The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(a) of the Constitution of Bosnia and Herzegovina, Article 57(2)(b) and Article 59(1) and (3) of the Rules of the Constitutional Court of Bosnia and Herzegovina (*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. Constance Grewe,

Ms. Seada Palavrić,

having deliberated on the request filed by **Mr. Safet Softić, Second Deputy Chair of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina**, in case no. ***U 7/15*****,** at its session held on 26 May 2016 adopted the following

DECISION ON ADMISSIBILITY AND MERITS

The request filed by **Mr. Safet Softić, Second Deputy Chair of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina**, for the review of constitutionality of the first sentence of Article 7(1) of the Constitution of the Republika Srpska in the part reading: "the language of the Bosniac people" is hereby dismissed as ill-founded.

It is hereby established that the first sentence of Article 7(1) of the Constitution of the Republika Srpska in the part reading: "the language of the Bosniac people" is in conformity with 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 9 September 2015, Mr. Safet Softić, Second Deputy Chair of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina ("the applicant") filed a request with the Constitutional Court of Bosnia and Herzegovina ("the Constitutional Court") for the review of constitutionality of the first sentence of Article 7(1) of the Constitution of the Republika Srpska in the part reading: "the language of the Bosniac people".

II. Procedure before the Constitutional Court

2. Pursuant to Article 23(2) of the Rules of the Constitutional Court of Bosnia and Herzegovina, the National Assembly of the Republika Srpska ("the National Assembly") was requested on 17 September 2015 to submit its reply to the request.

3. On 9 November 2015, the National Assembly submitted the reply to the request.

III. Request

a) Allegations stated in the request

4. The applicant holds that the challenged Article 7(1), first sentence thereof, of the Constitution of the Republika Srpska, in the part reading: "the language of the Bosniac people", is not in conformity with the Constitution of Bosnia and Herzegovina ("the Constitution of BiH"). At the very outset of the presentation, the applicant emphasizes that the request for the review of constitutionality deals with the constitutional right to language, which includes the right of the group to call its language as it wishes and to use it as stipulated by international and constitutional law. It is particularly emphasized that this "it does not relate to any issue raised with regards to the content of the language, its similarity or comparison with other official languages in Bosnia and Herzegovina, the justifiableness of the existence of three languages, etc., which are primarily the questions for the linguistic sciences and, thus, outside the scope of interest of this particular request".

5. The applicant sees the unconstitutionality of the first sentence of Article 7(1) of the Constitution of the Republika Srpska, in the part prescribing that the official languages in the Republika Srpska shall be: "… the language of the Bosniac people…", through five aspects:

a) **it imposes on the Bosniac people the name of the language and, thus, deprives it of the right to name its own language as an inherent element in the right to language, which is, again, the constituent element of the vital national interest of a constituent people**

6. The applicant alleges that the last 10th sentence of the Preamble of the Constitution of BiH prescribes the principle of the constituent status of peoples, which comprises a number of

specific collective rights of the constituent peoples. The very Constitution of BiH, as the applicant further alleges, does not stipulate that the language is a part of the principle of the constituent status of peoples. However, the right to language constitutes an integral part of the principle of the constituent status of peoples and it follows *explicite* from the provisions of the Entity Constitution. This case does not concern the individual but collective right to language as part of the vital national interest of any constituent people in terms of Article IV(3)(f) of the Constitution of BiH. Thus, in the context of the aforementioned, the applicant refers to the Decision of the Constitutional Court no. *U-10/05*. The applicant notes that the "European Convention for Regional or Minority Languages" does not apply to the constituent peoples (*U-10/05*), however it finds as unacceptable the conclusion that the access to the collective right to language does not apply to the constituent peoples, given that the State should take into account the needs and wants of the constituent peoples who use their respective languages. He emphasizes that the particular case concerns the language of the group which represents a factual minority in the Republika Srpska and refers to the Decision of the Constitutional Court, no. *U-5/98-III* of 1 July 2000 (paras 58 and 59), which he cited in full.

7. The applicant further alleges that when the notion "the right to language" is used, that right entails the right of a group to give a specified name to its language and not to have it imposed by others. The right to name its language, as the applicant alleges, represents the element inherent in the general right to language. That is so because the right to the recognition of a language also comprises the right to the recognition of the name of a language. This connection is a part of the effective protection of the right to language, as the language and its name are an expression of cultural wealth of a group (Article 7(1) line 1 of the "European Convention for Regional or Minority Languages").

8. In order to draw a conclusion, as the applicant alleges, that the Republika Srpska has violated the principle of the constituent status of peoples, by introducing in the Constitution of the Republika Srpska "the language of the Bosniac people" and not "the language of the Bosnian people", the applicant indicates that during the 1991 census, the Bosnian language, as the mother tongue, had been spoken by 37.2853 % of the population. Consequently, the Bosnian language had been the fact of the constitutional and legal system and order of Bosnia and Herzegovina even before the currently applicable Constitution of BiH. He further alleges that the General Framework Agreement for Peace in BiH was written, *inter alia*, also in the Bosnian language, and cites

Article XI(2) of the Agreement, which reads "Done at Paris, this 14 day of December, 1995, in the Bosnian, Croatian, English and Serbian languages, each text being equally authentic". Although this Agreement, as the applicant alleges, had not been published in the official languages of Bosnia and Herzegovina, this fact is indisputable. The English version clearly uses the term "Bosnian language", so that there is no dilemma as to whether it was concluded in "Bosnian" or "Bosniac" language, or in "the language of the Bosniac people". The applicant refers to the Decision of the Constitutional Court no. *U-32/01*, namely paragraph 17, which reads that "the Constitution of BiH, which text is contained in Annex 4, is an integral part of the Agreement. It can be therefore concluded that it follows from the structure of the Agreement that Annexes are of the same character and that the authors of Annexes had no intention to give rise to any conflict whatsoever", and concluded that the Constitution of BiH as well as other annexes to the General Framework Agreement for Peace in BiH, as its integral parts, were written, *inter alia*, also in the "Bosnian language". Consequently, starting from the interpretation of the General Framework Agreement and certain Annexes thereto, the "Bosnian language" is a constitutional language in Bosnia and Herzegovina and one of the three official languages. This is binding on the Republika Srpska within the meaning of Article III(3)(b) of the Constitution of BiH and the Entity does not have a discretionary right to recognize languages other than those that exist, or to change the names thereof. Furthermore, the applicant alleges an example that at the level of Bosnia and Herzegovina, all state laws are published in the "Bosnian language" in the *Official Gazette of BiH*, as the header clearly reads "Serbian, Croatian and Bosnian Language Edition". He also alleges that the Constitutional Court uses the "Bosnian language" in its work, and alleges paragraph 10 of the application form as an example.

9. The National Assembly, as the applicant alleges, after the Bosnian language had factually and legally existed and had been introduced in the General Framework Agreement, and after the Bosnian language had existed in the Federation of Bosnia and Herzegovina (the Bosnian and Croatian languages had been the official languages until the constitutional amendments), took a liberty to rename that language in "the language of the Bosniac people" without any legal or legitimate grounds for doing so. He deems that the Republika Srpska also denied and violated the collective right of the Bosniac people to call its mother tongue and one of the official languages as that people wished, which is contrary to the principle of the constituent status of peoples within the meaning of the last 10th line of the Preamble of the Constitution of BiH.

b) **Engages in *de facto* discrimination against the Bosniac people when compared to the Serb people, as there is a different approach, in practice, to "the language of the Serb people" and to "the language of the Bosniac people" when it comes to the naming thereof**

10. The applicant further indicates that the authorities in the Republika Srpska call in practice "the language of the Serb people" "Serbian" while not applying the same approach to "the language of the Bosniac people", in a sense that the term "Bosnian" is used in practice. Accordingly, there is a different treatment in practice of "the language of the Serb people" when compared to "the language of the Bosniac people". As an example the applicant mentioned the official page of the Supreme Court of the Republika Srpska that uses the term "Serbian language". It is clear from the official page of the RS Institute of Pedagogy, as the applicant infers, that "the Serbian language" is taught in the Republika Srpska while "the Bosnian language" does not even exist. The aforementioned is confirmed by the fact that grades are entered for the Serbian language in the students' grade reports and not for "the language of the Serb people". Furthermore, he alleges that all the websites of the public bodies in the Republika Srpska do not carry at all the title of a language that the website is displayed in to be read, thereby trying to cover up the established practice of "the Serbian language" unlike the formal and unnatural forcing of the language of "the Bosniac people" in practice. The applicant holds that this kind of practice is a reflection of a very "undemocratic and politically incorrect attitude to the collective rights of the constituent peoples in Bosnia and Herzegovina". Also, he mentions that numerous legal acts of the authorities of the Republika Srpska read that it is "Serbian" and not "the language of the Serb people". He cited as an example that in Banja Luka all documents are translated from English into "the Serbian language" as well as from "the Serbian language" into English. The media emphasize that it is "the Serbian language" and not "the language of the Serb people".

11. The applicant refers to Decision no. *U-5/98-III* wherein the Constitutional Court indicated that discrimination does not exist only when law makes formal differences without justification but also when the "legislation and administrative practices with discriminatory intent or effect" are adopted. It is also stated that there are several manners of discrimination that the applicant cited from the mentioned decision in the subsequent text of the request. He further referred to the description of discrimination referred to in the *Explanatory Report for Additional Protocol No. 12 to the European Convention*, which reads that discrimination exists not only in the case of the so-called formal discrimination but also when the State factually acts in a discriminatory manner,

when the state uses its discretion in a discriminatory manner or by any other act. Although the Constitution of the Republika Srpska treats equally all three peoples in formal and legal terms, there is a clear distinction in the factual treatment between "the language of the Serb people" and "the language of the Bosniac people", because in practice "the language of the Serb people" is used as "the Serbian language" which is the real will of the Serb people. The described *de facto* discrimination, as the applicant mentioned, happens for one reason only, and that is because the "Bosnian" language is reminiscent of the state of Bosnia and Herzegovina, of the notion indicative of something common, supranational, supra-ethnic, which does not fit concept-wise in the politics of the Republika Srpska expressed in the original version of the Constitution of the Republika Srpska (Articles 1 and 7), under which the Republika Srpska is "the state of the Serb people" in which the sole official language is "Serbian". This homophobic, ethno-nationalistic and discriminatory concept, which denies all other peoples and their rights and discriminates against them in the enjoyment of human rights, had been long since declared unconstitutional and contrary to the basic European values of pluralistic societies. The denial of the right to name the language as well as its existence, and the discrimination against the Bosniac people when compared to the Serb people and the Serbian language constitutes the infringement of the principle of the pluralist society within the meaning of the line 3 of the Preamble of the Constitution of BiH, because this constitutional notion incorporates cultural diversity that also includes a language. The applicant again referred to Decision no. *U-5/98*, wherein the Constitutional Court offered in paragraph 26 the interpretation of the Preamble of the Constitution of BiH indicating that it serves as a standard for the Constitutions of the Entities.

c) **The violation of the rights of "Others" to mother tongue as a part of the identity of the group of "Others" belonging to the Bosnian linguistic community**

12. In the subsequent portion of the request the applicant gives the definition of a mother tongue stating that the use of a mother tongue is one of the basic elements of the spirituality of a human, the culture and tradition. He recalls again that during the 1991 census, according to the statistical data, a large number of persons not belonging to the present-day constituent peoples had lived in Bosnia and Herzegovina. This applied to citizens who either for objective or subjective reasons did not belong to any community or a group or who identified themselves as members of

(un)recognized national minorities, but they no longer spoke the language, which is the official language in the states where those national minorities were the state-building nations (such as Jews, Polish or Austrians…). As he further states, after the reintroduction of the Bosnian language as a constitutional and legal category ("which the 1991 census went on to show") all those "BH" citizens identified the Bosnian language as their mother tongue. Therefore, "the Bosnian language" plays a double role for both the "Others" and the Bosniac people. Drawing a parallel to the constituent peoples, all members of the group of *Others* that identified Bosnian language as their native language represent a separate linguistic community, i.e. the separate group, which should have the same rights as the constituent peoples. This is so, primarily, because the category of *Others* speaking the Bosnian language is the constitutional category under line 10 of the Constitution of Bosnia and Herzegovina, the same as the constituent peoples, and they have the right to equal treatment without discrimination. Constitutional amendments in the Republika Srpska, which lead to the suspension of "the Bosnian language", brought about impossibility for the members of "Others" to identify themselves with one of the official languages in Bosnia and Herzegovina in terms of identity. That is how their right to private and family life within the meaning of Article 8 of the European Convention was endangered, as it influences the depersonalization of young people into identity. In addition to the aforementioned, the applicant referred to Article 27 of the International Covenant on Civil and Political Rights ("the International Covenant"), which provides for the right of the linguistic minorities, that the members of the group of "Others" speaking the Bosnian language are and they do have the right to language and its use. In the context of the aforementioned, the applicant referred to the judgments of the European Court of Human Rights ("the European Court") in the case of *Sejdić and Finci v. Bosnia and Herzegovina* and *Zornić v. Bosnia and Herzegovina* (paragraphs 30 and 31), which clearly identified the conclusion that "Others" must be equal in the enjoyment of constitutional rights and freedoms, and that the collective equality of the constituent peoples may not be exercised at the expense of the members of "Others".

13. The applicant indicates that the right to choose a mother tongue is a matter of "own self-determination of a person" and the fact that the members of "Others" identify with one language that features as an official language is a personal matter of every human being, and the cited judgment in the case of *Zornić v. Bosnia and Herzegovina* indicates that the state has no right to consider the reasons for such a choice, as that is a private matter and choice safeguarded by

Article 8 of the European Convention. The applicant concludes that the first sentence of Article 7(1) of the Constitution of the Republika Srpska violates the right to a mother tongue of the citizens from among the group of "Others" who speak the Bosnian language within the meaning of an integral part of the notion of "Others" under line 10 of the Preamble of the Constitution of BiH, the right to private and family life under Article 8 of the European Convention, the right to use language under Article 27 of the International Covenant, Article 30 of the Convention on the Rights of the Child, the "European Convention for Regional or Minority Languages", the International Convention on the Elimination of All Forms of Racial Discrimination, as well as the Framework Convention for the Protection of National Minorities.

d) The violation of the right to education in the mother tongue of the Bosniac people and Others who belong to the Bosnian linguistic community

14. In the continuing part of the request the applicant starts from the premise that the constitutional principle of the constituent status of peoples incorporates and safeguards the right to mother tongue, which right comprises the right to name the mother tongue as the group concerned wishes to name it, and the premise that the members of "Others" who speak "the Bosnian language" as a mother tongue represent a special linguistic community, the group that has the right to language as part of its national identity in the same way as the members of the constituent peoples do, and asks a question whether the abolition of "the Bosnian language" constitutes at the same time a violation of the right to education within the meaning of Article 2(1), the first sentence, of Additional Protocol No. 1 to the European Convention. The applicant points to the contents of the mentioned provision, under which the right to education guarantees the right of any individual not only of access to education, but also of access to the effective education and cited the relevant judgments of the European Court. In doing so the applicant refers to the case of *Cyprus v. Turkey (*Application no. 25781/94, judgement of 10 May 2001, paras. 277-279*)*, wherein the denial of the right to education in mother tongue constitutes the denial of the essence of the right to education.

15. The applicant holds that the factor of the factual majority does not give the right to the public authorities to privilege the Serb people, and to deny the use of the mother tongue in the public education system of the other constituent peoples or to "Others", thereby referring to Partial

Decision of the Constitutional Court no. *U-5/98-III* of 18 August 2000 (paragraph 34), which confirms the equal use of the Bosnian, Croatian and Serbian languages not only before the Institutions of BiH but also at the level of the Entities and all of their administrative units before the legislative, executive and judicial authorities, which implies the possibility to use these languages in the education as well. By abolishing the Bosnian language, as the applicant claimed, the children and parents, returnees to the Republika Srpska, have no right to education or the right to secure for their children the education in their own mother tongue. It is unacceptable to compensate for the impossibility to receive the education in their own language by offering the children of Bosniac and Croat origin and "Others" speaking the Bosnian language to get that education in the Bosnian and Croatian languages in the territory of the Federation of Bosnia and Herzegovina. Such an alternative means the separation of children from their parents again, or the impossibility for a sustainable survival of the Bosniac and Croat families in the Republika Srpska upon the return after the war to their pre-war places of origin.

16. The applicant further alleges that the element inherent in the constituent status of the three peoples in Bosnia and Herzegovina is the national ethnic identity of the members of the constituent peoples, which includes the right to mother tongue, the Bosnian language in the case at hand. In the context of the aforementioned the applicant cited paragraph 31 of the decision of the Constitutional Court no. *U-10/05*, and concludes that ethno-national identity of the members of the constituent peoples is characterized by language, for which reason the parents in Bosnia and Herzegovina have the right to request from the education system to have their identity determination through the language respected in the public education system. The applicant mentioned the stance from the judgment of the European Court of Human Rights in the case of *Sejdić and Finci v. Bosnia and Herzegovina*, reading that "the ethnicity has its origin in the idea of societal groups marked in particular by common nationality, religious faith, shared language, or cultural and traditional origins and backgrounds." Accordingly, as the applicant concludes, it means that the issue of language and ethnicity cannot be detached but are fully intertwined. Besides, the applicant referred to the judgment of the European Court of Human Rights in the case of *Chapman v. the United Kingdom* of 18 January 2001, Application no. 27238/95, paragraph 93, wherein the European Court of Human Rights pointed out that "that there may be said to be an emerging international consensus amongst the Contracting States of the Council of Europe recognizing the special needs of minorities and an obligation to protect their security,

identity and lifestyle". Bosnia and Herzegovina has the obligation not only to recognize the right to education in a mother tongue, which is the part of identity of the constituent peoples in BiH and *Others,* but also to affirm the pluralist society. The challenged provision of the Constitution of the Republika Srpska clearly interferes with the right of Bosniacs and *Others* who belong to the Bosnian linguistic community in such a manner that it does not guarantee to children and parents the right to education in a mother tongue, and, as alleged, raises the issue of this justification.

17. As the request progresses the applicant cites the relevant provisions of the Framework Law on the Elementary and Secondary Education in BiH (*Official Gazette of BiH,* 18/03) as well as the provisions of the Law on Elementary Upbringing and Education (*Official Gazette of RS*, 119/08 and 71/09), and concludes that the denial of the right of the Bosniac constituent peoples and members of "Others" who belong to the Bosnian linguistic community to be educated in their mother tongue in the Republika Srpska is not "lawful" in terms of the principle of legality as it is contrary to the Constitution of BiH. Therefore, it is not necessary to examine further aspects of the justifiability of the interference with the right to education in the native language: public interest, adequacy and proportionality.

e) The violation of the principle prohibiting the discrimination against the citizens from among the group of "Others" belonging to the Bosnian linguistic community in relation to the right to education in their mother tongue

18. The applicant indicates that he explained the manner in which "the language of the Serb people" functions both formally and in practice, and that he proved that "a gap exists between one and the other in such a manner that the language of the Serb people is treated as "the Serbian language" in practice, and that the citizens of the group of "Others" who speak "the Bosnian language" have the collective right to their mother tongue "Bosnian language", as they may be treated as "the linguistic community". At the moment in time when "the Bosnian language" has been kicked out of the Republika Srpska, both in normative sense and in practice, the members of "Others" speaking the Bosnian language have lost the right to their mother tongue both generally and in the area of education, which right is safeguarded by Article 2(1) of Additional Protocol No. 1 to the European Convention, thereby treating differently this group of citizens in

comparison to the Serb constituent people, because they have been deprived of that right. The impossibility for "Others" who speak "the Bosnian language", to use their mother tongue in the education system, instead they have to choose one of the languages of the constituent peoples, constitutes the prohibited discrimination under Article 14 of the European Convention in conjunction with Article 2 of Additional Protocol No. 1 to the European Convention.

19. Finally, the applicant concludes that the first sentence of Article 7(1) of the Constitution of the Republika Srpska is unconstitutional as it is in violation of the following:

a) the last line 10 of the Preamble to the Constitution of BiH and its principle of the constituent status of the Bosniac people, because it imposes on that people the name of the language and in that manner deprives them of the right to name their own language as an element inherent in the right to language, which is an integral element of the vital national interest of the constituent people in terms of Article IV(3)(f) of the Constitution of BiH;

b) Article II(4) of the Constitution of BiH in conjunction with the last line 10 of the Preamble to the Constitution of BiH as it constitutes *de facto* discrimination of the Bosniac peoples in comparison to the Serb people, as the authorities in the Republika Srpska treat differently "the language of Serb people" and "the language of Bosniac people" when naming thereof is concerned;

c) Article 3 and the last line 10 of the Preamble of the Constitution of BiH, Article 8 of the European Convention, Article 27 of the International Covenant, Article 30 of the Convention on the Right of the Child, the "Framework Convention on Regional or Minority Languages", International Convention on the Elimination of All Forms of Racial Discrimination as well as the "Framework Convention on the Rights of Minorities" in such a sense that the citizens of BiH from the group of "Others" who belong to the Bosnian linguistic community are deprived of their right to the mother tongue as a part of identity of this linguistic community;

d) Article 2 of Additional Protocol No. 1 to the European Convention as it deprives the Bosniac peoples and the members of "Others" who belong to the Bosnian linguistic community of the right to education in the mother tongue as the right to language implies the right to identify the language;

e) Article 14 of the European Convention in conjunction with Article 2 of Additional Protocol No. 1 to the European Convention, as it deprives the citizens of BiH from the among "Others" who belong to the Bosnian linguistic community of the right to education in their mother tongue when compared to the Serb constituent people, without justification, i.e. in an unconstitutional manner.

20. Also, the applicant notes that the supremacy of the Constitution of BiH arising from Article III(3) (b) of the Constitution of BiH would be illusory if the Republika Srpska abolished the constitutional standards stipulated in the Constitution of BiH, and one of these standards is also the official Bosnian language throughout the entire and for the entire Bosnia and Herzegovina, along with the Croatian and Serbian languages, so that the Constitution of the Republika Srpska, in the challenged part, also violates Article III(3)(b) of the Constitution of Bosnia and Herzegovina. The applicant proposed that the Constitutional Court of BiH declares as unconstitutional the first sentence of Article 7(1) of the Constitution of the Republika Srpska, in the part reading "the language of the Bosniac people", and to order the National Assembly to execute forthwith, and not later than 3 months from the date of publishing this decision in the *Official Gazette of BiH*, amendments to this norm so that the Constitution of the Republika Srpska, instead of words "the language of the Bosniac people" shall guarantee the Bosnian language without connotations to "the Bosniac people".

b) Reply to the request

21. In its reply to the request, the National Assembly alleges that the applicant unfoundedly indicated and envisaged that the constitutional right to the use of language and alphabet is guaranteed by Article 34(1) in conjunction with Article 49(5) of the Constitution of the Republika Srpska. Namely, Article 70, as amended by Amendment LXXVII to the Constitution of the Republika Srpska, stipulates as the vital national interest of the constituent peoples the right to use language, and Amendment LXXXII to the Constitution of the Republika Srpska ensures the protection of the vital national interests of the constituent peoples through the Council of Peoples of the National Assembly of the Republika Srpska and the Council for the Protection of Vital Interest within the Constitutional Court of the Republika Srpska.

22. The National Assembly indicates that, in accordance with the provision of Article III(3)(b) of the Constitution of BiH and the decision of the Constitutional Court no. *U-5/98* relating to the constituent status of peoples, it conducted the harmonization with the Constitution of BiH by means of Amendment LXXI to Article 7(1) and Amendment XLIV to Article 1 of the Constitution of BiH. Thus, it was established that the constituent peoples in the Republika Srpska are Serbs, Bosniacs and Croats, who, along with Others and citizens, are guaranteed the equality without discrimination on any grounds or status, and it was established that the official languages and the languages of the constituent peoples are: the language of the Serb people, the language of the Bosniac people and the language of the Croat people, in respect of which the Venice Commission issued a positive opinion. Given the aforementioned, the National Assembly concludes that the applicant's assertion that the first sentence of Article 7 of the Constitution of the Republika Srpska in the part prescribing that "the language of the Bosniac people" is spoken as one of the three languages in the Republika Srpska is unconstitutional as it imposed on the Bosniac people the name of the language, which is an integral part of the vital national interest of a constituent people, is incorrect.

23. As further inferred by the National Assembly, the criteria referred to in the request have neither legal nor scientific nor professional basis.

24. The definition of the official languages in the Constitution of the Republika Srpska ("The official languages of the Republika Srpska are: the language of the Serb people, the language of the Bosniac people and the language of the Croat people") does not impose the name of a language on any of the peoples, rather it indicates descriptively that these are the three "languages" inseparably linked to the three constituent peoples. Linguistics as a science, and lexicology in particular (the study of the meaning of words) defines a certain term in two ways: descriptively and lexically (using a term), providing an example by saying "the French language" and expressing the same substance descriptively as "the language of the French people". The Constitution of the Republika Srpska provides a descriptive definition of the three languages with "the language of the Serb people" being equal to "the language spoken by the Serb people", "the language of the Bosniac people" being equal to "the language spoken by the Bosniac people", or put terminologically it is equal to "the Bosniac language", and "the language of the Croat people" being equal to "the language spoken by the Croat people" or put terminologically it is equal to "the Croatian language". As further inferred by the National Assembly, the

definition determines in the same manner, descriptively that is, the substance of all three languages – that they are the languages of each of the peoples, the name of the language is imposed on no one, but a fact is noted "that everyone is entitled to their own language" and it introduces a universal scientific principle that the name of the language "is derived from the name of the people", because it shows that that language refers to the people concerned, since the language is the identity criterion of the people.

25. As for "the right to name their own language as they want and wish", the National Assembly indicates that the scientific study of the nine international documents (enumerated in the reply to the request) that also mentions the right to language, shows that all those documents speak exclusively about language rights of individuals and members of national minorities, and there is neither mention of language rights of peoples or states, nor the right of the people to name its language by its name. The right neither exists nor is such a right stipulated for any people, including the Bosniac people for that matter, to call their mother tongue as they wish. Thus, the assertion made by the applicant is unfounded in that it read that the right to language as wished and the manner of the use of such a language "is prescribed by the international and constitutional law". To support the mentioned assertion the National Assembly referred to the research carried out in his work by Milos Kovačević, and the opinion of the linguist Midhat Riđanovic was cited regarding the said issue.

26. Precisely in the same manner in which the Serbs and Croats were allowed the right in the Constitution of the Republika Srpska to the globally and solely scientifically known right to name the language, i.e. the links between the names of peoples and languages, so were the Bosniac people. The definition of the language reflects the principle of the link between the name of the language and the name of the people, wherefrom follows the unfoundedness of the objection of the applicant (that there is a discrimination against the Bosniac people when compared to the Serb people, because the authorities in the Republika Srpska approach differently "the language of the Serb people" and "the language of the Bosniac people" when it comes to the naming thereof) given that the authorities of the Republika Srpska make it possible for the descriptive and lexical definition of the language for all the three constituent peoples to be established in a completely equal and same manner for all three constituent peoples, which applies to all the languages in the world.

27. The linguistic solution in the Constitution of the Republika Srpska is not, as the applicant claims, the solution of the legal bodies and institutions of the Republika Srpska, instead it was imposed by Amendment LXXI on the language and alphabet of the then High Representative for Bosnia and Herzegovina, which substituted the previous constitutional norm on the language proposed by the National Assembly of the Republika Srpska precisely in order to avoid the lack of clarity concerning the term ”Bosnian language” and to put all three peoples in the same position – the recognition of their languages and indirect links between the name of their language and their respective ethnic names.

28. The applicant, as further stated in the reply, explains the violation of the right to language and education in their own language of “the members of Others” who belong to “the Bosnian linguistic community” and there is no explanation anywhere as to what is implied by “the Bosnian linguistic community”, whether that is the community of the three languages, or the community formed on the basis of the Bosnian as the language of the country. The applicant’s allegations that the present case does not concern any question raised in relation to the substance of the language, its similarities and comparisons with other official languages in Bosnia and Herzegovina, the justification of the existence of three languages, which are the questions for linguistic science, “is in contradiction to the mentioned 'European Convention for Regional and Minority Languages', i.e. European Charter for Regional or Minority Languages (“the European Charter”), because the European Charter alleges what may be deemed minorities languages that include, by all means, the languages of “Others” in Bosnia and Herzegovina. The National Assembly in the text of the reply to the request cites Article 2 of the Law on the Protection of the Rights of National Minorities Members (*Official Gazette of RS*, 2/05) and Article 3 of the Law on the Protection of National Minorities Rights (*Official Gazette of RS*, 2/05), which define the notion of a national minority. Also, they cited Article 11 of the Law on the Protection of the National Minorities Rights and Article 1 of the European Charter that provides the definition of regional and minority languages. “The Bosnian language” as a minority language does not exist, as no minority in Bosnia and Herzegovina had so far qualified that language, or submitted to the competent institutions of the Republika Srpska the request for the recognition thereof as a minority language. Thus, “the note by the applicant that “Others” identify “the Bosnian language as their mother tongue” is odd and that “does not imply that citizens choose one of the mother tongues that the members of the constituent peoples speak and that are the official languages, but

that this refers to their own mother tongue". Based on the mentioned definition of the minority languages in the Strasbourg Charter, it is clear that that is not possible, as such a language must be different from the three languages of the constituent peoples of Bosnia and Herzegovina. Thus, the applicant's reference to "Others" in this request is rather a result of resourcefulness than of the claims made by the applicant based on facts.

29. The National Assembly considers as untrue and absurd the allegations stated in the request that the refusal of the name "Bosnian language" denies to the Bosniacs and "Others" "the right to education in their mother tongue", and refers to the stance of the Bosniac linguists (names and surnames stated in the reply) that the Bosnian language, according to the criteria of the identity 3of the language, may not be considered different when compared to the Serbian, that is to say that the Serbian and Bosnian are only different names of the same language "linguistically speaking". Also, it indicated that the European Convention for Regional or Minority Languages, as well as Article 27 of the International Covenant refer to the regional or minority languages of the member states and not to the languages of the constituent peoples, and finds that the applicant's stance is wrong in that they should be applied to the constituent peoples.

30. The National Assembly emphasizes that the harmonization of the Republika Srpska Constitution with the BiH Constitution and the European Convention was carried out with regard to the rights of the Bosniac people to language as well as the constituent status of the peoples of BiH, which was confirmed by the Venice Commission. Also, it is indicated in the reply that the failure to use the notion "Bosnian language" does not mean the denial of the right to education in a mother tongue as claimed in the request, as that right is exercised also when the language is called "Bosniac" or "Serbian" or "Croatian" or "Bosnian" for that matter. The failure to use symbolic ethnic or state name of the language does not amount to "denying a possibility to use language". The National Assembly asks a question whether it means that Americans are denied a possibility to use language or to get education in a mother tongue, because the language that they use is not called American but English. The Republika Srpska, as further indicated, guarantees to all the Bosniacs the right to a mother tongue in schools even in case the language is called "Bosniac" and not "Bosnian", because that changes nothing in the curriculum and the contents of the language as a subject taught in school.

31. The National Assembly alleges that the claim is ill-founded in that the name of the language "Bosnian" was disputable to the Bosniacs because the Republika Srpska does not accept it, as they were not prevented from calling the "language of the Bosniac people" Bosnian, which is Bosniac according to the name of the people. As an illustration of one people who did not use the name that other people chose for their language it alleged the Serbs and Bosniacs who do not call "the language of the Slovenian people" "Slavic" (bcs. *slovenski*) as Slovenians call it, but "Slovenian" (bcs. *slovenački*). The same applies to "the language of the Bosniac people" that in the Serbian language, according to the formation rules, can be only "the Bosniac language".

32. The applicant, as further indicated in the reply to the request, alleges without arguments and tendentiously that the described discrimination occurs for one reason solely, and that is namely because "the Bosnian" language is reminiscent of the state of Bosnia and Herzegovina, an expression that is indicative of something common, national and that does not fit conceptually in the politics of the Republika Srpska. The essence of the problem regarding "the Bosnian language", as the National Assembly alleged, lies in the "supranational, supra-ethnic" character of "the Bosnian language", which threatens the equality and even the survival of the Serbian people and the Serbian language in Bosnia and Herzegovina. As to the references made by the applicant to the General Framework Agreement for Peace in Bosnia and Herzegovina, which reads that it was "Done at Paris, on the 14th day of December 1995, in the Bosnian, Croatian, English and Serbian languages, each text being equally authentic…", the National Assembly indicates that the signatories to the agreement were not national but state (republic) representatives, that they did not sign it on behalf of the Croats, Serbs and Muslims, but on behalf of the Republic of Croatia, Republic of Bosnia and Herzegovina and the Federal Republic of Yugoslavia, thus a question arises as to whether that means that each language is defined by the boundaries of its respective signatory. Does it mean that the signature of Alija Izetbegović in "the Bosnian language" implies that Bosnia and Herzegovina is the republic of "the Bosnian language" only? The filed request, as the National Assembly further notes, precisely implies that Bosnia and Herzegovina ought to be the republic of "the Bosnian language" only, which the Serbs in the Republika Srpska can never agree with.

33. The National Assembly finds unacceptable also the allegations on the violation of the Preamble of the Constitution of BiH, because the domestic legal theory does not have a uniform position

on its legal nature, whether it makes an integral part of the Constitution of BiH and whether it has a normatively legally binding nature.

34. The National Assembly further indicates that it is possible to identify in the lack of harmonization between the notions "Bosniac" and "Bosnian language" the tendency of unitarization and centralization of the government at the level of Bosnia and Herzegovina and the domination of the majority people and their language. It indicated again that according to the formation rules of the Serbian language the equivalent name "Serbian language" is derived from "the Serb people", the name "Croatian language" is derived from "the Croat people", and "the Bosniac language" is the only possible name to be derived from "the Bosniac people", while the name "Bosnian language" would suit the notion of non-existing Bosnian people. Thus, as the National Assembly concludes, the name of the language is identical to the name of the people (B/H/S. *nacija*), which product it is, and it can be named after the people who speak it and not after the state. It holds that it is unfounded and incorrect to substitute "the language of the Bosniac people" with the words guaranteed by the Bosnian language without connotation to "the Bosniac people", as that would amount to the identification of the notions of the people (B/H/S *nacija*) and nationality (B/H/S *državljanstvo*). In the present constitutional and judicial dispute, as further stated, the notion people (B/H/S *nacija*) applies to the Bosniacs, however the notion nationals of Bosnia and Herzegovina, applies, in addition to them, to Croats, Serbs, Jews and Roma, and they are all, by citizenship/nationality, Bosnia-Herzegovina's nationals who speak their (ethnic) languages and therefore it is correct to say "the Bosniac language", as it is the ethnic language of the Bosniacs solely and not of all others or even of the members of "Others".

35. Relying on the fact that they do not want to be "emigrants", the Bosniac people impose a standpoint that they are "Bosnians" by ethnicity and that their mother tongue is "Bosnian", which is an indicator that the acceptance of the name "Bosnian language" threatens the right of the Serb people, and it questions the survival of not only the Serbian language but also of the Serb people in Bosnia and Herzegovina. The applicant's request to replace in the Republika Srpska Constitution "the language of the Bosniac people" so as to "guarantee the Bosnian language without connotation to the Bosniac people" means that the applicant wishes for "the Bosnian language" to be not only the language of the Bosniacs but also of the Serbs, Croats in Bosnia and Herzegovina. The National Assembly deems it unacceptable for "the Bosnian language" to constitute a wider notion than "the Bosniac people", so that it is not linked only to

the language of the Bosniacs but to "the language of Bosnia and Herzegovina" so that it "covers" by its substance all constituent peoples in Bosnia and Herzegovina, and that it evokes in the consciousness "a Bosnian person" as an integrative ethnic notion. In the interaction of three names for a language, one language of the country "Bosnian" and two ethnic "Serbian" and "Croatian", the Bosnian is necessarily superior in rank and as "a language of the country" it includes as its subordinated notions the ethnic names of the languages. In the opinion of the National Assembly, if the Bosnian language was accepted in the Republika Srpska, the Serb people and their language would be discriminated against as the Bosnian language would be superior to the Serbian, and not equal. The Serbian language would only be an ethnic version of the Bosnian as "the language of the country", thus the Serb people cannot accept the name "Bosnian language", as it does not apply to "the language of the Bosniac people", but to the language of all the inhabitants of Bosnia and Herzegovina. The introduction of the notion "Bosnian language", as the National Assembly concludes, would mean the first step towards denying the equality of the Serbs and the Serbian language with the Bosniacs and the Bosnian language in the Republika Srpska, as well as in Bosnia and Herzegovina. The National Assembly eventually proposed that the request for the review of the constitutionality of the first sentence of Article 7(1) of the Constitution of the Republika Srpska be dismissed as ill-founded in the part concerning the words "the language of the Bosniac people".

IV. Relevant Law

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

Preamble

Based on respect for human dignity, liberty, and equality

[...]

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

[...]

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 II(1)

Human Rights and Fundamental Freedoms

1. Human Rights

Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. To that end, there shall be a Human Rights Commission for Bosnia and Herzegovina as provided for in Annex 6 to the General Framework Agreement.

Article II(4)

The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I_to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article III

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

3. Law and Responsibilities of the Entities and the Institutions

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.

37. **The Constitution of the Republika Srpska** (*Official Gazette of Republika Srpska,* 6/92, 8/92, 15/92, 19/92, 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 and 48/11) reads, in its relevant part, as follows:

Article 7

The official languages of the Republika Srpska are: the language of the Serb people, the language of the Bosniac people and the language of the Croat people. The official scripts are Cyrillic and Latin.

In regions inhabited by groups speaking other languages, their languages and alphabet shall also be in official use, as specified by law.

38. **The International Covenant on Civil and Political Rights** reads, in its relevant part, as follows:

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

39. **The European Charter for Regional or Minority Languages** reads, in its relevant part, as follows:

Article 7

Objectives and Principles

In respect of regional or minority languages, within the territories in which such languages are used and according to the situation of each language, the Parties shall base their policies, legislation and practice on the following objectives and principles:

a) the recognition of the regional or minority languages as an expression of cultural wealth.

40. **The Convention on the Rights of the Child** reads in its relevant part as follows:

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

41. The **European Convention for the Protection of Human Rights and Fundamental Freedoms** reads, in its relevant part, as follows:

Article 8

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

42. **Protocol No. 1 to the European Convention** reads, in its relevant part, as follows:

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

V. Admissibility

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

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

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.

45. In the present case, the request was filed by Mr. Safet Softić, Second Deputy Chair of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina. Bearing in mind the provisions of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina and Article 19 of the Rules of the Constitutional Court, the Constitutional Court established that the respective request is admissible, as it was lodged by an authorized entity, and that there is not a single reason under Article 19 of the Rules of the Constitutional Court rendering this request inadmissible.

VI. Merits

46. The applicant alleges that Article 7(1), first sentence, of the Constitution of RS, in the part reading: “the language of Bosniac people” is inconsistent with the last, tenth line of the Preamble of the Constitution of Bosnia and Herzegovina and its principle of the constituent status of the Bosniac people, and Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with the last, tenth line of the Preamble of the Constitution of Bosnia and Herzegovina. In addition, the applicant holds that the challenged provision is in violation of the third and tenth line of the Preamble of the Constitution of Bosnia and Herzegovina, Article 8 of

the European Convention, Article 27 of the International Covenant on Civil and Political Rights, Article 30 of the Convention on the Right of the Child, the European Charter for Regional or Minority Languages and the International Convention on the Elimination of All Forms of Racial Discrimination as well as the Framework Convention for the Protection of National Minorities. Furthermore, the applicant points out that the challenged provision of the RS Constitution is in violation of Article 2 of Protocol No. 1 to the European Convention, and Article 14 of the European Convention in conjunction with Article 2 of Protocol No. 1 to the European Convention.

47. The Constitutional Court will first present a general view on language, *i.e.* why the right to the language name is a constitutional issue in the specific case. In examining the request, the Constitutional Court will deal solely with the constitutional aspects of the right to the language. The Constitutional Court will not deal with the issues that are to be dealt by professionals and possible (professional) dilemmas in respect of the languages in the official use in Bosnia and Hercegovina (*e.g.* whether it concerns a single language or three languages, to what extent those languages are similar or different, *etc.*), as those are the questions to be resolved by professionals (linguists) and not by the Constitutional Court.

48. As there exist different languages and different peoples/nations (*narodi/nacije*), who speak those languages, the idea of a language as a constituent element of nationality/ethnicity (narodnosti/nacionalnosti) is naturally imposed. Language and alphabet are one of the key characteristics of a constituent people and part of its identity. As a language is, *inter alia*, (i) an expression of the freedom of expression of one's nationality and culture, the freedom to use its own language and the equality of the language of each people are the rights that are guaranteed. This freedom, for both peoples and national minorities, implies the right to use their own language also in a private speech, in a letter addressed to state authorities, in the press and in other forms of the public use of the language. Therefore, any issue related to this area evidently represents vital national interests of each constituent people.

49. In its Decision on Admissibility and Merits No. *10/05* (see, Constitutional Court, Decision No. *U-10/05* of 22 July 2005, published in the *Official Gazette of BiH,* 64/05), the Constitutional Court took the position on the notion 'vital national interests of the constituent peoples'. Thus, the Constitutional Court mentioned several factors shaping the understanding of

the aforementioned notion. First, the notion 'vital interest' is functional and it cannot be separated from the notion of the constituent status of the constituent peoples whose vital interests are served and protected by Article IV(3)(e) and (f) of the Constitution of Bosnia and Herzegovina. In addition, the Constitutional Court pointed out in the mentioned Decision that *the last line of the Preamble to the Constitution defines Bosniacs, Serbs and Croats as "constituent peoples (along with Others), and citizens of Bosnia and Herzegovina". In its Third Partial Decision U 5/98 (Decision of 7 January 2000, Official Gazette of Bosnia and Herzegovina, 23/00, paragraph 52), the Constitutional Court concluded that "however vague the language of the Preamble of the Constitution of BiH may be due to this lack of definition of the status of Bosniacs, Croats, and Serbs as constituent peoples, it clearly designates all of them as constituent peoples, i.e. as peoples"*. As further stated, the notion of constituent status of peoples is not an abstract notion but it incorporates certain principles without which a society with differences between peoples protected under its constitution could not function efficiently (Decision of the Constitutional Court No. *U-2/04*, paragraph 33).

50. In its further analysis of the notion 'vital interests', the Constitutional Court pointed out in the quoted Decision that the meaning of ‘vital interests’ is partly shaped by Article I(2) of the Constitution of Bosnia and Herzegovina, which provides that Bosnia and Herzegovina shall be a democratic state, *i.e.* "that democratic governmental institutions and fair procedures best produce peaceful relations within a pluralist society" (line 3 of the Preamble). To this end, the interest of the constituent peoples in fully participating in the system of government and the operation of public authorities can be seen as a vital interest. Furthermore, the Constitutional Court underlined as follows: *the vital interests of the constituent peoples include upholding various rights and freedoms which significantly help to ensure that the constituent peoples can effectively advance their interests in collective equality and participation in the state. As well as being constitutional rights (see Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with Articles I(4), II(3)(m) and II(5) of the Constitution of Bosnia and Herzegovina, the European Charter for Regional or Minority Languages and the Fourth Partial Decision of the Constitutional Court No. U-5/98 of 18 and 19 August 2000, Official Gazette of Bosnia and Herzegovina, 36/00, paragraph 34), the freedom to use one’s own language when participating, and to have access to education, information and ideas in that language, are among these vital interests (*see Decision of the Constitutional Court, *U-8/04,* paragraphs 38 through 41).

51. The Constitutional Court also recalls its position taken in the quoted Decision No. *U 5/98*, pointing out the following: *As any provision of an Entity's constitution must be consistent with the Constitution of BiH, including its Preamble, the provisions of the Preamble are thus a legal basis for reviewing all normative acts lower in rank in relation to the Constitution of BiH for as long as the aforesaid Preamble contains constitutional principles delineating – in the words of the Canadian Supreme Court – spheres of jurisdiction, the scope of rights or obligations, or the role of the political institutions. The provisions of the preamble are therefore not merely descriptive, but are also invested with a powerful normative force thereby serving as a sound standard of judicial review for the Constitutional Court* (paragraph 26).

52. In the context of the aforesaid, the Constitutional Court will first analyse how is the issue of language regulated within the constitutional and legal system of Bosnia and Herzegovina.

53. In this regard, the Constitutional Court first and foremost highlights that the Constitution of Bosnia and Herzegovina does not explicitly regulate the issue of languages in the official use in Bosnia and Herzegovina. However, the Preamble of the Constitution of Bosnia and Herzegovina provides for the principle of constituent status of the peoples, which comprises a number of specific collective rights of the constituent peoples (along with Others) and citizens of Bosnia and Herzegovina). As mentioned in the preceding paragraphs of the present Decision, language is one of the key characteristics of a constituent people and part of its identity. This constitutional right arises under the principle of respect for human dignity referred to in the first line of the Preamble of the Constitution of Bosnia and Herzegovina. To speak about respect for human dignity referred to in the first line of the Preamble of the Constitution of Bosnia and Herzegovina would become illusory, if the will of the constituent peoples and Others freely to use their language were not respected.

54. The Constitutional Court points out that the issue of languages in the official use in the Federation of Bosnia and Herzegovina is regulated by Article 6 of the Constitution of the Federation of Bosnia and Herzegovina, so that paragraph 1 of the mentioned Article stipulates as follows: *The official languages of the Federation of Bosnia and Herzegovina shall be the Bosnian language, the Croatian language and the Serbian language,* while paragraph 2 stipulates as follows: *Other languages may be used as a means of communication and*

instruction. According to the original provisions of the Constitution of the Federation of Bosnia and Herzegovina, the official languages were Bosnian and Croatian; however, through the enforcement of the Decision on the constituent status of the three peoples in the Federation of Bosnia and Herzegovina, it was stipulated by Amendment XXIX that the Serbian language would be in official use in the Federation of Bosnia and Herzegovina as well.

55. The Constitutional Court also points out that in the Rules of the Constitutional Court (see, *the Official Gazette of Bosnia and Herzegovina*, 94/14), adopted in accordance with Article VI(2) of the Constitution of Bosnia and Herzegovina, the issue related to the use of languages and scripts is regulated so that Article 6 prescribes the following: (1) *Equal use of the languages and scripts in the official use in Bosnia and Herzegovina shall be provided in the work of the Constitutional Court*, and (2) *When the judges appointed by the President of the European Court of Human Rights participate in the work of the Constitutional Court the use of a foreign language and script shall be provided in an appropriate fashion*. Article 17(1) of the mentioned Rules stipulates that *the official languages and scripts referred to in Article 6 of these Rules shall be used in the proceedings before the Constitutional Court. At the request of party/parties to the proceedings, member/members of other peoples, the Constitutional Court may grant leave for the use of another language*, and paragraph 2 of that Article prescribes that *the Constitutional Court shall provide conditions for everyone to exercise the right referred to in paragraph 1 of this Article*. In addition, the Constitutional Court underlines that a form for an appeal to the Constitutional Court is an integral part of the mentioned Rules. Item 10 of the form to be filled in by an appellant specifies Bosnian, Croatian and Serbian as official languages that appellants can use in their communication with the Constitutional Court.

56. The issue of languages in the official use in the Republika Srpska is governed by Article 7(1) of the RS Constitution, which prescribes as follows: *The official languages in the Republika Srpska shall be the language of the Serb people, the language of the Bosniac people and the language of the Croat people*. Paragraph 2 of the mentioned Article stipulates as follows: *In the regions populated by other national communities, their languages and alphabets shall also be in official use, as determined by law.*

57. The Constitutional Court will first point out that the challenged provision of Article 7(1) of the RS Constitution was adopted on 19 April 2002, when the High Representative, for the

purpose of enforcing four partial decisions of the Constitutional Court No. *U 5/98* (decision on the constituent status of the constituent peoples), passed a decision to amend the RS Constitution (Amendment LXXI). In the reasons for the decision, the High Representative stated as follows: *… the Constitutional Court ruled in its third partial decision in case No. U 5/98 of 30 June and 1 July 2000, the Constitutional Court ruled that exclusion of one or other constituent people from the enjoyment not only of citizens' but also of peoples' rights throughout Bosnia and Herzegovina was in clear contradiction with the non-discrimination rules contained in the said Annex 4, which rules are designed to re-establish a multi-ethnic society based on equal rights of Bosniacs, Croats and Serbs as constituent peoples and of all citizens; and bearing in mind that the Entities of Bosnia and Herzegovina have hitherto failed to take any steps to implement the said four partial Decisions of the Constitutional Court of Bosnia and Herzegovina in case no. U 5/98;...* and the High Representative pointed out *the fact that changes are required to the text of certain of the amendments to the Republika Srpska Constitution which have been communicated to the High Representative.*

58. The Constitutional Court notes that „the Serbian language of Ekavian and Iekavian pronunciation" had been in official use in Republika Srpska until the adoption of the mentioned amendment. Thus, the reason for enacting the mentioned amendment to the Constitution of the Republika Srpska was the harmonization of the Entity's Constitution with the Constitution of BiH following the adoption of the Decision of the Constitutional Court in case no. *U 5/98*. In the mentioned Decision the Constitutional Court concluded as follows: *Even if the constituent peoples are, in actual fact, in a majority or minority position in the Entities, the express recognition of Bosniacs, Croats, and Serbs as constituent peoples by the Constitution of BiH can only mean that none of them is constitutionally recognized as a majority or, in other words, that they enjoy equality as groups. It must therefore be concluded, in the same way that the Swiss Supreme Court derived from the recognition of the national languages an obligation of the Cantons not to suppress these language groups, that the recognition of the constituent peoples and its underlying constitutional principle of collective equality poses an obligation on the Entities not to discriminate in particular against these constituent peoples which are, in actual fact, in a minority position in the respective Entity. Hence, there is not only a clear constitutional obligation not to violate individual rights in a discriminatory manner which obviously follows from Article II(3) and 4 of the Constitution of BiH, but also a constitutional obligation of non-*

discrimination in terms of a group right if, for instance, one or two of the constituent peoples are given special preferential treatment through the legal system of the Entities (see Third Partial Decision of the Constitutional Court, No. *U 5/98* of 1 July 2000, para 59 published in the *Official Gazette of BiH*, 23/00 of 14 September 2000).

59. The Constitutional Court must answer the question whether the definition of official language as referred to in Article 7(1) of the Constitution of the Republika Srpska imposes the language name on the Bosniac people and thus deprives it of the right to give a specified name to its language and how (as alleged by the applicant) the principle of constituent status of the Bosniac people would be violated with regards to the right to name its own language.

60. The Constitutional Court notes that the definition of official languages in Republika Srpska is given in Article 7(1) of the Constitution of the Republika Srpska prescribing as follows: "… the language of the Serb people, the language of the Bosniac people and the language of the Croat people". The Constitutional Court notes that a neutral descriptive definition of official languages used in Republika Srpska is provided in that manner, and that the names of the languages of the constituent peoples are not provided. In particular, as it follows from the definition „the language of the Bosniac people", it is determined in the descriptive manner that this is the language spoken by Bosniacs (without constitutional designation of that language). Thus, unlike the Constitution of the Federation of Bosnia and Herzegovina and the Constitutional Court's Rules prescribing explicitly the names of the languages in the official use in the Federation, including the communication with the Constitutional Court, the Constitution of Republika Srpska does not name the language but it associates the language with the constituent people by stipulating that "the language of the Bosniac people" is, *inter alia*, in use in Republika Srpska. The name of the language in not imposed on the Bosniac people in that way but it is concluded that the Bosniac people is entitled to use its own language as an official language. Thus, it is concluded that the language "of the Bosniac people" is in official use in addition to "the language of the Serb people" and "the language of the Croat people".

61. The Constitutional Court notes that the Venice Commission, in its Opinion on the Implementation of Decision *U 5/98* of the Constitutional Court by the Amendments to the Constitution of the Republika Srpska (adopted at the 52nd Plenary Session held on 18 and 19 October 2002), noted, *inter alia*: "The delicate question of official languages is dealt with by the

new Article 7. The official languages of the RS are the language of the Serb people, the language of the Bosniac people and the language of the Croat people. This roundabout wording is designed to avoid any unnecessary disputes over the exact names of the languages."

62. The Constitutional Court is of the opinion that such an approach, which implies that all constituent peoples, including the constituent Bosniac people, are entitled to determine the name of its own language, is compatible with the principle of constituent status of peoples. Thus, the challenged provision does not name the official languages (it does not give names) so that it does not contain the name of the language, which would be contrary to the name of the language spoken by Bosniacs in Republika Srpska. The challenged provision, when analysed in the abstract sense, thus, without specific cases, i.e. the conduct of the public authority of the Republika Srpska, does not prevent Bosniacs from naming the language they speak as they wish. The Constitutional Court concludes that the first sentence of Article 7(1) of the Constitution of the Republika Srpska, in the part related to "the language of the Bosniac people", as a neutral provision which does not name the language, is compatible with the principle of the constituent status of peoples.

63. However, the Constitutional Court emphasizes that (unlike the majority of the allegations referred to in the response to the request) the language is the property of the people that speaks that language so that its name must reflect the wishes of as many people as possible speaking that language. The constitutional principle of freedom to use its own language and freedom to name its own language follows from the principle of human dignity referred to in the first sentence of the Preamble of the Constitution of Bosnia and Herzegovina and constitutes the expression of affiliation to a people, particularly the expression of ethnic culture.

64. The Constitution of Bosnia and Herzegovina stipulates in no way that the names of the languages spoken by the constituent peoples must be associated with the names of the constituent peoples. The Constitution of Bosnia and Herzegovina gives the right to the constituent peoples and Others to name the language they speak as they wish. The provision as such does entitle the authorities of the Republika Srpska to determine the name of the language spoken by Bosniacs contrary to their constitutional right to name the language they speak as they wish. The name of the language cannot depend upon linguistic rules because the constitutional right to the name of the language is independent from the content of the language, standards of the language etc. The

contested provision does not prevent Bosniacs, nor does it prevent anyone else, from naming the language they speak as they wish. Thus, such a concept of the contested provision is in accordance with the position that the Constitution of Bosnia and Herzegovina gives the right to all constituent peoples, including Bosniacs and Others to name the language they speak as they wish.

65. Furthermore, the Constitutional Court is to answer the question whether the contested provision violates the right to education (schooling) in the native language of Bosniacs and those Others that consider Bosnian language as their native language and whether the principle of prohibition of discrimination against citizens from among the group of “Others” that are belonging to the Bosnian linguistic community has been violated with regards to the right to education in the native language.

66. The right to education guaranteed by the first sentence of Article 2 of Protocol No. 1 to the European Convention requires by its nature the regulation by the State, although the very substance of that right must not be violated, nor, must it be contrary to other rights provided for in the European Convention and it Protocols (see, ECtHR, *Belgian linguistic case*, judgment of 23 July 1968, p. 32, para 5). As to its second sentence, the European Court, in its judgment *Campbell, Cosans v. the United Kingdom*, described the term “philosophical convictions” within the meaning of the second sentence of Article 2, arguing that in its ordinary meaning the word "convictions", taken on its own, is not synonymous with the words "opinions" and "ideas", such as are utilised in Article 10 of the Convention, which guarantees freedom of expression; it is more akin to the term "beliefs" (in the French text: "convictions") appearing in Article 9 - which guarantees freedom of thought, conscience and religion - and denotes views that attain a certain level of cogency, seriousness, cohesion and importance (see, ECtHR, *Campbell, Cosans v. the United Kingdom*, judgment of 25 February 1982, Series A, No. 48, p. 16, para 36).

67. As regards the adjective "philosophical", it is not capable of exhaustive definition and little assistance as to its precise significance is to be gleaned from the *travaux préparatoires*. Having regard to the Convention as a whole, including Article 17, the expression "philosophical convictions" in the present context denotes, in the Court's opinion, such convictions as are worthy of respect in a "democratic society" (see, most recently, the *Young, James and Webster* judgment of 13 August 1981, Series A no. 44, p. 25, par. 63) and are not incompatible with

human dignity; in addition, they must not conflict with the fundamental right of the child to education, the whole of Article 2 being dominated by its first sentence. Furthermore, according to the case-law of the European Court, Article 2 encompasses all State functions related to education and teaching, and it does not allow difference to be made between religious instruction and other subjects. It provides that the State must respect the parents' convictions, both religious and philosophical in the entire program of the State education (see, ECtHR, *Campbell, Cosans v. the United Kingdom*, judgment of 25 February 1982, Series A, No. 48, p. 16, para 36).

68. Furthermore, under the case-law of the European Court, Article 2 includes all functions of the state that concern education and teaching and does not allow distinction between religious teaching and other subjects. It stipulates that the state must comply with the convictions of the parents, both religious and philosophical, in the entire state education program.

69. The Constitutional Court recalls the position expressed in Decision no. *U 26/13*, which was adopted in the procedure for the review of constitutionality of the Law on Primary Education and Upbringing of the Republika Srpska, the Law on Secondary Education of the Republika Srpska and the laws on primary education and laws on secondary education of all ten Cantons in the Federation of Bosnia and Herzegovina. In the mentioned decision, the Constitutional Court pointed out *that all the principles and standards stipulated by the European Convention as to the discrimination and the right to education are supported by the Constitutional Court as well. Furthermore, the Constitutional Court considers that in the complex state such as Bosnia and Herzegovina there should be the system of education which will not be in contradiction to the aforementioned principles. Namely, it is necessary that the education system offers parents and their children the right to access to education that will be conformity with their own religious and philosophical convictions that are worthy of respect in a "democratic society" without discrimination at any ground. Only that kind of education is in democratic spirit Bosnia and Herzegovina strives for while all other types of education would be illusory* (see, Constitutional Court, Decision on Admissibility and Merits no. *U 26/13* of 26 March 2015, published in the *Official Gazette of BiH*, 33/15, paragraph 39).

70. The cited decision further points out that the provisions of the challenged laws on the primary and secondary educations of the Republika Srpska entity prescribing the curricula and syllabi are adopted in the competent ministry of education in cooperation with the pedagogic

institutes, are not discriminatory *per se* if the goal could be reached that the challenged laws, which are full of the provisions on prohibition of discrimination on any grounds whatsoever, would be implemented in an appropriate manner in the spirit of the challenged laws. In the opinion of the Constitutional Court, it is precisely the above laws that contain the general principles of international law to which the applicant refers in terms of Articles II(1) and III(3)(b) of the Constitution of Bosnia and Herzegovina, since they are stipulating and guaranteeing a considerably high level of human rights and fundamental freedoms protection without any discrimination in the area of education. This indeed was the obligation of the Republika Srpska Entity under the Framework law which set out the general principles and goals of the education system of Bosnia and Herzegovina. However, the manner of implementation of the law in practice within the competent ministries entrusted with the adoption of the by-laws and the enforcement of those acts cannot be an issue the Constitutional Court should deal with when reviewing the constitutionality of the challenged laws in terms of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina (paragraph 57).

71. The Constitutional Court again refers to the case-law referred to in Decision no. *U 10/05,* adopted on the basis of Article IV(3)(f) of the Constitution of Bosnia and Herzegovina in which the Constitutional Court stressed that it would not deal with the implementation of the law. Namely, in that Decision, the Constitutional Court noted that the claims that the existing television stations of the Federation of Bosnia and Herzegovina and of the Republika Srpska were *de facto* television stations in the Bosnian and Serbian languages and satisfied the needs of only the Bosniac and Serb people could not be used as arguments that the Draft Law was destructive to the vital national interests of the Croat people in Bosnia and Herzegovina.

72. Given the aforesaid, the Constitutional Court holds that the contested provision cannot serve as a justification for the competent authorities in the Republika Srpska to prohibit Bosniacs or Others to name the mother tongue they are learning in school as Bosnian language. However, only because the challenged provision does not contain the name “Bosnian language” it does not infringe upon the right to education in one’s mother tongue of the Bosniacs and “Others”. If the challenged provision is interpreted in accordance with the Constitution of Bosnia and Herzegovina, it affords to Bosniac and Others the right to education in Bosnian language. The competent public authorities in the Republika Srpska are obliged to apply the particular provision in this manner in the education system, as stated in the above part of reasoning, when

evaluating the constitutionality of the disputable provision in terms of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina .

73. The next issue which the Constitutional Court should answer is whether the challenged provision results in the situation that the members of "Others" belonging to the „Bosnian linguistic community" cannot automatically identify themselves with any of the official languages in the Republika Srpska (in terms of identity) which, as the applicant states, violates their right to private and family life under Article 8 of the European Convention, i.e. whether those belonging to the group of Others, who are considering Bosnian language as their mother tongue, are deprived of their identity in terms of Article 8 of the European Convention.

74. The Constitutional Court, first of all, recalls that the right of "Others" to be equal in the enjoyment of their rights and freedoms, both individual and group, has been determined by the judgements of the European Court of Human Rights in cases "*Sejdić and Finci v. Bosnia and Herzegovina"* of 22 December 2009 and "*Zornić v. Bosnia and Herzegovina"* of *15* July 2014*, (*available at *www.mhrr.gov.ba).* In both of the above judgements, the conclusion that "Others" have to be equal in the enjoyment of constitutional rights and freedoms and that the collective equality of the constituent peoples cannot be effectuated at the expense of the members of "Others" has been clearly identified. In the context of the above and the conclusion of the Constitutional Court that the first sentence of Article 7(1) of the Constitution of Republika Srpska in the part stating "the language of Bosniac peoples" is in compliance with the principle of constituent status of Bosniac peoples in respect of the right to language set forth in the Preamble of the Constitution of Bosnia and Herzegovina, the Constitutional Court holds that such approach does not differentiate between the constituent peoples and "Others", i.e. no one is in a privileged or inferior position as regards the use of language, including "Others". The challenged provision, as emphasized in the previous paragraphs of the present decision, does not give the right to public authorities to name the language, as that is the exclusive right of the constituent peoples and "Others". The challenged provision does not prohibit the members of Others (or Bosniacs) to name the language they speak as "Bosnian" and the competent authorities in the Republika Srpska are obliged to enable them in doing so. The public authorities in the Republika Srpska can neither interpret the challenged provision in an unconstitutional manner nor can they determine the name of the language by evading the will of the peoples who use it. The fact is that the challenged provision stipulates only the languages of the constituent

peoples as official languages. However, the applicant does not dispute the provision of Article 7 of the Constitution of Republika Srpska because it has not prescribed the language spoken by "Others" as an official language but deems the unconstitutionality in the fact that the challenged provision does not contain the name Bosnian language which, in itself, does not represent a reason for it being unconstitutional.

75. The Constitutional Court further needs to respond to the applicant's question whether the public authorities in the Republika Srpska *de facto* discriminate against the Bosniac people in relation to the Serb people, since, in practice, it calls „the language of Serb people", „Serbian language" and does not apply the same principle to Bosniacs, as it does not call „the language of Bosniac people" „Bosnian language".

76. The Constitutional Court notes that within the context of the above said the applicant presented an example where the grades are entered for the "Serbian language" in the students' grade reports and not for "the language of the Serb people". The applicant also presented the example of the Primary School „Petar Kočić" in Kravice (Konjević Polje) and the Primary School in Kozarac where, by the decisions of the Republika Srpska Institute of Pedagogy, the language of Bosniac people is introduced in the education process although the children of Bosniac origin have been learning "Bosnian language" for years. In addition, as an example the applicant also states that the official page of the Supreme Court of Republika Srpska uses "Serbian language" and the official page of the Republika Srpska Institute of Pedagogy clearly indicates that Serbian language is learned in the Republika Srpska while Bosnian language is not mentioned at all", etc.

77. In this respect, the Constitutional Court points out that in the previous paragraphs of the present decision it evaluated the challenged provision *in abstracto* and that it concluded that the existing provision follows the position that the Constitution of Bosnia and Herzegovina gives right to all constituent peoples as well as Others who are not declaring themselves as such to name the language they speak as they wish. The Constitutional Court cannot evaluate all the cases in which the public authorities in the Republika Srpska interpret the challenged provision and apply it in the practice. Each individual case may be the subject of separate proceedings and even the proceedings initiated on the basis of Article VI(3)(b) of the Constitution of Bosnia and Herzegovina. The Constitutional Court reiterates that the constitutional right of the constituent

peoples as well as Others who are not declaring themselves as such to name the language they speak as they wish and any different conduct in practice would lead to the violation of the Constitution of Bosnia and Herzegovina or the Constitution of Republika Srpska. The constitutional right to name language in accordance with the wishes of people speaking that language cannot be conditioned by linguistic rules as the constitutional right to name the language has priority over the linguistic rules. The challenged provision does not provide the public authorities in the Republika Srpska with the right in the specific cases to determine the name of language, in particular the language spoken by Bosniacs, contrary to their constitutional right to name the language they speak as they wish. When acting in such cases, all competent institutions (courts and administrative bodies) should bear in mind the position of the Constitutional Court that all the constituent peoples as well as Others not declaring themselves so have the constitutional right to name the language they speak as they wish and that only such interpretation and application in practice is in conformity with the Constitution of Bosnia and Herzegovina.

78. The Constitutional Court concludes that the first sentence of Article 7(1) of the Constitution of Republika Srpska, in the part reading "the language of Bosniac peoples", as a neutral provision which does not name the language, is not incompatible with the principle of constituent status of Bosniac peoples and Others in relation to the right to language set out in the Preamble of the Constitution of Bosnia and Herzegovina. Furthermore, the Constitutional Court concludes that the first sentence of Article 7(1) of the Constitution of Republika Srpska, in the part stating "the language of Bosniac peoples" is not incompatible with the provision of Article 2 of Protocol No. 1 to the European Convention or with Article 14 of the European Convention in conjunction with Article 2 of Protocol No. 1 of the European Convention, Article 8 of the European Convention, Article 27 of the International Covenant on Civil and Political Rights, Article 30 of the Convention on the Rights of the Child, the European Charter for Regional or Minority Languages as well as the Framework Convention for the Protection of National Minorities.

VII. Conclusion

79. The Constitutional Court concludes that the first sentence of Article 7(1) of the Constitution of Republika Srpska, in the part reading "the language of Bosniac peoples, is a neutral provision which does not determine the name of language but contains the right of Bosniac constituent peoples as well as other constituent peoples and Others who are not declaring themselves as such to name the language they speak by the name of their choice, which is in compliance with the Constitution of Bosnia and Herzegovina, and any contrary conduct in practice would lead to the violation of the Constitution of Bosnia and Herzegovina but also of the Constitution of the Republika Srpska.

80. Having regard to Article 57(2)(b) and Article 59(1) and (3) of the Rules of the Constitutional Court of Bosnia and Herzegovina and Article 61(1) and (3) of the Rules of the Constitutional Court, the Constitutional Court decided as set out in the enacting clause of this Decision.

81. Pursuant to Article 43 of the Rules of the Constitutional Court, Separate Dissenting Opinion of President Mirsad Ćeman joined by Judge Seada Palavrić, is attached to this Decision.

82. Having regard 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

Separate Dissenting Opinion of President Mirsad Ćeman joined by Judge Seada Palavrić

(Article 43 of the Rules of the Constitutional Court of Bosnia and Herzegovina – Revised Text (*Official Gazette of BiH*, 94/14)).

It is not difficult at first sight to agree with the Constitutional Court's majority opinion expressed in the reasons for the decision reading "the challenged provision (the first sentence of Article 7(1) of the Constitution of the Republika Srpska, in the part reading "the language of the Bosniac people"), when analysed in the abstract sense, does not prevent Bosniacs from naming the language they speak as they wish", and as such is a neutral provision which does not determine the name of language but contains the right of Bosniac constituent people as well as other constituent peoples and Others who are not declaring themselves as such to name the language they speak by the name of their choice, which is, as explicitly concluded by the Constitutional Court, in compliance with the Constitution of Bosnia and Herzegovina, and any contrary conduct in practice would lead to the violation of the Constitution of Bosnia and Herzegovina but also of the Constitution of the Republika Srpska" (para 79 of the Decision).

It is not difficult to agree notably with the Constitutional Court's approach in this case, namely, it "(…) will deal solely with the constitutional aspects of the right to the language (…)

will not deal with the issues that are to be dealt by professionals and possible (professional) dilemmas in respect of the languages in the official use in Bosnia and Hercegovina (*e.g.* whether it concerns a single language or three languages, to what extent those languages are similar or different, *etc.*), as those are the questions to be resolved by professionals (linguists) and not by the Constitutional Court" (para 47).

However, an in-depth analysis of the allegations expressed in the National Assembly's response to the request for review of the constitutionality of the challenged provision of the Entity's Constitution (paras 21-35 of the Decision) and particularly unconstitutional practice of the public authorities (educational and other) in the Entity of the Republika Srpska, which had been previously established and which has been renewed and has become worse, indicate that in the present case the Constitutional Court could have considered the challenged provision in a broader context which the theory of constitutionalism, in a way, encourages, since the constitution consists, in terms of the supranational, of the norm itself and, in addition to it, general and special social relationships, objectives and values which the Constitution promotes as an achieved state, but also a prospective as an aim to be achieved legitimately – moral, ideological and program objectives. In particular, not only that the rules or the methodology of interpretation of a legal norm are acquainted with such an approach (evolutionary to a reasonable extent) but it is also a developed practice all over democratic world which actually aims at affirming the constitutionalism and role of the constitutional courts and effective protection of human rights and freedoms through elimination of all forms of discrimination.

Moreover, the European Court of Human Rights interprets and applies the European Convention for the Protection of Human Rights and Fundamental Freedoms in its decisions, the provisions of which are seldom generalized (and the Convention forms integral part of the Constitution of Bosnia and Herzegovina - Article II(2)), and it does so by resolving the raised issues in the so-called operative part (enacting clause) through specifically expressed views and messages which, as a rule, do not need additional interpretation.

Thus, if a constitutional norm or mechanism is understood, interpreted or applied contrary to its real (?!) meaning for any reason whatsoever or if there is a dilemma as to their real meaning, then the author of the constitution must intervene or remove the reasons leading to such a situation or, as in the case here, when the legislator of the Constitution/the National Assembly

is the one that affords a disputable meaning to the norm, this must be removed in another constitutional way. Given the current constitutional order of Bosnia and Herzegovina, this would mean by means of a clearly and unambiguously reasoned decision of the Constitutional Court of Bosnia and Herzegovina.

However, in case no. *U 7/15*, the Constitutional Court proceeded with the review of the constitutionality of the challenged provision by abstracting the real context from which the constitutional dispute actually arose and the possibilities at its disposal within the limits of a broadly accepted modern understanding of constitutionalism, according to which the Constitutional Court is the last resort for not only formal but also substantive interpretation of the meaning of the constitutional norm.

As a rule, the definition of the abstract review of constitutionality is a very complex one, and decisions are often manifold and require a lot of skills and knowledge of constitutional law (and, notably, the sincere will) in the procedure for their implementation, which is the additional reason for and obligation of taking clear and specific decisions as a whole. I am quite certain that viewed as a whole, this was not such a decision.

In particular, in my opinion, the reasons for and operative part of the decision in case no. U 7/15 are not compatible, which renders this decision weak, which, just like the disputable constitutional provision, may likely be subject of different interpretations. Only at first sight one may say that this is a "neutral provision" which could be actually characterized as such in some other social context and more developed legal and political culture. However, the National Assembly's arguments *a contrario* clearly indicate that there is not any "neutral" social context in the present case, nor is there tolerant legal or political culture or intention. The Constitutional Court of Bosnia and Herzegovina had the responsibility to recognize it and to respond to it adequately.

Therefore, such obvious reluctance and precaution (although in most cases they do not have to be disputable in themselves) which the Constitutional Court manifested in the present case, being, I would say, almost convinced that this decision, as conceived, would produce the expected legal effects and constitutional and practical consequences, were, in my opinion, erroneous, and they reflect in a few important weak characteristics of this decision, which would

be most likely manifested to a real extent only in the procedure for its implementation (although not only for that reason):

1. From the formal aspect, the decision is unclear and contradictory (regardless of the fact that the term "decision" implies all the parts thereof), since the operative part and reasons are incompatible and it does not sufficiently comply with the standard of "reasoned decision", which the Constitutional Court applies when it deals with the decisions of the ordinary courts in the appellate proceedings. I am convinced at the same time that any decision with such a discrepancy between the operative part and reasons would be contested and classified as such by any appellate court which applies the standard of "reasoned decision" in the ordinary proceeding.

2. In substance, the Constitutional Court must resolve the constitutional issue and take a view and decision to clarify the disputable norm from the formal aspect (for example, possible linguistic meaning or meanings) and, at the same time, to remove the possibility for it to be interpreted differently and to prevent the dispute from being continued, failing which the Court devalues not only the constitutional provision related to the binding nature of its decisions (Article VI(5) of the Constitution) but also the purposefulness of the procedure for review of constitutionality, which should contribute to the harmonization of the case-law with the Constitution through a decision and acknowledgement of that decision.

3. Although the implementation of decisions of any authority, including the decisions of the Constitutional Court, is a separate issue, it could not be separated from the issue of the quality of decision. If a decision as such leaves room for voluntarism, then this is neither good decision nor quality decision. In the present case, voluntarism could not be excluded as the Constitutional Court left the door ajar for such a thing if not by the formal incompatibility between the operative part and reasons for the decision then by the substantive incompatibility.

Thus, regardless of the fact that one of the important questions which had to be answered included the question "whether the public authority in the Republika Srpska *de facto* discriminate against the Bosniac people in relation to the Serb people, since, in practice, it calls „the language of Serb people", „Serbian language" and does not apply the same principle to Bosniacs, as it does not call „the language of Bosniac people" „Bosnian language" (para 75 of the Decision), the Constitutional Court was not fully guided by gravity of the findings and constitutional-legal consequences of the affirmative response but it rather confined its

consideration, as it noted by the Constitutional Court itself, to the "abstract" review despite the fact that it found that discrimination *de facto* occurred. To all appearances, it is hard to believe that this would contribute to the real removal of unconstitutional situation in the present case, irrespective of the fact that the decision as such (if it is interpreted so) is nevertheless is binding in this sense.

On the other hand, the reference to the 2002 opinion of the Venice Commission (para 61 of the Decision) in this context is an inconsistent point, wherein the issue of official languages in Republika Srpska is actually classified as a "sensitive issue" dealt with by "new Article 7 of the Constitution" of this Entity and wherein it is concluded that this roundabout wording is designed to avoid any unnecessary disputes over the exact names of the languages". The Constitutional Court disregards the fact that meanwhile this issue (more than 13 years elapsed) did not remain, nor did it arise, at the level of the mere linguistic dispute and academic "bickering" (to call it so), but it has been rather manifested, all the time and obviously contrary to what was expected, primarily as a legal-constitutional practical issue related to human rights and fundamental freedoms, individual and group. In particular, these were exactly the Venice Commission and European Court of Human Rights that insisted in a number of their decisions and opinions not only on the formal content and meaning of the norm but also on their implementation in practice as a relevant criterion. This is the reason why in the present case the Constitutional Court could have referred or, actually, should have referred to its cases other than case no. U 10/05, para 49 of the Decision, and also to the case-law of the European Court of Human Rights, according to which it is irrelevant whether there is a difference of treatment or whether difference is expressly permitted by legislation (see, ECtHR, *Ireland v. the Great Britain*, judgment of 18 January 1978, Series A no. 25, para 226). This is a standard which is not created by this Constitutional Court but it is rather a heritage of a consistent understating of the European Convention within the framework of the modern constitutionalism (notably, as I have already noted, because the European Convention forms integral part of the Constitution of BiH, which is extremely important given our situation). Finally, I am quite certain that the Venice Commission did not mean, by "neutral/undetermined" wording of the contested norm of the Entity's Constitution, the right to deprive any of the constituent peoples (the Bosniac people in this case) to call its language as it wishes, instead of imposing it on it by unjustified excuses and reasons only

supported by the scientific or quasi-scientific views of the linguists "in their favour" without taking into account other different opinions equally relevant.

For these reasons, although I am supportive of the views and interpretation (i.e. the decision) in the part of the reasons wherein the Constitutional Court explicitly concludes that the contested provision of Article 7(1) of the Constitution of the Republika Srpska "provides for the constitutional right of the Bosniac people and any other constituent peoples as well as Others who are not declaring themselves as such to name the language they speak as they wish (…)", I could not agree with the operative part of this Decision as there was no convincing argument in support of such a view, given the social and constitutional context existing in Bosnia and Herzegovina, which should have been taken into account. At least not sufficiently convincing. On the contrary!

In my opinion, the Constitutional Court should have explicitly indicated the views expressed in the reasons for the decision in the operative part, which means it should have harmonized the operative part and the reasons in the following manner:

- by establishing that the challenged provision is not a "neutral" provision, and
- by granting the request for review of constitutionality and by establishing that the first sentence of Article 7(1) of the Constitution of the Republika Srpska, in the part reading "the language of the Bosniac people", is not compatible with the Constitution of Bosnia and Herzegovina".

Only a decision worded in such a manner and with such arguments could have, at least from the formal aspect, more chance to remain within the scope of *ius nudus*.

Although the parts of the National Assembly's response to the request for review of constitutionality are indicated as expert argumentation in paragraphs 34 and 35 of the Decision, which the Constitutional Court did not specifically elaborated, I will not particularly deal with them as they are primarily of political nature. Nevertheless, these are unfounded thesis ad claims which could be clearly denied through an analysis of the legislation and practice related to such issues.

It follows in essence that regretfully and with all due respect to my colleagues and their opinion, I disagree partially with the majority opinion on this issue in the present case.

Given the context, it seems to me that finally, it is noteworthy to remind that, for example, in case no. *U 9/09*, the Constitutional Court (paragraph 70 of the mentioned Decision) noted that "the Constitutional Court must have regard to its own knowledge and understanding of the situation within Bosnia and Herzegovina. Being far closer to and more familiar with the social and political conditions of life in Bosnia and Herzegovina today than is [*even* – added by M.Ć.] the European Court (…)".

The majority of the Constitutional Court "forgets" sometimes their own standards, which were developed by the Constitutional Court at an earlier point. It is obvious that Decision *No. 7/05* is such an example.