

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI (3)(b) of the Constitution of Bosnia and Herzegovina, Article 59 para 2(2), Article 61, paras 1, 2 and Article 64, para 2 of the Rules of the Constitutional Court of Bosnia and Herzegovina - New Amended Text (*Official Gazette of Bosnia and Herzegovina* No. 60/05), in plenary and composed of the following judges:

Ms. Hatidža Hadžiosmanović, President

Mr. Miodrag Simović, Vice -President

Mr. David Feldman, Vice -President

Ms. Valerija Galić, Vice-President

Mr. Tudor Pantiru,

Mr. Mato Tadić,

Mr. Jovo Rosić,

Ms. Constance Grewe,

Ms. Seada Palavrić,

Having deliberated on the appeal of **Milorad Bilbija *et al***, No. **AP-953/05**,

At its session held on 8 July 2006, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

The appeal lodged by **Milorad Bilbija and Dragan Kalinić** is granted.

The violation of the right to an effective legal remedy under Article II(2) of the Constitution of Bosnia and Herzegovina in conjunction with Article 13 of the European Convention for the Protection of Human Rights and Freedoms is established.

Bosnia and Herzegovina is ordered, as per its positive obligations, to ensure the protection of the appellants' constitutional rights in accordance with Article II(2) of the Constitution of Bosnia and Herzegovina in conjunction with Article 13 of the European Convention for the Protection of Human Rights and Freedoms.

Bosnia and Herzegovina is ordered, in accordance with Article 74 paragraph 5 of the Rules of the Constitutional Court of Bosnia and Herzegovina, to inform the Constitutional Court of Bosnia and Herzegovina about the measures taken to execute this Decision within the time-limit of three months from the date of submission of this Decision.

This Decision shall be delivered to the Presidency of Bosnia and Herzegovina, Council of Ministers of Bosnia

and Herzegovina and Parliamentary Assembly 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 6 April 2005, Milorad Bilbija ("the appellant"), from Banja Luka, represented by Miljkan Pucar, a lawyer practicing in Banja Luka, lodged an appeal with the Constitutional Court of Bosnia and Herzegovina ("the Constitutional Court") against the ruling of the Court of Bosnia and Herzegovina ("the Court of BiH"), No. U-20/05 of 28 February 2005. On 28 October 2005, the appellant submitted the supplement to the appeal from which it follows that he also challenges the ruling of the County Court of Banja Luka ("the County Court"), No. U-107/05 of 27 September 2005.
2. On 30 May 2005, Dragan Kalinić ("the appellant"), represented by Miljkan Pucar, a lawyer practicing in Banja Luka, lodged an appeal with the Constitutional Court of Bosnia and Herzegovina ("the Constitutional Court") against the Decision of the High Representative No. 219/04 of 29 June 2004. It follows from the appeal that the appellant also challenges the ruling of the Supreme Court of Republika Srpska ("the Supreme Court"), No. U-860/04 of 18 May 2005, which was issued following the appellant's request for the protection of rights and freedoms guaranteed by the Constitution and against the Decision of the High Representative. On 24 October 2005, the appellant Dragan Kalinić submitted the supplement to the appeal.

II. Procedure before the Constitutional Court

3. Given that appeals AP-953/05 and AP-1240/05 concern the same factual and legal grounds, the Constitutional Court decided to merge these two cases in order to conduct a single proceeding and adopt a single decision numbered AP-953/05, which is in accordance with Article 31, paragraph 1 of the Rules of the Constitutional Court.

4. With reference to case AP-953/05, pursuant to Article 21, paragraphs 1 and 2 of the then valid Rules of Procedure of the Constitutional Court, on 15 August 2005 the Court of BiH and the Public Attorney's Office of Bosnia and Herzegovina ("the Public Attorney's Office") were requested to submit their respective replies to the appeal. Pursuant to Article 22, paragraph 1 of the Rules of the Court, on 11 April 2006 the County Court was requested to submit its reply to the appeal.

5. The Court of BiH submitted its reply to the appeal on 22 August 2005 and the Public Attorney's Office on 1 September and the County Court on 21 April 2006.

6. Pursuant to Article 26, paragraph 2 of the Rules of the Constitutional Court, on 2 June 2006 the replies of the Court of BiH, the Public Attorney's Office and County Court were forwarded to the appellant Milorad Bilbija.

7. Given the fact that case AP-1240/05 of the appellant Dragan Kalinić concerns the same factual and legal grounds as case AP-953/05, the Constitutional Court decided not to request the replies to the said appeals from the Public Attorney's Office and Supreme Court of the Republika Srpska, but it has taken into consideration the replies that were delivered to the Constitutional Court in case No. AP-953/05.

III. Facts of the Case

8. The facts of the case as they appear from the appellants' allegations and the documents submitted to the Constitutional Court can be summarized as follows:

Facts of case AP 953/05

9. By Decision of the High Representative No. 317/04 of 16 December 2004 the appellant was removed from his position of Deputy Head Operative Administration of the Intelligence and Security

Agency in Banja Luka and from other public and party positions he currently holds. He was also barred from holding any official, elective or appointive public office and from running in elections and from office within political parties unless or until such time as the High Representative may expressly authorize him to do so or to hold the same. According to this Decision any entitlement of the appellant to receive remuneration or any privileges or status arising out of his post(s) ceases forthwith. In the reasons for removal it is stated that the appellant, whether through his actions or his failures to act was an integral part of the common scheme within Republika Srpska fostering a culture of silence and deceit wherein war crime indictees are protected from justice.

10. With reference to the said decision, by launching a lawsuit the appellant initiated an administrative dispute against the State of Bosnia and Herzegovina and High Representative for Bosnia and Herzegovina. By its ruling No. U-20/05 of 28 February 2005 the Court of BiH rejected the lawsuit. In the reasoning of the ruling the Court stated that the decision challenged by the appellant was issued by the High Representative, who is not an institution of Bosnia and Herzegovina within the meaning of Article 4 of the Law on Administrative Disputes of BiH. Neither the provisions of the General Framework Agreement nor the law provide that the decision of the High Representative could be reviewed by a lawsuit or by some other legal remedy in the court. Moreover, the challenged decision is not a final administrative act within the meaning of the Law on Administrative Disputes in BiH since the issue is not related to governmental bodies of BiH (bodies performing public functions) taking decision on the rights, obligations or legal interest of specific individuals or legal persons in administrative matters falling under the competence of the institutions of BiH. Therefore, the Court decided that the appellant's lawsuit is not admissible.

11. The appellant launched a lawsuit against the Decision of the High Representative and initiated an administrative dispute before the County Court which, by its ruling No. U-107/05 of 27 September 2005, rejected. In the reasoning of the ruling the Court stated that the Decision of the High Representative, in the instant case, served as a basis for issuance of the ruling by the Intelligence and Security Agency of Bosnia and Herzegovina, whereby the appellant's employment was terminated with effect from 16 December 2004, so the appellant was entitled to lodge an appeal against the mentioned ruling and only then to initiate an administrative dispute before the Court of Bosnia and Herzegovina as referred to in Article 14, paragraph 1 of the Law on the Court of Bosnia and Herzegovina. Therefore, the allegation that the County Court is competent to take a decision in this administrative dispute is not true. The Court stated that the lawsuit is aimed against the decision of the High Representative, but decisions of the High Representative

are not subject to review by the Court of BiH, and therefore the lawsuit is rejected for the decision of the High Representative has no characteristics of an administrative act within the meaning of Article 6 of the Law on Administrative Disputes because it was not issued by state authorities, enterprises or other organizations or institutions in the exercise of their public authorities.

Fact in case AP-1240/05

12. By decision of the High Representative No. 219/04 of 29 June 2004 the appellant was removed from his position as Chairman of the National Assembly of Republika Srpska and President of the Serb Democratic Party. He was also barred from other public and party duties he was currently performing, from holding any official, elective or appointive public office and from running in elections and from office within political parties unless or until such time the High Representative, by his subsequent decision, expressly authorizes him to do or hold the same. According to this Decision any entitlement of the appellant to receive remuneration or any privileges or status arising out of his post(s) ceases forthwith. In the reasoning for his removal it is stated that the appellant, as a leading member of SDS (Serb Democratic Party) who was holding the most responsible position in the party is culpable for the failure of SDS to purge from the political landscape conditions conducive to the provision of material support and sustenance to individuals indicted under Article 19 of the Statute of the International Criminal Tribunal for the former Yugoslavia. It is also stated that from the findings of Special Auditor for the Republika Srpska, the conclusion follows that due to the lack of control mechanisms the SDS and its President have no sufficient control over the funds of the party in order to prevent the party bodies from offering support and assistance to their former President.

13. The appellant filed an appeal against the decision of the High Representative with the Constitutional Court, which, by its Decision No. AP 766/04 of 29 September 2004 rejected the appeal as inadmissible for being premature. In the reasoning of its decision the Constitutional Court stated that the appellant failed to attempt to challenge the decision of the High Representative before competent courts, but he directly addressed the Constitutional Court.

14. The appellant submitted the request for protection of his rights and freedoms safeguarded by the Constitution in regards to which the Supreme Court, by its Ruling No. U-860/04 of 18 May 2005, stated that it is not competent to take a decision and rejected the request. In its ruling the Supreme Court concluded that the position of the High Representative is equal to the position of other institutions of Bosnia

and Herzegovina, which is completely in agreement with Article 4 of the Law on Administrative Disputes of BiH, and since under Article 68 of the Law on Administrative Disputes it is stipulated that the Council of Administrative Division of the Court of BiH is competent to take a decision on the request from Article 67 of the same law, it would follow that the Court of BiH is competent to take a decision on the request in question and not the court from the territory of Republika Srpska.

IV. Appeal

a) Allegations of the appeal

15. The appellants complain against a violation of the right under Article II(2) of the Constitution of Bosnia and Herzegovina, the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6, paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the European Convention”), the right under Article 7 of the European Convention (no punishment without law), the right to freedom of expression under Article II(3)(h) of the Constitution of Bosnia and Herzegovina and Article 10 of the European Convention, the right to freedom of assembly and association under Article II(3)(i) of the Constitution of Bosnia and Herzegovina and Article 11 of the European Convention, the right to non-discrimination under Article II(4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention, the right to free elections under Article 3 of the Protocol No. 1 to the European Convention, as well as the right to an effective legal remedy under Article 13 of the European Convention. In their appeals the appellants elaborate on the decision of the High Representative. The appellants stated that in the instant case the High Representative intervened into the legal system of Bosnia and Herzegovina, substituting domestic authorities. In that respect he acted as an authority of Bosnia and Herzegovina and the challenged act he issued has the characteristics of a decision adopted by domestic authorities, and therefore it should be deemed as a decision of the state body of Bosnia and Herzegovina. A legally sustainable justification for making a difference between the actions of the High Representative within the legislative-normative sphere and the measures he is taking against specific individuals cannot be found. The appellants stated that because of the decision of the High Representative they suffered a loss of status *capitis deminutio maxima*, also known as “civil death”. They also alleged that something like that could have only occurred during the time of ancient Roman state and that the contemporary civilization and democracy does not recognize that kind of system any more. The appellants stated that one of the consequences of that decision is that their right to work has been jeopardized, as well as their right to unemployment benefits granted in case of unemployment of prevention to work. The appellants stated that they have been unemployed since

the day the disputed decision of the High Representative for Bosnia and Herzegovina was issued and in this way their subsistence and the subsistence of their families have been jeopardized. By barring the appellants from performing any function the doors of both public and privately owned organizations are closed to them since the prospective employers fear that they may provoke the reaction of the High Representative.

16. In his appeal Milorad Bilbija, the appellant, stated that the decision of the High Representative served as a basis for issuance of the decision of the Intelligence and Security Agency of Bosnia and Herzegovina, No. 07-1028/05 of 8 February 2005, whereby the appellant's employment with the mentioned agency was terminated with effect from 16 December 2004, *i.e.* as of the date of issuance of the High Representative's decision. The appellant lodged a complaint against the said decision to the Director General of the Intelligence and Security Agency of Bosnia and Herzegovina who, on 10 March 2005, issued the decision by which the appellant's complaint was dismissed as ill-founded. The appellant stated that he was an employee of the Intelligence and Security Agency of Bosnia and Herzegovina, *i.e.* that he was a staff member of the agency and that given his job description he was not holding any public office neither by the Law on Intelligence and Security Agency of Bosnia and Herzegovina nor by the Law on Administration of Bosnia and Herzegovina.

17. In his appeal Dragan Kalinić, the appellant, stated that the legal remedies he filed against the decision of the High Representative do not meet the criteria of effectiveness as prescribed by the European Convention. The domestic valid law does not provide for the possibility to correct the decisions of the High Representative or to adopt measures by which the violation of these rights could be corrected. There is not a single case that a domestic body has altered, even partially, any of the decisions taken by the High Representative.

b) Reply to the appeal

18. In its reply to the appeal No. AP-953/05, the Court of BiH stated that the appellants' right under Articles 6, 7, 11 and 13 of the European Convention have not been violated by its ruling No. 20/05 of 28 February 2005. The Court of BiH holds that the challenged ruling is based on properly and completely established facts and on appropriate application of the provisions of Law on Court of Bosnia and Herzegovina and Law on Administrative Disputes.

19. In its reply to the appeal the County Court stated that according to the powers vested in the High Representative the Court is not competent to review the decisions issued by the High Representative.

Therefore, the Court refrains from examining the merits of the case, whereas it found that no procedural preconditions for conducting the administrative dispute were met, which was the reason for the appellant's lawsuit to be rejected as referred to in Article 29, paragraph 2, line 1 of the Law Administrative Disputes. The Court stated that it was indicated in its decision that the decision of the Intelligence and Security Agency constitutes an administrative act and that the appellant has the possibility to review that decision before a competent court and in a proper proceedings, *i.e.* by launching a lawsuit in an administrative dispute before the Court of BiH and that in this way he can exercise his right to a fair trial under Article 6 of the European Convention. Therefore, the allegations of the appellant from his supplement to appeal are not true, where he stated that by the decision of the County Court his right to a fair trial under Article 6 of the European Convention was violated, as well as his right to an effective legal remedy under Article 13 of the European Convention, although he failed to specify the violation of those rights in concrete terms, instead he just interpreted the whole proceedings. The County Court holds that the appeal is ill-founded since the appellant has the possibility to review the decision of the Intelligence and Security Agency of BiH before the Court of BiH and thus ensure the protection of his rights guaranteed under the Convention.

20. The Public Attorney's Office of BiH suggests that the appeal is rejected as *prima facie* inadmissible. With reference to the merits of the case, the Public Attorney's Office of BiH stated that by the decision of the Court of BiH No. U-20/05 the appellant's human rights have not been violated as alleged by the appellant. The decision issued by the High Representative cannot be considered a decision of a domestic body. It follows from the Dayton Peace Agreement itself that Bosnia and Herzegovina is an internationally recognized state, though under the strong influence of international community and the so-called "dual" activities of domestic and international bodies established by the mentioned agreement. The actions of the Court of BiH have been correct and lawful since this court is not competent to review the lawfulness of the decisions of the High Representative, rather only the decisions adopted by the institutions of Bosnia and Herzegovina. The provisions of the Law on Administrative Disputes are precise and explicit in this regard and there is no reason for the decision of the Court of BiH to be subject to review by the Constitutional Court of BiH with respect to establishing the violations of human rights relating to the right to a fair trial. Also, these proceedings are not civil proceedings within the meaning of Article 6, paragraph 1 of the European Convention since it is clear that the appellant was a civil servant employed by state authorities in charge for law enforcement. Therefore, the Public Attorney's Office of BiH suggests that the appeal be dismissed as ill-founded.

V. Relevant Law

21. As to the **Convention on the Privileges and Immunities of the United Nations** adopted by the General Assembly of the United Nations on 13 February 1946, the relevant provisions read:

SECTION 18. Officials of the United Nations shall:

(a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(b) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations;

(c) Be immune from national service obligations;

(d) Be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;

(e) Be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;

(f) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;

(g) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

22. **Annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina** (Agreement on Civil Implementation), in the relevant part, reads:

Article II: Mandate and Methods of Coordination and Liaison

1. The High Representative shall:

(1) Monitor the implementation of the peace settlement;

(...)

(d) Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation.

Article V: Final Authority to Interpret

The High Representative is the final authority in theater regarding interpretation of this Agreement on the civilian implementation of the peace settlement.

23. In paragraph XI(2) of the **Conclusions of the Peace Implementation Conference** held in Bonn on 9 and 10 December 1997, the Peace Implementation Council welcomed the High Representative's intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid "by making binding decisions, as he judges necessary" on certain issues including (under sub-paragraph (c) thereof) measures to ensure the Peace Agreement throughout Bosnia and Herzegovina and its Entities which "may include actions against persons holding public office".

24. In paragraph X(4) of the **Annex to the Declaration of the Peace Implementation Council** reached in Madrid on 16 December 1998, it was stated that the Council acknowledges that leaders whom the High Representative bars from official office "may also be barred from running in elections and from any other elective or appointive public office and from office within political parties until further notice".

25. In the **Opinion on the Constitutional Situation in Bosnia and Herzegovina and Powers of the High Representative** adopted at 62nd plenary session (Venice, 11-12 March 2005), the **European Commission for Democracy through Law** (Venice Commission), stated as follows: "However, the main concern is that the High Representative does not act as an independent court and that there is no possibility of appeal. The High Representative is not an independent judge and he has no democratic legitimacy deriving from the people of BiH. He pursues a political agenda, agreed by the international community, which serves the best interests of the country and contributes to the realisation of the Council of Europe standards. As a matter of principle, it seems unacceptable that decisions directly affecting the rights of individuals taken by a political body are not subject to a fair hearing or at least the minimum of due process and scrutiny by an independent court".

26. The relevant provisions of the **Law on Administrative Disputes of Bosnia and Herzegovina** (*Official Gazette of BiH*, No 19/02), read:

Article 1

In order to ensure judicial protection of the rights of citizens, enterprises, companies, institutions and other legal entities in Bosnia and Herzegovina this Law defines the rules of administrative dispute in which the institutions of Bosnia and Herzegovina vested with public powers decide on rights and obligations of citizens and legal entities..

Article 4

For the purpose of this Law the institutions of Bosnia and Herzegovina shall be understood to mean: the Ministries of Bosnia and Herzegovina and their bodies, public agencies, public corporations, institutions of the Brčko District and all other organisations, as provided by State Law, acting in the exercise of public powers vested in the State of Bosnia and Herzegovina under the Constitution of Bosnia and Herzegovina

Article 8

An administrative dispute may only be conducted against a final administrative act.

A final administrative act, for the purposes of this Law, is an act by which a competent institution from Article 4 of this Law decides on specific right or obligation of a specific individual or a legal entity in an administrative matter.

Article 67

A citizen whose rights and fundamental freedoms safeguarded by the Constitution of Bosnia and Herzegovina have been violated by a final individual act of institutions from Article 4 of this Law shall be entitled to request the protection of those rights and freedoms before the Court, in accordance with this law, if no other judicial protection is provided.

Article 68

(1) The Council of the Court Administrative Division shall decide on the requests referred to in Article 67 of this Law.

(...).

27. The relevant provisions of the **Law on Administrative Disputes** (Official Gazette of the Republika Srpska, No. 12/94) read:

Article 6

An administrative dispute may only be conducted against an administrative act.

An administrative act, for the purposes of this Law, is an act by which a state body, enterprise or some other organization or institution, in the performance of its public authority, decides on specific right or obligation of a specific individual or organization in an administrative matter.

VI. Admissibility

28. According to Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, the Constitutional Court shall also have appellate jurisdiction over issues under this Constitution arising out of a judgment of any court in Bosnia and Herzegovina.

29. Pursuant to Article 16, paragraph 1 of the Rules of Constitutional Court, the Court shall examine an appeal only if all effective remedies that are available under the law against a judgment or decision challenged by the appeal are exhausted and if the appeal is filed within a time-limit of 60 days as from the date on which the decision on the last remedy used by the appellant was served on him/her.

30. In the case at hand the subject of appeal No. AP-953/05 is the ruling of the Court of BiH No. 20/05 of 28 February 2005, and the ruling of the County Court in Banja Luka No. U 107/05 of 27 September 2005, against which there are no effective legal remedies available under law. The appeal was filed on 6 April 2005 and the supplement to appeal was submitted on 28 October 2005, *i.e.* within the time limit of 60 days as stipulated by Article 16, paragraph 1 of the Rules of Constitutional Court. Finally, the appeal meets the requirements under Article 16, paragraph 2 and 4 of the Rules of Constitutional Court since it is not manifestly (*prima facie*) ill-founded nor is there any other formal reason for which the appeal would be deemed inadmissible.

31. Furthermore, the subject of challenge by the appeal No. 1240/05 is the decision of the High Representative No. 219/04 of 29 June 2004 and the ruling of the Supreme Court of the Republika Srpska No. U-860/04 of 18 May 2005, which was adopted following the appellant's request for the protection of rights and freedoms safeguarded by the Constitution and against the Decision of the High Representative. By the challenged ruling of the Supreme Court, the appellant's lawsuit was rejected for formal reasons. Accordingly, the Supreme Court refrained from examining the decision of the High Representative with

regards to the merits. The appellant has no other legal remedies available under law against the ruling of the Supreme Court No. U-840/04 of 18 May 2005, and the appeal was lodged on 30 May 2005, *i.e.* within the time limit of 60 days as set forth in Article 16, paragraph 1 of the Rules of the Constitutional Court. Finally, the appeal also meets the requirements under Article 16, paragraph 2 and 4 of the Rules of the Constitutional Court since it is not manifestly (*prima facie*) ill-founded nor is there any other formal reason for which the appeal would be deemed inadmissible in relation to the right to an effective legal remedy under Article 13 of the European Convention.

32. Having regard to the provisions of Article VI(3)(b) of the Constitution of Bosnia and Herzegovina, Article 16, paragraphs 1, 2 and 4 of the Rules of the Constitutional Court, the Constitutional Court has established that the appeals meet the admissibility requirements in relation to the right to effective legal remedy under Article 13 of the European Convention.

VII. Merits

33. The appellants complain of the violation of their right under Article II(2) of the Constitution of Bosnia and Herzegovina, the right to an effective legal remedy under Article 13 of the European Convention, the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6, paragraph 1 of the European Convention, the right under Article 7 of the European Convention (no punishment without law), the right to freedom of expression under Article II(3)(h) of the Constitution of Bosnia and Herzegovina and Article 10 of the European Convention, the right to freedom of assembly and association under Article II(3)(i) of the Constitution of Bosnia and Herzegovina and Article 11 of the European Convention, the right to non-discrimination under Article II (4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention, the right to free elections under Article 3 of the Protocol No. 1 to the European Convention.

Article II(2) of the Constitution of Bosnia and Herzegovina reads:

2. *International Standards*

The rights and freedoms set forth in the European Convention for the Protection of Human

Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina.

Article 13 of the European Convention, in the relevant part, reads:

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity“.

34. The Constitutional Court concludes that pursuant to Article II(2) of the Constitution of Bosnia and Herzegovina, the European Convention shall be directly applied in Bosnia and Herzegovina. Moreover, pursuant to Article II(6) of the Constitution of Bosnia and Herzegovina, “...*all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms...*” referred to in Article II(2) of the Constitution of Bosnia and Herzegovina. Furthermore, pursuant to Article II(4) of the Constitution of Bosnia and Herzegovina and Annex I to the Constitution of Bosnia and Herzegovina, some international agreements on human rights may also be applied in Bosnia and Herzegovina. At the same time the following is stipulated by the said Article “*all persons in Bosnia and Herzegovina shall be free from discrimination on any grounds (...)*”. It follows that the enjoyment of the rights and freedoms provided for in the Constitution of Bosnia and Herzegovina and the European Convention shall be secured for all persons in Bosnia and Herzegovina without any reservation or exemption from the obligation to comply with these standards.

35. In the case at hand the question is raised whether the appellants have an effective legal remedy available against the decision of the High Representative by which they could challenge the said decisions as referred to in Article 13 of the European Convention.

36. In its Decision on Admissibility No. AP-905/04 of 30 November 2004, the Constitutional Court stated that in examining the formal aspects of the challenged decision and similar decisions of the High Representative including the consequences for the persons concerned, the Constitutional Court holds that such decisions have raised a serious issue of the existence of violations of some rights and fundamental

freedoms safeguarded by the Constitution of Bosnia and Herzegovina and the European Convention. Among others, the Constitutional Court notes that hindrance to challenge the said decisions of the High Representative leaves such persons without any protection of their rights and fundamental freedoms. Such an approach leaves individuals without any legal remedy by which the observance of Article 13 of the European Convention is brought in question.

37. In the judgment of the European Court for Human Rights, in case *Klass and Others vs. Germany*, the Court has taken the position in relation to Article 13 and stated that this provision, read literally, seems to say that a person is entitled to a national remedy only if a "violation" has occurred. However, a person cannot establish a "violation" before a national authority unless he is first able to lodge with such an authority a complaint to that effect. Consequently, as the minority in the Commission stated, it cannot be a prerequisite for the application of Article 13 that the European Convention be in fact violated. In the Court's view, Article 13 requires that "where an individual considers himself to have been prejudiced by a measure allegedly in breach of the European Convention, he should have a remedy before a national authority in order, both, to have his claim decided and, if appropriate, to obtain redress. Thus Article 13 (art. 13) must be interpreted as guaranteeing an "effective remedy before a national authority" to everyone who claims that his rights and freedoms under the European Convention have been violated", (see: Judgment of the European Court of Human Rights, *Klass and Others vs. Germany* dated 6 September 1987, series A. 28, pages 29-30).

38. Moreover, in the judgment of the European Court of Human Right of 25 March 1983, in case *Silver and Others vs. Great Britain and Northern Ireland*, the Court also stated that "where an individual has an arguable claim to be the victim of a violation of the rights set forth in the European Convention, he should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress", (see the judgment of the European Court of Human Rights, *Silver and Others v. the United Kingdom and Northern Ireland* of 25 March 1983, series A.61, page 42).

39. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, regulates the following issues: the United Nations shall have the capacity as a legal person, the issues of property, funds, assets of the United Nations, the issue of privileges and immunities of representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations; it is provided that the Secretary-General will specify the categories of officials to which the provisions of this Article and Article

V shall apply; Section 18 regulates privileges and immunities of the officials of the United Nations; the issue of privileges and immunities of experts performing missions for the United Nations and the issue of settlement of disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party or disputes involving any official of the United Nations who, by reason of his official position, enjoys immunity, if immunity has not been waived by the Secretary-General; the issue of all differences arising out of the interpretation or application of the Convention and the issue of a difference arising between the United Nations on one hand and a Member on the other hand. It follows that the aforementioned Convention of the United Nations regulates the issues relating to the officials of the United Nations, including the High Representative because the institution of the High Representative was established in accordance with the resolution of the United Nations.

40. In accordance with the aforesaid, the Constitutional Court concludes that the appellants have presented an arguable claim in the instant case as regards the decisions of the High Representative, where they have stated that they are the victims of violations of rights safeguarded by the Convention. However, the Constitutional Court concludes that it is not competent to review the individual decisions of the High Representative, rather it must be limited exclusively to its jurisdictions arising out of Article VI(3)(b) of the Constitution of Bosnia and Herzegovina and examine whether the appellants have had an effective legal remedy available under law by which they could challenge the said decisions within the meaning of Article 13 of the European Convention.

41. Pursuant to its present case-law, the Constitutional Court has so far been rejecting the appeals lodged against the Decisions of the High Representative, initially finding itself not competent (see Decision of the Constitutional Court No. *U-37/01* of 2 November 2001) and subsequently holding that those appeals were premature (see the Decision of the Constitutional Court No. *AP-905/04* of 30 November 2004) with view of its competence referred to in Article VI(3)(b) of the Constitution of Bosnia and Herzegovina.

42. By decisions of the High Representative the appellants were removed from the positions they were holding. The appellants attempted to challenge the said decisions before domestic courts, with no success though.

43. Appellant Milorad Bilbija brought an action before the Court of BiH against the Decision of the High Representative and thus launched a lawsuit against the State of Bosnia and Herzegovina and the High

Representative. By ruling U-20/05 of 28 February 2005, the Court rejected the appellant's lawsuit with an explanation that the High Representative is not an institution of Bosnia and Herzegovina within the meaning of Article 4 of the Law on Administrative Disputes of Bosnia and Herzegovina and that the decision of the High Representative is not a final administrative act in terms of Article 8 of the Law on Administrative Disputes of Bosnia and Herzegovina by which the administration bodies of Bosnia and Herzegovina are deciding on rights, obligations or on legal interest of citizens and legal persons in administrative matters that are under the jurisdiction of the institutions of Bosnia and Herzegovina within the meaning of Article 1 of the Law on Administrative Proceedings.

44. With reference to the lawsuit of appellant Milorad Bilbija against the Decision of the High Representative, the County Court, by its ruling No. U-107/05 of 27 September 2005, rejected the lawsuit with a reasoning that the decision of the High Representative has no features of an administrative act in terms of the Law on Administrative Disputes since it was not adopted by the state bodies, enterprises, other organizations or institutions in the exercise of their public authorities.

45. Appellant Dragan Kalinić also attempted to challenge the decision of the High Representative before the Supreme Court, to where he was referred by the Constitutional Court in its decision No. AP-766/04 of 29 September 2004. However, with reference to the appellant's request for the protection of rights and freedoms guaranteed by the Constitution filed against the Decision of the High Representative, the Supreme Court, in its ruling No. U-860/04 of 18 May 2005, stated that it is competent to take a decision on the request in question and rejected the request with an explanation that that the position of the High Representative is equal to the position of other institutions of Bosnia and Herzegovina, which is in agreement with Article 4 of the Law on Administrative Disputes of BiH and since it is stipulated by Article 68 of the Law on Administrative Disputes that the Council of Administrative Division of the Court of BiH is competent to take a decision on the request from Article 67 of the same law, it follows that the Court of BiH is competent to take a decision on the request in question and not the court from the territory of Republika Srpska.

46. The Constitutional Court reminds that the Office of the High Representative (OHR) is a leading organization tasked with civilian implementation of peace process in BiH. According to the Dayton Peace Agreement signed in 1995, the High Representative is tasked to oversee the civilian implementation of the Peace Agreement in Bosnia and Herzegovina on behalf of the international community. The High Representative is also tasked to coordinate the activities of international and civilian organizations and

agencies operating in the country. The High Representative is nominated by the Peace Implementation Council and his/her appointment is confirmed by the Security Council of the United Nations, which also ratified the Dayton Peace Agreement and deployment of the international troops in Bosnia and Herzegovina.

47. Pursuant to Article 5 of Annex X of the General Framework Agreement for Peace in Bosnia and Herzegovina, the High Representative is a final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement. According to Article 2(1)(d) of the said Agreement, the High Representative shall facilitate the resolution of difficulties by making binding decisions, as he judges necessary.

48. Pursuant to paragraph XI(2) of the Conclusions of the Peace Implementation Conference held in Bonn on 9th and 10th December 1997, the Peace Implementation Council welcomed the High Representative's intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid "by making binding decisions, as he judges necessary" on certain issues including (under sub-paragraph (c) thereof) measures to ensure the Peace Agreement throughout Bosnia and Herzegovina and its Entities which "may include actions against persons holding public office".

49. In paragraph X(4) of the Annex to the Declaration of the Peace Implementation Council reached in Madrid on 16 December 1998 it was stated that the Council acknowledges that leaders whom the High Representative bars from official office "may also be barred from running in elections and from any other elective or appointive public office and from office within political parties until further notice".

50. However, the Constitutional Court reminds of the Opinion on the Constitutional Situation in Bosnia and Herzegovina and Powers of the High Representative adopted at 62nd plenary session (Venice, 11-12 March 2005), where the European Commission for Democracy through Law (Venice Commission) stated as follows: "The main concern is however that the High Representative does not act as an independent court and that there is no possibility of appeal. The High Representative is not an independent judge and he has no democratic legitimacy deriving from the people of BiH. He pursues a political agenda, agreed by the international community, which serves the best interests of the country and contributes to the realization of the Council of Europe standards. As a matter of principle, it seems unacceptable that decisions directly

affecting the rights of individuals taken by a political body are not subject to a fair hearing or at least the minimum of due process and scrutiny by an independent court”.

51. Having regard to the said powers of the High Representative, the Opinion of the Venice Commission as well as the decisions of ordinary courts, which are adopted in the proceedings initiated by the appellants against the decisions of the High Representative, it follows that there is no effective legal remedy against the decisions of the High Representative available within the existing legal system of Bosnia and Herzegovina.

52. In connection with the aforesaid, the Constitutional Court concludes that Article 1 of the European Convention provides Member States with obligation to „secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention”. Article 1 makes no distinction as to the type of rule or measure concerned, and does not exclude any part of the member States’ “jurisdiction” from scrutiny under the European Convention. The European Convention does not exclude the transfer of competences to international organizations provided that European Convention rights continue to be “secured”. Member States’ responsibility therefore continues even after such a transfer (see, *mutatis mutandis*, judgment of the European Court for Human Rights, *Matthews vs. United Kingdom*, No. 24833/94 of 18 February 1999, paragraphs 29 and 32).

53. It thus follows that the state has a positive obligation to secure to individuals’ protection of rights and freedoms as safeguarded in Section I of European Convention even when the state has transferred competencies to international organizations.

54. Furthermore, the Constitutional Court referred, in its cases relating to “old-foreign currency savings accounts” to positive state obligation claiming that “the state cannot be released from obligation to guarantee protection of the rights to property referred to in Article 1 of Protocol no. 1 to the European Convention and Article II(3)(k) of the Constitution of Bosnia and Herzegovina through attempts to delegate responsibility, in terms of regulation and implementation, to entity institutions and the institutions of the Brčko District without securing sufficient legal guarantees that those institutions shall act pursuant to, *inter alia*, standards referred to in Article 1 of Protocol no. 1 to the European Convention” (see Constitutional Court of Bosnia and Herzegovina, Decision No. *AP 130/04* of 2 December 2005,

paragraph 72, *Official Gazette of Bosnia and Herzegovina*, No. 9/06, *Official Gazette of Republika Srpska*, No. 118/05).

55. Further, the Constitutional Court concludes that an individual must not be overburdened in finding the most effective way of exercising his rights (see, the Constitutional Court of Bosnia and Herzegovina, Decision No. *U-18/00* of 10 May 2002, paragraph 40, *Official Gazette of Bosnia and Herzegovina*, No. 30/02). The effectiveness of legal remedy is not only reflected in the fact that it is formally provided by law, but also in the fact that it should be effective in practice. The fundamental human rights protected by the European Convention and Constitution of Bosnia and Herzegovina must be real and effective both in law and in practice and not illusory and theoretical. Legal remedies intended for protection of human rights must be physically accessible and must not be hindered by acts, omissions, delay or negligence of public authorities and must be able to protect the rights in question (see the Constitutional Court of Bosnia and Herzegovina, Decision No. *U 36/02* of 30 January 2004, paragraph 25, published in the *Official Gazette of Bosnia and Herzegovina*, No. 9/04).

56. However, the Constitutional Court must consider a further question. Does the special status of the High Representative or the sources of his authority in the General Framework Agreement for Peace and various resolutions of the United Nations Security Council deprive the claimants of rights under the Constitution of Bosnia and Herzegovina or prevent positive obligations attaching to the State of Bosnia and Herzegovina to protect any such rights?

57. Annex 10 to the General Framework Agreement for Peace provides that the High Representative is to be the final authority in theatre on the interpretation of Annex 10, and is to take necessary steps to facilitate the civilian implementation of the General Framework Agreement. The Constitutional Court has consistently held that the High Representative is a creature of international treaty and is not subject to the jurisdiction of domestic courts except for a situation in which a decision of the High Representative substitutes for the domestic legislator. In such a case, the Constitutional Court is competent to decide in accordance with its jurisdiction under Article VI(3) of that Constitution of Bosnia and Herzegovina.

58. The powers of the High Representative under Annex 10 to the General Framework Agreement for Peace have been considered by the Peace Implementation Council, which at its session in Bonn on 9th and

10th December 1997 approved the view of the then High Representative that the powers conferred on the High Representative by Annex 10 included power to make binding decisions as he considers necessary for the civilian implementation of the peace agreement.

59. The Security Council of the United Nations has made a number of relevant resolutions, including several that have referred to the High Representative's powers under Annex 10 to the General Framework Agreement for Peace. Thus, at its 5567th meeting on 21st November 2006, the Security Council in its Resolution No. 1722, *inter alia*: (a) reaffirmed in paragraph 1 its support for the General Framework Agreement and for the Dayton-Paris Agreement on implementing the Federation of Bosnia and Herzegovina of 10 November 1995 and called on all parties to comply strictly with their obligations under those agreements; (b) reiterated in paragraph 2 'that the primary responsibility for the further successful implementation of the Peace Agreement lies with the authorities in Bosnia and Herzegovina themselves'; and (c) emphasised in paragraph 4 that under Annex 10 to the General Framework Agreement for Peace that:

'the High Representative is the final authority in theatre regarding the interpretation of civilian implementation of the Peace Agreement and that in case of dispute he may give his interpretation and make recommendations, and make binding decisions as he judges necessary on issues as elaborated by the Peace Implementation Council in Bonn on 9 and 10 December 1997;...'

60. This is just the latest in a series of similar provisions in more or less annual Security Council resolutions since 1998, including Resolution Nos. 1423 of 2002, 1491 of 2003, 1551 and 1575 of 2004, and 1639 of 2005.

61. A Security Council resolution made under Chapter VII of the UN Charter in response to a threat to international peace has a special status. A number of provisions of the Charter of the United Nations are relevant. Article 25 of the UN Charter provides: 'The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.' Under Article 39 of the UN Charter, 'The Security Council shall determine the existence of any threat to the peace, breach of the peace or acts of aggression and shall make recommendations, or decide which measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.'

Article 41 relates to measures not involving the use of armed force. Finally, Article 103 of the UN Charter provides: ‘In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.’

62. The position can be summed up as follows: successive Security Council Resolutions made under Chapter VII of the UN Charter have recognised the High Representative as having authority under Annex 10 to the General Framework Agreement for Peace to make binding decisions as he judges necessary on issues as elaborated by the Peace Implementation Council. Member States of the UN have an obligation under Article 25 of the UN Charter to carry out the decisions of the Security Council in accordance with the Charter. It is not entirely clear that the relevant provisions of the Security Council resolutions are decisions of the Security Council. They do not say that they are decisions. However, they clearly go beyond mere recommendations, and Article 39 recognises only two formal acts which the Security Council can promulgate under Chapter VII, namely recommendations and decisions. The Constitutional Court therefore accepts that the relevant provisions of the Resolutions are decisions for the purposes of Article 25 of the Charter. In international law, the High Representative thus has power to make binding decisions, and authorities of Bosnia and Herzegovina have an obligation to co-operate with the High Representative, by virtue of both the General Framework Agreement for Peace and the Security Council resolutions.

63. Furthermore, in international law by virtue of Article 103 of the UN Charter the obligations of Bosnia and Herzegovina to comply with decisions of the Security Council override conflicting obligations arising under other treaties. This appears to mean that, in the event of a conflict, even human rights obligations may be overridden by a Security Council resolution under Chapter VII of the Charter. The only possible exception so far recognised in the literature is an obligation which amounts to *ius cogens*, a peremptory norm of international law: see Article 30(1) of the Vienna Convention on the Law of Treaties; the decision of the Court of First Instance of the European Court of Justice, *Kadi v Council of European Union* (Case T-315/01, 21st September 2005); Separate Opinion of Judge *ad hoc Lauterpacht in Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (International Court of Justice, 13th September 1993, General List No 91, at para 100); Bernhardt, commentary on Article 103 of the Charter, in Bruce Simma *et al.*, *Charter of the United*

Nations - A Commentary, 2nd edition, at p. 1295. See also the decision of the European Court of Human Rights in *Air Bosphorus v Ireland* (Application No 45036/98, 30th June 2005).

64. The Constitutional Court has carefully considered whether this deprives the appellant of any rights to which they might otherwise have been entitled, or protects the State of Bosnia and Herzegovina against positive obligations on which the Constitutional Court can adjudicate and which it can enforce. In this connection, the Constitutional Court draws attention to the following matters.

65. First, a decision that the authorities of Bosnia and Herzegovina owe positive obligations to the appellant would not in any way affect a decision of the High Representative, or call in question the legal effectiveness of his binding decision to dismiss the appellant from his post. The Constitutional Court accepts the effectiveness of the decision of the High Representative. Indeed, had it not been effective the case would not have come before the Court.

66. Secondly, Article 103 of the Charter of the United Nations deals only with a sub-set of possible conflicts of laws in public international law, namely conflicts between the obligations of Member States of the United Nations arising under different treaties. It does not attempt (and indeed would be powerless to attempt) to determine the effect of any such conflict on the obligations of the authorities of Member States under their national constitutional or legal orders.

67. Thirdly, the obligations of the authorities of Bosnia and Herzegovina and the human rights within the jurisdiction of Bosnia and Herzegovina are clearly enumerated within the Constitution of Bosnia and Herzegovina. While the Constitution had its origin in an international treaty, Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina, it has functioned for over eleven years as the national Constitution, the highest legal act of the state of Bosnia and Herzegovina. It has a dual nature. It has an international aspect as one of the foundations for the existence and international recognition of Bosnia and Herzegovina in the international community of states. But it has a purely national aspect when perceived from within the country as the highest source of validity for the laws and institutions of Bosnia and Herzegovina. It is as a national, not an international, instrument that the Constitutional Court, as the highest judicial authority within Bosnia and Herzegovina, interprets and gives effect to it.

68. Having taken these matters into account, the Constitutional Court considers that the obligations of Bosnia and Herzegovina in public international law to co-operate with the High Representative and to act in conformity with decisions of the UN Security Council cannot determine the constitutional rights of people who are within the jurisdiction of Bosnia and Herzegovina. Article II of the Constitution of Bosnia and Herzegovina guarantees to people in the territory of Bosnia and Herzegovina the highest level of internationally recognized human rights, and provides that the European Convention on the Protection of Human Rights and Fundamental Freedoms are to apply directly in Bosnia and Herzegovina and have priority over all other law. However, in the view of the Constitutional Court this does not mean that the constitutional rights of people in the territory of the State are subject to limitations arising in public international law pursuant to other treaties such as the Charter of the United Nations. The reference in Article II of the Constitution of Bosnia and Herzegovina to internationally recognized human rights is not to be understood as a limitation of rights. The rights under Article II depend on the Constitution and its interpretation. While many of the rights are derived from those formulated in international treaties, and the Constitutional Court has drawn extensively on the case-law of the European Commission and Court of Human Rights when interpreting rights derived from the European Convention, the rights themselves as given effect in Bosnia and Herzegovina owe their authority to the Constitution of Bosnia and Herzegovina as a national constitution, not to international treaties. The constitutional source of the authority of the rights explains why the authorities of the Entities and other public institutions which have no legal personality in public international law are required to act in conformity with the rights as interpreted by the Constitutional Court, and also explains why the Constitutional Court is able to make final and conclusive determinations of the scope of constitutional rights when exercising its function of upholding “this Constitution” under Article VI of the Constitution of Bosnia and Herzegovina.

69. The Constitutional Court is aware that courts in some other legal systems have taken a different view. For example, the Court of Appeal of England and Wales in the case of *The Queen (on the application of Al-Jedda) v Secretary of State for Defence* [2006] EWCA Civ 327 in a judgment delivered on 29th March 2006 decided that the applicant’s rights under the UK’s Human Rights Act 1998, which (*inter alia*) makes certain rights under the European Convention part of the law of England and Wales, were qualified in international law and therefore in English law to the extent necessary to allow UK military forces in Iraq to comply with UN Security Council resolutions made under Chapter VII of the

Charter of the UN in respect of the operation of coalition military forces in Iraq. This judgment is currently under appeal.

70. The Constitutional Court respectfully considers that the judgment in *Al-Jedda's* case is of only limited assistance to it in the present case. The relationship between provisions of public international law and national constitutions and laws depends on the constitutional arrangements in each state. In England and Wales the Human Rights Act 1998 is an ordinary law and, as a matter of law, is not hierarchically superior to other Acts of Parliament. Furthermore, the rights protected by the Human Rights Act 1998 are the rights in the European Convention, and the Act merely makes those rights part of the law of the jurisdiction. By contrast, in Bosnia and Herzegovina the rights are contained in the Constitution of Bosnia and Herzegovina, with which all other law in the State must conform, and (as explained earlier in this decision) constitutional rights, even when derived from international treaties, have the source of their authority within Bosnia and Herzegovina in the Constitution.

71. In the light of this, the Constitutional Court holds that there is nothing in the international legal context from which this case arises to compel it to reach a conclusion different from the one at which it would arrive purely on the basis of its interpretation of the rights in their national constitutional context.

72. It follows from the aforesaid that the State has a positive obligation to ensure respect for human rights enshrined in the Constitution of Bosnia and Herzegovina or arising from international treaties, however, the source of their legal force is in the Constitution of Bosnia and Herzegovina, as it is in the present case the individual's right to an effective legal remedy. Therefore, a question is raised as to whether Bosnia and Herzegovina has undertaken the activities aimed at securing an effective legal remedy against individual decisions of the High Representative, which would be a part of its positive obligation. As to the reply of the Public Attorney's Office of Bosnia and Herzegovina, the Court could not establish whether Bosnia and Herzegovina has undertaken any activities aimed at protection of individuals' rights against the individual decisions of the High Representative.

73. The Constitutional Court notes that Bosnia and Herzegovina, through the Steering Board of the Peace Implementation Council and Security Council of the United Nations, a body in charge of nominating and confirming the appointment of the High Representative, was obliged to make an effort in pointing to the

alleged violations of constitutional rights of individuals on the grounds of non-existence of an effective legal remedy and thus ensure the protection of constitutional rights of its citizens.

74. Having regard to the aforesaid, the Constitutional Court established that there is no effective legal remedy available within the existing legal system of Bosnia and Herzegovina against the decisions of the High Representative concerning the rights of individuals nor has Bosnia and Herzegovina undertaken the activities, required by its positive obligation, to ensure an effective legal remedy against the decisions of the High Representative through the bodies in charge of nominating and appointing the High Representative.

75. In connection with the aforesaid, the Constitutional Court reminds of the Opinion of the European Commission for Democracy through Law (Venice Commission) on decertified police officers, which was adopted at the plenary session (Venice, 21-22 March 2005). The Venice Commission considers that it is beyond doubt that neither the courts in BiH nor any other authority in BiH are competent to review or reverse the decertification decisions. The Venice Commission considers therefore that it is appropriate that the United Nations carry out a review process of the decertification decisions that have been challenged before the Bosnian authorities. While it is up to the UN Security Council to decide on the body that most appropriately should review the decertification proceedings, the Venice Commission suggests that a special body be set up by the Security Council and mandated to review the decertification cases that have been challenged before the authorities in BiH.

76. Therefore, the Constitutional Court concludes that the appellants' right to an effective legal remedy under Article 13 of the European Convention has been violated in the instant case, and therefore it is true that Bosnia and Herzegovina has a positive obligation to protect the constitutional rights of appellants in this regard.

Other statements

77. In view of the conclusion as to the violation of right under Article 13 of the European Convention, the Constitutional Court finds it not necessary to examine separately other statements from the appeal.

VIII. Conclusion

78. The Constitutional Court concludes that the appellants' right to an effective legal remedy under Article 13 of the European Convention has been violated due to lack of an effective legal remedy within the legal system of Bosnia and Herzegovina, which could be pursued against the decisions of the High Representative concerning the rights of individuals and due to a fact that Bosnia and Herzegovina failed to undertake any activities within the scope of its positive obligation to secure an effective legal remedy against the said decisions of the High Representative .

79. Pursuant to Article 61, paras 1, 2 and Article 64, para 2 of the Rules of the Constitutional Court, the Constitutional Court decided as set out in the enacting clause of this decision.

80. Pursuant to Article VI(4) of the Constitution of Bosnia and Herzegovina, the decisions of the Constitutional Court shall be final and binding.