

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI (3) (c) of the Constitution of Bosnia and Herzegovina, Article 57 (2) (b), Article 59 (1) and (2) and Article 61 (4) of the Rules of the Constitutional Court of Bosnia and Herzegovina – Revised Text (*Official Gazette of Bosnia and Herzegovina*, 94/14), in Plenary and composed of the following judges:

Mr. Mato Tadić, President

Mr. Tudor Pantiru, Vice-President

Mr. Miodrag Simović, Vice-President

Mr. Mirsad Ćeman, Vice-President

Ms. Valerija Galić,

Ms. Seada Palavrić,

Mr. Zlatko M. Knežević,

Ms. Angelika Nußberger, and

Ms. Helen Keller

Having deliberated on the request of the Municipal Court in Sarajevo (Judge Belma Čano-Sejfović), in the case no. **U 7/21**, at the session held on 23 September 2021, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

In deciding the request of the Municipal Court in Sarajevo (Judge Belma Čano-Sejfović) for the review of constitutionality of the Law on Salaries and Other Compensations of Judges and Prosecutors of the Federation of Bosnia and Herzegovina (*Official Gazette of the Federation of Bosnia and Herzegovina*, 72/05, 22/09, 27/12 – Decision of the Constitutional Court of FBiH, and 55/13 and 55/17 – Decision of the Constitutional Court of FBiH),

it is hereby established that the Law on Salaries and Other Compensations of Judges and Prosecutors of the Federation of Bosnia and Herzegovina (*Official Gazette of the Federation of Bosnia and Herzegovina*, 72/05, 22/09, 27/12 – Decision of the Constitutional Court of FBiH, and 55/13 and 55/17 – Decision of the Constitutional Court of FBiH) is not in conformity with Article I (2) of the Constitution of Bosnia and Herzegovina and the provisions of Article II (4) of the Constitution of Bosnia and Herzegovina, in conjunction with Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1 of Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 26 of the International Covenant on Civil and Political Rights as it does not contain the provisions related to the compensation for on-call duty/standby.

Pursuant to Article 61 (4) of the Rules of the Constitutional Court of Bosnia and Herzegovina, the Parliament of the Federation of Bosnia and Herzegovina is ordered to harmonize, within a time limit of six months from the day of publication of this Decision in the *Official Gazette of Bosnia and Herzegovina*, the Law on Salaries and

Other Compensations of Judges and Prosecutors of the Federation of Bosnia and Herzegovina (*Official Gazette of the Federation of Bosnia and Herzegovina*, 72/05, 22/09, 27/12 – Decision of the Constitutional Court of FBiH, and 55/13 and 55/17 – Decision of the Constitutional Court of FBiH) with regard to the compensation for on-call duty/standby with Article I (2) of the Constitution of Bosnia and Herzegovina and the provisions of Article II (4) of the Constitution of Bosnia and Herzegovina, in conjunction with Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1 of Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 26 of the International Covenant on Civil and Political Rights.

Pursuant to Article 72 (5) of the Rules of the Constitutional Court of Bosnia and Herzegovina, the Parliament of the Federation of Bosnia and Herzegovina is ordered to inform, within the time limit referred to in the foregoing paragraph, about the measures taken with a view to enforcing this Decision.

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*.

REASONS

I. Introduction

1. On 22 April 2021, the Municipal Court in Sarajevo (Judge Belma Čano-Sejfović, “the applicant”) filed a request with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) for the review of compatibility of the Law on Salaries and Other Compensations of Judges and Prosecutors in the Federation of Bosnia and Herzegovina (*Official Gazette of the Federation of Bosnia and Herzegovina*, 72/05, 22/09, 55/13,¹ “the contested law”), with the provisions of Article I (2) and Article II (4) of the Constitution of Bosnia and Herzegovina, in conjunction with the provisions of Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the European Convention”), Article 1 of Protocol No. 12 to the European Convention, as well as with Article 26 of the International Covenant on Civil and Political Rights.

II. Proceedings before the Constitutional Court

2. Pursuant to Article 23 (2) of the Rules of the Constitutional Court, the Parliament of the Federation of Bosnia and Herzegovina, the House of Representatives and the House of Peoples of the Federation of Bosnia and Herzegovina were requested on 4 June 2021 to submit their replies to the request.

3. The Opinion of the Government of the Federation of Bosnia and Herzegovina was submitted to the Constitutional Court on 13 July 2021 and, again, on 30 July 2021.

III. Request

a) Allegations stated in the request

4. The applicant alleged that the contested law regulated salaries, compensations and other material rights based on work for all judicial office holders in the Federation of Bosnia and Herzegovina. At the same time, the contested law precluded a possibility to apply other law to compensations and salary allowances that were not prescribed by the contested law. The applicant further pointed to the content of Article 1 and Article 6c of the contested law providing for the compensations based on which salaries were increased, namely compensation for overtime work, work during non-working days, night work and work during state holidays. The applicant also referred to the content of the provision of Article 26 of the Collective Agreement for the employees

¹ In this part of the Decision, the Constitutional Court refers to the contested law as precisely stated by the applicant. In the remainder of the Decision, the contested law has been referred to stating the numbers of the issues of the official gazettes wherein the relevant decisions of the Constitutional Court of the Federation of Bosnia and Herzegovina have been published.

of the administration authorities and judicial authority in the Federation of Bosnia and Herzegovina (“the Collective Agreement”, published in the *Official Gazette of the Federation of Bosnia and Herzegovina*, 16/18).

5. The applicant alleged that the statement of claim concerned the regulation of compensation of salary for an entire segment of work, which was not recognized under the provisions of law and for which no special compensation was prescribed – on-call duty of the prosecutors. It also alleged that this concerned all judicial office holders at the level of the Federation of Bosnia and Herzegovina, judges and prosecutors alike, who, considering the nature and organization of work and operation of judicial institutions, have to perform on-call duty. On the other hand, for the personnel employed in the aforementioned institutions (civil servants and employees employed with prosecutor’s offices and courts) being also financed from the budget, such a compensation was prescribed under the Collective Agreement and was calculated and paid on a regular basis.

6. The applicant alleged that if the contested law applied when deciding on the plaintiffs’ claim there would be a risk of a violation of the constitutional rights of the parties to the proceedings, including other rights mentioned in this request. In this connection, the applicant referred to the Constitutional Court’s decisions wherein it had decided on the rights of the judges and prosecutors in relation to the provisions of the Law on Salaries of Judges and Prosecutors at the level of Bosnia and Herzegovina (Decision *U 7/12* of 30 January 2013). The applicant alleged that, in accordance with Article 14 of the European Convention, Article 1 of Protocol No. 12 to the European Convention and Article 26 of the International Covenant on Civil and Political Rights, it is prohibited to discriminate on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, that is to say that the right to equal treatment and equality before the law are guaranteed.

7. The applicant further alleged that the compensation that the plaintiffs sought in the lawsuits filed was defined by a special regulation and was paid to servants and employees employed with prosecutor’s offices and courts at the level of the Federation of Bosnia and Herzegovina, in the amount prescribed by internal bylaws. However, judicial offices holders, prosecutors specifically, were not entitled to such compensation for on-call duty. The applicant claimed that the described manner results in differentiation between judicial office holders on the one hand and civil servants and employees employed with the judicial institutions, as well as in other authorities, without a visible and justified reason.

8. The applicant further indicated that “there is no equality between on-call duties of prosecutors and on-call duties of employees in other areas and that on-call duties do not require continuous stay at a workplace”. However it was evident, likewise that the mentioned Collective Agreement identified the need to prescribe the compensation for on-call duty / standby, as the very nature of work required so. This results in an unacceptable situation where civil servants and employees were paid for standby, while judges and prosecutors were not entitled to a salary increase, namely the payment of the compensation on such grounds. In this connection, the applicant alleged that it would be necessary to assess whether the contested Law was compatible with the following international documents as mentioned: UN Basic Principles on the Independence of the Judiciary adopted in November 1995, Recommendation No. 94 (12) of the Committee of Ministers of the Council of Europe dated 13 October 1994, Conclusion under Item 4 of the multilateral meeting of the Council of Europe Member States on the guarantees of judicial independence, Budapest, May 1998, the European Charter on the Statute for Judges, Strasbourg 1998, and the Universal Charter of the Judge from Taipei (Taiwan), November 1999. According to these, the Constitutional Court had previously assessed the constitutionality of laws regulating salaries and compensations for judges and prosecutors.

b) Facts of the case in respect of which the request has been filed

9. The applicant alleged that in the case in respect of which the request was filed 16 prosecutors (the names are indicated in the request) had brought a lawsuit against the defendant Sarajevo Canton, Cantonal Prosecutor’s Office, represented by the General Attorney’s Office of the Sarajevo Canton, seeking the payment of the compensation for on-call hours. All plaintiffs are judicial offices holders – prosecutors of the Cantonal Prosecutor’s Office in Sarajevo, who, in accordance with the organization and work requirements, perform mandatory 24-hour on-call duty in addition to their regular duties. The lawsuit read that prosecutors performed during on-call duty regular prosecutorial duties outside regular working hours, and that they were not compensated for this type of work as the contested law did not provide for such a compensation. The plaintiffs referred in the lawsuit to analogous application of the provisions concerning overtime work, which again was not stipulated separately in the provisions of the contested law, nor were the necessary implementing acts passed, which would regulate the amount of the compensation for the accumulated overtime hours. The provisions of the Collective Agreement for the employees of the administration authorities and judicial authorities in the Federation of Bosnia and Herzegovina, which applied to all the civil servants and employees employed with the Cantonal Prosecutor’s

Office, as well as in other prosecutor's offices and courts in the territory of the Federation of Bosnia and Herzegovina, prescribed a compensation for standby, as well as a compensation for the time spent on standby for duty. This would equal standby during on-call duty, that prosecutors as well as judges were obliged to engage in, as judicial offices holders.

10. Evidence were submitted along with the lawsuit – certificates issued by the Cantonal Prosecutor's Office of the Sarajevo Canton, wherefrom it was possible to see the total number of days that the plaintiffs as judicial office holders and the prosecutors of the Cantonal Prosecutor's Office of the Sarajevo Canton had spent performing on-call duty and the Rulebook on Internal Organization of the Cantonal Prosecutor Office of the Sarajevo Canton, which regulate the on-call duty.

11. On 22 July 2021, the applicant submitted the Decision of the Supreme Court of the Federation of Bosnia and Herzegovina, no. 65 0 Rs 822256 21 Spp of 11 June 2021 to the Constitutional Court. The Supreme Court, having considered a request for resolving the disputed legal matter, pursuant to the provision of Article 61 (d) (1) and 61 (e) (1) of the Civil Procedure Code, decided that the work related to the on call-duty of the prosecutors as holders of judicial office did not have the character of overtime work.

c) Reply to the request

12. The Government of the Federation of Bosnia and Herzegovina submitted its Opinion wherein they alleged that the request was unfounded for the following reasons: the status from the aspect of labour rights of the civil servants in the Federation of Bosnia and Herzegovina, on the one hand, and judges and prosecutors of the Federation of Bosnia and Herzegovina, on the other hand, had already been the subject-matter of a decision of the Constitutional Court of the Federation of Bosnia and Herzegovina. In particular, the Judgment of the Constitutional Court of the Federation of Bosnia and Herzegovina, *no. U-28/11* of 24 January 2012, was consistently implemented in the Law Amending the Law on Salaries and Other Compensations of Judges and Prosecutors in the Federation of Bosnia and Herzegovina. The Government further alleged that the Collective Agreement was a written agreement between the workers, i.e. employees, which was articulated through the activity of the union, on the one side, and one or more employers, on the other side. The Government also alleged that the mentioned agreement regulated, for a determined period of time, different issues in the field of employment relations, and the mentioned agreement constituted the source of rights. However, the Collective Agreement was not a legal source of rights, i.e. its content

was neither defined nor adopted by a legislative body of the Federation of Bosnia and Herzegovina. Therefore, neither the arguments expressed in the request for review of compatibility, nor contesting of the provisions of the Law on Salaries and Other Compensations of Judges and Prosecutors in the Federation of Bosnia and Herzegovina itself were clear in the light of the Collective Agreement for the employees of the administration authorities and judicial authority in the Federation of Bosnia and Herzegovina (*Official Gazette of the Federation of BiH*, 16/18). This was particularly so for the reason that the possible granting of the request in question would result in the initiation of a number of new proceedings raising issues and contesting the law provisions before the Constitutional Court of Bosnia and Herzegovina by way of referring to the content of the employment rights defined in the relevant collective agreement. This would eventually cause immeasurable financial damage, legal uncertainty and bring into question the practice of conclusion of collective agreements in general.

IV. Relevant law

13. **The Law on Salaries and Other Compensations of Judges and Prosecutors in the Federation of Bosnia and Herzegovina** (*Official Gazette of the Federation of BiH*, 72/05, 22/09, 27/12 – Decision of the Constitutional Court of FBiH, 55/13 and 55/17 – Decision of the Constitutional Court)

Unofficial consolidated text drafted by the Constitutional Court will be used for the purpose of this Decision, reading as follows:

Article 6c.

Compensation for overtime work, work during non-working days, night work and work during state holidays

In the event of overtime work, work during non-working days, night work or work during state holidays, a judge, a prosecutor and a specialist associate shall be entitled to the compensation of a basic salary, proportionate to the duration of that work, increased by a percentage established under the Collective Agreement.

The amount of the compensation and conditions for receiving the compensation shall be established under the Act of the Government of the Federation of Bosnia and Herzegovina.

The compensation referred to in paragraph 1 of this Article shall be calculated on the basis of a basic salary without a part of the salary on the basis of the pension qualifying years. The compensation referred to in this Article makes up an integral part of the salary.

14. **The Collective Agreement for the Employees of the Administration Authorities and Judicial Authority in the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of BiH, 16/18)**, to which the applicant has referred, reads:

Article 26

The basic salary will be increased by:

- night work – minimum 25%*
- overtime work – minimum 25%*
- work during weekly days off – minimum 15%*
- work during holidays that are state holidays under the law – minimum 40%.*

An employee shall be entitled to compensation based on the time spent on standby work.

The amount and manner of use of this right will be regulated under the Labour Rulebook.

15. **The Branch Collective Agreement for the Employees of the Administration Authorities and Judicial Authorities in the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of BiH, 32/21)**, reads as follows:

Article 26

The basic salary will be increased by:

- night work – minimum 25%,*
- overtime work – minimum 25%,*
- work during weekly days off – minimum 15%,*
- work during holidays that are state holidays under the law – minimum 40%.*

An employee shall be entitled to compensation based on the time spent on standby work, and the amount and manner of use of this right will be regulated under Article 27 (2) of this Agreement or the Labour Rulebook.

V. Admissibility

16. In examining the admissibility of the request, the Constitutional Court has invoked the provisions of Article VI (3) (c) of the Constitution of Bosnia and Herzegovina.

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

c) The Constitutional Court shall have jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is compatible with this Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina; or concerning the existence of or the scope of a general rule of public international law pertinent to the court's decision.

18. The request for review of constitutionality was filed by the Municipal Court in Sarajevo (Judge Belma Čano-Sejfović), which means that the request was filed by an authorized person for the purposes of Article VI (3) (c) of the Constitution of Bosnia and Herzegovina, (see Constitutional Court, Decision on Admissibility and Merits, *no. U-5/10* of 26 November 2010, paragraphs 7-14, published in the *Official Gazette of Bosnia and Herzegovina*, 37/11). In view of the provisions of Article VI (3) (c) of the Constitution of Bosnia and Herzegovina and Article 19 (1) of the Rules of the Constitutional Court, the Constitutional Court concludes that the request is admissible as it has been filed by an authorized person and there is not a single formal requirement under Article 19 (1) of the Rules of the Constitutional Court which would render the request inadmissible.

VI. Merits

19. In the present case, the applicant claims that the contested law is not compatible with Articles I (2) and II (4) of the Constitution of Bosnia and Herzegovina, in conjunction with Article 14 of the European Convention, Article 1 of Protocol No. 12 to the European Convention and Article 26 of the International Covenant on Civil and Political Rights. The Constitutional Court will examine the applicant's allegations in this regard.

20. The Constitution of Bosnia and Herzegovina, so far as relevant, reads as follows:

Article I

Bosnia and Herzegovina

2. Democratic Principles

Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections.

Article II

Human Rights and Fundamental Freedoms

4. Non-Discrimination

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

21. Article 14 of the European Convention reads as follows:

Prohibition of discrimination

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

22. Article 1 of Protocol No. 12 to the European Convention reads as follows:

General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

23. The International Covenant on Civil and Political Rights, of 16 December 1966, insofar as relevant, reads:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

24. Before considering the present request, the Constitutional Court indicates that the Decision of the Constitutional Court of the Federation of Bosnia and Herzegovina, *U-28/11* of 24 January 2012, resulted in the adoption of the Law Amending the Law on Salaries and Other Compensations of Judges and Prosecutors in the Federation of Bosnia and Herzegovina, published on 17 July 2013. In the mentioned decision, the Constitutional Court of the Federation of Bosnia and Herzegovina ordered the Parliament of the Federation of Bosnia and Herzegovina to amend the law and regulate the rights of the judges, prosecutors and judicial associates to: meal allowance, compensation for the transportation costs from and to the workplace; compensation for overtime work, work during weekly days off, night work, work during state holidays, compensation on the grounds of illness or injury, compensation for the expenses in the event of death, serious illness or disability, maternity leave, retirement allowance, just like other budgetary beneficiaries are entitled thereto. In the same judgment, the Constitutional Court of the Federation dismissed the part of the request for compensation for family separation allowance, compensation for moving costs and jubilee award allowance. Taking into account the Government's Opinion that "the status from the aspect of labour rights of the civil servants in the Federation of Bosnia and Herzegovina, on the one hand, and judges and prosecutors in the Federation of Bosnia and Herzegovina, on the other hand, had already been the subject-matter of a decision of the Constitutional Court of the Federation of Bosnia and Herzegovina" and that the decision *U-28/11* of 24 January 2012 was consistently implemented, the Constitutional Court indicates primarily that in this Decision it will in no way "review" the decision of the Constitutional Court of the Federation of Bosnia and Herzegovina. The Constitutional Court already expressed the view in its case law under the appellate jurisdiction that it did not have jurisdiction in the appellate proceedings to consider a decision of the Constitutional Court of the Federation of Bosnia and Herzegovina that was taken under the scope of abstract jurisdiction. However, in the proceedings conducted upon the appeal *AP 2985/19*, the Constitutional Court took a decision, on 8 July 2021 (available at: www.ustavnisud.ba), wherein it noted (paragraph 49 *et*

seq.) that it could not disregard its own case law, wherein it had found that certain provisions of the law were contrary to the Constitution of Bosnia and Herzegovina and the European Convention. In the mentioned case, the Constitutional Court found a violation of Article I (2) of the Constitution of Bosnia and Herzegovina, Article II (4) of the Constitution of Bosnia and Herzegovina and Article 14 of the European Convention, Article 1 of Protocol No. 12 to the European Convention, as well as Article 26 of the International Covenant on Civil and Political Rights; it quashed the judgment of the Cantonal Court in Novi Travnik (the number specified in the decision) in the part deciding on the compensation for family separation and accommodation allowance (this part of the appellant's request was dismissed) and referred the case back to the competent court for a new decision. The Constitutional Court indicates that the Constitutional Court of the Federation of Bosnia and Herzegovina, in the Decision *U-28/11*, did not decide on the right to the compensation for mandatory on-call duty of judges and prosecutors (although this was sought in the request, Decision of the Constitutional Court *U-28/11*, after paragraph 5 of the Decision). The Constitutional Court is therefore obliged under its jurisdiction to examine this allegation stated in the request.

25. Before considering the present request, the Constitutional Court refers to its earlier decisions, wherein it considered a request for the review of compatibility of the Law on Salaries and Compensations in the Judicial and Prosecutorial Institutions at the Level of Bosnia and Herzegovina in the Decision no. *U 7/12* (see Constitutional Court, Decision on Admissibility and Merits, no. *U 7/12* of 30 January 2013, published in the *Official Gazette of Bosnia and Herzegovina*, 17/13). The Constitutional Court established in the mentioned decision that the challenged law was incompatible with the provisions of Article I (2) of the Constitution of Bosnia and Herzegovina and the provisions of Article II (4) of the Constitution of Bosnia and Herzegovina, in conjunction with Article 14 of the European Convention, Article 1 of Protocol No. 12 to the European Convention, as well as Article 26 of the International Covenant on Civil and Political Rights, as it did not contain provisions in relation to the compensation for travel expenses, meal allowance and family separation allowance.

26. The Constitutional Court also considered a request for the review of compatibility of the Law on Salaries and other Compensations in the Judicial and Prosecutorial Institutions at the Level of Bosnia and Herzegovina in its Decision no. *U 29/13* (see Constitutional Court, Decision on Admissibility and Merits, no. *U 29/13* of 28 March 2014, published in the *Official Gazette of Bosnia and Herzegovina*, 40/14). The Constitutional Court established in the cited decision that the contested law was incompatible with the provisions of Article I (2) of the Constitution of Bosnia

and Herzegovina and the provisions of Article II (4) of the Constitution of Bosnia and Herzegovina, in conjunction with Article 14 of the European Convention, Article 1 of Protocol No. 12 to the European Convention, as well as Article 26 of the International Covenant on Civil and Political Rights, as it did not contain the provisions on reimbursement of accommodation expenses incurred in the performance of duties and responsibilities. However, in the same decision the Constitutional Court found that the contested law was compatible with the mentioned provisions of the Constitution of Bosnia and Herzegovina, European Convention and its Protocols and International Covenant on Civil and Political Rights, despite the fact that it did not contain the provisions on reimbursement of allowance for special work conditions for certain categories of employees of the Prosecutor's Office of Bosnia and Herzegovina (specialist associates investigators and specialist associates jurists).

27. In both cases, the Constitutional Court based the conclusion that the principle of judicial independence and the principle of prohibition of discrimination had been violated on the fact that the Law on Salaries and Other Compensations in the Judicial and Prosecutorial Institutions at the Level of Bosnia and Herzegovina did not contain the provisions regulating the right to specific allowances based on work (meal allowance, transportation allowance, family separation allowance, compensation for accommodation expenses). Thus, those situations were the same as the situation alleged in the present request, wherein the applicant claims that the contested law does not provide for such a right (the right to compensation for mandatory on-call duty), thereby giving rise to the question as to whether the prosecutors and judges have equal treatment before the law and whether the institutional independence of judiciary was brought into question.

28. The Constitutional Court has pointed in decisions nos. *U 7/12* and *U 29/13* to the necessity to ensure the independence of the courts, meaning the independence of the courts as institutions and independence of each and every individual judge. The Constitutional Court refers to the reasoning provided in the decision no. *U 29/13*, paragraph 26.

29. The Constitutional Court also refers to its conclusion expressed in the decision no. *U 29/13*, paragraph 27, wherein it first referred to the decision no. *U 7/12*, which read as follows: " In this part, too, the Constitutional Court points out the reasoning given in the Decision U-7/12 as follows: The Constitutional Court notes that the judges, prosecutors and other professional staff of the Court of BiH are the category of employees in the territory of Bosnia and Herzegovina which, compared to the employees of the legislative branch and the executive branch, including elected officials, civil servants and employees entitled to reimbursement of travel expenses, meal allowance and family

separation allowance, is not entitled to the aforementioned compensations. At the level of Bosnia and Herzegovina, these compensations are regulated by the Law on Salaries and other Compensations in the Institutions of Bosnia and Herzegovina (the *Official Gazette of BiH* nos. 50/08, 35/09, 75/09, 32/12, 42/12 and 50/12). The Constitutional Court highlights the specificity and social relevance of the categories mentioned in the challenged law for a state based on democratic principles. The legislature needs to bear in mind that their independent position cannot be compared with any other category. The Constitutional Court recalls the Magna Charta of Judges obliging a state to ensure the human, material and financial resources necessary to the proper operation of the justice system. The Constitutional Court cannot find a justification in the challenged law for differential treatment with regard to the structure of earnings of the beneficiaries of the state budget, particularly taking into account that the judiciary is a specific category among all budget beneficiaries and that the challenged law was adopted seven years ago and has never been amended or updated in terms of economic and financial trends within the country. Therefore, the Constitutional Court holds that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized by adopting the challenged Law. Moreover, it may be concluded that a failure to provide for these compensations for this category of budget beneficiaries by the challenged Law, amounts to discrimination as it violates the constitutional principle of equality under provision of Article II(4) of the Constitution of BiH.“ Thus, as in the cited decision *U 7/12*, the Constitutional Court concluded in the decision no. *U 29/13* that the contested law was discriminatory for failing to stipulate the right to the compensation for accommodation costs during the work of the judges and prosecutors and other professional staff employed with these institutions.

30. Turning to the instant case, the question arises as to whether the provisions of the contested law are compatible with the provisions of the Constitution of Bosnia and Herzegovina and the European Convention, given the fact that they do not stipulate the compensation for an entire segment of work - mandatory on-call duty of prosecutors. Given the allegations stated in the request, it is up to the Constitutional Court to examine whether the contested law is compatible with the mentioned rights.

31. In this case, identically as in the earlier cases resolved in the cited decisions *nos. U 7/12* and *U 29/13*, based on the reasoning mentioned above, the Constitutional Court reached identical conclusion. In particular, it is indisputable that the prosecutor's office has established “permanent standby service”, in addition to the regular working hours, involving the participation of all

prosecutors of the prosecutor's office, except the Chief Prosecutor (with a possibility for certain exceptions) in order to ensure continuous work of the Prosecutor's Office for 24 hours a day and during holidays and other non-working days. Also, it is indisputable that the prosecutor on standby shall undertake all actions and measures with a view to exercising rights and obligations that a prosecutor has in accordance with the provisions of the Criminal Procedure Code.

32. It is reiterated that the applicant alleged that the issue of equal treatment of judges and prosecutors before the law arose and that the failure to define, regulate and prescribe the compensation for standby and on-call duty brought into question the institutional independence of the judiciary.

33. Given all the circumstances, starting from the need for the courts and prosecutors' offices to be independent, that one of the safeguards of the independent judiciary is the financial position and that concerning the prosecutors a need was recognised for appropriate compensations to be ensured in accordance with the importance of the tasks they perform, the Constitutional Court holds that there is a justified need to valorise on-call or standby duty of the prosecutors (and judges), i.e. to ensure a compensation for it, the amount of which should be specified by the relevant authority. All the more so in a situation where it is obvious, just like in the above-mentioned decisions *U 7/12* and *U 29/13*, that such a compensation is stipulated in other areas and that there is a circle of persons who have a recognized right to compensation for on-call duty or standby. Thus, the Constitutional Court observes that, by referring to Article 138 (3) of the Labour Law, the Government of the Federation of Bosnia and Herzegovina, as employer, on the one hand, and the Union of Civil Servants and Employees of the Civil Service Authorities, Judicial Authorities and Public Institutions in the Federation of Bosnia and Herzegovina, as a representation union, i.e. the representative of civil servants and employees employed with the civil service authorities, judicial authorities and public institutions in the Federation of Bosnia and Herzegovina, on the other hand, concluded a Collective Agreement (Branch Collective Agreement at a later point). By means of this Agreement, the civil servants and other persons concerned with this are recognised the right to compensation for standby duty (which has been pointed out by the applicant), which, however, has made an unjustified distinction between prosecutorial and judicial positions, on the one hand, and other beneficiaries of the budget, on the other. To make the situation even more absurd, the prosecutors and judges do not have the right to such a compensation, whereas the persons assisting them have that compensation. Also, the Labour Law (*Official Gazette of the Federation of Bosnia and Herzegovina*, 26/16, 89/18, 23/20 – Decision of the Constitutional Court of F BiH and 31/20 –

Decision of the Constitutional Court of F BiH) clearly defines the notion of working hours (the contested law does not stipulate a different definition, so that Article 7 of the contested law, under the heading “Working Hours”, stipulates the number of hours and correction of the right in the case of the part-time working hours). Article 35 of the Labour Law stipulates as follows: “1) Working hours shall be a period of time in which an employee, based on labour contract, is obliged to perform tasks for the employer. (2) Working hours shall not be a period of time in which an employee is on stand-by to report for duty, in case of such a need. (3) Stand-by period to report for duty and the amount of the compensation for the time spent in stand-by shall be governed by a collective agreement, Labour Rulebook, and labour contract.” Thus, the legislator did recognize the need for the standby duty to be part of the working hours and valorised, as it appears, for everyone except judges and prosecutors, whereby the Constitutional Court will not deal with the manner (modalities) of the compensation for the performance of on-call or standby duty.

34. In the present case, just like in its previous decisions, the Constitutional Court wishes to point out that it respects the legislator’s discretion to regulate certain areas, as it deems most appropriate. In this respect, the Constitutional Court indicated in its Decision *no. U 12/09* that it respected the particularities of the constitutional order of Bosnia and Herzegovina but that, however, the common constitutional standards of complex states – especially at the European level – had to be taken into account, while departures may only occur when there was sufficient justification (see Constitutional Court, Decision *no. U 12/09* of 28 May 2010, paragraph 34). However, the Constitutional Court reiterates that the wages of the judicial office holders must be at an adequate level in order to ensure the efficiency and independence of the judiciary, notably if one takes into account the work itself and functioning of the prosecutor’s offices and courts. In view of the aforementioned, by referring to the same reasons provided in the quoted decisions nos. *U 7/12* and *U 29/13*, the Constitutional Court concludes that the contested law violates the principle of the independence of the judiciary as the main safeguard of the rule of law and is discriminatory for not stipulating the right to compensation for the costs of the mandatory on-call/standby duty of the prosecutors and judges.

35. In view of the aforementioned, the Constitutional Court concludes that the contested law is not compatible with the provisions of Article I (2) of the Constitution of Bosnia and Herzegovina for not containing the provisions with respect to the compensation for mandatory on-call/standby duty of judges and prosecutors, violating thus the principle of independence of the judiciary as the basic safeguard of the rule of law. In addition, the contested law is not compatible with the

provisions of Article II (4) of the Constitution of Bosnia and Herzegovina, in conjunction with Article 14 of the European Convention, Article 1 of Protocol No. 12 to the European Convention and Article 26 of the International Covenant on Civil and Political Rights for not stipulating the aforementioned.

VII. Conclusion

36. The Constitutional Court concludes that the contested law is not compatible with the provisions of Article I (2) of the Constitution of Bosnia and Herzegovina and the provisions of Article II (4) of the Constitution of Bosnia and Herzegovina, in conjunction with Article 14 of the European Convention, Article 1 of Protocol No. 12 to the European Convention and Article 26 of the International Covenant on Civil and Political Rights for not containing the provisions with respect to the compensation for mandatory on-call or standby duty.

37. Having regard to Article 59 (1) and (2) and Article 61 (4) of the Rules of the Constitutional Court, the Constitutional Court decided as stated in the operative part of this decision.

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