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)(e) and Article 59(1) and (2) and Article 64(1) and (4) 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:

Ms. Seada Palavrić, President
Ms. Valerija Galić, Vice-President
Ms. Angelika Nussberger, Vice-President
Mr. Mirsad Ćeman,
Ms. Helen Keller,
Mr. Ledi Bianku, and
Mr. Marin Vukoja

Having deliberated on the request of **Mr. Denis Zvizdić, First Deputy Chair of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, at the time of filing the request for adoption of an interim measure,** in case no. **U-12/24**, at the session held on 24 July 2024, adopted the following

DECISION ON INTERIM MEASURE

The request for an interim measure filed by **Denis Zvizdić, First Deputy Chair of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina**, is hereby granted.

The Election Law of the Republika Srpska (*Official Gazette of RS*, 61/24) is temporarily rendered ineffective.

This decision shall enter into force immediately and shall produce legal effect from the day of the entering into force of the Election Law of the Republika Srpska (*Official Gazette of RS*, 61/24) pending the final decision by the Constitutional Court of Bosnia and Herzegovina on the filed request.

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

1. On 17 July 2024, Mr. Denis Zvizdić, First Deputy Chair of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina ("the applicant"), filed a request with the Constitutional Court of Bosnia and Herzegovina ("the Constitutional Court") for a review of constitutionality of the Election Law of the Republika Srpska (*Official Gazette of RS*, 61/24, "the RS Election Law").

2. Pursuant to Article 64 of the Rules of the Constitutional Court, the applicant also filed a request for an interim measure whereby the Constitutional Court would temporarily render ineffective the RS Election Law pending the final decision of the Constitutional Court.

Relevant facts

3. In August 2001, the Parliamentary Assembly of Bosnia and Herzegovina adopted the Election Law of Bosnia and Herzegovina ("the BiH Election Law") which was subsequently amended. After the adoption of the BiH Election Law, with a view to harmonizing the electoral legislative framework and complying with the need that all laws should follow the fundamental principles and standards established by the BiH Election Law the following laws were adopted in the Entities: the RS Election Law (*Official Gazette of RS*, 34/02, 35/03, 24/04, 19/05, 24/12, 94/12 – Decision of the Constitutional Court of Bosnia and Herzegovina, 109/12, 45/18 and 18/20); the Law on the Establishment of Bodies for the Conduct of Elections in the Federation of Bosnia and Herzegovina (*Official Gazette of the Federation of Bosnia and Herzegovina*, 26/02); and the Election Law of the Brčko District of Bosnia and Herzegovina (*Official Gazette of the Brčko District of Bosnia and Herzegovina*, 17/08 and 43/08).

4. In its Decision on Admissibility and Merits number *U-4/12* of 26 May 2012 (available at www.ustavnisud.ba), the Constitutional Court partially granted a request for review of constitutionality and determined that the provisions of Article 4(1)(1) and Article 6(1) and (3) of the Law on Amendments to the Election Law of the Republika Srpska (*Official Gazette of RS,* 24/12) are not consistent with Articles 1(2) and III(3)(b) of the Constitution of Bosnia and Herzegovina. The Constitutional Court concluded that the aforementioned provisions violate the constitutional principle that the Entities and other administrative units in Bosnia and Herzegovina are obliged to adhere, among other things, to the "decisions of the institutions of Bosnia and Herzegovina". The Constitutional Court held that the referenced provisions were contrary to the principles of the corresponding provisions of the BiH Election Law, which violates the rule of law under Article 1(2) of the Constitution of Bosnia and Herzegovina. However, the Constitutional Court concluded that the provisions of Article 3(2) and (4) and Article 11 of the Law on Amendments to the Election Law of the Republika Srpska (*Official Gazette of RS,* 24/12) were consistent with Articles I(2) and III(3)(b) of the Constitution of Bosnia and Herzegovina, since the content of these provisions follows the general principles established by the BiH Election Law as a "decision of the Institutions of Bosnia and Herzegovina", which does not bring into question the principle of the rule of law.

5. Pursuant to Article 1.14 and 2.9(1)(2.a) of the BiH Election Law, the Central Election Commission of Bosnia and Herzegovina ("the CEC") passed the Decision on announcing and conducting local elections in 2024, no. 05-1-07-1-619-1/24 of 8 May 2024 (available at www.izbori.ba). Under the Decision, the direct local elections were announced for, among other, municipal assemblies and city assemblies in the Republika Srpska and for municipal and city

mayors in Bosnia and Herzegovina. It was decided that the local elections will be held on 6 October 2024.

6. At its session held on 19 April 2024, the National Assembly of the Republika Srpska ("the National Assembly") passed the RS Election Law. After the completed procedure for the protection of vital national interest, the disputed Law was promulgated by the Decree on the promulgation of the RS Election Law (*Official Gazette of RS*, 61/24, 9 July 2024) and entered into force on 17 July 2024.

Allegations in the request

7. The applicant contends that the RS Election Law is in contravention of the provisions of Articles I(2) and III(3)(b) of the Constitution of Bosnia and Herzegovina.

a) Complaints about inconsistency of the RS Election Law with Article I(2) of the Constitution of Bosnia and Herzegovina

8. When substantiating the allegations of a violation of the principle of rule of law under Article I(2) of the Constitution of Bosnia and Herzegovina, the applicant stated that the National Assembly is obligated to respect a hierarchy of legal acts and that it does not have a constitutional authority to adopt laws or any other regulation that are inconsistent with the Constitution of Bosnia and Herzegovina and state-level laws or assume responsibilities of state-level institutions. In that connection, the applicant stated that the challenged law governs a number of issues such as "[…] the work of election bodies; voting lists/rolls; verification and candidacy for elections; conduct of elections; protection of electoral rights; rules of conduct during an election campaign; election of President and Vice-President of the Republika Srpska; election of delegates to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina from the Republika Srpska; repeated, postponed and early elections; funding of an election campaign; media during an election campaign and election observers." The applicant points out that these issues are not disputable provided that they elaborate on certain provisions of the BiH Election Law. However, the applicant points out that the BiH Election Law already governs all those issues and that the challenged law governs the majority of these issues in a clearly different way, that is, that the provisions of the RS Election Law are in conflict with the BiH Election Law.

9. The applicant adds that that was not the case with the previous RS Election Law that, in terms of volume and content, was much smaller and addressed only certain issues "[…] such as election bodies, election activities of political parties and independent candidates and funding of an election campaign, multi-member electoral units and election of delegates, election of local and

town bodies and elections for local communes". The applicant also notes that the Constitutional Court of Bosnia and Herzegovina decided on the amendments to that law in its case no. *U-4/12* (*op.cit*.) when it annulled certain provisions expanding the competences of the Republic Election Commission ("the REC") whereby it assumed certain competences of the CEC. The applicant considers that the situation is identical in this case. However, the applicant argues that in the case at hand the entire RS Election Law is inconsistent with the Constitution of BiH and the BiH Election Law from the aspect of rule of law, because it encroaches on the State's responsibilities too broadly, governing issues that do not fall within the competence of the RS National Assembly. He points out that an indication of it is the very scope of the RS Election Law that contains as many as 245 articles, whereas the previous RS Election Law, that is no longer in effect, contained only 68 articles. The applicant particularly notes that the reasoning behind the adoption of the challenged law is best seen through statements given by key political representatives from the Republika Srpska Entity, specifically the President of the Republika Srpska, who claimed that the goal is "to disempower the Central Election Commission in the territory of the Republika Srpska" and to have the next general elections in BiH organized by relying solely on the RS Election Law. This is in direct violation of the principle of rule of law and the principles of territorial integrity and sovereignty of a state.

10. In addition, the applicant argues that the disputed RS Election Law is contrary to one of the 14 priorities from the European Commission's Opinion, specifically priority no. 1, which reads: *Ensure that elections are conducted in line with European standards by implementing OSCE/ODIHR and relevant Venice Commission recommendations, ensuring transparency of political party financing, and holding municipal elections in Mostar*. The applicant also claims that in this regard, the OSCE reacted immediately upon the adoption of the disputed law with the following statement: *These actions go against the constitutional order of Bosnia and Herzegovina by establishing parallel structures that undermine the overall security and stability of the country. Since the end of the war in 1995, the Entities in BiH have never had jurisdiction over the conduct of the elections in the country […]*. Moreover, the applicant states that the RS Election Law is contrary to the Code of Good Practice in Electoral Matters adopted by the Venice Commission, and that "[…] from the aspect of compliance with the European Union *acquis*, it is clear and unambiguous that the European Union requires a strong Central Election Commission of BiH, a state-level election law of quality, strong election commissions and transparency of the financing of political parties and campaigns, and especially with respect to the role of media".

b) Complaints about the incompatibility of the Election Law of the Republika Srpska with Article III(3)(b) of the Constitution of Bosnia and Herzegovina

11. In connection with the allegations about the incompatibility of the Electoral Law of the Republika Srpska with Article III(3)(b) of the Constitution of Bosnia and Herzegovina, the applicant argues that the RS Election Law is unconstitutional because "it is completely in conflict with the Election Law of BiH as a decision of the institutions of Bosnia and Herzegovina", and refers to issues that are unequivocally defined by the Election Law of BiH.

12. Namely, the applicant argues that the provisions of the RS Election Law "again attempt to take away the responsibilities of the State institution ". According to his assessment, the content of Article 29 of the RS Election Law, which established the competences of the REC, is particularly controversial. In this regard, he points out that Chapter 2, Article 2.9 of the Election Law of BiH clearly and imperatively prescribes the competences of the CEC, and among others, these are precisely the competences that were "transferred" to the REC by Article 29 of the RS Election Law. At the same time, the applicant emphasizes that it follows from Article 2.9 (4) and Article 3.8 (5) of the BiH Election Law that the CEC is the only one competent to regulate all issues related to the Central Voter Register. In addition, the CEC adopted the Rulebook on Maintaining the Central Voter Register (*Official Gazette of BiH,* 37/10), which prescribes no role of the Entity election commissions in that process. However, as stated by the applicant, Article 29 of the Election Law of the RS stipulates "the [REC] is responsible for accuracy, update and overall integrity of the Central Voter Register for the territory of the Republika Srpska". In view of the above, the applicant is of the opinion that "the separation of the Voter Register for the Republika Srpska from the Central Voter Register, which is maintained for the entire territory of Bosnia and Herzegovina, is an attempt […]".to create a parallel system and thus threaten the sovereignty and territorial integrity of the State and State institutions[…]". Moreover, the applicant states that it is indisputable that the Election Law of BiH foresees the possibility of forming entity election commissions, but that Article 2.21 of the Election Law of BiH stipulates that *Entity Election Commissions shall be created by Entity law in accordance with this law. Their competencies shall be determined by the Central Election Commission of BiH in accordance with this law. The manner of election and the composition of all other election commissions shall be determined by Entity law and in accordance with the provisions of this law.* In this connection, the applicant points out that in this regard, the Constitutional Court of Bosnia and Herzegovina took the position in Decision *U-4/12* that the Election Law of Bosnia and Herzegovina is the fundamental law that establishes, as already

mentioned, not only elections for state authorities, but also the principles on which election laws and regulations at other levels of government must be established.

13. The applicant further states that according to the RS Election Law, the CEC, as the only competent institution for the conduct of elections in Bosnia and Herzegovina, is completely excluded from the electoral process for the level of the Entity of RS and for local elections in the RS. In this regard, the applicant points out that Articles 18 and 19 of the Election Law of the RS prescribe the manner of calling and the time of holding elections in the Republika Srpska, and that it is prescribed that the REC calls for elections in the Republika Srpska and that the instruction determines the content of the application for certification to participate in the elections. The said provisions, as stated, are completely in conflict with Articles 1.13 and 1.14 of the Election Law of Bosnia and Herzegovina, which in that way fully took over the competences of the CEC regarding the calling and holding elections. In this regard, the applicant states that "[…] entities in Bosnia and Herzegovina have never been given the authority to conduct elections in Bosnia and Herzegovina by any regulation, so they could not even conduct them in practice [...]". For this reason, the applicant states that these provisions of the RS Election Law are a "blatant" example of violation of Article III(3)(b) of the Constitution of Bosnia and Herzegovina.

14. Furthermore, the applicant states that the content of Article 243 of the RS Election Law is the key reason for which he submitted a request for review of the constitutionality of the entire law. He is of the opinion that it is evident that this article "excludes" the application of the Election Law of BiH on the territory of the RS, which is in complete contradiction with Article I(2) and Article III(3)(b) of the Constitution of BiH. In addition, he emphasizes that this law also prescribes the procedure for electing and appointing delegates to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, which is already prescribed by Article 9.12 of the BiH Election Law. Therefore, he claims that establishing or entrusting any body other than the Central Election Commission of BiH with the organisation and administration of the elections, constitutes a creation of a parallel election system by the legislative authorities in the Republika Srpska and a violation of the constitutional order of BiH, including the violation the Dayton Peace Agreement.

Allegations in the Request for adoption of an interim measure

15. Giving the reasons for the request for adoption of an interim measure, the applicant argues that “[…] although this Law cannot be applied to the 2024 local elections, there is a great possibility that, in the meantime, law and by-laws adopted for the purpose of applying the Law and of creating working bodies and administrative units will begin to be applied in order for the competences of the

Republic Election Commission to be exercised under by the Election Law of the Republika Srpska and, in this way, for the 2026 elections to be prepared according to this Law […].“ He also states that one should certainly take into account ”[…] the context of the adoption of the Election Law of the Republika Srpska after the High Representative in BiH had made Amendments to the Election Law of Bosnia and Herzegovina (*Official Gazette of BiH*, 24/24), i.e. direct statements of political representatives from Republika Srpska […]“. In that regard, the applicant points out that the RS President, on 12 May 2024, after the adoption of the challenged law, stated the following: *We failed to meet deadlines, we will have to register for these local elections while waiting to see the fate of our law. We will probably accept going for elections under duress. However, if possible, we will turn to the application of our law, which stipulates that the entitlement of the Central Election Commission of Bosnia and Herzegovina to conduct elections ceases to be valid in Republika Srpska*. The applicant is of the opinion that „[…] this statement actually acknowledges the intention of disempowering the Central Election Commission of Bosnia and Herzegovina and violation of the territorial integrity of BiH, that is, the creation of a parallel election system”. Furthermore, the applicant claims that in that statement it is said that *the general elections are in two years, which Republika Srpska will conduct according to its own law.* The applicant claims that “ […] this statement contains one of the basic reasons why the challenged Law should be suspended, namely, because immediately after its entry into force, measures are planned to be taken to prepare and organize elections according to the new Election Law of the Republika Srpska, only for the territory of the RS. This will amount to the cessation of validity the Election Law of Bosnia and Herzegovina at the State level and loss of legitimacy of the CEC […]”. In support of this claim, the applicant points out that “the harmfulness of application of the challenged Election Law of the Republika Srpska, in terms of its content and form, was confirmed by key State and international institutions in charge of the election process, such as the Central Election Commission of BiH (CEC), the Office of the High Representative (OHR), OSCE, ODIHR and the EU Delegation in Bosnia and Herzegovina. In addition to the above, the applicant considers that an interim measure on the suspension of the RS Election Law pending the adoption of the final decision of the Constitutional Court of Bosnia and Herzegovina is also necessary due to the fact that the vast majority of its provisions are *prima facie* unconstitutional. He argues that earlier case law of the Constitutional Court also points to this. According to the applicant's opinion, “if only one provision of the Election Law of the Republika Srpska is implemented in the meantime, by the time the final decision of the Constitutional Court of Bosnia and Herzegovina is adopted, it will already be too late, considering that the CEC will be irrevocably disempowered”. Therefore, the applicant argues

that at this stage of the proceedings, there are sufficient evidence and reasons showing that the implementation of the challenged Law would have serious and irreversible adverse consequences.

Relevant Law

16. 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 the CC BiH, 63/11 – Decision of the CC BiH, 15/12 – Ruling of the CC BiH, 11/13 – Ruling of the CC BiH, 18/13, 7/14, 31/16, 1/17 – Decision of the CC BiH, 54/17 – Ruling of the CC of BiH, 41/20, 38/22, 51/22, 24/24, 24/24 - Corrigendum).

For the purposes of this decision, the consolidated text published on the web page of the Central Election Commission is used (www.izbori.ba), which reads:

Article 1.1

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

Article 1.13

The application for certification to participate in the elections shall include a statement signed by the President of a political party, coalition, the independent candidate(s), representative of the list of independent candidate(s), registered association, or other registered organised form of action of national minorities and a group of at least 40 citizens with the voting rights, stating that this political party, coalition, independent candidates, registered associations, other organised forms of action of national minorities shall adhere to the General Framework Agreement for Peace in Bosnia and Herzegovina in their activities.

Article 1.14

(1) The elections at all levels of authority in BiH shall be held on the first Sunday in October unless the date conflicts with observance of a religious holiday of one of the constituent peoples of BiH. Any election that cannot be held on the first Sunday in October because of a conflict with a religious holiday shall be scheduled by the Central Election Commission of BiH for the Sunday closest to the first Sunday in October, which does not conflict with a religious holiday.

(2) At least 150 days prior to the holding of an election, the Central Election Commission of BiH shall announce the elections in accordance with this law and shall notify all competent authorities at all levels and the public when an election shall be conducted, unless otherwise provided by Chapter 14 of this law.

(3) The Central Election Commission of BiH shall publish the dates of the elections for all levels of authority in the Official Gazette of BiH, Entity official gazettes, Official Gazette of the District of Brčko and in the media.

Article 2.9

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

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

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

2.a issue a decision to hold the direct elections in BiH, as provided by this Law;

[…]

3. propose a budget for the Central Election Commission of BiH and report on its spending;

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

[…]

5. certify the participation of political parties, coalitions, lists of independent candidates and independent candidates for all levels of direct elections in BiH;

6. verify and certify the lists of candidates and the candidates for all levels of direct and indirect elections in BiH covered by this law;

7. be responsible for the timely printing, distribution and security of ballots and forms for all levels of direct elections in BiH;

8. enact more detailed regulations and be responsible for a timely procurement, distribution and security of election technologies and other corresponding

technical equipment for the direct elections at all levels of authority in BiH and adopts bylaws on the installation and use of election technologies;

[…]

10. define the contents and the form of the ballot for all levels of direct elections in BiH;

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

[…]

16. take the decision to terminate the mandate of an elected official at all levels of direct and indirect elections in BiH covered by this Law, but also where necessary conduct the preliminary fact-finding procedure (in the case where a member resigns, that it is done of his or her own volition);

[…]

Article 2.21

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

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

Article 3.5 (1) and (2)

(1) The Central Voters' Register shall be maintained ex-officio.

(2) The Central Election Commission of BiH shall maintain the Central Voters' Register for the territory of BiH on the basis of records of a competent State authority that maintains the records of citizens of BiH in accordance with the Law on Central Registers and Data Exchange, unless otherwise prescribed by this Law.

17. The **Election Law of the Republika Srpska** (*Official Gazete of RS*, 61/24) as relevant, reads:

Article 1 (1)

1) This Law regulates the election and appointment of the members of the National Assembly of Republika Srpska and delegates in the Council of Peoples of Republika Srpska, President and Vice-President of Republika Srpska, representatives of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, councillors in city assembly, councillors in municipal assembly, election and recall of the city mayor, municipality mayor, members of the council of local community, appointment of the bodies for conducting elections, protection of election rights, rules of conduct in election campaign, financing election campaign as well as other issues of importance for implementation of this law.

Article 18

The application for certification to participate in the elections shall include a statement signed by the President of a political party, coalition or the independent candidate(s) stating that this political party, coalition or independent candidate(s) shall adhere to the General Framework Agreement for Peace in Bosnia and Herzegovina and the Constitution of Republika Srpska the contents of which is established by the Republic Election Commission by way of instructions.

Article 19, (1) through (3)

1) The elections at republic and local level shall be held on the first Sunday in October unless the date conflicts with observance of a religious holiday of one of the constituent peoples of Republika Srpska.

2) Any election that cannot be held on the first Sunday in October because of a conflict with a religious holiday shall be scheduled by the Republic Election Commission for the Sunday closest to the first Sunday in October, which does not conflict with a religious holiday.

3) At least 150 days prior to the holding of an election, the Republic Election Commission shall notify all competent authorities and the public when an election shall be conducted, unless otherwise provided by Chapter XV of this law.

Article 29

The Republic Election Commission shall:

1) issue a decision to hold the direct elections in Republika Srpka, as provided for by this Law,

2) issue by-laws for the implementation of this law,

[…]

6) be responsible for accuracy, update and overall integrity of the Central Voters' Register for the territory of Republika Srpska;

[…]

8) certify the participation of political parties, coalitions, lists of independent candidates and independent candidates for Republic and local level direct elections in Republika Srpska;

9) be responsible for enacting regulations and for the timely distribution and security of applied election technology at polling stations and counting centres, i.e. equipment for electronic counting of ballots, optical scanners of ballots, electronic identification of voters, i.e. fingerprint readers, security cameras and other appropriate technical equipment and election materials for the conduct of elections under the competence of the Republic Election Commission,

[…]

11) confirm and certify candidate lists and candidates for all levels of direct and indirect elections in Republika Srpska covered by this law,

12) be responsible for the timely printing, distribution and security of ballots and forms for direct elections at both levels of government in Republika Srpska,

13) determine the content and form of ballots for both levels of government for direct elections in Republika Srpska,

14) determine and verify the results of direct and indirect elections covered by this law and certify that the elections are conducted in accordance with this law,

to send the results of the direct and indirect elections covered by this law to the Official Gazette of Republika Srpska for publication,

15) issue a certificate to the persons who obtained a mandate at both levels of government of the direct and indirect elections in Republika Srpska covered by this law

[…]

17) submit for publication in the Official Gazette of Republika Srpska, regulations and election results of direct and indirect elections in Republika Srpka included in this law, information for the voters and other information necessary for implementation of this law,

18) conduct all election activities for election of president and vice-president of Republika Srpska and members of the National Assembly of Rebuplika Srpska,

19) take the decision to terminate the mandate of an elected official at Republic and local level, and when necessary, determine whether elected official who resigned, has done so according to his/her own will,

20) review the decision taken by the competent authority to terminate the mandate of an elected official by recall, in order to ensure that the elected official's mandate was terminated in accordance with this Law,

21) report annually to the National Assembly of Republic on conducting elections in Republic Srpska, on the implementation of this law and initiates amendments to this law,

22) take general acts for recall of a city mayor and municipality mayor, oversee procedure of recall and be responsible for legal implementation of this procedure,

23) offer professional assistance to municipality or city assembly and bodies for conducting recall procedure,

[…]

25) enact acts regulating internal organisation and manner of its work, approved by National Assembly of Republika Srpska,

26) carry out other tasks as established by this law.

Article 240

(1) Within six months from the entry into force of this law, the Republic Election Commission shall adopt:

1) Rulebook on the implementation of the public tender procedure for the selection of members of the city or municipal election commission referred to in Article 35, paragraph 6 of this law,

2) Rulebook on deadlines and methods for concluding and confirming the final Central Voters' Register and deadlines for submitting data on changes in records of displaced persons and records of citizens who vote abroad referred to in Article 51, paragraph 6 of this law,

3) Rulebook on the work of the Central Voters' Register referred to in Article 53, paragraph 5 of this law,

4) Rulebook on the form and content of extracts from the Central Voters' Register referred to in Article 55, paragraph 3 of this law.

[...]

Article 242

1) The deadlines referred to in Article 19, paragraph 3, Article 69, paragraphs 1 and 2, Article 72, paragraphs 1 and 2, Article 74, paragraphs 3 and 4, Article 77 paragraphs 2 and 3, Article 83 paragraphs 1 and 2, Article 84 paragraph 2, Article 85 paragraph 2 and Article 88 paragraph 2 of this law shall not apply to the conduct of local elections in 2024.

(2) The Republic Election Commission shall, by decision, determine the deadlines for conducting the local elections in 2024.

Article 243

Upon the entry into force of this Law, the application of the provisions of the Election Law of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, 23/01, 7/02, 9/02, 20/02, 25/02 - Corrigendum, 4/04, 20/04, 25/05, 77/05, 11/06, 24/06, 33/08, 37/08, 32/10, 48/11 – Decision of the Constitutional Court of Bosnia and Herzegovina, 63/11 - Decision of the Constitutional Court of Bosnia and Herzegovina, 18/13, 7/14, 31/16, 54/17 - Decision of the Constitutional Court of Bosnia and Herzegovina, 41/2020, 38/22, 51/22 and 67/22), which regulate the election and appointment of the members of the National Assembly of the Republika Srpska, delegates of the Council of Peoples of the Republika Srpska, President and Vice-President of the Republika Srpska, delegates of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina from the Republika Srpska, city assembly councillors, municipal assembly councillors, city mayors, municipality chiefs, appointment of authorities for the implementation of elections for the legislative, representative and executive authorities in the Republika Srpska, participation of the members of national minorities in the elections for local levels, protection of the suffrage in the Republika Srpska, rules of conduct in the election campaign and the financing of the election campaign in the Republika Srpska, as well as other provisions of the mentioned law pertaining to the elections for legislative, representative and executive authorities in the Republika Srpska, shall cease.

18. In examining the request for an interim measure, the Constitutional Court invoked the provisions of Article VI (3) (a) of the Constitution of Bosnia and Herzegovina and Article 64 (1) and (4) of the Rules of the Constitutional Court

19. Article VI(3)(a) of the Constitution of Bosnia and Herzegovina reads as follows:

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 onefourth of either chamber of a legislature of an Entity.

20. Article 64 (1) and (4) of the Rules of the Constitutional Court reads as follows:

(1) The Constitutional Court may, of its own motion or at the request of an applicant or appellant, adopt any interim measure it deems necessary in the interest of the parties or the proper conduct of the proceedings before the Constitutional Court.

[...]

(4) The proceedings concerning the adoption of an interim measure shall be expedited and a decision granting a request for the adoption of an interim measure shall be binding until the Constitutional Court takes a final decision.

[...]

21. The Constitutional Court recalls that Article 64 of the Rules of the Constitutional Court is applicable in cases where the Constitutional Court assesses that, based on the reasons and evidence attesting to justification attached to the request for an interim measure, the adoption of the measure is in the interest of the parties, or the proper conduct of the proceedings, or where irreparable detrimental consequences might occur.

22. The Constitutional Court emphasises that it is obvious that the circumstances of this case raise very serious and complex issues regarding the constitutionality of the contested RS Election Law in relation to the provisions of Articles I(2) and III(3) (b) of the Constitution of Bosnia and Herzegovina. First, the Constitutional Court observes that, on the basis of the inspection of the subject-matter regulated by the contested RS Election Law and comparison thereof to the provisions of the Election Law of BiH, it follows that the contested law regulates the issues, which have

already been regulated by the provisions of the Election Law of BiH and that it sets forth, at the same time, the competencies of the Republic Election Commission for the announcement and conduct of elections, which has not had such competencies before the enactment of this law. In that regard, without prejudging the outcome of the decision on the merits, the Constitutional Court recalls the position taken in the Decision on Admissibility and Merits no. U-4/12, according to which "[…] the Election Law of BiH is the framework law determining, as already stated, not only the elections for state-level authorities, but also the principles upon which election laws and regulations on other levels of the Government must be based." (op. cit., paragraph 42). The Constitutional Court deems that this indeed raises, in the circumstances of the present case, the issue of the competence of the National Assembly for different regulation of the same area at different levels of the government in Bosnia and Herzegovina. Therefore, the Constitutional Court deems that there are reasonable suspicions that the contested law might undermine the constitutional order and political stability of Bosnia and Herzegovina, which is sufficient at this stage to establish the existence of an "arguable claim" concerning a possibility of irreparable detrimental consequences, as a requirement for the Constitutional Court to consider a request for an interim measure.

23. The Constitutional Court indicates next that it has the competence to adopt an interim measure only if there is urgency, in a sense that irreparable damage could be inflicted on the interests that are the subject matter of this proceeding. The Constitutional Court, further, observes that regulations relating to the elections constitute one of the most important areas of regulation, which is crucial for ensuring free, fair and transparent elections that reflect the will of the citizens. In addition, the Constitutional Court indicates that the Central Election Commission adopted a Decision on calling and holding the 2024 Local Elections (see paragraph 5 of this decision), thus calling for local elections in the municipalities and towns/cities in the Entities and the Brčko District of Bosnia and Herzegovina and that additional activities have begun concerning the organisation of elections. The Constitutional Court observes that, irrespective of the allegations made by the applicant that it will not be possible to apply the RS Election Law to the 2024 local elections, the content of transitional and final provisions do not rule out that possibility. On the contrary, the Constitutional Court observes that Article 242 of the RS Election Law bestows the competence on the REC to decide on the time limits applicable to the implementation of the 2024 local elections, while Article 243 of the RS Election Law explicitly prescribes that certain provisions of the BiH Election Law, which, among other things, pertain to the local elections, shall cease to be in force on the day of entry into force of this law in the RS. The Constitutional Court

deems that the existence of such provisions, in itself, is indicative of a certain possibility of occurrence of irreparable damage that might be inflicted on the election process. Namely, the very possibility to organise local elections in the RS, by applying the RS Election Law, while simultaneously rendering ineffective the provisions of the BiH Election Law, constitutes a threat of irreparable damage to the democratic election process, legal certainty and rule of law. Therefore, maintaining such legal situation would disrupt the legal order and the constitutional framework of the state, it would lead to legal uncertainty and jeopardise the legitimacy of the election process, which could result in a serious political instability.

24. At the same time, the Constitutional Court deems that the legal certainty, as an important segment of the rule of law, would also be seriously jeopardised if the authorities in the RS should continue to undertake further steps pursuant to the contested law. In that regard, the Constitutional Court deems that the adoption of any legal acts whatsoever pursuant to the said law would open a possibility for establishment of a parallel legal and institutional structure alongside that which has already existed under the state law, which should, among other things, include the REC with the same responsibilities that the CEC has, having the exclusive competence in the RS though. The Constitutional Court points to a possibility that the implementation of the said provisions would undermine the trust of the citizens in the legal system and democratic processes, and affect, at the same time, the key role of the CEC in the protection of the right to free elections in Bosnia and Herzegovina. Therefore, the Constitutional Court deems that it is indisputable that the legal certainty would be seriously jeopardised if the authorities in the RS continued to undertake further steps pursuant to the contested law. In these circumstances, the Constitutional Court concludes that there is urgency, which warrants the adoption of an interim measure, in a sense that the implementation of the RS Election Law would seriously undermine the role of the CEC and, therefore, affect its role in the protection and promotion of the right to free elections, pending the final decision on the request in this case.

25. Next, while assessing a possibility of irreparable detrimental consequences in the event of temporary suspension of the legal effect of the contested law, the Constitutional Court observes that, although the RS Election Law has entered into force, the implementation of the provisions thereof has not started yet. Therefore, the Constitutional Court deems that the adoption of an interim measure, in the event of a possible adoption of a decision on non-conformity of the RS Election Law with the Constitution of Bosnia and Herzegovina, would also prevent adverse consequences that might occur in case the competent public authorities in the Republika Srpska continued to adopt bylaws. On the other hand, the Constitutional Court observes that the provisions of the BiH

Election Law have been applied since 2001 and that, pursuant to the provisions thereof, a uniform election system has been established in the territory of Bosnia and Herzegovina. Pursuant to the said law, a CEC has been set up to undertake activities from within its jurisdiction. Therefore, the Constitutional Court deems that from the aspect of undeniable interests concerning the legal certainty and rule of law and the protection of the principle of constitutionality, the adoption of an interim measure is much more warranted.

26. Taking into account all of the above, the Constitutional Court deems that, within the meaning of Article 64 (1) of the Rules of the Constitutional Court, the adoption of an interim measure is necessary temporarily suspending the legal effect of the RS Election Law (*Official Gazette of RS,* 61/24), pending a final decision by the Constitutional Court of Bosnia and Herzegovina on the request filed.

27. Pursuant to Article 64 (4) of the Rules of the Constitutional Court, a decision on an interim measure shall produce legal effect from the day of entry into force of the Election Law of the Republika Srpska (*Official Gazette of RS,* 61/24), pending a final decision by the Constitutional Court.

28. In view of the above, it was decided as stated in the enacting clause of this decision.

29. The Constitutional Court recalls that the decision on an interim measure shall in no way prejudge a decision on admissibility, or merits of the request filed.

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

Seada Palavrić

President

Constitutional Court of Bosnia and Herzegovina