

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3) (a) of the Constitution of Bosnia and Herzegovina, Article 57(2)(e) and Article 64(1) and (4) of the Rules of the Constitutional Court of Bosnia and Herzegovina – consolidated text (*Official Gazette of Bosnia and Herzegovina*, 94/14, 47/23 and 41/24), in plenary and composed of the following judges:

Ms. Seada Palavrić, President

Ms. Valerija Galić, Vice-President

Ms. Angelika Nußberger, Vice-President

Mr. Mirsad Ćeman,

Ms. Helen Keller,

Mr. Ledi Bianku, and

Mr. Marin Vukoja

Having deliberated on the request by **Denis Zvizdić, Chairman of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina**, for adoption of interim measure, in case no. **U-8/25**, at the session held on 7 March 2025, adopted the following:

## DECISION ON INTERIM MEASURE

The request of **Denis Zvizdić, Chairman of House of Representatives of the Parliamentary Assembly of BiH** for adoption of interim measure shall hereby be granted.

The Law on High Judicial and Prosecutorial Council of the Republika Srpska shall be suspended (*Official Gazette of Republika Srpska*, 19/25).

Pursuant to Article 64(1) of the Rules of the Constitutional Court of Bosnia and Herzegovina, pending a final decision of the Constitutional Court of Bosnia and Herzegovina on the submitted request:

- all acts adopted based on the Law on High Judicial and Prosecutorial Council of the Republika Srpska (*Official Gazette of Republika Srpska*, broj 19/25) shall be suspended and

- all legislative, executive and judicial institutions in the Republika Srpska, as well as all official or responsible persons in those institutions of the Republika Srpska or units of local self-government or any other body of local self-government, as well as official or responsible persons from Republika Srpska holding office in the institutions of Bosnia and Herzegovina, shall be temporarily banned from undertaking any other actions based on the Law on High Judicial and Prosecutorial Council of the Republika Srpska (*Official Gazette of Republika Srpska*, 19/25).

This decision shall come into force immediately and shall produce legal effects from the day of the Law on High Judicial and Prosecutorial Council of Republika Srpska (*Official Gazette of*

*Republika Srpska*, 19/25) entering into force pending a final decision of the Constitutional Court of Bosnia and Herzegovina on the submitted request.

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

## REASONS

### I. Introduction

1. On 6 March 2025, Denis Zvizdić, the Chairman of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina (“the applicant”), filed a request with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) for a review of constitutionality of the Law on the High Judicial and Prosecutorial Council of the Republika Srpska (*Official Gazette of the Republika Srpska*, 19/25; („the Law on HJPC RS“)).
2. Pursuant to Article 64 of the Rules of the Constitutional Court, the applicant also filed a request for an interim measure whereby the Constitutional Court would suspend the Law on HJPC RS pending a final decision of the Constitutional Court.

### II. Request

#### a) Allegations from the Request

3. The applicant claims that the contested Law on the High Judicial and Prosecutorial Council of the Republic of Srpska („the Law on HJPC RS“) is not in accordance with Articles I(2), III(3)(b), and III(5) of the Constitution of Bosnia and Herzegovina. He alleges that as a Chairman of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, he is an authorized person to submit the request for a review of constitutionality. Additionally, he considers it undisputed that, in accordance with Article VI(3)(a) of the Constitution of Bosnia and Herzegovina, the Constitutional Court has jurisdiction to decide whether the provisions of the constitution or laws of the entities are in conformity with the Constitution of Bosnia and Herzegovina.

4. In relation to the allegations of inconsistency of the disputed law with the provisions of Article I(2) of the Constitution of Bosnia and Herzegovina, the applicant referred to the case law of the Constitutional Court in decision no. U-23/22 and pointed out that the entities cannot assume state competencies nor return them once they have already been transferred to the level of Bosnia and Herzegovina. He then stated that the formation of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (“HJPC BiH”) represented a request of the European Union and that it was assessed as the best way to ensure completely uniform standards regarding the appointment and disciplinary responsibility of judges and prosecutors throughout the territory of BiH. He also pointed out that the HJPC BiH was established based on the Agreement on the Transfer of Certain Entity Responsibilities through the Establishment of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (“the Agreement”). Based on that agreement and in terms of Article III(5)(a) of the Constitution of BiH, the Parliamentary Assembly of BiH adopted the Law on the HJPC BiH, following which, this subject matter fell within the legislative competence of Bosnia and Herzegovina. For this reason, the applicant contends that the entry into force of the disputed law would represent a huge step backward in the context of the European integration of Bosnia and Herzegovina and in general with regard to the rule of law and legal security on the territory of Bosnia and Herzegovina.

5. With regard to the allegations of inconsistency of the contested law with the provisions of Article III(5) of the Constitution of Bosnia and Herzegovina, the applicant alleges that the establishment of the HJPC BiH was carried out in full accordance with Article III(5)(b) of the Constitution of Bosnia and Herzegovina, which gave the entities the opportunity to start negotiations with the aim of including other issues in the jurisdiction of the institutions of Bosnia and Herzegovina. In accordance with that provision, as pointed out, both houses of the Parliamentary Assembly of BiH adopted the Law on the HJPC BiH, which made this law a full part of the constitutional and legal order of Bosnia and Herzegovina. It was further pointed out that the Constitutional Court in Decision no. U-11/08 of 30 January 2009, when considering the request for constitutional review of the Law on the HJPC BiH, concluded that there was a valid legal basis for passing the said law, i.e. that the law was passed in accordance with the Constitution of Bosnia and Herzegovina. Based on that, the applicant contends that there is no constitutional basis for the entities to take over that additional competence of Bosnia and Herzegovina in any way or to regulate it in a different way. In this regard, it indicates that only the body that established the HJPC BiH, namely the Parliamentary Assembly, could possibly make any decision as to the organization of the HJPC BiH. Furthermore, the applicant states that the Council of Ministers of Bosnia and Herzegovina at the session of 4 March 2025 determined the Draft

Law on the HJPC BiH with a proposal to the Parliamentary Assembly to consider it under a brief procedure with the aim of fulfilling priorities in the process of accession to the European Union. Therefore, the applicant contends that there is no legal argument that can dispute the validity of the establishment of the HJPC BiH, or in particular, that it is *prima facie* clear that the Law on the HJPC RS is not in compliance with the Constitution of Bosnia and Herzegovina.

6. When arguing the inconsistency of the contested law with Article III(3)(b) of the Constitution of Bosnia and Herzegovina, the applicant states that that provision clearly established that the Entities, as administrative-territorial units, must comply with all principles and procedural norms prescribed by the Constitution of BiH and that they must comply with the decisions of the institutions of BiH. The applicant further alleges that the Law on the HJPC of BiH constitutes a decision of the institutions of Bosnia and Herzegovina and that that law has to be complied with. However, despite that, the RS National Assembly, by adopting the contested law, have brought about an inconsistency between the two laws. In a situation of inconsistency, under the system of hierarchy of legal norms, it is clear that the state-level law is above any Entity regulation. In that connection, the applicant points out that Article 1 of the Law on the High Judicial and Prosecutorial Council of the RS indicates the intention of the Entity legislator to “establish the High Judicial and Prosecutorial Council of the Republika Srpska“, while Article 3 of that Law stipulates as follows: “The Council is an autonomous and independent body in the Republika Srpska.” On the other hand, as stated, the state-law in effect sets forth in Article 1 the establishment of the HJPC of BiH, while paragraph (2) of the same Article reads explicitly: “The Council is an independent organ of Bosnia and Herzegovina and has legal personality.” The applicant further states that the contents of the contested law indicate that it regulates all issues that have already been regulated on the state level and that the Republika Srpska does not have the legislative competence to adopt regulations on the organization and functioning of the Entity’s judiciary beyond the provisions of the state-level law. In addition, it is pointed out that the greatest collision is clearly reflected in the wording of Article 198 of the Law on the HJPC of RS, which regulates transitional and final provisions. That provision stipulates that “all holders of judicial functions who were appointed by the decision of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina before the entry into force of this law, shall remain in office in the courts and public prosecutors' offices of Republika Srpska they are holding at the moment when the law enters into force”. This is a confirmation of a clear intention of the Entity legislator to *de facto* disempower the HJPC BiH, after this Law enters into force, as defined by Article 200 of the contested law, within 90 days from the date of the coming into effect of the Rulebook under Article 6(2). In that regard, the applicant points out that the Republika Srpska President publicly stated multiple times that “the Serb

representatives in the judicial institutions and other institutions of BiH must not stay in their offices” and that, if they do so, they will “commit a treason of the Serb people”. According to the applicant, this indicates a discriminatory and unconstitutional intention, which is manifested as a violation of the human and labor rights of the Serb employees of the state-level judicial institutions. The applicant also states that, taking into account the other three laws adopted at the 18<sup>th</sup> special session of the RS National Assembly held on 27 February 2025 (the Law on Non-Application of Laws and Ban on Operation of Extra-Constitutional Institutions of BiH, the Law Amending the Criminal Code of the Republika Srpska and the Law on Special Register and Transparency of Operation of Non-Profit Organizations), as well as the statements of key government officials of the Republika Srpska, it is also possible to determine the *ratio* of the adoption of the contested law, which amounts to the intention “to break and divide the state judiciary”.

**(b) Allegations in the request for adoption of interim measure**

7. The applicant holds that entry into force of the Law on HJPC of RS would constitute a huge step backward for the process of the European integration of Bosnia and Herzegovina, rule of law and legal certainty in the whole country. He adds that when adopting an interim measure, it is necessary to also take into account the context of the adoption of the contested law. In this connection, he argues that the law was adopted after the Court of BiH had rendered the first instance judgment convicting the RS President to one year in prison and banning him from performing presidential duties for a period of six years. The applicant also makes reference to the statements of political representatives from the Republika Srpska from which, in his opinion, there follows a clear intention of that Entity’s political leadership to exert pressure on judicial authorities in Bosnia and Herzegovina. He also states that the plan is to take concrete measures for the establishment of the HJPC of RS immediately after the contested law enters into force. That includes adoption of the Rulebook on the procedure of candidacy for and election of the first members of the Council, which Rulebook would be rendered by the Minister of Justice, pursuant to the contested law. According to the applicant, that would render possible a complete political control over the processes of appointing judges and prosecutors. The applicant concludes that application of this law would lead to transfer of competences in the realm of judiciary from the level of the State to the level of the Entity, which is in contravention of the 2004 Agreement and the Decision of the Constitutional Court of BiH no. *U-11/08*. The applicant also holds that the contested law would lead to the creation of parallel institutions and the disruption of unity in the organization and management of the judiciary. That would jeopardize legal certainty, that is the foundation of every state of law, including Bosnia and Herzegovina, which would have direct

negative consequences on the citizens and would prevent them from enjoying their fundamental human rights.

8. In the opinion of the applicant, an interim measure ordering the suspension of the Law on HJPC of RS pending a final decision of the Constitutional Court is necessary because the referenced law, with respect to most of its provisions, is manifestly unconstitutional. According to the Constitutional Court's case law so far, it is clear that the RS National Assembly did not have the authority to pass a law that assumes the authorities of the state institutions, primarily the HJPC BiH, and that governs the same issues that have already been regulated by the state-level law. If a single provision of the contested law entered into force before the final decision of the Constitutional Court, it would be late already as the HJPC of BiH would be permanently disempowered. For that reason, there exists sufficient evidence at this stage already that the application of the contested law would inflict serious and irreparable damage to the independence and impartiality of the judiciary, without prejudice to the final decision of the Constitutional Court.

### III. Relevant law

9. In the **Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina** (*Official Gazette of BiH*, 25/04, 93/05, 48/07, 15/08, 63/23, 9/24, 50/24), the provisions as relevant, read:

#### *Article 1(1) to (3)*

##### *Establishment*

(1) *This Law establishes the High Judicial and Prosecutorial Council, and regulates: its work, organisation, competencies, powers and the conditions and mandate for the holding of judicial and prosecutorial power, the appointment of judges and prosecutors, the disciplinary responsibility of judges and prosecutors, the temporary suspension from office of judges and prosecutors, the incompatibility of judicial and prosecutorial service with other functions, the termination of mandates of judges and prosecutors and other questions related to the work of the High Judicial and Prosecutorial Council (hereinafter „the Council“).*

(2) *The Council is an independent organ of Bosnia and Herzegovina and has legal personality.*

(3) *The provisions of the Law on Ministries and Other Bodies of the Administration of Bosnia and Herzegovina (Official Gazette of Bosnia and*

*Herzegovina, 5/03 and 42/03) and the Law on Administration of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, 32/02) shall not apply to the Council.*

### CHAPTER III – COMPETENCE AND AUTHORITY

#### Article 17(1) to (7)

##### Competence

*The Council shall have the following competencies:*

- (1) Appointment of judges, including Court Presidents, lay judges and reserve judges in all courts at the State, Entity, Cantonal, District, Basic and Municipal levels in Bosnia and Herzegovina, including the Brcko District of Bosnia and Herzegovina, but excluding the Constitutional Courts of the State and Entities of Bosnia and Herzegovina;*
- (2) Appointment of Chief Prosecutors, Deputy Chief Prosecutors and prosecutors in all prosecutors' offices at the State, Entity, Cantonal and District levels in Bosnia and Herzegovina, including the Brcko District of Bosnia and Herzegovina;*
- (3) Making proposals to the relevant authorities in relation to, their proposal and election of judges to the Constitutional Court of Republika Srpska and their nomination of judges to the Constitutional Court of the Federation of Bosnia and Herzegovina. When exercising its competence under this paragraph, the Council shall seek a written opinion of the relevant Constitutional Court before it makes its proposal;*
- (4) Receiving complaints against judges and prosecutors, conducting disciplinary proceedings, determining disciplinary liability, and imposing disciplinary measures on judges, lay judges, reserve judges and prosecutors;*
- (5) Deciding upon appeals in disciplinary proceedings;*
- (6) Deciding upon suspensions of judges, lay judges, reserve judges and prosecutors;*
- (7) Supervising the advanced professional training of judges and prosecutors and advising the Entity Centres for Judicial and Prosecutorial Training and the Brcko*



*District of Bosnia and Herzegovina Judicial Commission in their adoption of programmes of advanced professional training for judges and prosecutors;*

*Article 18*

*Courts and Prosecutors' Offices*

*The Council shall have the competencies as defined in Article 17 hereof, over the judiciary in Bosnia and Herzegovina, which includes the following courts and prosecutor's offices:*

- (a) the Court of Bosnia and Herzegovina;*
- (b) the Prosecutor's Office of Bosnia and Herzegovina;*
- (c) the Constitutional Courts of Republika Srpska and the Federation of Bosnia and Herzegovina, exclusively in accordance with the provisions of Article 17(3) of this law;*
- (d) the Supreme Courts of Republika Srpska and the Federation of Bosnia and Herzegovina;*
- (e) the District and Basic Courts of Republika Srpska;*
- (f) the Cantonal and Municipal Courts of the Federation of Bosnia and Herzegovina;*
- (g) the Republic Prosecutor's Office of the Republika Srpska and the Federation Prosecutor's Office of the Federation of Bosnia and Herzegovina;*
- (h) the District Prosecutors' Offices in Republika Srpska and the Cantonal Prosecutors' Offices in the Federation of Bosnia and Herzegovina;*
- (i) The Appellate Court of Brčko District of Bosnia and Herzegovina, the Basic Court of Brčko District of Bosnia and Herzegovina and the Prosecutor's Office of the Brčko District of Bosnia and Herzegovina.*

*Article 92*

*Repealing of Provisions*

*The Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina, as amended, the Law on High Judicial and Prosecutorial Council of Republika Srpska, as amended, and the Law on High Judicial and Prosecutorial Council of*

*the Federation of Bosnia and Herzegovina, as amended, shall be repealed as of the entry into force of this Law.*

*Article 93*

*Harmonization*

*Laws or statutory provisions contained in the laws of Republika Srpska, the Federation of Bosnia and Herzegovina and the Brčko District of Bosnia and Herzegovina shall be brought into harmony with this Law and any provisions that are inconsistent with this Law are hereby repealed.*

10. **The Law on High Judicial and Prosecutorial Council of the Republika Srpska** (*Official Gazette of RS*, 19/25, published on 5 March 2025), so far as relevant, reads:

*Establishment*

*Article 1(1)*

*(1) This Law establishes the High Judicial and Prosecutorial Council of the Republika Srpska, and regulates its work, organisation, competencies, powers, the conditions and mandate for the holding of judicial and prosecutorial power, the appointment and transfer of judges and public prosecutors, temporary transfer of judges and public prosecutors, evaluation of judges and public prosecutors, the disciplinary responsibility of judges and public prosecutors, the temporary suspension from office of judges and public prosecutors, the incompatibility of judicial and public prosecutorial service with other functions, the termination of mandates of judges and public prosecutors and other questions related to the work of the High Judicial and Prosecutorial Council of the Republika Srpska.*

*Independent and Autonomous Body*

*Article 3*

*(1) The Council shall be an independent body of the Republika Srpska, which consists of Judicial and Prosecutorial Department, and has legal personality.*

*(2) The Council shall have a task to ensure maintenance of an independent, impartial, efficient and professional judiciary, as prescribed under Article 49 of this Law.*

*(3) The seat of the Council is in Banja Luka.*

*(4) The Government of the Republika Srpska shall provide appropriate premises, equipment and annual budget for the work of the Council.*

#### *CHAPTER VIII*

#### *COMPETENCE OF THE COUNCIL*

##### *Competence*

##### *Article 49(1) to (8)*

*The Council shall have the following competencies:*

- 1) appointment of judges, including Court Presidents and lay judges in all courts within the territory of the Republika Srpska, with exception of the Constitutional Court of the Republika Srpska,*
- 2) appointment of Chief Prosecutors, Deputy Chief Prosecutors and prosecutors in all prosecutor's offices within the territory of the Republika Srpska,*
- 3) deciding upon complaints in procedures of evaluation of judges and prosecutors,*
- 4) making recommendations to the President of the Republic in relation to their proposal and election of judges of the Constitutional Court,*
- 5) deciding upon the termination of mandates of judges, prosecutors, Court Presidents, Chief Prosecutors and Deputy Chief Prosecutors*
- 6) receiving complaints against judges and prosecutors, conducting disciplinary proceedings, determining disciplinary liability, and imposing disciplinary measures on judges, lay judges and prosecutors, and deciding upon appeals in disciplinary proceedings,*
- 7) deciding upon temporary suspension from office of judges, lay judges and prosecutors*
- 8) supervising the advanced professional training of judges and prosecutors and advising the Centre for Judicial and Public Prosecutorial Training of the Republika Srpska.*

##### *Application of competencies*

##### *Article 50(1)*

*(1) The Council shall have competencies established under the law in relation to courts and prosecutor's offices in the Republika Srpska, excluding the Constitutional Court of the Republika Srpska („the Constitutional Court“).*

*(2) The Council shall have the competencies over the Constitutional Court of the Republika Srpska, exclusively in accordance with the provisions of Article 17(3) of this Law.*

## *CHAPTER XXV*

### *TRANSITIONAL AND FINAL PROVISIONS*

#### *Regulating the status of holder of judicial power*

##### *Article 198*

*(1) Judges, lay judges, prosecutors, Court Presidents, Chief Prosecutors and Deputy Chief Prosecutors in courts and public prosecutor's offices of the Republika Srpska, who were appointed by the decision of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina before entry into force of this Law shall remain their positions in courts and public prosecutor's offices of the Republika Srpska held at the time of entry into force of this Law.*

*(2) Reserve judges who were appointed by the decision of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina before entry into force of this Law, shall change their status into regular judges upon the entry into force of this Law.*

#### *Beginning of work of the Council*

##### *Article 200*

*The Council is obliged to begin its work within 90 days from the date of entry into force of the Rules referred to in Article 6(2) of this Law.*

#### *Entry into force*

##### *Article 201*

*This Law shall enter into force on the day following its publication in the Official Gazette of the Republika Srpska.*

11. **Law on Non-Application of Laws and Ban on Operation of Extra-Constitutional Institutions of BiH** (*Official Gazette of the Republika Srpska*, 19/25), in so far as relevant, reads as follows:

Article 1

*This Law prescribes the non-application and non-implementation of laws and the prohibition of the activities of extra-constitutional institutions of BiH in the territory of the Republika Srpska.*

Article 3

*The Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (Official Gazette of BiH, 25/04, 93/05, 48/07, 63/23, 9/24 and 50/24) shall not be applied or implemented in the territory of the Republika Srpska.*

Article 5

*The work and actions of institutions whose work is regulated by the laws referred to in Articles 2 through 4 of this Law are prohibited in the territory of the Republika Srpska.*

Article 6

*The competent institutions and bodies of the Republika Srpska are obliged to take all measures and actions within their competence to ensure the implementation of this law.*

Article 7

*Persons who are obliged to act in accordance with the provisions of this Law are exempt from criminal liability prescribed by criminal legislation of BiH and criminal legislation of the Republika Srpska for criminal offenses related to the implementation of this law, and competent institutions and authorities of the Republika Srpska shall provide them with all necessary protection in connection with the application of this law.*

Article 8

*In order to implement this law, the Government of the Republika Srpska shall issue the necessary bylaws.*

Article 9

*This Law shall enter into force on the day after the date of its publication in the Official Gazette of the Republika Srpska.*

12. In examining whether the request for an interim measure is well-founded, the Constitutional Court invoked the provisions of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina and Article 64(1) of the Rules of the Constitutional Court.

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

*The Constitutional Court shall uphold this Constitution.*

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

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

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

14. Article 64(1) and (4) of the Rules of the Constitutional Court reads:

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

*[...]*

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

*[...]*

15. The Constitutional Court recalls that Article 64 of its Rules is applicable in cases where the Constitutional Court finds, based on the reasons and the evidence on the reasonableness submitted with the request for an interim measure, that the adoption of an interim measure is in the interest of the parties or proper conduct of the proceedings, that is, that irreversible harmful consequences might occur.

16. Primarily, based on the subject matter of the contested Law on the HJPC RS and a comparison with the provisions of the Law on the HJPC BiH, the Court notes that the contested law regulates issues that have already been addressed by the provisions of the Law on the HJPC BiH and that it establishes the jurisdiction of the HJPC RS over matters which are already under competence of HJPC BiH. In this regard, the Constitutional Court, without prejudging the outcome of the decision on the merits, recalls its position from Decision on Admissibility and Merits No. U-11/08, in which it stated “[...] that the formal transfer of jurisdiction from the entity level to the state level was carried out by the Agreement, thereby transferring the jurisdiction for the establishment of the High Judicial and Prosecutorial Council to the state level. The Parliamentary Assembly adopted the contested law in an area that has been transferred to the state level, thereby acting within its powers under Article IV/4(a) of the Constitution of BiH (see, *op.cit*, U-11/08, paragraph 23). The Constitutional Court reiterated this position in Decision No. U-2/22 of 26 May 2022 (see paragraphs 85-88), in which it concluded “[...] The Constitutional Court emphasizes that for competencies that have already been transferred to the state of BiH, there can be no entity jurisdiction for their re-establishment, and thus not for their regulation. This is under the exclusive responsibility of the institutions of BiH, in this case, the Parliamentary Assembly of BiH, which, in accordance with Article IV(4)(a) of the Constitution of BiH, is exclusively responsible to regulate these areas. The Parliamentary Assembly of BiH adopted the aforementioned laws, and therefore only it can revoke them[...]”. The Constitutional Court considers that this indeed raises an issue of the National Assembly of RS’ jurisdiction to adopt regulations in areas which are within the exclusive jurisdiction of Bosnia and Herzegovina. The Constitutional Court therefore considers that there are justified reasons to doubt that the disputed law may undermine the constitutional order and political stability in Bosnia and Herzegovina and the smooth functioning of its judiciary, which at this stage is sufficient to find existence of an “arguable claim” for the possibility of occurrence of irremediable detrimental consequences as a precondition for the Constitutional Court to grant the request for an interim measure.

17. The Constitutional Court further points out that it has the authority to adopt an interim measure only if there is urgency, meaning that irreparable harm could be caused to the interests that are the subject of these proceedings. The Constitutional Court observes that regulations concerning the area

of judicial governance represent one of the most important areas of regulation in any country, as they ensure the independence and impartiality of the judicial system, play a crucial role in upholding the rule of law, protecting human rights and freedoms, and preserving citizens' trust in justice institutions. In this regard, a stable judicial framework is based on the respect for democratic principles and legal certainty, and its undermining could have far-reaching negative consequences on other areas of social life.

18. First, the Constitutional Court notes that the National Assembly adopted the 'Law on the Non-Application of Laws and the Prohibition of the Operations of Unconstitutional Institutions of BiH' ("the Law on Non-Application"), which stipulates that the Law on the HJPC BiH will not "be applied or enforced in the territory of the Republika Srpska", prohibits the work and actions of the HJPC BiH, and instructs all institutions to take "measures and actions within their competence to ensure the implementation of this law". Simultaneously with this law, the Law on the HJPC RS was adopted in an expedited procedure. In this regard, the Constitutional Court considers that the adoption of the Law on Non-Application, followed by the contested law transferring the competences of the state HJPC BiH in an expedited procedure, and the law coming into force the day after its publication, are circumstances that pose a serious threat to the already established judicial system. At the same time, the Constitutional Court notes that the fact that the contested law prescribes a 90-day deadline for the commencement of the operations of the HJPC RS, as well as deadlines for the adoption of by-laws, indicates the urgency in adopting an interim measure. Specifically, the implementation of such provisions could lead to the creation of parallel judicial institutions and a situation where judicial office holders could face instability in their position, while parties to proceedings could be confronted with uncertainty regarding legality in the actions of ordinary courts. This legal situation could lead to a reduction in the effectiveness of legal protection and undermine public trust in judicial institutions. The creation of parallel legal structures would undoubtedly threaten the integrity of the judicial system of BiH, causing legal uncertainty and destabilizing the rule of law, especially if the law were later declared unconstitutional. Therefore, the Constitutional Court considers that there is urgency to adopt interim measures to prevent further detrimental consequences, preserve legal certainty, and protect the uniformity of the judicial system until the adoption of a final decision on the merits of the request.

19. Furthermore, in assessing the possibility of occurrence of detrimental consequences in the event of a suspension of the contested law, the Constitutional Court observes that the law on HJPC RS has just come into force. On the other hand, the Constitutional Court observes that the provisions of the Law on HJPC BiH have been in force since 2004 and based on these provisions, the judicial



system in Bosnia and Herzegovina has been established and fully functional for more than two decades. The Constitutional Court, therefore, considers that the application of the contested law creates a risk of irreparable harm to legal certainty and the rule of law.

20. At the same time, the Constitutional Court considers that legal certainty, as an important element of the rule of law, would also be seriously threatened if the authorities in RS took further steps based on the contested law. In this regard, the Constitutional Court considers that the adoption of any legal acts or the taking of any actions based on that law would open the possibility of establishing a parallel legal and institutional structure in relation to the one that already exists under the state law. Therefore, the Constitutional Court has decided, in accordance with Article 64, paragraph (1) of the Rules of the Constitutional Court, that it was necessary to adopt an interim measure, which will temporarily suspend all acts that may have been adopted based on the contested law, and simultaneously prohibit all persons from taking any further actions based on the provisions of that law.

21. In view of the foregoing, the Constitutional Court considers that, pursuant to Article 64(1) of the Rules of the Constitutional Court, it is necessary to adopt an interim measure, by which the Law on High Judicial and Prosecutorial Council of Republika Srpska (*Official Gazette of RS*, 19/25) is suspended *ab initio* until the Constitutional Court of Bosnia and Herzegovina takes a final decision on the submitted request.

22. Pursuant to Article 64(4) of the Rules of the Constitutional Court, decision on interim measure shall become effective from the date the Law on High Judicial and Prosecutorial Council of Republika Srpska (*Official Gazette of Republika Srpska*, 19/25) comes into force until the Constitutional Court takes a final decision.

23. In view of the foregoing, it has been decided as set out in the enacting clause of this decision.

24. The Constitutional Court reiterates that the decision on interim measure shall be without prejudice to the decision on admissibility and/or decision on merits to be adopted on the submitted requests.

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

Seada Palavrić  
President  
Constitutional Court of Bosnia and Herzegovina

