

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(a) of the Constitution of Bosnia and Herzegovina, Article 57(2)(b) and Article 59(1) and (2) and Article 61(2) and (3) of the Rules of the Constitutional Court of Bosnia and Herzegovina – Revised text (*Official Gazette of Bosnia and Herzegovina*, 94/14), in Plenary and composed of the following judges:

Mr. Mato Tadić, President

Mr. Miodrag Simović, Vice-President

Mr. Mirsad Ćeman, Vice-President

Ms. Helen Keller, Vice-President

Ms. Valerija Galić,

Ms. Seada Palavrić,

Mr. Zlatko M. Knežević,

Ms. Angelika Nußberger, and

Mr. Ledi Bianku

Having deliberated on the requests filed by **15 Members of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina**, in case no. **U-2/22**, at its session held on 26 May 2022, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

In deciding on the requests of **15 members of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina** for resolving a dispute between Bosnia and Herzegovina and Republika Srpska,

the Constitutional Court finds that there is a dispute over the following acts adopted by the National Assembly of the Republika Srpska: items 17, 18, 19 and 20 of the Declaration on the Constitutional Principles no. 02/1-021-1034/ 21 of 10 December 2021; items 4 and 5 of the Conclusions regarding Information on Judicial Institutions of Bosnia and Herzegovina no. 02/1-021-1032/21 of 10 December 2021; items 4 and 5 of the Conclusions regarding Information on the transfer of responsibilities from the Republika Srpska to the level of Bosnia and Herzegovina in the area of defence and security no. 02/1-021-1033/21 of 10 December 2021; items 5 and 6 of the Conclusions regarding Information on the transfer of responsibilities in the area of indirect taxation no. 02/1-021-1031/21 of 10 December 2021 and items 2 and 3 of the Conclusions regarding Information on the transfer of responsibilities from the Republika Srpska to the level of Bosnia and Herzegovina no. 02/1-021-1030/21 of 10 December 2021.

It is hereby established that items 17, 18, 19 and 20 of the Declaration on the Constitutional Principles no. 02/1-021-1034/ 21 of 10 December 2021; items 4 and 5 of the Conclusions regarding Information on Judicial Institutions of Bosnia and Herzegovina no. 02/1-021-1032/21 of 10 December 2021; items 4 and 5 of the Conclusions regarding Information on the transfer of responsibilities

from the Republika Srpska to the level of Bosnia and Herzegovina in the area of defence and security no. 02/1-021-1033/21 of 10 December 2021; items 5 and 6 of the Conclusions regarding Information on the transfer of responsibilities in the area of indirect taxation no. 02/1-021-1031/21 of 10 December 2021 and items 2 and 3 of the Conclusions regarding Information on the transfer of responsibilities from the Republika Srpska to the level of Bosnia and Herzegovina no. 02/1-021-1030/21 of 10 December 2021, are incompatible with Article I(2) of the Constitution of Bosnia and Herzegovina and Article III(3)(b) of the Constitution of Bosnia and Herzegovina.

The following provisions shall be quashed:

- items 17, 18, 19 and 20 of the Declaration on the Constitutional Principles no. 02/1-021-1034/ 21 of 10 December 2021;

- items 4 and 5 of the Conclusions regarding Information on Judicial Institutions of Bosnia and Herzegovina no. 02/1-021-1032/21 of 10 December 2021;

- items 4 and 5 of the Conclusions regarding Information on the transfer of responsibilities from the Republika Srpska to the level of Bosnia and Herzegovina in the area of defence and security no. 02/1-021-1033/21 of 10 December 2021;

- items 5 and 6 of the Conclusions regarding Information on the transfer of responsibilities in the area of indirect taxation no. 02/1-021-1031/21 of 10 December 2021;

- items 2 and 3 of the Conclusions regarding Information on the transfer of responsibilities from the Republika Srpska to the level

of Bosnia and Herzegovina no. 02/1-021-1030/21 of 10 December 2021 .

The quashed provisions shall be rendered ineffective on the next day following the date of the publication of the decision in the *Official Gazette of Bosnia and Herzegovina* in accordance with Article 61(3) of the Rules of the Constitutional Court of Bosnia and Herzegovina.

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

REASONING

I. Introduction

1. On 3 February 2022, 15 members of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina (the “applicants”) filed with the Constitutional Court of Bosnia and Herzegovina (the “Constitutional Court”) requests for resolution of a dispute between Bosnia and Herzegovina and Republika Srpska over the following acts adopted by the National Assembly of the Republika Srpska (the “National Assembly”):

- Declaration on the constitutional principles no. 02 / 1-021-1034 / 21 of 10 December 2021 (the request was registered as case number *U 2/22*);
- Conclusions regarding Information on judicial institutions of Bosnia and Herzegovina no. 02/1-021-1032/21 of 10 December 2021 (the request was registered as case number *U 3/22*);
- Conclusions regarding Information on the transfer of responsibilities from the RS to the level of BiH in the area of defence and security no. 02/1-021-1033/21 of 10 December 2021 (the request was registered as case number *U 4/22*);

- Conclusions regarding Information on the transfer of responsibilities in the area of indirect taxation no. 02/1-021-1031/21 of 10 December 2021 (the request was registered as case number U 6/22) and

- Conclusions regarding Information on the transfer of responsibilities from the RS to the level of BiH no. 02/1-021-1030/21 of 10 December 2021 (the request was registered as case number U 5/22);

2. At the same time, the applicants, in individual requests nos. U 3/22, U 4/22, U 5/22 and U 6/22 for the purposes of Article 64 of the Rules of the Constitutional Court, requested the adoption of interim measures prohibiting the application of the disputed conclusions pending the final decision of the Constitutional Court on the requests.

II. Procedure before the Constitutional Court

3. Pursuant to Article 32(1) of the Constitutional Court's Rules, the Constitutional Court adopted a decision to join the above requests in respect of which it will conduct single proceedings and adopt one decision no. U 2/22.

4. Pursuant to Article 23(2) of the Rules of the Constitutional Court, the National Assembly was requested on 10 February 2022 to submit a response to the requests within 30 days of receiving the letter.

5. On 7 March 2022, the National Assembly requested an extension of the deadline for submitting response to the request. In a letter of 8 March 2022, pursuant to Article 23(1) of the Rules of the Constitutional Court, the Constitutional Court informed the National Assembly that in the present case it was not possible to extend the deadline for submitting the response.

6. On 10 March 2022, the National Assembly submitted responses to the individual requests.

III. Requests and responses to the requests

1. Requests

I. Allegations in request no. U 2/22

7. The applicants allege that the Declaration on constitutional principles (the "Declaration") is contrary to paragraphs 3, 6 and 10 of the Preamble to the Constitution of BiH and constitutes a serious violation of the principle of continuity under Article I(1) of the Constitution of BiH and the democratic principles under Article I(2) of the Constitution of BiH, and the constitutional principle

of the hierarchy of legal regulations under Article III(3)(b) of the Constitution of BiH and the duty to comply with Article III(5)(a) of the Constitution of BiH.

8. The applicants claim that this is a unilateral decision of the legislative body of the Entity in the form of a declaration challenging the constitutional competencies of BiH, the role of the Constitutional Court and other aspects of the General Framework Agreement for Peace. According to the applicants, the direct consequence of the adoption of the Declaration is that the RS Government is tasked with the preparation of a text of the RS Constitution, which will expand the RS competencies, taking over those that explicitly belong to Bosnia and Herzegovina. In that regard, they believe that the adoption of the new RS Constitution and the "return of competencies", which belong to Bosnia and Herzegovina based on the regulation of certain issues and the adoption of laws in each of these areas would disrupt the constitutional order, create parallel institutions and disrupt the system of legal certainty. In addition, it would jeopardize the preservation of the sovereignty and territorial integrity of BiH. In addition, it would violate the political independence of the State and the fulfilment of BiH obligations arising from international conventions and treaties.

9. With regard to the admissibility of the request, the applicants allege that the jurisdiction of the Constitutional Court under Article VI(3)(a) of the Constitution of BiH in so far as it states "... including but not limited to...", entitles the Constitutional Court to decide in each case as to what is a dispute within the meaning of the mentioned provision of the Constitution of BiH. In doing so, the applicants allege that the Constitutional Court interpreted its jurisdiction under Article VI(3)(a) of the Constitution of BiH in a functional manner and not in a formal legal sense. In view of this, the applicants claim that the impugned declaration is not an "ordinary act of lower legal rank". This is so because its effect may be a threat to the existence of the State of BiH because it has the task of ordering the RS authorities to undertake activities to change the constitutional and legal system of BiH and, as an ultimate goal, may endanger peace and stability. Therefore, the applicants hold that that the Constitutional Court, in terms of Article VI(3)(a) of the Constitution of BiH, has jurisdiction to decide on the existence of a dispute regarding that article.

10. Next, the applicants point out that paragraphs 4-6 of the Declarations are contrary to the provisions of Articles I(1) and I (2) of the Constitution of BiH, and the Preamble of the Constitution of BiH. They also argue that paragraphs 7 and 8 of the Declaration misinterpret the High Representative's powers to enact legislation. Namely, according to Annex X of the General Framework Agreement for Peace, the High Representative is the final authority for the interpretation of the Agreement on the Implementation of the Civilian Aspects of the Peace

Settlement. He also has broad powers in the field of civilian implementation arising from the international mandate, which was confirmed by the Constitutional Court in its decision in case number *U-9/00*, in which it concluded that the High Representative could intervene in the legal system of BiH and effectively substitute the domestic legislators. The applicants further consider that paragraph 12 of the Declaration, which refers to the decisions of the Constitutional Court, seeks to show that the Constitutional Court acts outside its mandate, and not in accordance with Article VI of the Constitution of BiH. They also consider that the decisions of the Constitutional Court "take away the competencies" of the Republika Srpska, inflicting damage on relations in Bosnia and Herzegovina, which contributes to permanent instability. According to the applicants, such a position is contrary to Article VI(5) of the BiH Constitution, according to which decisions of the Constitutional Court shall be final and binding, and such an interpretation of the work of the Constitutional Court and its jurisprudence constitutes a violation of Article I(2) of the BiH Constitution.

11. With regard to paragraphs 9 to 11 of the Declaration relating to the matters of responsibilities transferred to Bosnia and Herzegovina, the applicants claim that the BiH Constitution, and not the Entity Constitutions, is the guarantor of the division of responsibilities between the State and the Entities. They claim that such a relationship can be changed only in the manner provided for by the Constitution of BiH. However, the BiH Constitution does not provide for the possibility of withdrawing consent to the transfer of competencies from the Entities to the State and returning the transferred competencies to the Entities, nor do laws passed by the High Representative representing BiH laws require confirmation by the BiH Parliamentary Assembly. In view of this, the applicants consider that the Declaration and Conclusions, which challenge the responsibilities of BiH, its legislative, executive and judicial institutions, and even the mechanisms of other Annexes to the General Framework Agreement for Peace, cannot produce legal effect. In this regard, the applicants state that the Constitutional Court, in Decision no. *U-11/08* of 30 January 2009, clearly emphasized that the State competencies could be transferred by agreement to the Entities, as the BiH Constitution does not provide for such a mechanism. In interpreting this Decision, the applicants state that if the Entity transferred State responsibility on the basis of an agreement under Article III(5)(a) of the Constitution of BiH, then such responsibility can no longer be given back to the Entities. Attempts to restore competencies in the manner in which it is done in the disputed Declaration, treating those competencies as "temporarily transferred competencies", constitute an interference with the jurisdiction of the State of BiH, and it is in contravention of Article III(5)(a) of the Constitution of BiH violating the principle of legal certainty.

II. Allegations in request no. U 3/22

12. The applicants allege that the Conclusions regarding Information on the judicial institutions of BiH are not in accordance with the provisions of Articles I(2) and VI(5) of the Constitution of BiH.

13. Namely, the applicants allege that the disputed Conclusions were issued with the aim of suspending the constitutional order of the State of BiH and with the intention of usurping the responsibilities of the State of BiH, and that they represent an attempt to change the distributed responsibilities between the State and the Entities. According to the applicants, the unlawful objectives of the Conclusions are 1) to create preconditions for further action and create a basis for other conclusions that will each serve in its capacity to implement the "intent to usurp and seize" BiH jurisdiction in the HJPC; 2) unlawful unilateral withdrawal of the consent to the Agreement on the transfer of certain responsibilities of the Entities through the establishment of the High Judicial and Prosecutorial Council, which aims to cause legal uncertainty and suspend the constitutional order of the State of BiH; 3) empowering the political representatives of the RS Entity to take the necessary actions to suspend the constitutional order and cause legal uncertainty; 4) ordering the RS Government to prepare and draft the necessary laws and legal acts that would formalize the "seizure and usurpation of responsibilities"; 5) prohibition of the application of the law of the State of BiH on the territory of the RS Entity, which is a direct violation of the principle of constitutionality, the principle of legality, the principle of democracy and the principle of the rule of law.

14. In view of the above, the applicants hold that there is a constitutional dispute between BiH and the RS Entity in which, in a manner contrary to the BiH Constitution and BiH laws, the National Assembly tried to usurp the State responsibility in the field of justice and thus to unlawfully change the division of responsibilities between BiH and the RS Entity. In support of the allegations of the dispute, the applicants relied on the decisions of the Constitutional Court in cases no. *U 15/08* of 3 July 2009, no. *U 10/16* of 1 December 2016 and no. *U 10/14* of 4 July 2014 (available at www.ustavnisud.ba).

15. The applicants further allege that based on the Agreement on the transfer of certain Entity responsibilities through the establishment of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (the "HJPC BiH") and in terms of Article III(5)(a) of the BiH Constitution, the BiH Parliamentary Assembly passed the Law on the HJPC of BiH, stipulating that the HJPC is an institution within the responsibility of the State of BiH, and that the State responsibilities cannot be

transferred to the Entities because there is no constitutional basis for that. They then point out that in Decision no. *U-11/08* of 30 September 2009, when considering the request for review of the constitutionality of the Law on the High Judicial and Prosecutorial Council (the “HJPC Law”), the Constitutional Court concluded that there was a valid legal basis for the enactment of the said law, i.e. that the law was enacted in accordance with the Constitution of BiH. So in this case the issue arises as to the duty of the Entity authorities to comply with the decisions of the Constitutional Court in terms of Article VI(5) of the Constitution of BiH, according to which the decisions of the Constitutional Court shall be final and binding. In addition, the applicants allege that this is not the first time that the authorities in the Republika Srpska have adopted similar acts, given that the National Assembly, at its session of 14 May 2009, adopted the act "Information on the effects of transferring constitutional powers from the RS to the BiH institutions". Along with the said act, it adopted Conclusion no. 01-787/09 approving the said Information and Additional Conclusions no. 01/788/09, and the High Representative issued a Decision of 20 June 2009 repealing the said Conclusions of the National Assembly no. 01-787/09 and no. 01-788 / 09 of 14 May 2009. Thus, the decisions of the High Representative are ignored by adoption of the said Conclusions. In view of the above, the applicants also claim that the adoption of the above Conclusions has been in violation of the rule of law and democratic order in terms of Article I(2) of the Constitution of BiH. This so, because attempts are being made to establish a state of suspension of the constitutional order of BiH, and to usurp the responsibilities of BiH, thus acting contrary to the Constitution of BiH, as well as the laws passed by the BiH Parliamentary Assembly.

16. In the request for an interim measure, the applicants proposed that the Conclusions be repealed and that suspension and prohibition of actions and decisions, laws and other acts listed in the Conclusions usurping and seizing the responsibilities of the State of BiH be ordered pending the adoption of the final decision of the Constitutional Court.

c) Allegations in request no. U 4/22

17. The applicants allege that the Conclusions regarding Information on the transfer of responsibilities from the RS to the level of BiH in the area of defence and security have been in violation of the principles of democracy and rule of law under Article I(2) of the Constitution of BiH, the principle of hierarchy of legal regulations under Article III(3)(b) of the Constitution of BiH, and that the exercise of the responsibilities of BiH under Article III(5)(a) of the Constitution of BiH has been jeopardized by the said Conclusions.

18. In connection with the issue of the existence of a dispute between BiH and the RS Entity, the applicants point to the decisions of the Constitutional Court in cases nos. *U 15/08*, *U 10/16* and *U 10/14*. Also, the applicants state that the responsibilities of the Constitutional Court according to Article VI(3)(a) of the Constitution of BiH are not final, which can be concluded from the wording "including, but not limited to". In this regard, they point out that the Constitutional Court in its previous case law has repeatedly interpreted its responsibilities under Article VI(3)(a) of the Constitution of BiH in a functional manner, interpreting the term "law" as a normative act in a substantive legal context and not in a formal legal context. In this respect, the applicants allege that in its case law the Constitutional Court examined the constitutionality of a number of City Statutes (Decisions on Admissibility and Merits no. *U 4/05* of 22 April 2005 and no. *U 7/05* of 2 December 2005). Considering that the above Conclusions oblige the RS Government to draft laws that are in conflict with the State laws on defence and armed forces, and the laws on agencies SIPA and OSA, in the opinion of the applicants, these laws that are to be drafted, would violate the constitutional order of BiH. In view of the above, in the opinion of the applicants, the impugned Conclusions are not ordinary acts of lower legal rank, and they are not implementing acts but the laws in the substantive legal sense. Therefore, they propose that the request in this particular case be considered as a request for resolving the dispute between BiH and the RS Entity.

19. In the reasons for the request, the applicants allege that the Conclusions in question, the content of which they indicated in detail, represent an unconstitutional activity aimed at dismantling the rule of law, creating legal uncertainty, dualism in the functioning of institutions and ultimately endangering peace, security and stability of the State of BiH. In this regard, the applicants point out that in Bosnia and Herzegovina, which is defined by Article I(2) of the Constitution of BiH as a democratic and legal state, the Entities are obliged, in accordance with Article III(3)(b) of the Constitution of BiH, to comply with the Constitution of BiH and laws and decisions adopted at the State level. The applicants point out that in specific areas, reforms in the field of defence, intelligence, and security agencies were carried out based on the responsibilities of BiH under the Constitution of BiH, which the applicants indicated in detail on pages from 5 to 8 of the request. They further point out that the Parliamentary Assembly of BiH adopted the Law on Defence of BiH, the Law on Service in the Armed Forces of BiH, the Law on the Intelligence and Security Agency of BiH and the Law on the State Investigation and Protection Agency of BiH under the prescribed procedure. Based on the adopted laws, appropriate institutions have been established at the State level, bylaws have been adopted, the entire system has been established according to which these institutions perform an appropriate function in order to protect the sovereignty and

territorial integrity of BiH, and to fight terrorism, organized crime, human trafficking and to protect human rights on the entire territory of BiH. However, contrary to that, the Conclusions contain the view that these are the responsibilities that have been transferred from the Entity to BiH and that these responsibilities need to be returned to the RS Entity. Therefore, in the opinion of the applicants, the disputed Conclusions of the National Assembly constitute an unconstitutional activity. In this regard, the applicants point out that the Conclusion of the National Assembly withdrawing the consent to the Agreement cannot produce legal consequences, because the Constitution does not prescribe the possibility of withdrawing the consent to transfer the responsibilities from the Entities to the State and return the transferred responsibilities to the Entities. In addition, it is so because if the Entity jurisdiction has become the State jurisdiction based on an agreement according to Article III(5)(a) of the Constitution of BiH, then such jurisdiction can no longer be returned to the Entities. In view of the above, the applicants consider that the disputed Conclusions are not compatible with Articles I(2), III(3)(b) and III(5)(a) of the Constitution of BiH.

20. In the request for an interim measure, the applicants stated that the Conclusions entered into force on the day following their adoption and that six months are given to draft Entity laws. Therefore, the Conclusions pose a threat to peace, stability, prosperity and further development of BiH. Therefore, the applicants point out that such activity of the National Assembly and the Government of the RS should be stopped immediately because it can produce unforeseeable consequences, and they believe that the conditions under Article 64 of the Rules of the Constitutional Court for adopting a Decision on interim measure have been fulfilled.

d) Allegations in the request in case no. U 5/22

21. The applicants hold that the Conclusions regarding Information on the Transfer of Responsibilities from the Republika Srpska to the Level of Bosnia and Herzegovina are in a violation of the principles of democracy and the rule of law laid down in Article I(2) of the Constitution of Bosnia and Herzegovina and the principle of the hierarchy of legal provisions referred to in Article III(3)(b) of the Constitution of Bosnia and Herzegovina, and endanger the exercise of responsibilities of the State of Bosnia and Herzegovina set forth in Article III(5)(a) of the Constitution of Bosnia and Herzegovina.

22. The applicants first propose that the Constitutional Court should consider the request for resolution of dispute between the State of Bosnia and Herzegovina and the Entity of the Republika Srpska. In that connection, the applicants indicated, in essence, the same reasons as in case no. *U*

4/22 which are presented in paragraph 17 of the present Decision. In addition, they indicate a position of the Constitutional Court in case no. *U 15/08* pointing out that a series of formal acts and activities undertaken by one of the Entities may raise an issue of existence of a dispute between the Entity and Bosnia and Herzegovina over an issue under the Constitution of Bosnia and Herzegovina in respect of which the Constitutional Court of BiH has sole jurisdiction to decide. The applicants hold that the Conclusions are not the simple acts of lower legal rank as they entrust the Government of the Republika Srpska with the obligation to adopt laws.

23. The applicants then present the contents of the challenged conclusions and indicate that the impugned Conclusions entrust the Government of the Republika Srpska with the preparation of laws which are not in conformity with the state legislation; they represent the activities on the preparation of the Entity legislation in the fields where the State legislation exists and by which the appropriate State laws would cease to be applied on the territory of the Republika Srpska. These laws that are to be prepared would infringe upon the constitutional order of Bosnia and Herzegovina, lead to the creation of the parallel institutions, to the violation of the principle of legal certainty and would disrupt the preservation of the sovereignty and territorial integrity of Bosnia and Herzegovina and the political independence of the State. In that connection, the applicants point out that the impugned Conclusions are incompatible with Article I(2) of the Constitution of Bosnia and Herzegovina which requires that all constitutions, laws and other regulations that are passed be harmonised with the Constitution of Bosnia and Herzegovina. They are in contravention of Article III(3)(b) of the Constitution of Bosnia and Herzegovina which prescribes the obligation of the Entities to fully comply with the Constitution of Bosnia and Herzegovina as well as the decisions of the institutions of Bosnia and Herzegovina, and that the Entities (or any subdivisions thereof) must comply with the obligations imposed on them by the decisions (laws) of the institutions of Bosnia and Herzegovina. Finally, the applicants cited the contents of Article III(5)(a) of the Constitution of Bosnia and Herzegovina and point out that the impugned Conclusions of the National Assembly by which the agreement regarding the Agreements on transfer of responsibilities is withdrawn cannot create legal effect, as the Constitution of Bosnia and Herzegovina does not provide for the possibility of withdrawing the consent for transfer of responsibilities from the Entities to the State and return of the transferred responsibility to the Entities. Contrary to that position, the position of the National Assembly stems from the impugned Conclusions that these are the responsibilities that are transferred from the Entities to the State of Bosnia and Herzegovina and that these responsibilities should be “returned to the Entity of the Republika Srpska”. At the same time, the applicants draw attention to the unacceptable unconstitutional interpretation of the Constitution of

Bosnia and Herzegovina, Decisions of the Constitutional Court of BiH and Decisions of the High Representative for BiH by the NARS which strives to substitute the interpretation of the Constitution of Bosnia and Herzegovina given by the Constitutional Court of BiH by its own interpretation and thereby it endangers the authority of the highest judicial institution which supports the rule of law in Bosnia and Herzegovina.

24. In their request for the interim measure, the applicants stated the same reasons as in the request in case *U 4/22*.

e) Allegations in the request in case no. U 6/22

25. The applicants hold that the Conclusions regarding Information on the Transfer of Responsibilities in the field of Indirect Taxation are in violation of the principles of democracy and the rule of law laid down in Article I(2) of the Constitution of Bosnia and Herzegovina and the principle of the hierarchy of legal provisions referred to in Article III(3)(b) of the Constitution of Bosnia and Herzegovina, and endanger the realisation of responsibilities of the State of Bosnia and Herzegovina set forth in Article III(5)(a) of the Constitution of Bosnia and Herzegovina.

26. In this connection, the applicants state that the reforms in the indirect taxation field have been carried out based on the constitutional responsibilities of Bosnia and Herzegovina and they point to the constitutional grounds and reasons for the issuance of regulations at the level of Bosnia and Herzegovina in the process of passing them in the parliamentary procedure. Those are the Law on the Indirect Taxation System in BiH, the Law on Payments into the Single Account and Distribution of Revenues, the Law on Indirect Taxation Authority (ITA), the Law on Indirect Taxation Procedure, the Law on Enforced Collection (of indirect taxes), the Law on Value Added Tax (VAT), and the Law on the Excise of Duties in BiH, which is described in detail on pages 4 to 14 of the request.

27. The applicants further point out that, in the particular case, the Government of the Republika Srpska is entrusted in the impugned conclusions with the tasks of preparing the laws which are in contravention of the above legislation. The laws that should be prepared according to the aforementioned Conclusions of the NARS would infringe upon the constitutional order of Bosnia and Herzegovina, lead to the creation of parallel institutions, to the violation of the principle of legal certainty and would disrupt the preservation of the sovereignty and territorial integrity of Bosnia and Herzegovina and the political independence of the State. The implementation of the international obligations of Bosnia and Herzegovina arising from the international conventions and agreements would be endangered. In that connection, the applicants indicate that the Constitutional

Court has interpreted on a number of occasions its jurisdiction of abstract review of constitutionality set forth in Article VI(3)(a) of the Constitution of Bosnia and Herzegovina in the functional manner, by interpreting the term “law” as normative act in substantive legal and not a formal sense. In addition, to corroborate the claim that there is a dispute between Bosnia and Herzegovina and the Republika Srpska, the applicants referred to the Decision of the Constitutional Court in cases nos. *U-15/08*, *U-10/16* and *U-10/14* wherein the Constitutional Court held that the particular cases were raising issues of dispute between Bosnia and Herzegovina and the Entity of the Republika Srpska. Taking that into consideration, given the fact that the instant case concerns the Conclusions, the applicants proposed that the Constitutional Court consider the instant request as the request for the resolution of a dispute between the State and the Entity of the Republika Srpska.

28. While presenting the reasons for which they hold that the impugned Conclusions are not in conformity with the Constitution of Bosnia and Herzegovina, the applicants invoked the provisions of Articles I(2), III(3)(b) and III(5)(a) of the Constitution of Bosnia and Herzegovina. Then they point out that the Parliamentary Assembly of BiH adopted the Law on the Indirect Taxation System in BiH, the Law on Payments into the Single Account and Distribution of Revenues, the Law on Indirect Taxation Authority (ITA), the Law on Indirect Taxation Procedure, the Law on Enforced Collection (of indirect taxes), the Law on Value Added Tax (VAT) and the Law on Excise Duties in BiH in the procedure prescribed by the Constitution and the Rules of Procedure of the National Assembly of the Republika Srpska (“Rules of Procedure”). Based on passed laws, the appropriate institutions at the state level were established, the bylaws were adopted, the entire system under which those institutions have been conducting the appropriate functions on the entire territory of Bosnia and Herzegovina was established. For that reason, the applicants hold that the conclusions represent the unconstitutional activity directed towards disintegration of the rule of law, creation of legal uncertainty, dualism in the functioning of the institutions and the ultimate goal of endangering the security and legal stability of the State of Bosnia and Herzegovina. The applicants further pointed out as undisputable that the Agreement on the responsibility/competence in the indirect taxation field between the Republika Srpska and the Federation of Bosnia and Herzegovina of 5 December 2003, which was signed by the Prime Ministers of the Entity Governments in the presence of the High Representative, preceded to the issuance of the abovementioned laws. Therefore, the applicants stress that the responsibility of the entities became the responsibility of the State based on the agreement under Article III(5)(b) of the Constitution of Bosnia and Herzegovina, and such responsibility can no longer be restored to the entities. The applicants also indicate the Constitutional Court’s Decision in case no. *U 14/04* in which the applicants requested that the law

passed by the Federation of BiH, which related to the competences in the field of indirect taxation, be reviewed. In addition, the applicants claim that, relying on the transfer of competencies, Bosnia and Herzegovina passed the Law on Indirect Taxation System in BiH according to which the Indirect Taxation Authority and the Governing Board were established. The Governing Board has authority to give a preliminary approval for promulgation and amendments of the State and Entity legislation and the legislation of the Brčko District of BiH. In its decision the Constitutional Court held that a failure of the Parliament of the Federation of BiH to get the approval by the Governing Board, led to the violation of Articles III(3)(b) and III(5)(a) of the Constitution of Bosnia and Herzegovina. This means that it is not possible to lawfully adopt regulations in this field without the approval of the Governing Board, which did not exist in the relevant case and, therefore, the impugned regulations are unconstitutional.

29. In their request for the interim measure, the applicants allege the same reasons as in the request in case *U 4/22*.

2. Responses to the request

a) Response to request no. U 2/22

30. The National Assembly alleges that it clearly follows from Article VI(3)(a) of the Constitution of BiH that the Constitutional Court has jurisdiction to decide whether any provision of an Entity's constitution or law is consistent with the Constitution of BiH. In the opinion of the National Assembly, the Constitutional Court does not have jurisdiction to decide this case as the subject of challenge is the Declaration and not the provisions of the constitution or law. Furthermore, the National Assembly alleges that any declaration is, primarily, a political act as stipulated in Article 178 of the Rules of Procedure. In this connection, the National Assembly referred to the decision of the Constitutional Court in case no. *U-6/08* of 30 January 2009 by alleging that the contested Declaration in that particular case expresses political views and is not a legal act either in formal terms or substantive terms and, therefore, as a political proclamation is not binding.

b) Responses to requests nos. U 3/22, U 4/22, U 5/22 and U 6/22

31. In the responses to individual requests contesting the Conclusions, the National Assembly essentially alleges the same reasons. In particular, the National Assembly alleges that the Constitutional Court does not have jurisdiction to consider the conformity of the Conclusions with the Constitution of BiH as Article VI(3)(a) of the Constitution of BiH explicitly defines that the Constitutional Court has jurisdiction to decide on the disputes concerning the conformity of any

provision of an Entity's constitution or law. Furthermore, concerning the applicants' allegations that the Conclusions determined the policy of implementation of laws, regulations and general acts adopted by the National Assembly, provided the guidelines for implementation of that policy and should be regarded as political acts, the National Assembly alleges that the Conclusions are not legal acts in formal and substantive terms, but rather a political proclamation and that, therefore, if the Constitutional Court deals with the merits of the requests at issue, it will directly violate Article VI(3)(a) of the Constitution of BiH. In this connection, the National Assembly refers to the decision of the Constitutional Court in case no. *U 6/08* of 30 January 2009. Furthermore, the National Assembly alleges that the allegations in the request that relate to the violation of the provisions of Articles I(2), III(3)(b) and III(5)(a) of the Constitution of BiH are erroneous as the responsibilities of Bosnia and Herzegovina are limited and strictly determined in Article III(1) of the Constitution of BiH and that Article III(3)(a) of the Constitution of BiH stipulates that all governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities. Furthermore, the National Assembly alleges that with a view to respecting for the Dayton Peace Agreement and consistently applying Article III(3)(b) of the Constitution of BiH, which stipulates that the Entities will strictly comply with the Constitution, the National Assembly alleges that the bodies of the RS are fully entitled to adopt the Conclusions at issue. In the opinion of the National Assembly, given the aforementioned, the Constitutional Court is not entitled to extend its jurisdiction in contravention of the provisions of the Constitution of BiH and proposes therefore that the requests be rejected as inadmissible as the Constitutional Court does not have competence to decide on this case.

32. With regard to the requests for interim measures, the National Assembly alleges that they are unfounded within the meaning of Article 64(5) of the Rules of the Constitutional Court.

IV. Relevant law

a) Relevant provisions related to the constitutional basis and procedure for enactment

33. In the **Constitution of BiH**, relevant provisions read as follows:

Preamble

[...]

Convinced that democratic governmental institutions and fair procedures best produce peaceful relations within a pluralist society, [...]

Committed to the sovereignty, territorial integrity, and political independence of Bosnia and Herzegovina in accordance with international law, [...]

Bosniacs, Croats and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina is as follows:

Article I(1) and (2)

Bosnia and Herzegovina

1. Continuation

The Republic of Bosnia and Herzegovina, the official name of which shall henceforth be „Bosnia and Herzegovina,” shall continue its legal existence under international law as a state, with its internal structure modified as provided herein and with its present internationally recognized borders. It shall remain a Member State of the United Nations and may as Bosnia and Herzegovina maintain or apply for membership in organizations within the United Nations system and other international organizations.

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 II(2)

Human Rights and Fundamental Freedoms

2. International Standards

The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.

[...]

Article III(1), (3) and (5)

Responsibilities of and Relations Between the Institutions of Bosnia and Herzegovina and the Entities

1. Responsibilities of the Institutions of Bosnia and Herzegovina

The following matters are the responsibility of the institutions of Bosnia and Herzegovina:

- a) Foreign policy.*
- b) Foreign trade policy.*
- c) Customs policy.*
- d) Monetary policy as provided in Article VII*
- e) Finances of the institutions and for the international obligations of Bosnia and Herzegovina.*
- f) Immigration, refugee, and asylum policy and regulation.*
- g) International and inter-Entity criminal law enforcement, including relations with Interpol.*
- h) Establishment and operation of common and international communications facilities.*
- i) Regulation of inter-Entity transportation.*
- j) Air traffic control.*

3. Law and Responsibilities of the Entities and the Institutions

- a) All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.*
- b) 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.*

5. Additional Responsibilities

- a) Bosnia and Herzegovina shall assume responsibility for such other matters as are agreed by the Entities; are provided for in Annexes 5 through 8 to the General Framework Agreement; or are necessary to preserve the sovereignty,*

territorial integrity, political independence, and international personality of Bosnia and Herzegovina, in accordance with the division of responsibilities between the institutions of Bosnia and Herzegovina. Additional institutions may be established as necessary to carry out such responsibilities.

b) Within six months of the entry into force of this Constitution, the Entities shall begin negotiations with a view to including in the responsibilities of the institutions of Bosnia and Herzegovina other matters, including utilization of energy resources and cooperative economic projects.

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

Parliamentary Assembly

4. Powers

4. 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(3)(a) and (5)

3. Jurisdiction

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 neighboring state is consistent with this Constitution, including provisions concerning the sovereignty and territorial integrity of Bosnia and Herzegovina.*
- Whether any provision of an Entity's constitution or law is consistent with this Constitution.*

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

[...]

5. Decisions

Decisions of the Constitutional Court shall be final and binding.

34. The **Constitution of the Republika Srpska** (*Official Gazette of RS*, 21/92, 28/94, 8/96, 13/96, 15/96, 16/96, 21/96, 21/02, 26/02 corrigendum, 30/02 corrigendum, 31/02, 69/02, 31/03, 98/03, 115/05, 117/05, 48/11 and 91/19 - OUS BiH) as relevant reads:

1. The National Assembly

Article 70, paragraph 1, item 2

The National Assembly shall:

2. pass laws, other regulations and general enactments;

Article 78

The National Assembly shall regulate its work and organisation and the manner in which members exercise their rights and duties.

35. The **Rules of Procedure of the National Assembly of the Republika Srpska** (*Official Gazette of RS*, 66/20) as relevant reads:

Acts of the National Assembly

Article 177 paragraph (2)

(2) National Assembly adopts laws, other regulations and general acts, development plan, urban development plan, budget, declarations, resolutions, recommendations, decisions and conclusions.

Article 178

Declaration shall express a position of the National Assembly on general issues with regards to the rights and obligations of the Republika and other general issues of interest of the citizens of the Republika.

Article 182 paragraphs (1), (2), (3)

(1) A conclusion shall establish policy of the enforcement of the law, other regulations and general texts adopted by the National Assembly, give directions for implementation of those policies, preparation of laws and other texts.

(2) Conclusions shall be submitted to the bodies and organisations it refers to. National Assembly may decide that conclusions determining positions and views on significant issues are published in the "Official Gazette of RS".

(3) National Assembly may adopt conclusions on its work and work of other bodies it formed and work of the Service of the National Assembly.

Article 239

(1) The National Assembly shall take positions and adopt conclusions on reports, analysis and information.

(2) On the occasion of examining documents referred to in paragraph 1 of this Article, the National Assembly may conclude deliberations without taking a position.

Article 272

Deliberation of issues that relate to the work of the Government may be completed by:

- adoption of conclusion that gives directions to the work of the Government or guidelines in regards to enforcement of the law, other regulations and general acts of the National Assembly,*
- adoption of the conclusions establishing obligations of the Government for taking certain measures, submitting report or draft laws or for submission of information and other documents and*
- taking position on the work of the Government and its responsibility.*

36. The Declaration on Constitutional Principles no. 02/1-021-1034/21 of 10 December 2021 (text taken from the internet page <https://www.narodnaskupstinars.net>) as relevant reads:

4. *Bosnia and Herzegovina does not have constitutional law continuity, as the Constitution of Bosnia and Herzegovina, as Annex 4 is a part of the international agreement – Dayton Agreement and it is not adopted or ratified by any institution of Bosnia and Herzegovina.*

5. *Bosnia and Herzegovina is an asymmetrical state union “consisting of two Entities” (Article I(3) of the Constitution of Bosnia and Herzegovina), Bosniacs, Croats and Serbs as constituent peoples (Preamble of the Constitution of Bosnia and Herzegovina), and Article IX(3) of the Constitution of Bosnia and Herzegovina is regulated that the officials appointed to the positions in the institutions of Bosnia and Herzegovina are generally representatives of the peoples of Bosnia and Herzegovina.*

6. *Articles IV(1) and V(2)(d) of the Constitution of Bosnia and Herzegovina are the constitutional confirmation of national and constituent structure of the Entity – Republika Srpska as entity of the Serb peoples and the Federation of BiH is joint entity of Bosniac and Croat peoples.”*

6.1. *The National Assembly of the Republika Srpska selects five Serb Delegates to the House of Peoples of the Parliamentary Assembly; Five Bosniac Delegates to the House of Peoples of the Parliamentary Assembly are selected by the Bosniac Delegates to the House of Peoples of the Federation of BiH and five Croat Delegates to the House of Peoples of the Parliamentary Assembly are selected by the Croat Delegates to the House of Peoples of the Federation of BiH (Article IV(1) of the Constitution of BiH).*

6.2. *The election of the members of the Presidency of BiH shall be one from the territory of the Entities, so that Serb as Member of the Presidency of BiH is directly elected by the voters from the territory of the RS and Bosniac and Croat for the members of the Presidency of BiH are elected by the voters from the territory of the Federation of BIH (Article V(1)(a) of the Constitution of BiH).*

6.3. *When a Member of the Presidency of BiH votes against a decision of the Presidency and declares it to be destructive of a vital interest of the RS, it refers to the National Assembly of RS for confirmation (Article V(2)(d) of the Constitution of BiH). Council of Peoples in RS imposed by the amendments of the High Representative to the Constitution of RS, has no constitutional jurisdiction in protection of vital national interests of entity or people, unlike*

House of Peoples in the Parliament of the Federation of BiH that has jurisdiction under Article V (2)(d) of the Constitution of BiH. Thus the Constitution of BiH confirms the National Assembly as the only representative and legislative body of RS as entity of the Serb People.

6.4. Bosniac Member of Presidency of BiH submits such declaration on it being destructive of a vital national interest to the Federation of BiH to the Bosniac Delegates of the House of Peoples of the Federation of BiH and Croat Member to the Croat delegates of the House of Peoples of the Federation of BiH (Article V(2)(d)).

6.5. Article IV(1) and V(2)(d) of the Constitution of BiH are constitutional confirmation of national and constitutive structure of the entities – RS as one national entity of Serb people and Federation of BiH as bi-national entity of Bosniac and Croat people.

7. The Constitution of Bosnia and Herzegovina confirmed the asymmetry of the state-forming entities at the moment of assembling of the Dayton Bosnia and Herzegovina, which was subsequently severely violated imposing the amendments to the entity constitutions by High Representative under the cover of the implementation of the Constitutional Court's Decision U 5/98, which he had no right whatsoever to do.

8. All legislation imposed by High Representative is unconstitutional since they have been not adopted by the Parliamentary Assembly under the provided constitutional procedure. All imposed laws which were endorsed by the Parliamentary Assembly referring to Article IV(4)(a) of the Constitution of Bosnia and Herzegovina are unconstitutional. The Constitution of Bosnia and Herzegovina is clear: The Parliamentary Assembly shall have responsibility for enacting legislation as necessary to implement decisions of the Presidency or to carry out the responsibilities of the Assembly under this Constitution, and, therefore, it did not have the responsibility of enacting legislation which were imposed by the High Representative."

9. Unconstitutionality of the imposed laws, even those passed by the Parliamentary Assembly without the explicit constitutional grounds, are directly confirmed by two attempts of constitutional amendments known as "April" and

“Butmir” packages which have never been adopted in the procedure of amendments of international agreements determined by Article 40 of the Vienna Convention and Article X(1) of the Constitution of Bosnia and Herzegovina which regulates its amendment. Lack of new initiatives for constitutional amendments does not mean that the responsibilities transferred to the level of Bosnia and Herzegovina became constitutional.

10. These responsibilities are not permanently transferred to the level of Bosnia and Herzegovina by the Agreements of the Entities on defence, value added tax and High Judicial and Prosecutorial Council of BiH as they were not preceded with the amendments to the Constitution of Bosnia and Herzegovina to create the constitutional grounds stipulated under Article III(3)(a) of the Constitution of Bosnia and Herzegovina. There were no constitutional amendments and, therefore, those responsibilities are unconstitutional and hence temporary.

10.1. The defence and the Army are the responsibility of the Entities under the Dayton Agreement as supported by Article V(5) of the Constitution of Bosnia and Herzegovina: “Each member of the Presidency shall, by virtue of the office, have civilian command authority over armed forces. Neither Entity shall threaten or use force against the other Entity, and under no circumstances shall any armed forces of either Entity enter into or stay within the territory of the other Entity without the consent of the government of the latter and of the Presidency of Bosnia and Herzegovina.” The Constitution of Bosnia and Herzegovina does not provide for the “armed forces of Bosnia and Herzegovina” or give the constitutional grounds for the existence of the armed forces of Bosnia and Herzegovina. Annex I-A of the Dayton Peace Agreement in Article I(2) as obligations of the signing parties – Republic of Bosnia and Herzegovina (which no longer exists under the Dayton Agreement), the Republika Srpska and the Federation of Bosnia and Herzegovina indicates “to establish a durable cessation of hostilities” continuing with the following text: “Neither Entity shall threaten or use force against the other Entity, and under no circumstances shall any armed forces of either Entity enter into or stay within the territory of the other Entity without the consent of the government of the latter and of the Presidency of Bosnia and Herzegovina.”

10.2. The Constitution of Bosnia and Herzegovina clearly regulates by Article VIII the manner of covering the expenditures of joint institutions through the budget of Bosnia and Herzegovina under which “The Federation shall provide two-thirds, and the Republika Srpska one-third, of the revenues required by the budget, except insofar as revenues are raised as specified by the Parliamentary Assembly”. Thereby the grounds for the adoption of law giving the original income to Bosnia and Herzegovina has not been created but only the possibility is given to the Parliamentary Assembly to determine some other ratio which is not of two-thirds to one-third for an annual budget. The Agreement on responsibilities in the field of indirect taxation has never been published in the Official Gazette of BiH and therefore it did not enter into force and could not represent grounds for passing the Law on Indirect taxation.

10.3. By the Conclusion of the National Assembly of the Republika Srpska of 25 February 2004 concerning the Agreement on transfer of certain responsibilities of the Entities through the establishment of the High Judicial and Prosecutorial Council of BiH, it was requested to “incorporate solutions through the law which would institutionally and essentially preserve the influence of the Entities which purports the establishment of a sub-councils of the Entities with clearly defined role and procedure of their operation in relation to the High Judicial and Prosecutorial Council of BiH, that the text of the Agreement be harmonised with the terminology of the Constitution of Bosnia and Herzegovina before signing, and that the seat of the High Judicial and Prosecutorial Council of BiH be in Serb (Istočno) Sarajevo. If the substance of these conclusions is not contained in the Bill of Law on the High Judicial and Prosecutorial Council of BiH, the National Assembly of the RS shall revoke its consent on this Agreement in the same manner it is given”.

11. Mutual rights and responsibilities of the Entities are established by the Dayton Agreement, including the Constitution of Bosnia and Herzegovina. The Agreements that two Entities enter into in accordance with the Constitution of Bosnia and Herzegovina are not in themselves the amendments to the Constitution of Bosnia and Herzegovina, and cannot amend it. By its Decision U-

17/05 of 24 May 2006, the Constitutional Court correctly established that inter-Entity agreements are not part of the Constitution of Bosnia and Herzegovina, and the Court does not have competence to determine if the impugned act is in conformity with the Constitution of Bosnia and Herzegovina. The Constitutional Court reasons: "The applicant has found the grounds to challenge the conformity of the provisions of the relevant Law with Article III(5)(b) of the Constitution, in the fact that the contested provisions are inconsistent with the Agreement, whereby the Entities transferred the aforementioned responsibilities to Bosnia and Herzegovina. Therefore, the applicant indirectly requests the Constitutional Court to examine the contested provisions of the relevant Law in relation to the Agreement. Having regard to the aforementioned, the Constitutional Court notes that it is authorized to examine the constitutionality and legality of the contested provisions only in relation to the provisions of the Constitution of Bosnia and Herzegovina and not in relation to the provisions of the Agreement, which are not part of the Constitution of Bosnia and Herzegovina, therefore, its constitutionality cannot be examined."

12. The actions of the Constitutional Court of BiH, which put itself in the function of endorsing the illegal decisions of the High Representative and thus modifying the constitutional structure of Bosnia and Herzegovina established by the International Agreement, inflicts severe damage on relations within Bosnia and Herzegovina and contributes to the permanent instability. Numerous decisions of the Constitutional Court of BiH take away the responsibilities from the Republika Srpska and its property is placed under the competency of Bosnia and Herzegovina with no legal grounds.

17. The National Assembly considers that the current inconsistency of the responsibilities that are transferred to the level of Bosnia and Herzegovina without amendments to the Constitution of Bosnia and Herzegovina as Annex IV to the Dayton Agreement needs to be overcome/resolved by consistent application of Article III(3)(b) of the Constitution of Bosnia and Herzegovina, which explicitly prescribes that the Entities "shall comply fully with this Constitution". This purports the right of the National Assembly and the Government of the RS to suspend the application of any act, measure or activity of a body or an institution on the level of Bosnia and Herzegovina which do not have grounds in the

Constitution of Bosnia and Herzegovina and are not explicitly determined by the Constitution of Bosnia and Herzegovina as responsibility of the bodies on the level of Bosnia and Herzegovina.

18. Confirming its previous documents on constitutional relationships, notably the Resolution on the Protection of Constitutional Order and Proclamation of Military Neutrality, of 18 October 2017, the Conclusions regarding Information on unconstitutional transformation of the Dayton structure of BiH and effects on the position and rights of the Republika Srpska, of 12 November 2019, Conclusions of the National Assembly regarding Information on anti-Dayton activities of the Constitutional Court of BiH, of 13 February 2020, and Conclusions of the National Assembly regarding Information on application of Annex 10 of the Dayton Agreement, of 10 March 2021, the National Assembly holds that it is necessary to proceed with the modifications of the Constitution of the Republika Srpska by adopting a new text of the Constitution of the Republika Srpska.

19. The Government of the Republika Srpska is entrusted by the National Assembly to prepare the text of the Republika Srpska Constitution, in coordination with the President of the Republika Srpska, which text shall confirm all responsibilities of the Republika Srpska with the exception of those that are the explicit responsibilities of Bosnia and Herzegovina under the Constitution of Bosnia and Herzegovina. The new Constitution, inter alia, Banja Luka shall be established as capital of the Republika Srpska and Pale as crown/capital city of the Republika Srpska.

20. The National Assembly shall decide on the procedure of adoption of the new Constitution of the Republika Srpska after the consideration of a Bill proposed by the Government of the Republika Srpska.

21. The Declaration shall be published in the Official Gazette of the Republika Srpska”.

b) Relevant provisions related to the field of judiciary

37. The **Conclusions concerning Information on the Judicial Institutions of BiH no. 02/1-021-1032/21 of 10 December 2021** (text taken from the web page <https://www.narodnaskupstinars.net>), as relevant reads:

1. The National Assembly of the Republika Srpska adopts Information on the Judicial Institutions of BiH.

2. The National Assembly of the Republika Srpska revokes the consent given in the Conclusions of the National Assembly of the Republika Srpska, no. 01165/04 of 25 February 2004 (Official Gazette of the Republika Srpska, 24/04), to the Government of the Republika Srpska to sign the Agreement on the Transfer of Certain Entity Responsibilities through the Establishment of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.

3. The National Assembly of the Republika Srpska entrusts the Government of the Republika Srpska with a task of revoking its consent to the Agreement on the Transfer of Certain Entity Responsibilities through the Establishment of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, signed on 11 March 2004 by the Prime Ministers of both Entities, and on 18 March 2004 by the Minister of Justice of BiH.

4. The National Assembly of the Republika Srpska entrust the Government of the Republika Srpska with a task of submitting within six months the Law on the High Judicial and Prosecutorial Council of the Republika Srpska to the National Assembly of the Republika Srpska for consideration and adoption.

5. The Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina shall not apply in the territory of the Republika Srpska from the date of entry into force of the Law on the High Judicial and Prosecutorial Council of the Republika Srpska.

6. These Conclusions shall come into force on the day of its adoption and shall be published in the Official Gazette of the Republika Srpska.

38. The Conclusions of the National Assembly of the Republika Srpska, no. 01-165/04 of 24 February 2004 (Official Gazette of the Republika Srpska, 24/04), so far as relevant reads:

1. The National Assembly of the Republika Srpska, having considered the Agreement on the Transfer of Certain Entity Responsibilities through the Establishment of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, took the position to recommend that the Government of the Republika Srpska sign this Agreement, and obliges the Government of the Republika Srpska and representatives of the Republika Srpska at the Parliamentary

Assembly of BiH to argue for the following while drafting the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina:

- to incorporate in the Law the solutions which will institutionally and substantially preserve the influence of the Entities, which implies the establishment of subcouncils with a clear role and procedure for their work in relation to the High Judicial and Prosecutorial Council of Bosnia and Herzegovina;

- to harmonize the text of the Agreement with the wording of the Constitution before signing it;

- the seat of the High Judicial and Prosecutorial Council of BiH will be in Srpsko Sarajevo;

2. If the substance of these conclusions is not provided for in the Proposal for the Law on the High Judicial and Prosecutorial Council of BiH, the National Assembly of the Republika Srpska will revoke the consent given to this Agreement in the same manner in which it gave it and will request that the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina be challenged through the parliamentary procedure at the Parliamentary Assembly of BiH, including the House of Peoples.

3. These conclusions shall come into force on the date of its adoption and shall be published in the Official Gazette of the Republika Srpska.

39. The Agreement on the Transfer of Certain Entity Responsibilities through the Establishment of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, published in the *Official Gazette of the Federation of BiH*, 16/04, so far as relevant reads:

PREAMBLE

The Governements of the Entities are referring in this Agreement to the Constitution of Bosnia and Herzegovina for the purpose of transferring certain responsibilities related to the issues of judiciary to the level of Bosnia and Herzegovina. The objective of this transfer is to advance the measures of justice reform, considered as important to advance the rule of law and human rights, to modernize the justice system in accordance with international standards and to facilitate impartial and effective exercise of judicial office throughout Bosnia and Herzegovina, Federation of Bosnia and Herzegovina and Republika Srpska.

(...)

4. Bosnia and Herzegovina shall assume the responsibilities transferred to it by the Entities, as determined in this Agreement.

5. *The Council of Ministers of Bosnia and Herzegovina, in cooperation with the Independent Judicial Commission, will prepare the Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. The Law shall be in accordance with the requirements referred to in this Agreement and relevant European and international standards.*

6. *The Council of Ministers of Bosnia and Herzegovina shall submit the draft law to the Parliamentary Assembly of Bosnia and Herzegovina.*

40. **The Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina** (Official Gazette of BiH, 25/04 of 1 June 2004) so far as relevant reads as follows:

Having regard to Article IV 4.a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at the session of the House of Representatives held on 11.05.2004 and at the session of the House of Peoples held on 21.05.2004, adopted the following:

LAW ON THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BOSNIA AND HERZEGOVINA

CHAPTER I. GENERAL PROVISIONS

Article 1(1) and (2)

Establishment

- (1) *This Law establishes the High Judicial and Prosecutorial Council, and regulates: its work, organisation, competencies, powers and the conditions and mandate for the holding of judicial and prosecutorial power, the appointment of judges and prosecutors, the disciplinary responsibility of judges and prosecutors, the temporary suspension from office of judges and prosecutors, the incompatibility of judicial and prosecutorial service with other functions, the termination of mandates of judges and prosecutors and other questions related to the work of the High Judicial and Prosecutorial Council (hereinafter “the Council”).*
- (2) *The Council is an independent organ of Bosnia and Herzegovina and has legal personality.*

c) Relevant provisions related to the field of security and defence

41. **The Conclusions regarding Information on the Transfer of Responsibilities from the Republika Srpska to the Level of Bosnia and Herzegovina in the field of defence and security, no. 02/1-021-1033/21 of 10 December 2021** (text taken from the web page <https://www.narodnaskupstinars.net>), as relevant reads:

1. The National Assembly of the Republika Srpska adopts Information on the Transfer of Responsibilities in the field of defence and security from the Republika Srpska to the level of Bosnia and Herzegovina.

2. The National Assembly of the Republika Srpska revokes the consent given to Decision no. 01-511/05 of 30 August 2005 (Official Gazette of the Republika Srpska, 82/05) and Decision to authorize the Government of the Republika Srpska to sign the Agreement on the Transfer of Responsibilities in the field of defence to the institutions of BiH with the Federation of BiH, no. 01-824/05 of 28 December 2005 (Official Gazette of the Republika Srpska, 117/05).

3. The National Assembly of the Republika Srpska entrusts the Government of the Republika Srpska with the task of revoking the consent to the Agreement with the Federation of BiH on the Transfer of Responsibilities in the field of defence to the institutions of BiH.

4. The National Assembly of the Republika Srpska entrusts the Government of the Republika Srpska with the task of submitting, within a time limit of six months, the laws in the field of defence and security to the National Assembly for consideration and adoption.

5. The Law on Defence of BiH, Law on the Service in the Armed Forces of BiH, Law on Intelligence and Security Agency of BiH, Law on the State Investigation and Protection Agency of BiH shall cease to apply on the territory of the Republika Srpska on the date of entry into force of the laws in the field of defence and security.

6. The conclusions shall come into force on the next day following day of the adoption.

42. **Decision of the National Assembly of the Republika Srpska, no. 01-511/05 of 30 August 2005** (Official Gazette of the Republika Srpska, 82/05) so far as relevant reads:

The National Assembly of the Republika Srpska accepts that the responsibilities in the field of defence of the Republika Srpska will be transferred to the common bodies and institutions of Bosnia and Herzegovina in order enable the implementation of the procedure related to the Law on Defence of Bosnia and Herzegovina and Law on the Service in Armed Forces of Bosnia and Herzegovina.

43. **The Agreement between the Federation of Bosnia and Herzegovina and Republika Srpska on the transfer of responsibilities in the field of defence** (*Official of the Republika Srpska*, 4/06 of 20 January 2006) so far as relevant reads:

The Federation of Bosnia and Herzegovina and Republika Srpska (hereinafter referred to as the “Parties”);

Recognizing the need for establishing a single defence system of Bosnia and Herzegovina with a clearly defined and effective chain of command and control over the Armed Forces of Bosnia and Herzegovina;

Bearing in mind that the foreign, security and defence policies of Bosnia and Herzegovina are directed at integration of Bosnia and Herzegovina into Euro-Atlantic organizations;

Recognizing that the present structure of the Armed Forces of Bosnia and Herzegovina is an obstacle to the membership of Bosnia and Herzegovina in NATO;

Considering that the Parliament of the Federation of Bosnia and Herzegovina and National Assembly of the Republika Srpska adopted decisions on the transfer of the responsibilities in the field of defence to the institutions at the level of Bosnia and Herzegovina;

Bearing that in mind and having considered all these issues, the Parties agreed as follows:

Article 1

The Parties agree to transfer all the responsibilities of the Entities in the field of defence to the institutions of Bosnia and Herzegovina pursuant to Article III(3)(a) of the Constitution of Bosnia and Herzegovina.

Article 2

The Parties accept that all the responsibilities transferred by the Entities based on this Agreement will be exclusively carried out by the institutions of Bosnia and Herzegovina.

44. **The Law on Defence of Bosnia and Herzegovina** (*Official Gazette of BiH*, 88/05), so far as relevant reads:

Based on Article III.5.a) and Article IV.4. a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at the session of the House of Peoples held on 28 September 2005 and at the session of the House of Representatives held on 5 October 2005, adopted the

LAW ON DEFENCE OF BOSNIA AND HERZEGOVINA

CHAPTER I. GENERAL PROVISIONS

Article 1

(Subject of the Law)

This Law shall regulate the common defence system of Bosnia and Herzegovina, establish and define the chain of command and role of all the elements in order for Bosnia and Herzegovina to have full capacity in civilian over sight and protection of the sovereignty and territorial integrity of Bosnia and Herzegovina. The Law shall establish the rights, responsibilities and activities of the institutions of Bosnia and Herzegovina, the Armed Forces of Bosnia and Herzegovina (hereinafter: the Armed Forces) and entity bodies for defence of the sovereignty and territorial integrity, political independence and international personality of Bosnia and Herzegovina and provision of assistance to civil authorities.

45. The **Law on the Intelligence-Security Agency of Bosnia and Herzegovina** (*Official Gazette of BiH*, 12/04, 20/04, 56/06, 32/07, 50/08- ZO, 12/09, 43/17 – Decision of the CC BiH and 42/18- Ruling of the CC BiH)

The Law on the intelligence-Security Agency of Bosnia and Herzegovina (*Official Gazette of BiH*, 12/04) is applicable in the present case, and, so far as relevant, reads:

On the basis of Article IV.4.a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina at the Session of the House of Representatives, held on 22 March, 2004, and at the Session of the House of Peoples, held on 22 March, 2004, adopted the following:

LAW ON THE INTELLIGENCE AND SECURITY AGENCY OF BOSNIA AND HERZEGOVINA

I - GENERAL PROVISIONS

Article 1

This Law establishes the Intelligence and Security Agency of Bosnia and Herzegovina (hereinafter: the Agency), which shall be responsible for gathering, analyzing and disseminating intelligence in order to protect the security, including the sovereignty, territorial integrity and constitutional order, of Bosnia and Herzegovina.

The Agency shall conduct its work in accordance with the Constitution of Bosnia and Herzegovina, including the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols referenced therein and international treaties and agreements that Bosnia and Herzegovina has signed or entered

46. **The Law on Service in the Armed Forces of Bosnia and Herzegovina** (*Official Gazette of BiH*, 88/05, 53/07, (58/08- ZO), 59/09, 74/10, 42/12, 41/16 and 38/18)

The Law on Service in the Armed Forces of Bosnia and Herzegovina (*Official Gazette of BiH*, 88/05) is applicable in the present case and, so far as relevant, reads:

Based on Article III.5.a) and Article IV.4. a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at the session of the House of Representatives held on 28 September 2005 and session of the House of Peoples held on 5 October 2005, adopted

LAW ON SERVICE IN THE ARMED FORCES OF BOSNIA AND HERZEGOVINA

CHAPTER I GENERAL PROVISIONS

Article 1

(Subject of the Law)

This Law shall regulate the service in the Armed Forces of Bosnia and Herzegovina (hereinafter referred to as the “Armed Forces”) composition of the Armed Forces, admission to the service, rights and duties of the persons serving in the Armed Forces, status of the persons during the service, system of classification of personnel, performance evaluation, advancement, management of the records of personnel and career of military personnel, military ranks and insignia in the Armed Forces, standards of the conduct and other status-related issues in the services of the Armed Forces.

47. The **Law on the State Investigation and Protection Agency** (*Official Gazette of BiH*, 27/04, 63/04, 35/05, 49/09 and 40/12)

The **Law on the State Investigation and Protection Agency** (*Official Gazette of BiH*, 27/04 and 63/04) applies in the present case, reading in so far as relevant as follows:

Pursuant to Article IV 4 a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at the session of the House of Representatives held on 24 April 2004 and at the session of the House of Peoples held on 4 May 2004, has adopted the

LAW ON THE STATE INVESTIGATION AND PROTECTION AGENCY

I – GENERAL PROVISIONS

Article 1

Scope of Regulation

(1) This Law shall establish the State Investigation and Protection Agency (hereinafter referred to as the „SIPA“) and shall regulate its competence and organisation, as a policy body of Bosnia and Herzegovina (hereinafter referred to as „BiH“).

(2) For all other issues relevant for the functioning of SIPA as a police body, such as police powers, working relations, education and training of police officials within SIPA, to the extent not prescribed by this Law, the Law on Police Officials of BiH shall apply.

(3) For all organizational and management issues and other issues relevant for the functioning of SIPA as an administrative organization, such as enactment of Rulebook on Internal Organization and other regulation, administrative supervision, relations between the institutions of BiH and relations towards legal and natural persons, to the extent not prescribed by this Law, the Law on Ministries and Other Administrative Bodies of BiH and the Law on Administration shall apply.

d) Relevant provisions related to the field of indirect taxation

48. **The Conclusions in relation to Information on the transfer of responsibilities in the area of indirect taxation no. 02/1 -021-1031/21 of 10 December 2021** (text taken from the web page <https://www.narodnaskupstinars.net>), as relevant reads:

1. The National Assembly of the Republika Srpska adopts Information about the transfer of responsibilities in the area of indirect taxation.

2. The National Assembly of the Republika Srpska withdraws the consent it gave, by means of the Conclusions of the National Assembly of the Republika Srpska no. 01-1005/03 of 30 October 2003 (Official Gazette of the Republika Srpska, 95/03) for the responsibility in the area of indirect taxation within the tax policy system (Article 68, paragraph 3, item 7 of the Constitution of the Republika Srpska) to be transferred to the Parliamentary Assembly of BiH, in order to enable the consideration and adoption of the Law on the Indirect Taxation System in BiH.

3. The National Assembly of the Republika Srpska withdraws the consent it gave, by means of the Conclusions of the National Assembly of the Republika Srpska no. 01-1005/03 of 30 October 2003 (Official Gazette of the Republika Srpska, 95/03), to the Government of the Republika Srpska to be able to conclude the Agreement on the responsibility in the area of indirect taxation between the Republika Srpska and the Federation of Bosnia and Herzegovina.

4. The National Assembly of the Republika Srpska tasks the Government of the Republika Srpska to withdraw the consent to the Agreement on the responsibility in the area of indirect taxation between the Republika Srpska and the Federation of Bosnia and Herzegovina, which was signed on 5 December 2003, in the presence of the High Representative in Bosnia and Herzegovina, by the Prime Ministers of the Entities' Governments.

5. The National Assembly of the Republika Srpska tasks the Government of the Republika Srpska to send, within six months, the Law on Value Added Tax in the Republika Srpska and the Law on Excise Tax of the Republika Srpska to the National Assembly of the Republika Srpska for consideration and adoption.

6. The Law on the Indirect Taxation System in BiH, the Law on Payments to a Single Account and Income Distribution, the Law on Indirect Taxation Authority of Bosnia and Herzegovina, the Law on Indirect Tax Forced Collection

Procedure, the Law on Value Added Tax and the Law on Excise Tax in BiH will not be applied in the territory of the Republika Srpska from the day of entry into force of the Law on Value Added Tax in the Republika Srpska and the Law on Excise Tax of the Republika Srpska.

7. These conclusions shall enter into force the next day following the adoption thereof.

49. The Conclusions of the National Assembly of the Republika Srpska, no. 01-1005/03 of 30 October 2003 (Official Gazette of RS, 95/03), so far as relevant read:

1. The National Assembly of the Republika Srpska gives its consent to the transfer of the responsibilities in the field of indirect taxation within the taxation policy system (Article 68 paragraph 3 item 7 of the Constitution of the Republika Srpska) to the Parliamentary Assembly of BiH in order to enable consideration and adoption of the Law on Indirect Taxation System of BiH.

2. The National Assembly of the Republika Srpska, in accordance with paragraph 1 of these Conclusions, enables the Government of the Republika Srpska to sign with the Government of the Federation of BiH an appropriate Agreement with a view to implementing the provisions of the mentioned law in accordance with the powers referred to in Article IV(4)(e) of the Constitution of BiH.

3. The National Assembly of the Republika Srpska shall forward the excerpts from the minutes on the discussion conducted on the customs and taxation system reforms at the session of the National Assembly with a view to informing the deputies of the Republika Srpska at the Parliamentary Assembly of Bosnia and Herzegovina.

4. The National Assembly of the Republika Srpska reaffirms its commitment to contribute, in support of the adoption of this law, to the faster progress of BiH and its Entities in the process of stabilization and accession to the EU.

5. The National Assembly of the Republika Srpska entrusts the Committee on Constitutional Issues of the National Assembly with a task of proposing, within the shortest possible time, an adequate form of transfer of constitutional responsibilities to this Assembly, given the fact that this issue will be posed in formal and substantial terms in other cases related to possible transfer of responsibilities or part of responsibilities in other fields.

6. These Conclusions shall enter into force on the date of its adoption and shall be published in the Official Gazette of the Republika Srpska.

50. The **Law on the Indirect Taxation System in Bosnia and Herzegovina** (*Official Gazette Bosnia and Herzegovina*, 44/03, 52/04, 34/07, 4/08, 50/08 – ZO, 49/09, 32/13 and 91/17)

The Law on the Indirect Taxation System in Bosnia and Herzegovina (*Official Gazette Bosnia and Herzegovina*, 44/03) applies in the present case, reading, so far as relevant, as follows:

Based on Article IV(4)(a) of the Constitution of Bosnia and Herzegovina the Bosnia and Herzegovina Parliamentary Assembly had, at the House of Representatives session held December 29, 2003 and the House of Peoples session held on December 29, 2003, enacted the

LAW ON INDIRECT TAXATION SYSTEM IN BOSNIA AND HERZEGOVINA

I - GENERAL PROVISIONS

Article 1

This Law establishes the institutional and organisational basis for a single indirect taxation system in Bosnia and Herzegovina in order to contribute to the overall macroeconomic stability and fiscal sustainability of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina (hereinafter: the Federation), Republika Srpska and the Brčko District of Bosnia and Herzegovina (hereinafter: the District), as well as to support the functioning of a single economic space in Bosnia and Herzegovina.

For the purpose of this Law, the term “indirect tax” refers to import and export duties, excise taxes, value added tax and all other tax levies on goods and services, including sales taxes and road tolls.

51. The **Law on Payments into the Single Account** (*Official Gazette of BiH*, 55/04, 34/07, 49/09 and 91/17).

The Law on Payments into the Single Account (*Official Gazette of BiH*, 55/04) applies in the present case, reading, so far as relevant, as follows:

Based on Article IV(4)(a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly, at the session the House of Peoples held on 23

November 2004 and, at the session of the House of Representatives held on 2 December 2004, enacted the

LAW

ON THE PAYMENTS INTO THE SINGLE ACCOUNT

AND DISTRIBUTION OF REVENUES

I-BASIC PROVISIONS

Article 1

This Law regulates the methods of payment of indirect taxes, other revenues and levies (hereinafter referred to as the “revenues”) under the scope of responsibilities of the Indirect Taxation Authority (hereinafter referred to as the “Authority”), the rules related to administering the single account intended for collection of indirect taxes, other revenues and levies, the transfer and distribution of collected revenues to Bosnia and Herzegovina (hereinafter referred to as the “State”), Republika Srpska, Federation of BiH (hereinafter referred to as the “Entities”) and Brčko District of BiH (hereinafter referred to as the “District”), bookkeeping for the single account, providing information regarding collection, transfer and distribution of collected revenues and independent annual external audit.

The term “indirect taxes” refers to the import and export duties, excise taxes, value added tax and all other levies on goods and services, including sales taxes and road tolls, as referred to in Articles 1 and 4 of the Law on the Indirect Taxation System in Bosnia and Herzegovina (Official Gazette of BiH, 44/03), hereinafter referred to as the “LITS”.

The term “other revenues and levies” refers to the revenues deriving from storage and demurrage fees, fines and revenues deriving from the sale of goods delivered to the Authority or confiscated in the administrative or minor offence proceedings, revenues deriving from customs escort, revenues deriving from EUR 1 certificate, rent revenues, revenues deriving from terminals, extraordinary revenues and other revenues deriving from the Authority’s own activities.

52. The **Law on the Indirect Taxation Authority** (Official Gazette of Bosnia and Herzegovina, 89/05), so far as relevant, reading as follows:

Based on Article IV(4)(a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly, at the session of the House of Representatives held on 21 December 2005 and at the session the House of Peoples held on 22 December 2005 enacted the

LAW

ON THE INDIRECT TAXATION AUTHORITY

CHAPTER I. GENERAL PROVISIONS

Article 1

(Subject of the Law)

This Law regulates the responsibilities, structure, administration of the Indirect Taxation Authority (hereinafter referred to as the “ITA”), right and duties of the employees, administration of human resources and other issues.

53. The **Law on the Procedure for Indirect Taxation** (*Official Gazette of Bosnia and Herzegovina*, 89/05 and 100/03).

The Law on the Procedure for Indirect Taxation (*Official Gazette of BiH*, 89/05) applies in the present case, reading, so far as relevant, as follows:

Based on Article IV(4)(a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly, at the 70th session of the House of Representatives held on 8 November 2005 and at the 51st session the House of Peoples held on 28 November 2005, enacted the

LAW

ON THE PROCEDURE FOR INDIRECT TAXATION

CHAPTER I. General provisions related to the indirect taxation

CHAPTER I. BASIC PROVISIONS

Article 1

(Basic rule)

(1) This Law regulates the procedure for determination, collection, control of indirect taxes and tax offences.

- (2) *The procedure for carrying out the activities in the field of customs charges is regulated in the Law on the Customs Policy in Bosnia and Herzegovina (Official Gazette of BiH, 57/04 and 12/05).*

54. The **Law on the Procedure for Forced Collection of Indirect Taxes** (*Official Gazette of Bosnia and Herzegovina*, 89/05 and 62/11)

The Law on the Procedure for Forced Collection of Indirect Taxes (*Official Gazette of BiH*, 89/05) applies in the present case, reading, so far as relevant, as follows:

Based on Article IV(4)(a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly, at the session of the House of Representatives held on 8 November 2005 and at the session the House of Peoples held on 28 November 2005, enacted the

LAW

ON THE PROCEDURE FOR FORCED COLLECTION OF TAXES

PART I. GENERAL PROVISIONS

Article 1

(Content of the Law)

- (1) *This Law regulates the procedure followed by the Indirect Taxation Authority of Bosnia and Herzegovina to collect forcibly indirect taxes and other revenues and levies (hereinafter referred to as the “debts”).*

- (2) *The debts arising from indirect taxes that are collected in accordance with this Law are the debts determined in the Law on the Indirect Taxation System in Bosnia and Herzegovina (Official Gazette of BiH, 44/03 and 52/04) and Law on Payments into the Single Account and Distribution of Revenues (Official Gazette of BiH, 55/04).*

55. The **Law on Value Added Tax** (*Official Gazette of Bosnia and Herzegovina*, 9/05, 35/05, 100/08 and 33/17)

The Law on Value Added Tax (*Official Gazette of Bosnia and Herzegovina*, 9/05), which was applicable at the time when the contested decisions were taken, in the relevant part, reads as follows:

Based on Article IV(4)(a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly, at the 50th session of the House of Representatives held on 12 January 2005 and at the session the House of Peoples held on 26 January 2005, enacted the

LAW ON VALUE ADDED TAX

GENERAL PROVISIONS

Article 1

Territorial application

This law shall introduce the obligation and regulate the system of payment of value added tax (hereinafter referred to as the “VAT”) in the territory of Bosnia and Herzegovina

The territory of Bosnia and Herzegovina constitutes the territory under the sovereignty of Bosnia and Herzegovina, including the air space and sea area which, according to national and international law, is under the sovereignty or jurisdiction of Bosnia and Herzegovina.

56. **The Law on the Excise Taxes in Bosnia and Herzegovina** (Official Gazette of Bosnia and Herzegovina, 49/09, 49/14, 60/14 and 91/17)

The Law on the Excise Taxes in Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, 49/09) applies in the present case, reading so far as relevant as follows:

Pursuant to Article IV 4 a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at the 54th session of the House of Representatives held on 27 May 2009 and at the 31st session of the House of Peoples held on 18 June 2009 adopted

LAW ON EXCISE TAXES IN BOSNIA AND HERZEGOVINA

I – GENERAL PROVISIONS

Article 1

(Subject)

(1) This Law shall regulate the taxation of trade and/or import of certain types of products (hereinafter referred to as the “excise products”) with a special type of tax – excise tax in the territory of Bosnia and Herzegovina.

(2) The provisions of this Law shall also apply to the road toll.

e) Other regulations

57. Conclusions Regarding Information on the Transfer of Responsibilities from the Republika Srpska to the Level of Bosnia and Herzegovina no. 02/1-021-1030/21 of 10 December 2021 (the text taken from the web page <https://www.narodnaskupstinars.net>), as relevant reads:

1. The National Assembly of the Republika Srpska adopts Information on the Transfer of Responsibilities from the Republika Srpska to the Level of Bosnia and Herzegovina.

2. The National Assembly of the Republika Srpska entrusts to the Government of the Republika Srpska with a task of sending the laws and other regulations, which will enable unhindered functioning of the Republika Srpska, to the National Assembly of the Republika Srpska for consideration and adoption within six months.

3. The laws and other regulations by which the transfer of responsibilities from the Republika Srpska to the institutions of Bosnia and Herzegovina was performed shall not be applied on the territory of the Republika Srpska as of the date of entry into force of the laws and other regulations under paragraph 2 of this Conclusion.

4. The Conclusions shall enter into force on the day following the date of their adoption.

58. Decision of the High Representative Repealing the Conclusion of the Republika Srpska National Assembly No. 01-787/09 and 01-788/09 adopted on 14 May 2009 (the text taken from the web page <http://www.ohr.int/>) so far as relevant reads:

In the exercise of the powers vested in the High Representative by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) (...)

Bearing in mind that the Republika Srpska National Assembly, at its Session held on 14 May 2009, following consideration of the Republika Srpska Government "Information on the Effects of the Transfer of Constitutional Responsibilities from Republika Srpska to the Institutions of BiH", adopted the Conclusion No. 01-787/09 adopting the said "Information" as well as additional Conclusions No. 01-788/09 (hereinafter collectively referred to as "the Conclusions"); (...)

Noting that under the Rules of Procedure of the Republika Srpska National Assembly, the Conclusions, *inter alia*, determine policies for the Republika Srpska authorities and provide instruction as to how to carry out those policies and set out the obligations of the Government, ministries and special organizations in regard to implementation of these policies;

Considering that the Conclusions undermine the exclusive competencies of Bosnia and Herzegovina expressly listed in the Constitution of Bosnia and Herzegovina;

Considering further that the Conclusions disregard decisions of the Constitutional Court of Bosnia and Herzegovina rendered on many of the issues listed as responsibilities “taken over from or transferred by” the Republika Srpska;

Taking note of the fact that the Conclusions indistinctively challenges all laws that were enacted by decisions of the High Representative by stating that they are not based on the Constitution of Bosnia and Herzegovina;

Noting further that the Conclusions instruct and/or demand from certain authorities or representatives of Republika Srpska to take actions to implement the policies contained in said Conclusions;

Concerned by the fact the Conclusions seeks to give the Republika Srpska National Assembly the mechanism to trigger the entity voting procedure provided for in the Constitution of Bosnia and Herzegovina, thereby undermining the functionality of the Parliamentary Assembly of Bosnia and Herzegovina and consequently damaging the ability of Bosnia and Herzegovina to fulfill its EU and NATO Agenda;

Recalling that the Constitution of Bosnia and Herzegovina, and in particular Article III,5 thereto, foresees that responsibilities not belonging to Bosnia and Herzegovina under the Constitution can only be assumed by the institutions of Bosnia and Herzegovina as agreed by the entities, and that the agreement of Republika Srpska has been and shall continue to be sought for the assumption of such responsibilities; (...)

Mindful of the fact that Article VI, 5 of the Constitution of Bosnia and Herzegovina provides that “[d]ecisions of the Constitutional Court are final and binding,” and that Article III,3,(b) of the Constitution of Bosnia and Herzegovina provides, *inter alia* that

“[t]he Entities and any subdivisions thereof are required to comply fully with this Constitution (...), and with the decisions of the institutions of Bosnia and Herzegovina”;

Concluding *therefore that the Conclusions undermine the system of division of responsibilities between the State and the Entities as established under the Constitution of Bosnia and Herzegovina and as further interpreted by the Constitutional Court of Bosnia and Herzegovina in a number of its decisions and therefore formally disregard or challenge the above mentioned provisions of Annex 4 to the General Framework Agreement for Peace and that by so doing calls into question the legal existence of Republika Srpska as provided for under the same Annex 4;*

Deploring *that the Republika Srpska National Assembly, by seeking to substitute its own interpretation of the Constitution of BiH and Article III thereof to the interpretation made by the Constitutional Court of Bosnia and Herzegovina, undermines the authority of the highest institution upholding the rule of law in Bosnia and Herzegovina;*

(...) the High Representative hereby issues the following:

DECISION

Repealing the Conclusions of the Republika Srpska National Assembly No. 01-787/09 and No. 01-788/09 adopted on 14 May 2009

The Conclusions of the Republika Srpska National Assembly No. 01-787/09 and No. 01-788/09 adopted on 14 May 2009 (“Official Gazette of Republika Srpska” No. 50/09) shall be repealed as of the entry into force of this Decision.

This Decision shall enter into force and shall be published on the website of the Office of the High Representative forthwith. It shall be published in the Official Gazette of Bosnia and Herzegovina and of Republika Srpska without delay.

59. **Conclusions of the National Assembly of the Republika Srpska no. 01-787/09 and no. 01-788/09 adopted on 14 May 2009** (text taken from the Internet site <https://www.narodnaskupstina.net>) so far as relevant read:

1. Article III of the Constitution of Bosnia and Herzegovina stipulates the responsibilities of the institutions of Bosnia and Herzegovina. It also prescribes that “all governmental

functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities “.

2. Based on Information on Effects of Transfer of Constitutional Competencies from the Republika Srpska to the Institutions of Bosnia and Herzegovina (hereinafter referred to as „Information“), the National Assembly concludes that there are 68 cases in which the responsibilities were transferred or taken from the Entities to the institutions of Bosnia and Herzegovina. The National Assembly concludes that there are only 3 cases in which it gave its consent for the Parliamentary Assembly of Bosnia and Herzegovina to enact the laws transferring the responsibilities from the Entities to the institutions of Bosnia and Herzegovina for the purposes of Article III(3) of the Constitution of Bosnia and Herzegovina.

5. The National Assembly considers that during the possible talks about modification of the Constitution of Bosnia and Herzegovina it is necessary to enact the procedure for transfer of responsibilities from the Entities to the institutions of Bosnia and Herzegovina and return thereof.

The National Assembly considers that every transfer of responsibilities has the character of constitutional modifications and that the procedure for transfer of responsibilities should be carried out in the manner and in accordance with the procedure intended for amendments to the Constitution of the Republika Srpska.

6. The National Assembly considers that any change in the distribution of responsibilities between the Entities and Bosnia and Herzegovina, including the responsibilities which were meanwhile transferred without modification of the Constitution of Bosnia and Herzegovina, must be the subject of comprehensive discussion during the possible talks about the changes in the Constitution of Bosnia and Herzegovina and can only be the result of consensus and compromise between domestic stakeholders without imposing solutions by the international actors.

7. The National Assembly claims that the transfer of responsibilities, without preliminary agreement of the Entities, carried out by means of passing acts at the Parliamentary Assembly of Bosnia and Herzegovina, is not constitutional, as the parties to the agreement are the Entities within the meaning of the Constitution of Bosnia and Herzegovina.

8. With regard to the responsibilities transferred unconstitutionally so far, the National Assembly requests the initiation of the procedure for amending and supplementing

previously enacted laws, i.e. referral of legal disputes before domestic and foreign judicial institutions.

10. *The National Assembly concludes that the Conclusions of the National Assembly, of 25 February 2004, were not fully complied with when considering the Agreement on the Transfer of Certain Entity Responsibilities through the Establishment of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. It was expressly requested in these Conclusions that the “influence of the Entities be preserved institutionally and substantially, which implies the establishment of subcouncils with a clear role and procedure for their work in relation to the High Judicial and Prosecutorial Council of Bosnia and Herzegovina;*

V. Admissibility

60. In examining the admissibility of the request, the Constitutional Court invoked the provisions of Articles IV(2) and VI(3)(a) of the Constitution of BiH.

61. Article IV(2) of the Constitution of BiH, as relevant, reads:

The House of Representatives shall comprise 42 Members, two-thirds elected from the territory of the Federation, one-third from the territory of the Republika Srpska.

62. Article VI(3)(a) of the Constitution of BiH reads:

The Constitutional Court shall have exclusive jurisdiction to decide any dispute that arises under this Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between Institutions of Bosnia and Herzegovina, including but not limited to: -

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

- Whether any provision of an Entity’s constitution or law is consistent with this Constitution.

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

63. Article 19 paragraph a) of the Rules of the Constitutional Court reads:

A request shall be inadmissible in any of the following cases:

a) the Constitutional Court is not competent to take a decision

64. Having regard to the provisions of Article IV(2) and Article VI(3)(a) of the Constitution of BiH, the Constitutional Court finds that the request in question was filed by an authorized person. Namely, the House of Representatives of the Parliamentary Assembly of BiH consists of 42 members and, therefore, 15 members, the number of those who filed the request, make up at least one quarter of the total number of members in terms of Article VI(3)(a), paragraph 2, of the Constitution of Bosnia and Herzegovina.

65. Having established that the request at hand was filed by an authorized person, the Constitutional Court examined whether the issues raised in the request at issue fall within the scope of jurisdiction of the Constitutional Court in terms of Article VI(3)(a) of the Constitution of BiH. The Constitutional Court observes that the applicants, as to the jurisdiction of the Constitutional Court, claim that the challenged Declaration and Conclusions are not ordinary acts of lower legal rank and that their effect could be “a threat to the existence of the State of Bosnia and Herzegovina”. This is so, taking into account the fact that they contain an order given to the authorities of the Republika Srpska to take actions with a view to changing the constitutional legal system of BiH and enacting laws that do not fall within the scope of responsibilities of the Republika Srpska. On the other hand, in response to the request, the National Assembly points out that the instant case is not about laws but about declarations and conclusions as acts of lower legal rank that should be viewed as political acts and, therefore, the Constitutional Court has no jurisdiction to review them.

66. The Constitutional Court notes that in the instant case, it is not disputed that the subject of review of constitutionality is neither an Entity’s constitution nor an Entity’s law. Given that Article VI(3)(a) of the Constitution of Bosnia and Herzegovina stipulates that the Constitutional Court shall have exclusive jurisdiction to decide any dispute that arises under this Constitution, including but not limited to, as to whether any provision of an Entity’s constitution or law is consistent with this Constitution, the Constitutional Court should examine whether it has jurisdiction to review the constitutionality of the challenged acts. In view of the above, in the following paragraphs, the Constitutional Court will give reasons for its position regarding the competence to decide on the requests at issue.

67. The Constitutional Court recalls its case-law wherein it established a certain degree of extensive interpretation of a part of the provision of Article VI(3)(a) of the Constitution, reading “including but not limited to”. The Constitutional Court was guided by the view that “the framer of the Constitution could not predict the scope of all the functions of the Constitutional Court at the time when the Constitution of Bosnia and Herzegovina was being adopted. This unpredictability is often associated with the issue of jurisdiction of the Constitutional Court”. Furthermore, the Constitutional Court emphasized that “if the framer of the Constitution was to prescribe in detail the requirements for adoption of decisions by the Constitutional Court, the question as to whether this would impose restrictions on the actions of the Constitutional Court would arise. Hence, the wording “including but not limited to” under Article VI(3)(a) of the Constitution”. In the reasons for its view, the Constitutional Court noted: “The Constitutional Court is one of the most responsible Institutions of the system, which represents an additional protection mechanism and ensures consistent respect for human rights in accordance with the international conventions and other international agreements. The Constitutional Court must be a just and reliable guardian of the Constitution of Bosnia and Herzegovina, its values and human rights. There are many issues under the Constitution of Bosnia and Herzegovina that need to be clarified and, in this respect, the Constitutional Court is the only body competent and qualified to provide interpretations” (see Constitutional Court, Decision on Admissibility and Merits, *U-4/05* of 22 April 2005, paragraphs 14-16, published in the *Official Gazette of BiH*, 32/05).

68. The Constitutional Court further notes that according to its previous case law related to the cases raising an issue of compatibility of the general acts, which were not expressly mentioned in the provision of Article VI(3)(a) of the Constitution of BiH, it considered the circumstances of each individual case relating to the jurisdiction conferred to it based on the mentioned Article and, accordingly, expressed the view whether a particular request for review of those acts was admissible. In addition, the Constitutional Court notes that it is the master of the characterization to be given in law to the facts of the case, and that it is not bound by the characterization given by the applicants (see Constitutional Court, Decision on Admissibility and Merits, no. *U-6/06* of 29 March 2006, paragraph 21, published in the *Official Gazette of BiH*, 40/08), and that it is the final authority on the interpretation and application of the Constitution (see Constitutional Court, Decision on Admissibility and Merits, no. *U-9/09* of 26 November 2010, paragraph 70, published in the *Official Gazette of BiH*, 48/11). In view of the above, the Constitutional Court will present the previous case law in cases that dealt with the issue of reviewing the constitutionality of acts of lower legal rank than the law.

69. In this connection, the Constitutional Court recalls that the subject of review in Decision on Admissibility and Merits no. *U-7/16* were the acts of lower rank than the law, namely, the Decision on the Adoption of Unified Data Processing Program for the Census of the Population, Households and Dwellings in Bosnia and Herzegovina in 2013, no. 11-43-2-12-601-2/16 of 18 May 2016, and the Data Processing Unified Programme for the Census of the Population, Households and Dwellings in Bosnia and Herzegovina in 2013, adopted by the Director of the Statistics Agency of BiH. The applicant claimed that the contested acts were in violation of the Constitution of BiH, as they were not compatible with the Law on Census of the Population, Households and Dwellings and Law on Statistics of BiH, which were passed by the Parliamentary Assembly of BiH (see Constitutional Court, Decision on Admissibility, no. *U-7/16* of 19 January 2017, available at www.ustavnisud.ba). The Constitutional Court concluded that it was not competent to take a decision for the purposes of Article VI(3)(a) of the Constitution of BiH, as the contested acts did not raise the issue of violation of human rights, and that a dispute could not arise from the applicable regulations. Finally, the Constitutional Court noted that it had no jurisdiction to review the lawfulness of acts in general, but that it followed from the arguments of the applicant that the issue was raised with regard to the conformity of the challenged acts with the Law on Census and Statistics (see paragraphs 33 and 34 of the mentioned decision).

70. The Constitutional Court recalls that the subject matter of review of constitutionality in Decision no. *U-28/14* was a provision of a by-law, more specifically, the Rulebook Amending the Rulebook on Criteria, Procedure and Method of Allocation of International Permits for Cargo Transport to Domestic Carriers, which was passed by the Minister of Communications and Transport. Given the fact that the request for review related to the issue arising out of the Constitution of Bosnia and Herzegovina and International Agreements that guarantee the protection and exercise of human rights and constitutional principles, such as the principle of market economy, the right to property and the right to non-discrimination, the Constitutional Court held that it was competent to review the constitutionality of the bye-law (see Constitutional Court, Decision on Admissibility and Merits, no. *U-28/14* of 26 November 2015, paragraph 15, available at www.ustavnisud.ba).

71. In addition, the Constitutional Court points out that in its previous case law it has developed the view that the issue relating to a conflict of responsibilities between different levels of government in Bosnia and Herzegovina as to the constitutional responsibility to pass (also) by-laws may give rise to the constitutional dispute within the meaning of Article VI(3)(a) of the Constitution

of Bosnia and Herzegovina. Actually, taking into account the provisions of Article VI(3) under which ...*the Constitutional Court shall uphold this Constitution...* as well as the provision of the same Article reading, as relevant, ... *including but not limited to...*, in respect of which the Constitutional Court considers also the provisions on division of responsibilities under Article III of the Constitution of Bosnia and Herzegovina, and in view of the constitutional principle of the rule of law under Article I(2) of the Constitution of Bosnia and Herzegovina, the Constitutional Court finds that it may establish its jurisdiction to decide the constitutional dispute in which it is claimed that the incompetent authority passed the by-law although it had no jurisdiction under the Constitution of Bosnia and Herzegovina for the adoption thereof (see Constitutional Court, Decision on Admissibility and Merits No. *U-10/14* of 4 July 2014, paragraph 79).

72. Furthermore, in its case law on the issue of the existence of a constitutional dispute, the Constitutional Court has taken the position that a series of formal acts and activities undertaken by one of the Entities may raise an issue of existence of a dispute between the Entity and Bosnia and Herzegovina over an issue under the Constitution of Bosnia and Herzegovina in respect of which the Constitutional Court of BiH has sole jurisdiction to decide (*mutatis mutandis, op. cit., U-10/14*, paragraph 75, with further references). In addition, in its case law, the Constitutional Court has interpreted that a dispute cannot arise from ordinary and positive legal regulations but it must relate to certain issues regulated by the Constitution of BiH itself (see Constitutional Court, Decision on Admissibility No. *U-12/08* of 30 January 2009, published in the *Official Gazette of BiH*, 62/09, paragraph 7). In this regard, the Constitutional Court recalls that pursuant to Article VI(3)(a) of the Constitution of Bosnia and Herzegovina, the Constitutional Court has exclusive jurisdiction to decide any dispute that arises under this Constitution between, *inter alia*, Bosnia and Herzegovina and an Entity.

73. According to the cited case law, the mere fact that the challenged provisions are contained in the legal acts which are not explicitly enumerated in Article VI(3)(a) of the Constitution of BiH is not an obstacle for the Constitutional Court to take a decision in the relevant case. However, at the same time, it does not mean that every legal act which is lower in rank than the law or the constitutions of the Entities may be subject to review within the meaning of the responsibilities under the quoted constitutional provision and that any invocation of the principles contained in the Constitution of BiH necessarily results in the dispute for which the Constitutional Court of BiH is competent to take a decision in that regard (see, *mutatis mutandis, inter alia, U-28/13*, paragraph 17). In view of the above, the Constitutional Court points out that, where considering the

jurisdiction, it is not limited to the type of acts, but it is necessary thoroughly to examine the content of the disputed acts and the consequences thereof.

74. In the present case, the Constitutional Court notes that, pursuant to Article 178 of the Rules of Procedure, the Declaration expresses the position of the National Assembly on general issues related to the rights and duties of the Republic and other general issues of interest to the citizens of RS. In considering the content of the impugned Declaration, the Constitutional Court notes that it mostly expresses the views of the National Assembly on general issues (such as the lack of constitutional continuity of BiH, asymmetric organization of the State, unconstitutionality of laws imposed by the High Representative, operation of the Constitutional Court, *etc.*), and it gives its own interpretation of the division of responsibilities between the Entity of the Republika Srpska and the State of BiH. However, the Constitutional Court notes that paragraph 18 of the Declaration contains the view that it was necessary to make amendments to the Constitution of BiH. In paragraph 17 of the Declaration, the National Assembly holds that “the present inconsistency of the responsibilities transferred to the level of BiH without amendments to the Constitution of BiH as Annex 4 of the Dayton Agreement should be overcome/resolved by consistent application of provision III(3)(b) of the Constitution of BiH, which explicitly prescribes that the “Entities shall comply fully with this Constitution.” Furthermore, the National Assembly (in paragraph 17) holds that “... it implies the right of the National Assembly and the Government of RS to suspend the application of any act, measure or activity of bodies and Institutions at the level of BiH, which have no basis in the Constitution of BiH and are not explicitly determined by the Constitution of BiH as the responsibility of bodies at the level of BiH.” Based on the aforementioned, paragraph 19 of the Declaration states: “The Government of the Republika Srpska is entrusted by the National Assembly to prepare the text of the Constitution of Republika Srpska, in coordination with the President of Republika Srpska, which text will confirm all responsibilities of the Republika Srpska with the exception of those that are the explicit responsibilities of Bosnia and Herzegovina ...”. Furthermore, paragraph 20 of the Declaration states: “The National Assembly shall decide on the procedure of adoption of the new Constitution of the Republika Srpska after the consideration of a Bill proposed by the Government of Republika Srpska.” Therefore, after the general political views, the Declaration determines the specific goals that the RS authorities ought to achieve or that they have the right to achieve, such as “...the right of the National Assembly and the Government of RS to suspend the application of any act, measure or activity of bodies and Institutions at the level of BiH, which have no basis in the Constitution of BiH...”, or “...The Government of the Republika Srpska is entrusted by the National Assembly to prepare the text of the Constitution of Republika

Srpska, in coordination with the President of the Republika Srpska, which text will confirm all responsibilities of the Republika Srpska...” Therefore, after expressing general political views, the public authorities in RS are given specific tasks that should be performed.

75. The Constitutional Court notes that Article 182 of the Rules of Procedure stipulates that the Conclusion will determine the policy of enforcement of laws, other regulations and general acts passed by the National Assembly, guidelines to enforce that policy, obligations of the Government, ministries and special organisations in implementing that policy and in preparing laws and other acts. In addition, Article 239 of the Rules of Procedure stipulates that the National Assembly will take positions and adopt conclusions on reports, analysis and information and that it will consider, in terms of Article 272 of the Rules of Procedure, issues related to the work of the Government, *inter alia*, by adopting a conclusion directing the work of the Government or giving it guidelines regarding the implementation of laws, other regulations and general acts of the National Assembly. The Constitutional Court notes that the disputed conclusions were made in the same methodological manner and they are of a similar content. Namely, they primarily adopt information on the judicial Institutions of BiH, on the transfer of responsibilities from the RS to the level of BiH in the field of defence and security, on the transfer of responsibilities from the RS to the level of BiH, and on the transfer of responsibilities in the field of indirect taxation. It is also stated that the National Assembly will withdraw the consents given to the Government of the RS for signing the agreements on the transfer of responsibilities, and that the Government of the RS is instructed to withdraw the consent to the agreements on the transfer of certain responsibilities. In addition, the Government of the RS is obligated to remit, within six months, certain laws for consideration and adoption, namely, the Law on the High Judicial and Prosecutorial Council of the RS, laws in the field of defence and security, laws and other regulations that will ensure the efficient functioning of the RS, and the Law on Value Added Tax in the RS and the Excise Duties Law of the RS. Finally, the conclusions contain the view that certain laws adopted at the level of BiH will not be applied in the territory of RS from the day of entry into force of the laws to be adopted in the National Assembly, and it is established that the conclusions will enter into force on the day following the day of their adoption.

76. As to the existence of the jurisdiction of the Constitutional Court in the part in which the applicants challenge the Declaration expressing the views of the National Assembly on general issues (such as the lack of constitutional continuity of BiH, asymmetric organization of the State, unconstitutionality of laws imposed by the High Representative, operation of the Constitutional Court, *etc.*), and giving its own interpretation of the division of responsibilities between the Entity

of the Republika Srpska and the State of BiH, the Constitutional Court notes that it is indisputable that this part of the Declaration expresses the political views of the National Assembly, which do not establish any obligation for public authorities. Therefore, given the fact that these are political views, the Constitutional Court holds that they do not directly raise the issue of the existence of a dispute in connection with paragraphs 3, 6 and 10 of the Preamble of the Constitution of BiH, and Articles I (2), II (2), III (3) (b) and III (5)(a) of the Constitution of BiH (see, *mutatis mutandis*, U-6/08 of 30 January 2009, paragraph 10, available at www.ustavnisud.ba). In addition, the Constitutional Court notes that the right of the National Assembly to analyse reports and information on the transferred responsibilities cannot be considered disputable, and that the aforementioned acts and activities in that regard can also be considered political views of the National Assembly, which in no way regulate issues that are regulated by the Constitution of BiH. In addition, the Constitutional Court considers that part of the conclusions related to the withdrawal of the consents for the transfer of responsibilities given previously, does not refer to the issues regulated by the Constitution of BiH, considering they refer to declaratory statements which do not have a direct effect on already established responsibilities at the level of Bosnia and Herzegovina (see paragraph 89 of this decision). However, as already mentioned, the Declaration does not express only the political views of the National Assembly or give declaratory statements, but establishes (also) the obligations for the RS public authorities.

77. On the other hand, the Constitutional Court notes that the provisions of paragraphs 17, 18, 19 and 20 of the Declaration, paragraphs 4 and 5 of the Conclusions regarding Information on Judicial Institutions of BiH, paragraphs 4 and 5 of the Conclusions regarding the Information on the transfer of responsibilities from the RS to the level of BiH in the area of defence and security, paragraphs 2 and 3 of the Conclusions regarding Information on the transfer of responsibilities from the RS to the level of BiH, and paragraphs 5 and 6 of the Conclusions regarding the Information on the transfer of responsibilities in the area of indirect taxation established certain obligations or tasks for the Government of RS and the President of RS, and set a deadline for their fulfilment. These obligations relate to the preparation of the new text of the Constitution of RS and its introduction to the procedure, as well as the preparation and introduction of laws in the areas where the responsibilities have been taken over or transferred from the Entities to the State of BiH pursuant to Article III(5)(a) of the Constitution of BiH. In addition, it also contains the view that the laws of BiH adopted based on the aforementioned provision of the Constitution of BiH and explicitly stated in the conclusions will not be applicable in the territory of RS after these new laws have been passed and entered into force in the National Assembly. The Constitutional Court notes that

although the disputed legal acts have not been published in the “Official Gazette of the RS”, the legislature has adopted them under a special procedure, and it has been stipulated that these acts will enter into force on the day of their adoption, meaning that they produce consequences, since the executive authorities are obliged to prepare and submit laws in these areas, within six months, for adoption. The Constitutional Court finds that it is more than obvious that the adoption of these laws will produce immediate effects and could cause serious problems for the State of BiH and the exercise of its responsibilities.

78. Taking into account the content of the mentioned acts and the fact that Article III(5) of the Constitution of BiH regulates the issue of division of responsibilities between the Entities and the State of BiH and the possibility of taking over responsibilities between the Entities and the State of BiH, the Constitutional Court finds that the disputed acts relate to the issues arising under the Constitution of BiH. Namely, the Constitutional Court notes that the Declaration and Conclusions clearly determine the preparation of the Constitution of RS and the laws that should be enacted within 6 months, where the disputed acts, taken individually and in whole, contain precise indications and an order that it is necessary to adopt certain regulations at the entity level in the areas in which responsibilities have been taken over by the State of BiH. In particular, the Constitutional Court notes that the content of the disputed acts indicates that, as soon as the new Constitution and laws prepared based on these acts enter into force, the constitutional order of BiH will be called into question, for it has been determined that the laws passed in the Parliamentary Assembly of BiH will no longer apply. Therefore, the Constitutional Court notes that the above provisions of the Declaration and Conclusions call into question the exclusive responsibilities of BiH that are prescribed in Article III(5)(a) of the Constitution of BiH. Accordingly, the Constitutional Court, interpreting the provision under which it has jurisdiction to resolve any dispute, “including but not limited to”, notes that the creation of an obligation to prepare the text of the Constitution of RS and laws in the areas falling within the responsibilities of the State of BiH can be considered a “dispute” within the meaning of Article VI(3)(a) of the Constitution of BiH, and that in this particular case the issue arises as to the possibility of the Entities to prepare, adopt and repeal regulations in the areas for which the responsibility of the State has been established.

79. In such circumstances, having considered the circumstances of the case in relation to the jurisdiction conferred to it under Article VI(3)(a) of the Constitution of Bosnia and Herzegovina and having in mind the decision of the Constitutional Court in case no. U-6/08 of 30 January 2009, the Constitutional Court concludes that the allegations of the National Assembly that the disputed

acts deal with political issues, are partially founded insofar as they relate to parts of those acts in which they present views on general issues, give their own interpretation of division of responsibilities between the entities of the Republika Srpska and state of BiH and analyse reports and information on transferred responsibilities. However, the Constitutional Court holds as unfounded the referral of the National Assembly to the decision of the Constitutional Court in the case U-6/08 insofar as they relate to the parts of the challenged acts establishing specific legal obligations or tasks of the Government of RS and President of RS to prepare a text of the Constitution and certain laws and insofar as they relate to the part stipulating the repeal of state laws, which will be examined further in this decision. Therefore the requests of 15 members of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina for resolving a dispute between Bosnia and Herzegovina and Republika Srpska is partially admissible.

VI. Merits

80. The applicants point out that the adoption of challenged acts has been in violation of Articles 3, 6 and 10 of the Preamble of the Constitution of BiH, the principles of democracy and the rule of law under Article I(2) of the Constitution of BiH and the principle of the hierarchy of legal provisions under Article III(3)(b) of the Constitution of BiH and the responsibilities of the State of BiH under Article III(5)(a) of the Constitution of BiH. In addition, the applicants underline that these acts call into question the finality and binding force of decisions of the Constitutional Court under Article VI(5) of the Constitution of BiH. Having in mind the conclusions of the Constitutional Court as to the admissibility of the request, the Constitutional Court stresses that it will only examine on the merits the parts of the disputed acts establishing the task of the Government of RS and the President of RS to prepare a text of the Constitution of RS and certain laws, as well as the parts ordering the repealing of state laws. Therefore, the Constitutional Court will examine the following provisions of the challenged acts:

a) Declaration on constitutional principles no. 02/1-021-1034/21 of 10 December 2021,
paragraphs as follows:

17. The National Assembly considers that the current inconsistency of the responsibilities that are transferred to the level of Bosnia and Herzegovina without amendments to the Constitution of Bosnia and Herzegovina as Annex IV to the Dayton Agreement needs to be overcome/resolved by consistent application of Article III(3)(b) of the Constitution of Bosnia and Herzegovina, which

explicitly prescribes that the Entities “shall comply fully with this Constitution”. This purports the right of the National Assembly and the Government of the RS to suspend the application of any act, measure or activity of a body or an institution on the level of Bosnia and Herzegovina which do not have grounds in the Constitution of Bosnia and Herzegovina and are not explicitly determined by the Constitution of Bosnia and Herzegovina as responsibility of the bodies on the level of Bosnia and Herzegovina.

18. Reaffirming its earlier documents on constitutional relations, in particular the Resolution on Protection of the Constitutional Order and Declaration of Military Neutrality of 18 October 2017, Conclusions on Information on the Unconstitutional Transformation of the Dayton Structure of BiH and the Impact on the Position and Rights of Republika Srpska of 12 November 2019, Conclusions of the National Assembly on Information on Anti-Dayton Activities of the Constitutional Court of BiH of 13 February 2020, as well as Conclusions of the National Assembly on Information on the Application of Annex 10 of the Dayton Agreement of 10 March 2021, the National Assembly considers that it is necessary to change the Constitution of the Republika Srpska by adopting a new text of the Constitution of the Republika Srpska.

19. The Government of the Republika Srpska is entrusted by the National Assembly to prepare the text of the Republika Srpska Constitution, in coordination with the President of the Republika Srpska, which text shall confirm all responsibilities of the Republika Srpska with the exception of those that are the explicit responsibilities of Bosnia and Herzegovina under the Constitution of Bosnia and Herzegovina. The new Constitution, inter alia, Banja Luka shall be established as capital of the Republika Srpska and Pale as crown/capital city of the Republika Srpska.

20. The National Assembly shall decide on the procedure of adoption of the new Constitution of the Republika Srpska after the consideration of a Bill proposed by the Government of the Republika Srpska.

b) Conclusions regarding Information on Judicial Institutions of BiH no. 02/1-021-1032/21 of 10 December 2021, paragraphs as follows:

4. The National Assembly of the Republika Srpska instructs the Government of the Republika Srpska to send within six months the Law on the High Judicial and Prosecutorial Council of the Republika Srpska to the National Assembly of the Republika Srpska for consideration and adoption.

5. The Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina shall not apply in the territory of the Republika Srpska from the date of entry into force of the Law on the High Judicial and Prosecutorial Council of the Republika Srpska. The conclusions shall enter into force the following day from the day of the adoption.

c) Conclusions regarding Information on the transfer of responsibilities from the RS to the level of BiH in the area of defence and security no. 02/1-021-1033/21 of 10 December 2021, paragraphs as follows:

4. The National Assembly of the Republika Srpska entrusts the Government of the Republika Srpska with the task of submitting, within a time limit of six months, the laws in the field of defence and security to the National Assembly for consideration and adoption.

5. The Law on Defence of BiH, Law on the Service in the Armed Forces of BiH, Law on Intelligence and Security Agency of BiH, Law on the State Investigation and Protection Agency of BiH shall cease to apply on the territory of the Republika Srpska on the date of entry into force of the laws in the field of defence and security.

d) Conclusions regarding the Information on the transfer of responsibilities in the area of indirect taxation no. 02/1-021-1031/21 of 10 December 2021, paragraphs as follows:

5. The National Assembly of the Republika Srpska tasks the Government of the Republika Srpska to send, within six months, for consideration and adoption to the National Assembly of the Republika Srpska the Law on Value Added Tax in the Republika Srpska and the Law on Excise Tax of the Republika Srpska.

6. The Law on the Indirect Taxation System in BiH, the Law on Payments to a Single Account and Income Distribution, the Law on Indirect Taxation Authority of Bosnia and Herzegovina, the Law on Indirect Tax Forced Collection Procedure, the Law on Value Added Tax and the Law on Excise Tax in BiH will

not be applied in the territory of the Republika Srpska from the day of entry into force of the Law on Value Added Tax in the Republika Srpska and the Law on Excise Tax of the Republika Srpska.

e) Conclusions regarding the Information on the transfer of responsibilities from the RS to the level of BiH no. 02/1-021-1030/21 of 10 December 2021:

2. National Assembly of the Republika Srpska entrusts to the Government of the Republika Srpska to send the laws and other regulations, which will enable unhindered functioning of the Republika Srpska, to the National Assembly of the Republika Srpska for consideration and adoption within six months.

3. The laws and other regulations by which the transfer of responsibilities from the Republika Srpska to the Institutions of Bosnia and Herzegovina was performed shall not be applied on the territory of the Republika Srpska as of the date of entry into force of the laws and other regulations under paragraph 2 of this Conclusion.

81. The first issue raised before the Constitutional Court, on which the applicants base their requests for review of constitutionality, is whether the acts adopted by the RS National Assembly are compatible with the Constitution of Bosnia and Herzegovina, primarily with Article III(3)(b) of the Constitution of BiH and, therefore, with the principle of the rule of law under Article I(2) of the Constitution of BiH. As to Article III(3)(b) of the Constitution of BiH, it is emphasized that "...the Constitutional Court notes that, although paragraph 3 of Article III of the Constitution of BiH prescribes that all governmental functions and powers not expressly assigned in this Constitution to the Institutions of Bosnia and Herzegovina will be those of the Entities, it establishes also a clear normative hierarchy: Article III(3)(b) prescribes that the Entities and any subdivisions thereof will comply fully with the 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. Thus, there is a hierarchy between the state constitution and legal systems of the Entities. The system of derogation also stems from this relationship, starting from the entity constitution itself, which the Constitutional Court of BiH clearly demonstrated in the case no. U-5/98: constitutional provisions of the entity cannot be inconsistent with the provisions of the Constitution of BiH. In addition, each level of government has its own competence, determined or determinable by the Constitution of BiH. The Constitution of BiH, and not the entity's constitution, is a guarantor of the relation of division of responsibilities between the State, on the

one hand, and the Entities, on the other hand. Such a relation can only be amended in a way as stipulated by the Constitution of BiH (*inter alia*, the provisions of Article III(5) and Article X of the Constitution of BiH). The legal system of the Entities, including their constitutions, can treat just those competences conferred upon them by the Constitution of BiH...” (see Constitutional Court, Decision no. U-1/11 of 13 July 2012, paragraph 67).

82. The Constitutional Court points out that it adopted a principled position in its Decision no. U-14/04, according to which “The enactment of entity laws contrary to the procedure prescribed by State laws raises the issue of the constitutionality of such laws within the meaning of Article III(3) (b) of the Constitution of BiH, and that obligations imposed by State laws must be complied with” (see, *mutatis mutandis*, 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, in its Decision no. U 2/11, reaffirmed the mentioned view and reiterated the following: “Furthermore, the laws of Bosnia and Herzegovina passed by the Parliamentary Assembly of Bosnia and Herzegovina are being considered [...] decisions of the Institutions of Bosnia and Herzegovina under Article III(3)(b) of the Constitution of Bosnia and Herzegovina, and the adoption of the laws by the Entities or any subdivisions thereof in Bosnia and Herzegovina contrary to the procedure prescribed by the State laws might challenge the issue of compliance with Article III(3)(b) of the Constitution of Bosnia and Herzegovina, pursuant to which the Entities and any subdivisions thereof are obliged to comply, *inter alia*, (and) with the decisions of the Institutions of Bosnia and Herzegovina. If held otherwise, besides completely calling into question the authority of the Institutions of Bosnia and Herzegovina, it would also challenge the principle of Article I(2) of the Constitution of Bosnia and Herzegovina under which: “Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law...“. In that case the question might rightly be posed regarding the purpose of the State laws (*e.g.* the laws in the field of privatization, operations of the insurance companies, indirect taxation, *etc.*), if the Entities or any subdivisions thereof in Bosnia and Herzegovina could pass laws violating or evading obligations imposed to those by the provisions of the State legislation, *i.e.* laws adopted on the level of the Institutions of Bosnia and Herzegovina. Therefore, the Entities (and subdivisions thereof) must comply with the obligations imposed on them through the laws passed by the Institutions of Bosnia and Herzegovina. The fact that such obligations have not been complied with might arise to the breach of the provisions of the Constitution of Bosnia and Herzegovina” (see 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).

83. The Constitutional Court notes that the Declaration and Conclusions relate to the issues arising from the application of the provision of Article III(5)(a) of the Constitution of BiH, *i.e.* they relate to the areas in which the responsibilities were taken over by BiH and thus they became additional responsibilities of Bosnia and Herzegovina. Examining the provision of Article III(5)(a) of the Constitution of BiH, the Constitutional Court notes that although Article III, paragraph 3 of the Constitution of BiH stipulates that “All governmental functions and powers not expressly assigned in this Constitution to the Institutions of Bosnia and Herzegovina shall be those of the Entities”, according to Article III paragraph 5, subparagraph a), Bosnia and Herzegovina shall assume responsibility for such other matters as are agreed by the Entities, and the term “additional responsibilities” is used in the Constitution of BiH in that regard (see Constitutional Court, Decision No. *U-26/01* of 28 September 2001, published in the *Official Gazette of BiH*, 4/02). As to Article III(5)(a) of the Constitution of BiH (“Additional Responsibilities”), the Constitutional Court recalls its Decision in case No. *U-9/00* (published in the *Official Gazette of BiH*, 1/01 of 19 January 2001), wherein it expressed its position that the aforementioned Article distinguishes between three mutually independent hypotheses: Bosnia and Herzegovina shall assume responsibility for such other matters as (1) are agreed by the Entities; (2) are provided for in Annexes 5 through 8 to the General Framework Agreement; or (3) are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina, in accordance with the division of responsibilities between the Institutions of Bosnia and Herzegovina according to the provision of Articles III(3) and III(5) of the Constitution of Bosnia and Herzegovina. In accordance with the above case law, the Constitutional Court emphasizes that in a situation where there has been a transfer of responsibilities to the level of the State of BiH, such responsibilities have become the responsibilities of BiH in accordance with III(5)(a) of the Constitution of BiH and they are not covered by the part of the provision of Article III(3)(a) of the Constitution of BiH, which speaks of the responsibilities of the Entities not expressly assigned in the Constitution to the Institutions of Bosnia and Herzegovina. By adopting laws in certain areas at the level of BiH, the matter prescribed by these laws has become the responsibility of BiH, regardless of the fact that the responsibility was not expressly prescribed by Article III(3)(a) of the Constitution of BiH or any other provision of the Constitution of BiH, given that the responsibilities of BiH are not prescribed only by the mentioned constitutional provision (see, *e.g.* Articles I/4, I/7, II/1, II/6, III/4, IV/4 of the Constitution of BiH).

84. In the instant case, it is not disputed that the Entities agreed to transfer responsibilities to the level of the State of BiH in the following areas: justice (for the adoption of the Law on the HJPC of

BiH and the establishment of the HJPC of BiH), defence and security, and indirect taxation. In this way, Bosnia and Herzegovina has taken over responsibilities in these areas. The transfer of responsibilities to the State of BiH, at the same time meant the responsibility of the Parliamentary Assembly of BiH for passing laws and establishing appropriate Institutions at the level of Bosnia and Herzegovina. In this regard, the Constitutional Court recalls Article IV(4)(a) of the Constitution of BiH, which stipulates that the Parliamentary Assembly of BiH shall have responsibility for enacting legislation as necessary to implement decisions of the Presidency or to carry out the responsibilities of the Assembly under this Constitution. Therefore, in accordance with the aforementioned constitutional provision, the Parliamentary Assembly of Bosnia and Herzegovina adopted the following laws: Law on the HJPC of BiH, Law on Defence of BiH, Law on Intelligence and Security Agency of BiH, Law on Service in the Armed Forces of BiH, Law on State Investigation and Protection Agency, Law on Indirect Taxation System in BiH, Law on Single Account Payments, Law on Indirect Taxation Authority, Law on Indirect Taxation Procedure, Law on the Procedure for Compulsory Collection of Indirect Taxes, Law on Value Added Tax, and Law on Excise Duties in Bosnia and Herzegovina. By the adoption of these laws by the legislative body at the level of BiH, the matter prescribed by these laws has become the responsibility of the State of BiH, regardless of the fact that these responsibilities, as stated above, were not expressly prescribed by the Constitution of BiH.

85. In addition, the Constitutional Court notes that, in Decision no. *U-11/08* of 30 January 2009, wherein it considered the constitutionality of the adoption of the Law on the HJPC, it considered the issue of the constitutionality of the procedure for establishing additional responsibilities of BiH, and concluded that the Law on the HJPC was adopted in accordance with the Constitution of Bosnia and Herzegovina. In the mentioned decision, the Constitutional Court concluded "...that the challenged law was enacted after the Entities had entered into the Agreement in accordance with Article III(5) of the Constitution of BiH, whereby they had given the approval on the establishment of the Institution of Bosnia and Herzegovina under the name 'High Judicial and Prosecutorial Council' as of the date of the entry into force of the new Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina. The Council of Ministers undertook to put forward a Draft Law to the Parliamentary Assembly. Hence, it is undisputed that Bosnia and Herzegovina, in terms of Article III(5)(a) of the Constitution of BiH, assumed the responsibility from the Entities in this field of judiciary, after the consent of the Entities, whereby the constitutional basis for enacting the challenged law as well as amendments thereto was created. Namely, what the applicants find disputable is that Article IV(4)(a) of the Constitution of BiH, which embodies the universal

responsibility in the field of legislative power, is stated in the Preamble of the challenged law as the constitutional basis to enact the said law and not Article III(5)(a) of the Constitution of BiH, whereby 'it would be possible to transfer formally this responsibility from the Entities to the Parliamentary Assembly of Bosnia and Herzegovina.' In this context, the Constitutional Court highlights that the formal transfer of the responsibility from the Entities to the State was carried out by the Agreement, whereby the responsibility for the establishment of the High Judicial and Prosecutorial Council was transferred at the state level. The Parliamentary Assembly enacted the challenged law in the field transferred to the state level, thereby it acted within the scope of its competence under Article IV(4)(a) of the Constitution of BiH...”

86. Therefore, it follows from the aforementioned decision that BiH has taken over the additional responsibility in the area of justice in accordance with the Constitution of BiH, and that the HJPC of BiH has been established in accordance with the Constitution of BiH. In deciding on the requests in question, the Constitutional Court finds no reason to take a different position in relation to other disputed areas, which the impugned Declaration and Conclusions relate to. Namely, the transfer of responsibilities to the State of BiH was carried out in the areas of defence and security and indirect taxation in an identical manner based on Article III(5)(a) of the Constitution of BiH, *i.e.* based on an agreement between the Entities transferring those responsibilities to the State of BiH. In this regard, the Constitutional Court considers it important to highlight that the Constitutional Court has taken the position that “...The constitutional nature of the decisions of the Constitutional Court means that none of the authorities, legislative, executive or judicial, has competence for issuing different acts on the issues which were decided in such a decision or for reviewing such a decision in any manner whatsoever, ... This is also required by Article I(2) of the Constitution of Bosnia and Herzegovina, which stipulates the principle of the rule of law, the integral part of which is the enforcement of court decisions” (see Decision on Admissibility and Merits no. *U-10/16* of 1 December 2016, paragraph 37, available at www.ustavnisud.ba).

87. The Constitutional Court also notes that, in the instant case, the legal issue is raised as to the possibility of “reinstating the assumed responsibilities”, *i.e.* whether the National Assembly had the authority to use the Declaration and Conclusions to order the preparation and referral to the procedure of the new text of the Constitution of RS and laws in the areas in which the additional responsibilities of BiH had been established. Namely, according to the relevant part of the content of the Declaration and Conclusions, based on the withdrawal of the consent to the transfer of responsibilities given by the previous conclusions and based on the views expressed in the

Declaration with regard to the legal nature of such responsibilities, the National Assembly holds that it has the competence to instruct the executive authorities to prepare a new text of the Constitution of RS and laws in the areas in which the responsibilities had been transferred. Accordingly, the Constitutional Court considers it important to answer the question as to whether and what effect the withdrawal of consent may have on the additional responsibilities already established at the level of BiH.

88. The Constitutional Court recalls that the provisions of the Constitution of BiH do not stipulate the possibility of reinstating the assumed additional responsibilities based on the withdrawal of consent of one of the Entities or based on the re-consent by the Entity. However, in view of the fact that these responsibilities were taken over from the Entities and that laws were passed based on them in the Parliamentary Assembly of BiH, the Constitutional Court, contrary to the applicants' claims, finds nothing to indicate that such a reversible transfer of responsibilities would be contrary to the Constitution of BiH, but it should be noted that such a thing could not be done in the way it was done in the disputed acts.

89. In addition, the Constitutional Court highlights that in order to transfer responsibilities, it is necessary to comply with the provisions of the Constitution of BiH, *i.e.* the responsibilities of the Institutions of BiH. This primarily implies that for the realization of the principle of the rule of law within the meaning of Articles I(2) and III(3)(b) of the Constitution of BiH, it is necessary to comply with the present constitutional and legal order and the division of responsibilities, as well as the decisions of the Institutions of BiH. The Constitutional Court reiterates that the fact that such obligations have not been complied with might arise to the breach of the provisions of the Constitution of Bosnia and Herzegovina (see 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.)

90. Accordingly, the Constitutional Court stresses that as to the responsibilities that have already been transferred to the State of BiH, there can be no competence of the Entity for their re-establishment and, consequently, for their regulation. This falls within the exclusive competence of the Institutions of BiH, *i.e.* in this case the Parliamentary Assembly of BiH, which has exclusive competence, in terms of Article IV(4)(a) of the Constitution of BiH, to regulate these areas. The Parliamentary Assembly of BiH has enacted the mentioned laws and, therefore, only it can repeal them. In such circumstances, the conclusions withdrawing the consents given previously cannot have the legal consequence of terminating the responsibilities of BiH already established. Therefore, the Constitutional Court points out that the responsibility of the Entity cannot be re-established only on the basis of conclusions or withdrawal of consents given previously and,

accordingly, the orders cannot be issued for amendments to the Constitution of RS for the adoption of new laws with respect to additional responsibilities of BiH. In particular, the Constitutional Court highlights that nor the conclusion of new agreements between the Entities, which would possibly regulate the issue of reinstating the assumed responsibilities, could produce such a legal consequence until the Parliamentary Assembly of BiH has made an appropriate decision on the transfer (reinstatement) of additional responsibilities to the Entities. Therefore, in a situation where a responsibility of the Entity is transferred to the state level by consent, it becomes the express responsibility of the State and, thus, in accordance with the rule of law principle under Article I(2) of the Constitution on BiH, the reinstatement of these previously transferred responsibilities can only take place on the basis of decisions made in the Institutions of BiH (Parliamentary Assembly of BiH).

91. In addition, the Constitutional Court notes that, based on a partial interpretation of Article III(3)(b) of the Constitution of BiH, the National Assembly concludes in paragraph 17 of the Declaration that additional responsibilities should have been explicitly stated in the Constitution of BiH. On that basis, they derive the right of RS to suspend the application of any act, measure or activity of bodies and Institutions at the level of BiH, and gives a task to amend the Constitution as stated in paragraphs 18, 19 and 20 of the Declaration. The Constitutional Court reiterates that the laws of Bosnia and Herzegovina passed by the Parliamentary Assembly of Bosnia and Herzegovina are being considered [...] decisions of the Institutions of Bosnia and Herzegovina under Article III(3)(b) of the Constitution of Bosnia and Herzegovina, and the adoption of the laws by the Entities or any subdivisions thereof in Bosnia and Herzegovina contrary to the procedure prescribed by the State laws might challenge the issue of compliance with Article III(3)(b) of the Constitution of Bosnia and Herzegovina, pursuant to which the Entities and any subdivisions thereof are obliged to comply, *inter alia*, (and) with the decisions of the Institutions of Bosnia and Herzegovina. In particular, the Constitutional Court points out that the Parliamentary Assembly had a constitutional basis to enact the laws that the Declaration and Conclusions seek to call into question, as it enacted legislation in the areas transferred to the state level based on the Agreement between the Entities in accordance with Article III(5) of the Constitution of BiH.

92. Therefore, the fact that the issues of operation and competences of the HJPC of BiH and in the areas of defence and security and indirect taxation are regulated by state laws, adopted by the Parliamentary Assembly of BiH, is sufficient for the Constitutional Court to conclude that this issue falls within the responsibility of the State and its Institutions. This is so within the meaning of Article III(3)(b) of the Constitution of BiH. In view of the above, the RS Entity, the National

Assembly did not have the competence, without an appropriate decision made in the Institutions of BiH, to instruct the executive in the RS Entity to send the laws listed in the disputed acts to the legislature, for consideration and adoption. In that context, it is important to underline 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 laws and decisions of the Institutions of BiH are in effect, the Entities are obliged to comply with them and cannot have the competence to adopt any legislative activities in these areas. This includes the adoption of the disputed provisions of the Declaration and Conclusions. Nevertheless, in its Declaration and Conclusions, the National Assembly established the obligation of executive bodies to adopt provisions of the Constitution of RS and laws in these areas, and determined that the mentioned laws would cease to apply after the entry into force of regulations adopted in the RS Entity. Therefore, the Constitutional Court concludes that the acts and activities of the Entity, *i.e.* the National Assembly expressed through the adoption of disputed provisions of the Declaration and Conclusions are not in accordance with the Constitution of Bosnia and Herzegovina. This is so as they are contrary to the principle of the rule of law under Article I(2) of the Constitution of BiH and the decisions of the Institutions of Bosnia and Herzegovina in terms of Article III(3)(b) of the Constitution of BiH. In view of all the above, the Constitutional Court emphasises the duty of each Entity and the Brčko District of BiH to comply with the responsibilities and decisions of the Institutions of BiH, thereby contributing to compliance with the principles of the rule of law and legal certainty.

93. The Constitutional Court highlights that this decision does not call into question the right of the National Assembly to consider issues of transfer of responsibilities and to take appropriate initiatives in that regard. However, the Constitutional Court stresses that the binding orders given by the National Assembly in this case to the executive in that entity were not based on the rule of law under Article I(2) of the Constitution of BiH, and the duty to comply with the Constitution of BiH and the decisions of the Institutions of BiH under Article III(3)(b) of the Constitution of BiH.

94. Furthermore, the Constitutional Court notes that the applicants challenged the constitutionality of the examined provisions of the Declaration and Conclusions in respect of Articles 3, 6 and 10 of the Preamble to the Constitution of BiH, Article III(5)(a) of the Constitution of BiH, and Article VI(5). However, taking into account the conclusions already adopted, the Constitutional Court holds that there is no need separately to examine these allegations.

95. Therefore, taking into account the circumstances of the present case, the Constitutional Court concludes that paragraphs 17, 18, 19 and 20 of the Declaration, paragraphs 4 and 5 of the

Conclusions regarding the Information on Judicial Institutions of BiH of 10 December 2021, paragraphs 4 and 5 of the Conclusions regarding the Information on the transfer of responsibilities from the RS to the level of BiH in the area of defence and security of 10 December 2021, paragraphs 5 and 6 of the Conclusions regarding the Information on the transfer of responsibilities in the area of indirect taxation of 10 December 2021, and paragraphs 2 and 3 of the Conclusions regarding Information on the transfer of responsibilities from the RS to the level of BiH of 10 December 2021 are in contravention of Article I(2) and Article III(3)(b) of the Constitution of BiH.

VII. Conclusion

96. The Constitutional Court concludes that paragraphs 17, 18, 19 and 20 of the Declaration, paragraphs 4 and 5 of the Conclusions regarding the Information on Judicial Institutions of BiH of 10 December 2021, paragraphs 4 and 5 of the Conclusions regarding the Information on the transfer of responsibilities from the RS to the level of BiH in the area of defence and security of 10 December 2021, paragraphs 5 and 6 of the Conclusions regarding the Information on the transfer of responsibilities in the area of indirect taxation of 10 December 2021, and paragraphs 2 and 3 of the Conclusions regarding Information on the transfer of responsibilities from the RS to the level of BiH of 10 December 2021 are in contravention of Article I(2) and Article III(3)(b) of the Constitution of BiH.

97. Having regard to Article 59(1) and (2) and Article 61(2) and (3) of the Rules of the Constitutional Court, the Constitutional Court decided as stated in the enacting clause of the present Decision.

98. In view of the decision of the Constitutional Court in the instant case, it is not necessary to consider separately the applicants' requests for decisions on interim measures.

99. For the purposes of Article 43 of the Rules of the Constitutional Court, Separate Dissenting Opinion of President Mato Tadić and Judge Zlatko M. Knežević are annexed to this decision. Vice-President Miodrag Simović stated his opinion dissenting from the majority decision.

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

Mato Tadić
President
Constitutional Court of Bosnia and Herzegovina

SEPARATE DISSENTING OPINION OF PRESIDENT MATO TADIĆ

Regretfully, I disagree with the majority decision for the following reasons:

1. The key question from the constitutional law aspect is the nature of the contested acts – whether these are political or legal acts – and the answer to the key question amounts to the type of the decision of the Constitutional Court, i.e. whether the Constitutional Court will deal with the merits or confine itself to admissibility.

It is not disputable that the composition of every parliament elected in a democratic manner is the result of the success of political parties at the elections. Every party that becomes parliamentary party, makes efforts to present its ideas and programs in several ways. Most frequently through the enactment of laws. However, these are very often various resolutions, declarations, conclusions, information etc., the acts aiming at expressing political views. In my opinion, such acts exactly have been contested in this decision. Every political act usually contains also some legal aspects, including the ones in the present case. However, from the constitutional law aspect, the crucial point is the extent of these acts. That is the issue to know who is bound by them. It is clear that these acts do not have a binding nature. They are the expression of political choice of some deputies, and the failure to comply with these acts does not entail sanctions. In my view, the concrete consequence of these acts, and then jurisdiction, could be the transformation of the political will into a law, which is binding upon all citizens and which would be subject to the review of constitutionality. The Constitutional Court would then have the competence and obligation to decide on the merits and compatibility thereof with the Constitution of BiH.

2. The contested acts were passed on 10 December 2021. The Government (which is also a political authority composed of those making majority in parliament) was requested in those acts to submit, within a time limit of six months, the laws on the matters mentioned in those acts to the Parliament for enactment thereof. The fact is that up to the moment of adoption of this Decision none of those laws have been submitted officially to the Parliament by the Government, and the time limit will expire in few days, which, all together, leads to the conclusion that the case relates to a political act. Although the draft law on the HJPC was presented at the session of the National Assembly, it was not submitted by the Government but by the deputies themselves, and it has not been adopted yet. The Law on the Agency for Medical Products and Devices of the RS was enacted based on the Law on Pharmaceuticals and Medical Devices of the Republika Srpska from October 2021, wherein the creation of the Agency was envisaged (it has not come in force yet).

3. What are the consequences of annulment of some provisions of the contested acts?! None, as the Government can prepare the drafts of various laws even without these acts, and this is its constitutional obligation. It can submit them to the parliament for further procedure. It cannot be denied to do so.
4. Even if the Government does not prepare the draft laws, they can be prepared by the members of the parliament, which is their democratic right. As stated above, the quality of those laws and potential unconstitutionality, as noted above, is another matter.
5. By expressing such a view, the Constitutional Court broadly interpreted its jurisdiction thereby creating the possibility for a number of such cases to be filed, which would mean that, in a way, we have engaged in politics.
6. Finally, I would like to note that we already had such cases, which we decided by rejecting them as inadmissible. For example, case *no. U-6/08*, wherein the applicant contested the Resolution of the National Assembly of the Republika Srpska that related to the status of Kosovo. That resolution dealt with the foreign policy, which is the exclusive responsibility of the institutions of BiH. The contested acts in that decision did not relate to the exclusive responsibilities but rather the transferred responsibilities in accordance with the Constitution. The Constitutional Court therefore departed from its case law in this decision, which is not good from the aspect of the rule of law and legal certainty.
7. For the reasons expressed above, I could not support the majority decision.

SEPARATE DISSENTING OPINION OF JUDGE ZLATKO M. KNEŽEVIĆ

The majority of the Constitutional Court of Bosnia and Herzegovina rendered Decision on Admissibility and Merits *no. U-2/22* (the merged cases as stated in the Decision) by giving detailed reasons for the majority views to grant partially the request of the applicant.

In this separate opinion, I shall not refer in detail to the arguments or responses given by the respondent part as they are indicated in the Decision, nor shall I repeat the full texts of the contested documents as they are indicated in the reasons for the Decision.

The main reason for expressing a dissenting opinion is the issue of **admissibility**, i.e. the issue as to whether the Constitutional Court of Bosnia and Herzegovina has jurisdiction to decide the present case. Given the fact that this is a requirement to be fulfilled in order to further decide, I shall not deal with the part called the **decision on the merits**, although the majority view in this regard could also be challenged.

Thus, I would like to put forward two points regarding the following:

1. Accepting the claim that there has been (there is) a constitutional dispute between the State of Bosnia and Herzegovina and Republika Srpska and
2. Declaring that the contested documents fall within the scope of jurisdiction of the Constitutional Court of Bosnia and Herzegovina in terms of deciding upon them.

I would like to note once again that I shall not refer to the third reason (deciding on the merits of the case) in this separate opinion, although I explained that in detail at the session of the Court, given the fact the present case essentially relates to the admissibility decision and not the decision on the merits.

As noted in the decision, and I shall reiterate it, the subjects of review were the Declaration on the Constitutional Principles of the National Assembly of the Republika Srpska and Conclusions regarding Information on Judicial Institutions of Bosnia and Herzegovina, Information on the Transfer of Responsibilities from the Republika Srpska to the level of Bosnia and Herzegovina in the Area of Defence and Security, Information on the Transfer of Responsibilities in the Area of Indirect Taxation, Information on the Transfer of Responsibilities from the Republika Srpska to the Level of Bosnia and Herzegovina.

The first question which arises is the issue of nature of the documents being the subject of review.

The answer to that question is a requirement to consider admissibility before the Constitutional Court. I am not among those who do not accept the established case law of the Constitutional Court of Bosnia and Herzegovina, who interpreted broadly the constitutional norm related to jurisdiction, starting from the jurisdiction to review the constitutionality of laws of Bosnia and Herzegovina to the jurisdiction to review the acts which are not laws, but given their content, they have an impact on the constitutional order and all its citizens, such as the well-established case law related to the review of the so-called “rules of procedure”. I expressed my support to some of them. However, there were indeed reasons for establishing or applying that case law.

However, turning to the present case, the “designation” of documents is not the only problem but also the fact that they have definitions in the legal order of the Republika Srpska, which were not contested either at an earlier point or in the present case.

The Rules of Procedure of the National Assembly of the Republika Srpska (Article 178) stipulate definitions of the documents being the subject of the review before the Constitutional Court.

A declaration, according to the definition, **expresses a view of the National Assembly on GENERAL issues regarding the rights and duties of the Republic and other general issues in the interest of the citizens of the Republic.**

When it comes to the **Conclusions**, several articles speak about their instructive nature related to (I refer only to the present case) Information submitted to the National Assembly and the National Assembly’s Opinion on that.

Thus, declaration is a political document, whereas conclusion cannot be defined as such as it constitutes the review of submitted information wherein an executive authority or another authority is requested to accomplish something or not to accomplish something.

The key difference between the majority and me: I am convinced that the Constitutional Court does not have jurisdiction to review the constitutionality of political acts, notably not the instructive document. This is not stipulated in the Constitution, nor is there such a possibility established in the case law of the Constitutional Court.

I would rightfully like to refer to the case law of the Constitutional Court, which, in case no. *U-6/08* (which related to the dispute over a matter being the exclusive responsibility of Bosnia and Herzegovina at the State level according to the Constitution), decided that it could not and did not wish to deal with the declarations as political acts, since they did not have the nature of legal acts.

The reasons given in the majority decision indicated that some of the elements of the Declaration were of legal nature as ordering other institutions to take some actions. All those reasons go to bottom line, even to the extent that a request to proceed with the enactment of a new Constitution of the Republika Srpska was declared unconstitutional for political views expressed in that request.

The assertion that it involves *legal, and not political nature* faces a question that cannot be answered as the answer does not exist. Thus, the question arises:” What will happen if the part of legal nature of the Declaration is not enforced? What if, for example, a new text of the Constitution is not prepared? What if those enumerated in the Declaration do not do that? What would be the consequences for them? Is there any opportunity to institute new **legal proceedings** against them? It is obvious that there is not. If they do not implement their views, finding them **politically responsible** is the only remaining option.

And here we come to the breakdown in the view on admissibility. The fact that some of the paragraphs of the Declaration, also contested, have been declared political and, thus, not subject to review, although that part of the request has not been rejected, can be mentioned in support of the view as to how much everything is overstretched.

Regretfully, the Constitutional Court, by taking this decision, is misplaced somewhere between the wish to send a political message and awareness that it is not entitled to do so.

It seems to me that the situation is even more difficult in terms of the Conclusions.

I would like to reiterate the questions:” What if the one to whom the Conclusion is addressed does not take any measure?” What will be the consequence thereof? Is there any form of typical understanding of legal form? Norm, obligation or sanction for failure to act upon it. I have put it simply, however, essentially, that is correct. In decision *no. U-7/16*, the Constitutional Court declined jurisdiction to examine the lawfulness in general. Turning to the present case, it decided that a part of the Conclusions had legal nature and examined the part of general nature as a review of constitutionality. **At the moment of adoption of this decision, the Constitutional Court was aware** that the Government of the Republika Srpska did not implement one of the Conclusions (it did not submit the Draft Law on the HJCP of the Republika Srpska), and that even a group of deputies arrived with their draft which disappeared thereafter somewhere in parliamentary channels. That information goes in favour of the view that these are political acts which do not have any other consequence but political.

I do not need to further elaborate on the reasons why I could not grant the admissibility of the request in this case, given the fact that, in my opinion, this a notorious matter. It is not up to the Constitutional Court to assess whether these are acceptable or not acceptable acts in political terms and whether there will be debate on it, and even less is it up to the Constitutional Court to get involved in such debates.

By rendering such a decision, the Constitutional Court did not reinforce its authority (unless if the aim was to protect the decisions that other political stakeholders rendered at an earlier point from the political review), not even in political sphere.

The applicants do not have either any reason for being satisfied if they consider what they requested and what was granted (the Constitutional Court indirectly found admissible the parts, which it did not accept). Regretfully, we conclude that politicization in our society spilled over into decisions of the Constitutional Court.

This is not the aim of our existence.

For these reasons and the reasons I presented at the Court's session, which do not need to be reiterated, I could not accept the majority decision and I therefore voted against it.