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), Article 59(1) and (2), Article 61(1), (2) and (3) and Article 64(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
Mr. Marin Vukoja

Having deliberated on the requests by **Mr. Denis Zvizdić, First Deputy Chair of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina and four delegates to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina**, in case no. **U-12/24**, at the session held on 19 September 2024, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

Having deliberated on the requests by **Mr. Denis Zvizdić, First Deputy Chair of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina and four delegates to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina**, for review of the constitutionality of the Election Law of the Republika Srpska (*Official Gazette of RS*, 61/24),

it is hereby established that the Election Law of the Republika Srpska (*Official Gazette of RS*, 61/24) is not consistent with Articles I(2), III(3)(b) and VI(5) of the Constitution of Bosnia and Herzegovina.

Pursuant to Article 61(1) of the Rules of the Constitutional Court of Bosnia and Herzegovina and Articles I(2) and III(3)(b) of the Constitutional Court of Bosnia and Herzegovina, the Election Law of the Republika Srpska (*Official Gazette of RS*, 61/24) is hereby repealed in its entirety and shall cease to have effect from the date of its publication in the Official Gazette of the Republika Srpska (*Official Gazette of RS*, 61/24).

Pursuant to Article 64(4) of the Rules of the Constitutional Court of Bosnia and Herzegovina, the Decision on Interim Measure U-12/24 of 24 July 2024 shall cease to have legal effect.

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 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"). This request was registered under no. *U-12/24*.

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

3. On 30 July 2024, Mr. Šefik Džaferović, Mr. Dženan Đonlagić, Mr. Džemal Smajić and Mr. Safet Softić, four delegates to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina ("the applicants/delegates"), filed a request for review of the constitutionality of the provisions of Articles 9 and 13, Article 29, paragraphs 1, 4, 6 through 8, 11 through 15, 17, 19 and 20, Article 50, paragraph 2, Article 51, paragraph 1, Article 64, paragraph 1, Article 101, paragraph 1, Article 102, paragraph 4, Article 105, paragraph 1, Article 117, paragraph 1, Article 121, paragraph 1 and Article 241 of the RS Election Law. The aforementioned request was registered under no. *U-15/24*.

4. Pursuant to Article 64 of the Rules of the Constitutional Court, the applicants/delegates filed a request for an interim measure whereby the Constitutional Court would suspend the RS Election Law pending a final decision of the Constitutional Court.

II. Proceedings before the Constitutional Court

5. In the Decision on Interim Measure no. *U-12/24* of 24 July 2024 (available at www.ustavnisud.ba), the Constitutional Court granted the request of the applicant and suspended the RS Election Law pending a final decision of the Constitutional Court on the request filed.

6. The Constitutional Court, pursuant to Article 32(1) of the Rules of the Constitutional Court, took a decision on the joinder of cases no. *U-12/24* and no. *U-15/24* in respect of which the Constitutional Court would conduct one set of proceedings and take a single decision on those cases under number *U-12/24*.

7. Pursuant to Article 23(2) of the Rules of the Constitutional Court, on 23 July and 1 August 2024, the National Assembly of the Republika Srpska ("the National Assembly") was requested to submit a response to the requests within 30 days from the date of receiving the letter. In addition,

pursuant to Article 34 of the Rules of the Constitutional Court, on 22 July and 1 August 2024, the Central Election Commission of Bosnia and Herzegovina ("the CEC") was requested to submit observations on the requests for review of the constitutionality in the context of competence of the CEC.

8. The National Assembly did not submit a reply to the requests within the given deadline. On 5 August 2024, the CEC submitted the observations on the requests.

III. Request

Relevant Facts

9. In August 2001, the Parliamentary Assembly of Bosnia and Herzegovina ("the Parliamentary Assembly"), "[in] accordance with Article II(1), Article IV(1), (2) and (4a) and Article V(1)(a) of the Constitution of Bosnia and Herzegovina and Article V of Annex 3 ("the Agreement on Elections") to the General Framework Agreement for Peace in Bosnia and Herzegovina, for the purposes of promoting free, fair and democratic elections and to ensure the achievement of democratic goals, […]" adopted the Election Law of Bosnia and Herzegovina ("the BiH Election Law"), which was subsequently amended. Pursuant to Article 2.21 of the BiH Election Law, the CEC passed a Decision Establishing the Competences of the Entity Election Commissions ("the Decision").

10. After the adoption of the BiH Election Law and the Decision, with a view to harmonising 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 FBiH*, 26/02), and the Election Law of the Brčko District of Bosnia and Herzegovina (*Official Gazette of the Brčko District of BiH*, 17/08 and 43/08).

11. In the Decision on Admissibility and Merits no. *U-4/12* of 26 May 2012 (available at www.ustavnisud.ba), the Constitutional Court granted in part the 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) were not consistent with Articles 1(2) and III(3)(b) of the Constitution of Bosnia and Herzegovina. Namely, the Constitutional Court concluded that the aforementioned provisions were in violation of the constitutional principle that the Entities and other administrative units in Bosnia and Herzegovina are obliged, *inter alia*, to adhere to the "decisions of the institutions of Bosnia and Herzegovina". The

Constitutional Court found that the referenced provisions were contrary to the principles of the corresponding provisions of the BiH Election Law, thereby violating the rule of law principle under Article 1(2) of the Constitution of Bosnia and Herzegovina. On the other hand, 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 call into question the principle of the rule of law.

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

Arguments

1. The applicant's arguments

13. The applicant contended 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) As to the complaints about inconsistency of the RS Election Law with Article I(2) of the Constitution of Bosnia and Herzegovina

14. In 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 was obligated to respect a hierarchy of legal acts and that it did not have the constitutional authority to adopt laws or any other regulation that were inconsistent with the Constitution of Bosnia and Herzegovina and state-level laws or to assume the responsibilities of state-level institutions. In this connection, the applicant stated that the disputed law governs a number of issues such as "[…] the work of election bodies; voters' registers; 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 pointed out that these issues are not disputable provided that they elaborate on certain provisions of the BiH Election Law. However, the applicant emphasised that

the BiH Election Law already governs all those issues and that the disputed law governs the majority of these issues in a clearly different way, *i.e.* that the provisions of the RS Election Law are in conflict with the BiH Election Law.

15. In addition, the applicant stated that such was not the case with the previous RS Election Law which, 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 constituencies and election of delegates, election of local and town bodies and elections for local committees". Furthermore, the applicant noted that the Constitutional Court of BiH decided on the amendments to that law in its case no. *U-4/12* (*op.cit*.), where it annulled certain provisions expanding the competences of the Election Commission of the Republika Srpska ("the RS Election Commission") and assuming certain competences of the CEC. In the appellant's opinion, the situation is identical in the present case, since the competences of the RS Election Commission have been expanded. However, the applicant argued 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 National Assembly. The applicant stated that this is indicated by the fact that the RS Election Law contains as many as 245 articles, whereas the previous RS Election Law (which is no longer effective) contained only 68 articles. In particular, the applicant noted that the reasoning behind the adoption of the challenged law is best seen through statements given by political representatives from the RS Entity, specifically the President of the Republika Srpska who stated 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 organised by relying solely on the RS Election Law. This is a direct violation of the rule of law principle and the principles of territorial integrity and sovereignty of the State.

16. In addition, the applicant argued that the disputed RS Election Law is contrary to one of the 14 priorities referred to in the European Commission's Opinion, specifically priority no. 1, which reads: "To 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 claimed 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 […]". Furthermore, the applicant contended 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) As to the complaints about inconsistency of the RS Election Law with Article III(3)(b) of the Constitution of Bosnia and Herzegovina

17. In connection with the allegations about the inconsistency of the RS Election Law with Article III(3)(b) of the Constitution of Bosnia and Herzegovina, the applicant argued that the RS Election Law is unconstitutional because "it is completely in conflict with the BiH Election Law as a decision of the Institutions of Bosnia and Herzegovina", and refers to issues that are unequivocally defined by the BiH Election Law.

18. Namely, the applicant contended that the provisions of the RS Election Law "again attempt to take over the responsibilities of the State institution". According to his assessment, the content of Article 29 of the RS Election Law (establishing the competences of the RS Election Commission) is particularly controversial. In this regard, he pointed out that Chapter 2, Article 2.9 of the BiH Election Law clearly and imperatively prescribes the competences of the CEC, and among others, these are precisely the competences that were "transferred" to the RS Election Commission by Article 29 of the RS Election Law. At the same time, the applicant emphasised that it follows from Article 2.9 (4) and Article 3.8 (5) of the BiH Election Law that the CEC is the only institution competent to regulate all issues related to the Central Voters' Register. In addition, the CEC adopted the Rulebook on Maintaining the Central Voters' 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 RS Election Law stipulates that "the [RS Election Commission] is responsible for accuracy, update and overall integrity of the Central Voters' Register for the territory of the Republika Srpska". In view of the above, the applicant is of the opinion that "the separation of the Voters' Register for the Republika Srpska from the Central Voters' 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 […]". In addition, the applicant stated that it is indisputable that the BiH Election Law foresees the possibility of forming Entity election commissions, whereas Article 2.21 of the BiH Election Law 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 pointed out that the Constitutional Court of BiH has taken the position in Decision *U-4/12* that the BiH Election Law 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.

19. Furthermore, the applicant stated 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 RS Entity and for local elections in the RS. In this regard, the applicant pointed out that Articles 18 and 19 of the RS Election Law prescribe the manner of calling and the time of holding elections in the Republika Srpska, and that it is prescribed that the RS Election Commission shall call for elections in the Republika Srpska and that the instruction determines the content of the application for certification to participate in the elections. The aforementioned provisions, as stated, are completely in conflict with Articles 1.13 and 1.14 of the BiH Election Law, as they envisage that the RS Election Commission fully takes over the competences of the CEC regarding the calling and holding of elections. In this regard, the applicant stated that "[…] the Entities in Bosnia and Herzegovina have never been given the authority to conduct elections in Bosnia and Herzegovina by any regulation and could not therefore conduct them in practice [...]". For this reason, the applicant stated 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.

20. Besides, the applicant stated that the content of Article 243 of the RS Election Law is the key reason for which he submitted the request for review of the constitutionality of the entire law. He is of the opinion that it is evident that the mentioned article "excludes" the application of the BiH Election Law in the territory of the RS, which is completely in contradiction with Article I(2) and Article III(3)(b) of the Constitution of BiH. Moreover, the applicant highlighted 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 considered that establishing or entrusting a body other than the CEC 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.

2. Arguments by the applicants/delegates

21. The applicants/delegates contended that the RS Election Law is in contravention of the provisions of Articles I(2), III(3)(b) and VI(5) of the Constitution of Bosnia and Herzegovina.

22. The applicants/delegates stated that in the normative hierarchy of legal regulations, the BiH Election Law is superior to the Entity election laws and that the Entities cannot assume the competences conferred on the CEC by the BiH Election Law. In addition, the applicants/delegates stated that pursuant to Article 20.11 of the BiH Election Law, the Entity election laws must be harmonised with the State election law. Furthermore, the applicants/delegates pointed out that the CEC, at the meeting of 6 February 2002, passed a decision that prescribes, in a clear, precise and foreseeable manner, the legal framework of competences assigned to Entity election commissions by the CEC. In this regard, the applicants/delegates stated that the Entity election commissions cannot be conferred a greater competence than that assigned to them by the BiH Election Law and the aforementioned decision. For this reason, they contended that the RS Election Law was adopted contrary to the procedures prescribed by Articles 2.21 and 20.11 of the BiH Election Law and the Decision, thereby violating the provisions of Articles I(2), III(3)(b) and VI(5) of the Constitution of Bosnia and Herzegovina. In addition, the applicants/delegates contended that this case concerns an attempt to suspend the constitutional order of the State of Bosnia and Herzegovina in an unlawful manner and to create legal uncertainty of such intensity that can unequivocally be considered an attempt to change the responsibilities distributed between the State of Bosnia and Herzegovina and the Entities, with the intention of usurping the competences of the CEC and creating a parallel electoral system in contravention of the democratic nature of the State of Bosnia and Herzegovina.

23. Furthermore, the applicants/delegates specified the content of individual provisions of the RS Election Law, which they consider to be contrary to the provisions of the BiH Election Law. In this connection, the applicants/delegates pointed out that Article 9, paragraph 3 of the RS Election Law is contrary to Article 1.5, paragraph 4 of the BiH Election Law; that Article 13, paragraph 2 of the RS Election Law is contrary to Article 1.8, paragraph 1 of the BiH Election Law. In addition, they stated that Article 29, paragraph 1 of the RS Election Law is contrary to Article 2.9, paragraph 2a) of the BiH Election Law, that Article 29, paragraph 4 of the RS Election Law is contrary to Article 2.9, paragraph 1 of the BiH Election Law; that Article 29, paragraph 6 of the RS Election Law is contrary to Article 2.9, paragraph 4 of the BiH Election Law; that Article 29, paragraph 7 of the RS Election Law is contrary to Article 2.9, paragraph 4a) of the BiH Election Law; that Article 29, paragraph 8 of the RS Election Law is contrary to Article 2.9, paragraph 5 of the BiH Election Law; that Article 29, paragraph 11 of the RS Election Law is contrary to Article 2.9, paragraph 6 of the BiH Election Law;

that Article 29, paragraph 12 of the RS Election Law is contrary to Article 2.9, paragraph 7 of the BiH Election Law; that Article 29, paragraph 13 of the RS Election Law is contrary to Article 2.9, paragraph 8 of the BiH Election Law; that Article 29, paragraph 14 of the RS Election Law is contrary to Article 2.9, paragraph 9 of the BiH Election Law; that Article 29, paragraph 15 of the RS Election Law is contrary to Article 2.9, paragraph 10 of the BiH Election Law; that Article 29, paragraph 17 of the RS Election Law is contrary to Article 2.9, paragraph 12 of the BiH Election Law, that Article 29, paragraph 19 of the RS Election Law is contrary to Article 2.9, paragraph 14 of the BiH Election Law; that Article 29, paragraph 20 of the RS Election Law is contrary to Article 2.9, paragraph 15 of the BiH Election Law. Besides, the applicants/delegates stated that Article 50, paragraph 2 of the RS Election Law is contrary to Article 3.5, paragraph 2 of the BiH Election Law; that Article 51, paragraph 1 of the RS Election Law is contrary to Article 3.6, paragraph 1 of the BiH Election Law; that Article 64, paragraph 1 of the RS Election Law is contrary to Article 4.1, paragraph 1 of the BiH Election Law; that Article 101, paragraph 1 of the RS Election Law is contrary to Article 5.14, paragraph 1 of the BiH Election Law; that Article 102, paragraph 4 of the RS Election Law is contrary to Article 5.15, paragraph 2 of the BiH Election Law; that Article 105, paragraph 1 of the RS Election Law is contrary to Article 5.18, paragraph 1 of the BiH Election Law; that Article 117, paragraph 1 of the RS Election Law is contrary to Article 5.29a, paragraph 1 of the BiH Election Law, and that Article 121, paragraph 1 of the RS Election Law is contrary to Article 6.1, paragraph 1 of the BiH Election Law.

24. In view of the above, the applicants/delegates contended that the challenged provisions of the RS Election Law are contrary to Article I(2) of the Constitution of Bosnia and Herzegovina, because they are not harmonised with Article 20.11 of the BiH Election Law, and that they are contrary to Article III(3)(b) of the Constitution of Bosnia and Herzegovina, because those provisions seek unlawfully to transfer the competences conferred. In this connection, the applicants/delegates contended that Article 243 of the RS Election Law, which stipulates that the provisions of the BiH Election Law will not apply upon the entry into force of the RS Election Law, represents an unconstitutional attempt to invalidate the law at a hierarchically superior level, adopted by the Parliamentary Assembly, by an act adopted at a lower level of government, which is in contravention of Articles I(2), III(3)(b) and VI(5) of the Constitution of Bosnia and Herzegovina.

25. In connection with the allegations of violation of Article VI(5) of the Constitution of Bosnia and Herzegovina, the applicants/delegates stated that the *stare decisis* principle, according to which once accepted, the legal interpretation should be adhered to in decision-making, derives from the mentioned provision. In this regard, the applicants/delegates referred to the principle of the normative

hierarchy of legal regulations (see, Constitutional Court, Decision on Admissibility and Merits no. *U-1/11* of 13 July 2012, paragraph 67, available at www.ustavnisud.ba), and the principle of compliance with the law enactment procedure (see Constitutional Court, Decision on Admissibility and Merits no. *U-25/13* of 23 January 2014, paragraph 41, available at www.ustavnisud.ba). In addition, the applicants/delegates pointed out that the Constitutional Court reiterated those principles in case no. *U-4/12 (op.cit.)*, in which it decided on the constitutionality of the provisions of the previously valid Election Law of the RS. In that context, the applicants contended that the National Assembly, based on Article VI(5) of the Constitution of Bosnia and Herzegovina, has the obligation "not to enact a regulation of the same or similar content". Despite this, as stated, the National Assembly acted contrary to the principle of "res judicata" in such a way that it included again and adopted in the disputed RS Election Law the provisions of Article 29, paragraphs 4 and 6 of the RS Election Law, which the Constitutional Court declared unconstitutional in its decision *U-4/12* (paragraphs 54 and 56 to 59). Therefore, the National Assembly acted in contravention of Article VI(5) of the Constitution of Bosnia and Herzegovina.

c) Reply to the requests

26. The National Assembly did not submit a reply to the requests within the given deadline.

d) Response by the CEC

27. In its response, the CEC stated that the BiH Election Law does not allow the RS Entity Commission to take over their competences, as attempted to be achieved by the adoption of the amendments to the RS Election Law in 2012 and the disputed RS Election Law. In addition, the CEC stated that it is not disputed that the Election Law foresees the possibility of forming Entity election commissions, but that Article 2.21 of the BiH Election Law determines that election commissions are formed in accordance with the BiH Election Law, that their competence is determined by the CEC, and that their competence must not be at the expense of the competence of the CEC. In this regard, the response states that the CEC determined the competence of the Entity election commissions by the Decision establishing the competences of the Entity election commissions (*Official Gazette of BiH*, 3/02, "the Decision Establishing the Competences"). In addition, it states that Article V of Annex 3 to the General Framework Agreement for Peace in Bosnia and Herzegovina clearly states the following: "The Parties agree to create a permanent Election Commission with responsibilities to conduct future elections in Bosnia and Herzegovina". The CEC stated that its role as the body that conducts elections in Bosnia and Herzegovina is clearly determined by the cited Article.

IV. Relevant Law

28. **Constitution of Bosnia and Herzegovina**, in so far as relevant, reads:

Article I, paragraph 2

Bosnia and Herzegovina

2. Democratic Principles

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

Article III, paragraph 3(b)

3. Law and Responsibilities of the Entities and the Institutions

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

Article IV, paragraph 4(a) and (e)

Parliamentary Assembly

4. Powers

The Parliamentary Assembly shall have responsibility for:

a) Enacting legislation as necessary to implement decisions of the Presidency or to carry out the responsibilities of the Assembly under this Constitution.

[...]

e) Such other matters as are necessary to carry out its duties or as are assigned to it by mutual agreement of the Entities.

Article VI, paragraph 5

Constitutional Court

5. DECISIONS

Decisions of the Constitutional Court shall be final and binding.

29. **Annex 3 to the General Framework Agreement for Peace in Bosnia and Herzegovina**, in so far as relevant, reads:

Annex 3

Agreement on Elections

In order to promote free, fair, and democratic elections and to lay the foundation for representative government and ensure the progressive achievement of democratic goals throughout Bosnia and Herzegovina, in accordance with relevant documents of the Organization for Security and Cooperation in Europe (OSCE), the Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska ("the Parties") have agreed as follow:

Article V

Permanent Election Commission

The Parties agree to create a permanent Election Commission with responsibilities to conduct future elections in Bosnia and Herzegovina.

30. 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, an unofficial consolidated text prepared by the Constitutional Court is used, reading as follows:

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 1.5, paragraphs 3, 4 and 5

(3) The Central Election Commission of BiH shall issue a separate regulation, in accordance with this Law, in order to regulate the complete procedure of voting in the diplomatic and consular representation offices of BiH (the voting application procedure and deadlines, the appointment of polling station committees, the

determination of number and distribution of polling stations and the procedure of conducting the elections).

(4) The Central Election Commission of BiH shall determine the number and distribution of polling stations in the diplomatic and consular representation offices of BiH according to the criteria referred to in Article 5.2 of this Law.

(5) The Central Election Commission of BiH shall appoint the polling station committees for voting in the diplomatic and consular representation offices of BiH by ensuring the representation of members from among each constituent people in each polling station committee.

Article 1.8, paragraph 1

(1) Judges of ordinary and Constitutional courts, prosecutors and their deputies, public attorneys and their deputies, Ombudsmen and their deputies, public notaries, police officials, civil servants, auditors general and deputy auditors general in the institutions in Bosnia and Herzegovina, and the Governor and Vice-Governors of the Central Bank of Bosnia and Herzegovina, members of the Armed Forces of Bosnia and Herzegovina, members of the Intelligence and Security Agency of Bosnia and Herzegovina, and diplomatic and consular representatives of Bosnia and Herzegovina abroad who enjoy a diplomatic status in accordance with the 1961 Vienna Convention on Diplomatic Relations, may stand as a candidate for public elected office only if they resign from their position or abide by the laws regulating their status. Should the Central Election Commission of Bosnia and Herzegovina determine that the person referred to in this paragraph has not resigned from the position or has failed to act in accordance with the law regulating his/her status during the period between the certification of candidacy and the printing of ballots, this person shall be removed from the certified list of candidates. Should the same also be determined after the printing of ballots, this person shall not receive the mandate even if he/she has won the mandate. In the procedure of establishing the factual situation referred to in this paragraph, the institutions must submit data from the records of candidates at the request of the Central Election Commission of Bosnia and Herzegovina, whereas the candidates must present the proof confirming that they have their status settled.

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 ahead 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 2.21

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

[…]

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 3.5, paragraph 2

(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.

Article 3.6, paragraph 1

(1) The Central Election Commission of BIH shall be responsible for accuracy, correctness and general integrity of the Central Voters' Register.

Article 4.1

In order to participate in the elections political parties, independent candidates, coalitions and lists of independent candidates shall certify their eligibility with the Central Election Commission of BiH.

Article 5.14

(1) The Central Election Commission of BiH shall define the contents and the form of the ballot for all levels of direct elections in Bosnia and Herzegovina;

Article 5.15

(1) A ballot shall contain only the following elements:

1. date of the election;

2. name of the body for which election is being made;

3. names of political parties, coalitions, lists of independent candidates designated with the marking as "independent candidate" and independent candidates in the sequence specified in the collective list based on the lottery conducted to determine their order on the ballot, and names of all the candidates; and

4. instructions on the manner of using and marking the ballot.

5. instructions to voters on the use of electoral technologies that affect the method of voting

(2) A lottery number shall be drawn for each political party, coalition, list of independent candidates and independent candidate to determine their order on the ballot. The lottery number shall be used for the political party or coalition at every level of elections in which this political party or coalition appears on the ballot. The Central Election Commission of BiH shall publicise the location, date, and time at which the lottery for ballot order shall be held.

Representatives of political parties, coalitions, lists of independent candidates, independent candidates, and other accredited observers may attend the lottery.

Article 5.18

(1) If a voter cannot be found on the excerpt from the Central Voters' Register because the voter registered to vote out of country and has returned to vote in person in BiH, the voter's name will be added to a special form that consists of all the categories of data as the excerpt of the Central Voters' Register. The voter will sign the excerpt of the Central Voters' Register, and the voter will have the right to vote by tendered/enveloped ballot in accordance with the other provisions of this Law.

(2) The voter's identification documentation shall be retained until the voter returns the tendered/enveloped ballot in the sealed envelope. The voter's ballot will be placed in a special envelope by the voter, on which is written information from which the voter's right to vote can be verified, and which shall be sealed before being placed by the voter in the ballot box. After the close of the polling and after opening the ballot boxes in accordance with this law, the Polling Station Committee shall count the number of tendered/enveloped ballots found in the ballot box and record the number in the Poll Book and shall package and forward all sealed envelopes to the Municipal Election Commission. The Municipal Election Commission shall forward the packages of sealed envelopes from each Polling Station in the municipality to the Central Election Commission of BiH. The Central Election Commission of BiH shall confirm that the voter is registered to vote out of country and the voter's right to vote before the envelope is opened and the ballot is

counted. If it cannot be confirmed that the voter is registered to vote out of country and has the right to vote, then the envelope shall not be opened or counted.

Article 5.29a

The Central Election Commission shall announce the preliminary, unofficial and incomplete election results for all levels of authority where the elections are held, in the following order:

a) First results at 24:00 hours on the election day,

b) twice within the following 24 hours,

c) each 24 hours within the following five days,

d) each 48 hours in the following days until the announcement of the final, official and complete election results.

Article 6.1

Protection of the electoral right shall be secured by the election commissions and the Appellate Division of the Court of BIH.

Article 20.11

The Entities shall harmonise their regulations with the provisions of this Law within six months after the entry into force of this Law.

31. **Decision Establishing the Competences of Entity Election Commissions** (*Official Gazette of BiH*, 3/02)

I

The Entity election commission, established based on the Entity Election Law, shall have the competence to perform the following tasks:

1. To ensure that the Entity Election Law and the Election Law of Bosnia and Herzegovina are applied correctly;

2. To ensure that all requests for certification of participation in the election of the President and Vice-President of the Republika Srpska, representatives of the National Assembly of the Republika Srpska, the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina and cantonal assemblies

are compiled in accordance with the Election Law of Bosnia and Herzegovina and submitted for approval to the Election Commission of Bosnia and Herzegovina;

3. To propose a budget for elections at the level of competence of the Entity, in accordance with Article 1.2 of the Election Law of Bosnia and Herzegovina.

4. To accredit a certified political party, coalition, list of independent candidates or independent candidate as observers in the constituency in which that political party, coalition, list of independent candidates or independent candidate is running for elections;

5. To accredit observers to observe the activities of Entity election commissions;

6. To determine remuneration for members of election commissions and members of polling committees;

7. To perform other duties as requested by the Election Commission of Bosnia and Herzegovina.

II

If the Entity election law determines the competence of the Entity election commission in contravention of this decision, this decision shall apply.

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

Article 1, paragraph 1

(1) This Law shall regulate the election and appointment of the members of the National Assembly of the Republika Srpska and delegates to the Council of Peoples of Republika Srpska, President and Vice-President of the 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 9, paragraph 3

(3) The Republika Srpska Election Commission of BiH shall determine the number and distribution of polling stations in the diplomatic and consular representation offices of Bosnia and Herzegovina according to the criteria referred to in Article 88 of this Law.

Article 13, paragraphs 1 and 2

(1) Judges of ordinary and Constitutional courts, prosecutors and their deputies, attorneys and their deputies, Ombudsmen and their deputies, members of the Human Rights Courts/Chambers/Councils, notaries public, members of police forces, chief auditors and deputy chief auditors in the institutions of the Republika Srpska and of Bosnia and Herzegovina, the Governor and Vice-Governors of the Central Bank of Bosnia and Herzegovina, members of the Armed Forces of Bosnia and Herzegovina, members of the Intelligence and Security Agency of Bosnia and Herzegovina, and diplomatic and consular representatives of Bosnia and Herzegovina abroad who have a diplomatic status in accordance with the 1961 Vienna Convention on Diplomatic Relations, may stand as a candidate for public elected office only if they resign from their position or abide by the laws regulating their status.

(2) If the Republika Srpska Election Commission determines that a person referred to in paragraph 1 had failed to resign from a position or to act in line with the law regulating his/her status in the period from certification of the candidacy to printing of the ballots, name of this person shall be removed from the certified candidates' lists, and if it was determined after the ballots were printed, no mandate shall be awarded to this person if he/she wins one.

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 the Republika Srpska the contents of which is established by the Republika Srpska Election Commission by way of instructions.

Article 19, paragraphs 1 through 3

(1) The elections at the RS and local levels 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 the 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 Republika Srpska 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 ahead of an election, the Republika Srpska 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 Republika Srpska Election Commission shall:

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

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

[…]

4) co-ordinate, oversee and regulate the lawful operation of all election commissions and Polling Station Committees in accordance with this Law;

[…]

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

7) provide statistical records classified by gender, age, classified by constituencies for each part of the electoral process,

8) certify the participation of political parties, coalitions, lists of independent candidates and independent candidates at the republic and local levels of government for direct elections in the 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 Republika Srpska Election Commission,

[…]

11. verify and certify the lists of candidates and the candidates for all levels of direct and indirect elections in the 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 the Republika Srpska,

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

[…]

17) submit for publication in the Official Gazette of the Republika Srpska, regulations and election results of direct and indirect elections in the Republika Srpska 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 the Republika Srpska and members of the National Assembly of the Republika Srpska,

19) take the decision to terminate the mandate of an elected official at the RS and local levels, 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 the Republika Srpska on conducting elections in the 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,

24) enact acts determining the criteria for the distribution of funds for financing the election campaign,

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

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

Article 50, paragraph 2

(2) Unless otherwise stipulated by this Law, the Republika Srpska Commission shall maintain the Voters' Register for the territory of the Republika Srpska based on the records of the Ministry of Internal Affairs in accordance with the laws regulating the area in question.

Article 51, paragraph 1

(1) The Republika Srpska Election Commission shall be responsible for accuracy, correctness and general integrity of the Voters' Register.

Article 64

In order to participate in the elections political parties, independent candidates, coalitions and lists of independent candidates shall certify their eligibility with the Republika Srpska Election Commission.

Article 101, paragraph 1

(1) The Republika Srpska Election Commission shall determine the format and content of the ballot by the rulebook for the republic and local levels of government for direct elections in the Republika Srpska.

Article 102, paragraph 4

(4) The Republika Srpska Election Commission shall publicize the location, date, and time at which the lottery for ballot order shall be held.

Article 105, paragraph 1

If the voter's name is not on the excerpt from the Voters' Register because the voter registered in the Voters' Register to vote abroad, but returned to vote in person in the Republika Srpska, his name shall be added to a special form that contains all the data as well as the excerpt from the Voters' Register.

Article 117

The Republika Srpska Election Commission shall announce the preliminary, unofficial and incomplete election results for all levels of authority where the elections are held, in the following order:

1) First results at 24:00 hours on the election day,

2) twice within the following 24 hours,

3) each 24 hours within the following five days,

d) each 48 hours in the following days until the announcement of the final, official and complete election results

Article 121

Protection of the electoral right shall be secured by the election commissions and the Supreme Court of the Republika Srpska.

Article 240

(1) Within six months from the entry into force of this law, the Republika Srpska 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 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 Voters' Register Centre referred to in Article 53, paragraph 5 of this Law,

4) Rulebook on the form and content of an extract from the Voters' Register referred to in Article 55, paragraph 3 of this Law,

[…].

Article 241

The assembly of the local self-government unit shall make a decision, within six months from the entry into force of this law, on the procedure for organising and holding elections for members of the local community committees, as well as the issues of convening and constituting the local community committees.

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 Republika Srpska Election Commission shall determine, by a decision, 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 to be applied.

V. Admissibility

33. In examining the admissibility of the requests, the Constitutional Court refers to Article VI(3)(a) of the Constitution of BiH and Article 19 of the Rules of the Constitutional Court.

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

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 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.

35. The requests for review of constitutionality were submitted by the First Deputy Chair of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, and one-fourth of the delegates to the House of Peoples of the Parliamentary Assembly, which means that the requests were filed by the authorized persons, within the meaning of Article VI(3)(a) of the Constitution of BiH. In addition, the Constitutional Court observes that the requests seek a review of the constitutionality of the RS Election Law, and it therefore follows that the Constitutional Court has jurisdiction to take a decision.

36. Therefore, in view of the provisions of Article VI(3)(a) of the Constitution of BiH and Article 19(1) of the Rules of the Constitutional Court, the Constitutional Court concludes that the requests are admissible for they have been filed by the authorized persons. In addition, there is no formal reason under Article 19(1) of the Rules of the Constitutional Court that would render the requests inadmissible.

VI. Merits

37. The applicants argued that the disputed law is incompatible with Articles I(2), Article III(3)(b) and Article VI(5)) of the Constitution of BiH. Namely, the applicants claimed that the RS Election Law regulates issues that are already regulated by the BiH Election Law, and that the disputed law regulates most of those issues in an apparently different way, since it takes away the authority of the CEC as a State institution responsible for conducting elections at all levels of government. For this reason, the applicant contended that the RS Election Law is unconstitutional in its entirety, while the applicants/delegates contended that certain provisions of the RS Election Law are unconstitutional.

38. Taking into account the substance of the allegations in the requests, the Constitutional Court considers that the present case primarily raises the issue of conformity of the disputed law with the provisions of Articles I(2), III(3)(b) and VI(5) of the Constitution of Bosnia and Herzegovina. The Constitutional Court recalls that it has already taken a clear position in its case law about the constitutional obligation to uphold State laws. Thus, in Decision no. *U-14/04*, the Constitutional Court pointed out that "the passing of Entities' laws contrary to the procedure prescribed under the State laws raises the issue of constitutionality of such laws within the meaning of the provisions of Article III(3)(b) of the Constitution of BiH, and that the obligations imposed under the State laws have to be complied with" (see, the Constitutional Court, Decision on Admissibility and Merits no. *U-14/04* of 29 October 2010, published in the *Official Gazette of BiH*, 23/05). The Constitutional Court reaffirmed this position also in Decision no. *U-2/11* (see, the Constitutional Court, Decision on Admissibility and Merits no. *U-2/11* of 27 May 2011, paragraph 52, published in the *Official Gazette of BiH*, 99/11).

39. In addition, the Constitutional Court reaffirmed the mentioned position in Decision no. *U-4/12* (*op.cit.*, paragraph 43), which referred to the issue of the possibility for the National Assembly to adopt amendments to the RS Election Law that would be in conflict with the BiH Election Law. In that decision, the Constitutional Court concluded the following: *[...] the Constitutional Court holds it beyond dispute that the Election Law of BiH amounts to a "decision of the institutions of Bosnia and Herzegovina" in terms of Article III(3)(b) of the Constitution of Bosnia and Herzegovina and that the*

said law establishes, inter alia, the principles upon which election laws and regulation on all other levels of power must be based. […] In this regard, examining the constitutionality of the challenged law in the light of compliance with the obligations and principles established by the BiH Election Law, the Constitutional Court considered whether the National Assembly has competence to regulate certain issues related to the election process and whether the challenged provisions of the RS Election Law follow the principles of the BiH Election Law. The Constitutional Court has concluded that the Entity legislator has the authority to enact the provisions of the Law on Amendments to the RS Election Law, which concerned the composition and professional qualifications of the members and the position of the president of the RS Election Commission, and to establish multi-member constituencies and to regulate these issues by Entity law. In addition, the Constitutional Court has concluded that those provisions are not in contravention of the principles established by the BiH Election Law, and, that they did not raise the issue of constitutionality under Article III(3)(b) of the Constitution of Bosnia and Herzegovina and, by extension, Article I(2) of the Constitution of Bosnia and Herzegovina (*ibid.*, paragraphs 46-52 and 54-60). On the other hand, after examining the issue of the RS Election Commission's competence to supervise the work of city and municipal election commissions and the polling station committees and the RS Election Commission's authority to control the work of the Voters' Registration Centre, as well as the obligation of municipal commissions to submit the consolidated election results from all polling stations to REC and CEC, the Constitutional Court has concluded that those provisions are in violation of the constitutional principle according to which the Entities and other administrative units in Bosnia and Herzegovina are obliged to comply with, *inter alia*, a "decision of the institutions of Bosnia and Herzegovina", and thus contrary to Article III(3)(b) of the Constitution of Bosnia and Herzegovina as well as the principle of rule of law under Article I(2) of the Constitution of Bosnia and Herzegovina. Namely, the Constitutional Court emphasised the following in paragraphs 54 and 55 of the mentioned decision:

> *54. […] the Constitutional Court notes that the Election Law of BiH does not prescribe any role of other election commissions to implement these competencies of the CEC, nor does it prescribe the possibility for the CEC to transfer these competencies to any other election commission. Furthermore, the Constitutional Court notes that Article 2.21 of the Election Law of BiH provides that the CEC has the exclusive competence to determine the competence of the Election Commissions of the Entities and, the Entities were obliged, based on Article 20.11 of the Election Law of BiH, to bring their laws and regulations in compliance with the Election Law of BiH. Furthermore, the Constitutional Court notes that based on Article 2.21*

of the Election Law, the CEC made the Decision Establishing the Competences of the Entity Election Commissions wherein the competencies of the Election Commissions of the Entities are specified. Furthermore, the aforementioned decision provides that in case the Entity Election Law "establishes the competence of the Entity Election Commission in contravention of this decision", this decision will apply.

55. Taking into account [...] that the Entities (and other administrative units of Bosnia and Herzegovina) shall respect the obligations imposed by the laws enacted by the institutions of Bosnia and Herzegovina (op. cit. U-14/04 and U-21/11), the Constitutional Court notes that the challenged law cannot prescribe the possibility of taking over any of these competencies of the CEC, nor can the Entity law prescribe the possibility for the CEC to transfer certain competencies to other election commissions as such possibility is not explicitly prescribed by the Election Law of BiH being the only act which may prescribe the competencies and responsibilities of the CEC, nor is it provided for by the Decision Establishing the Competences of the Entity Election Commissions, which the CEC issued on the basis of its powers referred to in Article 2.21 of the Election Law of BiH.

40. Turning back to the requests for review of constitutionality, which constitute the subject of these proceedings, the Constitutional Court first recalls that the BiH Election Law was adopted on the basis of Annex 3 to the General Framework Agreement for Peace under the title "Agreement on Elections". Namely, the Annex regulates the issue of organising and conducting the first post-war elections, and the principles and standards of fair and democratic elections contained in that annex constitute the basis for the adoption of the BiH Election Law with which Entity election laws must be harmonised. It is necessary to emphasise that in Article V of the Annex, the parties agreed *[...] to create a permanent Election Commission with responsibilities to conduct future elections in Bosnia and Herzegovina.* Therefore, the Constitutional Court highlights that through the adoption of the BiH Election Law by the Parliamentary Assembly, its entry into force and the establishment of the CEC as a body responsible for organising and conducting elections, a single legal system and institutional framework for direct elections for all levels of authority in Bosnia and Herzegovina was established. This ensues from the content of Article 1.1 and from other provisions of the BiH Election Law.

41. Such a legislative framework, as already indicated in Articles 2.21 and 20.13 of the BiH Election Law, allows for the adoption of Entity laws. At the same time, that framework provides for a limitation that Entity laws can only regulate the method of election, the composition of election

commissions and the creation of multi-member constituencies, and these are issues for which authority is expressly prescribed by the BiH Election Law. In addition, Article 2.21, paragraph 1 of the BiH Election Law prescribes that the Entity legislators cannot decide on the competences of the Entity election commissions, because the competence of those commissions is determined by the CEC in accordance with this Law. The CEC regulated the competences of those commissions by passing the Decision Establishing the Competences, which in Article II prescribes the following: *In case that the Entity Election Law establishes the competence of the Entity Election Commission in contravention of this decision, this decision shall apply.* In addition, the Constitutional Court underlines that Article 20.11 of the BiH Election Law prescribes the obligation that Entities must harmonise their laws and regulations with the BiH Election Law. Therefore, it clearly follows from the content of the aforementioned provisions that the National Assembly does not have the constitutional authority to pass regulations outside the scope of the provisions of the Election Law of BiH and the Decision Establishing the Competences as decision of the institutions of BiH, on any issue related to the conduct of direct elections in that Entity.

42. The Constitutional Court notes that according to the content of the provisions of Articles 1, 9, 13, 18, 19, 29, 50, 51, 64, 101, 102, 105, 117, 121 and 241 of the RS Election Law, pointed out by the applicants/delegates, the National Assembly regulated issues relating to: the possibility of voting abroad; the possibility of candidacy for holders of judicial and other incompatible duties; competences of the election commission; calling and scheduling elections; the design, content, properties and characteristics of the ballots; keeping voters' registers; certification of political parties, independent candidates, coalitions and lists of independent candidates for participation in elections; the lottery for ballot order; publication of election results; protection of electoral rights and other matters of relevance to the election process. In addition, the RS Election Law prescribes the competence of the RS Election Commission and other Entity authorities for conducting elections and applying the aforementioned legal provisions, while Article 243 of the RS Election Law expressly stipulates that the provisions of the BiH Election Law that relate, *inter alia*, to the conduct of direct elections in the Republika Srpska shall cease to apply upon the entry into force of the RS Election Law. In this connection, the Constitutional Court points out that these issues are already regulated by the provisions of Articles 1.5, 1.8, 2.21, 2.9, 3.5, 3.6, 4.1, 5.14, 5.15, 5.18, 5.29a and 6.1 of the BiH Election Law and that the CEC has exclusive responsibility for the implementation of these issues. In addition, the Constitutional Court points out that in decision no. *U-4/12* it found that the provisions of the Law on Amendments to the Election Law of RS, which regulated the competence of the RS Election Commission to monitor the operation of city and municipal election commissions, and

polling station committees, and, the authority of the RS Election Commission to control the Voters' Register Centre; and obliged municipal commissions to compile the results of elections from all polling stations and forward them to REC and CEC, were unconstitutional (*op.cit.*, paragraphs 54 and 56 through 59).

43. In view of the above, it is clear to the Constitutional Court that the disputed law was not adopted with the aim of harmonising the RS Election Law with the provisions of the BiH Election Law in terms of Article 20.11 of that law, since the provisions of the disputed law do not refer to "the method of election and the composition of election commissions" within the meaning of 2.21 of the BiH Election Law, nor to the determination of multi-member constituencies within the meaning of Article 20.13 of the BiH Election Law. In substance, the disputed law passed by the RS National Assembly reiterates the text of the provisions of the BiH Election Law and, without any constitutional authorisation, entrusts the competence for conducting elections in the territory of the Republika Srpska entity to the RS Election Commission. In this way, contrary to the procedures prescribed by the decisions of the BiH institutions, *i.e.* the BiH Election Law and the Decision Establishing the Competences, an effort is being made to establish a parallel system for elections of delegates to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina from the Republika Srpska, elections for the legislative, the executive and the judicial authorities in the Republika Srpska as well as for local elections in the Republika Srpska.

44. In particular, the Constitutional Court notes that the National Assembly does not have the authority to render ineffective, by Article 243 of the RS Election Law, the regulations adopted by the Parliamentary Assembly in the exercise of its powers. In this respect, the Constitutional Court recalls that in Decision on Admissibility and Merits no. *U-2/22* it underlined "that the only way that the above laws cease to have effect, as decisions made in the Institutions of BiH, may be new decisions of the Institutions of Bosnia and Herzegovina. This means that as long as the decisions of the Institutions of BiH, are in effect, the Entities are obliged to comply with them and do not have the competence to adopt any legislative activities in these areas" (see Constitutional Court, Decision on Admissibility and Merits no. *U-2/22* of 26 May 2022, paragraph 91, available at www.ustavnisud.ba). Therefore, given the undisputed content of the BiH Election Law, the content of the disputed law which takes over the competences of the institutions of Bosnia and Herzegovina, as well as the undisputed case law of the Constitutional Court, it is clear that there are no provisions in the Constitution of Bosnia and Herzegovina based on which the constitutionality of the disputed law passed by the National Assembly could be justified.

45. Given the fact that it clearly ensues from the content of the RS Election Law that the disputed law was not adopted with the aim of harmonising the RS Election Law with the provisions of the BiH Election Law and the Decision Establishing the Competences, and is in conflict with the BiH Election law, the Constitutional Court holds that the RS Election Law passed by the National Assembly is unconstitutional in its entirety because it is contrary to the BiH Election Law as "a decision of an institution of BiH". According to the rule of law principle under Article I(2) of the Constitution of Bosnia and Herzegovina, the Entities are obliged to comply with the laws at the level of Bosnia and Herzegovina. In addition, according to Article III(3)(b) of the Constitution of Bosnia and Herzegovina, the Entities are obliged to comply with the decisions of the institutions of Bosnia and Herzegovina and the principle under Article VI(5) of the Constitution of Bosnia and Herzegovina, according to which the decisions of the Constitutional Court shall be final and binding.

46. In view of all the above, the Constitutional Court concludes that the National Assembly, by adopting the disputed law, has acted contrary to Articles I(2), III(3)(b) and VI(5) of the Constitution of Bosnia and Herzegovina in connection with the Election Law of Bosnia and Herzegovina, which is why that law as a whole is contrary to Articles I(2), III(3)(b) and VI(5) of the Constitution of BiH.

47. In regard to the effect of the present decision of the Constitutional Court, pursuant to Article 61(1) of the Rules of the Constitutional Court, the Constitutional Court finds that the RS Election Law shall cease to have effect from the date of its publication in the *Official Gazette of the Republika Srpska* (*Official Gazette of RS*, 61/24).

VII. Conclusion

48. The Constitutional Court concludes that the RS Election Law passed by the National Assembly is not consistent with Articles I(2), III(3)(b) and VI(5) of the Constitution of Bosnia and Herzegovina. This Law is not found consistent as the adoption of that law violated the constitutional principle of the rule of law under Article I(2) of the Constitution of Bosnia and Herzegovina, according to which the Entities are obliged to comply with the laws at the level of Bosnia and Herzegovina, and the principle under Article III(3)(b) of the Constitution of Bosnia and Herzegovina, according to which the Entities are obliged to comply with the "decisions of the institutions of Bosnia and Herzegovina", as well as the principle under Article VI(5) of the Constitution of Bosnia and Herzegovina, according to which the decisions of the Constitutional Court shall be final and binding.

49. Pursuant to Article 64(4) of the Rules of the Constitutional Court of Bosnia and Herzegovina, the Decision on Interim Measure *U-12/24* of 24 July 2024 shall cease to have legal effect.

50. Pursuant to Article 59(1) and (2) and Article 61(1), (2) and (3) of its Rules, the Constitutional Court ruled as stated in the enacting clause of this decision.

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