

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(f) of the Constitution of Bosnia and Herzegovina, Article 57(2)(b) and Article 59(1) and (5) of the Rules of the Constitutional Court of Bosnia and Herzegovina – consolidated text (*Official Gazette of Bosnia and Herzegovina*, 94/14), in Plenary and composed of the following judges:

Mr. Mirsad Ćeman, President

Mr. Mato Tadić, Vice-President

Mr. Zlatko M. Knežević, Vice-President

Ms. Margarita Tsatsa-Nikolovska, Vice-President

Mr. Tudor Pantiru

Ms. Valerija Galić

Mr. Miodrag Simović,

Ms. Seada Palavrić,

Mr. Giovanni Grasso

Having deliberated on the request of **Mr. Bariša Čolak, Chairman of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina**, in the case no. **U 3/17**, at its session held on 6 July 2017 adopted the following

## DECISION ON ADMISSIBILITY AND MERITS

It is hereby established that the Statement of the Bosniac Caucus in the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina on destructive consequences upon the vital national interest of the Bosniac people in Bosnia and Herzegovina in the Proposal for the Law to Amend the Election Law of Bosnia and Herzegovina no. 02-02-1-1133/17 of 28 April 2017 has met the requirements as to the procedural regularity under Article IV(3)(f) of the Constitution of Bosnia and Herzegovina.

It is hereby established that the vital national interest of the Bosniac people in Bosnia and Herzegovina is not violated by the Proposal for the Law to Amend the Election Law of Bosnia and Herzegovina no. 02-02-1-1133/17 of 28 April 2017.

The procedure of passing the Law to Amend the Election Law of Bosnia and Herzegovina no. 02-02-1-1133/17 of 28 April 2017 shall be carried out to comply with the terms of the procedure under Article IV(3)(d) of the Constitution of Bosnia and Herzegovina.

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

## **REASONING**

### **I. Introduction**

1. On 8 May 2017, Mr. Bariša Čolak, the Chairman of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina (“the applicant”) lodged with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) a request for review of the regularity of the procedure, i.e. request for determination of existence or lack of the constitutional grounds for declaring the Proposal for the Law to Amend the Election Law of Bosnia and Herzegovina (“the Proposal for the Law”) no. 02-02-1-1133/17 of 28 April 2017 detrimental to the vital interest of the Bosniac people.

### **II. Request**

#### **a) Allegations stated in the request**

2. The applicant stated that at the 28<sup>th</sup> session of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina (“the House of Peoples”), held on 4 May 2017, the request of delegates Ljilja Zovko, Bariša Čolak, Zdenko Džambas, Martin Raguž and Marijo Karamatić, (“the request of the delegates”) was considered for consideration of the Proposal of the Law (the request of delegates was attached to the Request for review) under urgent procedure in accordance with Article 124 of the Rules of Procedure of the House of Peoples.

3. After granting the request for consideration of the Proposal for the Law under urgent procedure, the delegates of the Bosniac Caucus: Halid Genjac, Safet Softić, Sead Kadić, Fahrudin Radončić and Sifet Podžić, pursuant to Article 177 of the Rules of Procedure, declared the mentioned Proposal for the Law detrimental to the national interest of the Bosniac people. After declaring the Proposal for the Law detrimental to the vital interest of Bosniac people the discussion was terminated and the voting commenced on whether the Proposal for the Law is destructive to the vital interest of the Bosniac people. The Serb Caucus, with three votes “for” and two votes “abstained”, voiced its opinion that it did not consider the Proposal for the Law detrimental to the vital national interest of the Bosniac peoples. The Croat Caucus, with five votes “against” voiced its opinion that it did not consider the Proposal for the Law detrimental to the vital national interest of the Bosniac peoples. The Bosniac Caucus did not voice its opinion again given the fact that all five delegates from the Bosniac Caucus, in its letter no. 02-02-1-1132/17 of 4 May 2017, whereby

they had declared the Proposal for the Law detrimental to the vital interest of the Bosniac people, voiced their opinion that they consider the proposed law detrimental to the vital interest of the Bosniac people.

4. Furthermore, the applicant stated that given that the majority of delegates from both the Croat People and Serb People Caucuses stated that they are against the claim that the Proposal for the Law to Amend the Election Law of Bosnia and Herzegovina is detrimental to the vital interest of the Bosniac people, the Joint Commission for Resolution of Issue of Vital Interest (“the Joint Commission”) was established and it comprises three delegates of whom one member is elected by Bosniac delegates, one by Croat delegates and one by Serb delegates for the purpose of resolution of issue in dispute. The Joint Commission met on 4 May 2017 and held the session at which the members of the Joint Commission Bariša Čolak and Sredoje Nović remained supportive of their positions that they are against the statement that the mentioned Proposal for the Law is detrimental to the vital national interest of the Bosniac people. The Joint Commission concluded that it did not reach the solution and, pursuant to the provisions of the Constitution of Bosnia and Herzegovina and Rules of procedure of the House of Peoples, established that the case should be referred to the Constitutional Court of Bosnia and Herzegovina for further proceeding (the applicant submitted the Minutes from the session of the Joint Commission of 4 May 2017).

5. It follows from the Statement of the Bosniac Caucus of 4 May 2017 signed by Halid Genjac, Safet Softić, Sead Kadić, Fahrudin Radončić and Sifet Podžić, (the copy of the Statement attached to the Request) that the statement makers submitting the statement declare the Proposal for the Law detrimental to the vital interest of the Bosniac people.

6. In the reasons for the decision the statement makers pointed out that Article 1 of the Proposal for Law amends Article 8.1 of the Election Law of Bosnia and Herzegovina (“the Election Law”), which is related to election of the members to the Presidency of Bosnia and Herzegovina (“the Presidency of BiH”). It is further stated that it is proposed that one Croat and one Bosniac would be elected, as it is now, but the election is conditioned upon the majority given in the “electoral area” consisting, mainly, of a group of municipalities where at least 2/3 of population belong to the same ethnic group as the candidate. According to the applicable regulations of the Election Law, the entire entity, namely the Federation of BiH is the constituency for the election of the members to the Presidency, and the Bosniac member

who receives the highest number of votes among Bosniac candidates shall be elected to the Presidency of BiH, and the Croat member who receives the highest number of votes among Croat candidates shall be elected to the Presidency of BiH.

7. Furthermore, it was noted that in the judgment of the European Court of Human Rights in the case of *Sejdić and Finci vs. Bosnia and Herzegovina* of 22 December 2009, a violation of the Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the European Convention”) was established, as well as in the provisions of the Constitution of Bosnia and Herzegovina (“the Constitution of BiH”) and Election Law, as they prevent the citizens of the Federation of BiH that are not Croats or Bosniacs from standing as candidates for election to the Presidency of Bosnia and Herzegovina. In this connection, it was noted that the the proposed amendment does not remove the violation of the European Convention (which is a post-accession obligation of Bosnia and Herzegovina as a member of the Council of Europe), and the adoption of such a modification would create a situation being more unfavourable than the present one with regards to the European Convention for the Protection of Human Rights: the Croat member and the Bosniac member of the Presidency are elected exclusively from the ethnically determined “electoral areas” (Bosniac or Croat). Thus, the proposed solution is contrary to the legally binding judgment of the European Court of Human Rights and its adoption would cause detrimental consequences for Bosnia and Herzegovina, and, thus, Bosniacs, as one of the constituent peoples.

8. Further, in the reasons the applicant pointed to Article 13 of the Proposal for the Law relating to amendment to Article 20.16A, paragraph 2 of the Election Law. The offered solution is, as stated, aimed at implementing the Decision of the Constitutional Court no. U 23/14 of 1 December 2016. Finally, it was noted that by the mentioned Article the number of delegates is suggested (Serbs, Croats, Bosniacs and Others) that are elected from the cantons to the House of Peoples of the Parliament of FBiH.

9. The Statement makers pointed out that the proposed number of delegates per canton is argued by “taking into account the last census”. According to the proposal for sub-paragraph a) of the amended para 2 of Article 20.16 A, the Bosniac delegates to the House of Peoples of the Parliament of the Federation of BiH would be elected in a manner in which the Bosniacs from Livno Canton, Posavina Canton and West Herzegovina Canton could not be elected to

the House of Peoples of the Parliament of the Federation of BiH. It is noted in the statement that according to the last census, there are 8252 Bosniacs in Posavina Canton, and 8037 Bosniacs in Canton 10. It should be noted that Chapter IV, Article 8(3) of the Constitution of the Federation of BiH stipulates as follows: *In the House of Peoples there shall be at least one Bosniac, one Croat, one Serb from each Canton which has at least one such delegate in its legislative body and that so far* significant number of delegates from Bosniac people have been elected to the assemblies of the mentioned cantons in the previous elections. Therefore, they point out that preventing Bosniacs from the mentioned cantons from being elected to the House of Peoples of the Parliament of the Federation of BiH would constitute a flagrant discrimination which had already been found in the *Pilav v. BiH* judgment of the European Court of Human Rights. In view of the aforesaid, they consider that Article 13 of the Proposal for the Law proposes the amendments which would prevent Bosniacs from the territory of three cantons of the Federation of Bosnia and Herzegovina to be elected to the House of Peoples of the Parliament of the Federation of BiH, which is indisputably detrimental to the vital interest of the Bosniac people.

10. It follows from the Statement of the delegate of the Croat Caucus, Bariša Čolak, the member of the Joint Commission (the Statement of 4 May 2017 attached to the Request) that the Proposal for the Law is not detrimental to the interest of the Bosniac people and that there are no constitutional and grounds referred to in the Rules of Procedure that the representatives from the Bosniac People Caucus, Halid Genjac, Safet Softić, Sead Kadić, Fahrudin Radončić and Sifet Podžić raise the vital national interest issue.

11. It follows from the Statement of the delegate of the Serb Caucus, Sredoje Nović, the member of the Joint Commission, (the Statement of 4 May 2017 attached to the Request) that he remains fully with his position and position of the Serb People Caucus and their statement from the 28<sup>th</sup> session of the House of Peoples of the Parliamentary Assembly of BiH held on 4 May 2017 and that he considers that there are no constitutional and grounds referred to in the Rules of Procedure that the representatives from the Bosniac People Caucus, Halid Genjac, Safet Softić, Sead Kadić, Fahrudin Radončić and Sifet Podžić raise the vital national interest issue.

12. It follows from the Statement of the delegate of the Bosniac Caucus, Halid Genjac, the member of the Joint Commission, (the Statement of 4 May 2017 attached to the Request) that he remains fully with his position and position of the Bosniac People Caucus and their

statement from the 28<sup>th</sup> session of the House of Peoples of the Parliamentary Assembly of BiH held on 4 May 2017 and that he considers that there are constitutional and grounds referred to in the Rules of Procedure that the representatives from the Bosniac People Caucus, Halid Genjac, Safet Softić, Sead Kadić, Fahrudin Radončić and Sifet Podžić raise the vital national interest issue.

### **b) Reply to Request**

13. The Constitutional Court established that in the case at hand the requirement of the adversarial proceeding before the Constitutional Court was met as the applicant attached to the request the statements of the following delegates: the Croat Caucus, Bariša Čolak, the member of the Joint Commission, the Serb Caucus, Sredoje Nović, the member of the Joint Commission, who in their names and in the name of the Croat Caucus and Serb Caucus have challenged the allegations of the Statement makers and for that reason the Constitutional Court did not ask for the opinion about the request from the delegates of the Croat Caucus and Serb Caucus.

## **III. Relevant Law**

14. The **Constitution of Bosnia and Herzegovina** as relevant reads:

### *Article 1*

#### *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 5*

#### *Presidency*

*The Presidency of Bosnia and Herzegovina shall consist of three Members: one Bosniac and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of the Republika Srpska.*

*The term of the Members of the Presidency elected in the first election shall be two years; the term of Members subsequently elected shall be four years. Members shall be eligible to succeed themselves once and shall thereafter be ineligible for four years.*

15. **The Constitution of Federation of Bosnia and Herzegovina** (*Official Gazette of F BiH*, 1/94, 1/94, 13/97, 13/97, 16/02, 22/02, 52/02, 52/02, 60/02, 18/03, 63/03, 9/04, 20/04, 33/04, 71/05, 72/05, 32/07 i 88/08) as relevant reads:

#### IV. STRUCTURE OF THE FEDERATION GOVERNMENT

##### *A. The Federation Legislature*

##### *1. The House of Peoples*

##### *Article 6*

##### *Composition of the House of Peoples and Selection of Members*

- (1) The House of Peoples of the Federation Parliament shall be composed on a parity basis so that each constituent people shall have the same number of representatives.*
- (2) The House of Peoples shall be composed of 58 delegates; 17 delegates from among each of the constituent peoples and 7 delegates from among the Others.*
- (3) Others have the right to participate equally in the majority voting procedure.*

##### *Article 8*

- (1) Delegates to the House of Peoples shall be elected by the Cantonal Assemblies from among their representatives in proportion to the ethnic structure of the population.*
- (2) The number of delegates to the House of Peoples to be elected in each Canton shall be proportional to the population of the Canton, given that the number, structure and manner of election of delegates shall be regulated by law.*
- (3) In the House of Peoples there shall be at least one Bosniac, one Croat, one Serb from each Canton which has at least one such delegate in its legislative body.*
- 4) Bosniac delegates, Croat delegates and Serb delegates from each Canton shall be elected by their respective representatives, in accordance with the election results in the*



*legislative body of the Canton, and the election of delegates from among the Others shall be regulated by law.*

16. **The Election Law of Bosnia and Herzegovina** (Official Gazette of BiH, 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13, 7/14 i 31/16) so far as relevant reads:

*Article 8.1*

*The members of the Presidency of Bosnia and Herzegovina directly elected from the territory of the Federation of Bosnia and Herzegovina– one Bosniak and one Croat shall be elected by voters registered to vote for the Federation of Bosnia and Herzegovina. A voter registered to vote in the Federation may vote for either the Bosniak or Croat Member of the Presidency, but not for both. The Bosniak and Croat member that gets the highest number of votes among candidates from the same constituent people shall be elected. The member of the Presidency of Bosnia and Herzegovina that shall be directly elected from the territory of RS-one Serb shall be elected by voters registered to vote in the Republika Srpska.*

*The candidate who gets the highest number of votes shall be elected.*

*Article 20.16. A*

*Until Annex 7 of the GFAP has been fully implemented, the allocation of seats by constituent people normally regulated by Chapter 10, Subchapter B of this law shall be done in accordance with this Article.*

*Until a new census is organized, the 1991 census shall serve as a basis so that each Canton will elect the following number of delegates:*

- 1) from the Legislature of Canton number 1, Una-Sanai Canton, five (5) delegates, including two (2) Bosniacs, one (1) Croat and two (2) Serbs shall be elected.*
- 2) from the Legislature of Canton number 2, Posavina Canton, three (3) delegates, including one (1) Bosniak, one (1) Croat and one (1) Serb shall be elected.*
- 3) from the Legislature of Canton number 3, Tuzla Canton, eight (8) delegates, including three (3) Bosniacs, one (1) Croat, two (2) Serbs and two (2) Others shall be elected.*

- 4) *from the Legislature of Canton number 4, Zenica-Doboj Canton, eight (8) delegates, including three (3) Bosniacs, two (2) Croats, two (2) Serbs and one (1) Other shall be elected.*
- 5) *from the Legislature of Canton number 5, Bosnian-podrnije Canton – Gorazde, three (3) delegates, including one (1) Bosniac, one (1) Croat and one (1) Serb shall be elected.*
- 6) *from the Legislature of Canton number 6, Central Bosnia Canton, six (6) delegates, including one (1) Bosniac, three (3) Croats, one (1) Serb and one (1) Other shall be elected.*
- 7) *from the Legislature of Canton number 7, Herzegovina-Neretva Canton, six (6) delegates, including one (1) Bosniac, three (3) Croats, one (1) Serb and one (1) Other shall be elected.*
- 8) *from the Legislature of Canton number 8, West Herzegovina Canton, four (4) delegates, including one (1) Bosniac, two (2) Croats and one (1) Serb shall be elected.*
- 9) *from the Legislature of Canton number 9, Canton Sarajevo, eleven (11) delegates, including three (3) Bosniacs, one (1) Croat, five (5) Serbs and two (2) Others shall be elected.*
- 10) *from the Legislature of Canton no. 10, Canton 10, four (4) delegates, including one (1) Bosniac, two (2) Croats and one (1) Serb shall be elected.*

**17. Decision on Admissibility and Merits of the Constitutional Court of Bosnia and Herzegovina no. 23/14 of 1 December 2016 (Official Gazette, 1/17), as relevant reads:**

(...)

*It is established that the provision of Sub-chapter B, Article 10.12 (2), in part stating that each of the constituent peoples shall be allocated one seat in every canton and the provisions of Chapter 20 – Transitional and Final Provisions of Article 20.16A (2), items a-j of the Election Law of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13 and 7/14) are not in conformity with Article I (2) of the Constitution of Bosnia and Herzegovina.*

*The Parliamentary Assembly of Bosnia and Herzegovina is ordered to harmonise, not later than six months from the day of delivery of this decision, the provision of Subchapter B, Article 10.12 (2), in part stating that each of the constituent peoples shall be allocated one seat in every canton, and the provisions of Chapter 20 – Transitional and Final Provisions of Article 20.16A(2) items a-j of the Election Law of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13 and 7/14) with Article I (2) of the Constitution of Bosnia and Herzegovina.*

18. **The Proposal for the Law to Amend the Election Law of Bosnia and Herzegovina no. 02-02-1-1133/17 of 28 April 2017** so far as relevant reads:

*Article 1*

*In the Election Law of Bosnia and Herzegovina (Official Gazette of BiH, 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13, 4/14 and 31/16), in Chapter 8, Presidency of Bosnia and Herzegovina, Article 8.1 is hereby amended to read:*

*Article 8.1*

*(1) The members of the Presidency of Bosnia and Herzegovina (“the Presidency of BiH”) directly elected from the territory of the Federation of Bosnia and Herzegovina – one Bosniac and one Croat - shall be elected by voters registered in the Central Voters Register to vote in the Federation of Bosnia and Herzegovina. A voter registered in the Central Voters Register to vote in the Federation may vote for either the Bosniac or Croat Member of the Presidency, but not for both.*

*(2) For the purpose of election of the members of the Presidency of BiH directly elected from the territory of the Federation of Bosnia and Herzegovina, there shall be created three ad hoc electoral areas: A, B and C.*

*Electoral area A shall include all basics constituencies in which, according to the data of the last census, reside more than 2/3 of the Bosniac People.*

*Electoral area B shall include all basics constituencies in which, according to the data of the last census, reside more than 2/3 of the Croat People.*

*Electoral area C shall include all other basics constituencies.*

*Until the implementation of the new regulation, the composition of three ad hoc electoral areas A, B and C shall be as follows:*

- a) Electoral area A shall include the following basics constituencies: Novi grad Sarajevo, Novo Sarajevo, Centar Sarajevo, Stari Grad Sarajevo, Ilidža, Ilijaš, Vogošća, Hadžići, Trnovo (FBiH), Tuzla, Živinice, Srebrenik, Lukavac, Gradačac, Ćelić, Banovići, Gračanica, Kladanj, Kalesija, Doboj-Istok, Teočak, Sapna, Zenica, Kakanj, Maglaj, Tešanj, Zavidovići, Visoko, Breza, Olovo, Doboj-Jug, Bihać, Sanski Most, Velika Kladuša, Cazin, Bosanska krupa, Ključ, Bužim, Konjic, Jablanica, Bugojno, Donji Vakuf, Goražde, Pale (FBiH) and Foča (FBiH).*
- b) Electoral area B shall include the following basics constituencies: Široki Brijeg, Ljubuški, Posušje, Grude, Livno, Tomislavgrad, Kupres, Čapljina, Čitluk, Prozor-Rama, Neum, Ravno, Orašje, Domaljevac-Samac, Kreševo, Dobretići and Usora.*
- c) Electoral area B shall include the following basics constituencies: City of Mostar, Stolac, Travnik, Vitez, Jajce, Kiseljak, Novi Travnik, Busovača, Gornji Vakuf-Uskoplje, Fojnica, Odžak, Žepče, Vareš, Drvar, Bosansko Grahovo, Bosanski Petrovac and Brčko District BiH-option FBiH.*

*(3) The Bosniac member who receives the highest number of votes among Bosniac candidates shall be elected to the Presidency of BiH, provided that he/she has received a higher number of votes in the area consisting of ad hoc electoral areas A and C than in the area consisting of ad hoc electoral areas B and C. In the event that the candidate, who has received the highest number of votes, does not satisfy the aforementioned requirement, the next candidate on the list of Bosniac candidates who has received the highest number of votes, and so on throughout the list until the requirement is satisfied, shall be elected.*

*If no Bosniac candidate satisfies the aforementioned requirement, the candidate that receives the highest number of votes shall be elected.*

*(4) The Croat member who receives the highest number of votes among Croat candidates shall be elected to the Presidency of BiH, provided that he/she has received a higher number of votes in the area consisting of ad hoc electoral areas B and C than in the area consisting of ad hoc electoral areas A and C. In the event that the candidate, who has received the highest number of votes, does not satisfy the aforementioned requirement, the next candidate on the list of Croat candidates who has received the highest number of votes, and so on throughout the list until the requirement is satisfied, shall be elected.*

*If no Croat candidate satisfies the aforementioned requirement, the candidate that receives the highest number of votes shall be elected.*

*(5) The member of the Presidency of Bosnia and Herzegovina that shall be directly elected from the territory of RS - one Serb shall be elected by voters registered in the Central Voters Register to vote in the Republika Srpska. The candidate who receives the highest number of votes shall be elected.*

*(6) The mandate for the members of the Presidency of Bosnia and Herzegovina shall be four (4) years.*

### *Article 13*

*In Chapter 20, Transitional and Final Provisions, Article 20.16A paragraph 2 shall be amended to read:*

### *Article 20.16 A*

*(2) The number of delegates from each constituent people and group of Others per cantons, taking into account the last census, shall be arranged as follows:*

- a) 17 delegates from among the Bosniac People shall be elected from the Legislature of the cantons as follows: Tuzla Canton shall elect four delegates, Sarajevo Canton shall elect four delegates, Zenica-Doboj Canton shall elect three delegates, Una-Sana Canton shall elect three delegates, Herzegovina-Neretva Canton shall elect one delegate, Central Bosnia shall elect one delegate and Bosnian-Podrinje Canton shall elect one delegate.*

- b) *17 delegates from among the Croat People shall be elected from the Legislature of the cantons as follows: Herzegovina-Neretva Canton shall elect five delegates, Central Bosnia shall elect four delegates, West Herzegovina Canton shall elect three delegates, Herzeg-Bosnia Canton shall elect two delegates, Zenica-Doboj Canton shall elect one delegate, Posavina Canton shall elect one delegate and Tuzla Canton shall elect one delegate.*
- c) *17 delegates from among the Serb People shall be elected from the Legislature of the cantons as follows: Sarajevo Canton shall elect four delegates, Herzeg-Bosnia Canton shall elect three delegates, Una-Sana Canton shall elect three delegates, Tuzla Canton shall elect two delegates, Herzegovina-Neretva Canton shall elect two delegates, Zenica-Doboj Canton shall elect two delegates and Central Bosnia shall elect one delegate.*
- d) *7 delegates from among the group of Others shall be elected from the Legislature of the cantons as follows: Sarajevo Canton shall elect three delegates, Tuzla Canton shall elect two delegates, Zenica-Doboj Canton shall elect one delegate and Una-Sana Canton shall elect one delegate.*

#### **IV. Admissibility**

19. The request was lodged by the Chairman of the House of Peoples and so in terms of the authorized applicant, the request meets one of the admissibility criteria. As to the rest of the admissibility criteria, the Constitutional Court holds that they are contingent upon the very interpretation of the responsibilities of the Constitutional Court referred to in Article IV(3)(f) of the Constitution of Bosnia and Herzegovina.

20. The Constitutional Court recalls that the essence of the responsibilities of the Constitutional Court referred to in Article IV(3)(f) of the Constitution of Bosnia and Herzegovina is to resolve the issue of “procedural regularity”. What the notion of “procedural regularity” implies, ought to be concluded through a targeted and systematic interpretation, first and foremost of the provisions of Article IV(3)(f) of the Constitution of Bosnia and Herzegovina.

21. Under the provisions of Article IV(3)(d) through (f) of the Constitution of Bosnia and Herzegovina, it is clear that the procedure for declaring a decision destructive to a vital

national interest of a constituent people comprises an invocation of Article IV(3)(e) of the Constitution of Bosnia and Herzegovina by a majority of delegates from among the caucus of one constituent people (a minimum of three delegates). The consequence thereof is the stricter voting criterion, i.e. the adoption of such a decision requires agreement in the House of Peoples, as voted for by the majority of delegates of all three constituent peoples who are present and voting. This makes it possible for the parliamentary procedure to carry on despite the objection of destructiveness to a vital national interest of one constituent people, under the stricter democratic requirements though, as the notion of parliamentary majority gets another dimension. If the House of Peoples fails to reach a required majority, the decision cannot pass through the parliamentary procedure in the House of Peoples, as it does not have the confidence thereof. However, if there is no voting, because the majority of delegates from among one of the constituent peoples object by invoking the vital national interest, the voting procedure on the proposed decision shall be suspended and the House of Peoples shall proceed in accordance with Article IV(3)(f) of the Constitution of Bosnia and Herzegovina.

22. So, on the basis of the relevant provisions of the Constitution of Bosnia and Herzegovina it clearly follows that the procedure of the protection of vital national interests of one people has been clearly and decidedly prescribed by the quoted provisions and that the said procedure must be complied with. In this respect, the Constitutional Court observes that the Statement by the Bosniac Caucus, Halid Genjac, Safet Softić, Sead Kadić, Fahrudin Radončić and Sifet Podžić, which means that all delegates are the delegates of the Bosniac People Caucus. The Serb People Caucus (with three votes “against” and two votes “abstained”) and the Croat People Caucus (with five voted “against”) voted against that Statement. The Constitutional Court established those facts based on the applicant’s allegations and documents attached to the Request. Further, following the vote by which no agreement has been reached on the Proposal for the Law being detrimental to the vital national interest of the Bosniac people, a Joint Commission has been formed consisting of: Mr. Bariša Čolak, Mr. Halid Genjac, and Mr. Sredoje Nović, which met on 4 May 2017. However, the Joint Commission failed to find a solution and established that the disputed issue should be referred to the Constitutional Court for further procedure. The Constitutional Court established the aforementioned on the basis of the allegations stated by the applicant and on the basis of the Minutes from the session of the Joint Commission of 4 May 2017, which the applicant has also attached to the request. After that, on 4 May 2017, the Serb People Caucus, the member of the Joint Commission and Croat People Caucus, and the

member of the Joint Commission gave, on 4 May 2017, the written statements, in which they stated that they fully remain supportive of their position and positions of their respective caucuses presented at the session of the House of Peoples of 4 May 2017. It follows that the admissibility requirement, in relation to the procedure of referring cases to the Constitutional Court for decision-making, has been met.

23. On the other hand, it clearly follows from the cited provisions that this type of dispute arises out of a situation in which the representatives of constituent peoples cannot reach an agreement on whether a decision is destructive to the vital national interest of one of the peoples. This results in a blockage of the work of the Parliamentary Assembly since the proposed decision cannot get the confidence of a majority of delegates of certain people. In this regard, the role of the Constitutional Court as the guardian of the Constitution of Bosnia and Herzegovina (Article VI(3) of the Constitution of Bosnia and Herzegovina) is to contribute to de-blocking the work of the Parliamentary Assembly of Bosnia and Herzegovina by its decision on the merits, if the Parliamentary Assembly is not capable to overcome the problem by itself. This procedure is urgent in nature since the prompt intervention of the Constitutional Court is necessary to enable the work of the legislative body. This second role of the Constitutional Court, *i.e.* adoption of the decision on the merits regarding whether or not the decision is destructive to the vital national interest of one people, is very important in a situation when the state needs a decision to regulate certain field, whereas voting on that decision is blocked by the objection raised with regard to a vital national interest of one people.

24. The mechanism of protection of vital national interests of one people is very important in the states with multiethnic, multilingual and multi-religious communities or communities which are distinctive due to their differences. On the other hand, each invocation of vital national interest has for a consequence a stricter criterion for adoption of general acts (Article IV(3)(e) of the Constitution of Bosnia and Herzegovina) or, as a last resort, procedure before the Constitutional Court. The consequences are the interruption of parliamentary procedures, which may have an adverse effect on the work of the legislative body and functioning of the state. For that reason, the procedure under Article IV(3)(f) of the Constitution of Bosnia and Herzegovina should be invoked if there is a reason for the opinion that the proposed decision of the Parliamentary Assembly is destructive to the vital national interest of constituent peoples or if there is a serious controversy in opinions or a doubt about whether the



procedures from Article IV(3)(e) and (f) have been complied with (see, the Constitutional Court, Decision on the Merits no. U 7/06 of 31 March 2006, paragraphs 19 to 25 with further references, published in the *Official Gazette of BiH*, 34/06).

25. In the instant case, the essence of the reasons set forth in the Statement on destructiveness relates to the opinion that the Proposal for the Law neglects and does not remove from the domestic legal system the provisions of discriminatory character regarding the candidates running for the position of the member to the Presidency of BiH as defined by the judgment of the European Court of Human Rights in the case of *Sejdić and Finci* that by the offered solution regarding the manner in which the members of the Presidency of BiH are elected even worse situation is created in relation to the European Convention and such situation would cause detrimental consequences to BiH, and, thus, to the Bosniacs, as one of the constituent peoples. Also, the Statement makers claim that preventing Bosniacs from the mentioned cantons from being elected to the House of Peoples of the Parliament of the Federation of BiH would constitute discrimination against the Bosniacs and such matter was already judged in the judgment of the European Court of Human Rights, in the case of *Pilav vs. Bosnia and Herzegovina*. Having regard to the aforesaid, the Constitutional Court considers that the Request and the Statement contain reasons for which the statement makers are of the opinion that the Proposal for the Law is destructive to the vital interest of the Bosniac people. Therefore, the Constitutional Court holds that even this requirement for admissibility of the request has been met.

26. Taking into account the aforesaid, the Constitutional Court concludes that the request at issue has been lodged by an authorized person, that the procedural regularity within the meaning of Article VI(3)(e) and (f) of the Constitution of Bosnia and Herzegovina has been complied with and that the formal requirements under Article 16(2) of the Rules of the Constitutional Court have been met.

## **V. Merits**

27. The applicant requests the Court to examine the regularity of the procedure, i.e. to determine whether there are constitutional grounds for the Statement that the Proposal for the Law is considered detrimental to the vital national interest of the Bosniac people.

28. In the Statement it is indicated that the discriminatory provisions on the candidates running for the position of the member to the Presidency of BiH are not removed by the Proposal for the Law as it is established in the binding judgement of the European Court of Human Rights, in the case of *Sejdić and Finci vs. Bosnia and Herzegovina*, that the offered solution creates even more unfavourable situation in relation to the European Convention and such situation would cause detrimental consequences to BiH, and, thus, to the Bosniacs, as one of the constituent peoples. Also, it is stated in the Statement that preventing Bosniacs from the mentioned cantons from being elected to the House of Peoples of the Parliament of the Federation of BiH would constitute discrimination against the Bosniacs and such matter was already judged in the judgment of the European Court of Human Rights, in the case of *Pilav vs. Bosnia and Herzegovina*.

### **Notion of a Vital National Interest of the Constituent Peoples**

29. According to the Constitutional Court's case-law with regards to Article VI(3)(f) of the Constitution of Bosnia and Herzegovina, the Constitutional Court has never dealt with the enumeration of the elements of the vital national interest of one people. Instead, the Constitutional Court has noted that the notion of vital national interest of a constituent people is the functional category and that it should be dealt with from that aspect. In that sense, the Constitutional Court has noted through its case-law relating to this issue that several factors shape the perception of the mentioned term. First, the notion of vital national interest is the functional category which cannot be viewed separately from the notion "constituency of peoples" whose vital national interests are protected under Article IV(3)(e) and (f) of the Constitution of Bosnia and Herzegovina. In connection therewith, the Constitutional Court has indicated that the notion of constituent status of peoples is not an abstract notion but it incorporates certain principles without which a society with differences protected under its respective constitution, could not function efficiently. Furthermore, the Constitutional Court has also noted that the meaning of "vital national interest" is partially shaped by Article I(2) of the Constitution of Bosnia and Herzegovina, which provides that Bosnia and Herzegovina shall be a democratic state so that in that connection the interest of constituent peoples to participate in full capacity in the government system and in the activities of public authorities may be viewed as a vital national interest. Therefore, according to the case-law of the Constitutional Court, the efficient participation of constituent peoples in adopting political decisions in terms of prevention of absolute domination of one people over the other, represents the vital national interest of each constituent people. Furthermore, the

Constitutional Court has also noted that the state authorities should, in principle, be a representative reflection of advanced co-existence of all peoples in Bosnia and Herzegovina, including minorities and others. On the other hand, “efficient participation of constituent peoples in the authorities”, if it falls outside the constitutional framework, must never be carried out or imposed at the expense of efficient operation of the state and its authorities (for further details, see *op. cit. U 7/06*, paragraphs 33-37, with further references).

30. Furthermore, according to the jurisprudence relating to the same issue it was emphasized that, according to Article VI(3)(1) of the Constitution of Bosnia and Herzegovina, the Constitutional Court safeguards the Constitution and is limited thereof with regard to the functional interpretation. In this connection, in the consideration of any specific case, the Constitutional Court shall apply, within the assigned constitutional framework, the values and principles essential to a free and democratic society that incorporates, *inter alia*, the inherent dignity of every person and accommodates a wide range of diversity in beliefs and respect for the cultural identity of a person or groups as well as the confidence in social and political institutions that are promoting the participation of individuals and groups in the society. On the other hand, the protection of vital national interest must not imperil the state sovereignty and its functionality, which is closely related to the neutral and essential notion of citizenship, as the criterion of affiliation to a “nation”. In other words, the protection of vital national interest must not lead to unnecessary disintegration of civil society, as the indispensable element of modern statehood (*ibid.* paragraph 38).

### **Destructiveness to the vital interest**

31. First and foremost, the Statement makers indicate that Article 1 of the Proposal for the Law, whereby the manner in which the members to the Presidency are elected is modified - one Croat and one Bosniac from the Entity of F BiH, does not remove the discriminatory provisions relating to the candidates standing in election to the Presidency of BiH as established in the binding judgement of the European Court of Human Rights in the case of *Sejdić and Finci vs. Bosnia and Herzegovina*, and that the offered solution creates even worse situation than the existing one in relation to the European Convention and that such situation may have detrimental consequences to BiH and, thus, to the Bosniacs, as one of the constituent peoples.

32. The Constitutional Court reminds that the European Court of Human Rights, in the case of *Sejdić and Finci vs. Bosnia and Herzegovina* (see, the European Court of Human Rights, judgments of 22 December 2009) established (see paragraph 56): “(...) that the constitutional provisions which render the applicants ineligible for election to the Presidency must also be considered discriminatory and a breach of Article 1 of Protocol No. 12.”

33. Furthermore, in the case of *Zornić vs. Bosnia and Herzegovina* (see, the European Court of Human Rights, the judgment of 17 July 2014), the European Court of Human Rights noted (see, paragraph 36): "...In *Sejdić and Finci* (ibid., §56) the Court has already found that the constitutional provisions which rendered the applicants ineligible for election to the Presidency of BiH were discriminatory and in breach of Article 1 of Protocol No. 12. The Court does not see any reason to depart from that jurisprudence in the present case.

34. Finally, in the case of *Pilav vs. Bosnia and Herzegovina* (see, the European Court of Human Rights, the judgment of 9 July 2016 ), noted (see, paragraphs 41 and 42): "The Court observes that in accordance with the Constitution of Bosnia and Herzegovina only persons declaring affiliation with a "constituent people" are entitled to stand for election to the Presidency, which consists of three members: one Bosniac and one Croat, each directly elected from the Federation of Bosnia and Herzegovina, and one Serb directly elected from the Republika Srpska. The applicant, a Bosniac living in the Republika Srpska is as a result excluded. Similar constitutional precondition has already been found to amount to a discriminatory difference in treatment in breach of Article 1 of Protocol No. 12 in the quoted judgment in the case of *Sejdić and Finci* (paragraph 56), which relates to impossibility of the applicants, of whom one is the member of Roma people and the other one of Jewish people, to stand as candidates at election of the member to the Presidency of BiH. In the judgment in the case of *Zornić* (quoted above, paragraphs 36-37 and paragraph 43), which is related to the applicant, who does not declare affiliation with any of the "constituent peoples", but she declares as a citizen of Bosnia and Herzegovina, the Court reached the same conclusion with regards to her ineligibility to stand as candidate at elections to the Presidency."

35. Furthermore, the Constitutional Court reminds that in the Decision on Admissibility and Merits no. *U-14/12* of 26 March 2015 (available at [www.ustavnisud.ba](http://www.ustavnisud.ba)) noted (see, paragraphs 73 and 74): "(...) from it unambiguously follows from the *Sejdić and Finci* judgment of the European Court that the Constitution of BiH should be amended. In this connection, the Constitutional Court outlines that the European Court noted in the case of *Zornić v. Bosnia and Herzegovina* (see para 40): "(...) It emphasises that the finding of a violation in the present case was the direct result of the failure of the authorities of the respondent State to introduce measures to ensure compliance with the judgment in *Sejdić and Finci*. The failure of the respondent State to introduce constitutional and legislative proposals to put an end to the current incompatibility of the Constitution and the electoral law with

Article 14, Article 3 of Protocol No. 1 and Article 1 of Protocol No. 12 is not only an aggravating factor as regards the State's responsibility under the Convention for an existing or past state of affairs, but also represents a threat to the future effectiveness of the Convention machinery (see *Broniowski*, cited above, § 193, and *Greens and M.T.*, cited above, § 111)". However, it is impossible to foresee the scope of those changes in this moment. The Constitutional Court will not quash the aforementioned provisions of the Constitutions of the Entities and the Election Law, it will not order the Parliamentary Assembly of BiH, National Assembly and Parliaments of the Federation to harmonize the aforementioned provisions until the adoption, in the national legal system, of constitutional and legislative measures removing the current inconsistency of the Constitution of Bosnia and Herzegovina and Election Law with the European Convention, which was found by the European Court in the quoted cases".

36. Having regard to the aforesaid, it follows that the enforcement of the judgment in the *Sejdić and Finci* case, which was expressly invoked in the Statement, as well as the judgments in the *Zornić and Pilav* cases, implies first the modification of the provisions of the Constitution of BiH, which were found to be discriminatory, and only then the appropriate modification of the Election Law, as noted in the Decision No. *U 14/12* of the Constitutional Court.

37. The Constitutional Court recalls that Article IV(3)(e) of the Constitution of BiH stipulates that a proposed decision of the Parliamentary Assembly may be declared to be destructive of a vital interest of the Bosniac, Croat, or Serb people by a majority of, as appropriate, the Bosniac, Croat, or Serb Delegates. It follows unambiguously from the cited constitutional provision that the mechanism of vital national interest is an instrument afforded only to the constituent peoples for the purpose of protection against possible destruction of the interest of the specific constituent people. Thus, for example, the Constitution of BiH does not make it possible for the delegates from among Bosniac people to declare a decision detrimental to the interest of the Croat people or Serb people and *vice versa* by availing themselves of the mechanism of vital national interest. The Constitutional Court notes that the implementation of the judgment in the *Sejdić and Finci* case relates to the exercise, protection and further advancement of one of the fundamental principles being the basis of the State of BiH, i.e. free and democratic elections. As such it indisputably constitutes the interest of the society as a whole and all those living in BiH, and notably those who declare themselves as members of one of the constituent peoples. Furthermore, the implementation of the mentioned decision, as already noted in this Decision, relates to the modification of the Constitution of

BiH, whereupon the modification of the provisions of the Election Law will be possible in that regard. This is the reason why the implementation of the judgment in the *Sejdić and Finci* case cannot constitute only the interest of members of the Bosniac people, the protection of which is exercised through the mechanism of vital national interest.

38. Furthermore, the Constitutional Court notes that the Proposal for the Law was not submitted with the aim of implementing that judgment (*Sejdić and Finci*) but it rather relates to the issues of electoral procedure provided for in the present Election Law. This clearly follows from Reasons for the Proposal for the Law, wherein the proponents indicate the enforcement of the Decision of the Constitutional Court, *No. U 23/14* of 1 December 2016 (available at [www.ustavnisud.ba](http://www.ustavnisud.ba)), and compliance with the general principle of democracy, namely that one people does not elect the representative of the other one, as the reason for its adoption.

39. Furthermore, the Proposal for the Law is based on the same principles provided for in the Constitution of BiH and Election Law as the current solution, according to which one Bosniac and one Croat from the territory of the Federation are elected to the Presidency of BiH. Only the procedure for their election is regulated differently by the proposed solution, which should ensure, as stated in the Reasons for the Proposal for the Law, the general principle of democracy, namely that one people does not elect the representatives of the other one, i.e. that each constituent people elects by itself its own representatives of the legislature.

40. The Constitutional Court notes that Article 31 of the Rules of the Constitutional Court determines the scope of examination by the Constitutional Court, since the Constitutional Court examines only those violations that are stated in the request. Given the fact that Article 1 of the Proposal for the Law, which amends Article 8.1. of the Election Law, does not lead to the implementation of the mentioned judgment of the European Court and that it does not resolve the problem of discriminatory provisions on the candidates running for the position of the member of the Presidency of BiH, that the resolution of that issue should be resolved only after the modification of the Constitution and that the proposal in question resolves some other issues, one cannot speak of the detrimental consequences to Bosnia and Herzegovina, including Bosniacs as one of the constituent peoples thereof, which would result, as alleged by the Statement makers, in the violation of the vital interest. Finally, given the principles set forth in the Constitution of BiH and the general principle of democracy, namely that one people does elect the representatives of the other one, the proposed solution regulates

differently only the procedure for the election of members of the Presidency of BiH from the Federation of BiH as one Bosniac and one Croat from the Federation of BiH will still be elected as members to the Presidency of BiH.

41. Having regard to the aforesaid, it follows that the proposed solution provided for in Article 1 of the Proposal for the Law, which amends Article 8.1 of the Election Law, does not violate the vital interest of the Bosniac people in the manner alleged by the Statement makers.

42. Furthermore, the Constitutional Court notes that a part of the Transitional Provisions of the Election Law, more specifically paragraph 2 of Article 20.16A, which determines the number of delegates elected to the House of Peoples of the Parliament of the Federation of BiH by the cantons, is amended by Article 13 of the Proposal for the Law. According to the allegation of the Statement makers, the proposed solution, wherein Bosniacs from Canton 10, Posavina Canton and West Herzegovina Canton could not be elected to the House of Peoples of the Parliament of the Federation of BiH, amounts to discrimination, as also established in the European Court's judgment in the mentioned case of *Pilav v. Bosnia and Herzegovina*. In support of this allegation, the applicants allege that Chapter IV, Article 8(3) of the Constitution of the Federation of BiH prescribes that "in the House of Peoples there shall be at least one Bosniac, one Croat, one Serb from each Canton which has at least one such delegate in its legislative body" and that so far a significant number of delegates from Bosniac people have been elected to the assemblies of the mentioned cantons in the previous elections.

43. The Constitutional Court notes that the Election Law, in its Chapter 10, Subchapter B (House of Peoples), regulates, *inter alia*, the allocation of seats by constituent people. However, Article 20.16A, para 1, of Chapter 20 of the Election Law (Transitional Provisions) stipulates that until Annex 7 of the GFAP has been fully implemented, the allocation of seats by constituent people normally regulated by Chapter 10, Subchapter B of this law shall be done in accordance with this Article. Para 2 of the mentioned Law stipulates that until a new census is organized, the 1992 census shall serve as a basis so that each Canton will elect the prescribed number of delegates from each constituent people and Others.

44. The Constitutional Court notes that Article 13 of the Proposal for the Law amends the Transitional Provisions of the Election Law, more specifically Article 20.16A. According to the proposed solution, para 1 of the mentioned Article remains unchanged. However, para 2 of the mentioned Article is amended so as to stipulate that the number of delegates from each

constituent people and group of Others per cantons, taking into account the last census, shall be arranged as follows: 17 delegates from among the Bosniac People shall be elected from the Legislature of the enumerated cantons, excluding Posavina Canton, Canton 10 and West Herzegovina Canton; 17 delegates from among the Croat People shall be elected from the Legislature of the enumerated cantons, excluding Bosnia-Podrinje Canton, Una-Sana Canton and Sarajevo Canton; 17 delegates from among the Serb People shall be elected from the Legislature of the enumerated cantons, excluding Bosnia-Podrinje, Una-Sana Canton and Sarajevo Canton and 7 delegates from among the group of Others shall be elected from the Legislature of the enumerated cantons, excluding Bosnia-Podrinje Canton, Posavina Canton, West Herzegovina Canton, Herzegovina-Neretva Canton, Central Bosnia Canton and Canton 10. The determination of the cantons wherein 17 delegates from each constituent people are elected or wherein delegates for each constituent people will not be elected is based on the proportional representation of each constituent people in cantons, taking into account the last census.

45. The Constitutional Court notes that the reason for the proposed solution, as indicated in the Reasons for the Proposal for the Law, is the enforcement of the decision of the Constitutional Court, *No. U 23/14* so as to ensure that House of Peoples of the Parliament of the Federation of BiH is a house of legitimate and legal representatives of peoples.

46. The Constitutional Court recalls that it noted in its Decision *No. U 23/14* that the House of Peoples of the Parliament of the Federation of BiH represents a House of constituent peoples, not the House of cantons as federal units which form the Federation of BiH. Therefore, the right to participate in democratic decision-making, which is exercised through legitimate political representation, has to be based on the democratic election of the delegates to the House of Peoples of the Federation by the constituent people represented and whose interests are represented (see, *op. cit.* Decision on Admissibility and Merits *No. U 23/14*, paras 50 and 51). In this connection, the Constitutional Court took into account the fact that the composition of the House of Peoples is determined on a party basis by the Constitution of the Federation of BiH so that each constituent people, not canton, has equal number of delegates, 17 delegates each constituent people, and 7 delegates Others. Furthermore, the Constitution of the Federation of BiH stipulates that the delegates to the House of Peoples shall be elected by the Cantonal Assemblies from among their representatives in proportion to the ethnic structure of the population, not in proportion to the ethnic structure of their delegates. Moreover, the number, structure and manner of election of delegates are



determined by the law. Finally, the Constitution of the Federation of BiH stipulates that in the House of Peoples there shall be at least one Bosniac, one Croat, one Serb from each Canton which has at least one such delegate in its legislative body. In this case, it is a conditional option, i.e. it is necessary that at least one Croat, one Bosniac or one Serb is elected as representative at the direct elections for cantonal assembly.

47. The Constitutional Court notes that the proposed solution, just like the previous one, is based on the identical principles, i.e. delegates are elected from the legislatures of the cantons according to the last census. The proposed solution, just like the previous one, ensure the representation on the parity basis, i.e. 17 delegates for each constituent people. Furthermore, based on the last census, the proposed solution determines the proportional representation of each constituent people in the cantons, based on which it is determined which canton, out of 10 cantons, shall elect 17 delegates of each constituent people. Finally, under the criterion of the proportional representation of members of the constituent peoples in the total number of inhabitants of cantons, each constituent people is excluded from the allocation of mandates in precisely determined cantons. Having regard to the aforesaid, it follows that that the criterion of proportional representation of each constituent people in the total number of inhabitants of the cantons is applied equally to all constituent peoples and results in the same restriction applied to all constituent peoples, i.e. each constituent people elects delegates in precisely determined cantons, although not in all cantons.

48. The Constitutional Court notes that the House of Peoples of the Federation of BiH represents a house of constituent peoples, not the house of cantons as federal units which form the Federation of BiH. The main function of the House of Peoples is the protection of constituent status of peoples (*op. cit.* Decision on Admissibility and Merits, No. U 23/14, paragraph 51). In particular, the Constitution of the Federation of BiH determines the composition of the House of Peoples on the parity basis so that each constituent people, not canton, has equal number of delegates, each constituent people has 17 delegates, and Others 7 delegates. Furthermore, the delegates to the House of Peoples shall be elected by the Cantonal Assemblies from among their representatives in proportion to the ethnic structure of the population, not in proportion to the ethnic structure of their delegates. Moreover, the number, structure and manner of election of delegates are determined by the law. Moreover, the Constitution of the Federation of BiH stipulates that in the House of Peoples there shall be at least one Bosniac, one Croat, one Serb from each Canton which has at least one such delegate in its legislative body. In this case, it is a conditional option, i.e. it is necessary that at least

one Croat, one Bosniac or one Serb is elected as representative at the direct elections for cantonal assembly.

49. The Constitutional Court notes that the proposed solution amends the Transitional Provisions, more specifically Article 20.16.A of the Election Law, which apply until Annex 7 of the GFAP has been fully implemented. Paragraph 1 of the mentioned Article, which remains unmodified, stipulates that until Annex 7 of the GFAP has been fully implemented, the allocation of seats by constituent people normally regulated by Chapter 10, Subchapter B of this law shall be done in accordance with this Article. The proposed solution amends para 2 of the mentioned Article so as to determine the number of delegates of each constituent people and Others per cantons to the House of Peoples of the Federation of BiH, taking into account the last census from 2013.

50. Therefore, the proposed solution, just like the previous one, is based on the identical principles, i.e. delegates are elected from the legislatures of the cantons and proportionally based on the last census. By the equal application of the mentioned principles to all constituent peoples, the number of delegates to the House of Peoples of the Parliament of the Federation of BiH from each constituent people and group of Others per cantons is determined so as to ensure the representation on the parity basis, namely 17 delegates from each constituent people, so that the number of delegates per canton is determined proportionally taking into account the last census. In this connection, the Constitutional Court notes that it did not deal with the accuracy of the mathematical calculation based on which the number of delegates elected in the cantonal assemblies is determined in the Proposal for the Law.

51. Taking into account the fact that the House of Peoples is the house of constituent peoples, not cantons, and that the delegates to the House of Peoples are elected by the cantonal assemblies from among their delegates in proportion to the ethnic structure of the population of the cantons, not in proportion to the ethnic structure of the cantonal assemblies' delegates from among whom the delegates to the House of Peoples are elected, the proposed solution, which is based on the criterion of the proportional representation taking into account the last census, which is indisputably applied equally to all, does not place the members of the Bosniac people in a less favourable position compared to two other constituent peoples, which would result in the violation of the vital national interest, which was alleged by the Statement makers.

52. Finally, whether the proposed solution relating to the allocation of mandates raises an issue of harmonization with the Constitution of the Federation of BiH, which the Statement makers suggested by referring to specific provisions of the Constitution of the Federation of BiH, is not an issue in relation to the issue of possible destructiveness of vital national interest, as these are two separate issues (see, among other authorities, Decision on Admissibility and Merits, *No. U 32/13* of 23 January 2014, para 31, available at [www.ustavnisud.ba](http://www.ustavnisud.ba)).

53. Having regard to the foregoing, it follows that Article 13 of the Proposal for the Law, wherein para 2 of Article 20.16 A of the Election Law is amended, is not in violation of the vital interest of the Bosniac People, which was alleged by the Statement makers.

54. The Constitutional Court concludes that the Statement makers' allegations that the Proposal for the Law is destructive of the vital interest of the Bosniac people are not founded.

55. In accordance with this Decision, the House of People should pursue the procedure for adoption of the Proposal for the Law in accordance with Article IV(3)(e) of the Constitution of Bosnia and Herzegovina.

## **VI. Conclusion**

56. The Constitutional Court concludes that the Law Proposal for the Law to Amend the Election Law of Bosnia and Herzegovina no. 02-02-1-1133/17 of 28 April 2017 is not in violation of the vital interest of the Bosniac People.

57. Pursuant to Article 59(1) and (5) of the Rules of the Constitutional Court, the Constitutional Court has decided as stated in the enacting clause of this decision.

58. Under Article 43 of the Rules of the Constitutional Court, President Mirsad Ćeman gave a statement of dissent to the majority decision.

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

Mirsad Ćeman  
President  
Constitutional Court of Bosnia and Herzegovina

