

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), 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, Vice-President,

Mr. Mato Tadić, Vice-President,

Ms. Margarita Tsatsa-Nikolovska, Vice-President,

Mr. Tudor Pantiru,

Ms. Valerija Galić,

Mr. Miodrag Simović,

Ms. Seada Palavrić,

Mr. Giovanni Grasso

Having deliberated on the request filed by **30 delegates of the National Assembly of the Republika Srpska**, in the case no. *U 22/16*, at its session held on 6 July 2017 adopted the following

## DECISION ON ADMISSIBILITY AND MERITS

The request filed by **30 delegates of the National Assembly of the Republika Srpska** for review of the constitutionality of Articles 1, 2 and 3 of the Law Declaring November 25 as Statehood Day of the Republic of Bosnia and Herzegovina (*Official Gazette of the Republic of Bosnia and Herzegovina*, 9/95) is hereby dismissed.

It is hereby established that Articles 1, 2 and 3 of the Law Declaring November 25 as Statehood Day of the Republic of Bosnia and Herzegovina (*Official Gazette of the Republic of Bosnia and Herzegovina*, 9/95) are not inconsistent with Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with Article 1.1 and Article 2(a), (b), (c), (d), (e) of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 1 of Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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 7 December 2016, 30 delegates to the National Assembly of Peoples of the Republika Srpska (“the applicants”) filed a request with the Constitutional Court of Bosnia and Herzegovina (“the

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Constitutional Court”) for review of the constitutionality of Articles 1, 2 and 3 of the Law Declaring November 25 as Statehood Day of the Republic of Bosnia and Herzegovina (*Official Gazette of the Republic of Bosnia and Herzegovina*, 9/95; the “challenged law”).

## **II. Procedure before the Constitutional Court**

2. Pursuant to Article 23(2)(a) of the Rules of the Constitutional Court of Bosnia and Herzegovina, the House of Representatives and the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina (“the House of Representatives and the House of Peoples of the BiH Parliamentary Assembly”) were requested on 6 February 2017 to submit their replies to the request.
3. On 7 March 2017, the House of Representatives of the BiH Parliamentary Assembly submitted the reply to the request, while the House of Peoples of the BiH Parliamentary Assembly did so on 7 April 2017.

## **III. Request**

### **a) Allegations stated in the Request**

4. The applicants contest the constitutionality of the provisions of Articles 1, 2 and 3 of the challenged law with reference to the tenth paragraph of the Preamble of the Constitution of Bosnia and Herzegovina, Articles I(2) and II(4) of the Constitution of Bosnia and Herzegovina, Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the European Convention”), Article 1 of Protocol No. 12 to the European Convention and Article 1.1. and Article 2(a), (b), (c), (d), (e) of the International Convention on the Elimination of All Forms of Racial Discrimination. In the reasons for their request, the applicants point out firstly that the Constitutional Court of Bosnia and Herzegovina, in its Decision U 5/98, based on the tenth paragraph of the Preamble of the Constitution, established the constituent status of Serbs, Bosniacs and Croats throughout the territory of Bosnia and Herzegovina and the obligation of the Entities to create conditions in order for that status to be exercised in its full capacity. In addition, the applicants underline that *the aim of the General Framework Agreement for Peace in Bosnia and Herzegovina, including the Constitution of Bosnia and Herzegovina, is the prohibition of discrimination*. The provision of Article II(4) is *included in the Constitution of Bosnia and Herzegovina despite the fact that there is a similar provision provided for in the European Convention (Article 14 thereof)*. Annex I to the Constitution of Bosnia and Herzegovina contains a list of international documents protecting the human rights and freedoms, while Article II(4) of the Constitution of Bosnia and Herzegovina prescribes that the application of those rights and freedoms

shall be secured to all persons without discrimination. In the applicants' opinion, the intention additionally to secure and to protect a wide range of rights of all persons in the territory of Bosnia and Herzegovina is thus expressed. The applicants hold that such a constitutional solution *is unique in the world*, as the international instruments provided for in Annex I to the Constitution of Bosnia and Herzegovina form an integral part of the Constitution of Bosnia and Herzegovina *and, thus, have priority over all other law*. In the case at hand, according to the applicants, this means that these constitutional provisions have priority over law of the State and Entities, including all the laws.

5. Furthermore, the applicants state that Bosnia and Herzegovina, despite the obligation to respect the constitutional norm related to the constituent status of Serbs, Bosniacs and Croats throughout the territory of Bosnia and Herzegovina, determined November 25 as Statehood Day of Bosnia and Herzegovina. The applicants allege that a Decree to Proclaim the Law wherein November 25 was declared as Statehood Day of Bosnia and Herzegovina and National Holiday was signed by *the President of the Presidency of the so-called Republic of Bosnia and Herzegovina, Alija Izetbegović, on 6 March 1995, at the time of tragic conflict in Bosnia and Herzegovina*. Based on that act, nowadays the Statehood Day has been *celebrated only in one part of the territory of Bosnia and Herzegovina, i.e. Federation of Bosnia and Herzegovina*. In the applicants' view, it clearly follows that *the intention behind the determination of November 25 as Statehood Day of Bosnia and Herzegovina was to exclude one constituent people, i.e. the Serb people*. Namely, in the applicants' opinion, any prescription of a holiday of the Entities symbolizing only one constituent people or two constituent peoples in Bosnia and Herzegovina constitutes the measure directed at distinction, exclusion, restriction or giving preference based on national or ethnic origin, the aim of which is to jeopardize or impair the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms under equal conditions in all fields of life. The applicants point out that despite the obligations *for all participants in public life and public authorities at*

*any level whatsoever to refrain from, not to encourage, not to defend or not to support discrimination, and to take efficient measures at the national or local levels to amend, rescind or nullify any laws and regulations which provide for discriminatory provisions, to prohibit any discriminatory actions, the competent authorities of Bosnia and Herzegovina failed to take adequate measures to that end. The applicants hold that November 25 is celebrated as a holiday related only to two peoples, namely the Bosniac people and Croat people, which places the Serb people in a subordinated and discriminatory position.*

6. In view of the above, the applicants requested that the Constitutional Court establish that the provisions of Articles 1, 2 and 3 of the challenged law are inconsistent with Article 1 of Protocol No. 12 to the European Convention and Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with Article 1.1 and Article 2(a), (b), (c), (d), (e) of the International Convention on the Elimination of All Forms of Racial Discrimination.

**b) Reply to the request**

7. In the reply to the request, the House of Representatives of the BiH Parliamentary Assembly stated that the Constitutional and Legal Commission discussed the request and *failed to take a unanimous position on the issue.*

8. In the reply to the request, the House of Peoples of the BiH Parliamentary Assembly mentioned the date when the challenged law had been passed, and the signatory party to the Decree to Proclaim the Law and the time when it had been signed. In addition, it is stated that the provision of Article II(2) (interim provisions) prescribes that *all laws, regulations, and judicial rules of procedure in effect within the territory of Bosnia and Herzegovina when the Constitution enters into force shall remain in effect to the extent not inconsistent with the Constitution, until otherwise determined by a competent governmental body of Bosnia and Herzegovina.* Furthermore, they stated that, following the discussion, the Constitutional and Legal Commission of the House of Peoples of the BiH Parliamentary Assembly decided *to inform the Constitutional Court of BiH about the mentioned facts and that the Constitutional Court, within its jurisdiction, ought to decide whether or not the challenged law is inconsistent with the Constitution of BiH.*

**IV. Relevant Law**

9. **The Law Declaring November 25 as Statehood Day of the Republic of Bosnia and Herzegovina** (*Official Gazette of the Republic of Bosnia and Herzegovina*, 9/95), as relevant, reads:

*Article 1*

*It is hereby declared that November 25 shall be a Statehood Day of the Republic of Bosnia and Herzegovina.*

*Article 2*

*The Statehood Day of the Republic of Bosnia and Herzegovina shall be a national holiday.*

*Article 3*

*State authorities, companies and other legal persons shall not work on the Statehood Day.*

*State authorities, companies and other legal entities that are obliged to work on the Statehood Day as well as the scope of their work shall be determined by the Government of the Republic of Bosnia and Herzegovina.*

[...]

**V. Admissibility**

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

11. 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 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*

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*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.*

12. Having regard to the provisions of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina and Article 19 of the Constitutional Court's Rules, the Constitutional Court established that the request for review of the constitutionality of Articles 1, 2 and 3 of the challenged law is admissible, as it was filed by an authorised person, and that there is no any formal reason under Article 19 of the Rules of the Constitutional Court rendering the request inadmissible.

## **VI. Merits**

13. The applicants hold that Articles 1, 2 and 3 of the challenged law are not in conformity with the provisions of Article I(2) and II(4) of the Constitution of Bosnia and Herzegovina, Article 14 of the European Convention, Article 1 of Protocol No. 12 to the European Convention and Article 1.1 and Article 2(a), (b), (c), (d), (e) of the International Convention on the Elimination of All Forms of Racial Discrimination, for *the Serb people in Bosnia and Herzegovina is discriminated against*, contrary to the constituent status proclaimed under the Preamble of the Constitution of Bosnia and Herzegovina.

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

### *Preamble*

*Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine that the Constitution of Bosnia and Herzegovina is as follows:*

### *Article 1*

#### *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*

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

*Article II*

[...]

*4. Non-Discrimination*

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

15. **Article 1 of Protocol No. 12 to the European Convention** 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.*

16. The **International Convention on the Elimination of All Forms of Racial Discrimination** (adopted by the General Assembly at its plenary meeting held on 21 December 1965), as relevant, reads:

*Article 1.1*

*In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*

*Article 2*



*1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:*

*(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;*

*(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;*

*(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;*

*(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;*

*(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.*

17. The Constitutional Court first notes that Article 14 of the European Convention, referred to by the applicants, is not applicable to the present case, as the right guaranteed under Article 14 of the European Convention is an accessory right. This means that Article 14 of the European Convention does not provide for an independent right to non-discrimination but it may be referred to only having regard to “the enjoyment of the rights and freedoms set forth in the European Convention.” Given that the applicants failed to make a connection between their allegations on discrimination and a right safeguarded by the European Convention in respect of which they claim a violation, the Constitutional Court cannot examine the applicants’ allegations on discrimination under Article 14 of the European Convention in the present case.

18. However, the applicants also referred to the prohibition of discrimination under Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with Article 1.1 and Article 2(a), (b), (c), (d), (e) of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 1 of Protocol no. 12 to the European Convention. As to the applicability of the aforementioned provisions, the Constitutional Court notes that in the First Partial Decision no. *U-4/04* of 31 March 2006 (published in the *Official Gazette of BiH*, 47/06) and in the Second

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Partial Decision no. *U-4/04* of 18 November 2006 (published in the *Official Gazette of BiH*, 24/07), while examining the constitutionality of the then legal solutions on the flag, coat of arms and anthem, and the stipulation of holidays, it took a position that the International Convention on the Elimination of All Forms of Racial Discrimination was applicable. This conclusion was based on the fact that the International Convention on the Elimination of All Forms of Racial Discrimination was listed in Annex I to the Constitution of BiH, as one of the additional agreements which are applied in Bosnia and Herzegovina, and that the obligations under the international agreements, listed in Annex I to the Constitution of Bosnia and Herzegovina, in accordance with Article II(1) and Article II(6) of the Constitution of Bosnia and Herzegovina also refer to the Entities. In addition, in the aforementioned Decision the Constitutional Court concluded that the stipulation of holidays and days of their observance falls under “the right explicitly guaranteed under the domestic law” within the meaning of Article 1 of Protocol No. 12 to the European Convention, regarding which the public authorities have committed themselves not to discriminate against anyone (*idem*, *U 3/03*, paragraphs 65-68).

19. In the present case, the assertions that Articles 1, 2 and 3 of the challenged law discriminate against the Serb people, meaning that other two peoples are given preference over the Serb people, contrary to the principle of equality of the constituent peoples, are based on the following facts: 1) the Decree to proclaim the challenged law was signed, as stated by the applicants, by *the President of the Presidency of the so-called Republic of Bosnia and Herzegovina, Alija Izetbegović [...], at the time of tragic conflict in Bosnia and Herzegovina*; and 2) November 25 as Statehood Day of the Republic of Bosnia and Herzegovina has been observed only in the Federation of Bosnia and Herzegovina, which means that *the intention behind the determination of November 25 as Statehood Day of Bosnia and Herzegovina is absolutely to exclude one constituent people, i.e. the Serb people*.

20. According to the case-law of the Constitutional Court based on the case-law of the European Court of Human Rights, discrimination occurs if a person or a group of persons who are in analogous situations are treated differently, without an objective and reasonable justification for such treatment. In addition, it is irrelevant whether discrimination is a consequence of a differential treatment or of the application of the law itself (see, the European Court, *Ireland v. The Great Britain*, judgment of 18 January 1978, Series A, no. 25, paragraph 226). Therefore, the first issue to be examined by the Constitutional Court is whether there is differential treatment, as alleged by the applicants.

21. As to the first argument that the challenged law is discriminatory because the Decree proclaiming the challenged law was signed by *the President of the Presidency of the so-called Republic of Bosnia and Herzegovina, Alija Izetbegović, on 6 March 1995, at the time of tragic conflict in Bosnia and Herzegovina*, the Constitutional Court notes that the challenged law was passed by the Presidency of the then Republic of Bosnia and Herzegovina, which, at the time, was an internationally recognized State and a Member State of the United Nations. The aforementioned also ensues from the Constitution of Bosnia and Herzegovina, which, in Article I(1), prescribes continuity between the former Republic of Bosnia and Herzegovina and present day Bosnia and Herzegovina, which *shall continue its legal existence under international law as a state*.

22. As to the applicants' assertion that there was a clear *intention behind the determination of November 25 as Statehood Day of Bosnia and Herzegovina is absolutely to exclude one constituent people*, the Constitutional Court first recalls that in the First Partial Decision no. *U-4/04*, while examining the constitutionality of the Entities' laws on the flag, coat of arms and anthem, the Constitutional Court pointed out the following: (see paragraph 131): *[...] As to the symbols of the Republika Srpska, the Constitutional Court points to the fact that the symbols in question are the official symbols of a territorial unit which has the status of "Entity", that they constitute a constitutional category and as such must represent all citizens of the Republika Srpska, who have equal rights according to the Constitution of the Republika Srpska. These symbols appear on all features of the public institutions of the Republika Srpska, that is the National Assembly of the Republika Srpska, public institutions etc. They are not the local symbols of one people, which are to reflect the traditional and historical heritage of that people but the official symbols of the multinational Entity. As such they must reflect the character of the Entity*. In the cited Decision, the Constitutional Court concluded that the challenged Laws were not in conformity with Article II (4) of the Constitution of Bosnia and Herzegovina in conjunction with Articles 1.1 and 2. a) and c) of the International Convention for Elimination of All Forms of Racial Discrimination.

23. In addition, in the Second Partial Decision no. *U-4/04*, wherein the Constitutional Court examined the constitutionality of the provisions of Articles 1 and 2 of the Law on the Family Patron-Saints' Days and Church Holidays, designating as the holidays of the Republika Srpska: Christmas, Day of Republic, New Year (January 14th), Twelfth-day, St. Sava, First Serb Uprising,

Easter, Whitsuntide, May Day – Labour Day and St. Vitus’s Day, the Constitutional Court concluded that the challenged provisions (see, paragraph 70) were not in conformity with the constitutional principle of equality of the constituent peoples, citizens and Others, had a discriminating character and were not in conformity with Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with Articles 1.1 and 2 (a) and (c) of the International Convention for Elimination of All Forms of Racial Discrimination, because they included the holidays which only reflect and exalt the Serb history, tradition, customs and religious and national identity.

24. Furthermore, in its Decision no. *U 3/13*, the Constitutional Court concluded that the contested Article 3(b) of the Law on Holidays, by designating the Day of Republic to be observed on January 9, places members of the Serb people in the privileged position when compared to Bosniacs and Croats, Others and citizens of the Republika Srpska, for the fact that this date represents a part of the historical heritage of only Serb people, and on account of the observance of the Saint Patron’s Day of the Republika Srpska being connected to the tradition and customs of only Serb people. In view of the above, the Constitutional Court concluded that the contested Article 3(b) of the Law on Holidays was inconsistent with Article I (2) of the Constitution of Bosnia and Herzegovina, Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with Article 1.1 and Article 2 a) and c) of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 1 of Protocol No. 12 to the European Convention (*op. cit.* *U 3/13*, paragraphs 97-98).

25. Therefore, in the present case, the Constitutional Court will consider the historical context and symbolism of November 25 in order to establish whether the relevant date represents a part of the historical heritage which excludes the Serb people. In this regard, the Constitutional Court notes that, historically, the date of November 25 is based on the date of the 1943 First State Anti-Fascist Council of the People’s Liberation of Bosnia and Herzegovina meeting (“ZAVNOBIH”), held in Mrkonjić Grad on 25 and 26 November 1943. In the former Socialist Republic of Bosnia and Herzegovina, this date used to be observed as national holiday based on the Law Declaring November 25 as national holiday of the Socialist Republic of Bosnia and Herzegovina (*Official Gazette of SR BiH*, 5/69), which ceased to exist after the adoption of the challenged law. According to historical sources, this date is important because a Decision on Constituting Bosnia and Herzegovina as equal federal unit within the Yugoslav Federation was passed. The ZAVNOBIH Presidency was formed so that it reflected the equality of all the peoples in Bosnia and Herzegovina (Dr. Vojo Kecmanović was appointed President and Avdo Humo, Đuro Pucar Stari, Aleksandar Preha, Vice-Presidents and Hasan Brkić, Secretary). At this meeting, ZAVNOBIH adopted a

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resolution, wherein the following was pointed out: “for the first time in the history of Bosnia and Herzegovina, representatives of the Serb, Croat and Muslim peoples, feeling strong ties of fraternity in the uprising, are met with the aim of making political decisions allowing our peoples to organise our county in accordance with our will and interests, based on the results of armed struggle of the peoples of Yugoslavia and Bosnia and Herzegovina”. In addition, the ZABNOBIH Resolution states: “the peoples of Bosnia and Herzegovina, mixed with each other, have been living together for centuries and have been sharing common interests and desire that their country, which is neither Serb, nor Croat nor Muslim, but Serb as well as Croat and Muslim, is free and fraternizes Bosnia and Herzegovina, guaranteeing equal rights to all Serbs, Muslims and Croats” (texts of the Minutes of the First ZAVNOBIH Meeting and Resolution available at: [http://www.znaci.net/00001/145\\_3.pdf](http://www.znaci.net/00001/145_3.pdf)).

26. In view of the above, the Constitutional Court holds that it can be concluded that the date of November 25 is historically associated with the Serb people equally as with the Croat and Bosniac peoples, meaning that this date is not associated with any event which has excluded the Serb people in any way. On the contrary, it can be concluded that this date represents a symbol of the common anti-fascist struggle of all the peoples in Bosnia and Herzegovina in World War II and their aspirations for Bosnia and Herzegovina as equal federal unit within former Yugoslavia and that all the peoples living there are equal.

27. Furthermore, the Constitutional Court holds that the fact itself that the challenged law was passed during the war in Bosnia and Herzegovina and that the Decree to Proclaim the Law was signed by the then President of the internationally recognised Republic of Bosnia and Herzegovina does not call into question the indisputable historical connection of the peoples in Bosnia and Herzegovina with the events November 25 symbolises, as already stated. In view of the above, the Constitutional Court holds that November 25, as the date observed as national holiday in Bosnia and Herzegovina, based on the challenged law and after the dissolution of the former Yugoslavia, is a symbol of collective, shared remembrance contributing to strengthening the collective identity, as values of particular significance in a multi-ethnic society that is based on the respect for diversity as the fundamental values of a modern democratic society.

28. The second argument on discrimination, as stated by the applicants, is that the mentioned holiday has been *celebrated only in one part of the territory of Bosnia and Herzegovina, i.e. Federation of Bosnia and Herzegovina*. In connection with this issue, in its Decision no. *U 3/13* the Constitutional Court noted *that the holiday is manifested in the public life of a*

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*community through activities undertaken by the public authority for the purpose of reminding the public of the values of significance for the community as a whole and through representation of the community towards others, from outside of the community itself. Therefore, the manner of observance of the holidays assumes a character of exercising the public authority although, as such, it is not regulated by legal or any other norm (op. cit. U 3/13, paragraph 82), and that the manifestation of a holiday in a private life of an individual is connected to free time and does not obligate or impose any public or private participation in the very observation of the holiday. Thus, the practice of the observation of a holiday in principle could not result in discrimination in exercising one's individual rights and obligations. However, non-discrimination of individuals is not the same as the equality of groups (see, Constitutional Court, Third Partial Decision, No. U 5/98, paragraph 70). Therefore, the principle of collective equality of constituent peoples imposes an obligation on the entities not to discriminate, primarily, against those constituent peoples who are, in reality, a minority in that particular entity (idem, paragraph 87).*

29. Moreover, the Constitutional Court stated in the mentioned Decision that *the Venice Commission, in support of the reasons for which the selection of January 9 as the day of observance of the Day of the Republic may be problematic, among other things, indicated that, although no obligation has been imposed on persons to participate in the formal celebration of the Day of the Republic, the very fact that that law imposes the celebration on all the inhabitants by introducing it as a day off, namely for them to refrain from work on that day, under a threat of sanction of a relatively high fine, may be problematic, and the application thereof may result in disproportionate impact on individuals/members of certain ethnic communities living in the Republika Srpska, and the communities concerned (idem, paragraph 95).*

30. In the present case, the Constitutional Court notes that Article 3 of the challenged law prescribes that *state authorities, companies and other legal entities shall not work on the Statehood Day*. Accordingly, the Constitutional Court notes that it is common practice that the Ministry of Labour and Social Policy of the Federation of BiH sends a notification that the relevant day is a non-working day in the Federation of Bosnia and Herzegovina. However, the Constitutional Court notes that neither the challenged law nor any regulation prescribe any sanction in case that any legal person works on the Statehood Day. Furthermore, the applicants failed to refer to any practice or anything that would lead to the conclusion that the manner of observance of November 25, there

where the date is celebrated as Statehood Day, established a difference in respect of the Serb people, when compared to the Bosniac people and Croat people.

31. In view of the above, the Constitutional Court holds that the applicants, by their allegations, failed to prove, to make it probable that, by proclaiming and/or observing November 25 as the Statehood Day of Bosnia and Herzegovina, the Serb people in Bosnia and Herzegovina is treated differently from the Bosniac people and Croat people. As it cannot be concluded that there is a differential treatment, the Constitutional Court concludes that the allegations on discrimination are ill-founded, meaning that the allegations are ill-founded that Articles 1, 2 and 3 of the challenged law are inconsistent with Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with Article 1.1 and Article 2 a), b), c), d) and e) of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 1 of Protocol No. 12 to the European Convention.

## **VII. Conclusion**

32. The Constitutional Court concludes that the provisions of Articles 1, 2 and 3 of the Law Declaring November 25 as Statehood Day of the Republic of Bosnia and Herzegovina (*Official Gazette of the Republic of Bosnia and Herzegovina*, 9/95) are not inconsistent with Article II(4) of the Constitution of Bosnia and Herzegovina in conjunction with Article 1.1 and Article 2 a), b), c), d) and e) of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 1 of Protocol No. 12 to the European Convention.

33. Having regard to Article 59(1) and (3) of the Constitutional Court's Rules, the Constitutional Court decided as set out in the enacting clause.

34. Having regard to Article 43 of the Rules of the Constitutional Court, Vice-President Zlatko M. Knežević and Judge Miodrag Simović gave their statement of dissent to the majority decision.

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