constitutional Court and public information available on the official websites, may be summarised as follows.

AP-3722/25

a) Circumstances relevant to the alleged bias of judge J. Ć.-D.

12. In early 2020, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina ("the HJPC") adopted a decision (based on a public announcement) that J. Ć-D. (judge of the Court of BiH) would be the candidate of Bosnia and Herzegovina for the position of judge in the International Criminal Court ("the ICC") in The Hague. At the request of the Ministry of Justice of BiH, on 13 May 2020, the Ministry of Foreign Affairs of BiH communicated to the Embassy of BiH in The Hague the referenced judge's application to run for the position of an ICC judge. The appellant, who held the office of a member of the Presidency of BiH at that time, opposed the nomination of the referenced judge as a BiH candidate stating that her candidacy was "an insult to the Serbs and the [Republika] Srpska". In a letter (submitted with the supplement to the appeal of 5 September 2025; paragraph 70 of this decision), which the appellant communicated to the then Minister of Foreign Affairs of BiH (B. T.), the appellant, *inter alia*, pointed out the following: "I believe that a candidate with high moral and professional qualities should be proposed for such position, who, among other things, is impartial and

ethical, which by no means can be the person who was a member of the team of the war criminal N.O. That is why I emphasize once again that such proposal is an insult to the entire Serb people, the Republika Srpska, BiH, as well as the ICC in The Hague". The cited letter was published in the media [1]. The BiH Ministry of Foreign Affairs publicly reacted to the appellant's letter explaining the procedure of the referenced judge's candidacy.[2] In the further procedure of her election, judge J. Ć.-D. was formally the candidate of the Eastern European States group, but in late 2020, during the vote at the Assembly of the States Parties of the ICC, her candidacy was withdrawn.

b) The 2021 initiative/letter of the BiH Prosecutor's Office

13. It follows from the case file (the Information submitted by the BiH Prosecutor's Office to the Constitutional Court on 2 September 2025) that on 15 October 2021, one prosecutor of the BiH Prosecutor's Office (Dž. P.) introduced an initiative which he communicated to all prosecutors in the BiH Prosecutor's Office via the institution's official email. The initiative entitled *Prosecutor's Initiative* reads as follows:

> *Dear Sir/Madam, in relation to the statements of BiH Presidency member Milorad Dodik, in which he has expressed threats to the territorial integrity and the highest-level institutions of BiH in the manner which, to the degree of grounds for suspicion, satisfies the elements of criminal offences under chapter XVI of the Criminal Code of BiH, I hereby initiate an urgent opening of a case, if it has not been done already, in order to enable timely action by the BiH Prosecutor's Office and protection of the integrity of BiH under the Criminal Code. In fulfilling the basic duties of every prosecutor pursuant to Article 35 of the Criminal Procedure Code of Bosnia and Herzegovina, and given that, under the established procedure for opening and assigning cases, I am not able to act ex officio (that is, to open a case myself), I hereby call for the taking of necessary measures in order to conduct an investigation, in a case that will be assigned to one of the prosecutors of the BiH*

[1] Information downloaded from the Internet on 12 September 2025:
https://www.glassrpske.com/lat/novosti/politika/dodik-jasmina-cosic-dedovic-ne-moze-biti-kandidat-bih-za-sudiju-u-hagu-to-je-uvreda-za-srbe-i-srpsku/318006?fbclid=IwY2xjawMwsbpleHRuA2FlbQIxMQBicmlkETE1Smx4eURRYWpPOWw0ODFPAR6_pRkcnQCXWo6Dnb1QreUNznU23Krgkc8NxuYCSJOeoz4SWWJIGJJ5KFD-Aw_aem_GMXok4BhMWf150ptihWn9w
https://www.slobodna-bosna.ba/vijest/155812/dodik_iskljuchiv_asmina_cosic_dedovic_ne_moze_predstavljati_bih_to_je_uvreda_za_srbe_i_rs.html?fbclid=IwY2xjawMwsYZleHRuA2FlbQIxMQBicmlkETE1Smx4eURRYWpPOWw0ODFPAR4nHzFtzHsBffzJ4N78yuCHpUPFzBK32qC1vcPE7rMiZ5ctqlbJnAxZLOgzGA_aem_y6HMtjkNxiJN5917_01w7Q

[2] Information downloaded from the Internet on 12 September 2025:
https://mvp.gov.ba/aktuelnosti/top_news/default.aspx?id=42207&template_id=16&pageIndex=1

Prosecutor's Office in accordance with the Rulebook on Prosecutorial Case Management System (TCMS) .

14. The Initiative was signed by multiple prosecutors, including S. U. – the then prosecutor of the BiH Prosecutor's Office.

15. The Initiative was published as news in many BiH and foreign media.[3] On 7 August 2022, S. U., prosecutor of the BiH Prosecutor's Office until then, was appointed a judge of the Court of BiH and she took office on 8 August 2022[4].

c) The circumstances that preceded the criminal proceedings

16. At its 7th special session held on 21 June 2023, the National Assembly of the Republika Srpska ("the RS National Assembly") adopted the Law on Amendments to the Law on Publication of Laws and Other Regulations of the Republika Srpska. In addition, at its 8th special session held on 27 June 2023, the RS National Assembly adopted the Law on Non-application of Decisions of the Constitutional Court of Bosnia and Herzegovina. After that, on 1 July 2023, Christian Schmidt, the High Representative for BiH ("the High Representative"), issued two decisions, namely: Decision Preventing the Entry into Force of the Law on Amendments to the Law on Publication of Laws and Other Regulations of Republika Srpska, no. 15/23, and Decision Preventing the Entry into Force of the Law on Non-application of Decisions of the Constitutional Court of Bosnia and Herzegovina, no. 14/23. Article 5, common to both Decisions, reads that they shall enter into force immediately upon publication on the official website of the Office of the High Representative ("the OHR") on 1 July 2023. On the same day, the High Representative also issued Decision Enacting the Law on Amendments to the Criminal Code of Bosnia and Herzegovina, whereby a new Article was added: Article 203a – Failure to Implement Decisions of the High Representative. Article 4 of the Decision reads that the law shall enter into force on 2 July 2023. All

[3] Downloaded from the Internet on 1 September 2025
https://www.klix.ba/vijesti/bih/tuzioci-zatrazili-formiranje-predmeta-protiv-milorada-dodika/211016045
https://avaz.ba/vijesti/bih/689451/tuzilastvo-bih-formiralo-novi-predmet-protiv-milorada-dodika
https://lat.rtrs.tv/vijesti/vijest.php?id=449627
https://dnevni.ba/clanak/drzavni-tuzitelji-traze-pokretanje-istrage-protiv-dodika-hoce-li-biti-uhicen
https://istraga.ba/pobuna-u-tuzilastvu-bih-cetrnaest-drzavnih-tuzilaca-od-gordane-tadic-trazilo-procesuiranje-milorada-dodika-ona-obmanula-javnost-da-je-formirala-predmet/
https://balkans.aljazeera.net/news/balkan/2021/10/16/tuzioci-zatrazili-formiranje-predmeta-protiv-milorada-dodika
https://n1info.ba/vijesti/hoce-li-dodik-biti-procesuiran-ima-li-imunitet-ili-ne/
https://www.tportal.hr/vijesti/clanak/drzavni-tuzitelji-traze-otvaranje-istrage-protiv-dodika-20211016
https://www.facebook.com/share/v/19uGAR9fBA/
https://ba.voanews.com/a/tuzilastvo-bih-predmet-milorad-dodik/6275037.html
https://www.vecernji.ba/vijesti/tuziteljstvo-bih-formiralo-novi-predmet-protiv-milorada-dodika-1531995
https://www.bl-portal.com/novosti/tuzioci-zatrazili-formiranje-predmeta-protiv-milorada-dodika-evo-zbog-cegadmeta-protiv-milorada-dodika-razlog-istupi-u-medijima/

[4] Information downloaded on 3 September 2025 from https://pravosudje.ba/vstvfo-api/vijest/download/93919

three Decisions of the High Representative were published in the *Official Gazette of BiH,* 47/23 of 7 July 2023 (see paragraphs 81-83 of this decision). The information about the referenced decisions of the High Representative was also reported by many BiH media[5].

17. On 7 July 2023, acting in the capacity as the President of the Republika Srpska ("the RS President"), the appellant issued and signed in his own hand two decrees as follows: Decree Promulgating the Law on Amendments to the Law on Publication of Laws and Other Regulations of the Republika Srpska no. 01-020-3382/23, and Decree Promulgating the Law on Non-application of Decisions of the Constitutional Court of Bosnia and Herzegovina no. 01-020-3396/23 ("the contested decrees"). The two Decrees were published in the *Official Gazette of the RS*, 60, year XXXII, 9 July 2023 (see paragraphs 87 and 88 of this decision).

d) The indictment and petition for disqualification of judge J. Ć.-D.

18. On 22 August 2023, the BiH Prosecutor's Office accused the appellant and M. L. of having committed the criminal offence of Failure to Implement Decisions of the High Representative under Article 203a(1) of the Criminal Code of Bosnia and Herzegovina ("the CC BiH"), in conjunction with Article 54 of the CC BiH. The Preliminary Hearing Judge, J. Ć-D., returned the indictment for correction/supplementation, whereupon, on 11 September 2023, she confirmed the indictment. On 27 September 2023, the appellant filed with the Court of BiH a petition for disqualification of judge J. Ć-D (petition was more precisely stated on 28 September 2023) pursuant to Article 29(f) of the Criminal Procedure Code of BiH ("the CPC BiH").

19. The case file indicates that on 29 September 2023, the Court of BiH sitting in plenary session issued a ruling dismissing as unfounded the appellant's petition for disqualification of judge J. Ć.-D. The reasons of the ruling read that the appellant, as the party that filed the petition, finds the reason for doubt into the impartiality of judge J. Ć-D. (the preliminary hearing judge) in the fact that, having returned the original indictment, she violated the provisions of the procedural law, and that her conduct resulted in a violation of the equality of arms in favour of the BiH Prosecutor's Office and to the detriment of the appellant. In this regard, the Court of BiH sitting in plenary stated that, contrary to the appellant's allegations, when controlling the due form of the indictment pursuant to Articles 227 and 228 of the CPC BiH, as read with Article 148 of the CPC BiH, the preliminary hearing judge found that the indictment contained certain deficiencies due to which it was not possible to decide on it. In that way, as pointed out, she did not make any suggestions concerning the contents of the

[5] https://n1info.ba/vijesti/procitajte-izmijenjene-odredbe-krivicnog-zakona-bih-koje-je-nametnuo-schmidt/
https://www.slobodnaevropa.org/a/schmidt-dodik-odluka-rs-ohr-ustavni-sud/32485009.html
https://www.federalna.ba/christian-schmidt-0hpii

indictment nor did she prejudge the prosecutorial decision. It was further stated that judge J. Ć.-D. acted with the sole aim of reviewing the indictment comprehensively and as effectively as possible, so that the acts (which were posited alternatively in the original indictment) and the mode of criminal responsibility with which the appellant was charged would be described more precisely. It was pointed out that, having acted in that manner, the judge did not exceed her authorities under the CPC BiH, but acted in the appellant's interest so that he would be informed of what exactly he was charged with under the indictment. Based on the foregoing, it was concluded that the conduct of the preliminary hearing judge in the case at hand was professional, independent and objective, and based on statutory authority. It was added that the appellant's allegations did not constitute objective reasons that would suggest bias on the part of judge J. Ć-D. that would raise a reasonable suspicion as to her actions and justify application of Article 29(f) of the CPC BiH.

20. After the confirmation of the indictment, there were multiple postponements of the trial hearings and the severance of the proceedings against the accused M. L.

e) Petitions for disqualification of judge S. U.

21. Following the decision of the Court of BiH to sever the proceedings, the appellant's defence counsel filed a petition for disqualification of eight judges, including the judge seized of the case, due to which this hearing was also postponed until 5 February 2024. Based on the decision of the Commission for Reassignment of Cases of Sections I and II of the Court of BiH, on 2 February 2024, the individual judge seized of the case was changed in such a way that the case was assigned to judge S. U. instead of the previous judge M. S., because of his imminent retirement. The parties and the appellant's defence counsel were informed about this fact at the hearing for the commencement of the main trial held on 5 February 2024, at which the appellant's defence counsel filed a petition for disqualification of the new judge seized of the case for the reasons prescribed under Article 29(f) of the CPC BiH. At the hearing held on 5 February 2024, judge S. U. informed everybody present that she was familiar with the previous hearings in this case, including the procedural decision on the separation of the proceedings against the accused M. L. In addition, she also informed the present persons that she was aware of the fact that the defence counsel for the accused M. L. had filed a motion for joinder with the proceedings conducted against the appellant, that the Court of BiH had not yet made a decision about this motion and that the decision would be rendered in accordance with Article 25 of the CPC BiH, because it was not contingent upon procedural deadline. Despite the petition for disqualification of judge S. U. filed by the appellant's defence, at the hearing held on 5 February 2024, the Court of BiH made a decision that the indictment should be read whereby the main trial in this case related to the appellant commenced. Judge S. U., who was seized of the case, considered that in the

specific case there was a risk of delay under Article 29(f) of the CPC BiH. The foregoing was substantiated by the fact that more than three months had elapsed from the plea hearing and that the main trial had not commenced before 5 February 2024 although it had been scheduled six times. It was, therefore, concluded that it was necessary to prevent delay in the proceedings by any party within the meaning of the right to a trial within a reasonable time and, at the same time, to respect the right of the accused appellant to be informed without delay of the nature and reasons of the charges against him.

22. Deciding on the petition of the appellant's defence counsel for disqualification of judge S. U. (of 5 February 2024, supplemented on 7 and 13 February 2024 respectively), the Court of BiH sitting in plenary adopted the decision no. Su-10-105/24 of 20 February 2024 dismissing the petition as unfounded.

23. The reasons of the ruling read that disqualification of judge S. U. was requested for several reasons summed up as follows: i) the reading of the indictment only with respect to the appellant as a form of the judge's inappropriate interference with the contents of the indictment, as well as the reading of the indictment after the petition for disqualification of the judge had been filed; ii) failure to provide information about the name of the judge who had assumed the case in the context of (im)possibility to object the composition of the court; iii) the political bias of judge S. U. due to the fact that in 1998-2002 period she held the office of Deputy Minister of Finance, to which she had been appointed by the SDA (Party of Democratic Action), political party whose political program included the will to abolish the RS; iv) the conduct of judge S. U. at the time when she was a prosecutor in the BiH Prosecutor's Office when, together with 14 other prosecutors, she advocated the prosecution of the appellant due to his alleged announcements of subverting the BiH institutions, for which reason the judge is prejudiced against the appellant; v) the issue of the Bosniak ethnicity of judge S. U. in the context of the multi-ethnic composition of the Court of BiH, and, in that regard, the ethnic composition of the Commission for Reassignment of Cases which appointed the judge seized of this case.

24. With respect to the first reason, the Court of BiH states that the fact that at the hearing held on 5 February 2024, judge S. U. called the prosecutors to read the indictment in the part related to the appellant, who "stayed" in the case after the ruling to sever the proceedings against the second-accused M. L. had previously been rendered, constitutes the usual conduct of the court in identical situations. According to the Court of BiH sitting in plenary, such conduct is justified, especially when it is taken into account that, in terms of facts, in addition to the preamble (introduction), the indictment consists of two separate counts, where only Count 1 pertains to the appellant's actions. This is

particularly visible from the legal definition of the criminal offence the appellant is charged with under the indictment. Reading of the factual allegations in the indictment with respect to the accused person against whom the criminal proceedings were separated by the court's decision, would constitute an unnecessary delay from the aspect of expediency, efficiency and economy of the proceedings, in the opinion of the Court of BiH. In this connection, it is also stated that it should be borne in mind that in this particular case the indictment was confirmed almost five months ago and that it has not yet been read out.

25. In relation to the second reason provided by the appellant's defence, it is stated that the law does not stipulate anywhere an obligation of the judge seized of a case to inform the parties and the defence about the composition of the court at any stage of the proceedings before the judge undertakes any action within his or her jurisdiction. It is stated in this regard that the appellant's defence learned at the first opportunity that judge S. U. was seized of the case, that is, when the defence was informed about the change in relation to the previous judge, and that it used its statutory right and requested disqualification of judge S. U.

26. With respect to the previous political commitments of judge S. U., it is stated that it was not reasoned in which way that fact constitutes circumstances that raise a reasonable suspicion as to the judge's impartiality. It is pointed out that the judge was relieved of the duties of Assistant Minister of Finance in 2001, that is, more than 20 years ago, whereupon she has worked in the judiciary only, and that in 2002 she was appointed a judge of the Court of BiH by an HJPC decision.

27. As to the allegations in the petition related to the judge's support for the initiative of the prosecutor of the BiH Prosecutor's Office (Dž. P.) for opening a case regarding the appellant's announcements of subverting the constitutional order of BiH, the Court of BiH sitting in plenary states that that fact does not mean that judge S. U. is in any way prejudiced against the appellant. It is pointed out in that regard that the basic rights and the basic duty of a prosecutor, pursuant to Article 35 of the CPC BiH, are the detection and prosecution of perpetrators of criminal offences falling within the jurisdiction of the Court of BiH. It is, therefore, concluded that the conduct of judge S. U. at the time when she held the office of a prosecutor has no bearing on her conduct in the particular criminal case.

28. Finally, with regard to the ethnic affiliation of judge S. U., it is stated that that circumstance in itself cannot influence the performance of the judicial function. It is stated in that respect that the case was reassigned to the referenced judge on the basis of a decision of the Commission for Reassignment of Cases of Sections I and II of the Criminal Division of the Court of BiH because of the imminent retirement of judge M. S. under the established rules of procedure in such situations (Rulebook on

Court Case Management System). As stated, the parties and the defence counsel were informed of it. It is also stated that, as a holder of judicial office, every judge, including judge S. U., has the obligation to act conscientiously in every case assigned to him/her and be guided in his or her work by the principle of impartiality in line with the rules of the Code of Judicial Ethics and judicial oath. As pointed out, a judge is obliged to perform his or her function so as to treat all parties to the proceedings without favouritism, bias and prejudice, and to make decisions based on the presented facts and evidence, as judge S. U. has done.

29. At the trial resumption hearing held on 6 March 2024, the Court of BiH adopted a ruling to join the respective proceedings against the accused appellant and M. L. into a single set of proceedings to be conducted under number S1 2 K 046070 23 K.

30. At the trial hearing held on 9 October 2024, the appellant's defence counsel again presented orally on the record a petition for disqualification of judge S. U. pursuant to Article 29(f) of the CPC BiH. As stated, the suspicion as to the bias of judge S. U. was based on a violation of the right to defence due to the events that occurred in the course of that hearing because she insisted on resumption of the main trial.

31. By ruling no. S1 2 K 046070 24 Kv 2 of 10 October 2024, the panel of three judges of the Court of BiH rejected as inadmissible the appellant's petition for disqualification of judge S. U. of 9 October 2024. The reasons read that the petition was filed after the commencement of the main trial (at the presentation-of-evidence stage), due to which it was rejected in accordance with Article 32(4) of the CPC BiH. It is said that the appellant and his counsel may raise objections of bias in a potential appeal against the judgment.

f) Contested judgments

32. By the judgment of the Court of BiH (rendered by judge S. U.), no. S1 2 K 046070 23 K of 26 February 2025 ("the first instance judgment"), the appellant was found guilty of the following:

> *In the period from 1 to 9 July 2023, in Banja Luka, knowing that the High Representative for BiH, Christian Schmidt, issued Decision Preventing the Entry into Force of the Law on Non-application of Decisions of the Constitutional Court of BiH, no. 14/23 of 1 July 2023, which law the RS National Assembly had adopted at its 8th special session held on 27 June 2023, and Decision Preventing the Entry into Force of the Law on Amendments to the Law on Publication of Laws and Other Regulations of Republika Srpska, no. 15/23 of 1 July 2023, which law the RS National Assembly had adopted at its 7th special*

session held on 21 June 2023, of which Decisions he was previously informed yet, despite that, took official actions with a view to continuing the legislative procedure, failing to apply and to implement the aforementioned decisions of the High Representative, in a way that:

2. (Count 1 of the indictment)

Milorad Dodik, as an official person of an institution of the Republika Srpska, in the capacity as the President of the Republika Srpska, having exercised the powers prescribed by Article 80(1)(4) of the Constitution of the Republika Srpska (Official Gazette of the RS, 21/1992, 28/1994–Amendments XXVI-XLIII, 8/1996–Amendments XLIV-LI, 13/1996–Amendment LII, 15/1996–corr., 16/1996–Amendment LIII, 21/1996– Amendments LIV-LXV, 21/2002–Amendments LXVI-XCII, 26/2002-corr., 30/2002-corr., 31/2002-Amendments XCIII-XCVIII, 69/2002-Amendments XCIX-CIII, 31/2003-Amendments CIV and CV, 98/2003-Amendments CVI-CXII, 115/2005-Amendment CXIV, 117/2005-Amendments CXV-CXXI and 48/2011-Amendments CXXII, and Official Gazette of BiH, 73/2019 – Decision of the Constitutional Court of BiH), issued Decree Promulgating the Law on Amendments to the Law on Publication of Laws and Other Regulations of the Republika Srpska, no. 01-020-3382/23 of 7 July 2023, by signing it in his own hand , which the RS National Assembly had adopted at the session held on 21 June 2023, thus failing to apply and implement the High Representative Christian Schmidt's Decision no. 15/23 of 1 July 2023 which entered into force on that date and by which the legislative procedure of adoption of the referenced law was suspended, a nd also issued Decree Promulgating the Law on Non-application of Decisions of the Constitutional Court of Bosnia and Herzegovina, no. 01-020-3396/23 of 7 July 2023, which the RS National Assembly had adopted at the session held on 27 June 2023, thus failing to apply and implement the High Representative Christian Schmidt's Decision no. 14/23 of 1 July 2023 which entered into force on that date and by which the legislative procedure of adoption of the referenced law was suspended, with both Decisions of the High Representative having been published in the Official Gazette of BiH, 47/23 of 7 July 2023. Although aware that decisions of the High Representative for BiH were binding in accordance with the powers vested in the High Representative by Article V of Annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina and Article II.I(d)

thereof, the accused did the foregoing with the intention that the referenced Decisions of the High Representative for BiH were not applied or implemented, considering the fact that refraining from further legislative procedure was required for the application and implementation of these Decisions, whereupon he forwarded the referenced Decrees to the Official Gazette of the Republika Srpska for their publishing and subsequent entry into force of the referenced Laws, which (consequences) he desired.

33. In the enacting clause of the judgment, the Court of BiH states that by the foregoing acts the appellant committed the criminal offence of Failure to Implement Decisions of the High Representative under Article 203a (1) of the CC BiH, for which he was sentenced to one-year imprisonment. Pursuant to Article 203a (4), a security measure of ban on carrying out the duty of the RS President was imposed on the appellant for the period of six years from the date of finality of the judgment, with the proviso that the time spent serving the prison sentence would not be credited towards the duration of the security measure.

34. The reasoning stated that the defence's closing argument contained 22 chapters, and that in Chapter 17 the appellant's counsel provided a detailed elaboration on the issue of procedural irregularities during the proceedings, focusing in particular, among other things, on the argument that the indictment had not been confirmed by an 'impartial' tribunal. In chronological order, reference was made to the appellant's written and oral petitions for the disqualification of specified prosecutors, the expert witness and judges in this case. In this regard, the Court of BiH noted that it had been mindful of the principle of judicial impartiality throughout the entire proceedings and in each of its decisions. In respect of the appellant's complaint of a violation of Article 251 of the CPC BiH, the Court of BiH noted that during the main trial the hearings were adjourned for periods exceeding thirty days on several occasions (between the hearings held on 6 March 2024 and 17 April 2024; 22 May 2024 and 17 July 2024; 17 July 2024 and 28 August 2024). Given the prior consent of the parties and defence counsel that the earlier presented evidence need not be presented again, during the hearings held on 17 April 2023, 17 July 2024 and 28 August 2024, the Court of BiH decided that the main trial should recommence from the beginning as provided for under Article 251(2) of the CPC BiH. It was noted that the witnesses already heard would not be summoned and examined again, rather the statements they had previously given in these proceedings, as well as the documentary evidence adduced during the main trial, would be used. Due to lapse of time exceeding thirty days between the hearings held on 5 December 2024 and 29 January 2025, for the purposes of Article 251(2) of the CPC BiH after the parties and defence counsel expressed their positions, the Court of BiH, at the hearing that resumed on

29 January 2025, issued a ruling that the main trial would recommence from the beginning. It was decided that the evidence presented until that point would not be presented again, that is, the witnesses of the BIH Prosecutor's Office would not be re-summoned, and instead their statements given at the main trial hearings of 6 March 2024, 17 April 2024 and 13 November 2024, would be used. Furthermore, it was also decided that the appellant's defence witnesses would not be summoned, and that their statements given at the main trial hearings held on 17 July 2024 and 28 August 2024, would be used. At the status conference held on 30 December 2024, the Court of BiH requested the BiH Prosecutor's Office and defence counsel to state whether they would give their consent given that a 30-day period had elapsed. On 15 January 2025 the Court of BiH received the defence counsel's position informing the Court that the appellant and his defence counsel do not agree with non-representing the earlier presented evidence, and they instead request that the main trial be recommenced from the beginning, by reading the indictment of the BiH Prosecutor's Office of 22 August 2023. In this regard, it was noted that the defence counsel invoked the procedural rights belonging to the appellant as the accused, as well as the principles of immediacy and publicity, noting that the principle of publicity is crucial for building trust in the entire judicial system, and consequently in the Court of BiH as well. He also reflected on the fact that during the proceedings, the Court of BiH rejected a certain number of pieces of evidence tendered by the defence, which related to the legal status of the High Representative in Bosnia and Herzegovina in general, including the status of Christian Schmidt. With respect to these allegations by the appellant, the Court of BiH primarily noted that during the main trial there had been multiple adjournments, which disrupted the pace of the trial for objective reasons, and resulted in the discontinuity of the proceedings, with the varying reasons for adjournments. Therefore, the Court of BiH noted that the trial could not be conducted at the planned pace, i.e. on a weekly basis, which resulted in a prolonged duration of the proceedings. In light of the fact that the parties had previously given their consent on three occasions for the 30-day period to elapse, the Court of BiH found the defence’s motion to have all the evidence re-presented to be unfounded. In this context, the Court of BiH took into account the rights of the accused to a trial within a reasonable time, as well as the principle of efficiency and economy of the proceedings. By such a decision of the Court of BiH, as noted, neither the accused’s right to a fair trial nor the principles of immediacy, publicity, and equality of arms, invoked by the appellant’s counsel, were violated, and the accused was not placed at any disadvantage. Furthermore, it was noted that, in the course of the proceedings, the Court is obliged to take into account the rights of the accused on the one hand and the rights of witnesses on the other, and to ensure that witnesses are not subjected to unnecessary examinations, which in the present case would have occurred, as certain witnesses were summoned to the Court of BiH on multiple occasions to testify in this case. It was also noted that the

re-summoning of witnesses to the Court of BiH, as well as adducing the documentary evidence would merely have resulted in additional costs. In view of the foregoing, the Court of BiH concluded that the sole purpose behind such defence's request was to prolong the criminal proceedings, which the Court of BiH finds unacceptable. In addition, the Court of BiH noted that the aforementioned motion for recommencing the proceedings had been filed, *inter alia*, to satisfy the principle of publicity. In this regard, the Court of BiH noted that the public was present during the entire course of proceedings, that is, the Court of BiH had never, pursuant to Article 235 of the CPC BiH, issued a procedural decision to exclude public from either a part or entirety of the proceedings. According to the Court's assessment, the lowering of a screen in front of the area designated for the public in the courtroom where the main hearing took place constituted merely a mechanism by which the presiding judge exercised the right and duty to remove from the courtroom any person disrupting order, ensuring that the trial could proceed without interference. In this manner, the appellant's contact with the public was prevented, as he had, through conclusive actions (hand gestures, turning towards the public, etc.), signalled for them to stand, which the public did after receiving instructions, rising and loudly expressing their disapproval. The Court of BiH noted that, with the aim of fulfilling its duty to maintain order in the courtroom and the dignity of the Court, it repeatedly, during the main hearing, warned those present of their obligation to behave properly and not to disrupt the proceedings, recording in the minutes of the main hearing any observed inappropriate conduct. It was also noted that the Court of BiH, on multiple occasions, warned both the appellant and his counsel that the court would not tolerate the making of political speeches in the courtroom. It was also noted that the principles of immediacy and equality of arms were also complied with in accordance with the provisions of the CPC BIH, which is why those allegations were assessed as ill-founded.

35. It was further noted that the appellant's defence proposed the presentation of documentary evidence contained in the court file, which had been submitted as an annex to the appellant's petition for the disqualification of the then judge seized of the case, M. S. and judge S. U., for the purpose of the decision to be taken by the Plenary of the Court of Bosnia and Herzegovina. This evidence consisted of statements by the High Representative, the FBiH Minister of Internal Affairs, a Minister in the Council of Ministers of Bosnia and Herzegovina, foreign ambassadors, and the President of the Court of BiH concerning the appellant. The Court of Bosnia and Herzegovina dismissed the appellant's proposal, holding that newspaper articles and the content therein cannot constitute evidence in criminal proceedings. In this regard, it was noted that the court's assessment (which is also consistent with the case law of the Appellate Panel of the Court of Bosnia and Herzegovina) is that

newspaper articles and texts represent the opinion of their author, and therefore cannot be considered to be based on authentic and verified information or facts, and cannot serve as reliable evidence.

36. It was further noted that the decisions of the High Representative of 1 July 2023 were published in the *Official Gazette of Bosnia and Herzegovina,* 47/23 of 7 July 2023. It was also noted that the said decisions of the High Representative, which were published on the official OHR website www.ohr.int, constitute official and authentic documents, and that the official OHR website serves as an official public source for these decisions. In addition, it was noted that the authenticity of the official OHR website is further corroborated by the mere fact that entering into force of certain decisions and laws is linked to their publication on the official OHR website. The publication on the official OHR website of 1 July 2023, preceded the publication in the Official Gazette of Bosnia and Herzegovina, while the entry into force is linked to its publication on the official OHR website, and not in the Official Gazette of Bosnia and Herzegovina.

37. The Court of BiH dismissed as ill-founded the defence counsels' objection concerning the authority of the High Representative, Christian Schmidt, the manner of publication of his decisions, as well as the Bonn Powers. In this regard, the Court of BiH referred to the positions taken in paragraph 72 of the Constitutional Court's Decision no. *U-27/22* of 23 March 2023 (available at www.ustavnisud.ba). With respect to legal matters related to the legitimacy of the High Representative and his authority to impose laws in Bosnia and Herzegovina, the Court of BiH pointed out that if fully upholds the positions expressed in the judgments of the Constitutional Court that are final and binding, as well as in the Decisions of the European Court of Human Rights ("the European Court") particularly in case *Berić and Others v. Bosnia and Herzegovina* (paragraphs 26-28). Furthermore, it was noted that on 27 May 2021, the Steering Board of the Peace Implementation Council (PIC SB) "officially appointed" Christian Schmidt as the High Representative. In response to the request of the PIC Steering Board to inform the UN Secretary-General thereof, on 3 June 2021 the then High Representative, Dr Valentin Inzko, sent a letter to UN Secretary-General António Guterres notifying him of the PIC Steering Board's decision to officially appoint Christian Schmidt. Furthermore, the Court of BiH noted that the Constitutional Court's Decision no. *U-15/21* of 14 July 2022 relates to an almost identical legal situation regarding the authority of the High Representative, Christian Schmidt to issue a Decision enacting the Law on Amendments to the Criminal Code of Bosnia and Herzegovina and the Law on Non-Application of that decision of the High Representative enacted by the RS National Assembly. In view of the foregoing, it was concluded that Christian Schmidt was legally appointed High Representative and that under Annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina ("Annex 10"), the relevant UN Security

Council resolutions and the Bonn Declaration – he had the authority to intervene in the legal system of Bosnia and Herzegovina, thereby substituting the national authorities and acting as the authority of Bosna and Herzegovina and that any law enacted by him must be regarded as a law of Bosnia and Herzegovina.

38. Having examined all the evidence presented, the Court of BiH found that the appellant committed the criminal offence, because as an official within the RS institutions he failed to apply and implement the decisions of the High Representative. In this regard, the appellant's status was first established, and it was concluded that during the relevant period he exercised the office of the RS President. In respect of the act of commission as an essential element of the criminal offence, the Court of BiH noted that witness J. P-B., testified as to the circumstances preceding the signing of the contested decrees, mentioning certain activities that had taken place in the Service of the RS President. In that context, the witness noted that, at the request of the President, a number of meetings were organized and held in the Office of the President, attended by the Prime-Minister of the RS Government and Ministers in the RS Government (lawyers by profession), constitutional law professor, S. K., ministers Ž. B. and M. B., the RS National Assembly Speaker, Advisors to the RS President, representatives of the Republika Srpska in the institutions of Bosnia and Herzegovina, a Serb member of the Presidency, Ž.C., and many constitutional law professors. The Court of BiH pointed out that the witness explained that the meetings with the relevant legal experts had been held for the purpose of obtaining an adequate analysis/expertise of the said issues, in order to ultimately give a conclusion to the RS President whether he should sign the decrees in question. Furthermore, the Court of BiH noted that the appellant in the capacity of a witness noted that in a discussion with the advisers it was concluded that, in their view, Christian Schmidt's decision was illegal, unnecessary, and had not been published in the Official Gazette of Bosnia and Herzegovina. The appellant noted that he signed the contested decrees the day before the Official Gazette containing the High Representative's decisions was presented to him, and added that, according to the Constitution and the laws, the sole legislator at the level of Bosnia and Herzegovina is the Parliamentary Assembly of Bosnia and Herzegovina, and that all decisions applied within the legal system of Bosnia and Herzegovina must be published in the Official Gazette. It was further noted that the appellant stated that his advisors had informed him that, should he refuse to sign the decree, he would, pursuant to the provisions of the Criminal Code of the Republika Srpska, face a 12-year prison sentence, and that there was no legal ground for him not to sign it. According to the appellant, as the RS President, he is a part of legislative procedure, but he cannot influence the enactment of the law, which falls under exclusive prerogative of the RS National Assembly. He pointed out that he had a possibility to return

the laws to the RS National Assembly, but the key reason he chose not to do so was that the Council of Peoples, which regularly raised issues of vital national interest, most often through the Bosniak Caucus, had given its consent for the laws to enter into force. The appellant explained that, had the Bosniak Caucus or any other caucus in the Council of Peoples expressed the view that there were elements of endangerment, he would not have signed the decrees, adding in conclusion that he receives a law for signature from the RS National Assembly Speaker only once it has passed the entire procedure.

39. Having regard to the above, as well as to the fact that during the proceedings the appellant's ability to comprehend the significance of the act he committed and to control his actions was never called into question, the Court of BiH concluded that, in the present case, all the elements of the criminal offence of Failure to Implement Decisions of the High Representative under Article 203a(1) of the CC BiH had been fulfilled in the appellant's conduct, and found him guilty thereof. The allegations made in the closing arguments, to the effect that the present case constituted a politically rigged trial and his political persecution, and that the entire proceedings were conducted with the aim of eliminating the appellant from politics, were dismissed as unfounded. It was noted that at the time of the commission of the criminal offence the appellant was capable of reasoning and able to comprehend and understand the significance of his actions, as well as fully capable of making decisions and understanding their significance. The Court of BiH did not accept the defence's assertion that the appellant was obliged to sign the contested decrees on the promulgation of laws in the Official Gazette of the Republika Srpska, as he was required to do so by Article 80(4) of the Constitution of the Republika Srpska. The Court of BiH noted that such a claim by the appellant is refuted by the evidence presented. On the contrary, the Court of BiH emphasized that the appellant was obliged to request the RS National Assembly to reconsider the laws on which the High Representative had previously issued decisions preventing those laws from entering into force. In support of the fact that the appellant was indeed aware that the High Representative's Decision had been published together with the Law and that he was familiar with the content of that Law, the Court of BiH pointed to the appellant's speech from Kozara (2 July 2023), which was reproduced at the main hearing on 13 November 2024, wherein, inasmuch as relevant, it is stated as follows:

> *[...]. But mark my words—they are building a framework solely to drag us off, primarily me, to the dungeons of Sarajevo and put me on trial there. That is why Schmidt amended the Criminal Procedure Code and stated that, in his view, any act undermining the constitutional order carries a six-year imprisonment sentence. This means that when Milorad Dodik signs the decree to enact the laws that he had*

> *annulled yesterday, they will come after Milorad Dodik… there he is… and then they will drag me before some Muslim prosecutor, who will pass me to a Muslim judge to hand down the harshest sentence, while traitors among us cheer, convinced that I am a criminal who deserves to be locked away... [...] We will proclaim those laws applicable and then will likely initiate proceedings before the Court. We will go to Parliament and enact a decision on non-recognition of the jurisdiction of the Court, the Prosecutor's Office, and SIPA within the territory of Republika Srpska.. [...]*

40. In addition to the appellant's speech in Kozara on 2 July 2023, the Court of BiH noted that the appellant's awareness of and knowledge about the High Representative's decisions of 1 July 2023, which prevented the entry into force of two laws, is also evident from the testimony of witness J. P-B. In response to the Court's question regarding the reason for the appellant's meetings with numerous professors, experts, and advisors, she confirmed that their knowledge came from media reports that Christian Schmidt had issued two decisions regarding the laws on 1 July 2023. This is why a large number of experts were engaged to consider whether the President of Republika Srpska should sign the decrees.

41. Thus, the Court of BiH concluded that the appellant was aware that, as an official person acting in the capacity of President of the Republika Srpska, he issued two decrees with the intent to prevent the application or implementation of the High Representative's decisions, despite knowing that those decisions were binding. The decrees were subsequently published in the Official Gazette of Republika Srpska, the consequence he desired acting with direct intent to achieve it. Having regard to the aforementioned conclusion, the Court of BiH did not accept the defence's claim, presented in the closing argument, that the appellant acted under a mistake of law/fact. Likewise, the appellant's claims that the present case concerns a "trivial act" were also assessed as completely unfounded. Contrary to the claims of the appellant's defence, it was assessed that the very nature and gravity of the criminal offence, by which the appellant could have jeopardized the legal certainty of the citizens of Bosnia and Herzegovina, the manner in which the offence was committed, and the appellant's intent to prevent the functioning of state institutions in the territory of the Republika Srpska after the disputed laws entered into force, as well as the fact that he acted with direct intent, are factors leading the Court to conclude that the actions undertaken by the appellant can in no way be regarded as a trivial act.

42. It was also stated that the defence's allegations concerning the absence of harmful consequences, as well as the status of the injured party, are unfounded. The Court of BiH reiterated

that the appellant through the actions taken, could have jeopardized the legal certainty of the citizens of Bosnia and Herzegovina, by failing to publish the Constitutional Court's judgments, he could have prevented citizens of the Entity of the Republika Srpska from accessing information on the legal positions and decisions of the highest judicial authority at the state level. The fact that the said consequence did not occur in the present case, as pointed out, is of no relevance to the Court's conclusion that the appellant, through his actions, demonstrated an intention for them to occur. This would, as stated, ultimately have unforeseeable repercussions and lead to the undermining of the rule of law. The Court of BiH noted that it could not disregard the fact that, had the appellant's conduct not been prevented (albeit not by his own volition), an indefinite but considerable number of citizens of the Entity of the Republika Srpska and the state of Bosnia and Herzegovina would have been harmed.

43. With respect to the appellant's complaint that on 7 July 2023 – when he signed the two contested decrees – the criminal offence did not exist and amendments to the CC BiH entered into force on 8 July 2023, in accordance with the uniform rules for legislative drafting in the institutions of Bosnia and Herzegovina, the Court of BiH noted that this applies only to the laws enacted by the Parliamentary Assembly of Bosnia and Herzegovina, not to the laws enacted by the High Representative. In this regard, it is noted that Article 1(2) of the uniform rules represents only a recommendation and not an obligation, and that the High Representative, by substituting domestic authorities, he also enacted and published the Law on Amendments to the CC BiH, which was posted on the OHR website and entered into force the following day, 2 July 2023. In this way, as noted, the defence's arguments claiming that the appellant could not have committed the criminal offence, are refuted.

44. With respect to the decision on the sentence, the Court of BIH particularly assessed the fact that the criminal offence falls under crimes against humanity and the values protected by international law. The values safeguarded by the criminalization of such acts, which the international community recognizes as universal human values, are at the same time the values of each individual country, protected both in the context of fulfilling international obligations and as fundamental values of our society. As an aggravating circumstance, the Court of BiH noted that the appellant, through his actions, could have undermined the legal certainty of citizens by failing to publish the judgments of the Constitutional Court of Bosnia and Herzegovina—whose decisions are final and binding under the Constitution of Bosnia and Herzegovina—thereby potentially preventing citizens of the Entity of the Republika Srpska from accessing information on the legal positions and decisions of the highest judicial authority at the state level, and in turn causing legal uncertainty, unequal treatment among citizens, and weakening the rule of law. Furthermore, as an aggravating circumstance, the Court

assessed the motives behind the appellant's actions, specifically his intention to obstruct the functioning of state institutions—particularly the Court of BiH, the BiH Prosecutor's Office, and the State Investigation and Protection Agency—within the territory of Republika Srpska after the laws enacted by the RS National Assembly were promulgated, as he explicitly stated in his speech on Kozara on 2 July 2023. Furthermore, the Court of BiH, as an aggravating circumstance took into account the appellant's behaviour after committing the criminal offence, which is reflected in the disrespect of the Court of BiH and the Prosecutor's Office of BiH demonstrated during the trial in the courtroom. As mitigating circumstances, the Court took into account that the appellant had no prior criminal record and considered his family situation. In view of the foregoing, it was concluded that the imposed sentence in relation to the appellant will achieve the purpose of punishment (individual deterrence), as well as deter potential perpetrators of such criminal offences from engaging in criminal activities (general deterrence).

45. With respect to the imposed security measure, the Court of BiH, taking into account the circumstances under which the criminal offence was committed and the manner of its commission, concluded that there is a risk that the continued performance of the duties of the RS President could encourage the appellant to use his knowledge, experience, and professional skills to reoffend by committing one of the criminal offences related to the performance of those duties (as he has publicly announced). The Court of BiH determined that imposing a security measure for six years—approaching the statutory maximum for such a measure—is proportionate to the prison sentence handed down in this judgment.

46. With regard to the legal consequences linked to the conviction, the Court of BiH noted that it did not issue a separate decision on the BiH Prosecutor's Office's motion, which related to Article 203a(5)(a), (c), and (d) of the CC BiH. It was noted that the legal consequences linked to the conviction under Article 5 of the CC BIH do not constitute a criminal sanction and, therefore, are not determined, imposed, or included in the judgment, as they arise automatically by operation of law. It is precisely this nature, as noted, that distinguishes them from criminal sanctions, such as those security measures, which must be imposed by a judgment in order to take effect. It is further noted that, in the present case, the factual overlap between the potential legal consequences of the conviction- which will arise should the statutory conditions for it be met—and the security measure imposed, do not preclude each other. In this regard, it was noted that these are two measures of entirely different nature, both in terms of what constitutes a criminal sanction and in terms of what the court can determine and impose through its judgment. It was therefore noted that, when the legal conditions are met and the court considers it justified, as in the present case, it will impose the security

measure it is legally authorized to impose, while the legal consequences of the conviction will arise to the extent and at the time prescribed by law, without any need for a separate court decision. The Court of BiH considered it important to note that the legal consequences incident to conviction will cease upon expunction of the conviction, in accordance with Article 121 of the CC BiH, and that a conviction cannot be expunged from the criminal record for as long as security measures are in place, as stipulated in paragraph 6 of the same Article.

47. By judgement of the Panel of the Appellate Division Court of BiH ("the Appellate Panel"), no. S1 2 K 046070 25 Kž 2 of 12 June 2025 ("the second-instance judgement"), the appeals by the BiH Prosecutor's Office and the appeal of the defence counsel were dismissed as ill-founded and the first-instance judgement was upheld.

48. With regard to the complaint of a violation of Article 251(2) of the CPC BiH, the Appellate Panel noted that the defence maintains that, given that more than 30 days had elapsed since the last adjournment, the main trial should have recommenced on 29 January 2025. In this regard, the Appellate Panel started from the purpose of the cited legal provision, that is, the entire statutory article with all its paragraphs. It is clear, as pointed out, that this legal provision fully protects the principle of immediacy, i.e., the continuity of holding main trial hearings in order to maintain judicial immediacy. However, as the law provides for exceptions, with the consent of parties and defence counsel, the Appellate Panel noted that the said legal provision is not the imperative, contrary to the defence's assertion in the appeal. Therefore, it was concluded that these are arbitrary reasons put forward by the defence which, at that moment, were clearly aimed at delaying the proceedings, and through the appeal were directed at claiming a significant procedural violation that, in essence, does not exist. The Appellate Panel further noted that the appellant's allegation that the competent court failed to decide on the transfer of jurisdiction is unfounded. The Appellate Panel further observed that the individual judge stated that he/she would not deliberate on another motion for transfer of jurisdiction, as the motion had already been finally adjudicated due to its untimely submission.

49. With respect to the complaint of a violation of the principle of publicity under Article 234 of the CPC BiH, the Appellate Panel noted that the appellant's defence has fundamentally misinterpreted the events at the hearing on 5 February 2024, which it erroneously attempts to portray as an unlawful exclusion of the public. In this regard, it was noted that it was exclusively a disciplinary measure, that is, a mechanism for maintaining order in the courtroom. The Appellate Panel further supported this conclusion with the fact, verifiable from the case file, that at the moment the screen was lowered, the broadcast of the hearing to the monitors in the public seating area (behind the glass and the lowered screen) continued uninterrupted, whereas such broadcasts are normally suspended when the public is

genuinely excluded. Given that the hearing was transmitted on monitors accessible to the public, the Appellate Panel found the defence's claims that the public could not be informed of the indictment and the parties' opening statements to be incorrect and unfounded.

50. With respect to the complaint of a violation of the right to use language and alphabet, the Appellate Panel noted that the defence, among other points, once again raises the issue of Annex 10, offering an interpretation of the terms "*izvornik*" versus "*original*" /Translator's note: both 'izvornik' and 'original' can be translated into English as "original", "original copy" or "master copy"./ Such complaints were found to be ill-founded, as they pertain to factual presentation regarding the issue of authenticity. The Appellate Panel noted that the appointment of the High Representative is not a factual matter, as suggested by the defence, but solely a legal issue, since the role of the High Representative is a well-known component of the state and legal system of Bosnia and Herzegovina, including its constitutional order. In this regard, it was noted that Christian Schmidt, not only in the context of imposing the criminal offence which is the subject of these proceedings, but also in many other widely known circumstances and actions, is the High Representative, and he certainly does not exercise this function arbitrarily. In this regard, the Appellate Panel also pointed out that the appointment of the High Representative does not require a separate United Nations Security Council resolution, and that the legitimacy of the High Representative, Christian Schmidt, is unquestionable and was confirmed on 27 May 2021 by the Steering Board of the Peace Implementation Council.

51. With respect to the complaints of judicial bias, the Appellate Panel noted that the defence maintains that there were grounds for disqualification of preliminary hearing judge (J.Ć.-D.). In this context, the defence pointed out that she was a judge who had previously been a candidate for the International Criminal Tribunal in The Hague, a candidacy which the appellant opposed in his then capacity as a Serb member of the Presidency of Bosnia and Herzegovina. The appellant's defence finds confirmation of its position in the act of the preliminary hearing judge, when the indictment was returned for supplementation, namely, in the letter which, according to the defence, constitutes the drafting of the factual description of the indictment. It was further stated that the defence also challenged the conduct of the single judge, S. U., who issued the first-instance judgment in this case, noting that she appeared in the courtroom on 5 February 2024 without her identity having been previously disclosed to the defence. The defence also referred to the previous positions held by the judge seized of the case (S. U.) during her term as a prosecutor at the BiH Prosecutor's Office, considering that this gives rise to some bias against the appellant. The appeal emphasizes that, at the main trial hearing on 5 February 2024, a petition for the disqualification of judge S. U. was filed, yet she continued her work despite there being no grounds for urgency.

52. In examining the defence's objections concerning the alleged continuous violation in light of the principle of judicial impartiality, which, according to the defence, spans from the indictment confirmation stage to the pre-trial phase, the Appellate Panel found that this reflects a one-sided interpretation by the defence. Such a view, as noted, stems solely from the appellant's personal dissatisfaction with a particular judge, without any basis objectively indicating that the appellant was tried before a biased court at any stage of the proceedings. In this regard, it was stated that all defence's complaints regarding the court's impartiality were decided by the Plenary of the Court of BiH as the only authority competent to decide on this issue. Therefore, it was noted that at no stage of the proceedings was the appellant prevented from submitting and having his petition for disqualification decided, nor was he barred from expressing his opinion regarding the alleged bias. However, it was concluded that the fact that such a position of the defence, or the appellant, ultimately proved irrelevant to the decision he sought, does not constitute a procedural violation, as is now argued on appeal. It was noted that, for the Appellate Panel, it is important that in this particular case the grounds for disqualification were not mandatory, but rather optional/discretionary grounds, requiring a detailed assessment of the allegedly asserted bias. The impartiality of a judge is presumed by virtue of the mandate entrusted to them, and cannot be easily undermined by a party's subjective dissatisfaction with the judge's personality. It was likewise noted that, in light of the circumstances of the particular case, the judge S. U. acted properly when she decided to continue with her work (the hearing of 5 February 2024), notwithstanding the submitted petition for her disqualification, which related to optional/discretionary grounds for disqualification. It was explained that the reading of the indictment at that moment constituted the formal commencement of the main trial, and it was stressed that no criminal justice system can allow the accused to wilfully obstruct the trial against them. The Appellate Panel noted that, in upholding the principle of equality of arms, the court is obliged to ensure fairness to both the defence and the prosecution, recognizing that the state, in its pursuit of justice, has the right to prosecute and prevent criminal offences. It was therefore concluded that an indefinite adjournment of the proceedings, in light of the appellant's persistent attempts to exploit certain procedural rules, would be wholly contrary to the principles of fairness, efficiency, and economy of the proceedings.

53. Furthermore, the Appellate Panel fully accepted the position of the first-instance court that the legal provision defining the criminal offence in question was indisputably in force at the time of the commission of offence, and stated that it would not repeat in detail the reasoning of the Court of BiH given in the first-instance judgment regarding this legal issue. However, the Appellate Panel noted that it would briefly highlight the considerations that led to such a decision. In this regard, the Panel was guided by the concept of *vacatio legis*, i.e., the legal theory recognizing a period between the

adoption of a legal provision and its entry into force, which was of particular importance in earlier times when technical capabilities were significantly limited, and when the access to legal norms depended solely on printed versions of the Official Gazette. Furthermore, the Appellate Panel emphasized that the case at hand concerned a specific, but nonetheless legitimate and legally valid method of enacting an amendment to the law by the High Representative. In this context, the Panel pointed out that the case file clearly indicates that the appellant is an informed individual who closely follows development of events, especially those relating to the actions of the High Representative. In addition to the official publication on the OHR website, the relevant decision was also widely covered by the media. Importantly, the decision amending the CC BiH explicitly specified the date of its entry into force, thereby meeting the standards of foreseeability, as there was no arbitrariness in interpreting the moment from which the amendment was applicable. Having considered the specific circumstances of the case at hand, the Appellate Panel concluded that the criteria of foreseeability and accessibility of the legal provision violated by the accused were satisfied, while the appellant's defence counsel's doubts regarding the moment the law entered into force were deemed unfounded and unsubstantiated.

54. With regard to the allegation in the appeal concerning the absence, i.e. the exclusion of unlawfulness in the present case, the Appellate Panel emphasized that it fully accepts the reasoning provided in the first-instance judgment, which it found to be valid, lawful, and adequate. Additionally, the Appellate Panel noted that, contrary to the appellant's assertions, the will of the individual holding the office of the High Representative does not reflect personal or individual intent, but rather derives from the full scope of his functions and powers conferred upon him by a high-level legal instrument - Annex 10, which is the most significant agreement pertaining to Bosnia and Herzegovina as a state.

55. The Appellate Panel further stated that, contrary to the appellant's allegations, in the present case there could be no error of fact or error of law on the part of the appellant, given that his erroneous understanding regarding the indisputably legitimate and authorized person empowered to enact legislation does not exempt the appellant from responsibility. In that regard, it was noted that the core of the appellant's defence rests on persistent opposition to the legitimately established state apparatus and the legal system functioning in conjunction with the existence of the High Representative. However, such a unilateral perspective does not call into question the existence or authority of the High Representative's office. It was emphasized that the appellant, like any other individual, cannot claim the right to arbitrarily disregard a part of the state system simply because he does not like it for reasons only known to him. Therefore, the subject matter of this criminal proceedings cannot concern the examination of the validity of an existing legislative norm adopted on the basis of the power

explicitly referenced by the High Representative in the preamble to his decision. The subject of the proceedings is related to the criminally relevant actions undertaken by the appellant and the issue is whether those actions meet the essential elements of the criminal offence with which he is charged. In this context, it was clarified that the criminal offence as such - and the procedure by which it was established - is not a matter to be contested within the scope of an ordinary criminal proceeding, nor does it fall within the scope of jurisdiction of ordinary courts. It was likewise noted that, contrary to the claims of the defence counsel, the so-called Bonn Conclusions did not necessarily have to be introduced as evidence in the proceedings, just as existing laws are not themselves introduced as evidence.

56. Furthermore, the appellants' claims that the offence constitutes an insignificant act or an inadequate attempt due to the absence of harmful consequences and the alleged low degree of culpability on the part of the appellant were deemed by the Appellate Panel as unfounded and unacceptable. In this regard, it was noted that the Court of Bosnia and Herzegovina, in the contested judgment, correctly found that the lack of harmful consequence does not affect the existence of the criminal offence in question. This is because, as pointed out, the criminal offence under Article 203a of the CC BiH cannot be considered negligible in nature or insignificant due to the absence or minimal nature of harmful consequences, as argued by the defence counsel. It was highlighted that the commission of the offence in question undermines the lawful functioning and operations of the State as a whole and calls into question the authority of the State apparatus across all its segments, including citizens' trust in the State apparatus. Moreover, the Appellate Panel noted that the appellant's overall conduct clearly leads to a conclusion that there was an intent to commit the offence in question, i.e. that there was a deliberate and grave act of disrespect for the authority of the High Representative, taking into consideration the essential elements of the criminal offence under Article 203a of the CC BiH. In this context, it was pointed out that the appellant's defence counsel at no point disputed the actions undertaken by the appellant. Finally, it was stated that, contrary to the appellant's claims, the decision to impose a security measure was rendered in accordance with the applicable law provisions, and that the Court of BiH duly considered the proportionality between the imposed measure and the prison sentence.

g) Additional notes

57. On 1 August 2025, the Court of BiH published information on its official website[6] entitled: "Due to High Public Interest – The Court of BiH Clarifies the Security Measure and Legal

[6] https://www.sudbih.gov.ba/Post/Read/Radi%20velikog%20interesa%20javnosti%20%E2%80%93%20Sud%20BiH%20poja%C5%A1njava%20mjeru%20sigurnosti%20i%20pravne%20posljedice%20osude%20u%20predmetu%20Milorad%20Dodik%20i%20drugi

Consequences of the Conviction in the Case of Milorad Dodik et al." In this public release, the Court of BiH clarified the distinction between the security measure imposed on the appellant and the legal consequences of the conviction, noting that in the present case such consequences are not established through judicial determination, but rather arise automatically by operation of law and that they will "clearly imply a broader restriction on public and political activity than the security measure itself".

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58. It follows from the case file that on 1 August 2025, the CEC addressed the Court of BiH with a request for the delivery of the second-instance judgment of the Appellate Panel dated 12 June 2025, so that the CEC could act in accordance with the provisions within its competencies.

59. On 1 August 2025, the Court of BiH submitted to the CEC the data for the convicted person (appellant) for the purpose of recording the security measure and legal consequences of the conviction and further action within the competencies of the CEC. The second-instance judgment of the Appellate Panel of 12 June 2025 was attached to this submission. In this regard, it was stated that the legal consequences of the conviction under Article 203a of the CC BiH shall occur by operation of law upon the finality of the judgment, i.e. 12 June 2025, and that the appellant may not perform any of the duties or tasks listed in Article 203a, paragraph (5), subparagraphs a), c) and d) of the CC BiH. It was further stated that the legal consequences of the conviction are not a criminal sanction under Article 5 of the CC BiH, which is why they are not determined, imposed or entered in the judgment, since they occur automatically or by operation of law in the event that the conviction for the aforementioned criminal offence becomes final. It was also noted that the legal consequences of a conviction may last for a maximum of 10 years, with the legal consequences of the conviction being terminated by the expungement of the conviction. In terms of Article 121, paragraph (6) of the CC BiH, a conviction shall not be deleted from criminal records for as long as security measures are in place. In this case, this means that the legal consequences of the conviction remain in force for the entire duration of the security measure imposed on the appellant, and at most until the moment the conviction is expunged.

60. The CEC issued decision no. 06-1-07-939/25 on 6 August 2025 on the termination of the appellant's term of office as RS President. In paragraph 1 of the operative part of said decision, it is stated that the term of office of the appellant, President of the Republika Srpska, elected in the 2022 General Elections from the electoral list of the political entity Alliance of Independent Social Democrats – SNSD – Milorad Dodik, is deemed to have terminated as of 12 June 2025, the date on which the judgment of the Court of BiH, no. S1 2 K 046070 23 K, dated 26 February 2025, became final and binding. In paragraph 2 of the operative part, it is stated that, upon the finality of this

decision, the CEC shall adopt a decision on the calling and conducting early elections. In the reasoning of the CEC's decision, it is stated that on 1 August 2025, the CEC submitted a request to the Court of BiH to deliver the referenced first-instance judgment so that the CEC could act in accordance with the provisions relating to the scope of its responsibility. It is further stated that on 1 August 2025, the Court of BiH delivered to the CEC both the first-instance judgment and second-instance judgment, with a note that the legal consequences of conviction prescribed under Article 203a(5)(a), (c), and (d) of the CC BiH occur *ex lege* upon finality of the judgment. This means, as stated, that following the finality of the judgment, the appellant may no longer perform any of the duties or functions listed under sub-paragraphs (a), (c), and (d) of Article 203a(5) of the CC BiH. The CEC further referred to the provisions of Article 1.10(1)(4) of the Election Law of BiH, as well as to sub-paragraphs (5) and (6) of the above article, and paragraph (2) thereof. Pursuant to the aforementioned law provisions and Article 2.9(1)(16) of the Election Law of BiH, and Article 11 of the Instruction on Awarding and Terminating Mandate, the CEC rendered the decision as set forth in the operative part. The appellant has filed an appeal against the CEC's decision with the Appellate Division of the Court of BiH.

61. On 6 August 2025, the appellant addressed the CEC with a request/proposal that the CEC postpone the consideration of the termination of the appellant's term of office as the RS President pending the decision on interim measure by the Constitutional Court. On 6 August 2025, the CEC delivered a notice to the appellant informing him that until the Constitutional Court adopts a decision on interim measure postponing the enforcement of the final judgment of the Court of BiH, there is no legal basis for the CEC to act upon the appellant's request/proposal.

62. By the decision of the Appellate Panel of the Court of BiH, no. S1 3 Iž 052766 25 Iž of 18 August 2025, the appellant's appeal filed against the decision of the CEC of 6 August 2025 was dismissed as unfounded. The reasoning of the decision stated that the CEC acted on the submitted final judgment and, in accordance with its competences, issued a decision on the termination of the appellant's term of office in view of the final judgment issued against the appellant, i.e. the imposed security measure of ban on carrying out a duty. It was further stated that the appellant's allegations about the retroactive application of an individual act were also unfounded, and that in the present case, the CEC properly determined the termination of the appellant's term of office, as the legal consequences ensue on the date the judgment becomes final, which in this case was determined to be 12 June 2025, the date of adoption of the second-instance judgment. The Appellate Division further noted that it did not specifically address the appellant's argument concerning alleged violations of Articles 80(4), 87, and other provisions of the Constitution of Republika Srpska, as the CEC is not competent to review constitutionality and applies exclusively the provisions of the Election Law of

BiH, as a *lex specialis*. The appeal also unjustifiably alleged that CEC member (V. B.-P.) was obliged to recuse herself from the decision-making in the case due to a civil dispute pending between her and the appellant. In that regard, it was explained that such a circumstance does not constitute grounds for disqualification of the CEC members under Article 35(6) of the Election Law of BiH. It was also noted that the appellant had the opportunity to raise the issue and request disqualification of the mentioned commission member before the CEC, but failed to do so. Finally, the Appellate Panel emphasized that the CEC renders its decisions by a two-thirds majority, and that the CEC decision of 6 August 2025 was adopted unanimously, with all seven members participating in its adoption. Therefore, it was concluded that disqualification of the said commission member would not have affected the outcome of the CEC's decision.

IV. Appeal

a) Allegations in appeal no. AP-3722/25

63. The appellant contends that the contested decisions have been in violation of his rights under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the European Convention"). He also points to violations of Article 7(1) and (2) of the European Convention. He claims that the criminal proceeding in which he was convicted was politically motivated with the aim of eliminating him from political life in Bosnia and Herzegovina. In this regard, the appellant's primary complaint concerns the principle of lawfulness regarding the concept of *vacatio legis*, the publication of the law, the accessibility/admissibility and foreseeability of criminal norms in the instant case. He primarily disputes the conclusion of the ordinary courts that Article 203a of the CC BiH, which was "imposed", constitutes "a domestic law." According to the appellant, the key issue is not what was known to him on 7 July 2023 - the date on which he signed the two contested decrees - but rather whether the provision of Article 203a of the amended CC BiH was legally binding on that date. The appellant claims that the "law" was not legally binding. In this regard, he stated: "Even if the appellant was in principle aware of the announced amendments to the Criminal Code of BiH (the speech at Kozara, which the defence counsel disputed as legally valid evidence), he was obviously not aware of the possibility that he could be imposed with a security measure prohibiting him from exercising the duties of the President of the Republika Srpska. Although the issue of inaccessibility and foreseeability regarding the security measure was highlighted in detail in the appeal, the Appellate Panel is silent on this fact". In this regard, it was also stated that "it is irrelevant to prove that the appellant knew that the new article of the Criminal Code had been written. What matters is when it entered into force". Therefore, the appellant claims that in the present case the conditions of

foreseeability and accessibility were absolutely not met with regard to the incriminating act in connection with the security measure, which is mandatory and not optional in relation to the criminal offence under Article 203a of the CC BiH. The appellant points out that he did not receive information regarding all the elements of the new criminal offence, particularly concerning the security measures and legal consequences of the said offence in the form of a ban on holding political office. Furthermore, he points out that the condition for the entry into force of all laws is their publication in the *Official Gazette of Bosnia and Herzegovina*, and that this rule must equally apply to Article 203a of the CC BiH. The appellant further asserts that, in the present case, the incrimination is entirely arbitrary, since the decisions of the High Representative, i.e. the failure to implement them within the meaning of Article 203a of the CC BiH, do not constitute values protected under Article 2 of the CC BiH.

64. The appellant further contends that the indictment against him was not confirmed by an impartial court, and that the first-instance proceedings were conducted by a single judge whom the appellant claims to be biased. In this regard, the appellant points out that there were reasons for disqualification of the preliminary hearing judge J. Ć.-D., on whose rights the appellant had previously decided in his capacity as a member of the Presidency of Bosnia and Herzegovina, objecting in writing to the election of the said judge as a judge of the International Criminal Court in The Hague. In support of the reasonable doubt as to the impartiality of the said judge, the appellant mentioned, as an additional argument, the fact that the previous indictment was returned to the BiH Prosecutor's Office, and, in the appellant's opinion, the judge exceeded her powers under the CPC BiH because instead of pointing out the formal shortcomings of the indictment, she suggested the content of the indictment in terms of the act of perpetration and complicity. It was further stated that the principle of impartiality of the court was also violated by the actions of judge S. U., who issued the contested first-instance judgment. In this regard, the appellant claims that adjudicating judge S. U., as a former prosecutor in the BiH Prosecutor's Office, together with 14 other prosecutors, requested in writing the prosecution of the appellant for his alleged announcements of the overthrow of the institutions of Bosnia and Herzegovina. The appellant pointed out that the aforementioned claim about the role of judge S. U. was not even disputed in the decision of the Court of BiH dismissing the request for disqualification. He also claims that he did not know the identity of the adjudicating judge (S. U.) until the hearing for the main trial on 5 February 2024, when the indictment was read, which is why he was not able to make any objections to the composition of the court in terms of Article 258(2) of the CPC BiH, which resulted in a violation of Articles 6 and 7 of CPC BiH.

65. Next, the appellant contends that in this particular case unlawfulness within the meaning of Article 20 of the CC BiH is excluded, because he issued the contested decrees using the constitutional powers prescribed by Article 80 (1)(4) of the Constitution of the Republila Srpska. In this connection, he emphasizes that the Constitution of the Republika Srpska is not in contradiction with the Constitution of Bosnia and Herzegovina, and that criminal law must not serve as a means of political pressure. He claims that acting in accordance with the Entity constitution should not constitute a criminal offence in the event of a conflicting situation between Article 80 of the Constitution of the Republika Srpska and Article 203a of the CC BiH. The appellant further points out that the Bonn Conclusions were not read out as evidence in the criminal proceedings. The appellant claims that in this way his defence was prevented, while also questioning the content, i.e. the powers from the Bonn Conclusions and what they refer to, which the ordinary courts failed to address.

66. Furthermore, the appellant argues that the act in question constitutes an insignificant offence and/or an inappropriate attempt. In this regard, the appellant emphasizes that the contested decrees are not independent legal acts, but are related to the laws that had previously been annulled by the High Representative. If there is no law, then the decree loses the legal meaning of its existence, as the appellant claims. In support of the above, the appellant points out that all legal entities in the RS treated those annulled laws as if they did not exist. The appellant also claims that no one attempted to apply the disputed decrees, nor did they produce any consequences in real life, which is ultimately acknowledged by the court. Therefore, in the appellant's opinion, the incriminating actions may fall within the scope of Article 23a of the CC BiH, because the condition of absence of harmful consequences is met. As a precaution, the appellant further contends that, by their very nature, the contested decrees also constitute an inappropriate attempt within the meaning of Article 27 of the CC BiH, as they relate to laws that legally no longer exist.

67. With regard to the request for an interim measure, the appellant contends that the request pertains solely to the part of the decision relating to the security measure banning him from holding the office of the RS President. The appellant points out that the interim measure is not sought in respect of the criminal conviction, given that the appellant, in the meantime, submitted a request to the Court of BiH for the substitution of the prison sentence with a fine. In the context of the request for interim measures, the appellant referred to the activities undertaken by the CEC concerning the termination of his term of office as the RS President, as well as a significant number of subsequent actions related to the election of a new president. The appellant further contends that there is no legal possibility under either the Election Law of BiH or the CC BiH to request a postponement of the

enforcement of the imposed security measure, within the meaning of Article 64(5) of the Rules of the Constitutional Court.

68. In the supplement to the appeal of 14 August 2025, the appellant informed the Constitutional Court of the changes in the case that occurred after the appeal had been filed, in connection with the termination of his term of office as RS President. In this regard, the CEC notification of 6 August 2025, the CEC decision of 6 August 2025 and the appellant's appeal filed against the CEC decision of 6 August 2025 were submitted.

69. In the supplement to the appeal of 18 August 2025, the appellant reiterated his request for an interim measure to postpone the execution of the security measure banning him from holding the office of the RS President and, accordingly, to order the CEC to suspend activities concerning the early elections for the office of the RS President until the final decision on the appeal is adopted. In addition, the appellant claims that there are circumstances indicating the risk of irreparable harm should the appeal be granted while the enforcement of the security measure - imposed by a final and binding first-instance judgment - is not postponed. In this connection, the appellant pointed out that the RS President holds significant powers in relation to the RS National Assembly, the RS Government, and even with respect to the State-level institutions of Bosnia and Herzegovina. The appellant also points out that the Constitution of the Republika Srpska does not envisage a situation in which the President’s term of office is terminated for any reason other than impeachment or resignation. Therefore, the appellant asserts that there exists a serious risk of the collapse of the constitutional order of Bosnia and Herzegovina in the absence of a functional RS President as an integral part of Bosnia and Herzegovina, which may result in a state of constitutional anarchy. It was also noted that any early elections could not realistically be conducted within less than two to three months, which would create a state of absolute legal uncertainty. Therefore, the appellant proposes that the Constitutional Court be guided by the principle of "less harm" or the constitutional principle of "restraint" in its proceedings until all issues raised by the appeal have been fully resolved, and to adopt the proposed interim measure pending a final decision on the appeal.

70. In the supplement to the appeal of 5 September 2025, the appellant reiterated the allegations made in the appeal regarding the right to an impartial trial regarding two judges of the Court of BiH (S. U. and J. Ć-D.) and submitted specified documentation.

71. In the supplement to the appeal of 9 September 2025, the appellant substantially reiterated the previously presented arguments regarding the merits of the appeal and the interim measure. Additionally, when it comes to the allegations regarding a fair trial and the status/legitimacy of

Christian Schmidt as the High Representative, he challenged the refusal to present evidence regarding his election and his hearing at the main trial. He then challenged the refusal to read the defence evidence (the Conclusions of the RS National Assembly of 10 March 2021) in light of the appellant's powers as RS President and the existence of intent on the appellant's part when signing the disputed decrees. The appellant also claims that the delegation of jurisdiction was not decided by the functionally competent court. In this regard, he points out that such a decision should have been made by three judges panel of the Court of BiH, and not by a single judge. The appellant also claimed that in the instant case the main trial should have started anew in accordance with Article 251(2) of the CPC BiH and that the principle of "trial within a reasonable time" should not have been given priority. The appellant also alleged that the principle of publicity was violated during the hearing held on 5 February 2024, as the court excluded the public without formally issuing a decision on the exclusion of the public in accordance with Article 237 of the CPC BiH. Finally, the appellant also alleged that there was a violation of the right to use the script and language in the context of Annex 10 because a translation into Croatian was used, not Serbian, given that the text of that document/evidence was downloaded from the internet.

72. In the supplement to the appeal of 1 October 2025, the appellant reiterated the previous allegations regarding the exclusion of the public, and the request for adoption of an interim measure. The supplement to the appeal also pointed out the violation of the principle of presumption of innocence under Article 6(2) of the European Convention. "In this regard, the appellant points to statements made by public officials during the trial, as a specific aspect of the violation of the constitutional principle of a fair trial (by influencing the independence of the court as well as violating the presumption of innocence)."This refers to the statements made during the trial by Christian Schmidt (a total of eight statements), the Embassy of the United States of America (a total of eight statements) and the Embassy of the United Kingdom in Sarajevo (one statement), Bakir Izetbegović (President of the SDA-Party of Democratic Action), and the statements of "Minister Helez and Minister Isak" (Minister of Defence of Bosnia and Herzegovina and Minister of Internal Affairs of FBiH). The appellant claims that the Court of BiH refused to present the printed versions of the aforementioned statements as defence evidence, as can be seen from the decision of the Court of BiH of 21 May 2024. In the appellant's opinion, this refusal also constitutes a violation of the right to defence and of equality of arms of the parties in criminal proceedings.

b) Allegations in the appeal no. AP-4095/25

73. The appellant contends that the contested decision of the CEC of 6 August 2025 and the decision of the Court of BiH of 18 August 2025 violated his rights under Article II(3)(e) of the

Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention and Article 3 of Protocol No. 1 to the European Convention. He points out that the CEC did not conduct a lawful and constitutional procedure for termination of the appellant's term of office as RS President, which was uncritically accepted by the Court of BiH in the contested decision. The appellant states that Article 3 of Protocol No. 1 to the European Convention applies to him, and that in this specific case, an analogy between elections for the legislative body and elections for the RS President is acceptable, as both involve direct elections "which ensure the free expression of the opinion of the people". It was stated that it is unacceptable to incriminate the actions of the RS President under the Constitution of the Republika Srpska, and that in this specific case criminal law serves as a means of political pressure, not as a means of the rule of law, and that Article 203a of the CC BiH is not in accordance with the fundamental, legal and constitutional principles of Bosnia and Herzegovina. Therefore, the appellant claims that the CEC and the Court of BiH should have considered general issues of constitutionality and legality before adopting the contested decisions, rather than merely formally accepting the challenged judgements of the Court of BiH (Appeal no. AP-3722/25). It was also pointed out that the contested decision of the CEC overlooks the consequences of its retroactive application and that it seems that the enforceability of decisions has been completely disregarded in favour of finality. It was also stated that the CEC and the Court of BiH were deciding on the appellant's civil rights and obligations, and that the standard of impartiality was not met in that proceeding because V. B.-P. as a member of the Commission took part in adoption of the contested decision and she initiated a civil dispute against the appellant before the specified competent court in the RS. In addition, in light of the arguments on impartiality, the actions of the preliminary hearing judge who confirmed the indictment against the appellant and the judge who issued the first-instance conviction judgment against the appellant were also questioned, as well as the statements of the High Representative Christian Schmidt during the time when the criminal proceedings against the appellant were ongoing. In view of the above, the appellant claims that the procedure for termination of office does not support the rule of law but represents a personal showdown between a foreigner and the appellant – a constitutionally elected political representative of the people, who, based on legal arguments and not arbitrarily, does not recognize him as the High Representative in Bosnia and Herzegovina. In that context, it was stated that "after all, even if the arguments challenging the appointment of Mr. Schmidt are not accepted, this should not be a reason for his retaliation against the appellant". Finally, the request for adoption of an interim measure sought to postpone the execution of the challenged decision of the CEC of 6 August 2025 and the decision of the Court of Bosnia and Herzegovina of 18 August 2025 pending a final decision of the Constitutional Court. In this regard, the arguments for issuance of a measure from case no. *AP-3722/25* were essentially reiterated.

c) Response to appeal no. AP-3722/25

74. The Court of BiH stated that the appeal, in substance, is the re-submission of an identical appeal that had already been decided by the Appellate Panel of the Court of BiH as part of an ordinary legal remedy. Furthermore, the court stated that the appellant's conduct and actions were primarily directed toward the commission of a criminal offence, i.e. towards a serious disregard for the authority of the High Representative, constituting the essential elements of the offence under Article 203a of the CC BiH. In this connection, the Court of BiH noted that at no point during the proceedings did the appellant's defence counsel contest the incriminating action that was taken. The court further noted that the concept of the appellant's defence was built exclusively on the appellant's own view of the state system of Bosnia and Herzegovina and illegitimate activity of the High Representative. The Court of BiH further pointed out that by taking such approach, the appellant tried to undermine the fundamental legal position of the Court of BiH that the constitutional order of the State constitutes a matter of established public fact. By reducing this to a matter of personal issue and action, the appellant paves the way to arbitrary actions, which the Court deemed inadmissible.

75. In its response to the supplement to the appeal, the Court of BiH stated that it maintained all the allegations and positions expressed in the contested second-instance judgment. The Court of BiH further emphasized that it "reiterates" its position that the appellant's entire conduct and actions imply the conclusion that the objective was the commission of a criminal offence, namely, the disrespect of the authority of the High Representative. In this regard, the Court of BiH considered the appellant's persistent insistence on the issuance of an interim measure to be unfounded. The Court noted that the appellant equates the function he has held thus far with his own person, evidently disregarding the existence of lawful mechanisms within the state apparatus, of which the Republika Srpska and the office of its President form a part. It was further stated that this function will continue to exist even following the appellant's valid removal from office based on a lawful conviction, after which electoral procedures will be conducted resulting in the election of a new candidate. Therefore, it was proposed that the appeal and the supplements thereto be dismissed as unfounded, together with the request for the issuance of an interim measure.

76. The BiH Prosecutor's Office pointed out that there were no violations, as alleged by the appellant. In this connection, the BiH Prosecutor's Office noted that the appellant is undoubtedly an informed person who follows all development of events, particularly those related to the actions of the High Representative. The amendment to the CC BiH effected by the High Representative was publicly accessible to all, and it is a matter of common knowledge that, in today's information sphere - in addition to the official publication on the OHR website — the OHR decision was extensively

covered by the media. It was also emphasized that it is of crucial importance that the OHR decision amending the CC BiH immediately specified the date of entry into force of the amendment, thus fulfilling the standards of foreseeability. Furthermore, it was noted that the appellant's defence counsel consistently raised doubts regarding the impartiality of the adjudicating judges at every stage of the criminal proceedings, constantly referring to the sole reason - that in his political activity and public statements, the appellant had been and remained an advocate for the abolition of the Court of BiH - which is not a sufficiently strong or compelling argument in support of the appellant's claims alleging partiality of the adjudicating judges. Regarding the judge responsible for the preliminary proceedings, the BiH Prosecutor's Office pointed out that at no point did her conduct give rise to any suspicion as to her impartiality. It was further noted that in the contested second-instance judgment the issue of potential exclusion of unlawfulness was lawfully, validly, and adequately assessed, decided, and reasoned, within the meaning of Article 2 (1), and Article 4a of the CC BiH. With respect to the submission of the appellant's defence counsel regarding a low degree of the appellant's culpability and the claim that in the instant case it was about an atypical intrusion of criminal law into the political sphere, the BiH Prosecutor's Office considered such arguments unfounded and fully agreed with the views of the Appellate Panel of the Court of BiH. Additionally, the BiH Prosecutor's Office asserted that the appellant's request for an interim measure was likewise unfounded.

77. In its extensive response to the supplements to the appeal, the BiH Prosecutor's Office emphasized, inter alia, that the appellant's allegation regarding the alleged bias of judges S. U. and J. Ć-D. during the first-instance proceedings remains entirely unsubstantiated, particularly given that the contested first-instance judgment was confirmed by the contested second-instance judgment. In that regard, it was stated that the purpose of the appeal and the renewed attempt to establish the "bias of the first-instance Court of Bosnia and Herzegovina" represent an obstruction of the criminal proceedings. Furthermore, it was noted that the defence counsel, whether deliberately or inadvertently, fails to recognize that in the process of proposing or presenting evidence, particularly defence evidence, the quantity of evidence is less important than its quality and its relevance to the determination of the essential elements of the offence and the circumstances described in the part of the indictment relating to the facts. The mere fact that the main hearing was scheduled to recommence on 29 January 2025, due to the lapse of 55 days, is of "a general nature", and even in the appeal it is not adequately substantiated. For that reason, the BiH Prosecutor's Office considers that the defence counsel abused procedural rights again. In this context, it was pointed out that the postponement of the main hearing, including other delays, were caused by the unpreparedness or unavailability of the defence counsel or the accused in the criminal proceedings. The allegations in the appeal regarding the

recommencement of the trial and the role of the OHR are not related to the present criminal case and do not amount to legal arguments or facts. Rather, they carry a political undertone, considering that the appellant held the highest executive office in the entity of Republika Srpska at the time of the trial. Regarding the appellant's allegations concerning the exclusion of the public, the BiH Prosecutor's Office submitted that the appellant had failed to indicate in what way his rights had been violated, noting that he had not been excluded from the courtroom and had been present throughout the proceedings, notwithstanding his conduct and repeated disturbances of the order in the courtroom. As to the alleged violation of the right to use one's language, the BiH Prosecutor's Office stated that the evidence was submitted in Latin script, which is one of the three official scripts/languages used in Bosnia and Herzegovina. At no stage did the appellant's defence counsel request translations or raise objections to the evidence submitted by the second accused person, which was also largely in Latin script (e.g., correspondence with various authorities). The appellants' defence counsel accepted the evidence of the second accused with due understanding, which supports the assertions of the BiH Prosecutor's Office that, in the present case, there was no violation of the right to use one's language and script. Moreover, in terms of Article 6, paragraphs 1 and 2 of the European Convention, the appellant's allegations of a violation of the principle of presumption of innocence and a threat to judicial independence - statements made by public officials during the appellant's trial (High Representative Christian Schmidt, B. I., and Z. H. - Minister of Défense of Bosnia and Herzegovina) were assessed as unfounded. In this regard, it was pointed out that the Court of BiH, throughout the criminal proceedings, correctly evaluated all the evidence presented, on the basis of which it made a lawful decision. It was also stated that the appellant was not excluded from the trial, but rather followed the criminal proceedings in the courtroom the whole time. In this regard, it was also stated that the appellant makes contradictory claims regarding the exclusion of the public, since he himself claims that the public wrote about the court proceedings against him and that this affected the independence of the court.

d) Response to appeal no. AP-4095/25

78. The Court of BiH stated that it maintains all the reasons stated in the contested decision of 18 April 2025. It was additionally pointed out that the authority of the CEC to adopt a decision on the termination of the term of office of an elected member of a government body is prescribed by paragraph 2 of Article 1.10 of the Election Law of BiH and a deadline was set that cannot be shorter than 15 days from the date on which the reasons for termination of the term of office occurred, or the date on which the reasons for termination of the term of office became known.

79. The CEC stated that the appellant's allegations were unfounded. In this connection, it was additionally stated that on 28 August 2025, the CEC adopted a decision on calling and holding of early elections for the President of the RS, as well as a decision on the conclusion of the Central Voters' Register for early elections for the President of the RS. The aforementioned acts were published in the Official Gazette of BiH no. 52/25 of 2 September 2025. It was then stated that the CEC is responsible for the implementation of the Election Law, and that in the specific case, only the provisions of the aforementioned law and the by-law were applied. It is emphasized that the cited provisions of the Election Law of BiH have never been subject to constitutional review before the Constitutional Court, and that the CEC is not competent to review the constitutionality of the law, while in the instant case, the termination of the appellant's term of office is conditioned by the very fact of the finality of the judgment in the criminal proceedings and its legal consequences. The CEC's only obligation is to call early elections upon the finality of the decision on the termination of the mandate - which is of a declaratory nature - and that was done. The CEC stated that in the present case, it only issues a declaratory decision in which it states the date of termination of the term of office on the day the judgment becomes final. As regards the appellant's allegation that the CEC should have "considered general issues of constitutionality and legality, and not only formally anticipated the judgments of the Court of BiH of 26 February 2025 and 12 June 2025", the CEC stated that its competences are prescribed by the provision of Article 2.9 of the Election Law of BiH, which is why it is not competent to review the constitutionality and legality of court judgments. It was further stated that the CEC conducted the procedure within 15 days of learning about the reason for the termination of the appellant's term of office, i.e. that the legally prescribed deadline for adopting a decision on the termination of the term of office was fully respected, because the final judgment of the Court of BiH was received on 1 August 2025. It was also pointed out that the provisions of Article 1.10 of the Election Law of BiH clearly stipulate that the term of office terminates on the date of the final judgment, and not on the date of its enforcement as alleged by the appellant, and that the consequences of the termination of the term of office cannot begin at a different time from the termination of the term of office itself. It was emphasized that the enacting clause of the contested CEC decision contains all the elements of the Decision on Termination of Mandate, in accordance with the provisions of the Election Law of BiH, with a valid explanation of all relevant facts established in a legally conducted procedure, to which the substantive law was correctly applied. Then, the appellant's allegations of bias of a member of the CEC Council (V. B-P.) were assessed as unfounded, since the court dispute between her and the appellant cannot be considered a reason for her disqualification within the meaning of Article 35 of the Law on Administrative Procedure of BiH. It was also stated that the appellant never requested her disqualification within the meaning of Article 37 of the

aforementioned law, both in the instant case and in previous cases when V. B-P. participated in decision-making in situations where the appellant violated the Election Law of BiH on several occasions. It was also pointed out that the CEC makes its decisions by a two-thirds majority of the total number of members (seven), and that the contested decision on termination of the appellant's mandate was made unanimously. Therefore, it was pointed out that her disqualification would not amount to a different decision by the CEC in the instant case.

V. Relevant laws

80. The **Criminal Code of Bosnia and Herzegovina** (*Official Gazette of Bosnia and Herzegovina*, 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15, 35/18, 46/21 and 31/23). For the purposes of this decision, the unofficial consolidated text prepared at the Constitutional Court of BiH is used, which in the relevant part reads:

Basis and Limits of Criminal Justice Compulsion

Article 2

(1) Criminal offences and criminal sanctions shall be prescribed only for acts threatening or violating personal liberties and human rights, as well as other rights and social values guaranteed and protected by the Constitution of Bosnia and Herzegovina and international law in such a manner that their protection could not be realized without criminal justice compulsion.

(2) The prescription of criminal offences, as well as the types and the range of criminal sanctions, shall be based upon the necessity for criminal justice compulsion and its proportionality with the degree and nature of the danger against personal liberties, human rights and other basic values

Types of Criminal Sanctions

Article 5

Criminal sanctions are: punishments, suspended sentence, security measures and educational measures.

Period Set by Statute of Limitation Regarding the Execution of Accessory

Punishment and Security Measures

Article 17 (3)

(3) The execution of the security measure of ban on carrying out a certain occupation, activity or duty shall be barred after the lapse of the period for which this measure has been ordered.

Types of Security Measures
Article 69 (c)

The following security measures may be imposed on perpetrators of criminal offences:

c) Prohibition to carry out a certain occupation, activity or duty

Imposing Security Measures
Article 70

The court may impose one or several security measures on a perpetrator of a criminal offence, when grounds for imposing them exist under this Code.

Ban on Carrying out a Certain Occupation, Activity or Duty
Article 73 (1) and (2)

(1) The security measure of ban on carrying out a certain occupation, activity or duty may be imposed to a perpetrator who perpetrates a criminal offence in relation to his occupation, activity or duty, if there is a danger that such role could induce the perpetrator to perpetrate another criminal offence in relation to his occupation, activity or duty.

(2) The security measure of ban on carrying out a certain occupation, activity or duty may be imposed for a term which exceeds one but does not exceed ten years, counting from the date the decision becomes final, with the provision that the time spent serving the punishment of imprisonment shall not be credited towards the term of this security measure.

Taking Effect of the Legal Consequences Incident to Conviction
Article 113 (1) and (3)

(1) Sentences for particular criminal offences may entail as legal consequences the termination or loss of certain rights, or bar on the acquisition of certain rights.

(3) Legal consequences incident to conviction may be prescribed only by law and they take effect by the force of the law in which they were set forth.

Types of Legal Consequences Incident to Conviction
Article 114

(1) Legal consequences incident to conviction relating to the termination or loss of certain rights are the following:

a) Cessation of the performance of particular jobs or functions in government agencies, business enterprises or other legal persons;

b) Termination of employment or cessation of the performance of a particular profession, occupation or activity;

c) confiscation of permits or authorizations issued under decisions by government agencies, or a status acknowledged under decisions rendered by government agencies;

d) Deprivation of decorations.

(2) Legal consequences incident to conviction which consist of a bar on the acquisition of particular rights are as follows:

a) Bar on the performance of certain jobs or functions in government agencies, business enterprises or other legal persons;

b) Bar on the acquisition of a particular office, title, position or promotion in service;
c) Ban on the acquisition of permits or authorizations issued under decisions of government agencies, or a status acknowledged under decisions rendered by government agencies

Beginning and Duration of Legal Consequences Incident to Conviction
Article 115

(1) The legal consequences incident to conviction take effect on the day of effectiveness of the sentence.

(2) The legal consequences incident to conviction which consist of a bar on the acquisition of particular right may not exceed ten years from the day on which the punishment has been served, pardoned or amnestied, or has been barred by the statute of limitation, except for certain legal consequences for which law provides a shorter period of duration.

(3) The legal consequences incident to conviction cease by the deletion of the sentence.

Termination of Security Measures and Legal Consequences Incident to Conviction on the Basis of the Court Decision

Article 116

(1) The court may decide to discontinue the application of the security measure of a prohibition to carry out a certain occupation, activity or duty, if three years have elapsed from the day on which the security measure took effect.

(2) The court may decide to terminate the legal consequence of a sentence consisting in the bar on the acquisition of a certain right after the lapse of three years from the day on which the punishment has been served, pardoned or amnestied, or barred by the statute of limitation.

(3) In deciding whether to order the termination of a security measure or a legal consequence of a sentence, the court shall take into account the conduct of the convicted person after the conviction, his readiness to compensate damage caused by the perpetration of a criminal offence and to return material gain acquired by the perpetration of a criminal offence, as well as other circumstances which indicate the justifiability of the termination of a security measure or a legal consequence of a sentence.

(4) The termination of legal consequences incident to conviction in no way affects the rights of third parties originating from the judgement.

Deletion of Conviction
Article 121 (6)

(6) Conviction shall not be deleted from criminal records for as long as security measures are in place, or until the property gain acquired by the perpetration of the criminal offence has been entirely confiscated.

81. The **Decision of the High Representative enacting the Law on Amendments to the Criminal Code of Bosnia and Herzegovina,** issued on 1 July 2023, published on 1 July 2023 on the official website of the OHR-a https://www.ohr.int/decision-enacting-the-law-on-amendments-to-the-criminal-code-of-bosnia-and-herzegovina-2/. This law entered into force on 2 July 2003 and was published on 7 July 2023 in the *Official Gazette of BiH*, 47/23:

Article 2

(New Article 203a)

After Article 203 of the Criminal Code, a new Article 203a shall be added to read:

Failure to Implement Decisions of the High Representative

Article 203a

(1) An official person in an institution of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska, the Brčko District of Bosnia and Herzegovina, or in a canton, a city or a municipality or a local community or any form of local government and self-government, or a responsible person, who does not apply, implement, enforce or otherwise comply with a decision of the High Representative in Bosnia and Herzegovina, or who prevents or otherwise obstructs its application, implementation or enforcement,

shall be punished by imprisonment for a term between six months and five years.

(2) A person from paragraph (1), who was ordered, directly or indirectly, to behave in a way referred to in paragraph (1) of this Article, and felt compelled to follow such an order not to lose the livelihood or not to be exposed to maltreatment at work, but informed the superior that by such actions a criminal offence might be committed, may be punished less severely.

(3) A person from paragraph (1), who was ordered, directly or indirectly, to behave in a way referred to in paragraph (1) of this Article, but informed the competent prosecutor of such a situation, shall be released from punishment.

(4) For the criminal offence from paragraph (1) of this Article, the security measure of ban on carrying out a duty shall be imposed.

(5) In accordance with Articles 113 and 114 of this Code, a sentence for a criminal offence from paragraph (1) of this Article shall entail as legal consequences incident to conviction:

a) cessation of an official duty and termination of employment;

b) deprivation of decorations;

c) ban on performance of an official duty in the legislative, executive, judicial, administrative or any body financed by public funds in whole or in part; and

d) ban on acquisition of an official duty in the legislative, executive, judicial, administrative or any body financed by public funds in whole or in part."

[...]

Article 4

(Entry into Force)

This Law shall enter into force on 2 July 2023, being published on the official website of the Office of the High Representative and shall be published without delay in the "Official Gazette of Bosnia and Herzegovina".

82. The **Decision Preventing the Entry into Force of the Law on Non-application of Decisions of the Constitutional Court of Bosnia and Herzegovina 14/23** (published on the official website page of the OHR, https://www.ohr.int/decision-preventing-the-entry-into-force-of-the-law-on-non-application-%d0%bef-decisions-of-the-constitutional-court-of-bosnia-and-herzegovina-2/**,** and *Official Gazette of BiH*, 47/23 of 7 July 2023).

Article 1

The legislative procedure of adoption of the Law on Non-application of Decisions of the Constitutional Court of Bosnia and Herzegovina adopted by vote of the National Assembly of Republika Srpska at its Eight Special Session held on 27th June 2023 is hereby terminated.

All acts and procedural steps adopted or finalized within the legislative procedure of adoption of the Law on Non-application of Decisions of the Constitutional Court of Bosnia and Herzegovina, including the adoption by vote of the National Assembly of Republika Srpska at its Eight Special Session held on 27th June 2023, are hereby declared null and void ab initio and are without any legal effect whatsoever.

The Law on Non-application of Decisions of the Constitutional Court of Bosnia and Herzegovina adopted by vote of the National Assembly of Republika Srpska at its Eight Special Session held on 27th June 2023 shall not enter into force.

Article 2

All competent authorities and official persons shall cease any acts and activities purported to enable the entry into force and the application of the Law referred to in Article 1 of this Decision in any manner whatsoever, including the promulgation of the said Law and its publication in the "Official Gazette of Republika Srpska".

Article 3

All acts and activities referred in Article 2 of this Decision or the application in any manner whatsoever of the Law referred to in Article 1 of this Decision fall within the ambit of the provisions of Article 2 of the Law on Amendments to the Criminal Code of Bosnia and Herzegovina and Article 203a (Failure to Implement Decisions of the High Representative) of the Criminal Code of Bosnia and Herzegovina and therefore may be subject to criminal prosecution.

Article 4

This Decision shall have precedence over any inconsistent provisions of the Constitution of Republika Srpska, any law, regulation or act, existing or future. This Decision shall be directly applicable and no further act is required to ensure its legal effect.

Article 5

This Decision shall enter into force immediately upon publication on the official website of the Office of the High Representative.

This Decision shall be published on the official website of the Office of the High Representative and shall be published without delay in the "Official Gazette of Bosnia and Herzegovina" and in the "Official Gazette of Republika Srpska".

Sarajevo, 1 July 2023

Christian Schmidt

High Representative

83. The **Decision Preventing the Entry into Force of the Law on Amendments to the Law on Publication of Laws and Other Regulations of the Republika Srpska 15/23 (**published on the official website of OHR https://www.ohr.int/decision-preventing-the-entry-into-force-of-the-law-on-amendments-to-the-law-on-publication-of-laws-and-other-regulations-of-republika-srpska-2/, as well as in the *Official Gazette of BiH*, 47/23 of 7 July 2023).

Article 1

The legislative procedure of adoption of the Law on Amendments to the Law on Publication of Laws and Other Regulations of Republika Srpska adopted by vote of the National Assembly of Republika Srpska at its Session held on 21st June 2023 is hereby terminated.

All acts and procedural steps adopted or finalized within the legislative procedure of adoption of the Law on Amendments to the Law on Publication of Laws and Other Regulations of Republika Srpska, including the adoption by vote of the National Assembly of Republika Srpska at its Session held on 21st June 2023 are hereby declared null and void ab initio and are without any legal effect whatsoever.

The Law on Amendments to the Law on Publication of Laws and Other Regulations of Republika Srpska, adopted by vote of the National Assembly of Republika Srpska at its Session held on 21st June 2023 shall not enter into force.

Article 2

All competent authorities and official persons shall cease any acts and activities purported to enable the entry into force and the application of the Law referred to in Article 1 of this Decision in any manner whatsoever, including the promulgation of the said Law and its publication in the "Official Gazette of Republika Srpska".

Article 3

All acts and activities referred in Article 2 of this Decision or the application in any manner whatsoever of the Law referred to in Article 1 of this Decision fall within the ambit of the provisions of Article 2 of the Law on Amendments to the Criminal Code of Bosnia and Herzegovina and Article 203a (Failure to Implement Decisions of the High Representative) of the Criminal Code of Bosnia and Herzegovina and therefore may be subject to criminal prosecution.

Article 4

This Decision shall have precedence over any inconsistent provisions of the Constitution of Republika Srpska, any law, regulation or act, existing or future. This Decision shall be directly applicable and no further act is required to ensure its legal effect.

Article 5

This Decision shall enter into force immediately upon publication on the official website of the Office of the High Representative.

This Decision shall be published on the official website of the Office of the High Representative and shall be published without delay in the "Official Gazette of Bosnia and Herzegovina" and in the "Official Gazette of Republika Srpska".

Sarajevo, 1 July 2023

Christian Schmidt

High Representative

84. The **Election Law of Bosnia and Herzegovina** (*Official Gazette of BiH*, 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, 32/10, 48/11 – Decision of CC BiH, 63/11 – Decision of CC BiH, 15/12 – Ruling of the CC BiH, 11/13 – Ruling of CC BiH, 18/13, 7/14, 31/16, 1/17 – Decision of the CC BiH, 54/17 – Ruling of the CC BiH, 41/20,

38/22, 51/22, 67/22, 24/24, 24/24 - Corrigendum). For the purposes of this decision an unofficial consolidated prepared at the Constitutional Court is used, which is as relevant, reads:

Article 1.10

The term of office of an elected member of a body of authority at all levels shall terminate before the expiration of the mandate for which he or she was elected if

[...]

4. on the day when a court judgment becomes final and binding by which he/she has been sentenced to a sentence of six (6) months or longer;

5. on the day when a court decision becomes final and binding by which he or she has been deprived of legal capacity (declared mentally incompetent);

6. on the day when he or she is elected or appointed to an office which is incompatible with the office of an elected member of a certain body as stipulated by law

[...]

10. for a reason stipulated by law that he or she loses the right to be elected.

The mandate of an elected member of a body of authority at any level shall terminate on the day when one of the reasons for termination established by law occurs. The Central Election Commission of BiH shall, within maximum fifteen (15) days after the reasons for termination have occurred or become known, take the decision to terminate the mandate of an elected member of a government authority and shall notify thereof the government authority in which the elected member had the mandate.

[...]

85. The **Criminal Procedure Code of Bosnia and Herzegovina** (*Official Gazette of BiH*, br. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09, 72/13, 49/17 – Decision of the Constitutional Court, 42/18 – Ruling of the Constitutional Court, 65/18, 22/21 – Decision of the Constitutional Court and 8/22 – Ruling of the Constitutional Court). For the purposes of this decision an unofficial consolidated text prepared at the Constitutional Court is used, which, as relevant, reads:

Article 6

Rights of a Suspect or Accused

(1) The suspect, on his first questioning, must be informed about the offence that he is charged with and grounds for suspicion against him and that statement of his may be used as evidence in further proceeding.

(2) The suspect or accused must be provided with an opportunity to make a statement regarding all the facts and evidence incriminating him and to present all facts and evidence in his favor.

(3) The suspect or accused shall not be bound to present his defense or to answer questions posed to him.

Article 7
Right to Defense

(1) The suspect or accused has a right to present his own defense or to defend himself with the professional aid of a defense attorney of his own choice.

(2) If the suspect or accused does not have a defense attorney, a defense attorney shall be appointed to him in cases as stipulated by this Code.

(3) The suspect or accused must be given sufficient time to prepare a defense.

Article 29 (d) and (f)
Reasons for Disqualification

A judge cannot perform his duties as judge:
d) if he has participated in the same case as the preliminary proceeding judge or preliminary hearing judge or if he participated in the proceedings as prosecutor, defense attorney, his legal representative or power of attorney of the injured party or if he was heard as a witness or expert witness;

f) if circumstances exist that raise a reasonable suspicion as to his impartiality.

Article 30 (1) and (3)
Disqualification upon the Petition of the Parties or Defence Attorney

(1) The parties and the defense attorney may seek disqualification of the President of the Court and of the judge.

(3) The parties and defense attorney may file a petition for disqualification of a judge of the Panel of the Appellate Division in the appeal or in an answer to the appeal.

Article 32
Decision on the Petition for Disqualification

(1) The Court in plenary session shall decide the petition for disqualification referred to in Article 30 of this Code.

Article 33
Validity of Actions

Taken after Filing of the Petition for Disqualification When a judge learns that a petition has been filed for his disqualification, he shall be bound immediately to cease all work on the case and, if the issue is disqualification referred to in Article 29 paragraph f) of this Code, until issuance of a decision upon the petition he may take only those actions whose delay poses a risk.

Article 35 (1) and (2), paragraphs a) b) and i)
Rights and Duties

(1) The basic right and the basic duty of the Prosecutor shall be the detection and prosecution of perpetrators of criminal offences falling within the jurisdiction of the Court.

(2) The Prosecutor shall have the following rights and duties:
a) as soon as he becomes aware that there are grounds for suspicion that a criminal offence has been committed, to take necessary steps to discover it and investigate it, to identify the suspect(s), guide and supervise the investigation, as well as direct the activities of authorized officials pertaining to the identification of suspect(s) and the gathering of information and evidence;

b) to perform an investigation in accordance with this Code;

i) to issue and defend indictment before the Court;

Article 148
Filing and Emendation of Submissions

(1) Bills of indictment, motions, legal remedies and other statements and communications shall be submitted in writing or given orally for entry into the minutes.

(2) A submission referred to in Paragraph 1 of this Article must be comprehensible and must contain all that is necessary in order to be acted upon.

(3) Unless otherwise determined by this Code, the person filing a submission that is incomprehensible or does not contain all that is necessary for action on the submission, shall

be summoned by the Court to correct or supplement the submission; should he not do so within a specified period, the Court shall reject the submission.

(4) The summons to correct or to supplement the submission shall warn the person who filed the submission about the consequences of his failure to correct or to supplement it,

Article 227 (1) subparagraph c)
Contents of the indictment

(1) The indictment shall contain:
c) a description of the act pointing out the legal elements which make it a criminal offence, the time and place the criminal offence was committed, the object on which and the means with which the criminal offence was committed, and other circumstances necessary for the criminal offence to be defined as precisely as possible;

Article 228 (1)
Decision on Indictment

(1) Immediately on receipt of the indictment the preliminary hearing judge shall examine whether the Court has jurisdiction to try, whether the circumstances under Article 224 Paragraph (1) subparagraph d) of this Code exist, and whether the indictment was properly drafted (Article 227 of this Code). If the Court finds that the indictment was not properly drafted it will act in accordance with Article 148 Paragraphs (3) and (4) of this Code.

Article 234
General Public

(1) The main trial is public.

(2) Only adults may attend the main trial.

(3) Persons attending the main trial must not carry arms or dangerous weapons, except for the guards of the accused and persons who are permitted to do so by the judge or the presiding judge.

Article 235
Exclusion of the Public

From the opening to the end of the main trial, the judge or the Panel of judges may at any time, ex officio or on motion of the parties and the defense attorney, but always after hearing the

parties and the defense attorney, exclude the public for the entire main trial or a part of it if that is in the interest of the national security, or if it is necessary to preserve a national, military, official or important business secret, if it is to protect the public peace and order, to preserve morality in the democratic society, to protect the personal and intimate life of the accused or the injured or to protect the interest of a minor or a witness.

Article 251
Resumption of the Adjourned Main Trial

(1) If the main trial resumes after it has been adjourned before the same judge or the Panel, the judge or the presiding judge shall briefly summarize the previous course of the proceedings. The judge or the presiding judge may order that the main trial recommence from the beginning.

(2) The main trial that has been adjourned must recommence from the beginning if the composition of the Panel has changed or if the adjournment lasted longer than 30 days but with consent of the parties and the defence attorney, the Panel may decide that in such a case the witnesses and experts shall not be examined again and that the new crime scene investigation shall not be conducted but the minutes of the crime scene investigation and testimony of the witnesses and experts given at the prior main trial shall be used.

(3) If the main trial is held before another judge or presiding judge, the main trial must commence from the beginning and all evidence must be again presented. In exceptional cases, if the main trial is held before another presiding judge, with consent of the parties and the defense attorney, the Panel may decide that the earlier presented evidence shall not be presented again.

(4) In cases from Paragraphs (2) and (3) of this Article, the judge or the Panel, without consent of the parties and the defense attorney, but after hearing parties and the defense attorney, may decide to use the testimony of the witnesses and experts given at the prior main trial as evidence if witnesses or experts died, became mentally incapacitated or unavailable or their appearance before the Court is impossible or difficult due to other reasons.

Article 258 (2)
Verifying the Identity of the Accused and Giving Directions

(2) After verification of the identity of the accused, the judge or the presiding judge shall ask the parties and defense attorney whether they have any motions regarding the composition of the Panel or jurisdiction of the Court.

86. The **Constitution of the Republika Srpska** (*Official Gazette of the Republika Srpska*, 21/92, 28/94, 8/96, 13/96, 15/96, 16/96, 21/96, 12/00 – Decision of the CC BiH, 31/00 – Decision of the CC BiH, 36/00 – Decision of the CC BiH, *Official Gazette of BiH*, 36/00 – Decision of the CC BiH, *Official Gazette of the Republika Srpska*, 21/02, 26/02 Corrigendum, 30/02 Corrigendum, 31/02, 69/02, 31/03, 98/03, 115/05, 117/05, 48/11 and 91/19 – Decision of the CC BiH). For the purposes of this decision, an unofficial consolidated text prepared at the Constitutional Court is used, which as relevant reads:

Article 72

[...]

Should the National Assembly shorten its mandate or should it be dismissed, elections for a new National Assembly must be held within 60 days from the day if issuance of decision on the shortening of mandate. The elections shall be scheduled by the President of the Republic.

[...]

The President of the Republic may, after he has heard the opinion of the President of the Government and the President of the National Assembly decide to dismiss the National Assembly.

Article 74

[...]

The President of the National Assembly shall convene and chair sessions.
The President shall be obliged to convene a session upon the request of [...] the President of the Republic or the Government.

Article 76

The President of the Republic, the Government, every Assembly deputy or a minimum of 3,000 voters shall have the right to propose laws, other regulations and general enactments.

2. The President of the Republic

Article 80

The President of the Republic shall:

1. represent the Republic;

2. propose to the National Assembly a candidate for the Prime Minister;

3. nominate to the National Assembly candidates for the president and judges of the Constitutional Court upon proposal by the High Judicial and Prosecutorial Council;

4. The President of the Republic shall promulgate laws by decree within seven days from the day of their adoption by the National Assembly. The President of the Republic may, within that timeline, request that the National Assembly make decision on the law anew. The President of the Republic is obliged to promulgate the law which has been readopted by the National Assembly.

5. grant pardons;

6. confer decorations and awards specified by law;

7. perform other tasks in accordance with the Constitution.

The President of the Republic shall:

1. perform, in accordance with the Constitutions of Bosnia and Herzegovina and Republika Srpska and other relevant law, tasks related to defence, security and relations of the Republic with other countries and international organizations,

2. Amendment CXVI – item 2, shall be deleted.

3. The President of the Republic shall, at the proposal of the Government, by decree appoint and recall heads of missions of Republika Srpska in foreign countries, and shall nominate ambassadors and other international representatives of Bosnia and Herzegovina from Republika Srpska.

4. form advisory bodies and expert agencies for performing tasks falling within his competence.

Two Vice-Presidents of the Republic shall assist the President of the Republic in performing tasks entrusted to them by the President of the Republic.

The President shall have two Vice-presidents from among different constituent peoples.

The President of the Republic shall decide which of the vice-presidents of the Republic shall replace him in case he is temporary prevented from performing his duties.

Article 94

[…]

During the mandate of the Government, the Prime Minister may, based on the opinions of the President of the Republic and the President of the National Assembly, make changes in the composition of the Government, of which he shall inform the National Assembly.

If he assesses that there has been a crisis in the work of the Government, the President of the Republic may, at the initiative of at least 20 Assembly representatives and after obtaining the opinion of the President of the National Assembly and the Prime Minister, demand that the Prime Minister resigns. Should the Prime Minister refuse to resign, the President of the Republic may dismiss him.

[…]

Article 132

A proposal to amend the Constitution of the Republic may be submitted by the president of the Republic […].

87. The **Law on Non-application of Decisions of the Constitutional Court of Bosnia and Herzegovina** (*Official Gazette of RS*, 60/23 of 9 July 2023) adopted on 27 June 2023, reads:

Based on Article 80 (1)(4) of the Constitution of the Republika Srpska, I am hereby adopting

DECREE PROMULGATING THE LAW ON NON-APPLICATION OF DECISIONS OF THE CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA

I am hereby promulgating the Law on Non-application of Decisions of the Constitutional Court of Bosnia and Herzegovina, which was adopted by the National Assembly of the Republika Srpska at the Eighth Special Session, held on 27 June 2023.

Bosniak People Caucus in the Council of the People of the Republika Srpska adopted Decision No. 03/8.02-3-22/23, dated 4 July 2023, on the refusal to consider the materials adopted by the National Assembly of the Republika Srpska at the Eighth Special Session, held on 27 June 2023.

The Council of the Peoples of the Republika Srpska, with its act, number: 03/2.01-020-308/23, dated 6 July 2023, informed the National Assembly of Republika Srpska that the aforementioned law does not fall under the issues of violation of the vital national interest of the Bosniak people, thus fulfilling the formal and legal conditions for the adoption of the Decree.

Number: 01-020-3396/23

7 July 2023

Banja Luka

President of the Republic,

Milorad Dodik, /signed/

LAW ON NON-APPLICATION OF DECISIONS OF THE CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA

Article 1

The decision amending the Rules of the Constitutional Court and the decisions of the Constitutional Court of Bosnia and Herzegovina, made subsequent to the amendments to the Rules of the Constitutional Court of Bosnia and Herzegovina, shall not be applied and enforced on the territory of the Republika Srpska.

Article 2

(1) Decisions referred to in Article 1 of this Law shall not be applied and enforced on the territory of Republika Srpska pending the adoption of the Law on the Constitutional Court of BiH by the Parliamentary Assembly of BiH.

(2) Until the adoption of the law referred to in paragraph 1 of this Article, the provisions of the Law stipulating the publication of laws and other regulations of the Republika Srpska, in the part that refers to regulations and other acts passed by the Constitutional Court of Bosnia and Herzegovina, shall be temporarily suspended.

Article 3

Persons who are obligated to act according to the provisions of this law shall be exempted from the criminal responsibility prescribed by the criminal legislation of BiH, with regard to criminal acts related to the enforcement of this law and will be protected by the institutions of the Republika Srpska.

Article 4

This law shall enter into force the day after its publication in the Official Gazette of the Republika Srpska.

Number: 02/1-021-726/23

27 June 2023

Banja Luka

President of the National Assembly,

Dr Nenad Stevandić /signed/

88. The **Law on Amendments to the Law on Publication of Laws and Other Regulations of Republika Srpska** (*Official Gazette of Republika Srpska,* 60/23 of 9 July 2023) entered into force on the eighth day from the date of publication in the *Official Gazette of the Republika Srpska*.

Based on Article 80(1)(4) of the Constitution of the Republika Srpska, I am hereby adopting

DECREE PROMULGATING THE LAW ON AMENDMENTS TO THE LAW ON PUBLICATION OF LAWS AND OTHER REGULATIONS OF THE REPUBLIKA SRPSKA

I am hereby promulgating the Law on Amendments to the Law on Publication of Laws and Other Regulations of the Republika Srpska, which was adopted by the

National Assembly of the Republika Srpska at the Seventh Special Session, held on 21 June 2023.

Bosniak People Caucus in the Council of Peoples of the Republika Srpska adopted Decision No. 03/8.02-3-21-2/23, of 4 July 2023, which annuls the Decision of the Bosniak People Caucus, No. 03/8.02-3-21/23, of 26 June 2023, which initiated the procedure for the protection of the vital national interest of the Bosniak people on the Law on Amendments to the Law on Publication of Laws and Other Regulations of the Republika Srpska, thus fulfilling the formal and legal requirements for the adoption of the Decree.

Number: 01-020-3382/23 *Milorad Dodik /signed/*

7 July 2023, Banja Luka *President of the Republic,*

LAW ON AMENDMENTS TO THE LAW ON PUBLICATION OF LAWS AND OTHER REGULATIONS OF THE REPUBLIKA SRPSKA

Article 1

In the Law on Publication of Laws and Other Regulations of the Republika Srpska (“Official Gazette of the Republika Srpska”, 67/05 and 110/08) in Article 3 (1) in the fifth line after the word: "Constitutional Court of the Republika Srpska", the word: "and" is deleted and a full stop is added.

Line six is deleted.

Article 2

This law shall enter into force on the eighth day from the day of its publication in the Official Gazette of the Republika Srpska.

Number: 02/1-021-696/23 *Dr Nenad Stevandić /signed/*

21 June 2023, Banja Luka *President of the National Assembly*

VI. Admissibility

89. In accordance with Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, the Constitutional Court shall also have appellate jurisdiction over issues under this Constitution arising out of a judgment of any court in Bosnia and Herzegovina.

90. In accordance with Article 18(1) of the Rules of the Constitutional Court, the Constitutional Court may examine an appeal only if all effective remedies available under the law against a judgment or a decision challenged by the appeal have been exhausted and if the appeal is lodged within a time limit of 60 days as from the date on which the appellant received the decision on the last effective remedy he/she used.

a) *Ratione materiae* AP-4095/25

91. Article 18(3)(h) of the Rules of the Constitutional Court reads as follows:

An appeal shall also be inadmissible in any of the following cases:

h) the appeal is ratione materiae incompatible with the Constitution;

a.1) As to the allegations of a violation of the right to a fair trial with regard to the follow-up proceedings to the conviction by the Court of BiH (appeal no. AP-4095/25)

92. As to the appellant's allegations of a violation of the right to a fair trial in the proceedings in which the contested decisions of the CEC and the Court of BiH were taken following the final conviction wherein the appellant was found guilty (AP-3722/25), the Constitutional Court refers to the consistent case law of the European Court, according to which political rights are not considered civil rights. The European Court took that view in case *Pierre-Bloch v. France* (see ECtHR, *Pierre-Bloch v. France*, judgement of 21 October 1997, application no. 24194/94, paragraphs 48-50). The Constitutional Court observes that in the case law adopted by the Constitutional Court recently, the mentioned view has been confirmed (see Constitutional Court, Decision on Admissibility and Merits no. *AP-849/23* of 23 January 2025, paragraph 25 with further references, available at www.ustavnisud.ba).

93. In the present case, the CEC conducted *ex officio* the procedure for termination of the appellant's term of office as the RS President. That procedure was conducted in accordance with the relevant provisions of the BiH Election Law (see paragraphs 60, 62 and 84 of this decision) following the second-instance judgment of the Court of BiH in case no. AP-3722/25, i.e. after the convicting

judgment against the appellant became final. As it is based on the reasons for the decisions of the CEC and the Court of BiH, the issue of constitutionality and lawfulness of the conduct of the Court of BiH in the criminal proceedings against the appellant was not dealt with in that procedure (although the appellant insisted on it; see paragraphs 62 and 79 of this decision). The declaratory nature of the contested decision of the CEC (acknowledgement of the termination of the appellant's term) was also emphasized in the response to the appeal (see paragraph 79 of this decision). Given that, the Constitutional Court concludes that neither the appellant's "civil rights and obligations" nor the "criminal charge" for the purposes of Article 6(1) of the European Court were dealt with in case no. AP-4095/25 and that the safeguards under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention are therefore not applicable to the procedure conducted before the CEC and the Court of BiH. Consequently, that conclusion excludes the examination of the merits of the appellant's allegation of bias of a member of the council of the CEC (V.B-P.) who participated in the decision-making of the CEC's contested decision of 6 August 2025, given that the right to an independent and impartial tribunal for the purposes of the European Convention is a segment of the right to a fair trial. That being said, the Constitutional Court holds that this part of the allegations made in the appeal is *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina and the European Convention.

a. 2) As to the allegations of a violation of the right to free elections (AP-4095/25)

94. In examining the appellant's allegations of a violation of the right to free elections, the Constitutional Court notes that according to the case law of the European Court, the obligations imposed on the Contracting States by Article 3 of Protocol No. 1 are limited to "the choice of legislature" and do not normally apply to the election of a Head of State, unless it is established in the light of the constitutional structure of the State in question – which the Court hasn't yet concluded in any previous case – that the latter could arguably be considered to be a "legislature", being given the power to initiate and adopt legislation or to enjoy wide powers to control the passage of legislation or the power to censure the principal lawmaking authorities (see ECtHR, *Câlin Georgescu Romania*, decision of 11 February 2025, application no. 3727/24, § 22 with further references).

95. On the issue of applicability of Article 3 of Protocol No. 1 to the European Convention, the Constitutional Court recalls that it dealt with cases involving president and vice-presidents of the Entity of the Federation of Bosnia and Herzegovina in which it ruled on the criteria referred to in the

previous paragraph (see Decision on Admissibility and Merits, *AP-849/23*, paragraphs 27-29). Among other things, the Constitutional Court found the following in the cited case:

> *28. In the present case, the Constitutional Court does not observe any indications that the powers of the President and Vice-President of the FBiH are such that they could be considered part of the "legislative bodies" of the Federation of BiH within the meaning of the previously mentioned standards of the European Court. Namely, the Constitutional Court notes that it follows from the content of Article IV.B.1.1 of the Constitution of the Federation of BiH that the President of the FBiH is the head of the federal executive and that he has two Vice-Presidents (see paragraph 18 of this decision). The Constitutional Court also notes that the powers of the President and Vice-Presidents of the FBiH, as set out in Article IV.B.3.7 (a) and (b) of the Constitution of the Federation of BiH, include, inter alia, appointing the Government, judges of the Constitutional Court, signing decisions of the Parliament of the FBiH, signing and ratifying international agreements on behalf of the Federation of BiH, and granting pardons. Finally, the Constitutional Court notes that the President, in agreement with the Vice-Presidents, may, under the conditions set out in Article IV.A.3.16 of the Constitution of the Federation of BiH, dissolve one or both houses of the Parliament of the FBiH. Having regard to the above, the Constitutional Court notes that the powers of the President and Vice-Presidents of the FBiH do not indicate that they have the power to initiate and adopt legislation, or that they enjoy wider powers to control the passage of legislation or the power to censor the principal lawmaking authorities. In view of the above, the Constitutional Court considers that Article 3 of Protocol No. 1 to the European Convention does not apply to the elections for the President and Vice-President of the FBiH.*
>
> *29. Having regard to the above findings, it follows that the appellants' complaints of [...] the right to free elections under Article 3 of Protocol No. 1 to the European Convention [...] are incompatible ratione materiae with the Constitution of Bosnia and Herzegovina and the European Convention.*

96. As there are asymmetric Entity constitutional arrangements in Bosnia and Herzegovina, an issue arises as to whether the findings from the quoted decision no. *AP-849/23* – pertaining to the President of FBiH - can also be applied to the RS President (the appellant in the present case). In that connection, the Constitutional Court first of all observes that there are many similarities in the

constitutional powers of the presidents of the two Entities of Bosnia and Herzegovina that are manifested in representing an Entity, nominating/appointing a government and judges of the Constitutional Court, signing decisions adopted by the legislature, signing and ratifying international agreements on behalf of an Entity and granting pardon. However, concerning the relationship towards the legislative and executive branches, the RS President has an additional constitutional power to propose legislation (Article 76 of the Constitution of the Republika Srpska) and call upon the Prime Minister of the RS Government to resign during a crisis in the work of the Government (and relieve him/her of his/her duty should he/she refuse). The RS President is also authorised to give an opinion on changes to the composition of the RS Government (Article 94 of the Constitution of the Republika Srpska). The Constitutional Court additionally notes that the RS President is elected directly from the people as opposed to the President of FBiH. Furthermore, the President of FBiH requires consent from the two vice-presidents to appoint a Government of FBiH. While vice-presidents of the RS are elected directly, they do not have the same constitutional position as the vice-presidents of FBiH. Namely, they only assist the RS President in performing duties entrusted to them by the RS President. The latter indicates that the RS President's autonomy to act is significantly greater than that of the President of FBiH. Legislation-wise, the RS President is authorised under the Constitution to call upon the RS National Assembly to reconsider a law (Article 80(4) of the Constitution of the Republika Srpska). He may, after hearing the opinion of the President of the RS Government and the President of the RS National Assembly, decide to dismiss the RS National Assembly (Article 72 of the Constitution of the Republika Srpska). He may also call upon the President of the RS National Assembly to convene a session of the RS National Assembly (Article 74 of the Constitution of the Republika Srpska) and may file a motion for an amendment to the RS Constitution (Article 132 of the Constitution of the Republika Srpska).

97. Despite these differences, the Constitutional Court considers that in the light of the constitutional structure pertaining to the RS the additional powers vested in the RS President and the broader autonomy to act compared to the FBiH President do not allow to consider the RP President t o be a part of "legislature" in terms of the Convention. The Constitutional Court therefore considers that Article 3 of Protocol No. 1 to the European Convention is not applicable to the appellant's case.

98. In addition, the Constitutional Court considers that it is necessary to stress that the appellant did not clearly and explicitly raise the issue/indicated in either appeal that the disputed decisions (the duration of the imposed measure and the consequences of the conviction) from case no. AP-3722/25 would effectively prevent him from running for office at the next general elections. In that connection, the Constitutional Court notes that the subject matter of the appeals is not the appellant's exclusion

from (the legislative) elections but solely the termination of his mandate as RS President. As an appeal should contain statements, facts and evidence on which it is based (Article 21(2) of the Rules of the Constitutional Court), in the present case the Constitutional Court will not separately address or prejudge the issue of passive suffrage under Article 3 of Protocol No 1. to the European Convention, particularly because the appellant's possible running for office is a future and uncertain event.

99. Given the mentioned findings, the appellant's allegations of the violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention in so far as this aspect of the case is concerned and the allegations of the right to free elections under Article 3 of Protocol No. 1 to the European Convention are *ratione materiae* incompatible with the Constitution of Bosnia and Herzegovina and European Convention.

b) As to a violation of the presumption of innocence under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(2) of the European Convention regarding the statements given by the officials during the trial against the appellant (AP-3722/25 and AP-4095/25)

100. Article 18(4) of the Rules of the Constitutional Court reads as follows:

> *(4) The Constitutional Court shall reject an appeal as being manifestly (prima facie) ill-founded when it establishes that there is no justified request of the party to the proceedings, or that the presented facts cannot justify the allegation of the existence of a violation of the rights safeguarded by the Constitution and/or when the Constitutional Court establishes that the party to the proceedings has not suffered the consequences of a violation of the rights safeguarded by the Constitution, so that the examination of the merits of the appeal is superfluous.*

101. The Constitutional Court recalls that at the stage of examination of the admissibility of a case it is called upon, among other things, to determine whether the requirements for a decision on the merits listed in Article 18(4) of the Rules of the Constitutional Court have been met. In that connection, the Constitutional Court indicates that, according to its own case law and the case law of the European Court, the appellant is required to state a violation of his/her rights safeguarded by the Constitution of Bosnia and Herzegovina and those violations must appear plausible. The appeal is manifestly ill-founded if it lacks prima facie evidence that demonstrates with sufficient clarity that the alleged violation of human rights and freedoms is plausible (see ECtHR, *Abedin Smajić v. Bosnia and Herzegovina,* decision of 16 January 2018, application no. 48657/16, § 43; and *Khudunts v.*

Azerbaijan, judgment of 26 February 2019, § 32; see also Constitutional Court, Decision on Admissibility no. AP-156/05 of 18 May 2005, paragraph 9, available at www.ustavnisud.ba); and if the facts in relation to which the appeal is filed do not manifestly constitute a violation of the right alleged by the appellant, i.e. if the appellant does not raise an "arguable claim" (see ECtHR*, Dumlu v. Turkey*, decision of 20 April 2021, application no. 65159/17, § 27), and when it is found that the appellant is not a "victim" of a violation of rights safeguarded by the Constitution of Bosnia and Herzegovina (see ECtHR, *Spasoje Lukić and Others v. Bosnia and Herzegovina*, admissibility decision of 18 November 2008, application no. 34379/03).

102. In his supplement to appeal no. AP-3722/25 of 1 October 2025 (see paragraph 72 of this decision), the appellant claims that the principle of the presumption of innocence under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(2) of the European Convention has been violated as a result of the statements made by the public officials during the trial. This notably relates to the statements given by High Representative Christian Schmidt, the US and UK Embassies, President of the SDA Political Party (B. I.), Minister of Defence of Bosnia and Herzegovina (Zukan Helez) and Minister of Police of F BiH (Ramo Isak). The disputed statements given by High Representative Christian Schmidt were also indicated in appeal no. AP-4095/25. In this connection, the Constitutional Court notes that it found a violation of the right to the presumption of innocence in several cases regarding the statements made by politicians and public officials, wherein they made conclusions on the guilt of the appellants before final decisions were made by the courts (see Constitutional Court, Decisions on Admissibility and Merits no. AP-4319/14 of 18 December 2014, paragraph 35, and AP-2011/15 of 22 December 2016, paragraph 50, with further references, available at www.ustavnisud.ba). In the present case, the appellant – aside from the general reference to the individuals he believes to have prejudged his guilt in the present case – did not supply a single concrete piece of evidence to the Constitutional Court in support of the credibility of the applicant's contentions, nor does the case-file contain sufficient data and information based on which the Constitutional Court could inspect their content. Consequently, while the appellant referred to the statements made by certain public officials in the appeal, the Constitutional Court does not have reliable information about the content and character of those statements, which is the reason why it cannot take them into consideration in order to assess their influence on the appellant's conviction. In particular, the Constitutional Court notes that appellants, pursuant to Article 21(1)(c) of its Rules, are required to submit evidence in support of their contentions in the procedure before the Constitutional Court. In the case in question, the appellant has failed to comply with the mentioned obligation. The Constitutional Court also notes that it is not its task, either in the appellant's case or other cases, to

investigate media content that can potentially be linked to decisions challenged by the appellants before the Constitutional Court.

103. Lastly, the Constitutional Court notes that it does not have jurisdiction to examine statements given by representatives of the international community in Bosnia and Herzegovina (see, *mutatis mutandis*, Decision on Admissibility and Merits no. AP-667/24 of 14 November 2024, paragraph 220 – available at www.ustavnisud.ba). That being said, the Constitutional Court concludes that there is nothing in the present case indicating that the appellant's allegations give rise to the constitutional issue he invoked, i.e. there is nothing indicating that he has an "arguable claim" for the purposes of Article 18(4) of the Rules of the Constitutional Court that should be examined on the merits. Hence, the Constitutional Court holds that the appellant's allegations of the violation of the principle of the presumption of innocence under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(2) od the European Convention are manifestly (*prima facie*) unfounded.

104. Having regard to the provision of Article 18(3)(h) and Article 18(4) of the Rules of the Constitutional Court, the Constitutional Court therefore holds that the complaints (AP-3722/25 and AP-4095/25), insofar as they concern the right to a fair trial concerning to the disputed decisions of the CEC and the Court of BiH (decisions on the resulting out of the judgment of the Court of BiH against the appellant), the right to free elections and the presumption of innocence are inadmissible.

c) Other allegations -- a violation of fair trial and *nullum crimen, nulla poena sine lege*, and the politically motivated trial of the appellant (AP-3722/25)

105. Insofar as the appellant claims that the contested judgments of the Court of Bosnia and Herzegovina have been in violation of his right under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 of the European Convention and the right under Article 7 of the European Convention as they have been politically motivated, the Constitutional Court reiterates that it is not bound by the legal characterization given in the appeal. According to the *iura novit curia* rule, the Constitutional Court is master of the characterization to be given in law to the facts of the case (see Decision on Admissibility and Merits, *no. AP-2297/22* of 25 September 2025, paragraph 40, with further references, available at www.ustavnisud.ba; *Radomilja and Others v. Croatia*, judgment of 20 March 2018, applications no. 7685/10 and 22786/12, paragraphs 114 and 126 with further references). Given the fact that the appellant's allegations relate to the procedure of determination of the criminal charge against him, which the appellant considers to be politically motivated, the termination of term of office and ban on carrying out his duties as a RS President, the aim of which in his view was to

eliminate him from political life in Bosnia and Herzegovina, the Constitutional Court will examine the allegations made in the appeal under Article 18 of the European Convention, in conjunction with Article 6 of the European Convention.

106. The Constitutional Court finds that appeal no. AP-3722/25, including the supplements thereto, in the part related to the allegations of a violation of Article II(3)(e) of the Constitution of Bosnia and Herzegovina, Article 6(1) of the European Convention, Article 7 of the European Convention, and Article 18, in conjunction with Article 6 of the European Convention has fulfilled the requirements under Article VI(3)(b) of the Constitution of Bosnia and Herzegovina and Article 18(1) of the Rules of the Constitutional Court, that it was filed within the given time limit and has fulfilled all other admissibility requirements under Article 18(3) of the Rules of the Constitutional Court and is not manifestly (*prima facie*) ill-founded for the purposes of Article 18(4) of the Rules of the Constitutional Court.

VII. Merits

107. Given the content of the appellant's allegations, the Constitutional Court finds it necessary to examine first the appellant's allegations of the violation of Article 7 of the European Convention because it is a non-derogable right, and the examination of the appellant's other allegations depends on the preliminary consideration of that right.

a) No punishment without law

108. In the present case, the appellant claims that the criminal proceedings conducted against him for a criminal offence referred to in Article 203a of the CC BiH and his conviction, together with the security measure of ban on carrying out his duties as the RS President, amounted to a violation of the principle of no punishment without law under Article 7 of the European Convention.

109. Article 7 of the European Convention reads as follows:

> *1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.*
>
> *2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.*

110. According to the case law of the European Court, the guarantee enshrined in Article 7 of the European Convention, which is an essential element of the rule of law, occupies a prominent place in the European Convention system of protection, as is underlined by the fact that no derogation from it is permissible under Article 15 of the Convention in time of war or other public emergency. Article 7 should be construed and applied, as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment. Article 7 also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and the principle that criminal law must not be extensively construed to the detriment of an accused, for instance by analogy. From these principles it follows that an offence must be clearly defined in law. This requirement is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him or her criminally liable. When speaking of "law", Article 7 alludes to the very same concept as that to which the European Convention refers elsewhere when using that term, a concept which comprises written as well as unwritten law and implies qualitative requirements, notably those of accessibility and foreseeability. In any system of law, including criminal law, however clearly drafted a legal provision may be, there is an inevitable element of judicial interpretation. There will always be a need for elucidation of doubtful points and for adaptation to changing circumstances. Indeed, in the Convention States, the progressive development of the criminal law through judicial law-making is a well-entrenched and necessary part of legal tradition. Article 7 of the European Convention cannot be read as outlawing the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen. The lack of an accessible and reasonably foreseeable judicial interpretation can lead to a finding of a violation of Article 7 rights. Were that not the case, the object and purpose of this provision – namely that no one should be subjected to arbitrary prosecution, conviction or punishment – would be defeated. The requirement of accessibility and foreseeability entails that, in principle, a measure can only be regarded as a penalty within the meaning of Article 7 where an element of personal liability on the part of the offender has been established. Accordingly, Article 7 requires, for the purposes of punishment, the existence of a mental link through which an element of liability may be detected in the conduct of the person who physically committed the offence (see *Yüksel Yalçınkaya v. Türkiye*, judgment of 26 September 2023, application no. 15669/20, paragraphs 237-242 with further references).

111. As to the assessment of foreseeability, the European Court has noted that in assessing the foreseeability of a judicial interpretation, decisive importance should not be attached to the absence of comparable precedents. When domestic courts are called upon to interpret a provision of criminal law for the first time […] an interpretation of the scope of the offence thereof must not, in principle, be considered as unforeseeable. In this regard, the European Court has held that it is aware of the fact that a given legal norm must one day be applied for the first time. It remains that the novelty, particularly in the light of case-law, of the legal question raised does not in itself constitute an infringement of the requirements of accessibility and foreseeability of the law, provided that the solution adopted was one of the possible interpretations, consistent with the essence of the offence and reasonably foreseeable. The scope of the concept of foreseeability depends to a large extent on the content of the text in question, the field it covers, and the number and status of its addressees. The foreseeability of the law does not prevent the person concerned from having recourse to informed advice to assess, to a reasonable degree in the circumstances of the case, the consequences that may result from a given act. This notably applies to professionals, who are accustomed to having to exercise great caution in the exercise of their profession. They can therefore be expected to take particular care in assessing the risks involved. Finally, the Constitutional Court reaffirms that it is not normally its role to replace domestic courts in the assessment and legal classification of the facts, provided that these are based on a reasonable analysis of the elements of the case. It is not for the Constitutional Court to deal with errors of fact or law allegedly committed by a court, unless and to the extent that they may have infringed the rights and freedoms protected by the European Convention, or if the assessment made is manifestly arbitrary (see *Total S. A*. and *Vitol S. A. v. France*, judgment of 12 October 2023, applications no. 34634/18 and 43546/18, paragraphs 55-57 with further references).

112. Turning to the circumstances of the present case in the light of the aforementioned principles, the Constitutional Court will consider the conviction of the appellant and the security measure in the light of safeguards under Article 7 of the European Convention. As to the existence of the legal grounds in the present case, the Constitutional Court observes that the case involves a new criminal offence, which is incorporated in the criminal justice system by the decision of the High Representative (see paragraphs 16 and 81 of this decision). It follows from the case file that the ordinary courts applied and interpreted Article 203a of the CC BiH for the first time in the appellant's case, and therefore one cannot speak of comparative situations/precedents. The substance of the appellant's allegations regarding the application of law relates to the origin of the legal provision applied and thus to the legal status of Christian Schmidt as High Representative and his role in the legal system of Bosnia and Herzegovina, i.e. his power to enact laws. In the circumstances of the

present case, this relates to the powers of the High Representative to adopt the two decisions on 1 July 2023, preventing the entry into force of the Law on Publication of Laws and Other Regulations of the Republika Srpska and the Law on Non-application of Decisions of the Constitutional Court of Bosnia and Herzegovina, and then the decision dated 1 July 2023, enacting the Law on Amendments to the CC BiH, prescribing the criminal offence in respect of which the appellant was prosecuted and convicted. In the present case, non-compliance with the decisions of the High Representative resulted in the appellant's conviction. In contrast, the appellant contends that the legislative activity in the present case should have been exclusively within the scope of competence of the Parliamentary Assembly, which is why, in general, the appellant disputes the existence of the criminal offence of which he was convicted.

113. Regarding the High Representative's powers to enact laws, the Constitutional Court already took the view in several decisions that the High Representative's powers follow from Annex 10, the relevant resolutions of the Security Council of the United Nations and the Bonn Declaration and that these powers and the exercise of these powers are not subject to review by the Constitutional Court (see, for example, Decision on Admissibility and Merits *no. U-27/22* of 23 March 2023, paragraphs 72 and 73 with further references; available at www.ustavnisud.ba). In the present case, the Constitutional Court observes that on 1 July 2023 the High Representative intervened in the legal system of Bosnia and Herzegovina and, while substituting himself for the Parliamentary Assembly of Bosnia and Herzegovina, took the Decision Enacting the Law on Amendments to the CC BiH. He therefore acted as a legislative authority of Bosnia and Herzegovina and the aforementioned Amendment to the CC BiH undoubtedly has the legal nature of domestic legislation, the constitutionality of which is not the subject of this appeal. The Constitutional Court therefore dismisses as unfounded the appellant's allegations challenging the legal status of the High Representative and his powers in the context of prescribing the criminal offence under Article 203a of the CC BiH, of which the appellant was found guilty. The ordinary courts gave detailed reasons in this regard, on which the criminal proceedings as a whole were centred. Therefore, the Constitutional Court considers that it is beyond doubt that the basic requirement of Article 7 of the European Convention that only a law can prescribe a criminal offence and a punishment (that is, that a criminal offence is clearly defined by law) has been met in the case in question. Similarly, and contrary to the appellant's complaints, the Constitutional Court considers that the criminal offence of which the appellant has been convicted was in force at the time of signing of the contested decrees. The fact that the Law on Amendments to the CC BiH was published in the Official Gazette on the same day when the appellant signed the contested decrees does not call into question the aforementioned finding of

the Constitutional Court, considering that the Decision by the High Representative explicitly stipulated (Article 4 of the Decision) that the law entered into force on 2 July 2023 (see paragraph 81 of this decision). Therefore, there does not arise a problem of retroactive application of a provision of criminal law under Article 7 of the European Convention either.

114. The next question that the Constitutional Court needs to address concerns the quality requirements of Article 7 of the European Convention, namely the foreseeability and accessibility of the legal norm based on which the appellant was convicted and the relevant security measure imposed. In that regard, the Constitutional Court will also examine whether the ordinary courts gave reasonable interpretations and explanations, considering that a negative finding may lead to a violation of Article 7 of the European Convention.

115. With regard to the accessibility of the "criminal code", this in principle implies that the code is made available to the public. In the case in question, the new Article 203a of the CC BiH was officially available to the public on 1 July 2023 via the website of the OHR at which all three decisions referred to in paragraph 15 above – including the Decision Enacting the Law on Amendments to the CC BiH – were published. Apart from the OHR's official website, publication also included many media that carried the content of the new Article 203a of the CC BiH. Accordingly, the Constitutional Court considers that the accessibility requirement has been met in the appellant's case. The appellant does not deny this when alleging in the appeal that "the issue in the case in question is not what the appellant knew on 7 July 2023 – when he signed the two contested decrees – but whether Article 203a of the amended CC BiH was in force on that date" (see paragraph 63 of this decision). As to the aspect of foreseeability of the legal norm in the present case, the appellant argues that at the time of signing of the two contested decrees he was not sufficiently aware of the consequences of his actions, that is, he was not able to foresee that his actions would result in the termination of his mandate of RS President and the ban on discharging that duty. In terms of case law of the European Court, such contentions directly concern a mental link disclosing an element of liability in the offender's conduct for the imposition of punishment (see ECtHR, *G. I. E. M. S. R. L. and Others v. Italy* (GC), judgment of 28 June 2018, applications nos. 1828/06 and two others, §§ 242 and 246 with further references; and ibid *Yüksel Yalçinkaya v. Türkiye*, § 242 with further references) The issue of the appellant's awareness in the case in question was addressed through the presentation of evidence in the criminal proceedings against the appellant in order to establish intent on his part. In that regard, the Constitutional Court notes that the evidence presented at the trial demonstrated beyond doubt that the appellant, in the period between 1 July 2023 (when the High Representative issued the decisions referred to in paragraph 15 as read with paragraphs 80 through 82 of the decision) and the day when

the appellant signed the two contested decrees (7 July 2023 – paragraphs 86 and 87 of the decision), undertook activities (consultation/legal advice) pertaining to the said decisions of the High Representative of 1 July 2023. In particular, the Constitutional Court is mindful of the fact that there was a joint consultation that included many experts on constitutional law and the holders of highest legislative and executive offices in the Republika Srpska and Bosnia and Herzegovina. Such consultation can, in view of the requirements of the European Convention, be regarded as adequate and informed advice based on which the appellant could reasonably assess the consequences resulting from signing the two contested decrees on 7 July 2023 (see, ECtHR, *Jorgić v. Germany*, judgement of 12 July 2007, application no. 74613/01, paragraph 113.). It is therefore evident that the appellant, as a professional in exercising his political profession (that is, the function of RS President) demonstrated particular caution when weighing the risks involved. The appellant's activities show beyond doubt that he was aware of and informed about the content of the aforementioned decisions of the High Representative of 1 July 2023, which, in the present case, included elements of the criminal offence under Article 203a of the CC BiH and *ex lege* imposition of the measure of ban on performing the duty accompanying the conviction. The fact that the period in question was brief has no bearing on this finding under the circumstances of the case, considering the scope of the appellant's awareness established in the evidentiary procedure and explained in detail in the disputed judgments on the points of accessibility and foreseeability. Therefore, in a situation where, as in the case in question, a provision of the Criminal Code is interpreted for the first time with a lawful legal basis and a clear formulation (Article 203a of the CC BiH), the Constitutional Court considers that the ordinary courts have adequately and sufficiently addressed all the disputable issues pertaining to the quality requirements of Article 7 of the European Convention. The interpretation of the facts in the disputed judgments do not appear to be arbitrary. Therefore, the appellant's complaint that he could not reasonably and sufficiently foresee the consequences – the conviction/punishment and the ban on performing the duty of RS President – of his unlawful conduct of 7 July 2023 (the signing of the two contested decrees) appear to be unfounded in the light of the Law on Amendments to the CC BiH that entered into force on 2 July 2023.

116. Based on the foregoing, the Constitutional Court finds that there has been no violation of Article 7 of the European Convention in the case in question.

b) The right to a fair trial

117. The appellant's allegations of a violation of the right to a fair trial substantially relate to the right to an independent and impartial tribunal, public hearing before a competent court, the presentation/assessment of evidence, equality of arms and arbitrariness in application of law.

118. Article II(3) of the Constitution of Bosnia and Herzegovina, so far as relevant reads:

> *All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:*
>
> *e) The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.*

119. Article 6(1) of the European Convention, insofar as relevant, reads:

> *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. [...]*

b.1) Right to an independent and impartial tribunal

120. In the present case, the appellant raises an issue of impartiality of two judges of the Court of BiH that took part in the criminal proceedings conducted against the appellant, namely judge J. Ć.-D., who confirmed the indictment against the appellant, and judge S. U., who rendered the first-instance judgment against the appellant.

121. The Constitutional Court reiterates that, according to the case law of the European Court, the concepts of independence and objective impartiality are closely linked and, depending on the circumstances, may require joint examination (see *Ramos Nunes de Carvalho e Sá v. Portugal*, judgment of the Grand Chamber of 6 November 2018, application no. 55391/13 and two others, § 150 with further references). Independence refers, in this connection, to the necessary personal and institutional independence that is required for impartial decision-making, and it is thus a prerequisite for impartiality. It characterises both (i) a state of mind, which denotes a judge's imperviousness to external pressure as a matter of moral integrity and (ii) a set of institutional and operational arrangements – involving both a procedure by which judges can be appointed in a manner that ensures their independence and selection criteria based on merit – which must provide safeguards against undue influence and/or unfettered discretion of the other State powers, both at the initial stage of the appointment of a judge and during the exercise of his or her duties (see *Guðmundur Andri Ástráðsson v. Iceland*, judgement of the Grand Chamber of 1 December 2020, application no. 26374/18, paragraph 234 with further references). Furthermore, impartiality normally denotes the absence of

prejudice or bias. The existence of impartiality for the purposes of Article 6(1) must be determined according to (i) a subjective test where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also according to (ii) an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see, *inter alia*, *Micallef v. Malta* [GC], application no. 17056/06, ECHR 2009, § 93 with further references). The personal impartiality of a judge must be presumed until there is proof to the contrary (see ECtHR, *Kezerashvili v. Georgia,* judgment of 5 December 2024, application no. 11027/22, § 84 with further references). However, there is no watertight division between the two notions between the subjective and objective impartiality since the conduct of a judge may not only prompt objectively held misgivings as to impartiality from the point of view of the external observer (objective test) but may also go to the issue of his or her personal conviction (subjective test) (see *Kyprianou v. Cyprus* [GC], ECHR 2005 XIII, application no. 73797/01, § 119). Thus, in some cases where it may be difficult to procure evidence with which to rebut the presumption of the judge's subjective impartiality, the requirement of objective impartiality provides a further important guarantee (see *Pullar v. the United Kingdom*, of 10 June 1996, § 32, Reports 1996-III). In this connection, even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done". What is at stake is the confidence which the courts in a democratic society must inspire in the public (see *Morice v. France* [GC], ECHR 2015, application no. 29369/10, § 78 and *Denisov v. Ukraine* [GC], judgment of 25 September 2018, application no. 76639/11, 61-63 §§ with further references).

122. Moreover, in order that the courts may inspire in the public the confidence which is indispensable, account must also be taken of questions of internal organisation. The existence of national procedures for ensuring impartiality, namely rules regulating the withdrawal of judges, is a relevant factor. Such rules manifest the national legislature's concern to remove all reasonable doubts as to the impartiality of the judge or court concerned and constitute an attempt to ensure impartiality by eliminating the causes of such concerns. In addition to ensuring the absence of actual bias, they are directed at removing any appearance of partiality and so serve to promote the confidence which the courts in a democratic society must inspire in the public. The European Court takes such rules into account when making its own assessment as to whether a tribunal was impartial and, in particular, whether the applicant's fears can be held to be objectively justified (see *Ugulava v. Georgia* (No.2), judgment of 1 February 2024, application no. 22431/20, § 56 with further references). Furthermore, the mere fact that a party requests the exclusion of a judge for bias, even repeatedly, does not

automatically have a consequence that the judge should withdraw or be excluded (see *Harabin v. Slovakia*, judgment of 20 November 2012, application no. 58688/11, § 138). When it is being decided whether, in a given case, there is a legitimate reason to fear that a particular body lacks impartiality, the standpoint of those claiming that it is not impartial is important but not decisive. What is decisive is whether the fear can be held to be objectively justified (see *Kroi and Nocka v. Albania*, judgment of 26 August 2025, application no. 84056/17, § 56 with further references).

123. The Constitutional Court will therefore examine whether those two judges of the Court of BiH had an obligation to recuse themselves in the criminal proceedings against the appellant.

- **Independence and impartiality with regard to judge J. Ć.-D.**

124. The appellant claims that the mentioned judge was biased in deciding on the indictment against him for two reasons. The appellant alleges that the first reason are the circumstances surrounding the application of that judge for the position of judge of the International Criminal Court in 2020, and the second reason is that she sided with the BiH Prosecutor's Office by referring the initially filed indictment back for amendments.

125. The Constitutional Court first of all reiterates that impartiality is essential for the proper performance of judicial duties and that it applies not only to court decisions but also to the decision-making process. With regard to the first reason alleged by the appellant, the Constitutional Court notes that it follows from the case file that judge J. Ć.-D. applied for the position of judge of the ICC (see paragraph 12 of this decision). The nomination was based on a public competition conducted by the HJPC at the beginning of 2020, whereupon judge J. Ć.-D. participated in the election procedure, upon the proposal of the Ministry of Foreign Affairs of Bosnia and Herzegovina. At that time, the appellant was member of the Presidency of Bosnia and Herzegovina and, in that capacity, he undisputedly publicly expressed his disagreement regarding the nomination of J. Ć-D as a candidate for the ICC. T hat disagreement entailed a formal address to the Ministry of Foreign Affairs of BiH and was covered by the media on several occasions while the election process was ongoing. However, the Constitutional Court observes that the procedure for electing the said judge did not include the participation of the institution of the Presidency of BiH in a formal and legal sense, i.e. the appellant’s function at the time. The appellant was not in any way directly involved in the selection of judge J. Ć.-D., nor was the prior approval of the Presidency of BiH sought in connection with her candidacy. Therefore, the Constitutional Court cannot accept as correct the appellant's allegations that his written opposition to the selection of the mentioned judge - by addressing the Ministry of Foreign Affairs of BiH - represents a prior decision on her rights, which would raise the issue of hierarchical relationship for the purpose of the objective test. In contrast, considering the office the appellant held at the

relevant time, it seems reasonable to assume that judge J. Ć.-D. was aware of the appellant's statements and disagreement with her candidacy for the position of judge of the ICC. However, it does not follow from the case file that she ever reacted in individual capacity or within the framework of her judicial function to any of the appellant's publicly presented statements. In addition, the Constitutional Court notes that a period of almost three and a half years passed from the appellant's disputed statements at that time to the confirmation of the indictment.

126. In addition, the Constitutional Court notes that it follows from the decision taken by the Plenum of the Court of BiH on 29 September 2023 that the appellant, in the petition for disqualification of judge J. Ć.-D. (candidacy for the position of judge of the International Criminal Court in The Hague) did not allege that as a reason for her disqualification for the purposes of Article 29(f) of the CPC BiH (see paragraph 18 and 19 of this decision). Hence, the Constitutional Court finds that this part of the appellant’s allegations is also unfounded.

127. The second reason was the referral of the indictment back for amendments. In this connection, the Constitutional Court observes that on 29 September 2023 the Plenum of the Court of BiH gave sufficient reasons for its decision, which does not appear arbitrary to the Constitutional Court. These reasons were substantially reiterated in its entirety in the contested second-instance judgment, in which the appellant's allegations of partiality on the side of judge J. Ć.-D were decided on (see paragraphs 51 and 52 of this decision). Thus, with regard to the second reason – request for an amendment to the indictment – the Constitutional Court notes that the case involves the specification of the criminal offence for the purposes of Article 227(1)(c) of the CPC BiH (see paragraph 85 of this decision) in relation to the powers that the said judge had in deciding on the indictment for the purposes of Article 228(1) of the same law, specification of the facts in terms of ensuring the right to defence - information about the charge - and not exceeding authority or siding of Court BiH with the BiH Prosecutor’s Office. The Constitutional Court notably emphasizes that the confirmation of the indictment constitutes the initial phase of the criminal proceedings, which did not result in a decision on the appellant's guilt. Bearing in mind the above and given the absence of objectified evidence demonstrating the existence of personal conviction and prejudices in the context of the events that preceded the confirmation of the indictment, the Constitutional Court contends - from the point of view of a reasonable, honest and informed observer – that the conduct of judge J. Ć.-D. in the criminal proceedings against the appellant could not raise objectively justified doubts in her independence and impartiality.

- Independence and impartiality with regard to judge S. U.

128. As to judge S. U., the appellant connects the issue of her alleged impartiality to two situations in the ordinary proceedings i) her conduct at the time she held office of the prosecutor of the BiH Prosecutor's Office, i.e. the disputed letter from 2021, which she signed together with the other prosecutors, and ii) the fact that the appellant did not know her identity until the main trial of 5 February 2024 which commenced with her reading out the indictment.

129. In relation to the first issue, according to the jurisprudence of the European Court problems with impartiality may emerge if, in other phases of the proceedings, a judge has already expressed an opinion on the guilt of the accused *(Gómez de Liaño y Botella* v. *Spain*, judgement of 22 July 2008, application no. 21369/04, §§ 67-72 with further references). The mere fact that a judge has already ruled on similar but unrelated criminal charges is not in itself sufficient to cast doubt on that judge's impartiality in a subsequent case (*Kriegisch v. Germany*, decision of 23 November 2010). It is, however, a different matter if the earlier judgments contain findings that actually prejudge the question of the guilt of an accused in such subsequent proceedings (*Poppe v. the Netherlands*, judgement of 24 March 2009, application no. 3227/21, § 26). Concerning the change of the position between a prosecutor and a judge the Constitutional Court notes that the mere fact that a judge was once a member of the public prosecutor's office is not a reason for fearing that he or she lacked impartiality nor it is the case when a judge was once an officer of the public prosecutor's department in a case that has been examined initially by that department, when the judge in question had never had to deal with that case himself or herself (see *Paunović v. Serbia*, judgment of 3 December 2019, application no. 54574/07, § 41, with the references therein). This may be different if a prosecutor could exercise supervisory powers over the prosecution service when an applicant's case was examined (*Ugulava v. Georgia* (No. 2), § 60).

130. The Constitutional Court notes that it is undisputed that judge S. U. had been prosecutor of the BiH Prosecutor's Office at an earlier point and that she was appointed judge of the Court of BiH in 2022. It is also undisputed that in 2021 she, together with the other prosecutors of the BiH Prosecutor's Office, supported the initiation of a criminal case against the appellant. The substance of the aforementioned prosecutorial initiative was the appellant's prosecution before the Court of BiH due to his public statements and threats to the territorial integrity and the highest institutions of Bosnia and Herzegovina (see paragraph 13 of this decision). It does not follow from the case file whether and when a criminal case was officially initiated against the appellant as a result of the aforementioned prosecutorial initiative, and whether any action falling within the scope of the prosecutorial jurisdiction was taken in this regard. The disputed letter from 2021 related to the criminal offences

referred to in Chapter XVI of the CC BiH (offences against integrity of Bosnia and Herzegovina), whereas the criminal offence of failure to implement decisions of the High Representative in violation of Article 203a of the BiH Criminal Code – for which the appellant was prosecuted in the present case – is inserted in Chapter XVII of the BiH Criminal Code (criminal offences against humanity and values protected under international law) in accordance with the High Representative's Decision enacting the Law on Amendments to the Criminal Code of Bosnia and Herzegovina, of 1 July 2023, (see paragraph 81 of this decision). Hence, the provision on the criminal offence for which the appellant was prosecuted and convicted (based on the contested judgments) was not in legal force at the time when the 2021 disputed letter was written. It is undisputed that it was not the same criminal case, that is, that the present case was not a continuation of a previously initiated/intended criminal proceedings. Therefore, there was no obligation to disqualify her for the purposes of Article 29(d) of the CPC BiH.

131. Concerning the disputed letter from 2021, it follows that it was a matter of some kind of prosecutorial self-organization, in which S. U., in her capacity as prosecutor at that time, indirectly expressed her own opinion in relation to the appellant's personality and his political activity. That prosecutorial initiative did not amount to the determination of "criminal charges" against the appellant for the purposes of the Convention either at the BiH Prosecutor's Office or before the Court of BiH. It was, in principle, a general statement on the necessity of prosecuting the appellant for other criminal offences. The Constitutional Court notes that judge S. U. was not the author of the disputed letter, i.e. she did not launch that initiative. Furthermore, the Constitutional Court has taken into account the passage of time, i.e. the period of about two years and four months from the 2021 letter to the appointment of S. U. as a single judge in the appellant's case. It does not follow from the case file that judge S. U. (after she joined the prosecutorial initiative) ever subsequently expressed any public opinion regarding the disputed letter, nor was that circumstance indicated in the appeal. Furthermore , the Constitutional Court points out that the legal system of Bosnia and Herzegovina does not prevent the holders of the prosecutor's office from subsequently performing the duty of a judge and vice versa, nor does such a change of duty in the Convention sense (as previously indicated), *a priori* lead to a violation of the right to an impartial court. The stated circumstances viewed in their entirety do not lead to the conclusion of the existence of a personal interest of judge S. U. in convicting the appellant, that is, a risk of the so-called "psychological attachment" to her previous role of prosecutor. Furthermore, with regard to judge S. U., the Constitutional Court contends that the circumstances that would hypothetically create a possible temptation for the judge as an ordinary person to not strike a clear and just balance have not been objectified. In this connection, the Constitutional Court notes that

even the risk of bias could undermine the impression of a fair, independent and impartial trial, and that judicial authority derives from public trust that the trial will be fair. In the present case, the existing legal framework allowed for an examination of the appellant's allegations of the bias on the side of judge S. U. These allegations were initially decided by the Plenum of the Court of BiH and the Appellate Panel in the second-instance judgment. In its decision of 20 February 2024, the Plenum of the Court of BiH responded extensively to several of the appellant's allegations regarding the alleged bias on the side of judge S. U. One of those allegations also referred to the disputed letter from 2021. In this connection, the Plenum of the Court of BiH found that the stated fact - the disputed letter - did not mean that judge S. U. had any prejudices towards the appellant. In support of that position, the Plenum of the Court of BiH referred to the prosecutorial powers under Article 35 of the CPC BiH (detection and prosecution of perpetrators of criminal offences).

132. In view of the above, the Constitutional Court holds in the given circumstances that the public confidence in the judiciary has not been undermined because - from the point of view of a reasonable, fair and informed observer - the conduct of judge S. U. during the time she was performing duties of prosecutor could not impair her ability to impartially examine the indictment against the appellant and decide on his guilt. Furthermore, the Constitutional Court notes that the ordinary courts provided sufficient guarantees to exclude any legitimate doubt and justified fear regarding the impartiality of judge S. U., who, as a single judge, decided on his guilt. Furthermore, the Constitutional Court notes that, according to the case law of the European Court, a violation of Article 6(1) of the European Convention cannot be grounded on the alleged lack of independence or impartiality of a decision-making tribunal if the decision taken was subject to subsequent oversight by a judicial body that has full jurisdiction and ensures respect for the guarantees laid down in that provision (see *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, judgement of 18 July 2019, application no. 16812/17, § 345 with further references) As noted above, the appellant in this particular case had access to the Appellate Panel as a second-instance court with full jurisdiction to re-examine the appellant's guilt and the imposed security measures, including factual and legal issues. The Constitutional Court notably emphasizes that the appellant did not raise the issue of impartiality of the judges of the Appellate Panel, which made the contested second-instance judgment, either in the ordinary proceedings or in the appeal.

133. As to the second reason, relating to the appellant's allegations that he was not aware of the identity of the mentioned judge until the main trial of 5 February 2024, the Constitutional Court notes that according to the jurisprudence of the European Court in order to guarantee an effective exercise of the right to impartiality, the applicant must have an opportunity to challenge the presence of a judge

and seek the judge's disqualification (see, *ibid*. *Morice v. France,* para. 90). In this case, the appellant immediately used the right available under the law to request disqualification of judge S. U at the main trial held on 5 February 2024, when she took over the duties of single judge from the previous judge M. S. The allegation was initially decided in the decision that the Plenum of the Court of BiH made on 20 February 2024, and then the Appellate Panel in relation to the appellant's claims regarding the issue of impartiality. In substance, the Appellate Panel fully accepted the reasons adduced by the Plenum of the Court of BiH in relation to all the appellant's allegations related to the disqualification of judge S. U. The Constitutional Court holds that, in so far as that segment of the appellant's claim is concerned, the reasons adduced by the Plenum of the Court of BiH do not leave the impression of arbitrariness (see paragraph 25 of this decision).

134. Bearing in mind the above, the Constitutional Court holds that the above-mentioned circumstances in relation to the mentioned judges J. Ć.-D. and S. U. are not sufficient to declare the appellant's allegations of the court's impartiality founded. The Constitutional Court therefore finds that, considering the allegations of the applicant and the facts of the case, the impartiality of judges J. Ć.-D. and S. U. is not open to doubt, and therefore there was no obligation to disqualify them.

135. Having regard to the foregoing, the Constitutional Court concludes that, in the present case, there has been no violation of the right to an independent and impartial tribunal under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention.

b.2) Public hearing before a competent court

136. Furthermore, the Constitutional Court observes that the appellant has challenged the reasons given by the ordinary courts in respect of other procedural issues: ensuring a public hearing and the delegation of jurisdiction that was not decided by the functionally competent court.

- **Public nature of a trial**

137. On the subject of “exclusion of the public”, the appellant argues that the public was effectively excluded despite the absence of a formal court decision in that regard. According to the European Court's case law, the holding of court hearings in public constitutes a fundamental principle enshrined in Article 6(1) of the European Convention. By rendering the administration of justice transparent, publicity contributes to fulfilling the aim of Article 6(1), namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention. The requirement to hold a public hearing, however, is subject to exceptions. Thus, it expressly permits the press and the public to be excluded from all or part of a trial in the interests of morals, public order

or national security in a democratic society […]. Furthermore, it may on occasion be necessary under Article 6 of the European Convention to limit the open and public nature of proceedings in order, for example, to protect the safety or privacy of witnesses, or to promote the free exchange of information and opinion in the pursuit of justice. In any event, before excluding the public from criminal proceedings, the national court must make a specific finding that exclusion is necessary to protect a compelling public interest and must limit secrecy to the extent necessary to preserve that interest. It is relevant, when determining whether a decision to hold criminal proceedings *in camera* was compatible with the right to a public hearing under Article 6 of the European Convention, whether public interest considerations were balanced with the need for openness, whether all evidence was disclosed to the defence and whether the proceedings as a whole were fair (see *Boshkoski v. North Macedonia*, judgment of 4 June 2020, application no. 71034/13, § 39 with further references). Having considered the foregoing in relation to the circumstances of the appellant's case, the Constitutional Court notes that the Court of BiH had never issued a procedural decision to exclude public from either a part or the entirety of the main trial pursuant to Article 235 of the CPC BiH. The Constitutional Court observes that the trial was open to the public throughout the proceedings and that a large audience attended the trial. In that regard, the Constitutional Court notes that the ordinary courts gave clear reasons why it was necessary to take certain measures to maintain order in the courtroom (lowering the screen; see paragraphs 34 and 49 of this decision). Moreover, the Appellate Panel found that there was no interruption in the broadcast on the monitors in the audience area. It is therefore clear that the audience/public could follow the trial unhindered. In this connection, the Constitutional Court considers that "public nature of trial" does not imply that the public can disrupt the work of the court and "actively participate" in a trial. It is the right and duty of the court to "conduct proceedings", and the manner in which the Court of BiH acted in the case in question has not called into question the public nature of the trial. The Constitutional Court therefore considers these contentions to be unfounded.

- **The competent court**

138. With regard to the appellant's allegations that the decision on the delegation of jurisdiction was not decided by the functionally competent court, the Constitutional Court recalls that the case law of the European Court on the issue of jurisdiction in the context of the term "tribunal" established the criteria to analyse whether the authority that rendered a decision constituted "tribunal" within the meaning of Article 6(1) of the European Convention. It was pointed out that a "tribunal" is characterised in the substantive sense of the term "by its judicial function, that is to say, determining matters within its competence on the basis of legal rules and after proceedings conducted in a

prescribed manner" (see ECtHR, *Xero Flor w Polsce sp. z o.o. v. Poland*, judgment of 7 May 2021, application no. 4907/18, § 194 with further references). Therefore, in order to fulfil the requirement of a "tribunal established by law" under Article 6(1) of the European Convention, a court does not only have to be established in accordance with law, but must also adjudicate within the jurisdiction prescribed by law (see, *ibid AP-667/24*, paragraph 178 with further references). The Constitutional Court points out that the appellant's contentions on functional jurisdiction were examined by the Appellate Panel in the contested second instance judgment. The reasons provided in that regard are sufficiently clear and not arbitrary, particularly in view of the fact that it was an issue that had been decided previously by a final decision (see paragraph 48 of this decision). The Constitutional Court points out that the court before which the appellant was tried has all competences for trial as any other ordinary court. It is a court established by law in which professional judges adjudicate cases and whose material jurisdiction includes determining of the appellant's criminal liability under Article 203a of the CC BiH. The Constitutional Court therefore holds that unfounded are the appellant's allegations of a violation of the right to a fair trial because he was not tried by a competent court.

b.3) Evaluation of evidence and "equality of arms"

139. The Constitutional Court further observes that the appellant challenges the lawfulness of certain pieces of evidence and argues that the judgment is based on the evidence that was not adduced at the main trial. The Constitutional Court recalls that, according to the European Court's case law, Article 6 of the Convention does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are the tasks of ordinary courts. The European Court's duty is limited to an assessment as to whether the proceedings as a whole, including the way in which the evidence was obtained, were fair, and involves an examination of the alleged "unlawfulness" (see ECtHR, *Sorokins and Sorokina v. Latvia*, judgment of 28 May 2013, application no. 45476/04, § 110). Then, generally speaking, refusing to hear any witness or to examine the evidence of the defence may raise a question regarding the equality of arms (see ECtHR, *Topić v. Croatia*, judgment of 10 October 2013, application no. 51355/10, § 48). The issue of equal treatment of the parties to the specific criminal proceedings essentially concerns the evaluation of evidence, which right in criminal proceedings often corresponds to the right to "equality of arms" as a presumed element of a fair trial under Article 6(1) of the European Convention. The right to "equality of arms" implies that each party must be afforded a reasonable (procedural) opportunity to present his/her case under conditions that do not place him/her at a substantial disadvantage vis-à-vis his/her opponent. In this regard, some minor inequality that does not affect the fairness of the proceedings as a whole will not lead to a violation of

Article 6 of the European Convention (see Constitutional Court, Decision on Admissibility and Merits, no. *AP-749/20* of 5 October 2021, paragraph 49 with further references).

140. With respect to this part of the appellant's allegations, the Constitutional Court observes that the evidence whose lawfulness he contests as well as the evidence he claims was not adduced at the main trial – and on which the judgments are based – is the evidence on the basis of which the ordinary courts reached the conclusion of the legitimacy of the High Representative and his authority to enact laws. As the Appellate Panel states in the contested second instance judgment, the appellant attempted to reduce the existence and legitimacy of the High Representative to a "factual question" and to convince the ordinary courts with the proposed evidence that the criminal offence under Article 203a of the CC BiH did not exist because of the manner in which it was stipulated. In this connection, the Constitutional Court refers to its own conclusions from the previous paragraphs of this decision with respect to the status of the High Representative, from which it follows that the reasons of the contested decisions do not appear to be arbitrary in connection with the conducted evidentiary proceedings. The ordinary courts reached their conclusions on the existence of the criminal offence in the context of the appellant's acts as charged in a manner that is in accordance with the standards of the right to a fair trial. The determination of the appellant's criminal liability is a result of the evidentiary proceedings as a whole conducted at the oral (and public) main trial at which the appellant, that is, his defence counsel was given an opportunity to challenge all evidence of the prosecution. In addition, the appellant was heard as a witness at the main trial so the court had an opportunity to gain direct impressions as to his credibility and the credibility of his testimony. Therefore, the Constitutional Court holds that the condition of the "fairness" principle has been fulfilled in the present case, which principle requires that all evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument (see ECtHR, *Gülağacı v. Turkey*, decision of 13 April 2021, application no. 40259/07, § 36 with further references). Mindful of the foregoing, the Constitutional Court could not conclude that by the way in which they conducted the evidentiary proceedings in this criminal matter, the ordinary courts went beyond the scope of their discretion of free evaluation of the evidence adduced in the proceedings, or that "equality of arms" was compromised, which would have resulted in a violation of Article 6(1) of the European Convention.

b.4) Arbitrariness in application of law

141. In connection with the appellant's allegations whereby he substantially denies the perpetration of the criminal offence (the issues concerning the exclusion of the appellant's criminal liability, authentic interpretation of Annex 10 in the context of its originality/authenticity, and the presence of

the elements of the criminal offence of which he has been convicted), the Constitutional Court reiterates that according to the case law of the European Court, it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of national legislation. The ECtHR notes that it should not act as a fourth-instance body and will therefore not question under Article 6(1) of the European Convention (equivalent to Article II(3)(e) of the Constitution of BiH) the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (see ECtHR, *Ašćerić v. Bosnia and Herzegovina*, decision of 17 December 2019, application no. 52871/13, § 23 with further references). The Constitutional Court has consistently followed this case law in relation to decisions of ordinary courts (see, *inter alia*, Decision on Admissibility and Merits no. *AP-4033/20* of 22 June 2022, paras. 42 through 45 with further references, available at www.ustavnisud.ba). According to the case law of the European Court, Article 6 (1) of the European Convention obliges the national courts to indicate with sufficient clarity the grounds on which they base their decisions. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. Without requiring a detailed answer to every argument advanced by the complainant, this obligation presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings. It must be clear from the decision that the essential issues of the case have been addressed. Furthermore, the Constitutional Court has notes that it is not called upon to rule on the guilt or innocence of a person convicted by the national courts, that matter being within the competence of the domestic courts. However, it is within the Constitutional Court's jurisdiction to assess whether the proceedings as a whole, including the obligation of the courts to give reasons for their judgments, were in compliance with the European Convention (see ECtHR, *Rostomashvili v. Georgia*, judgment of 8 November 2018, application no. 13185/07, §§ 54, 55 and 58 with further references). Mindful of the foregoing, and in the context of the adduced evidence, the Constitutional Court first of all does not consider arbitrary the position of the Court of BiH that at the relevant time the appellant was absolutely capable of making decisions and comprehending their significance, that is, that he had to sign the contested decrees pursuant to Article 80(4) of the Constitution of Republika Srpska (see paragraph 39 of this decision). Furthermore, the Constitutional Court does not consider arbitrary the ordinary courts' finding that in the perpetration of the criminal offence the appellant acted with direct intent, and not as a result of an error of law or fact, as he claims. In that regard, the Constitutional Court repeats the fact emphasized previously that never in the course of the trial did the appellant deny that he had signed the contested decrees. Contrary to the appellant's allegations, there is also no arbitrariness in the findings of the ordinary courts that the present case did not concern an insignificant

act considering the nature and gravity of the offence - jeopardizing the legal certainty of citizens of Bosnia and Herzegovina - and the manner in which the offence was committed in the context of the appellant's intent to prevent the operation of the State institutions in the territory of the Republika Srpska (see paragraphs 41 and 42 of this decision). Finally, the Constitutional Court does not consider arbitrary the position of the Appellate Panel with respect to the interpretation of the terms *izvornik* \an d *original* in the context of Annex10 (which was adduced as evidence at the trial) and the appointment of Christian Schmidt as the High Representative (see paragraph 50 of this decision). The Constitutional Court therefore considers the appellant's allegations of an arbitrary application of the law to be unfounded.

142. In view of all the aforesaid, the Constitutional Court considers that in the reasons given in the disputed decisions the ordinary courts have not failed to address in detail all the appellant's arguments/complaints of essential importance to the outcome of the proceedings in the case in question and that the courts have given relevant and sufficient grounds in support of their determination. The Constitutional Court has also entertained other numerous submissions made in the appeal in the context of the right to a fair trial, but found that they do not raise issues requiring a separate detailed consideration.

143. Based on the foregoing, the Constitutional Court considers that the circumstances surrounding the case in question, in the light of the foregoing considerations and findings, do not give the impression that the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention was violated in the criminal proceedings against the appellant viewed as a whole.

c) Limits on the use of rights' restrictions under Article 18 of the European Convention in connection with the right to a fair trial

144. The appellant also argues that the case in question involves a politically motivated criminal trial against him, the purpose of which is to remove him from the political life. In the view of the Constitutional Court, this complaint raises exclusively issues under Article 18 of the European Convention taken in conjunction with Article 6 of the European Convention. This is also consistent with the recent case law of the European Court, considering that Article 18 of the European Convention is applicable in conjunction with Article 6, but not in conjunction with Article 7 of the European Convention (see *Ukraine v. Russia (Re Crimea)*, judgment of the Grand Chamber of 25 June 2024, applications nos. 20958/14 and 38334/18, §§ 1337-1341).

145. Article 18 of the European Convention reads:

> *The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.*

146. The European Court noted that in its task of establishing whether the domestic authorities had improper motives in restricting a politician's human rights, it must base its scrutiny on the specific facts of the individual case in question and needs to treat with particular caution statements that may have been influenced by political considerations (see *Saakashvili v. Georgia*, judgment of 23 May 2024, applications nos. 6232/20 and 22394/20, § 161 with further references). According to the jurisprudence of the European Court, the fact that the accused is a political figure, as well as statements by other politicians regarding the criminal charge, are not sufficient to conclude that the domestic courts dealing with the person's criminal case were driven by the improper ulterior purpose of removing him from the political scene. This is only the case if there is evidence that the judicial authority was not sufficiently independent (compare *Batiashvili v. Georgia*, judgment of 10 October 2019, application no. 8284/07, § 102 with further references). As explained above, no such evidence was presented in the appellant's case.

147. With regard to the general political context, in view of various political activities that the appellant undertook to refute the jurisdiction of the highest judicial instances in Bosnia and Herzegovina (including the High Representative), the Constitutional Court notes that according to the European Court's case law high political status does not, in principle, grant immunity (compare, *ibid* , *Merabishvili*, § 323, and *Ugulava v. Georgia*, judgment of 9 February 2023, application no. 5432/15, § 128 with further references). It is legitimate in a country governed by the principle of rule of law to initiate criminal proceedings against individuals reasonably suspected of committing a criminal offence, even if they are at the same time in the centre of controversial political debates. This, of course, implies i) the existence of facts showing in the case in question that charges are serious and substantiated; ii) that there was direct and congruent indirect evidence in the case file, iii) that the ordinary courts conducted a full adversarial procedure during which the appellant and his counsel were able to confront all the principal witnesses and otherwise refute the evidence against the appellant and iv) decisions of the domestic courts were properly reasoned. The Constitutional Court has scrutinized these circumstances and not found any violation of the rights of the applicant in the case at hand (see above). Therefore, in the Constitutional Court's view, the Court of BiH's position from the impugned first-instance judgment dismissing as unfounded the appellant's argument that the present case involved a politically rigged trial and his political persecution and that the purpose of the

proceedings was to eliminate the appellant from politics (see paragraph 39 of this decision) is not arbitrary.

148. Based on the foregoing, in particular the reasons given by the ordinary courts in the disputed decisions, the Constitutional Court considers that the authorities acted in good faith when deciding to bring the appellant to justice for his unlawful actions within the meaning of Article 203a of the CC BiH. In the absence of sufficient evidence to the contrary, the Constitutional Court dismisses as unfounded the appellant's allegation of an ulterior motive. Consequently, there has been no violation of Article 18 of the European Convention in conjunction with the right to a fair trial in the case in question.

VIII. Conclusion

149. The Constitutional Court concludes that there has been no violation of the appellant's right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 paragraph 1 of the European Convention in the criminal proceedings (viewed as whole) in which the appellant was found guilty of the criminal offence of failure to implement decisions of the High Representative under Article 203a of the CC BiH. In the disputed decisions the ordinary courts gave clear and precise explanations in support of their findings and determination, from which it follows that all the standards of the right to a fair trial were observed during the criminal proceedings against the appellant (in the part pertaining to the conducted evidentiary procedure, equality of arms, public nature of the trial before a court of appropriate jurisdiction and the application of law). This also implied that the appellant was tried by an independent and impartial court at two judicial instances, considering that - from the viewpoint of a reasonable, fair-minded and informed observer – there is no objectified evidence that the circumstances that preceded the confirmation of the indictment and the adoption of the impugned first-instance judgment could impair the capacity of Judge J. Ć.-D. to review the indictment impartially or the capacity of Judge S. U. to deliver the first-instance judgment.

150. Furthermore, there has been no violation of the appellant's right under Article 7 of the European Convention because a lawful and clearly formulated legal ground for the appellant's conviction and the security measure existed in the case in question. In terms of the security measure, the evidence presented during the criminal proceedings demonstrated that the measure meets the accessibility and foreseeability requirements.

151. Lastly, there has been no violation of the appellant's right under Article 18 of the European Convention in conjunction with the right to a trial, considering that there is no proof of the existence of

an ulterior motive for criminal prosecution of the appellant and that the only motive was to bring him to justice for committing unlawful actions within the meaning of Article 203a of the CC BiH.

152. Pursuant to Article 18(3)(h), Article 18(4), Article 57(2)(b), Article 58 and Article 59(1) and (3) of the Rules of the Constitutional Court, the Constitutional Court has decided as stated in the enacting clause above.

153. In the light of the Constitutional Court's determination in the present case, there is no need to address the appellant's motion for an interim measure.

154. Pursuant to Article VI(5) of the Constitution of Bosnia and Herzegovina, decisions of the Constitutional Court are final and binding.