

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

Mr. Zlatko M. Knežević, President

Mr. Mato Tadić, Vice-President

Mr. Mirsad Ćeman, Vice-President

Mr. Tudor Pantiru,

Ms. Valerija Galić,

Mr. Miodrag Simović,

Ms. Seada Palavrić,

Ms. Angelika Nußberger, and

Ms. Helen Keller

Having deliberated on the request filed by the seven delegates of the Council of Peoples of the Republika Srpska, in the Case no. **U 14/20**, at its session held on 26 March 2021, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

In deciding the request filed by seven delegates of the Council of Peoples of the Republika Srpska for review of the constitutionality of the provisions of Article 15 subparagraph 16 and Article 31 of the **Law on Republic Administration** (*Official Gazette of Republika Srpska*, 115/18),

it is hereby established that the provisions of Article 15 subparagraph 16 and Article 31 of the Law on Republic Administration (*Official Gazette of Republika Srpska*, 115/18) are in conformity with Articles I(1), I(2), I(7)(e), III(1)(a), III(2)(b), III(3)(b) and V(3)(a), (c) and (d) of the Constitution of Bosnia and Herzegovina.

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

REASONING

I. Introduction

1. On 11 December 2020, seven delegates of the Council of Peoples of the Republika Srpska (“the applicants”) filed a request with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) for review of the constitutionality of the provisions of 15 subparagraph 16 and Article 31 of the Law on Republic Administration (*Official Gazette of Republika Srpska*, 115/18; “the challenged provisions”).

II. Procedure before the Constitutional Court

2. Pursuant to Article 23 (2) of the Rules of the Constitutional Court, on 22 December 2020 the National Assembly of Republika Srpska (“the National Assembly”) was requested to submit its response to the request.

3. In its submission of 18 January 2021, the National Assembly requested to be given additional time to submit a response to the request, and it submitted the response on 17 February 2021.

III. Request

a) Allegations stated in the request

4. The applicants hold that the challenged provisions of the Law on Republic Administration are not in conformity with Articles I(1), I(2), I(7)(e), III(1)(a), III(2)(b), III(3)(b) and V(3)(a), (c) and (d) of the Constitution of Bosnia and Herzegovina, which prescribe the responsibilities of the Institutions of Bosnia and Herzegovina, given that in that way the entity law regulates the issue that falls within the responsibility of the Institutions of Bosnia and Herzegovina. The essence of the extensive allegations in the submitted request shows that the applicants consider that the constitutional and substantive responsibilities of the Institutions of Bosnia and Herzegovina in relation to foreign policy, especially in relation to the name of the Ministry of European Integration and International Cooperation (“the Ministry”) have been blatantly taken away by the challenged provisions of the Law on Republic Administration, as well as in relation to the responsibilities assigned to it, especially in relation to emigration and *coordination of cooperation with other*

bodies in BiH, as well as institutions, bodies and authorities of the EU, its member states, candidate states and potential candidates in the process of association and accession to the EU. The applicants hold that the challenged provisions, in addition to depriving the Institutions of BiH of their responsibilities, also aim at introducing legal uncertainty into the entire legal system of BiH, thereby undermining the international legal personality and sovereignty of BiH.

5. The applicants assert that the provisions of the Constitution of Bosnia and Herzegovina confer on the State of BiH and its Institutions the exclusive responsibility to regulate the issue of conducting foreign policy. Therefore, only the state institutions, in cooperation and coordination with the Entities and their assistance as necessary in that context, can lead the State of BiH to equal membership in international bodies and organizations, and above all to membership in the European Union (“the EU”).

6. As to the name of the Ministry, as defined by the challenged provisions, the applicants point out that the name is *essentially contrary to the provisions of the Constitution of BiH*, for it implies that the Entity Ministry is responsible for European integration and international cooperation, which is the exclusive responsibility of the State of BiH. The applicants consider that *the legislator is obviously intent on showing through the name of the mentioned Ministry that the Republika Srpska is independent of BiH in the process of European integration*, which is absolutely in contravention of the Constitution of BiH and decisions of the BiH Institutions.

7. As to the responsibilities of the Ministry, the applicants first point out that foreign policy is one of the essential elements of the international legal personality and sovereignty of Bosnia and Herzegovina, which is reflected in: a) membership in the United Nations; b) membership in the Council of Europe and c) the intention of Bosnia and Herzegovina to become part of the EU, as a separate community of states. In that context, the applicants cite a number of laws and strategic documents adopted at the level of BiH which operationalize the field of foreign policy of Bosnia and Herzegovina. The applicants state that according to these laws and strategic documents, it is indisputable that the Presidency of Bosnia and Herzegovina has exclusive responsibility for conducting foreign policy and representing Bosnia and Herzegovina in international and European organizations and institutions. Therefore, the lower levels of government, specifically the Entities, can in no way deal with foreign policy issues in the way defined by the challenged provisions. In support of their claims, the applicants refer to the Decisions of the Constitutional Court nos. U-5/98 and U-68/02, pointing out that the Constitutional Court concluded therein that foreign policy and foreign trade policy under Article III(1)(a) and (b) of the Constitution of BiH *are essentially a prerogative of the Institutions of Bosnia and Herzegovina*, and that the Entities are subordinate to

the sovereignty of Bosnia and Herzegovina, *i.e.* that *the autonomous status of the Entities is conditioned by hierarchically superior responsibilities of the State.*

8. As to the strategic goals of BiH to become a full member of the EU, the applicants point out that Bosnia and Herzegovina has signed a Stabilization and Association Agreement with the EU Member States (“the SAA”), and that joint bodies of Bosnia and Herzegovina and the EU have been established to supervise the application and implementation of the SAA. In addition, they point to the Decision on the System of Coordination in the Process of European Integration in BiH (*Official Gazette of BiH*, 72/16; “the Decision on Coordination”), which defines *the institutional and operational system and method of achieving the coordination of BiH Institutions on the implementation of activities related to the process of BiH’s accession into the European Union, as well as joint bodies within the coordination system, their structure, responsibilities and relationships.* According to Article 2 of the Decision, *The system of coordination shall also regulate the manner of communication between the Institutions in Bosnia and Herzegovina, with the aim of ensuring and presenting a harmonized position, on behalf of Bosnia and Herzegovina, in communication with the Institutions of the European Union.* In this connection, the applicants point to the decisions of the Constitutional Court nos. U-9/07 and 17/09 according to which the process of BiH’s accession to European integration is *an integral part of foreign policy of Bosnia and Herzegovina, which falls within the exclusive responsibility of the state institutions, i.e.* that the issue of *Bosnia and Herzegovina’s membership in the European Union is certainly a matter related to the foreign policy of our country and that we have already committed ourselves to certain obligations in this respect by signing the SAA.*

9. In the remainder of the request, the applicants describe the chronology of the activities of the RS National Assembly, which practically deprive the Institutions of BiH of their responsibilities in the field of foreign policy in the process of accession to European integration. These activities, as further stated, have been going on since 2008. Until that time, the Law on Ministries, which prescribed the coordinating role of the Ministry of Economic Relations and Coordination, with respect for the Constitution and laws of BiH and the necessary cooperation with BiH Institutions in the field of international cooperation and European integration, was in effect. In this connection, the applicants state that the Law on Ministries contained provisions stipulating that relations between higher and lower level civil service bodies and RS administration bodies were arranged by the Constitution of Bosnia and Herzegovina; that the Ministries of the Republika Srpska would cooperate with the same or similar Ministries of Bosnia and Herzegovina and international institutions in accordance with the Constitution of Bosnia and Herzegovina, and would provide

notifications, information and data from the scope of their activities to the competent authorities of Bosnia and Herzegovina. They underline that the aforementioned Law took into account the fact of vertical subordination between *higher and lower level state and republic administration bodies*, as well as that any kind of cooperation of Entity administration bodies with BiH administrative bodies and international institutions took place in accordance with the Constitution of BiH.

10. The applicants also assert that after rendering effective the Law on Republic Administration (*Official Gazette of the Republika Srpska*, 118/08, 11/09, 74/10, 86/10, 24/12, 121/12, 15/16, 57/16 and 31/18) in 2008, the Ministry of Economic Relations and Coordination ceased operations and its activities were taken over by the Ministry of Economic Relations and Regional Cooperation. The aforementioned Law already did not contain provisions governing the relations and cooperation of the administrative bodies of the Republika Srpska with the institutions and administrative bodies of Bosnia and Herzegovina. The applicants mention a number of examples which, in their opinion, in the period between the expiration of the previous Law and the formation of the Ministry of Economic Relations and Regional Cooperation, implied the Entity as a contracting party to the SAA, and a subject in the process of negotiations with the EU. Namely, the applicants contend that the responsibility of that Ministry, *inter alia*, was *...to monitor the implementation of the SAA [...], coordination of activities related to the fulfilment of the Ministry's obligations arising from the Stabilization and Association Process [...], coordination of the activities of the representatives of the Republic in the BiH-EU joint bodies, which are established based on the SAA, and monitoring of their work [...], coordination of cooperation with other bodies in BiH, as well as institutions, bodies and authorities of the EU, its member states, candidate states and potential candidates in the process of association and accession to the EU [...]*.

11. In addition, the applicants state that in 2018, the challenged Law on Republic Administration was rendered effective, which entrusted the tasks of the former Ministry of Economic Relations and Regional Cooperation to the new Ministry, assigning it *the responsibility in foreign policy and international relations*. Furthermore, the applicants contend that the challenged Law, as well as the previous one, does not contain provisions governing the cooperation of the administrative bodies of the Entity with the Institutions of BiH. This fact, in the applicants' opinion, indicates *the intention of the legislator to create conditions through the name of the Entity institutions, which not only deprive the State of BiH of its responsibilities in the field of foreign policy, but also tries to establish the international legal personality of the Entity, primarily in the field of foreign policy*. According to the applicants, the challenged provisions imply that *the Entity cooperates on an equal footing with other bodies in BiH, but also with institutions and bodies outside BiH*.

12. Furthermore, the applicants elaborate in detail on the constitutional provisions, which prescribe the responsibilities of the Institutions of Bosnia and Herzegovina in foreign policy, and the reasons why they consider that the challenged provisions are contrary to those constitutional provisions. As to the right referred to in Article I(1) of the Constitution of BiH, the applicants contend that the challenged provisions *seek to give the right to continuity and international legal personality of BiH to the Republika Srpska entity, since the Ministry is trying to impose itself as a subject of law*. In that context, the applicants indicate only some of the responsibilities assigned to the Ministry by the challenged provisions, such as *coordination of Republic administrative bodies regarding the development and monitoring of the implementation of measures envisaged by the UN Development Assistance Framework, through participation in the work of joint working bodies; cooperation with the UN specialized agencies; giving an opinion on UN acts; giving an opinion on the participation and coordination of the participation of Republic administrative bodies in UN projects in BiH; coordination of Republic administrative bodies in the field of implementation of post-accession obligations of BiH arising from membership in the Council of Europe and cooperation with the bodies of the Council of Europe; and giving an opinion on acts of the Council of Europe*.

13. In addition, the applicants hold that the challenged provisions are in violation of the principle of the rule of law under Article I(2) of the Constitution of BiH, *which is a system of political power based on respect for the constitution, laws and other regulations and the requirement that all constitutions, laws and other regulations enacted must be harmonized with constitutional principles*. The applicants emphasize that the RS National Assembly, by adopting the challenged provisions of the Law on Republic Administration, *disregarded its obligation to comply with the Constitution and other laws of BiH*, since, as already mentioned, the issue of foreign policy falls within the exclusive responsibility of Bosnia and Herzegovina, *i.e. the Presidency of Bosnia and Herzegovina*.

14. The applicants also point to a violation of the provision of Article I(7)(e) of the Constitution of BiH, the essence of which is the protection of the citizens of BiH abroad. Namely, according to the applicants, *the protection of BiH citizens who are abroad, is achieved with the support of BiH Institutions*, and Bosnia and Herzegovina has regulated the implementation of the constitutional obligation by laws adopted by the Parliamentary Assembly of Bosnia and Herzegovina. In addition, there are two ministries at the level of BiH Institutions, namely the Ministry of Human Rights and Refugees and the Ministry of Foreign Affairs, dealing with the issue of emigration. In this connection, the applicants point to the decision of the Constitutional Court no. U-9/11, where it is

highlighted *that it is the interest of Bosnia and Herzegovina to keep the bond with its citizens to whom it is the state of the so-called “parent or original” citizenship.*

15. As to the constitutional provisions of Articles III(1)(a), III(2)(b), III(3)(b) and V(3)(a), (c) and (d) of the Constitution of BiH, the applicants particularly point out that accession negotiations and treaties with international organizations, even at the accession phase, can be conducted only by BiH as a state, but not by lower levels of government. In addition, the applicants assert that the Entities have a constitutional obligation to provide all necessary assistance to the Institutions of Bosnia and Herzegovina in accordance with Article III(2)(b) of the Constitution of Bosnia and Herzegovina, but not to act independently, and that the Entities, as well as other levels of government in Bosnia and Herzegovina, enjoy their constitutional autonomy, but their autonomy is subject to their obligation to comply fully with the Constitution and the decisions of the Institutions of Bosnia and Herzegovina. Membership in international organizations, reporting to international organizations, concluding international agreements as well as protection and assistance to BiH citizens abroad are the exclusive responsibility of the Institutions of Bosnia and Herzegovina. According to the applicants, the challenged provisions *disregarded these constitutional principles and deprived the Institutions of Bosnia and Herzegovina of their responsibility in the field of European integration as a part of foreign policy.*

16. Based on all the above, the applicants proposed that the request for review of the constitutionality be granted and that the challenged provisions of the Law on Republic Administration be found not in conformity with Articles I(1), I(2), I(7)(e), III(1)(a), III(2)(b), III(3)(b) and V(3)(a), (c) and (d) of the Constitution of BiH.

b) Reply to the request

17. In response to the request, the RS National Assembly first disputes the applicants' standing to sue, pointing out that part of the Bosniak Caucus in the Council of Peoples of the RS National Assembly does not have a procedural possibility provided for by the Constitution of Bosnia and Herzegovina to submit a request for review of constitutionality under Article VI(3)(a) of the Constitution of Bosnia and Herzegovina. The aforementioned is explained by the fact that the Council of Peoples of the RS National Assembly is not a “house” within the RS National Assembly, which is a unicameral body, nor is it a “legislative body”, but a “special body for the protection of vital national interest”.

18. In addition, as to the applicants' allegations that the authorities of the Republika Srpska *do not perceive the protection of constitutionality as a positive obligation*, the RS National Assembly

states that the situation is exactly the opposite, and that the applicants *have a continuous tendency to abolish the responsibilities of the Entities provided by the Constitution of BiH, namely by Article III(1), in order to change the division of responsibilities within BiH, which amounts to a direct violation of constitutionality.* Such ways of changing the division of responsibilities within Bosnia and Herzegovina, *especially through practice or judicial interpretation, create a real danger of disrupting the balance established by the Constitution.* Furthermore, the RS National Assembly points out that the applicants' allegations about the unconstitutionality of the challenged provisions are completely unfounded. Namely, the RS National Assembly first states that it is indisputable that foreign policy falls within the responsibility of state institutions, *i.e. the Presidency of Bosnia and Herzegovina.* However, at the same time the RS National Assembly points out that *the applicants lose sight of the fact that Article III(2) of the Constitution of BiH defines the responsibility of the Entities to enter into agreements with states and international organizations and Article 68 subparagraph 15 of the Constitution of Republika Srpska [...] which defines that the Republika Srpska regulates and ensures international cooperation, except for that which has been transferred to the Institutions of Bosnia and Herzegovina.*

19. The RS National Assembly also considers *that in the present case it is very important to give a precise definition of terms, for, as they point out, foreign policy and international cooperation are not only dissimilar concepts, but also, both doctrinally and in practice, fall into two completely different categories.* As the RS National Assembly states, *foreign affairs include relations between states as subjects of international public law, and those affairs are within the responsibility of the State of Bosnia and Herzegovina, i.e. the Presidency of Bosnia and Herzegovina and the Ministry of Foreign Affairs of Bosnia and Herzegovina.* On the other hand, international cooperation ought to be understood *outside the context of foreign policy, as it represents cooperation without interfering in foreign affairs, which is confirmed by the provisions of the Constitution of BiH and the Constitution of the Republika Srpska.* Therefore, as the RS National Assembly points out, international cooperation can be developed by non-governmental organizations, economic entities, local self-government units, administrative and autonomous administrative levels of a state as well as of the state itself. Therefore, according to both the Constitution of Bosnia and Herzegovina and *all contemporary understandings of a democratic state and the principles of constitutionality and legality, and especially in accordance with the European Charter of Local Self-Government,* Republika Srpska has the right to develop international cooperation.

20. In addition, as to the allegations about the unconstitutionality of the challenged provisions in relation to Article I(1) of the Constitution of Bosnia and Herzegovina, the RS National Assembly considers that the applicants' assertions are completely wrong, as the challenged provisions in no way violate the continuity and identity of the State of Bosnia and Herzegovina. Namely, it is incorrect that the Republika Srpska wants to acquire *certain legal capacities* by the challenged provisions, as emphasized by the applicants. Actually, *based on all provisions of the Constitution of BiH (as a whole), but also in accordance with international documents that are relevant to these legal issues, it has a basis for achieving international cooperation*. In this connection, the RS National Assembly underlines that the Republika Srpska has the right to enter into international relations at the regional level and to maintain international cooperation, not only because the Constitution of Bosnia and Herzegovina does not prohibit it, but also because it has a constitutional basis in Articles III(1) and III(3)(a) of the Constitution of Bosnia and Herzegovina. Furthermore, the RS National Assembly states that the Republika Srpska has *an international legal personality of a special nature* based on Article III(2)(a), according to which the Entities have the right to establish special parallel relationships with neighbouring countries and based on Article III(2)(d), according to which each Entity may enter into agreements with states and international organizations. In addition, the RS National Assembly reasons that there is the Congress of Local and Regional Authorities of the Council of Europe, which is *an example par excellence of international cooperation at the regional level, and of an institutional nature*. In view of the above, the RS National Assembly holds that the challenged provisions and actions of the Ministry are in accordance with the above constitutional provisions and the international system established at the level of the Council of Europe, and *especially with the obligations assumed by BiH when concluding [SAA]*.

21. The RS National Assembly also considers that the applicants erroneously hold that the challenged provisions are unconstitutional, viewing it in the context of legal regulations that preceded the Law on Republic Administration, as well as that the challenged provisions aim at depriving Bosnia and Herzegovina of its responsibilities in the field of European integration. First, the RS National Assembly points out that the responsibilities have remained the same as before (as to coordination, *etc.*), and that the competent ministry was given a new name because it was reorganized, *i.e.* the department that is currently part of another ministry was singled out. The change of name *is not motivated by the tendency to take away responsibilities, but by completely different, practical reasons*. In addition, the RS National Assembly states that the challenged provision of Article 31 of the Law on Republic Administration prescribes the responsibility in

performing coordination tasks in the work of republic institutions and fulfilling the obligations arising from the process of European integration. Therefore, as the RS National Assembly states, the prescribed responsibilities of the Ministry do not encroach on the responsibility of the Directorate for European Integration (“the Directorate”), nor are they in conflict with it. On the contrary, the RS National Assembly points out that, in order to achieve a unified position of all levels of government in the field of European integration and international cooperation, the system of coordination of the European integration process was harmonized in 2016, respecting the constitutional structure and responsibilities of all levels of government in Bosnia and Herzegovina. In addition, the RS National Assembly states that the Decision on Coordination, referred to by the applicants, obligates the Republika Srpska *to work in the process in that way*. Accordingly, representatives of the Republika Srpska take part in delegations within committees, subcommittees and other bodies established under the SAA. Therefore, the RS National Assembly holds that the applicants’ allegation that *the challenged provisions call into question the joint bodies of the Institutions of BiH [...], which were formed in order for BiH to meet all the conditions and join the [EU], is not clear. On the contrary, the joint bodies formed to coordinate the activities related to meeting the conditions for EU accession ‘have successfully implemented the activity of drafting answers to the European Commission Questionnaire and are currently actively working on the development of the Program for the Integration of BiH into the EU’, and the [Ministry] directly cooperates with the Directorate and coordinates the members [of joint bodies] from the Republika Srpska.*

22. Therefore, according to the RS National Assembly, the Republika Srpska assists the Institutions at the level of Bosnia and Herzegovina, *for the obligations arising from European integration, in terms of percentage, mostly obligate the Entities*. In addition, RS National Assembly states that similar bodies exist in the Federation of BiH (Office of the Government of the Federation of BiH for European Integration) and in the Brčko District of BiH (Department for European Integration and International Cooperation). In view of the above, the RS National Assembly holds that neither the name of the Ministry nor its responsibilities violate the sovereignty of the constitutional responsibilities of Bosnia and Herzegovina, but, on the contrary, confirm them. Consequently, the RS National Assembly proposed that the Constitutional Court dismiss the request as a whole.

IV. Relevant Law

1 The Constitution of Bosnia and Herzegovina

*Article I**Bosnia and Herzegovina***1. Continuation**

The Republic of Bosnia and Herzegovina, the official name of which shall henceforth be "Bosnia and Herzegovina," shall continue its legal existence under international law as a state, with its internal structure modified as provided herein and with its present internationally recognized borders. It shall remain a Member State of the United Nations and may as Bosnia and Herzegovina maintain or apply for membership in organizations within the United Nations system and other international organizations.

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.

7. Citizenship

There shall be a citizenship of Bosnia and Herzegovina, to be regulated by the Parliamentary Assembly, and a citizenship of each Entity, to be regulated by each Entity, provided that:

[...]

e) A citizen of Bosnia and Herzegovina abroad shall enjoy the protection of Bosnia and Herzegovina. Each Entity may issue passports of Bosnia and Herzegovina to its citizens as regulated by the Parliamentary Assembly. Bosnia and Herzegovina may issue passports to citizens not issued a passport by an Entity. [...].

*Article III****Responsibilities of and Relations between the Institutions of Bosnia and Herzegovina and the Entities*****1. Responsibilities of the Institutions of Bosnia and Herzegovina**

The following matters are the responsibility of the institutions of Bosnia and Herzegovina:

a) Foreign policy.

[...]

2. Responsibilities of the Entities

[...]

b) *Each Entity shall provide all necessary assistance to the government of Bosnia and Herzegovina in order to enable it to honour the international obligations of Bosnia and Herzegovina [...]*

d) *Each Entity may also enter into agreements with states and international organizations with the consent of the Parliamentary Assembly. The Parliamentary Assembly may provide by law that certain types of agreements do not require such consent.*

3. Law and Responsibilities of the Entities and the Institutions

a) *All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.*

b) *The Entities and any subdivisions thereof shall comply fully with this Constitution, which supersedes inconsistent provisions of the law of Bosnia and Herzegovina and of the constitutions and law of the Entities, and with the decisions of the institutions of Bosnia and Herzegovina. The general principles of international law shall be an integral part of the law of Bosnia and Herzegovina and the Entities.*

Article V

Presidency

[...]

3. Powers

The Presidency shall have responsibility for:

a) *Conducting the foreign policy of Bosnia and Herzegovina.*

[...]

c) Representing Bosnia and Herzegovina in international and European organizations and institutions and seeking membership in such organizations and institutions of which Bosnia and Herzegovina is not a member.

4. Powers

The Parliamentary Assembly shall have responsibility for:

e) Such other matters as are necessary to carry out its duties or as are assigned to it by mutual agreement of the Entities.

4. The **Law on Republic Administration** (*Official Gazette of the Republika Srpska*, 115/18), in the relevant part, reads:

Article 15

Ministries are:

...

16) Ministry of European Integration and International Cooperation

Article 31

The Ministry of European Integration and International Cooperation shall perform administrative and other professional activities related to the monitoring of fulfilment and the fulfilment of obligations under the Stabilization and Association Agreement (“the SAA”) and reporting on it; implementation and coordination of activities related to the fulfilment of obligations in the process of association and accession to the EU within the framework of chapters 1, 3 and 22 of the EU acquis and the Political Criteria; coordination of Republic administrative bodies in the implementation of activities in the field of European integration in accordance with Republic regulations; coordination of the activities of the Republic representatives in the joint bodies of the EU and BiH, which are established on the basis of the SAA, and analytical monitoring of their work; interministerial preparation of Republic institutions and coordination of the participation of Republic representatives in all phases of the pre-accession process and the process of negotiations with the EU; preparation and revision of strategic documents and action plans related to the fulfilment of obligations in the process of European integration; realization and coordination of cooperation with other bodies in BiH, as well as institutions, bodies and authorities of the EU, its member states,

candidate states and potential candidates in the process of association and accession to the EU; coordination of harmonization of Republic legislation with the regulations of the European Union and the practice and standards of the Council of Europe; participation in the drafting of normative acts with the aim of their harmonization with the regulations of the European Union and the practice and standards of the Council of Europe; coordination of drafting and monitoring of Republic plans and programs for harmonization of republic legislation with the EU acquis and the practice and standards of the Council of Europe; professional support to Republic administrative bodies and other Republic institutions and coordination of their participation in the process of harmonization of legislation; cooperation with the working bodies of the National Assembly in the field of harmonization of the Republic legislation with the EU acquis and the practice and standards of the Council of Europe; translation and translation coordination for the needs of the European integration process; organization and operational coordination of activities of Republic administrative bodies and other Republic institutions with the aim of ensuring adequate participation of the Republic in the programming of European Union funds and resources made available to BiH by other donors; coordination of activities of Republic administrative bodies and other Republic institutions in the implementation of projects within the programmes to use EU funding and resources of other donors; cooperation with BiH and EU institutions in BiH with the aim of the Republic's participation in using funds from the EU pre-accession and accession programmes; proposing measures to improve the absorption capacity of BiH/Republic within the framework of available support programmes; encouraging the development and promotion of cross-border cooperation; planning and organization of trainings in the field of European integration; preparation and implementation of the General Professional Development Program in the field of European integration; development and issuance of publications in the field of European integration; monitoring the work of joint committees of BiH for cooperation with countries abroad and coordinating the participation of representatives of the Republic in their work; improving regional and institutional cooperation with the regions of Europe and the world, as well as cooperation with domestic institutions; initiating, preparing and proposing agreements and protocols for the establishment and development of interregional cooperation and monitoring their implementation; keeping a register of agreements, protocols and memoranda of cooperation with entities abroad; participation in the drafting of international cooperation agreements; coordination of representation of the Republic abroad; normative regulation of the organization and work of economic offices representing

the Republic abroad; monitoring the implementation of programs and work plans of economic representative offices, and taking measures and activities related to their coordinated and better work; activities in the field of relations between the Republic and diaspora; coordination of activities of Republic administrative bodies in the field of cooperation with diaspora; coordination of activities within the Republic's membership in the Assembly of European Regions; cooperation with domestic, regional and international organizations and institutions; cooperation with international organizations to coordinate donor contributions; keeping a register of donations in the public sector; coordination of activities associated with the preparation of reports and other documents related to the fulfilment of obligations of the institutions of the Republic regarding the membership of BiH in international organizations; coordination of Republic administrative bodies regarding the development and monitoring of the implementation of measures envisaged by the UN Development Assistance Framework, through participation in the work of joint working bodies; cooperation with the UN specialized agencies; giving an opinion on UN acts; giving an opinion on the participation and coordination of the participation of Republic administrative bodies in UN projects in BiH; coordination of Republic administrative bodies in the field of implementation of post-accession obligations of BiH arising from membership in the Council of Europe and cooperation with the bodies of the Council of Europe; giving an opinion on acts of the Council of Europe; drafting laws and bylaws falling within the scope of jurisdiction of the Ministry and other activities in accordance with the law.

5. **The Law on Council of Ministers of Bosnia and Herzegovina** (*Official Gazette of BiH*, 38/02, 30/03, 42/03, 81/06, 76/07, 81/07, 94/07 and 24/08), in the relevant part, reads:

Directorate for EU Integration

Article 23

The Directorate for EU Integration shall perform in particular the tasks and duties relating to the coordination of activities of the authorities in Bosnia and Herzegovina, supervision of the implementation of decisions taken by responsible institutions of Bosnia and Herzegovina concerning all relevant activities required for European integration.

The Directorate shall participate in the preparation of drafts, policy proposals, laws, other regulations and guidelines relating to the carrying out of tasks that Bosnia and Herzegovina is obliged to undertake in order to join the process of European integration. [...]

6. The Decision on the System of Coordination in the Process of European Integration in Bosnia and Herzegovina (*Official Gazette of BiH*, 72/16 and 35/18), in the relevant part, reads:

Article 1

(Subject-matter)

The Decision on Coordination System in the Process of European Integration in Bosnia and Herzegovina (hereinafter: the Decision) shall provide for the institutional and operational system and the manner of coordination of institutions in Bosnia and Herzegovina in terms of implementation of activities relating to the process of integration of Bosnia and Herzegovina into the European Union, joint bodies within the coordination system, their composition, responsibilities and mutual relations.

Article 2

(Coordination of the process of European integration)

(1) Coordination of the process of European integration in Bosnia and Herzegovina shall involve activities implemented with a view to ensuring the highest level of approximation and coherence of institutions across all levels of government in Bosnia and Herzegovina relating to fulfilling contractual obligations under the Stabilisation and Association Agreement between the European Communities and their Member States and Bosnia and Herzegovina ... as well as any other obligations stemming from the process of European integration. The system of coordination shall also govern the manner of exercising communication between institutions in Bosnia and Herzegovina, aimed at ensuring and expressing an agreed view on behalf of Bosnia and Herzegovina in communicating with the European Union institutions.

(2) Coordination of the process of European integration in Bosnia and Herzegovina shall be based on the principles of compliance with the existing internal legal and political structure in Bosnia and Herzegovina, safeguarding of responsibilities of all levels of government and their institutions, as prescribed by constitutions, in specific areas covered by the process of European integration, as well as ensuring visibility and accountability of all levels of government for timely and effectively fulfilling of commitments in the European integration process within their responsibility.

(3) The coordination of the European integration process shall be realised at horizontal (coordination within one level of organisation of authority) and vertical levels (coordination

between different levels of authority). In accordance with paragraph (2) of this Article, the structures and modalities of realisation of horizontal coordination shall be arranged independently by each level of authority, in line with its constitutional order and administrative-legal specificities, capacities and needs, and hence shall not be the subject of this Decision.

(4) For the purpose of effective implementation of vertical and horizontal coordination of the European integration process, the following joint bodies shall be established:

- a) Collegium for EU Integration,*
- b) Ministerial Conferences,*
- c) Commission for European Integration,*
- d) Working Groups for European Integration.*

(5) For the purpose of monitoring the implementation of the Stabilisation and Association Agreement, and ensuring functional link between the bodies of the internal system of coordination of the European integration process in BiH and actions and advocacy of an agreed “one voice” on behalf of Bosnia and Herzegovina, the composition of the joint bodies with the European Union on behalf of Bosnia and Herzegovina shall have the engagement of the following:

- a) Standing delegation of Bosnia and Herzegovina with the Stabilisation and Association Council;*
- b) Standing delegation of Bosnia and Herzegovina with the Stabilisation and Association Committee;*
- c) Standing delegation of Bosnia and Herzegovina with the Stabilisation and Association Subcommittees;*
- d) Standing delegations of Bosnia and Herzegovina with other joint bodies between Bosnia and Herzegovina and the European Union established in accordance with the Stabilisation and Association Agreement.*

[...]

Article 4

(Ministerial Conferences)

(1) Ministerial Conferences shall be bodies in the system of coordination of the European integration process in Bosnia and Herzegovina whose actions ensure comprehensive and aligned approach of competent institutions at all levels of government in each of the sectors covered by the European integration process.

(2) Ministerial Conferences shall comprise relevant line ministers with the Council of Ministers of Bosnia and Herzegovina, entity governments, cantonal governments and representatives of the Government of the Brčko District of BiH, in accordance with their respective constitutional responsibility for the matter under consideration or the area for which the Ministerial Conference was formed.

(3) Ministerial Conferences shall contribute to overcoming any possible stalemates in meeting the commitments of Bosnia and Herzegovina in the European integration process as well as the process of programming European Union assistance that could not be resolved by technical and operational bodies in the system of coordination. The assignments of Ministerial Conferences shall refer to identifying joint guidelines and agendas for actions by operational and technical bodies in the system of coordination in each of the sectors covered by the European Union accession process, so as to meet the commitments under the Stabilisation and Association Agreement.

[...]

V. Admissibility

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

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

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

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

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

9. In its response, the RS National Assembly first points out that the request is *ratione personae* inadmissible, for the Council of Peoples of the Republika Srpska does not have standing to sue under the Constitution of Bosnia and Herzegovina to submit a request for review of constitutionality. The Constitutional Court highlights that it has already examined this issue, and in connection with such allegations it has stated, *inter alia*, that *the exercise of legislative power in the first sentence of item 1 of Amendment LXXVI to the Constitution of RS has been vested in, i.e. has been the jurisdiction of the RS National Assembly and the RS Council of Peoples. [...] Although this concerns a narrow legislative jurisdiction of the Council of Peoples of Republika Srpska, bearing in mind provisions of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina and Article 17 (1) of the Rules of the Constitutional Court, the Constitutional Court holds that one fourth of the members of the RS Council of Peoples is considered to be an authorized entity to file a request, as the Constitution of BiH places no restrictions whatsoever when it comes to the scope of legislative responsibility for filing a request. It is rather on the contrary, it vests such responsibility in one fourth of members of either chamber of a legislative authority of an Entity, and the Constitutional Court finds it undisputed that the RS Council of Peoples is a “legislative body” given its definition in the RS Constitution – “The legislative power in Republika Srpska shall be vested in the National Assembly and the Council of Peoples” (item 1 of Amendment LXXVI) (see, Constitutional Court, Decision on Admissibility and Merits no. U-15/07 of 4 October 2008, published in the Official Gazette of BiH no. 99/08, paragraphs 15 through 17). The Constitutional Court sees no reason to depart from this position.*

10. In view of the aforementioned, the Constitutional Court points out that in the present case, the request for review of constitutionality was filed by seven delegates of the Council of Peoples of the Republika Srpska, which has a total of 28 delegates, which makes up $\frac{1}{4}$ of members of either chamber of a legislature of an Entity, meaning that the request was filed by an authorized subject within the meaning of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina.

11. Having regard to the provisions of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina and Article 17(1) of the Rules of the Constitutional Court, the Constitutional Court finds that the request is admissible, as it was filed by an authorized subject, therefore, there is no

single formal reason under Article 17(1) of the Rules of the Constitutional Court rendering the request inadmissible.

VI. Merits

12. The applicants consider that the RS National Assembly, by the challenged provisions of the Law on Republic Administration, autonomously regulated the segment of foreign policy relating to European integration, in respect of which it has no constitutional responsibility, since the Institutions of the State of Bosnia and Herzegovina have the exclusive responsibility in the areas of foreign policy, cooperation with international bodies and organizations and protection and assistance to BiH citizens abroad, *i.e.* the issue of cooperation with diaspora. They also state that the process of BiH's accession to European integration is *an integral part of foreign policy*, which falls within the exclusive responsibility of the state institutions. Therefore, the applicants hold that the challenged provisions violate the constitutional division of responsibilities between the Institutions of Bosnia and Herzegovina and the Entities and that for that reason those provisions are not in conformity with Articles I(1), I(2), I(7)(e), III(1)(a), III(2)(b), III(3)(b) and V(3)(a), (c) and (d) of the Constitution of Bosnia and Herzegovina.

The issue of division of responsibilities in the case-law of the Constitutional Court

13. The Constitutional Court points out that the issue of division of responsibilities between Bosnia and Herzegovina and its Entities is a complex one, which the Constitutional Court encountered on a number of occasions when deciding on the basis of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina. In its Decision U-16/11, the Constitutional Court points out that the text of the Constitution of Bosnia and Herzegovina itself entails a significant number of issues relating to the division of responsibilities between Bosnia and Herzegovina and the Entities, referring to relevant decisions on the matter (see, Constitutional Court, Decision on Admissibility and Merits no. U-16/11 of 13 July 2012; *Official Gazette of BiH*, 105/13 of 31 December 2012, paragraph 30 and other references).

14. The case-law of the Constitutional Court shows that it is not possible to take a general position on the issue of division of responsibilities between the State and the Entities, but the issue, where there is a dilemma regarding the division of responsibilities, should be considered in each specific case as the decision on that, depends on a number of factors. For example, in the case challenging the constitutionality of the Law on Statistics of Bosnia and Herzegovina, the applicant considered that *the field of statistics did not fall within the scope of responsibilities specified in Article III(1) of the Constitution of BiH, [and that] the Parliamentary Assembly had no mandate to*

regulate this field through law, i.e. that it was the exclusive responsibility of the Entities. The Constitutional Court stated in the decision that it considered the request in the context of the obligations and requirements to be fulfilled by Bosnia and Herzegovina for its inclusion into the European integration process, as an integral part of foreign policy of Bosnia and Herzegovina, which is under the sole responsibility of the state institutions within the meaning of Articles III(1) (a) and V(3)(a) of the Constitution of BiH. After a detailed analysis of the issue in the light of the constitutional provisions on the division of responsibilities as well as the requirements to be met by Bosnia and Herzegovina for its inclusion into the European integration process, the Constitutional Court concluded that the central agency for statistics significantly facilitates functioning of all of these areas under the responsibilities of the Institutions of BiH, including foreign trade policy, customs policy, immigration, refugee and asylum policy and regulation, communication facilities and regulation of inter-Entity transportation etc. Although the said obligations fall within the exclusive responsibility of the Institutions of Bosnia and Herzegovina, and the State of Bosnia and Herzegovina is responsible for the fulfilment of those obligations, the Entities have the constitutional obligation to provide all necessary assistance to the Institutions of Bosnia and Herzegovina in accordance with Article III(2)(b) of the Constitution of BiH (see, Constitutional Court, Decision on Admissibility and Merits no. U-9/07 of 4 October 2008, published in the Official Gazette of BiH, 20/09, paragraphs 16 through 18).

15. In another case, the Constitutional Court decided on the constitutionality of the acts concluded by the Republika Srpska in connection with its activities at international level, and on the constitutionality of the budget of Republika Srpska, which allocated the funds for the Republika Srpska's representation abroad. In that decision, the Constitutional Court stated that *the Entities have a constitutional basis for adopting their budgets, which determine a financial framework for revenue and expenditure. In the present case, the adoption of such a budget whereby the funds are allocated, inter alia, for the Republika Srpska's representation abroad is not per se inconsistent with the Constitution of Bosnia and Herzegovina as it does not constitute a takeover of or interference with foreign policy and foreign trade policy of Bosnia and Herzegovina.* However, the Constitutional Court also highlighted that *the issue of compliance with the constitutional division of responsibilities between Bosnia and Herzegovina and the Entities may be raised in case where the activities, which are undertaken by officials of the Entities and financed from the budgets of the Entities, constitute a takeover of or interference with some of the responsibilities of Bosnia and Herzegovina.* Having considered the activities undertaken by the Republika Srpska in the case in question, the Constitutional Court assessed that *it did not relate to the establishment of diplomatic*

relations with another country, the conclusion of an agreement with another country or international organisation, nor did the Republika Srpska, through the aforementioned activities, represented itself abroad as an independent state, which would bring into question the division of responsibilities in respect of foreign policy and foreign trade policy. Therefore, the Constitutional Court assessed that the activities undertaken by the Republika Srpska were aimed at lobbying abroad for the purpose of advancing the interests of the Republika Srpska as an Entity, and that the acts passed by the Republika Srpska as the basis for any such activities contained nothing that related to the sole responsibility of Bosnia and Herzegovina in the field of foreign affairs or foreign trade. It was therefore concluded that *a series of formal acts and activities undertaken by the Republika Srpska, as referred to by the appellant, do not constitute a takeover of or interference with foreign policy or foreign trade policy and are not inconsistent with Articles III(1)(a) and (b), III(3)(b), V(3)(a) and (c) and V(4)(a) of the Constitution of Bosnia and Herzegovina* (see, Constitutional Court, Decision on Admissibility and Merits no. U-15/08 of 3 July 2009, published in the *Official Gazette of BiH*, 73/09, paragraphs 35 through 36). The Constitutional Court came to the same conclusion in a case wherein it considered whether the preparation and submission of the Report of the Republika Srpska officials to the United Nations Security Council on the Situation in Bosnia and Herzegovina constituted an interference with and assumption of the sole responsibility of Bosnia and Herzegovina for conducting foreign policy. Namely, taking into account the content of the challenged report, the Constitutional Court concluded that neither the report nor the activities related to the submission thereof constituted a report of the State of Bosnia and Herzegovina, nor did they represent the State of Bosnia and Herzegovina before the UN Security Council. It was therefore concluded that *no legally relevant activity based on the challenged Report was taken to the detriment of the constitutional position of the State of Bosnia and Herzegovina, i.e.* that in the relevant case, the acts and activities of the Republika Srpska did not take over the constitutional responsibilities of Bosnia and Herzegovina in the field of foreign policy (see, Constitutional Court, Decision on Admissibility and Merits no. U-15/09 of 27 March 2010, published in the *Official Gazette of BiH* no. 84/10, paragraphs 43 through 45).

Application of the relevant positions of the Constitutional Court in the present case

16. In the present case, the applicants do not challenge any specific activities of the Republika Srpska in relation to the process of accession to the EU, but they contest the challenged provisions of the Law on Republic Administration *in abstracto*. Actually, the applicants raised the issue of the constitutionality of the name of the Ministry referred to in Article 15, subparagraph 16 and its responsibilities under Article 31 of the Law on Republic Administration, and reasoned that the

responsibilities of Bosnia and Herzegovina in the field of foreign policy, including the process of European integration, and in the field of protection of BiH citizens abroad were taken over by the name of the Ministry itself and the prescribed responsibilities thereof.

17. The Constitutional Court holds that the issue of the name of the Ministry and its responsibilities can be examined only in relation to each other and not separately.

18. The Constitutional Court notes that the applicants and the RS National Assembly do not dispute that, pursuant to Article III(1) of the Constitution of BiH, foreign affairs are the sole responsibility of the State, not the Entities. As highlighted by the applicants, the Constitutional Court has already concluded that the obligations and requirements to be fulfilled by Bosnia and Herzegovina for its inclusion into the European integration process is an integral part of foreign policy of Bosnia and Herzegovina, and that it falls within its sole responsibility, and that the Entities have a constitutional obligation to assist the Institutions of Bosnia and Herzegovina to comply with these obligations, which is not disputed by the RS National Assembly. In order to examine whether the challenged provisions themselves take over the sole responsibility of BiH in the process of European integration as a part of foreign policy, the Constitutional Court highlights what has already been stated by both the applicants and the RS National Assembly, namely that a number of decisions have been made at the level of Bosnia and Herzegovina and a number of activities have been undertaken to meet the obligations and requirements related to the integration of Bosnia and Herzegovina into the EU. So, the Directorate for European Integration was established, which, according to the Law on the Council of Ministers, is responsible, *inter alia*, for matters relating to *the coordination of activities of the authorities in BiH, supervision of the implementation of decisions taken by responsible institutions of BiH concerning all relevant activities required for European integration.*

19. In addition, the Decision on Coordination of the Council of Ministers prescribes the system and manner of coordination of institutions in Bosnia and Herzegovina in the implementation of activities relating to the process of integration of Bosnia and Herzegovina into the EU, as well as joint bodies within the coordination system *with the aim of ensuring and presenting a harmonized position, on behalf of Bosnia and Herzegovina, in communication with the Institutions of the European Union.* The Constitutional Court notes that the aforementioned Decision prescribes vertical coordination (between different levels of government, and joint bodies established by the Decision on Coordination are in charge of the implementation thereof), as well as horizontal coordination (within one level of government, for which lower levels of government are in charge). In addition, it is explicitly prescribed that the structures and modalities of realisation of horizontal

coordination *shall be arranged independently by each level of authority, in line with its constitutional order and administrative-legal specificities, capacities and needs*, and for that reason this is not the subject of regulation in the Decision on Coordination. Therefore, taking into account *the existing internal legal and political structure in Bosnia and Herzegovina, safeguarding of responsibilities of all levels of government and their institutions, as prescribed by constitutions, in specific areas covered by the process of European integration*, the system of coordination at the state level stipulates that the Entities can and ought to coordinate the activities they have to carry out in order for Bosnia and Herzegovina to satisfy the criteria for accession to European integration. Furthermore, as correctly pointed out by the RS National Assembly, major obligations and requirements that Bosnia and Herzegovina must meet towards that goal, such as harmonization of a number of laws and other regulations governing the areas of responsibilities of lower levels of government, adoption and revision of strategic documents in these areas, *etc.*, can be met only by the active engagement of these levels of government. In this way, the lower levels of government meet their constitutional obligation to assist Bosnia and Herzegovina in fulfilling its international obligations.

20. In this connection, the Constitutional Court notes that the responsibilities referred to in the challenged Article 31 of the Law on Republic Administration include a number of the activities relating to coordination and similar activities between the republic administration bodies in the implementation of the mentioned activities. The applicants particularly dispute the activities related to the coordination of cooperation with institutions, bodies and authorities of the EU, its member states, candidate states and potential candidates in the process of association and accession to the EU and other activities that include international cooperation with entities abroad, participation in drafting international agreements on cooperation, coordination of the representation of the Republika Srpska abroad, *etc.* In this connection, the Constitutional Court holds that such a list of activities includes nothing that could be assessed as taking away the rights and possibilities to carry out these activities outside the framework of the Constitution of Bosnia and Herzegovina. Namely, although the applicants especially highlight that the definition of these responsibilities in the challenged provisions of the Law on Republic Administration does not include the wording *in accordance with the Constitution and laws of Bosnia and Herzegovina*, as it was in the previous laws, it does not mean that the Republika Srpska, acting according to the responsibilities referred to in Article 31 of the Law on Republic Administration, has the right to go beyond the framework of the Constitution of Bosnia and Herzegovina. On the contrary, according to Article III(3)(b) of the Constitution of Bosnia and Herzegovina, the Entities and any administrative units thereof shall

comply fully with the Constitution and the decisions of the Institutions of Bosnia and Herzegovina, and the Constitutional Court has jurisdiction to examine whether the Entities, by their activities, go beyond the constitutional framework. However, the Constitutional Court also emphasizes that the Entities have the right to establish special parallel relationships with neighbouring countries in accordance with the sovereignty and territorial integrity of Bosnia and Herzegovina (Article III(2) (a) of the Constitution of Bosnia and Herzegovina).

21. Also, given the areas in which the Entities have the responsibility for passing laws, policies, strategies, and the like, there is no doubt that they have the right to develop international cooperation with other relevant subjects of international law, international organizations, *etc.* The Constitutional Court has already stated in its previous decisions that it will not give a definition of foreign policy and, therefore, it will not give a definition of international relations and, in that context, international cooperation. However, the Constitutional Court emphasizes that these terms are certainly broader than the term foreign policy, and that international cooperation is not established exclusively by states or its administrative units, but also by other entities, such as non-governmental organizations, universities, companies, corporations, *etc.* In addition, Article III(2)(d) of the Constitution of Bosnia and Herzegovina prescribes that *each Entity may also enter into agreements with states and international organizations with the consent of the Parliamentary Assembly.* Therefore, regulation that the Republika Srpska may have and coordinate cooperation with other bodies in BiH, as well as institutions, bodies and authorities of the EU, its member states, candidate states and potential candidates in the process of association and accession to the EU, improve regional and institutional cooperation with the regions of Europe and the world, initiate, prepare and propose agreements and protocols for the establishment and development of interregional cooperation and the like, *per se*, does not constitute an assumption of the Bosnia and Herzegovina's responsibilities in the field of foreign policy. Such an issue could be raised, as the Constitutional Court has previously concluded, *only in the event that the activities taken by Entity officials constitute an interference with or assumption of some of the responsibilities of Bosnia and Herzegovina (op. cit. U-15/09, paragraph 40).* However, as already stated, the applicants do not dispute any specific activities of the Republika Srpska or the Ministry that should be examined as regards compliance with constitutional obligations, but they consider that the challenged provisions *are imprecise and, as such, leave open the possibility of different interpretations when applying the regulations in practice;* however, the applicants do not give specific examples of such an interpretation or activity that the Constitutional Court ought to examine.

42. In this connection, the applicants' allegations cannot be accepted that the name of the Ministry itself shows that *this is not about a body in charge of horizontal coordination*, and that the challenged provisions, contrary to the Constitution of Bosnia and Herzegovina, do not prescribe its vertical coordination with state institutions in the process of European integration. Namely, the Constitutional Court highlights that joint bodies are prescribed and established for the implementation of vertical coordination in that process, in accordance with Article 2, paragraph 4 of the Decision on Coordination, which actively work on the matters related to the fulfilment of the obligations and criteria for Bosnia and Herzegovina's accession to the EU, and representatives of the institutions of the Republika Srpska also participate in those joint bodies. In addition, the presentation of harmonized positions on behalf of Bosnia and Herzegovina takes place through communication between the Institutions of Bosnia and Herzegovina and the EU Institutions, which the applicants did not even call into question.

43. The Constitutional Court also holds that the same can be concluded with regard to the issue of cooperation with BiH citizens abroad. Namely, Article I(7)(e) of the Constitution of Bosnia and Herzegovina regulates that BiH citizens abroad enjoy the protection of the State of Bosnia and Herzegovina. However, regardless of the fact that the issue of protection of citizens of Bosnia and Herzegovina at the state level falls within the responsibilities of the Ministry of Foreign Affairs and the Ministry of Human Rights, there are a number of issues that BiH citizens abroad regulate exclusively through the bodies and institutions of the Entities, such as the issuance of personal documents, regulation of issues related to property rights, cultural and other cooperation, *etc.* In this connection, the Constitutional Court points out that, in examining the constitutionality of the provisions of the Law on Citizenship which prescribed the loss of citizenship of Bosnia and Herzegovina in cases where there was no bilateral agreement on dual citizenship with the country whose citizenship had been acquired (referred to also by the applicants), it concluded that those provisions were unconstitutional, and that *it is the undisputable interest of Bosnia and Herzegovina to keep a certain bond with its citizens to whom it is the state of the so-called "parent or original" citizenship* (see, Constitutional Court, Decision on Admissibility and Merits no. U-9/11 of 28 September 2012, published in the *Official Gazette of BiH*, 85/12, paragraph 37). However, the Constitutional Court holds that vesting the Ministry with the responsibility for *affairs in the field of relations between the Republic and diaspora and coordination of activities of Republic administrative bodies in the field of cooperation with diaspora*, does not in any way encroach on the state's responsibility to protect its citizens abroad in terms of the provision of Article I(7)(e) of the Constitution of Bosnia and Herzegovina.

44. In view of the above, the Constitutional Court holds that the constitutional responsibilities of Bosnia and Herzegovina for conducting foreign policy or protecting its citizens abroad have in no way been assumed or called into question by the name of the Ministry or its responsibilities as prescribed by the challenged provisions of the Law on Republic Administration. Therefore, the Constitutional Court concludes that the applicants' allegations are ill-founded that the challenged provisions of the Law on Republic Administration are in violation of Articles I(1), I(2), I(7)(e), III(1)(a), III(2)(b), III(3)(b) and V(3)(a), (c) and (d) of the Constitution of Bosnia and Herzegovina.

VII. Conclusion

45. The Constitutional Court concludes that the provisions of Article 15, subparagraph 16 and Article 31 of the Law on Republic Administration (*Official Gazette of the Republika Srpska*, 15/18) are not in contravention of Articles I(1), I(2), I(7)(e), III(1)(a), III(2)(b), III(3)(b) and V(3)(a), (c) and (d) of the Constitution of Bosnia and Herzegovina, for the reason that it cannot be concluded that the responsibility of Bosnia and Herzegovina for conducting foreign policy, in respect of the process of European integration as a segment of foreign policy which is within the responsibilities of the Institutions of Bosnia and Herzegovina, or the responsibility for protecting the citizens of Bosnia and Herzegovina abroad, have been taken over by those provisions.

46. Pursuant to Article 59(1) and (3) of the Rules of the Constitutional Court, the Constitutional Court decided as set out in the enacting clause of the present decision.

47. Pursuant to Article 43 of the Rules of the Constitutional Court, the annex to this decision contains a Separate Concurring Opinion of Vice-President Mirsad Ćeman.

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

Zlatko M. Knežević
President
Constitutional Court of Bosnia and Herzegovina

SEPARATE CONCURRING OPINION OF VICE-PRESIDENT MIRSAĐ ĆEMAN

Pursuant to Article 43, paragraph 1 of the Rules of the Constitutional Court of Bosnia and Herzegovina – Revised text (*Official Gazette of Bosnia and Herzegovina*, 94/14), I hereby give a separate opinion concurring in the decision in the Case No. U-14/20.

In the present case, the applicants challenge certain provisions of the applicable Law on Republic Administration of the Republika Srpska entity (*Official Gazette of the Republika Srpska*, 115/18) *in abstracto*. Namely, the applicants before the Constitutional Court raised the issue of the constitutionality of the name of the entity Ministry of European Integration and International Cooperation referred to in Article 15, subparagraph 16 and of its responsibilities under Article 31 of the Law on Republic Administration. According to the applicants, the name of the Ministry, as well as its prescribed responsibilities, constitute the assumption of the responsibilities of the State of Bosnia and Herzegovina in the field of foreign policy, which includes the process of European integration, as well as in the field of protection of citizens of Bosnia and Herzegovina abroad.

The Constitutional Court *concluded* that the challenged provisions were not in contravention of Articles I(1), I(2), I(7)(e), III(1)(a), III(2)(b), III(3)(b) and V(3)(a), (c) and (d) of the Constitution of Bosnia and Herzegovina, for the reason that it cannot be concluded that the responsibility of Bosnia and Herzegovina for conducting foreign policy, in respect of the process of European integration as a *segment of foreign policy* that is within the responsibilities of the Institutions of Bosnia and Herzegovina, or the responsibility for protecting the citizens of Bosnia and Herzegovina abroad, have been taken over by those provisions.

According to the Constitutional Court, the issue of the name of the Ministry and its responsibilities can be examined only in relation to each other, and not separately. I agreed with such an approach and supported the decision.

However, taking into account similar cases where the Constitutional Court reviewed the constitutionality of the provisions of certain state or entity laws and, in so doing, remained, tentatively speaking, only at a “declarative level”, *i.e.* without a more complete definition of the meaning, sense and content of certain *constitutional categories, mechanisms and standards*, which later in the implementation of the decision proved to be *a serious shortcoming and “unfinished job”* (in such cases I also wrote separate opinions), I am positive that the Court could and should have been more explicit in defining certain constitutional categories in this case as well, *e.g.* as to “*foreign policy*”.

Namely, in the case when the Court decides that a legal provision (of a state or entity law) is consistent or inconsistent with, or that it is in contravention of the Constitution, the Constitutional Court is obligated *effectively to contribute* to the implementation of the standards contained in and guaranteed by the Constitution, without the possibility of circumventing or denying their constitutional force and meaning. Experience teaches us that whenever the Constitutional Court was not sufficiently explicit (true, not for that reason only), its decisions became only a *nudum ius* (naked law).

The need to define the content and to give the meaning to a constitutional norm stems from the very *nature of constitutional norms*, which are not (at least one part) always quite concrete, (but they encompass, *i.e.*, they take on meanings stemming from their own practice and the development of constitutionalism in general) and therefore require interpretation. Thus, at a global level, a number of constitutional mechanisms and standards have emerged that have universal meanings and application independently of other characteristics of the constitutional and political system of different states. This, however, at the same time gives the constitutional norms the necessary vitality, as well as the persistence by which the system, *i.e.* the constitutional order is established (was established) and defended.

For example, has not the European Court of Human Rights given meaning to the *general norms and standards* of the European Convention on Human Rights and Fundamental Freedoms (*e.g.* the right to a fair trial, the right to an effective remedy, the right to respect for private and family life, freedom of expression, freedom of thought, conscience and religion, *etc.*)? They have made the system of human rights and freedoms not only clearer and more specific than declarations and proclamations (as they seem according to the text itself), but also a very powerful means of affirming and defending democracy and human rights and freedoms.

However, although in our case the content, *i.e.* meaning (not only possible but also generally accepted), of certain constitutional norms, categories, mechanisms and standards is not sufficiently determined, the Constitutional Court avoids defining and determining them in more detail in specific examples and cases (even in this case), and it should do so. Thus, *e.g.* in paragraph 41 of the present decision, the Constitutional Court recalls that in its earlier decisions that *it has already stated that it will not give a definition of foreign policy and, therefore, it will not give a definition of international relations and, in that context, of international cooperation*. This consequently creates or maintains a state of constitutional confusion that not only fails to contribute to the establishment and consolidation of the order, but also makes it further confusing and complicated. As a result, new

constitutional disputes and ambiguities survive or occur, most often on the issue of the distribution of responsibilities between the State and Entities, and the like.

As difficult as it may seem, in my opinion, it is a wrong approach. The Constitutional Court must be not only braver but also more responsible in this regard. Namely, where and if the Constitutional Court would define more bravely and responsibly certain constitutional categories, it would, I am positive (provided, of course, that court decisions are accepted and enforced), contribute to more efficient functioning of the system, *i.e.* of the State at all levels within the existing constitutional solutions and internal structure of the State and Entities.

Finally, one gets the impression that the Constitutional Court additionally bases a major part of the reasoning for its decision on the Decision on the System of Coordination in the Process of European Integration in Bosnia and Herzegovina (*Official Gazette of BiH*, 72/16 and 35/18), instead of solely on the constitutional norm itself. However, although it is more an illustration, I hold it is wrong, especially since this bylaw (as the decision is actually a bylaw) at the time of adoption and application caused and has been causing the same controversy and dilemmas in the context of the *ever-present issue of responsibilities* among the State, Entities and other (“lower”) administrative-territorial units that exist within the structure of government in Bosnia and Herzegovina.

Overall, as correctly stated in the decision and as the Constitutional Court emphasizes, it does not help that the specified terms (international relations, international cooperation, *etc.*) are certainly broader than the term *foreign policy*, and that international cooperation is not established exclusively by states or its administrative units, but also by other entities, such as non-governmental organizations, universities, companies, corporations, *etc.* Namely, by persistently avoiding to determine the meaning of certain constitutional categories, terms and standards more precisely by its decisions and interpretation of the constitutional text, *i.e.* in a situation where the seemingly resolved constitutional dilemma is not actually resolved (with obviously present different political aspirations and actions), the unproductive struggle of the State and the Entities for responsibilities (where they are not or should not be disputable) consumes the strength of both instead of being used productively in a pure “constitutional legal field”. The Constitutional Court can contribute more in this regard. Therefore, as regards such circumvention or unfounded or excessive caution, I can recognise the defensive position of the Constitutional Court to do so.