

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(a) of the Constitution of Bosnia and Herzegovina, Article 57(2)(b) and Article 59(1) and (3) of the Rules of the Constitutional Court of Bosnia and Herzegovina – Revised text (*the Official Gazette of Bosnia and Herzegovina*, 94/14), in Plenary and composed of the following judges:

Mr. Mato Tadić, President,
Mr. Tudor Pantiru, Vice-President
Mr. Miodrag Simović, Vice-President
Mr. Mirsad Ćeman, Vice-President
Mr. Valerija Galić,
Ms. Seada Palavrić,
Mr. Zlatko M. Knežević,
Ms. Angelika Nußberger, and
Ms. Helen Keller.

Having deliberated on the request filed by **Mr. Milorad Dodik**, a Member of the Presidency of Bosnia and Herzegovina, in the Case No. **U 11/19**, at its session 15 July 2021, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

In deciding on the request of **Mr. Milorad Dodik**, Member of the Presidency of Bosnia and Herzegovina, for review of the constitutionality of the **Law Amending the Law on the Flag of Bosnia and Herzegovina** (*the Official Gazette of Bosnia and Herzegovina*, 23/04),

it is hereby established that the **Law Amending the Law on the Flag of Bosnia and Herzegovina** (*the Official Gazette of Bosnia and Herzegovina*, 23/04) is compatible with Article I(6) of the Constitution of Bosnia and Herzegovina.

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

REASONING

I. Introduction

1. On 8 November 2019, Mr. Milorad Dodik, Member of the Presidency of Bosnia and Herzegovina filed a request with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) for review of the constitutionality of the Law Amending the Law on the Flag of Bosnia and Herzegovina (*the Official Gazette of Bosnia and Herzegovina*, 23/04).

II. Procedure before the Constitutional Court

2. Pursuant to Article 23 of the Rules of the Constitutional Court, on 12 November 2019, the Parliamentary Assembly of Bosnia and Herzegovina, as the authority that adopted the challenged act, was requested to submit a response to the request.
3. On 2 December 2019, the Presidency of Bosnia and Herzegovina (“the Presidency”) and the Parliamentary Assembly of Bosnia and Herzegovina (“the Parliamentary Assembly”) were requested to submit information on whether the Presidency, after the adoption of the Law Amending the Law on the Flag of Bosnia and Herzegovina, had adopted an act to approve that Law for the purposes of Article I(6) of the Constitution of Bosnia and Herzegovina.
4. The House of Representatives submitted its response on behalf of the Parliamentary Assembly on 11 December 2019, and the Constitutional-Legal Commissions submitted their respective responses on behalf of the House of Representative and House of Peoples on 19 and 23 December 2019. The Presidency failed to submit its response to the request.

III. Facts of the Case

a) Allegations from the request

5. The applicant claims that the Law Amending the Law on the Flag on Bosnia and Herzegovina, which was adopted by the Parliamentary Assembly of Bosnia and Herzegovina in 2004, was not approved by the Presidency within the meaning of Article I(6) of the Constitution of Bosnia and Herzegovina. Therefore, according to the applicant, the Law in question is unconstitutional.
6. The applicant further alleges that the Law on the Flag of Bosnia and Herzegovina (*the Official Gazette of Bosnia and Herzegovina*, 19/01) was adopted by the Parliamentary Assembly of Bosnia and Herzegovina and approved by the Presidency of Bosnia and Herzegovina by a Decision to Approve the Design and Shape of the Flag of Bosnia and Herzegovina. Therefore, the provision of Article I(6) of the Constitution of Bosnia and Herzegovina was complied with.
7. The applicant also claims that none of the amendments included in the Law Amending the Law on the Flag of Bosnia and Herzegovina is compatible with the Constitution of Bosnia and Herzegovina. The reason being that the text of that Law, which was adopted by the Parliamentary Assembly of Bosnia and Herzegovina, is not in force, for it has not been approved by the Presidency.

b) Reply to the request

8. In its response to the request, the House of Representatives alleges that they forwarded the letter of the Constitutional Court to the Constitutional-Legal Commission of that House to give it an opportunity to express its opinion on the request. The House of Representatives also stressed that the House of Representatives of the Parliamentary Assembly had not appointed a Constitutional-Legal Commission yet.
9. In its response to the request, the Constitutional-Legal Commission of the House of Representatives of the Parliamentary Assembly alleges, *inter alia*, that “after a discussion it unanimously established that the Parliamentary Assembly, in accordance with its responsibilities referred to in Article IV(4) of the Constitution of Bosnia and Herzegovina, had adopted the Law Amending the Law on the Flag of Bosnia and Herzegovina (*the Official Gazette of Bosnia and Herzegovina*, 23/04).
10. In its response to the request, the Constitutional-Legal Commission of the House of Peoples of the Parliamentary Assembly alleges, *inter alia*, as follows: “Having considered your request for giving a response to the request for review of constitutionality and the letter related to the request of the Constitutional Court of Bosnia and Herzegovina, the Constitutional-Legal Commission established the following: 1. The Law Amending the Law on the Flag of Bosnia and Herzegovina was adopted by the Parliamentary Assembly of Bosnia and Herzegovina and it was published in the *Official Gazette of Bosnia and Herzegovina*, 23/04)...; Following a discussion, the Constitutional-Legal Commission unanimously decided to leave it up to the Constitutional Court of Bosnia and Herzegovina to decide on the request”.

IV. Relevant Law

11. The **Constitution of Bosnia and Herzegovina**, in its relevant part, reads as follows:

Article I(6)

Symbols

Bosnia and Herzegovina shall have such symbols as are decided by its Parliamentary Assembly and approved by the Presidency.

Article VI(3)(a)

The Constitutional Court shall uphold this Constitution.

- a) *The Constitutional Court shall have exclusive jurisdiction to decide any dispute that arises under this Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina, including but not limited to:*
- *Whether an Entity's decision to establish a special parallel relationship with a neighbouring state is consistent with this Constitution, including provisions concerning the sovereignty and territorial integrity of Bosnia and Herzegovina.*
 - *Whether any provision of an Entity's constitution or law is consistent with this Constitution.*

Disputes may be referred only by a member of the Presidency, by the Chair of the Council of Ministers, by the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, by one-fourth of the members of either chamber of the Parliamentary Assembly, or by one-fourth of either chamber of a legislature of an Entity.

Article VI(5)

Decisions of the Constitutional Court shall be final and binding.

12. The **Law on the Flag of Bosnia and Herzegovina** (*Official Gazette of Bosnia and Herzegovina*, 19/01), in its relevant part, reads:

Article 1

This Law regulates the shape and design of the flag of Bosnia and Herzegovina, as well as its display at the level of the State of Bosnia and Herzegovina.

Article 2

The flag of Bosnia and Herzegovina represents Bosnia and Herzegovina and is displayed as the symbol of Bosnia and Herzegovina.

Article 3

The flag of Bosnia and Herzegovina is of a blue colour. Right of centre there is a triangle of yellow colour. Running parallel to the left side of this triangle is a row of white five pointed stars in a line from the top edge of the flag to the bottom edge. The flag of Bosnia and Herzegovina is of a rectangular shape. The relationship between the length and width is 1:2.

Article 5

The flag of Bosnia and Herzegovina shall be officially displayed at the level of the State of Bosnia and Herzegovina in the following ways:

- a) On all buildings of the Presidency of Bosnia and Herzegovina, the Council of Ministers and its three Ministries , the Parliamentary Assembly of Bosnia and Herzegovina, the Constitutional Court of Bosnia and Herzegovina, the Standing Committee of Military Matters, the Commission of Human Rights, the Central Bank and the Permanent Election Commission following its formation and on any other building of the common institutions or institution which is administered by or reporting to the common institutions.*
- b) On all buildings of Embassies and Consulates of Bosnia and Herzegovina.*
- c) On official occasions of the departure of the members of the Presidency of Bosnia and Herzegovina abroad and on their return from abroad.*
- d) On official means of transport used by the members of the Presidency of Bosnia and Herzegovina.*
- e) On all occasions of official international visits, competitions and other gatherings (political, scientific, cultural - artistic, sports and others) at which Bosnia and Herzegovina is participating or is represented.*
- f) At the border crossings of Bosnia and Herzegovina*

In all cases referred to in the previous paragraph, no other flag from Bosnia and Herzegovina shall be displayed together with the flag of Bosnia Herzegovina.

Official display of the flag in the Entities and unofficial use of the flag will be regulated by a separate law.

Article 6

Disrespect for the flag of Bosnia and Herzegovina is a punishable offense. Necessary legislation shall be adopted by the Entities within 2 months from the entry into force of this Law.

Article 7

This Law shall be published in the “Official Gazette of Bosnia and Herzegovina” and in the official gazettes of the Entities.

13. The **Decision to Approve the Design and Shape of the Flag of Bosnia and Herzegovina by the Presidency of Bosnia and Herzegovina** (*Official Gazette of Bosnia and Herzegovina*, 28/01) reads:

I.

Design and shape of the flag of Bosnia and Herzegovina, which were determined in the Law on the Flag of Bosnia and Herzegovina by the Parliamentary Assembly of Bosnia and Herzegovina is hereby approved, the Official Gazette of BiH, 19, of 3 August 2001.

II.

This Decision shall come into force on the date of its publication in the Official Gazette of BiH.

14. The **Law Amending the Law on the Flag of Bosnia and Herzegovina** (*Official Gazette of Bosnia and Herzegovina*, 23/04) reads:

Article 1

In Article 5(1)(a) of the Law on the Flag of Bosnia and Herzegovina (Official Gazette of BiH, 19/01) the words “its three Ministries” shall be replaced with the words “its Ministries; after the words “the Constitutional Court of Bosnia and Herzegovina”, the following words shall be added: “the Court of Bosnia and Herzegovina, Prosecutor’s Office of Bosnia and Herzegovina”; the words “the Permanent Election Commission following its formation” shall be replaced with the words “the Election Commission of Bosnia and Herzegovina”.

In paragraph 1 of the same Article, item g) shall be added to read:

“At the entrances of the facilities of the Armed Forces of Bosnia and Herzegovina”.

Paragraph 2 of Article 5 shall be amended to read:

In all cases referred to in the previous paragraph, with the exception of item g), no other flag from Bosnia and Herzegovina shall be displayed together with the flag of Bosnia and Herzegovina.

Article 2

Article 6 shall be amended to read:

“The use of the flag of Bosnia and Herzegovina in contravention of the provisions of Articles 3 and 4 of the Law and the failure to display the flag of Bosnia and Herzegovina in compliance with 5 of the Law shall constitute a minor offence for which a fine shall be imposed on:

- 1. Governmental body, company or any other legal person in the amount ranging from 1,500 KM to 7,500 KM;*
- 2. Responsible person within the governmental body, company or any other legal person in the amount ranging from 300 KM to 750 KM;*
- 3. Person who performs an independent economic activity in the amount ranging from 300 KM to 750 KM;*
- 4. Citizen in the amount ranging from 100 KM to 400 KM.*

A protective measure of seizure of items used for the perpetration of minor offence shall be imposed on the offenders of the minor offence referred to in paragraph 1 of this Article.”

Article 3

This Law shall come into force on eight day from the date of its publication in the Official Gazette of Bosnia and Herzegovina.

V. Admissibility

15. In examining the admissibility of the request the Constitutional Court invoked the provisions of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina.

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

The Constitutional Court shall have exclusive jurisdiction to decide any dispute that arises under this Constitution between the Entities or between Bosnia and Herzegovina and an

Entity or Entities, or between institutions of Bosnia and Herzegovina, including but not limited to:

- Whether an Entity's decision to establish a special parallel relationship with a neighbouring state is consistent with this Constitution, including provisions concerning the sovereignty and territorial integrity of Bosnia and Herzegovina.

- Whether any provision of an Entity's constitution or law is consistent with this Constitution. Disputes may be referred only by a member of the Presidency, by the Chair of the Council of Ministers, by the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, by one-fourth of the members of either chamber of the Parliamentary Assembly, or by one-fourth of either chamber of a legislature of an Entity.

16. In the present case, it is indisputable that for the purposes of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina, the Constitutional Court has jurisdiction to decide on the constitutionality of a law at the State level, more specifically, on the Law Amending the Law on the Flag of Bosnia and Herzegovina. In addition, the request for review of constitutionality was filed by a member of the Presidency, which means that the request was filed by an authorized persons within the meaning of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina. Bearing in mind the provisions of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina and Article 19 of the Rules of the Constitutional Court, the Constitutional Court establishes that the request is admissible, as it was lodged by an authorized person and that there is not a single reason under Article 19 of the Rules of the Constitutional Court rendering this request inadmissible.

VI. Merits

17. The applicant claims that the Law Amending the Law on the Flag of Bosnia and Herzegovina is not compatible with Article I(6) of the Constitution of Bosnia and Herzegovina, as the Presidency did not approve it after the Parliamentary Assembly adopted it. The Constitutional Court recalls that Article 3 of the Law in question prescribes that it shall come into force on the eighth day from the date of its publication in the *Official Gazette of Bosnia and Herzegovina*. The Law Amending the Law on the Flag of Bosnia and Herzegovina was published in the *Official Gazette of Bosnia and Herzegovina*, 23/04, of 25 May 2005, which means that it came into force.

18. The Constitutional Court recalls that symbols in constitutional context were the subject of Decision No. U 4/04. In that decision, the Constitutional Court emphasized, *inter alia*, as follows: "...the symbols are closely related to the fostering and preservation of tradition, culture, distinctive

characteristics of every people and that they have an influence on bringing them together and joining in one idea and one belief. No doubt that the symbols convey certain emotions and meaning which those who recognize their history, tradition and culture in those symbols experience in a specific way. The symbols are not pure images and decorations but each of them carries certain deeper and hidden meaning.... Moreover, a flag represents the symbol which sublimates achievements, hope and ideals of all citizens of a country” (see, Constitutional Court, Partial Decision on Merits, of 31 March 2006, paragraph 113, published in the *Official Gazette of Bosnia and Herzegovina*, 47/06, available at www.ustavnisud.ba).

19. Given the fact that Article I(6) of the Constitution of Bosnia and Herzegovina reads: “Bosnia and Herzegovina shall have such symbols as are decided by its Parliamentary Assembly and approved by the Presidency”, it is indisputable that the Constitution of Bosnia and Herzegovina provides for joint competence of the Parliamentary Assembly and Presidency in determining the symbols Bosnia and Herzegovina. The joint competence means that the Parliamentary Assembly shall adopt a decision on symbols and, in order for that decision to be compatible with the Constitution of Bosnia and Herzegovina, it must be approved by the Presidency.

20. The Constitutional Court recalls that the Parliamentary Assembly, at the session of the House of Representatives held on 6 June 2001 and at the session of the House of Peoples held on 23 May 2001, adopted the Law on the Flag of Bosnia and Herzegovina. Article 1 of that Law stipulates: “This Law regulates the shape and design of the flag of Bosnia and Herzegovina, as well as its display at the level of the State of Bosnia and Herzegovina”. Article 3 of the same Law determines design and shape of the flag, and Articles 5 and 6 prescribe the place and manner in which the flag shall be displayed, and stipulate that disrespect for the flag of Bosnia and Herzegovina is a punishable offense. Article 7 stipulates that the Law shall be published in the *Official Gazette of Bosnia and Herzegovina and in the official gazettes of the Entities*. The Law on the Flag of Bosnia and Herzegovina was published in *Official Gazette of Bosnia and Herzegovina*, 19/01, of 3 August 2001.

21. At the session held on 12 October 2001, the Presidency adopted a Decision to Approve the Design and Shape of the Flag of Bosnia and Herzegovina. Article I. of that Decision reads: “The design and shape of the flag of Bosnia and Herzegovina, which was determined in the Law on the Flag of Bosnia and Herzegovina by the Parliamentary Assembly of Bosnia and Herzegovina is hereby approved, the *Official Gazette of BiH*, 19 of 3 August 2001, and Article II of that Decision reads: “This Decision shall enter into force on the date of its publication in the *Official Gazette of*

BiH'. The Decision in question was published in the *Official Gazette of BiH*, 28/01, of 13 November 2001.

22. Subsequently, the Parliamentary Assembly adopted the Law Amending the Law on the Flag of Bosnia and Herzegovina. That Law came into force on the eighth day from the date of its publication in the *Official Gazette of Bosnia and Herzegovina*. No decision of the Presidency in relation to that Law has been published in the *Official Gazette of BiH*, and the Presidency did not submit any response to the Constitutional Court's request for information on whether the Presidency had adopted any act to approve that Law.

23. As to the present request, the Constitutional Court notes that the case does not relate to a Decision or a Law of the Parliamentary Assembly that determines the flag as a symbol of Bosnia and Herzegovina in terms of the type, design and shape of that symbol (given the fact that it is determined in the Law on the Flag of Bosnia and Herzegovina), but it concerns the Law Amending the Law on the Flag of Bosnia and Herzegovina, which regulates the issue of display of the flag of Bosnia and Herzegovina in a different way and stipulates punishable offence in case of disrespect for specific law provisions. The fact is that the Law on the Flag of Bosnia and Herzegovina, as a unique law, regulates also the issues of the flag as a symbol, its design and shape, but also the issues of its display and sanctions in case of disrespect for specific law provisions. However, in terms of Article I(6) of the Constitution of Bosnia and Herzegovina, the joint competence of the Parliamentary Assembly and Presidency exclusively relates to the type, design and shape, *i.e.* the content of the symbols of Bosnia and Herzegovina. Other issues, such as the manner and obligation to display it, sanctions in case of disrespect for specific law provisions and other issues fall within the responsibilities of the Parliamentary Assembly, which may regulate them by a unique law, as mentioned above, or by a special law.

24. In view of the above, the Constitutional Court concludes that the Law Amending the Law on the Flag of Bosnia and Herzegovina, which was adopted by the Parliamentary Assembly and which came into force on the eighth day from the date of its publication in the *Official Gazette of BiH*, is compatible with Article I(6) of the Constitution of Bosnia and Herzegovina.

VII. Conclusion

25. The Constitutional Court concludes that the Law Amending the Law on the Flag of Bosnia and Herzegovina (*the Official Gazette of Bosnia and Herzegovina*, 23/04) is compatible with Article

I(6) of the Constitution of Bosnia and Herzegovina, as it stipulates the display of the flag and the responsibility in case of disrespect for specific law provisions, which is an exclusive competence of the Parliamentary Assembly. Therefore, it does not determine which and what kind of symbols Bosnia and Herzegovina shall have, which is a joint competence of the Parliamentary Assembly and the Presidency. Thus, following the adoption of the Law by the Parliamentary Assembly, unlike the allegations of the applicant, the approval of that Law by the Presidency is not necessary in terms of Article I(6) of the Constitution of Bosnia and Herzegovina.

26. Pursuant to Article 59(1) and (3) of the Rules of the Constitutional Court, the Constitutional Court decided as stated in the enacting clause of the present Decision.

27. Pursuant to Article 43 of the Rules of the Constitutional Court, a Separate Dissenting Opinion of Vice-Presidents Miodrag Simović and a Separate Dissenting Opinion of Judge Zlatko M. Knežević are annexed to the present Decision.

28. In view of Article VI(5) of the Constitution of Bosnia and Herzegovina, the decisions of the Constitutional Court shall be final and binding.

Mato Tadić
President
Constitutional Court of Bosnia and Herzegovina

**SEPARATE DISSENTING OPINION OF VICE-PRESIDENT
MIODRAG SIMOVIĆ**

At the 122nd plenary session of 15 July 2021, in the case no. U-11/19, the Constitutional Court, by a majority vote, adopted a decision establishing that the Law Amending the Law on the Flag of Bosnia and Herzegovina (*the Official Gazette of Bosnia and Herzegovina*, 23/02) is compatible with Article I(6) of the Constitution of Bosnia and Herzegovina. I did not support this decision of the Court, which was adopted upon a request lodged by Milorad Dodik, a member of the Presidency of Bosnia and Herzegovina, for the following reasons:

(1) The principle of constitutionality requires the legislature to comply with the norms contained in the constitution in its regular legislative activity. In order to exercise this principle, there is a function of the constitutional judiciary or review of constitutionality. It sanctions a violation of the constitution as the supreme law. In the event of a conflict between the constitution and a law, either the constitution will take precedence over the conflicting law or the ordinary law will change the constitution. A middle solution is not possible.

(2) Article I(6) of the Constitution of Bosnia and Herzegovina stipulates that “Bosnia and Herzegovina shall have such symbols as are decided by its Parliamentary Assembly and approved by the Presidency.” Both conditions for determining the symbols of the State of Bosnia and Herzegovina are therefore set cumulatively: a) a decision is required (it does not have to be just a law, but also another decision) of the Parliamentary Assembly of BiH and b) approval of the Presidency of BiH. In the present case, the constitutional obligation, relating to the approval by the Presidency of BiH, was not complied with.

(3) The importance of complying with the constitutional provision of Article I(6) also stems from the fact that the authors of the Constitution of Bosnia and Herzegovina in Dayton failed to define state symbols constitutionally. The signatories agreed to authorize the Parliamentary Assembly of BiH to decide on the symbols, but with the restriction that the Presidency of BiH must approve the decision. As is well known, it was not possible to reach an agreement on common state symbols in the BiH Parliamentary Assembly for years. Thus, on 3 February 1998, the High Representative for BiH simply imposed the symbols (Decision imposing the Law on the Flag of BiH - *Official Gazette of BiH*, 1/98). In addition, state symbols, such as the flag, coat of arms and anthem, are usually part of the identification with the state.

(4) The decision of the Constitutional Court also calls into question the constitutional competences of the Presidency of Bosnia and Herzegovina under Article V(3) of the Constitution of Bosnia and Herzegovina, referred to in the subchapter correctly titled “Powers”. However, despite that title, this paragraph does not contain an exhaustive list of powers of the Presidency. Also, the Presidency has the constitutional powers granted to it under Article V(4) and (5), as well as under other articles of the BiH Constitution, as set out below. One of those competences is set out in Article I(6) of the Constitution.

(5) The competencies of the Presidency of Bosnia and Herzegovina listed in paragraph 3 of Article 5 of the Constitution are divided into two categories - those that require a “decision” of the Presidency and those that involve actions of lesser legal

significance than decision-making such as “reporting”, “coordinating” and “proposing”. The competence referred to in Article I (6) of the Constitution is of particular importance because it includes an “approval” by the Presidency of Bosnia and Herzegovina, which is of a binding nature.

(6) Certainly, the Constitutional Court is not bound by the standpoint of the doctrine, but for its part, it is obliged to formulate its own interpretation that will oppose, by convincing constitutional and legal arguments, the “wrong” doctrinal interpretation of constitutional law. Instead of such a response, the majority position of the Constitutional Court followed a second, more comfortable path. Hesitating between “judicial restraint” and “judicial activism”, the Constitutional Court made a mistake. Therefore, the Court, exaggerating in its own “judicial restraint”, impressed by the political significance of the constitutional dispute, apparently relented before the obligation to get into the heart of the constitutional dispute in question.

To conclude, if the Constitutional Court, in this case, had relied on the Constitution of Bosnia and Herzegovina and the undivided standpoint of BiH constitutional doctrine, it would have certainly considered that it was about a binding rule under Article I(6), which has a constitutional character. Instead of the decision determining the unconstitutionality in the procedure of passing the impugned law, the Court essentially made the decision dismissing the request for review of the constitutionality of the law in question. It is evident that in this case, the role of the Constitutional Court does not correspond to the one assigned to it by the constitution authors.

SEPARATE DISSENTING OPINION OF JUDGE ZLATKO M. KNEŽEVIĆ

At its plenary session held on 15 and 16 July 2021, the Constitutional Court of Bosnia and Herzegovina, deciding on the request for review of the constitutionality of

the Law on Amendments to the Law on the Flag of Bosnia and Herzegovina (*Official Gazette of BiH* 23/04), lodged by authorized applicant Milorad Dodik, a member of the Presidency of Bosnia and Herzegovina, adopted a decision establishing that the challenged Law on Amendments is in accordance with the Constitution of Bosnia and Herzegovina, *i.e.* with Article I(6) of the Constitution.

I did not accept the decision of the majority and voted against it for the following reasons:

- It is indisputable that the Law on the Flag of Bosnia and Herzegovina (*Official Gazette*, 19/01) was adopted in accordance with the provision of the Constitution of Bosnia and Herzegovina governing the matter in question, *i.e.* with Article I(6). Article requires that after the adoption of the decision/law on the flag by the Parliamentary Assembly, the decision/law shall be approved by the Presidency of Bosnia and Herzegovina. That was done, and it is reasoned in detail in Decision U-11/19.
- However, the Law on Amendments to the Law on the Flag of Bosnia and Herzegovina was **NOT** passed in the same way and following the same procedure, which is actually indicated by the authorized applicant, given that the Presidency of Bosnia and Herzegovina never approved the impugned Law. The same is also stated in detail in the Decision no. U-11/19.
- The conclusion made by the majority is that the authority of the Presidency of Bosnia and Herzegovina refers to the type, design, shape and content of the flag and that, therefore, the Parliamentary Assembly is authorized to pass amendments but that the Presidency does not have the authority to approve the decision/law, *i.e.* the provision of Article I(6) does not refer to amendments to the law, for it concerns the manner and obligation to display the symbols, sanctions for non-compliance, and some other issues.
- I consider that the decision of the Court, as such, is wrong for at least two substantial reasons:
 1. According to the reasoning of the decision, the basic text of the law and its possible amendments do not have the same **legal nature** or the **same legal force**. It is a well-known fact that the law and its amendments **must** be passed in the same way, as they have the same force and effect. Although the reasoning of the decision (paragraph 19) acknowledges that this matter concerns a shared competence between the Parliamentary Assembly and the Presidency, there is no argument to **transfer** this shared competence in favour of only one holder of the shared authority (Parliamentary Assembly). All the more so because Article I(6) of the Constitution concerns symbols

(and the flag is a symbol) determined by the Parliamentary Assembly and confirmed by the Presidency. Therefore, this is about a basic law and all its amendments must be adopted in the same way and following the same procedure, as provided by the Constitution. Perhaps part of the reasoning in paragraph 23 of the Decision would have its *ratio* if it were some other law that would regulate the manner and obligation of display, but even then, there would be serious doubts as to the correctness of such a conclusion.

2. In my view, the second wrong conclusion in the decision is even more serious. The Presidency of Bosnia and Herzegovina has its exclusive competence determined by the Constitution, and no authority can diminish or remove the competence of the Presidency by its decision. The Constitutional Court can and ought to interpret the provisions of the Constitution, but it can in no way engage into decision-making by which it would diminish the competence of the Presidency. Such a position introduces the possibility that some law/decision of another body diminishes the competence of the Presidency. It is indisputable that decision-making on some other issues can be handed over to the competence of the Presidency by law, but it can never be diminished. The competence of the highest executive authority (the Presidency, according to our Constitution) is always interpreted in constitutional disputes in such a way that the competences determined by the Constitution are always strictly complied with. In the present case, it is not about the competence that is **derived from** some other laws, but about an express constitutional norm. In my view, the Presidency, as an institution in whole, has no interest in having its competencies diminished. I therefore cannot accept the competences of the Presidency to be diminished, for that breaches an explicit constitutional norm.
3. For those reasons, I am unable to accept the proposed decision and I therefore voted against it.