

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), 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* no. 94/14), in Plenary and composed of the following judges:

Mr. Mirsad Ćeman, President

Mr. Mato Tadić, Vice-President

Mr. Zlatko M. Knežević, Vice-President

Ms. Margarita Tsatsa-Nikolovska, Vice-President

Mr. Tudor Pantiru

Ms. Valerija Galić

Mr. Miodrag Simović

Ms. Constance Grewe

Ms. Seada Palavrić

Having deliberated on the request of **the Court of Bosnia and Herzegovina (Judge Anđelko Marijanović)** in the case no. **U 9/15**, at its session held on 6 April 2016 adopted the following

DECISION ON ADMISSIBILITY AND MERITS

The request lodged by **the Court of Bosnia and Herzegovina (Judge Anđelko Marijanović)** for review of the constitutionality of the provision of Article 119(3) of the Law on Police Officials of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina* nos. 27/04, 63/04, 5/06, 33/06 58/06, 15/087, 63/08, 35/09 and 7/02) is hereby dismissed.

It is hereby established that the provision of Article 119(3) of the Law on Police Officials of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina* nos. 27/04, 63/04, 5/06, 33/06 58/06, 15/087, 63/08, 35/09 and 7/02) is compatible with the Constitution of Bosnia and Herzegovina.

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

REASONING

I. Introduction

On 25 September 2015, the Court of Bosnia and Herzegovina (Judge Anđelko Marijanović; “the applicant”) lodged a request with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) for review of the constitutionality of Article 119(3) of the Law on Police Officials of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina* nos. 27/04, 63/04, 5/06, 33/06 58/06, 15/087, 63/08, 35/09 and 7/02; “the challenged Law”).

II. Procedure before the Constitutional Court

On 9 December 2015, pursuant to Article 23(2) of the Rules of the Constitutional Court, the House of Representative and the House of Peoples of the National Assembly of Bosnia and Herzegovina (“the House of Representatives” and “the House of Peoples”) and the National Assembly of Republika Srpska (“the National Assembly of RS”) were requested to submit their respective responses to the request.

The House of Representatives submitted its reply on 11 January 2016. The House of Peoples submitted its reply on 20 January 2016, whereas the National Assembly of RS failed to do so.

III. Request

a) Facts of the case in respect of which the request was lodged

The applicant states that the civil proceedings were initiated before that Court upon a lawsuit of the plaintiff Jovan Ilić (“the plaintiff”), a police officer employed in the State Investigation and Protection Agency of BiH, against the following defendants: Bosnia and Herzegovina, the Council of Ministers – the Ministry of Security of Bosnia and Herzegovina and the State Investigation and Protection Agency. The lawsuit was lodged for the annulment of the ruling on termination of the plaintiff’s employment after reaching 40 years of contributions to the pension fund and for his reinstatement in his job, including compensation for damages on the basis of unpaid salaries. In his lawsuit, the plaintiff alleges that by a mandatory termination of the employment after reaching 40 years of contributions to the pension fund, without meeting the requirements for old-age pension concurrently, as prescribed by the pension legislation of the Republika Srpska, he has been discriminated against when compared to the employees in the institutions at the same level of government who are residents in the territory of the Federation of Bosnia and Herzegovina.

b) Allegations from the Request

The applicant states that the grounds for the termination of employment, in the particular case, are referred to in Article 119 of the challenged Law. Paragraph 3 of the relevant provision stipulates that “A police official shall terminate his/her employment in the case of reaching 65 years of age and legally prescribed number of contribution years to the pension fund or 40 years of contribution to the pension fund”. On the other hand, as the applicant points out, the exercise of the right to old-age pension is regulated by the Entity regulations and, in the case at hand, the relevant provision is the one referred to in Article 42(1) of the Law on Pension and Disability Insurance of the Republika Srpska (*Official Gazette of the Republika Srpska* nos. 134/11 and 82/13). This provision, as the applicant further states, stipulates that an insured person who has not reached the age of 65 shall be entitled to an old-age pension after reaching the age of 60 and 40 years of contributions. The applicant also points out that the Labour Law relating to the Institutions of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina* nos. 26/04, 7/05, 48/05 and 60/10) prescribes in Article 71(1) that the employee’s employment status shall be terminated, *inter alia*, when “he/she reaches the legally prescribed pension insurance period of 40 years irrespective of his/her age”. The applicant points out that according to the pension regulations in the Republika Srpska “the special service period is not counted towards the years of contribution to the pension fund irrespective of being registered in the main record of the Pension and Disability Insurance Fund”. This actually means that the plaintiff would not meet the requirements for the termination of his employment if the provisions of the Labour Law relating to the Institutions of Bosnia and Herzegovina were applied to the specific

case, as he would not have completed 40 years of the pension contributions without the special service period”. Furthermore, the applicant notes that two terms are used: “pension insurance period” in the Labour Law relating to the Institutions of Bosnia and Herzegovina and the “contribution period” in the challenged Law, although he does not indicate why he deems it relevant to the particular situation.

6. The applicant further points out that the police officials residing in the territory of the Federation of Bosnia and Herzegovina, “in the same legal situation, would not be prevented from exercising the right to a pension, as their status is regulated by the Law on Pension and Disability Insurance of FBiH [...], which stipulates that the policy holder shall acquire the right to an old-age pension after he/she completes 40 years of contributing period, regardless of his/her age”. On the basis of the aforesaid, the applicant holds that the employees in “the institutions at the same level of government” are prevented from the equal enjoyment of the right to an old-age pension and that such treatment has no objective or reasonable justification, meaning that such treatment amounts to discrimination. In this respect, the applicant “recalls the Decision of the Constitutional Court in the case no. *U 12/09* of 28 May 2010, establishing that the female employees in the institutions of Bosnia and Herzegovina residing in the Federation of Bosnia and Herzegovina were discriminated against when compared with female employees residing in the territory of the Republika Srpska, as regards the exercise of their right to paid maternity leave, which was paid only to those residing in the territory of the Republika Srpska”.

7. In view of the above, the applicant holds that the challenged Law is discriminatory and that the particular case concerns the “issue on which depends the decision of the Court”. Therefore, the applicant requested that the Constitutional Court decide about the Law in terms of Article VI(3)(c) of the Constitution of Bosnia and Herzegovina.

c) Responses to the Request

8. In their responses to the request, both the House of Representatives and the House of Peoples stated only that the challenged Law was enacted and that the review of constitutionality of that Law was within the jurisdiction of the Constitutional Court.

IV. Relevant Law

9. The **Constitution of Bosnia and Herzegovina**, as relevant, reads:

Article VI(3) Jurisdiction

[...]

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.

10. The **Law on Police Officials of Bosnia and Herzegovina** (*Official Gazette of Bosnia and Herzegovina* nos. 27/04, 63/04, 5/06, 33/06 58/06, 15/087, 63/08, 35/09 and 7/02), as relevant, reads:

Article 1

Scope of the Law

This Law regulates police powers and the working legal status (labor relations, including: obligations and rights, recruitment, education and in-service training, deployment, ranks, performance evaluation and promotion, remuneration, working conditions, disciplinary

responsibility, responsibility for damage and termination of employment) of police officials of Bosnia and Herzegovina (“BiH”).

Article 95

Labour and Social Rights

The Law on Labour Relations and other Laws regulating rights and obligations deriving from employment shall apply to police officials and cadets unless otherwise provided in this Law.

Article 119

Grounds for the Termination of Employment

The employment of a police official shall be terminated and he/she shall automatically lose his/her police official status in the following cases:

[...]

3. after reaching the age of 65 and after completing legally prescribed pension contributions, or after completing 40 years of pension contributions;

[...]

11. The **Law on Pension and Disability Insurance of the Republika Srpska** (*Official Gazette of RS nos. 134/11, 82/13 and 103/15*), as relevant, reads:

Insured person covered by compulsory insurance

Article 10

An insured person covered by compulsory insurance shall be:

An individual employed on the basis of employment contract or other act of an employer (“the insured employee”)

[...]

Article 11

The insured employee shall be:

[...]

b) An individual employed in the joint institutions of Bosnia and Herzegovina (“BiH”) and the Brčko District of Bosnia and Herzegovina (“the Brčko District”), residing in the territory of the Republika,

[...]

Article 42

(1) An insured employee who has not reached the age of 65 shall be entitled to an old-age pension after reaching the age of 60 and 40 years of contributions.

12. The **Law Amending the Law on Pension and Disability Insurance of the Republika Srpska** (*Official Gazette of RS no. 103/15*), as relevant, reads:

Article 4

The following new paragraph 3 shall be added to Article 42 to read:

“(3)As an exception to paragraph 1 of this Article, the right to an old-age pension shall have a police official, an employee of the Judicial Police of the Republika Srpska and a member of the security service – policeman in an correctional institution of the Republika Srpska after he/she completes 40 years of contributions, regardless of his/her age.”

Article 22

This Law [...] shall enter into force on 1 January 2016.

V. Admissibility

13. The applicant requests the review of constitutionality of Article 119(3) of the challenged Law. The decision of that Court in respect of the labour dispute initiated by the plaintiff, depends on the application of that Law.

14. In the present case, the request was lodged by the Court of BiH (Judge Anđelko Marijanović), which means that the request was filed by an authorised person pursuant to Article VI(3)(c) of the Constitution of Bosnia and Herzegovina (see Constitutional Court, Decision on the Admissibility and Merits no. *U 5/10* of 26 November 2010, paragraphs 7 through 14, published in the *Official Gazette of Bosnia and Herzegovina* no. 37/11).

15. Bearing in mind the provisions of Article VI(3)(c) of the Constitution of Bosnia and Herzegovina and Article 19(1) of the Constitutional Court's Rules, the Constitutional Court establishes that the present request is admissible, as it was submitted by an authorised person and because there is no single reason under Article 19 of the Constitutional Court's Rules rendering this request inadmissible.

VI. Merits

16. The applicant holds that the provision of Article 119(3) of the challenged Law, regulating the termination of an employee's employment after completing 40 years of contributions, discriminates against the police officials employed in the institutions of Bosnia and Herzegovina and residing in the territory of the Republika Srpska and who exercise their pension right under the relevant legislation of the Republika Srpska, when compared to the police officials employed in the same institutions and who exercise the mentioned right in the territory of the Federation of Bosnia and Herzegovina. Namely, the applicant stated that the right to old-age pension under the Law on RS Pension and Disability Insurance is exercised by the insured employee who has reached the age of 65, or the age of 60 and have completed 40 years of contributions. Therefore, those police officials who are employed in the institutions of Bosnia and Herzegovina and whose employment is terminated for they have completed 40 years of contributions but at the time have not reached the age of 60, cannot, as the applicant indicates, exercise their right to pension under the relevant legislation of the Republika Srpska. On the other hand, the police officers residing in the territory of the Federation of BiH exercise their right to pension because the Law on FBiH PIO recognizes such a right.

17. Article II(4) of the Constitution of Bosnia and Herzegovina reads:

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, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

18. Article 1 of Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms ("Protocol No. 12"), in the relevant part, reads:

*Article 1**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.*

19. Non-discrimination within the meaning of the Constitution of Bosnia and Herzegovina and the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the European Convention”) means treating persons in relevantly similar situation in a similar manner in terms of their rights safeguarded by the European Convention, unless an objective and reasonable justification for the difference in treatment exists (direct discrimination; see *e.g.*, the Judgement of the European Court of Human Rights in the case of *Muñoz Diaz v. Spain*, Application no. 49151/07, of 8 March 2010). In addition, the right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated “when States, without an objective and reasonable justification, fail to treat differently persons whose situations are significantly different” (see, European Court of Human Rights, the Judgment in the case of *Thlimmenos v. Greece*, (2001) 31 E.H.R.R. 15). At the same time, such a case does not concern a differential treatment but the effects of such a treatment, which would be felt differently by persons of different characteristics (indirect discrimination). In view of the above, it follows that the applicant holds that the provision of Article 119(3) of the challenged Law may indirectly discriminate against the police officials residing in the territory of Republika Srpska, when compared to those residing in the Federation of Bosnia and Herzegovina.

20. The Constitutional Court recalls that a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *e.g.* the Judgement of the European Court of Human Rights, *Burden v. the United Kingdom* of 29 April 2008, paragraph 60). Furthermore, the Constitutional Court recalls that the right to non-discrimination is a qualitative rather than an absolute right, and States can have a considerable margin of appreciation in that regard. Whether that margin of appreciation is wide or narrow depends upon: a) the nature of the right involved (the margin of appreciation is wide where relating to social and economic rights, *e.g.* see, European Court of Human Rights, *Stec v. the United Kingdom*,

Judgement of 12 April 2006, and it is very narrow where it relates to fundamental rights); b) the level of interference (whether certain measure, partly or completely, has deprived an individual of his/her right, see, European Court of Human Rights, *Aziz v. Cyprus*, (2002) 35 E.H.R.R. CD 14); and c) the public interest (*e.g.* the strong public interest in combating gender and racial distinctions requires a higher level of justification for discrimination on those bases).

21. In the present case, the Constitutional Court points out that the dispute pending before the Court of BiH, which was the immediate cause for the submission of the request, considers *ex lege* termination of the employment of the plaintiff, who had been employed with the BiH State Investigation and Protection Agency, in accordance with the challenged Law. In this connection, the Constitutional Court notes that the challenged Law regulates, *inter alia*, the employment of police officials of Bosnia and Herzegovina and it applies to everyone, irrespective of the police official's place of residence. Namely, Article 119(3) of the challenged Law stipulates that the employment of a police official shall be terminated, *inter alia*, after he/she has completed 40 years of contributions to the pension fund, irrespective of his/her age. Therefore, the challenged Law, which the applicant has to apply in the labour dispute in respect of which he lodged the particular request for review of the constitutionality, does not *prima facie* disclose anything that could be considered as direct discrimination against the police officials regardless of their place of residence.

22. As regards the issue of possible indirect discrimination, because of the alleged differential effect of the Law on those police officials residing in the territory of the Republika Srpska in relation to those who reside in the territory of the Federation of BiH, the Constitutional Court finds that such allegations cannot be accepted. Namely, the challenged Law does not in any way regulate the exercise of the right to pension, given that in the constitutional order of Bosnia and Herzegovina, the pension and disability insurance matter falls within the responsibility of Entities. In accordance with such a division of responsibilities, the right to pension is regulated by the relevant Entity laws on pension and disability insurance. Furthermore, Article 95 of the challenged Law titled "Labour and Social Rights" stipulates that "the Law on Labour Relations and other Laws regulating rights and obligations deriving from employment shall apply to police officials and cadets", unless otherwise provided in the challenged Law. This means that the challenged Law does not enter into the matter of exercising the rights regulated by the Entity regulations but it in fact only makes reference to them. Therefore, the employment is *ex lege* terminated to the police official meeting the requirements of the challenged Law, in the particular case, completing 40 years of contributions to the pension fund, irrespective of his/her age. That police official exercises his/her right to pension in accordance with

regulations of the Entity in the territory of which is his/her place of residence and the competent Entity bodies and courts decide on the exercise of that right. Bearing that in mind, the Constitutional Court holds that possible inconsistency of the Entity regulations on the manner and possibility of acquiring a pension with the State legislation on the termination of employment in civil service after meeting the prescribed requirements does not raise an issue of consistency of the State legislation, which the applicant is bound to apply in the particular case, with the Constitution of Bosnia and Herzegovina or an issue of the discriminatory effect thereof. On the contrary, that could only raise the issue of non-compliance of the Entity regulation with the Constitution of Bosnia and Herzegovina.

23. Namely, in its case-law the Constitutional Court took the position that the enactment of the Entity laws contrary to the procedure prescribed by the State laws raises the issue of constitutionality of such legislation in terms of Article II(3)(b) of the Constitution of Bosnia and Herzegovina, and the responsibilities imposed by the State laws must be complied with (see, *mutatis mutandis*, the Constitutional Court, Decision on Admissibility and Merits no. *U 14/04* of 29 October 2010, published in the *Official Gazette of BiH* no. 23/05). The Constitutional Court reaffirmed this position in its Decision no. *U 2/11* in which it reiterated that “the laws of Bosnia and Herzegovina passed by the Parliamentary Assembly of Bosnia and Herzegovina are [...] considered ‘decisions of the institutions of Bosnia and Herzegovina’ under Article III(3)(b) of the Constitution of Bosnia and Herzegovina, and the adoption of the laws by the Entities or any subdivisions thereof in Bosnia and Herzegovina contrary to the procedure prescribed by the State laws might challenge the issue of compliance with Article III(3)(b) of the Constitution of Bosnia and Herzegovina, pursuant to which the Entities and any subdivisions thereof are obliged to comply, *inter alia*, (and) with the decisions of the institutions of Bosnia and Herzegovina. If held otherwise, in addition to completely bringing into question the authority of the institutions of Bosnia and Herzegovina, it would also challenge the principle of Article I(2) of the Constitution of Bosnia and Herzegovina under which: ‘Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law...’. In that case the question might rightly be posed regarding the purpose of the State laws (*e.g.* the laws in the field of privatization, operations of the insurance companies, indirect taxation, *etc.*), if the Entities or any subdivision thereof in Bosnia and Herzegovina could pass laws violating or evading obligations imposed to those by the provisions of the State legislation, *i.e.* laws adopted at the level of the institutions of Bosnia and Herzegovina. Therefore, the Entities (and subdivisions thereof) must comply with the obligations imposed on them through the laws passed by the institutions of Bosnia and Herzegovina. The fact that such obligations have not been complied with might give rise to the

breach of the provisions of the Constitution of Bosnia and Herzegovina (see, the Constitutional Court, Decision on Admissibility and Merits no. *U 2-11* of 27 May 2011, published in the *Official Gazette of BiH* no. 99/11, paragraph 52). Furthermore, in another decision, the Constitutional Court underlined that “the Constitutional Court is completely aware that the Constitution of Bosnia and Herzegovina limits its jurisdiction to the review of constitutionality of laws, *i.e.* that the Constitution of Bosnia and Herzegovina does not provide for the possibility for the Constitutional Court to review the lawfulness of Entity laws in relation to the laws enacted by Bosnia and Herzegovina. Therefore, in the present case, taking into account its already taken positions on the necessity to comply with ‘the obligations imposed upon the Entities or other administrative units in Bosnia and Herzegovina by the provisions enacted by the institutions of Bosnia and Herzegovina’ (*ibid.*), the Constitutional Court will examine the constitutionality of the challenged law in the present case exclusively in the light of compliance with the obligations and principles, as established by the Election Law of BiH, as ‘the decision of the institutions of Bosnia and Herzegovina’ with a view to the administration of fair and democratic elections throughout Bosnia and Herzegovina” (see, Constitutional Court, Decision on Admissibility and Merits no. *U 4/12* of 25 May 2012, published in the *Official Gazette of BiH* no. 63/12, paragraph 44).

24. In view of the above positions, the Constitutional Court indicates that the challenged Law which the applicant is bound to apply in the present case is indisputably “the decision of the institutions of Bosnia and Herzegovina”, within the meaning of Article III(3)(b) of the Constitution of Bosnia and Herzegovina. The employment status of the police officials of Bosnia and Herzegovina, and when, *inter alia*, they are acquiring their pension, is determined by that Law irrespective of their place of residence. However, the exercise of the pension right is possible only under the Entity regulations and the competent Entity bodies pass a decision in that regard. This further means that, in accordance with the above stated position of the Constitutional Court, there is a need for the Entities to secure, within the scope of their responsibilities, the implementation of principles and obligations of the State regulations as “decisions of the institutions of Bosnia and Herzegovina”, in order to comply with the rule of law principle under Article I(2) of the Constitution of Bosnia and Herzegovina. In the present case, although it is not explicitly prescribed by the challenged Law, the need existed to secure, by the Law on RS Pension and Disability Insurance, the exercise of the pension right of those police officials of Bosnia and Herzegovina who acquired the mentioned right under the provisions of the challenged Law. All the more so because the Law on RS Pension and Disability Insurance itself explicitly prescribes in Article 11 that “the insured employee shall be [...] an individual employed in the joint institutions of Bosnia and

Herzegovina [...], residing in the territory of the Republika”. The Constitutional Court considers that the fact that it was not done prior to the amendments to the Law on RS Pension and Disability Insurance in December 2015 cannot lead to the conclusion that the challenged Law is unconstitutional or that it has a discriminatory effect on the police officials of Bosnia and Herzegovina residing in the territory of the Republika Srpska.

25. On the other hand, the Constitutional Court reiterates that the origin of the request presented this way is a labour dispute in which the plaintiff disputes the ruling on termination of his employment for meeting the requirements prescribed by the challenged Law, and not because of the decisions of the competent Entity bodies or courts, dismissing his request for the acquisition of pension. In the particular case, the subject matter of the review of constitutionality cannot be the Law on RS Pension and Disability Insurance, since that is not the challenged Law. Furthermore, the applicant’s decision, in terms of Article VI(3)(c) of the Constitution of Bosnia and Herzegovina, does not depend on that law. Nevertheless, the Constitutional Court holds it necessary to point out that the Law on RS Pension and Disability Insurance, until the enactment of the Law Amending the Law on RS Pension and Disability Insurance in December 2015, did not provide the possibility of exercising the pension right without simultaneously meeting the age requirement. However, by the amendments enacted in December 2015, Article 42 of the Law on RS Pension and Disability Insurance was amended to stipulate that, as an exception, a police official shall have the right to old-age pension, *inter alia*, after he/she completes 40 years of contributions period, regardless of his/her age. The Constitutional Court considers that the Entity legislator thus secured the implementation of the challenged Law as “the decision of the institutions of Bosnia and Herzegovina”, also applicable to the insured persons residing in the territory of Republika Srpska, which represents yet another confirmation in favour of the Constitutional Court’s position that the statements on unconstitutionality or discriminating effect of the challenged Law are unfounded. The Constitutional Court also emphasizes that within the scope of consideration of the relevant request, it is not possible to say whether the beneficiaries of the Republika Srpska pension fund, whose employment had been terminated under Article 119(3) of the challenged Law before the beginning of application of the said amendment to the Law on RS Pension and Disability Insurance (1 January 2016), would be recognized the right to pension, as that would represent a prejudgement. The competent Entity bodies and courts should decide on that upon the requests of interested parties. Furthermore, in the particular case, as already stated, the applicant’s decision in the relevant case, in terms of Article VI(3)(c) of the Constitution of Bosnia and Herzegovina, does not depend on the application of the Law on RS Pension and Disability Insurance.

26. Furthermore, the Constitutional Court holds that the applicant's allegations relating to the Law on Civil Service in the Institutions of Bosnia and Herzegovina is not relevant to the case at hand, as the challenged Law, relating to the police officials of Bosnia and Herzegovina, represents *lex specialis* in relation to the said law, regulating the employment status of civil service employees in general. Moreover, the Law on Civil Service is not the law on which depends the decision of the applicant in terms of Article VI(3)(c) of the Constitution of Bosnia and Herzegovina. Thus, the Constitutional Court will not separately consider those allegations. Also, the Constitutional Court points out that the Decision of the Constitutional Court no. *U 12/09* of 28 May 2010, which the applicant referred to, relates to a different situation and, thus, it is of no relevance to the present case.

27. In view of the above, the Constitutional Court considers that the allegations are ill-founded that Article 119(3) of the challenged Law is inconsistent with Article II(4) of the Constitution of Bosnia and Herzegovina for its discriminatory effect on the police officials of Bosnia and Herzegovina residing in the territory of the Republika Srpska.

VIII. Conclusion

28. The Constitutional Court concludes that the provision of Article 119(3) of the Law on Police Officials of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina* nos. 27/04, 63/04, 5/06, 33/06 58/06, 15/087, 63/08, 35/09 and 7/02), stipulating that the employment of a police official shall be terminated, *inter alia*, after he/she has completed 40 years of contributions to the pension fund, irrespective of his/her age, is not incompatible with Article II(4) of the Constitution of Bosnia and Herzegovina, *i.e.* that it does not have a discriminatory effect on the police officials of Bosnia and Herzegovina residing in the territory of the Republika Srpska.

29. 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 this decision.

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

Mirsad Ćeman
President
Constitutional Court of Bosnia and Herzegovina