

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*, 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. Seada Palavrić,

Mr. Giovanni Grasso

Having deliberated on the request filed by **twenty six representatives to the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina**, in the case no. **U 6/17**, at its session held on 28 September 2017 adopted the following

DECISION ON ADMISSIBILITY AND MERITS

The request lodged by **twenty six representatives to the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina** for the review of the constitutionality of Article 3.15 of the Election Law of Bosnia and Herzegovina (*Official Gazette of BiH*, 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13, 7/14 and 31/16) is hereby dismissed.

It is hereby established that Article 3.15 of the Election Law of Bosnia and Herzegovina (*Official Gazette of BiH*, 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13, 7/14 and 31/16) is in conformity with Articles I(2), II(1), II(2), II(3), II(4) and II(5) of the Constitution of Bosnia and Herzegovina, Articles 14 and 17 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 25 and 26 of International Covenant on Civil and Political Rights, Article 3 of Protocol No. 1 and Article 1 of Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

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 20 June 2017, twenty six representatives to the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina (“the applicant”) lodged a request with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) for the review of constitutionality of Article 3.15 of the Election Law of Bosnia and Herzegovina (*Official Gazette of BiH*, 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13, 7/14 and 31/16; “the Election Law”).

II. Procedure before the Constitutional Court

2. Pursuant to Article 23 of the Rules of the Constitutional Court, the Parliamentary Assembly of Bosnia and Herzegovina, the House of Representatives and the House of Peoples respectively were requested on 22 June 2017 to submit their respective replies to the request.
3. The House of Peoples submitted its reply on 19 July 2017. The House of Representatives failed to submit its reply to the request, within the given deadline of 30 days.
4. Upon the proposal of the President, Mirsad Ćeman, the Constitutional Court took a decision that the President will not participate in the work and decision-making upon the request for the existence of the reasons referred to in Article 90(1)(b) of the Rules of the Constitutional Court of Bosnia and Herzegovina.

III. Request

a) Allegations stated in the request

5. The applicant claimed that the challenged Article 3.15 of the Election Law of Bosnia and Herzegovina (*Official Gazette of BiH*, 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13, 7/14 and 31/16) is not in conformity with Articles I(2), II(1), II(2), II(3), II(4) and II(5) of the Constitution of Bosnia and Herzegovina

(“the Constitution of BiH”), Articles 14 and 17 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 25 and 26 of International Covenant on Civil and Political Rights, Article 3 of Protocol No. 1 and Article 1 of Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

6. The applicant indicated that Article I(2) of the Constitution of BiH establishes that Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections. The applicant held that the mentioned provision envisages that there is a law that regulates a certain area, as well as that the mentioned law is on accordance with the highest standards of fundamental human rights and freedoms in a democratic society. Therefore, cited provision requires that the elections are free and democratic, i.e. that there must be no restrictions, or additional obligations with regards to registration and expression of the will of voters and that that process must be organized in a democratic manner and the outcome thereof will reflect the will of voters, and not restriction or differential treatment of citizens of BiH. In the applicant’s opinion, imposing additional obligations on the citizens of BiH based on the place of residence constitutes a differential treatment of voters.

7. To support the allegations the applicant referred to the document – Query of 23 June 2016, which the Social Democratic Party (“SDP”) addressed to the Central Election Commission of BiH (“CEC”). In the cited document the SDP requested the CEC to submit its reasoning, by stating the specific legal regulation, on the basis of which the CEC, in its notification of 13 May 2016, requested from the citizens of BiH who are temporarily residing abroad or hold the status of a refugee from BiH to register themselves by a given deadline for the Local Elections in BiH to be held on 2 October 2016, i.e. to state the specific legal basis for seeking, as alleged, reregistration of the citizens of BiH from abroad, who have already been registered in the Central Voters Register and who have used their suffrage previously.

8. Based on the presented document that was cited in the request, it follows that references were made to Article 25 of the International Covenant on Civil and Political Rights in Article IV of Annex 3 of the Framework Agreement for Peace in BiH, and “the Document from the second session of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe (CSCE), which is integrated in the Framework Agreement for Peace as an attachment to Annex 3”. Furthermore, the opinion was voiced that the determination of additional requirements for participation of the citizens of Bosnia and Herzegovina residing abroad in elections, by evading

the legally prescribed election procedures, may be considered discrimination against this population and the violation of the provisions of the Constitution of BiH, including the Election Law.

9. Furthermore, it was indicated that the Election Law, in Article 1.5 paragraphs 2 and 3, stipulates that a citizen of BiH temporarily residing abroad and having the right to vote, shall have the right to vote in person (by arriving at an appropriate polling station in BiH or at a diplomatic and consular representation offices of BiH abroad) or by mail, and that the CEC shall regulate, by means of a special regulation, the entire procedure of voting in a diplomatic and consular representation office of BiH. Article 2.9 of the Election Law stipulates that the CEC shall be responsible for the accuracy, updating and overall integrity of the Central Voters Register for the territory of BiH, without making any distinction whatsoever between the voters abroad and those who permanently reside in BiH. Article 3.5 of the Election Law stipulates that the CEC shall keep the Central Voters Register for the territory of BiH on the basis of the records of a competent state authority that keeps the records of citizens of BiH, where the competent authority keeping the records of citizens of BiH receives the data from: a) the competent Registry Office on death of all citizens over eighteen (18) years of age; and b) the competent Ministry of BiH on the removal from BiH citizenship. It was indicated that it was not possible to identify in the statutory provisions the obligations of the citizens of BiH residing abroad to “update” their status in the Central Voters Register during each election cycle. Finally, it was indicated that Article 3.2 paragraph 2 of the Election Law defines that the citizens of BiH shall be registered in the Central Voters Register “who have voting rights in accordance with Article 20.8 paragraph 6 of this Law, which regulates that a citizen of BiH who has a refugee status and has the right to vote under this article, shall register in the Central Voters Register for the municipality where he or she had a permanent place of residence according to the last Census conducted by the State of BiH, except in the case where he or she can produce a proof of a change of his or her permanent residence in accordance with the law, in the period from the last Census to the moment the person concerned acquired a refugee status”.

10. Accordingly, it was concluded that it clearly follows that every citizen of BiH residing abroad has equal right to be registered in the Central Voter Register, and that those registered in accordance with the law have permanent right to participate in election processes in BiH under the same conditions as other citizens of BiH.

11. The applicant further stated that the CEC pointed out, in its reply no. 06-1-07-2-719-2/16 of 13 July 2016, the following: “Article 3.15 of the Election Law stipulates that a citizen of BiH who is temporarily residing abroad, as well as a citizen of BiH who has a refugee status in order to be included in the excerpt from the Central Voters Register for voting outside of BiH, is obliged to

submit an application to the Central Election Commission of BiH for every elections. A proof of identity of the applicant, as prescribed by this Law, and accurate details of the address abroad shall be attached to the application, signed by the applicant. Furthermore, the provision of Article 22 of the Rulebook on the keeping and use of the Central Voters Register (*Official Gazette of BiH, 37/14*) provides that the CEC BiH, upon calling the elections, submits form PRP-2 to all voters who were, during previous elections, listed on the excerpt of the Central Voters Register for voting outside of BiH. The entire procedure of conducting elections in the diplomatic and consular representation offices of BiH is prescribed by the Rulebook on the manner of conducting elections in the DCRO of BiH, in which the citizens who reside outside of BiH have been given a chance, when submitting an application for voting outside of BiH, to opt to vote by mail or to vote in the DCRO of BiH. Based on the selected voting option, the CEC BiH prepares voting lists for voters who opted for voting in the DCRO BiH and for those opting to vote by mail. Voting in the DCRO BiH is done in person by arrival of voters to the polling station. The CEC BiH complies with the legal regulations regulating this area and it is not authorized to amend them”.

12. Accordingly the applicant deems that the challenged Article 3.15 of the Election Law is not in conformity with the principles of the Constitution of BiH and the principles set forth in the recognized international conventions. In the applicant’s opinion the CEC is forced to act in accordance with the challenged Article 3.15 of the Election Law, which results in discrimination regarding the manner of voting and in departure from the principles of equality and non-discrimination. The application of the challenged article, according to the applicant, results in flagrant violation of the principle of non-discrimination and violates the rights of refugees and displaced persons, thus the challenged article is in contravention of Article 3 of Protocol No. 1 to the European Convention, which is also in contravention of the provisions of Articles I(2), II(1), II(2), II(3), II(4) and II(5) of the Constitution of BiH.

13. The applicant pointed out that the constitutional principles must be applied so as not to derogate the basic meaning of elections, including the equality and non-discrimination of all citizens of BiH who represent the key elements of stability and equality in a multinational and complex state of BiH. The application of the principle of equality and non-discrimination and international standards and human rights, particularly the rights of refugees and displaced persons, in the applicant’s opinion, must, through technical elements of application, fulfil its purpose and must not be only a declarative provision in the Constitution and in the Election Law. The challenged Article 3.15 of the Election Law is in violation of the provisions of the Constitution of BiH, Article 3 of Protocol No. 1, Protocol No. 12 and the International Covenant on Civil and Political Rights,

particularly Articles 25 and 26 that prescribe that every citizen shall have the right and the opportunity, without any distinctions whatsoever and without unreasonable restrictions: to vote and to be elected at fairly conducted periodic elections, with universal and equal suffrage and secret ballot, ensuring the free expression of the will of the voters; to have access, on general terms of equality, to public services in their country. All persons are equal before the law and are entitled without any discrimination to equal protection under the law. The law should prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political and other opinion, national and social origin, property, birth or other circumstance.

14. Finally, the applicant indicated that the challenged Article 3.15 of the Election Law, which the CEC referred to in acting as a state body in charge of conducting the elections, while treating the citizens of BiH in the diaspora and in the country in a different manner, does not provide equal rights for all citizens, without any differences whatsoever, to vote and to be elected, does not provide universal and equal suffrage, and it does not provide access, on general terms of equality, to public services in their country, and neither does it make possible for all persons to be equal before the law. Therefore, the challenged article does not ensure the free expression of the will of voters and is in contravention of the aforementioned provisions of the Constitution and the highest international and legal standards on the protection of human rights as established in the documents of UN and Council of Europe.

b) Reply to the request

15. The House of Peoples, the Constitutional and Legal Commission, indicated in the reply to the request that it reached a unanimous conclusion after the discussion that the Constitutional Court should, in accordance with its responsibilities, render a decision on the conformity of the respective law with the Constitution of BiH.

IV. Relevant Law

16. The **Election Law of Bosnia and Herzegovina** (*Official Gazette of BiH*, nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07, 33/08, 37/08, 32/10, 18/13, 7/14 and 31/16) reads in its relevant part as follows:

Article 1.4

(1) Each citizen of Bosnia and Herzegovina who has attained eighteen (18) years of age shall have the right to vote and to be elected (hereinafter: right to vote) pursuant to provisions of this law.

(2) To exercise his or her right to vote, a citizen must be recorded in the Central Voters Register, pursuant to this law.

Article 1.5

(1) All citizens of BiH who have the right to vote, pursuant to this law, shall have the right to vote in person in the municipality of their permanent residence.

(2) A citizen of BiH who is temporarily residing abroad and has the right to vote, shall be entitled to vote in person (by appearing at an appropriate polling station in BiH or at a diplomatic and consular representation office of BiH abroad) or by mail (by sending the voting ballot by mail) for the municipality where the person had the permanent place of residence prior to his or her departure abroad, provided that he or she is registered as a permanent resident in that municipality at the moment of submitting his or her application for out-of-country vote.

(...)

Article 3.1

(1) The Central Voters Register constitutes the records of citizens of BiH who have the right to vote in accordance with this Law and shall be established, maintained and used for the following purposes: to organize and conduct elections in accordance with law, to conduct referendums, to conduct recalls of elected officials and to elect bodies of the Local Self-governance in accordance with law.

Article 3.2

(1) The Central Voters Register is unique, permanent and shall be regularly updated.

(2) The following citizens of BiH shall be recorded in the Central Voter Register:

a) those of age (18) or older;

b) those who will become eighteen (18) years of age on the Election Day;

c) those who have the right to vote in accordance with this Law, but are temporarily residing abroad; and

d) those who have the right to vote as provided by Article 20.8, Paragraph 6 of this Law.

(...)

Article 3.3

The Central Voters Register shall be made and maintained on the basis of data from official records on permanent and temporary residence of citizens of BiH maintained by a competent State authority, from other public identification documents and official records on citizens of BiH maintained by the Central Election Commission of BiH and other competent authorities and on the basis of public documents and data received directly from citizens.

Article 3.5

(1) The Central Voters Register shall be maintained ex-officio.

(2) The Central Election Commission of BiH shall maintain the Central Voters Register for the territory of BiH on the basis of records of a competent State authority that maintains the records of citizens of BiH in accordance with the Law on Central Registers and Data Exchange, unless otherwise prescribed by this Law.

(3) The competent State authority referred to in Paragraph 2 of this Article shall maintain and shall be responsible for the overall technical processing of all data of relevance for the records of the Central Voters Register (hereinafter: the authority in charge of technical maintenance of the Central Voters Register records).

(4) The competent authority that maintains the records on citizens of BiH pursuant to Law on Citizens' Single Identification Number, Law on Permanent and Temporary Residence of the Citizens of BiH and the Law on Identification Card of BiH Citizens, shall receive the data from:

a) Competent Registry Office on death of all citizens over eighteen (18) years of age; and

b) Competent Ministry of BiH: on deregistration of BiH citizenship.

(6) The competent authority in charge of technical maintenance of the Central Voter Register records shall receive data from the following parties:

a) Municipal Election Commissions on Polling Stations; and

b) Central Election Commission of BiH and Municipal Election Commissions on changes of voting options.

(7) The competent authority in charge of maintaining the official records concerning such data shall be responsible for accuracy and update of data necessary to produce the Central Voters Register.

(8) The competent Registry Offices shall provide to the authority competent for maintaining the official records concerning the Citizens' Single Identification Number, Permanent and Temporary Residence of the Citizens of BiH with the data on all changes that affect the accuracy of the Central Voters Register, in writing, not later than within seven (7) days from the date the change has occurred.

(9) The authority competent for maintaining the official records concerning the Citizens' Single Identification Number, Permanent and Temporary Residence of the Citizens of BiH is responsible for keeping the data updated and accurate and is obliged to keep the files with documents, public identification documents and requests of citizens, on the basis of which the Central Voters Register is maintained and updated, and make the access to these files possible and the files available at the request of the Central Election Commission.

Article 3.6

(1) The Central Election Commission of BiH is responsible for accuracy, correctness and general integrity of the Central Voter Register.

(2) In terms of maintaining the Central Voters Register, Central Election Commission of BiH shall:

(...)

b) draw up the excerpts from the Central Voters Register for displaced persons of BiH;

c) draw up the excerpts from the Central Voters Register for voters who participate in an out-of-country voting;

(...)

e) complete and verify the final excerpts from the Central Voters Register to be used for the elections.

(3) The excerpts from the Central Voters Register for voters referred to in Paragraph 2, sub-paragraph b) of this Article shall be drawn up on the basis of data received from the competent State authorities and citizens in accordance with this Law.

(4) The excerpts from the Central Voters Register for the voters referred to in Paragraph 2, sub-paragraph c) of this Article shall be drawn up on the basis of data possessed by the Central Election Commission of BiH and data delivered by the citizens who participate in the out-of-country voting.

(...)

(6) The Central Election Commission of BiH shall issue its regulations guiding the following:

a) deadlines for completion and verification of the final Central Voters Register and

b) deadlines for delivery of data on the changes in the records of displaced persons and records of citizens who participate in the out-of-country voting.

Article 3.9

(1) A citizen of BiH who has the right to vote shall be recorded in the Central Voters Register for the basic electoral unit where he is registered as a permanent resident in BiH, unless otherwise specified by this Law.

(2) A citizen of BiH who has the right to vote under this Law and who is temporarily residing abroad shall be recorded in the Central Voters Register for the basic electoral unit in which he was registered as a permanent resident in BiH before the departure abroad.

(3) A citizen of BiH who has the right to vote under this Law and who has the status of a refugee from BiH shall be recorded in the Central Voters Register for the basic electoral unit where he used to have permanent residence in accordance with the provisions of Article 20.8 of this Law.

(4) A citizen of BiH who has the right to vote under this Law and who has a status of a displaced person shall be recoded in the Central Voters Register for the basic electoral unit on the basis of the expressed voting option, in accordance with the provisions of Article 20.8 of this Law.

(5) An application for determination or a change in the voting option, in accordance with Paragraph 4 of this Article, shall be submitted by applicants in person, in due time and in the form as prescribed by the Central Election Commission of BiH.

(6) If a citizen of BiH fails to submit an application for determination or a change in the voting option pursuant to Paragraph 5 of this Article, he shall be recorded in the Central Voters Register for the basic electoral unit where he was recorded in the last elections, and if he was not recorded in the Central Voters Register at all, he shall be recorded in the Central Voters Register for the basic electoral unit in which he had a permanent residence according to the last Census conducted by BiH.

Article 3.10

(1) Records of the Central Voters Register shall contain the following information on citizens of BiH who have the right to vote:

a) Last and first name and name of one of parents,

b) Date of birth,

c) National Identification number,

d) Gender,

e) Name of the Municipality where this person has a permanent or temporary residence,

f) Address of the permanent/temporary residence (street, street number and town),

g) Name of the Municipality and/or electoral unit for which this person is eligible to vote,

h) Voting option,

i) Polling Station,

j) Date of registration of the permanent or temporary residence,

k) *Field with the heading: "Notes".*

(...)

Article 3.12

(1) Permanent residence is the municipality in which a citizen has settled down with the intention to permanently reside there and where the permanent residence is registered pursuant to the Law on Permanent and Temporary Residence of Citizens of BiH.

(2) Permanent residence of a citizen of BiH who has the status of a displaced person or a refugee is his municipality of permanent residence in accordance with the last Census conducted by BiH.

Article 3.15

(1) A citizen of BiH who has the right to vote under this Law and is temporarily residing abroad and is recorded in the Central Voters Register, in order to be included in the excerpt from the Central Voters Register for out-of-country voting, is obliged to submit an application to the Central Election Commission of BiH for every elections. Proof of identity of the applicant as prescribed by this law and accurate details of the address abroad, as well as a declaration concerning the voting option: in a diplomatic and consular representation office (DCR) or by mail, shall be attached to the application, signed by the applicant.

(2) A citizen of BiH who has the status of a refugee from BIH and has the right to vote under this Law, and is recorded in the Central Voter Register, in order to be included in the excerpt from the Central Voters Register for out-of-country voting, is obliged to submit an application to the Central Election Commission of BIH for every elections. The application must be received before the deadline set by the Central Election Commission of BIH in the period after the elections are announced and contain the declaration concerning the voting option: in a diplomatic and consular representation office (DCR) or by mail. The applicant should attach to the signed application, the following proofs:

a) proof of identity of the applicant as prescribed by this Law;

b) accurate details of the address abroad and

c) proof of the permanent residence in BiH in accordance with Article 20.8 of this Law, if he wants a change of the data recorded in the Central Voters Register for the basic electoral unit that he has the right to vote for.

(3) A refugee from BiH who is not recorded in the Central Voters Register, in order to be recorded in the Central Voters Register and to exercise thereby his right to vote under this Law, must submit an application to the Central Election Commission of BiH. The application must be received before the deadline set by the Central Election Commission of BiH in the period after the elections are announced. The applicant should attach to the signed application, the following proofs:

a) proof of identity of the applicant,

b) proof of the citizenship of BiH,

c) proof of change of the permanent residence in BiH, in accordance with Article 20.8 of this Law and

d) accurate details of the address abroad.

(4) The following documents shall be admissible as valid proof on identity of the applicant, pursuant to Item a) of Paragraph 3 of this Article:

a) Passport

b) Driving license

c) Valid personal identity card issued by the host country and

d) Refugee card issued by the Government of the host country or another international organization.

(5) The applicant may send the completed and signed application and the required documents by fax and electronically. The procedure and method of sending, receiving, processing, filing (archiving) and protection of electronic applications and documents shall be established by the Central Election Commission of BiH under a separate regulation.

(6) If the requirements of Paragraphs 1, 2 and 3 of this Article are met, the applicant shall be recorded in the excerpt from the Central Voters Register for out-of-country voting.

(7) The applicant referred to in Paragraphs 1, 2 and 3 of this Article shall be held responsible for authenticity of data attached to the application.

(8) The Central Election Commission of BiH shall prescribe the layout of the application form referred to in Paragraphs 1, 2 and 3 of this Article, the manner and procedure to verify the accuracy of data in the documents submitted by refugees from BiH who request to be recorded in the Central Voters Register, to verify the proofs of identity and permanent residence of the refugees and shall issue relevant instructions regarding the procedure for recording voters in the excerpts of the Central Voters Register for out-of-country voting.

(9) Registration into the Central Voters Register of the citizens of BiH who have the status as refugees from BiH, and who have their voting rights as provided by this Law, shall be a continuing process conducted during the entire year, with the documentation attached as provided by paragraph (3) of this Article.

Article 3.16

(1) A citizen of BiH referred to in Paragraphs 1, 2 and 3 of Article 3.15 of this Law shall be obliged to provide all changes affecting the data that he previously submitted to the Central Election Commission of BiH and based of which he is recorded in the excerpt from the Central Voters Register for out-of-country voting. The changes of the data must be submitted not later than the deadline established for the submission of applications for out-of-country voting in the next elections.

(2) If a citizen of BiH referred to in Paragraph 1 of Article 3.15 of this Law fails to submit an application before the deadline established for out-of-country voting in the next elections, he shall be recorded in the excerpt from the Central Voters Register for voting in the appropriate Polling Station in the basic electoral unit of his permanent residence.

(3) If a citizen of BiH referred to in Paragraph 2 of Article 3.15 of this Law, fails to submit proof of his permanent residence in BiH in accordance with Article 20.8 of this Law, he shall be recorded in the excerpt from the Central Voters Register for voting out-

of-country with the right to vote for the basic electoral unit of his permanent residence according to the information available to the authority which performs technical maintenance of the records of the Central Voters Register.

(4) If a citizen of BiH, who is recorded in the excerpt from the Central Voters Register for out-of-country voting has returned to BiH before the deadline established for submission of applications for out-of-country voting in the next elections, he is obliged to submit a request to change his voting option to the competent Voters Register Center.

(5) Voters Register Center shall receive through the Municipal Election Commission and process all requests referred to in Paragraph 4 of this Article in accordance with the regulations of the Central Election Commission of BiH and shall deliver these data to the Central Election Commission of BiH in order to record changes in excerpt from the Central Voters Register for out-of-country voting.

(6) If a citizen of BiH who is recorded in the excerpt of the Central Voters Register for out-of-country voting has returned to BiH after the expiry of the deadline established for submission of applications for out-of-country voting in the next elections, he shall be allowed to vote with the tender-ballot/enveloped ballot in the Polling Station in the basic electoral unit he has right to vote for.

Article 3.17

(1) A citizen of BiH who has the right to vote and is not found in the completed excerpt from the Central Voters Register may vote if he presents a valid identification document referred to in Article 5.12 of this Law and a confirmation on permanent residence.

(2) A voter referred to in Paragraph 1 of this Article shall vote in a Polling Station according to his permanent residence.

Article 20.8

(...)

(5) Until otherwise decided by the High Representative or the Parliamentary of BiH pursuant to paragraph seven of this article, a citizen of BiH who is a refugee and who

has the right to vote shall have the right to register and to vote in person or by mail for the municipality in which the person had his or her permanent place of residence according to the last Census conducted by the State of BiH, except in the case where the person can provide proof of a change of his or her permanent residence in accordance with the law, in the period from the last Census conducted by the State of BiH until that person acquired refugee status.

(6) A citizen of BiH who has refugee status and has the right to vote under this article, shall register for the municipality where he or she had a permanent place of residence according to the last Census conducted by the State of BiH, except in the case where he or she can provide proof of a change of his or her permanent residence in accordance with the law, in the period from the last Census conducted by the State of BiH until that person acquired refugee status.

(7) The special rights to register and to vote provided to displaced persons and refugees in this article shall expire on a day determined by the High Representative. If the High Representative does not so decide before his or her mandate terminates, then the special rights to displaced and refugee voters shall continue until so decided by the Parliamentary Assembly of BiH.

(...)

V. Admissibility

17. 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 and Article 19 of the Rules of the Constitutional Court.

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 neighboring 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.

18. The request for the review of constitutionality was lodged by twenty six representatives to the House of Representatives of the Parliament of the FBiH, which means that the request was filed by an authorized entity within the meaning of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina.

VI. Merits

19. The applicant claimed that the challenged Article 3.15 of the Election Law is not in conformity with Articles I(2), II(1), II(2), II(3), II(4) and II(5) of the Constitution of BiH, in conjunction with Articles 14 and 17 of the European Convention, Articles 25 and 26 of the International Covenant on Civil and Political Rights, Article 3 of Protocol No. 1 and Protocol No. 12 to the European Convention and Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

20. Based on the applicant's allegations it follows that the challenged provision does not bring into question the right of the citizens of BiH abroad to vote, and of the persons with the status of refugees from BiH. However, the conditions under which these persons exercise their right to vote, i.e. the obligation, as the applicant stated, to "reregister" themselves and to "update" before every election process, although they have already been registered in the voters register and have already exercised that right, brings these categories into an unequal position in comparison to the citizens of BiH living in BiH who do not have the same obligation before every election process. In that respect the applicant indicated that maintaining and bringing up-to-date the Central Voters Register is within the competence of state authorities, and that there is the obligation of the competent state authorities to submit and exchange the necessary data on the citizens of BiH. The applicant deems that this brings about a differential treatment of citizens of BiH according to the place of residence. In the applicant's opinion, the challenged Article 3.15 of the Election Law does not afford the equal right to all citizens, without differences, to vote and to be elected, it does not afford the universal and equal suffrage, it does not afford access to public services of their country with general

conditions of equality, neither does it make possible for all persons to be equal before the law, and does not ensure free expression of the will of voters.

21. The applicant referred to Article 3 of Protocol No. 1 to the European Convention, and Article 25 of the International Covenant on Civil and Political Rights.

22. Article 3 of Protocol No. 1 to the European Convention reads as follows:

Article 3
Right to free elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

23. Article 25 of the International Covenant on Civil and Political Rights reads as follows:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country

24. The Constitutional Court recalls that the right to vote and to be elected are not absolute rights and the state is granted a wide margin of appreciation regarding the manner in which to regulate this issue, as well as the issue of organizing and conducting the election process.

25. The Constitutional Court observes that the European Court, in the case of *Sitaropoulos and Giakoumopoulos v. Greece* (see, ECHR, judgment of 15 March 2012, paragraph 70), considered the question as to whether Article 3 of Protocol No. 1 places States under an obligation to introduce a system enabling expatriate citizens to exercise their voting rights from abroad. The European Court pointed out the following:

“71. In general terms, Article 3 of Protocol No. 1 does not provide for the implementation by Contracting States of measures to allow expatriates to exercise

their right to vote from their place of residence. Nevertheless, since the presumption in a democratic State must be in favour of inclusion (see *Hirst*, cited above, § 59), such measures are consonant with that provision. The question is, however, whether Article 3 of Protocol No. 1 goes so far as to require them to be taken. In answering that question, Article 3 should be interpreted with reference to the relevant international and comparative law (see *Yumak and Sadak*, cited above, §127, and *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 76 and 85, ECHR 2008) and to the domestic law of the country concerned.

73. Firstly, with regard to international law, the Court notes that neither the relevant international and regional treaties – such as the International Covenant on Civil and Political Rights, the American Convention on Human Rights and the African Charter on Human and Peoples’ Rights – nor their interpretation by the competent international bodies provide a basis for concluding that voting rights for persons temporarily or permanently absent from the State of which they are nationals extend so far as to require the State concerned to make arrangements for their exercise abroad (see paragraphs 26-31 above).

74. It is true that, in order to give greater effect to the right to vote in parliamentary elections, the institutions of the Council of Europe have, *inter alia*, invited member States to enable their citizens living abroad to participate to the fullest extent possible in the electoral process. (...) The Venice Commission, for its part, observed that since the 1980s the recognition of external voting rights had gained ground in Europe. While it also recommended that member States facilitate the exercise of expatriates’ voting rights, it did not consider that they were obliged to do so. Rather, it viewed such a move as a possibility to be considered by the legislature in each country, which had to balance the principle of universal suffrage on the one hand against the need for security of the ballot and considerations of a practical nature on the other (see, in particular, paragraph 25 above).

75. Furthermore, a comparative survey of the legislation of Council of Europe member States in this sphere shows that, while the great majority of them allow their nationals to vote from abroad, some do not (see paragraph 38 above). However, as regards those States which do allow voting from abroad, closer examination reveals that the arrangements for the exercise of expatriates’ voting rights are not uniform, but take a variety of forms. (...) Lastly, in the majority

of member States which allow voting from abroad, persons wishing to avail themselves of this facility must register by a certain deadline on the electoral roll with the authorities in their country of origin or the diplomatic or consular authorities abroad (see paragraphs 39-45 above).

76. In short, none of the legal instruments examined above forms a basis for concluding that, as the law currently stands, States are under an obligation to enable citizens living abroad to exercise the right to vote. As to the arrangements for exercising that right put in place by those Council of Europe member States that allow voting from abroad, there is currently a wide variety of approaches.”

26. According to the cited position of the European Court, it follows that neither Article 3 of Protocol No. 1 to the European Convention nor, accordingly, Article 25 of the International Covenant on Civil and Political Rights, which the applicant referred to, impose the basis for a conclusion that states are under an obligation to enable citizens living abroad to exercise the right to vote where they live. Also, the mentioned provisions do not impose a certain mechanism for the exercise of the right to vote where recognized to expatriates. In that sense the establishment of a mechanism under which the exercise of the right to vote abroad, i.e. in the place where a voter resides abroad, is conditioned, *inter alia*, upon the registration within a certain deadline in the voters register of the authority of one’s own country of origin or at its diplomatic or consular authorities abroad, which, according to the cited paragraph is precisely the case with the majority of the countries allowing their citizens living abroad to vote, is not contrary to the right referred to in Article 3 of Protocol No. 1 to the European Convention, or in Article 25 of the International Covenant on Civil and Political Rights.

27. Furthermore, when it comes to domestic law, the Constitutional Court recalls that Article 3 of the Law on Citizenship stipulates that all citizens of BiH shall enjoy the same human rights and fundamental freedoms, as stipulated under the Constitution of BiH and shall enjoy the protection of these rights throughout the territory of BiH, under the same conditions. In accordance with Article 1.4 of the Election Law all citizens shall be guaranteed the right to vote (to vote and to be elected) in accordance with the provisions of this law, under the conditions applicable to all the citizens of BiH: to have turned 18 years of age and to be registered in the Central Voters Register in accordance with the provisions of this law.

28. According to the aforementioned provisions it follows undisputedly that the right to vote is recognized to all the citizens of BiH, irrespective of whether they live abroad or in BiH or whether

they are the refugees from BiH. The Constitutional Court recalls that in its hitherto case-law it took a position that it was the right guaranteed under the law in respect of which the public authorities must not discriminate against anyone (see, the Constitutional Court, Decision on Admissibility and Merits no. *U-14/12* of 26 March 2015, paragraph 62, available at www.ustavnisud.ba).

29. In the present case the applicant claimed that the conditions prescribed under the challenged Article 3.15 of the Election Law under which the citizens of BiH abroad and refugees from BiH exercise this right in a discriminatory manner and, as such, in contravention of Article II(4) of the Constitution of BiH, Article 14 of the European Convention, Protocol No. 12 to the European Convention and Article 26 of the International Covenant on Civil and Political Rights.

30. Article II(4) of the Constitution of BiH reads as follows:

Non-Discrimination

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

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

Article 14

Prohibition of discrimination

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

32. Protocol No. 12 to the European Convention reads as follows:

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.

33. Article 26 of the International Covenant on Civil and Political Rights reads as follows:

Article 26

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

34. The Constitutional Court recalls that, regarding the interpretation of the term discrimination in its hitherto case-law (see, *inter alia*, the afore-cited Decision on Admissibility and Merits no. *U-14/12*, paragraph 63), it followed the position of the European Court according to which: “In particular, this jurisprudence has made it clear that ‘discrimination’ means treating differently, without an objective and reasonable justification, persons in similar situations (see paragraphs 42-44 above and the authorities cited therein). The authors used the same term, discrimination, in Article 1 of Protocol No. 12. Notwithstanding the difference in scope between those provisions, the meaning of this term in Article 1 of Protocol No. 12 was intended to be identical to that in Article 14 (see the Explanatory Report to Protocol No. 12, § 18). The Court does not, therefore, see any reason to depart from the settled interpretation of ‘discrimination’, noted above, in applying the same term under Article 1 of Protocol No. 12 (as regards the case-law of the UN Human Rights Committee on Article 26 of the International Covenant on Civil and Political Rights, the provision similar, although not identical – to Article 1 of Protocol No. 12 to the Convention, see *Nowak*, CCPR Commentary, N.P. Engel Publishers, 2005, pp. 597-634)”.

35. In view of the above, the Constitutional Court must answer the question as to whether the challenged Article 3.15 of the Election Law, concerning the citizens of BiH abroad and refugees from BiH, by prescribing the obligation for them to submit an application for each election process, which obligation has not been prescribed for the citizens of BiH who reside in BiH, establishes a

differential treatment between the mentioned categories, without an objective and reasonable justification.

36. The challenged Article 3.15 of the Election Law reads as follows:

Article 3.15

(1) A citizen of BiH who has the right to vote under this Law and is temporarily residing abroad and is recorded in the Central Voters Register, in order to be included in the excerpt from the Central Voters Register for out-of-country voting, is obliged to submit an application to the Central Election Commission of BiH for every elections. Proof of identity of the applicant as prescribed by this law and accurate details of the address abroad, as well as a declaration concerning the voting option: in a diplomatic and consular representation office (DCR) or by mail, shall be attached to the application, signed by the applicant.

(2) A citizen of BiH who has the status of a refugee from BIH and has the right to vote under this Law, and is recorded in the Central Voter Register, in order to be included in the excerpt from the Central Voters Register for out-of-country voting, is obliged to submit an application to the Central Election Commission of BIH for every elections. The application must be received before the deadline set by the Central Election Commission of BIH in the period after the elections are announced and contain the declaration concerning the voting option: in a diplomatic and consular representation office (DCR) or by mail. The applicant should attach to the signed application, the following proofs:

a) proof of identity of the applicant as prescribed by this Law;

b) accurate details of the address abroad and

c) proof of the permanent residence in BiH in accordance with Article 20.8 of this Law, if he wants a change of the data recorded in the Central Voters Register for the basic electoral unit that he has the right to vote for.

(3) A refugee from BiH who is not recorded in the Central Voters Register, in order to be recorded in the Central Voters Register and to exercise thereby his right to vote under this Law, must submit an application to the Central Election Commission of BiH. The application must be received before the deadline set by the Central Election

Commission of BiH in the period after the elections are announced. The applicant should attach to the signed application, the following proofs:

- a) proof of identity of the applicant,*
- b) proof of the citizenship of BiH,*
- c) proof of change of the permanent residence in BiH, in accordance with Article 20.8 of this Law and*
- d) accurate details of the address abroad.*

(4) The following documents shall be admissible as valid proof on identity of the applicant, pursuant to Item a) of Paragraph 3 of this Article:

- a) Passport*
- b) Driving license*
- c) Valid personal identity card issued by the host country and*
- d) Refugee card issued by the Government of the host country or another international organization.*

(5) The applicant may send the completed and signed application and the required documents by fax and electronically. The procedure and method of sending, receiving, processing, filing (archiving) and protection of electronic applications and documents shall be established by the Central Election Commission of BiH under a separate regulation.

(6) If the requirements of Paragraphs 1, 2 and 3 of this Article are met, the applicant shall be recorded in the excerpt from the Central Voters Register for out-of-country voting.

(7) The applicant referred to in Paragraphs 1, 2 and 3 of this Article shall be held responsible for authenticity of data attached to the application.

(8) The Central Election Commission of BIH shall prescribe the layout of the application form referred to in Paragraphs 1, 2 and 3 of this Article, the manner and procedure to verify the accuracy of data in the documents submitted by refugees from BIH who request to be recorded in the Central Voters Register; to verify the proofs of identity and permanent residence of the refugees and shall issue relevant instructions

regarding the procedure for recording voters in the excerpts of the Central Voters Register for out-of-country voting.

(9) Registration into the Central Voters Register of the citizens of BiH who have the status as refugees from BiH, and who have their voting rights as provided by this Law, shall be a continuing process conducted during the entire year, with the documentation attached as provided by paragraph (3) of this Article.

37. The Constitutional Court recalls that Article 1.5 of the Election Law stipulates that the citizens of BiH who have the right to vote, pursuant to this law, shall have the right to vote in person in the municipality of their permanent residence. It is a general provision equally applied to all the citizens of BiH irrespective of whether they are in BiH or outside of BiH. This indisputable follows from paragraph 2 of the mentioned Article, under which a citizen of BiH who is temporarily residing abroad and has the right to vote, shall be entitled to vote in person (by appearing at an appropriate polling station in BiH or at a diplomatic and consular representation office of BiH abroad) (“DCR”) or by mail (by sending the voting ballot by mail) for the municipality where the person had the permanent place of residence prior to his or her departure abroad, provided that he or she is registered as a permanent resident in that municipality at the moment of submitting his or her application for out-of-country vote.

38. It follows from this legal solution that, unlike the citizens of BiH in the country who have the right to vote in person in the municipality where they reside permanently, the citizens of BiH outside BiH, in addition to this right, also have the right, by submitting an application for out-of-country vote, to vote in person at the DCR or by sending the voting ballot by mail.

39. The Constitutional Court recalls that in the Decision on Admissibility and Merits no. *AP-4144/16* of 10 November 2016 (available at www.ustavnisud.ba), in relation to the right of citizens of BiH outside BiH to choose the right to vote within the meaning of Article 1.5 of the Election Law, indicated the following (see, paragraph 55): “This solution is obviously in the spirit of historical context and wartime developments in BiH, which resulted in a significant number of citizens of BiH leaving their pre-war places of permanent residence and now living abroad, i.e. it aims to redress “factual inequality” between the citizens of BiH who have the right to vote and live in BiH who can vote in person on the elections day at a polling station in their place of permanent residence and the citizens of BiH who have the right to vote and live abroad, who in order to exercise this right are conditioned to appear and vote at the polling station of their place of residence which would make the exercise of such right difficult to say the least. In that respect,

Article 5.21 of the Election Law explicitly regulated that a citizen of BiH who has the right to vote and is abroad shall have the right to vote by mail. The Central Election Commission of BiH shall regulate the manner and procedure of voting by citizens by mail”.

40. The Constitutional Court observes that based on the challenged Article 3.15 of the Election Law it follows (paragraph 7) that in order to submit an application and meet conditions prescribed in Paragraphs 1, 2 and 3 the applicant should be on the excerpt from the Central Voters Register for out-of-country voting. In that sense, the challenged Article 3.15 of the Election Law is in the service of the exercise of the rights of voters from BiH who are abroad to vote at DCR or by mail. Given that the citizens of BiH living in BiH do not have this right, only prescribing the conditions for the exercise thereof in terms of submitting an application for each election process does not put the citizens of BiH outside BiH in an unequal position when compared to the citizens of BiH living in BiH.

41. Furthermore, the Constitutional Court observes that it follows from the allegations of the applicant that the claims of differential treatment between the citizens of BiH outside BiH and the citizens of BiH living in BiH is based on the fact that the citizens of BiH outside the country must submit the required data for each election process, although they changed nothing regarding the data previously submitted, and that the citizens of BiH living in BiH are not required to submit data about possible changes irrespective of whether there were any. In support of these allegations the applicant invoked the relevant provisions of the Election Law which regulate the following: that the Central Election Commission of BiH shall be responsible for accuracy, update and overall integrity of the Central Voters Register without any distinctions between the voters citizens of BiH in and outside the country; the Central Election Commission of BiH shall maintain the Central Voters Register on the basis of records of a competent State authority that maintains the records of citizens of BiH; that the necessary data for citizens of BiH are submitted by competent state authorities: Registry Offices on death of all citizens over 18 years of age; and competent Ministry of BiH: on deregistration of BiH citizenship.

42. As already noted in this decision the challenged Article 3.15 of the Election Law is in the service of the exercise of the rights of citizens of BiH living outside of BiH and refugees from BiH to vote at DCR or by mail, which is the right that voters the citizens of BiH living in the country do not have. Further, the very choice between these two options were in no way conditioned or limited by the Election Law. Namely, there is no provision prescribing that a once chosen option is obligatory or that it may be changed solely under certain conditions. Accordingly, a voter may select one option in one election process and another in the next process without any restrictions or

conditioning whatsoever. Therefore, neither the Election Law, nor bylaws enacted on the basis of this law, prescribe the obligation of the public authority to observe once chosen manner of voting (at DCR or by mail), or that they must ensure it for so long as the voter, citizen of BiH, has decided to change it.

43. Furthermore, it is possible to conclude that by prescribing obligation for the voters, citizens of BiH out-of-country of submitting an application before any election procedure, the challenged Article 3.15 of the BiH Election Law serves to achieve the legitimate aim, i.e. to enable their citizens living abroad to participate to the fullest extent possible in the electoral process. The legitimate aim determined in such a manner is in accordance with the primary obligation in the field of the right to vote, which is not one of abstention or non-interference, as with the majority of the civil and political rights, but one of adoption by the State of positive measures to "hold" democratic elections (see, ECtHR, *Mathieu-Mohin and Clerfayt v. Belgium*, judgment of 2 March 1987, Series A no. 113, para 50).

44. In view of the aforementioned, it is necessary to answer the question whether the challenged legal solution strikes a fair balance between the principle of universal suffrage granted to all citizens of BiH regardless of where they live, one the one hand, against the need for security of the ballot and considerations of a practical nature on the other (see, *mutatis mutandis*, *Sitaropoulos and Giakoumopoulos v. Greece*, paragraph 73).

45. In accordance with the challenged Article 3.15 of the BiH Election Law, the citizens of BiH are obliged to submit an application before every election process, wherein they should indicate the voting option (through DCRO or by mail). The application must be duly signed by the applicant and the proof of identity must be attached to it (copy of passport, identity card, driving license, valid personal identity card issued by the host country and refugee card issued by the Government of the host country or another international organization), and the accurate details of home address abroad must be indicated therein.

46. The Constitutional Court notes that Rulebook on the Manner of Conducting Elections in the Diplomatic-Consular Representative Offices of BiH regulates conducting of elections in the DCRO. According to Article 2 of that Rulebook, the Central Election Commission shall take a decision no later than 65 days before the Election Day in order to designate the polling stations in the DCRO of BiH, where the voters, registered in the excerpt from the Central Voters Register for out-of-country voting, may vote. The same Article stipulates that the Central Election Commission determines the polling stations in the DCROs on the basis of the number of voters registered in the excerpt from

the Central Voters Register for out-of-country voting in the DCR, and that there must be at least 50 voters, although a decision to vote in the DCROs with smaller number of voters may be taken if there are justified reasons for it. If the mentioned requirement is not fulfilled, the voters registered to vote in DCROs will be allowed to vote by mail. In addition to the mentioned requirements, the organisational and technical requirements must be fulfilled to organize voting in a DCRO.

47. Furthermore, in accordance with Article 31 of the Rulebook on the Procedure of Conducting Elections in Bosnia and Herzegovina, the BiH Central Election Commission shall make a mail delivery of polling package to all those voters who choose to vote by mail and to voters in the case that the requirements to vote in a DCRO are not fulfilled. The package shall contain: voter's personal information form: name and last name, personal identification number, date of birth, present address outside BiH (street and number, city, zip code, state), combination number for the ballot papers; appropriate specially protected ballot papers that are issued for the basic constituency for which the voter casts his/her vote; return envelope with imprinted (return) address of the BiH Central Election Commission and an envelope for ballot papers to ensure confidentiality of the vote. It follows from the aforementioned that the polling package contains personal information, the protection of which, according to the relevant laws of BiH, must be secured, and that it contains the ballot paper which, if used, forms integral part of the election results at the specific elections.

48. It follows from the cited provisions of the mentioned Rulebooks that the purpose of the submission of application before any election process is the security of the ballots and considerations of a practical nature related to the exercise of the rights of voters, citizens of BiH out-of-country, to vote in the DCROs or by mail.

49. In particular, the BiH Central Election Commission takes a decision to determine the DCROs where voting will be organized before each electoral process, and the requirement to organize the elections in a DCRO is the number of applied voters who decided to avail themselves of the right to vote by mail in a specific electoral process. In that sense, the submission of application in respect before electoral process for the purposes of the challenged Article 3.15 of the BiH Election Law aims at creating the conditions making it possible for the greatest possible number of voters, citizens of BiH, to vote in the DCROs and as such it does not exceed the limits of positive measures to hold democratic elections, which the state takes for the purpose of making it possible for the right to vote to be exercised.

50. Furthermore, as to the exercise of the right to vote by mail and, in this connection, the submission of application in each electoral process, it follows from the cited provisions of the

mentioned Rulebooks that the accurate address to be obtained from voters abroad, to which the pooling package will be delivered, given the content of the pooling package, is an important factor for the purpose of protection of personal information and protection against possible abuse of ballot papers. In particular, the voters from BiH are not obliged to submit information about the residence address abroad to the relevant authorities which gather and process data and maintain registers on the citizens of BiH. Those records are the basis for creating, maintaining and updating of Central Voter's Register, i.e. the national authorities neither create nor maintain such records. In this connection, the requirement to submit an application for each electoral process, wherein it must be indicated, in addition to the voting option by mail, the accurate address abroad, does not exceed the limits of positive measures to hold democratic elections, which the State takes for the purpose of making it possible for the right to vote by mail to be exercised.

51. Finally, the Constitutional Court notes that Article 3.16 paragraph 2 of the BiH Election Law imposes the obligation on all voters out of BiH to provide all changes affecting the data that they previously submitted to the BiH Central Election Commission and based of which they are recorded in the excerpt from the Central Voters Register for out-of-country voting. However, the BiH Election Law does not impose any sanction whatsoever in case of failure to do so.

52. In particular, according to Article 3.16 para 2 of the Election Law, if a citizen of Bosnia and Herzegovina living abroad fails to submit an application for the purposes of Article 3.15 of the Election Law, he/she shall be recorded in the excerpt from the Central Voters Register for voting in the appropriate polling station in the basic electoral unit of his permanent residence, just like the citizens of BiH living in BiH, and he/she may vote in the pooling station of his/her permanent residence, i.e. in accordance with the rule which applies to all citizens of BiH regardless of where they live.

53. Furthermore, as to the citizens of BiH who are refugees from BiH, Article 20.8 of the Election Law prescribes special rights of that category. According to paragraph 5 of that Article, such persons shall have the right to register and to vote in person (at the polling station in the country or in the DCRO) or by mail for the municipality in which the person had his/her permanent place of residence according to the last Census conducted by the State of Bosnia and Herzegovina, except in the case where the person can provide proof of a change of his or her permanent residence in accordance with the law, in the period from the last Census conducted by the State of Bosnia and Herzegovina until that person acquired refugee status. Furthermore, according to paragraph 9 of the challenged Article 3.15, registration into the Central Voters Register of the citizens of BiH who have the status as refugees from BiH, and who have their voting rights as provided by this Law, shall be a

continuing process conducted during the entire year. According to Article 3.16 paragraph 3 of the BiH Election Law, if such persons fails to submit proof of their permanent residence in BiH in accordance with Article 20.8 of this Law, they shall be recorded in the excerpt from the Central Voters Register for voting out-of-country with the right to vote for the basic electoral unit of his permanent residence according to the information available to the authority which performs technical maintenance of the records of the Central Voters Register, i.e. where the person had his/her permanent place of residence according to the last Census conducted by the State of BiH.

54. Taking into account the aforementioned, the Constitutional Court holds that the balance between the universal suffrage granted to all citizens of BiH regardless of where they live, on the one hand, against the need for security of the ballot and considerations of a practical nature on the other is not called into question by the challenged Article 3.15 of the Election Law.

55. The Constitutional Court concludes that the challenged Article 3.15 of the Election Law is not contrary to Articles I(2), II(1), II(2), II(3), II(4) and II(5) of the Constitution of Bosnia and Herzegovina, Articles 14 and 17 of the European Convention, Articles 25 and 26 of the International Covenant on Civil and Political Rights, Article 3 of Protocol No.1 and Article 1 of Protocol No. 12 to the European Convention and Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

VII. Conclusion

56. The Constitutional Court concludes that the challenged Article 3.15 of the Election Law (*Official Gazette of BiH*, 23/01, 7/02, 9/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/10, 18/13, 7/14 and 31/16) is compatible with Articles I(2), II(1), II(2), II(3), II(4) and II(5) of the Constitution of Bosnia and Herzegovina, Articles 14 and 17 of the European Convention, Articles 25 and 26 of the International Covenant on Civil and Political Rights, Article 3 of Protocol No.1 and Article 1 of Protocol No. 12 to the European Convention, and Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

57. Pursuant to Article 59(1) and (3) of the Rules of the Constitutional Court, the Constitutional Court decided as stated in the enacting clause of this decision.

58. According 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