

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3) (a) of the Constitution of Bosnia and Herzegovina, Article 59(2)(2) and Article 61(1) and (2) of the Rules of the Constitutional Court of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina* No. 60/05, 64/08 and 51/09), in plenary and composed of the following judges:

Mr. Miodrag Simović, President

Ms. Valerija Galić, Vice-President

Ms. Constance Grewe, Vice-President

Ms. Seada Palavrić, Vice-President

Mr. Tudor Pantiru,

Mr. Mato Tadić,

Mr. David Feldman,

Mr. Mirsad Ćeman

Having deliberated on the request of **Mr. Beriz Belkić, Deputy Chair of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina**, in case No. **U 15/09**, at its session held on 27 March 2010 adopted the following

## DECISION ON ADMISSIBILITY AND MERITS

The request filed by **Mr. Beriz Belkić, Deputy Chair of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina**, to establish that the preparation and submission of the Second Report of the Republika Srpska to the United Nations Security Council on the Situation in Bosnia and Herzegovina No. 04/1-2219/9 of 16 November 2009 is inconsistent with Articles I(1), III(1)(a), III(3)(b), V(3)(a) and (c) and V(4)(a) of the Constitution of Bosnia and Herzegovina, is hereby dismissed as ill-founded.

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 24 November 2009, Mr. Beriz Belkić, the Deputy Chairman of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, ("the applicant"), filed a request with the Constitutional Court of Bosnia and Herzegovina ("the Constitutional Court") for review of the constitutionality of the Second Report of the Republika Srpska submitted to the United Nations Security Council on the Situation in Bosnia and Herzegovina No. 04/1-2219/9 of 16 November 2009 ("the Second Report of the RS to the Security Council on the Situation in BiH"), as well as for review of the constitutionality of the activities of the Republika Srpska taken either directly or indirectly through its authorized agent and directed towards the Security Council of the United Nations ("the activities of the RS relating to the challenged Report"). The applicant also sought that an interim measure be issued whereby the Constitutional Court would "order an immediate suspension of the challenged Second Report submitted

by the RS to the Security Council on the Situation in BiH” as well as an immediate suspension of all the activities of the RS relating to the challenged Report”.

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

2. By its decision on the interim measure No. U 15/09 of 12 January 2009, the Constitutional Court dismissed the applicant’s request for an interim measure as ill-founded.

3. Pursuant to Article 22(1) of the Rules of the Constitutional Court, on 23 December 2009, the Government of the Republika Srpska was requested to submit its reply to the request.

4. The Government of the Republika Srpska, which is, pursuant to the Decision on Establishment of the Office of Legal Representative of the Republika Srpska (*Official Gazette of RS*, Nos. 40/98 and 77/06), represented by legal counsel Milan S. Dupor, submitted its reply to the request on 4 February 2010.

5. Pursuant to Article 26(2) of the Rules of the Constitutional Court, the reply to the request was communicated to the applicant on 10 February 2010.

## **III. Request**

6. The applicant states that the challenged Second Report of the RS to the Security Council on the Situation in BiH and the challenged activities of the RS relating to the mentioned report are in violation of Articles I(1), III(1)(a), III(1)(b), V(3)(a) and (c) and V(4)(a) of the Constitution of Bosnia and Herzegovina. The applicant refers to Article I(1) of the Constitution of Bosnia and Herzegovina which provides that “Bosnia and Herzegovina 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“, Article III(1)(a) which specifies that “the foreign policy shall be under the responsibility of the institutions of Bosnia and Herzegovina“, Article III(3)(b) which provides that “ the Entities and any subdivisions thereof shall comply fully with this Constitution”, Article V(3)(a) and (c) according to which “the BiH Presidency shall have responsibility for representing Bosnia and Herzegovina in international and European organizations and institutions“, and Article V(4)(a) according to which “together the Chair and the Ministers shall constitute the Council of Ministers with responsibility for carrying out the policies and decisions of Bosnia and Herzegovina in the fields referred to in Article

III(1), (4), and (5) of the BiH Constitution, which means that they shall have responsibility for conducting the foreign policy of Bosnia and Herzegovina within the meaning of Article III (1)(a) of the BiH Constitution“.

7. The applicant further states that on 16 November 2009 the Government of the Republika Srpska submitted the Second Report of the RS to the Security Council on the Situation in BiH, which is the subject of the dispute, emphasising that the submission of the mentioned report on the situation in Bosnia and Herzegovina to the UN Security Council by an Entity in Bosnia and Herzegovina constitutes an interference with and assumption of the sole responsibility of Bosnia and Herzegovina for conducting foreign policy. The applicant points out that “even if the Constitutional Court would consider that such an action, by itself, does not constitute an interference with or assumption of the sole responsibility of Bosnia and Herzegovina, the text of the Report leaves no doubt that the Republika Srpska had an intention to interfere with and take over the sole responsibility of Bosnia and Herzegovina and its institutions in an unconstitutional manner”.

8. Aimed at clarifying the request in question, the applicant notes that the Republika Srpska, in February 2009, had already submitted the “Report to the UN Security Council on the Situation in Bosnia and Herzegovina: How can the international community support continued progress”. In the relevant Report, the Government of the Republika Srpska “invites the Security Council and other interested members of the international community to adapt their manner of supporting BiH...”and it states that “the Security Council should not appoint a new High Representative and should make clear that the Council does not authorise the use of peremptory powers”, and it is also stated that the Peace Implementation Council (PIC) “has no legal authority over BiH, including its Entities” and that the opinion of PIC “has no legal force or effect”. In this report it is further stated that “there is no legal ground for the continuation of use of peremptory powers of the High Representative and that “by use of these powers the Constitution of BiH, the Dayton Accord, and other international agreements and general principles of international law are violated.” Furthermore, it is stated that the UN Security Council has no authority to “continue acting under Chapter VII of the UN Charter”, which concerns the measures aimed at maintenance of international peace and security”.

9. The applicant notes that the cover page of the challenged Second Report of RS to the Security Council on the Situation in BiH is printed on the memorandum of the Government of the Republika Srpska with the logo containing the coat of arms of the Republika Srpska and the wording: Republika

Srpska – Government, and that the aforementioned heading is in Cyrillic script. The cover letter, which makes an integral part of the Report, is printed on the memorandum of the Office of the President of the Government of the Republika Srpska with the identical logo and is addressed to the Ambassador of the Republic of Austria, the current Chairman of the UN Security Council and signed by the President of the Government of the Republika Srpska, Mr. Milorad Dodik.

10. The cover letter refers to the “debate about Bosnia and Herzegovina” scheduled to take place in the Security Council on 23 November 2009 and it is stated that the Government of the Republika Srpska, as a signatory party to all eleven annexes to the Dayton Peace Accord and as one of the two Entities which make up Bosnia and Herzegovina “respectfully requests that its views be taken into consideration by the Council during this debate”, noting that the Government of the Republika Srpska drafted the mentioned Report “in order to assist the Security Council in its upcoming deliberations”. It is further stated that the Report starts with “the overview of the significant political progress which has been made by the elected officials in BiH during the recent years and points to the conclusions of experts that BiH does not constitute a threat to international peace and security”. It is also stated that the Report at hand “explains that the progress in BiH was impeded by serious and strengthened interference of the High Representative and certain countries in BiH’s internal affairs and it also gives an account of the relevant laws, including the one applied to the Peace Implementation Council and High Representative and points to a need for complying with the law and compensation mechanisms in the event of its violation”, and that “the Government believes firmly that, in the absence of unlawful international interference, the elected leaders of BiH can accelerate political progress and build a better future for BiH”, and that “the Government, which speaks for many citizens of BiH directly affected by the Council’s decisions, trusts that the Council will give its views careful consideration”.

11. In the documentation on which this Request is based the applicant presented the content of the Report in detail. The Report and the cover letter are attached as an annex to the decision of the Constitutional Court.

12. In the opinion of the applicant, in the relevant paragraph of the challenged Report in which it is stated that “the Government reiterates its request that the Security Council and the broader international community proceed in a manner that respects the sovereignty of BiH, international legal agreements, including the Dayton Accords, and other principles of international law and the rule of law”, the Government of the Republika Srpska makes a direct and targeted effort to assume the role of the

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institutions of Bosnia and Herzegovina by presenting, to the international community, the positions and needs concerning the entire State. Furthermore, the challenged Report is an attempt of the Government of the Republika Srpska to speak on the international scene on behalf of Bosnia and Herzegovina as a whole. Apart from presenting the documented facts about Bosnia and Herzegovina as a whole, the challenged Report is full of subjective opinions of the Government of the Republika Srpska about Bosnia and Herzegovina or opinions attempted to be attributed to Bosnia and Herzegovina as a whole.

13. The applicant mentions the examples of such positions, including the following: “the security situation in BiH is stable and secure. The current situation does not constitute a threat to international peace and security and, therefore, there is no longer a factual or legal basis for the Security Council to act under Chapter VII of the UN Charter”. Further, “such actions are fundamentally destabilizing and disruptive of the consensus building and reform efforts of BiH’s own authorities”, “neither the Dayton Accords nor the UN Security Council has given the PIC authority to intervene in BiH’s domestic affairs or international relations”, “BiH must be treated as an equal and fully sovereign state free from international intervention in its domestic affairs”, the Government believes that BiH can accelerate legitimate and sustainable political progress. The international community’s contribution should be to respect the rule of law, BiH sovereignty, and the federal structure mandated by the Dayton Accords. Without unlawful interference by the High Representative and PIC Steering Board in internal affairs of BiH, the BiH leading parties can negotiate in good faith, develop consensus and build a better life for BiH’s citizens”, “as explained in the examples below, the hard work of governance is being vigorously pursued by BiH’s elected officials”, “BiH’s rapid progress since May toward satisfying the Commission’s visa liberalization criteria demonstrates its leaders’ ability to compromise and approve necessary reforms”, “BiH citizens - with the exception of individuals targeted by decrees of the High Representative - continue to enjoy freedom of expression, freedom of assembly, freedom of association, and all the other freedoms guaranteed in the BiH Constitution and the European Convention on Human Rights”, “the situation in BiH does not warrant the Security Council to continue to act under Chapter VII of the UN Charter”, “the Security Council should forego further reference to Chapter VII with respect to the situation in BiH”, A key objective of advocates of muscular intervention is to prevent the OHR’s closure... in order to transform BiH from the federal state mandated by the Dayton Accords into an anti-Dayton unitary state”. The applicant considers that this paragraph is aimed at presenting Bosnia and Herzegovina as a federal state to the UN Security Council, which is not stipulated by the BiH Constitution.

14. There are further examples of the positions: “the High Representative’s presence, thus, corrodes the spirit of give and take that is necessary for BiH’s continued progress”, “another abuse of authority and unlawful intrusion into the domestic affairs of BiH by the new High Representative occurred in its response to a set of Conclusions adopted on 14 May 2009 by the Republika Srpska National Assembly”, “the questioning and debate called for in the Conclusions should be encouraged by BiH’s friends, not condemned. In any event, actions such as the RSNA’s passage of the Conclusions are internal affairs of an Entity of a sovereign state. The High Representative’s attempt to repeal the RSNA Conclusions was an unnecessary intrusion into the domestic affairs of the BiH and its Entities and a violation of international law”, “on 6 June 2009, the High Representative removed two senior police officials from their positions, alleging that an official from the State Investigation and Protection Agency of BiH was conducting surveillance against the OHR and that the Police Commissioner of Herzegovina-Neretva Canton in the Federation, was threatening international staff of the OHR in order to obstruct an inquiry into his alleged abuse of office”, “the BiH citizens are left to wonder what distinguished these four men from the other banned officials”, “the appointment of foreign personnel as officials in BiH’s institutions is not consistent with a return to constitutional government and the rule of law”, “The Government will oppose any further attempt to change the law to extend the period for foreigners to serve as judges and prosecutors beyond 2009”. The applicant stated that the status of international judges and prosecutors in the Court of Bosnia and Herzegovina and the Prosecutor’s Office of Bosnia and Herzegovina is regulated by the legislation of Bosnia and Herzegovina, that the Government of the Republika Srpska has no authority to decide these issues or to “confront” them. However, the Government of the Republika Srpska is trying to take over that authority.

15. Furthermore, “new revelations, however, show that the OHR has been conducting secret investigations of important BiH citizens”, “the conduct recently revealed is damaging to the reputation of BiH citizens and BiH itself”. The applicant stated that the challenged Report describes these events in detail, including the enforceable decisions of the international community within the Brčko District and concludes that “these actions demonstrate that violations of the BiH citizens’ human rights by the use of preemptory removal powers are not merely relics of the immediate post-war years...”

16. The applicant explains that the removals and other enforceable measures referred to in the Report as an issue concern one official working for the BiH Institutions (SIPA), one official working for the institutions of the Federation of Bosnia and Herzegovina and three companies from the Brčko

District. Therefore, the applicant considers that in the instant case no claim should be made that the Report was “aimed at lobbying abroad for the interest of the Republika Srpska as an Entity” and referred to the decision of the Constitutional Court No. *U 15/08* of 3 July 2009. The applicant is of the opinion that the Report raises an issue as to the situation in the entire Bosnia and Herzegovina and constitutes an interference with and assumption of the responsibilities vested in the institutions of Bosnia and Herzegovina.

17. The following examples have been also stated: “only if constitutional changes result from a transparent, democratic and legal process... will be accepted as legitimate by BiH citizens and be sustainable”; “the actions of the current High Representative and his staff and certain PIC Steering Board members... not only impede progress and destabilize BiH...”, “they constitute egregious violations of the legal duty not to intervene in matters within the domestic jurisdiction of another State - including with respect to BiH’s - inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another state”, “the PIC communiqués of recent years have concerned themselves with the details of internal affairs of BiH”, “the Government wishes BiH to have friendly relations with all member states of the United Nations, including those that are members of the PIC; but, these relations must be conducted according to international law, recognizing the sovereignty of BiH and without asserting any threat of sanctions should BiH or the Entities choose not to accept the views offered”, “the exercise of these peremptory powers is inconsistent with the Constitution and international legal commitments of BiH”, “BiH must be treated as a full and equal sovereign member of the United Nations. The continuation of the High Representative seriously impedes this”, “as a matter of international law, BiH and the Entities have no legal obligation to consent to the exercise of peremptory powers by the High Representative”. According to the statements of the applicant, in this part the Report quotes the provisions of the UN Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States and in this regard explicitly states that “the timing of such reforms should also take into account the situation in BiH and the needs of the country. If the interests of BiH’s citizens are to be given priority, the most pressing issue facing BiH is not constitutional reform, but economic development”, “...the way forward for progress in BiH must be based on adherence to the following principles...”, “BiH must be treated as an equal and fully sovereign state free from international intervention in its domestic affairs”, “exercise of peremptory removal powers is inconsistent with the general standards of human and civil rights required of members of the European Union and all states party to the human and civil rights treaties to



which BiH is a party” (the applicant explains that the mentioned paragraph further enumerates a number of conventions and other international instruments which were signed and adopted by Bosnia and Herzegovina), “the use of the Bonn Powers to remove officials from office is also in violation of the Stabilization and Association Agreement between Bosnia and Herzegovina and the European Communities”, “moreover, respect for these principles, which constitutes a legal obligation of the parties to the SAA, has been violated by BiH because of its implementation of decisions of the High Representative”, “nearly 200 citizens of BiH have been removed from office by the High Representative...”

18. The applicant holds that the aforementioned and many other parts of “the challenged Report clearly indicate that this act of the Government of the Republika Srpska, including the activities towards the UN Security Council arising from this Report, constitute an unconstitutional interference with and assumption of the sole responsibility of Bosnia and Herzegovina and its institutions for conducting foreign policy. In view of the aforementioned facts, the Constitutional Court of BiH should declare the challenged Report unconstitutional“. The applicant further states that it is clear that the challenged Report is primarily aimed at challenging and finally terminating the role and the powers of the High Representative who, according to Annex 10 of the Dayton Accord, is the High Representative for entire Bosnia and Herzegovina and not only for one of its entities. Even if one would consider as justified the argument that in this case the Republika Srpska is only lobbying for its interests abroad, although the challenging and terminating the role and the powers of the High Representative for entire Bosnia and Herzegovina would definitely affect the Republika Srpska, such an activity of an Entity, within the frames of an international organisation whose member is Bosnia and Herzegovina and not the mentioned entity, would clearly constitute an unconstitutional interference with and assumption of the sole responsibilities of Bosnia and Herzegovina and its institutions. Namely, even if a general responsibility of Bosnia and Herzegovina for foreign policy would be left aside for a moment, including a more specific responsibility of the Presidency of Bosnia and Herzegovina for conducting the said policy and the responsibility of the Council of Ministers of Bosnia and Herzegovina for carrying out that policy, there is still the fact that the Presidency of Bosnia and Herzegovina is the only authority that is responsible for “representing Bosnia and Herzegovina in international organisations and institutions...”, and there is no doubt that the Security Council is one of those organisations.

19. Furthermore, any argument that the Republika Srpska is authorised to lobby for its own interests before the UN Security Council cannot be relevant in the case at hand. The applicant refuses to accept “any of such arguments” since the UN Security Council is one of the exceptional international organisations where the access and addressing (either in verbal or in written form) is allowed solely to the UN member states and international organisations in the absence of invitation by the Council to some other organisation to address it... The title of the Report explicitly indicates that the Report deals with “the situation in Bosnia and Herzegovina”. Also, it follows from the text of the Report that the Republika Srpska is trying to act on behalf of Bosnia and Herzegovina, in other words that it is trying to articulate the positions of Bosnia and Herzegovina referring, *inter alia*, to the alleged “domestic affairs of Bosnia and Herzegovina”, “interference with the internal affairs of BiH”, “an affront to BiH”, “the situation in the country and the needs of BiH”, “the interests of the citizens of BiH”, “the inalienable right (of BiH ) to choose its political, economic, social and cultural systems,” and requesting that “BiH... must be treated as a full and equal sovereign member of the United Nations, as well as “the recognition of the sovereignty of BiH.” Furthermore, one of the rare examples where the name of Republika Srpska is explicitly mentioned in this Report is related to the statement that “the RS Government wishes to have friendly relations with all member states of the United Nations”, whereby the Republika Srpska is directly trying to obtain the capacity for establishing relations with sovereign countries”. The applicant also considers that the activity of the Republika Srpska before the UN Security Council is not only unconstitutional for the reason that an entity is not authorized to independently address an international institution, which may only be addressed by sovereign states and international organizations, but also for the fact that the activity of the RS in the present case constitutes an interference with and assumption of the responsibilities of Bosnia and Herzegovina because of the content of that Report which is clearly aimed at presenting the situation in Bosnia and Herzegovina by way of expressing the alleged positions and interests of Bosnia and Herzegovina and making requests on behalf of Bosnia and Herzegovina.

20. The applicant points out that any argument that the Report undoubtedly refers to the position of an Entity and not to the position of the entire State is not valid. Namely, regardless of the logo and identification of the Republika Srpska in that Report, there is no doubt that most of the statements, claims and requests are presented on behalf of Bosnia and Herzegovina. Given the explicitness of such allegations and requests on behalf of Bosnia and Herzegovina, as well as the scope of the Report and quantity of information contained therein, no one can expect that each UN member state having this

Report at its disposal will understand that those are the positions of an Entity and not the positions of Bosnia and Herzegovina. The applicant further states that the answer to the question whether an act or activity is unconstitutional must depend on the very act or activity by which an entity interferes with or assumes the responsibilities of Bosnia and Herzegovina and not on the degree of transparency around an Entity's activities. In addition, the argument that Bosnia and Herzegovina may inform other UN member states that the Report does not represent the position of its institutions would disregard the very essence of dispute. Any kind of independent activity by the Entity representatives relating to those responsibilities, in particular on behalf of Bosnia and Herzegovina, like in this dispute, constitutes an inadmissible deterioration of balance. The applicant holds that the presented evidence clearly indicate that the Republika Srpska, through the mentioned Report, intentionally interfered with the responsibilities of Bosnia and Herzegovina arising from the aforementioned provisions of the BiH Constitution. The Republika Srpska based its legal argument about the lack of lawfulness of the OHR activity on the principles relating to sovereignty of states. Given that only Bosnia and Herzegovina, and not its Entities, enjoys sovereignty (as acknowledged by the Constitutional Court in its earlier decisions), the Republika Srpska is trying to achieve its goals, and to justify legal arguments for these goals, through Bosnia and Herzegovina. However, the Republika Srpska is doing all of this without the consent of Bosnia and Herzegovina and its institutions, whereby the relationship between these levels of authority has been flagrantly undermined, in which case the mentioned provisions of the Constitution of BiH have been also violated.

21. The applicant specifically points out that the violation of the mentioned provisions of the BiH Constitution should not depend on whether the Republika Srpska is undertaking the mentioned activities with the aim of "lobbying abroad for the interest of the Republika Srpska as an Entity", (Decision of the Constitutional Court *U 15/08*, paragraph 36). It is further stated that in the mentioned decision, the Constitutional Court concluded that there was no violation of the BiH Constitution because the Court considered that those acts and activities of the Republika Serpska "contain nothing that relates to the sole responsibility of Bosnia and Herzegovina in the area of foreign affairs or foreign trade". The applicant is of the opinion that the case at hand does not deal with that issue. In that regard it is stated that it is a sole responsibility of Bosnia and Herzegovina to represent the positions of Bosnia and Herzegovina within the international institutions before which only the sovereign countries are authorised to act when it comes to issues such as "the situation in Bosnia and Herzegovina", "domestic affairs of Bosnia and Herzegovina", "an affront to BiH", "the situation in BiH and the needs of the

country”, “the interests of the citizens of BiH”, “inalienable right (of BiH) to choose its political, economic, social and cultural systems”, and to request that “BiH must be treated as a full and equal sovereign member of the United Nations”, as well as to insist on “ recognition of the sovereignty of BiH.” Therefore, an entity may not “lobby for its interests” by referring to the mentioned interests of the State of Bosnia and Herzegovina or another Entity or the Brčko District (that is also done in this Request), in particular if one takes into account that those levels of authority do not consider that their interests are of such nature. Therefore, the Report and the activities of the Republika Srpska relating to the Report “constitute an interference with and assumption of the responsibilities of Bosnia and Herzegovina”, which, as noted by the applicant, the Constitutional Court of BiH identified as a situation that requires dealing with the issue of “compliance with the constitutional division of responsibilities between the State of Bosnia and Herzegovina and its Entities”.

22. In the applicant’s opinion “the act of interfering with and assumption the responsibilities of Bosnia and Herzegovina becomes evident from the very text of the challenged Report. By this act and activities the Republika Srpska violated the provisions of the BiH Constitution that concern the responsibilities of Bosnia and Herzegovina for foreign policy, as well as its institutions for carrying out that policy and the responsibility of the BiH Presidency “for representing Bosnia and Herzegovina in international and European organizations and institutions.”

### **b) Reply to the Request**

23. In its reply to the Request the Government of the Republika Srpska, *inter alia*, notes that it submitted the Second Report of RS to the Security Council on the Situation in BiH not only as an Entity of Bosnia and Herzegovina but also as a signatory party to the General Framework Agreement for Peace in Bosnia and Herzegovina and eleven international agreements which are, as annexes, attached to the Dayton Agreement. It is further stated that the challenged Report was submitted to the UN Security Council because of the Council’s specific role in the implementation of the Dayton Agreement and debates that it held not only about Bosnia and Herzegovina as a state, but specifically about the Republika Srpska as an Entity of Bosnia and Herzegovina and a contracting party. In particular, the Government of the Republika Srpska notes that as a party to the Dayton Agreement it has right and obligation to present its positions and to submit objections against the statements relating to the facts and law which are submitted by other contracting parties with regards to the Dayton Agreement, the legal obligations and rights of the Republika Srpska in that regard. The aim of the

challenged Report was to reply to the previously expected statements of the High Representative to the UN Security Council, whereby the High Representative accused the Government of the Republika Srpska and its officials that they were violating the Dayton Agreement and internal law. Also, the challenged report was aimed at informing the UN Security Council about important facts and law, which are relevant when it comes to the correct interpretation of the Dayton Agreement. In the challenged Report it was made clear that it is a report of the Government of the Republika Srpska and it is nowhere stated or hinted that the Report represents the positions or interests of the State. In this regard, it is further stated that the cover letter refers to the “debate about Bosnia and Herzegovina” which is scheduled to take place in the UN Security Council on 23 November 2009 and that the Government of the Republika Srpska “respectfully requests that its views be taken into consideration by the Council during the debate.” The challenged Report includes the opinion of the Government of the Republika Srpska about the situation in Bosnia and Herzegovina, and the Government makes it very clear, throughout the Report, that the presented opinions are its own opinions. In doing so, the Government is convinced that not only the citizens of the Entity it represents but also the citizens of the entire Bosnia and Herzegovina may benefit from the adoption of its opinions expressed in the Second Report. The Government of the Republika Srpska considers that it has taken no action of representation, either explicit or implicit, which would be aimed at representing the interests of Bosnia and Herzegovina. In this regard it was stated that it clearly follows from the official Report presented at the session of the UN Security Council that there was no confusion among the members and other participants when it comes to whether the Second Report of the Republika Srpska to the Security Council on the Situation in Bosnia and Herzegovina was submitted on behalf of the State or whether the challenged Report in any way indicated that it represents the positions or the interests of the state institutions. The State was separately represented by the Chairman of the Council of Ministers of Bosnia and Herzegovina who presented the views on behalf of the State. One of the members considered the challenged Report was a separate Report of the Government of the Republika Srpska (including the First Report submitted at the session held in May; see the comments of the Russian Ambassador, page 13). Furthermore, none of the evidence indicates that the UN Security Council considers the challenged report unacceptable or undesirable or that the Security Council would not accept the reports of other contracting parties. Accordingly, both the Reports were recognised as the Reports of the Republika Srpska.

24. The Government of the Republika Srpska challenges the admissibility of the Request stating that it is a political act, and not a legal act, in which certain political opinions are expressed and that such kind of acts are not subject to “administrative-judicial review”. The RS Government also referred to the previous decisions of the Constitutional Court emphasising that neither the facts relating to the challenged Report nor the Constitution of Bosnia and Herzegovina support the claims of the applicant. It is further stated that in “paragraph 1 of the Partial Decision of the Constitutional Court in Case *U 5/98* (Request of Alija Izetbegović, the Chairman of the Presidency of Bosnia and Herzegovina), the Constitutional Court established the legal principles pointing to the constitutionality of the Second Report”. In view of the aforesaid, it is stated, *inter alia*, that “according to the principles of the mentioned decision of the Constitutional Court, the challenged Report is undoubtedly constitutional”. It is further stated that the Constitutional Court has clearly indicated that the Republika Srpska, as an Entity of Bosnia and Herzegovina, is authorized to engage itself into international activities, to enter into international agreements, to establish economic, cultural and other representative offices abroad as long as that right does not interfere with the authority of Bosnia and Herzegovina to be represented as a State or into its essential prerogative. The Government of the Republika Srpska considers that the challenged Second Report and its submission to the UN Security Council definitely fall within the frames of these principles. It is also noted that the Constitutional Court, by the same decision, dismissed the applicant’s request in relation to a part of Article 80 of the Constitution of the Republika Srpska, which provides that the RS President is authorized “to propose ambassadors and other international representatives of BiH coming from the Republika Srpska”. This non-obligatory legal nature of the proposal of the Republika Srpska with respect to the appointments of diplomats according to Article 80, as it is further stated, “affected the conformity of the mentioned Article with the Constitution of Bosnia and Herzegovina and, therefore, the challenged Report is constitutional since the issue is not about a legal act which is binding on the State of Bosnia and Herzegovina or on its institutions”.

25. The Government of the Republika Srpska also refers to the Decision of the Constitutional Court No. *U 15/08* of 3 July 2009, because, as it was noted, “the activities pertaining to the case which is being deliberated by the Court are similar to those in the case of *Silajdžić*, and Court considered the activities constitutional”. It is noted that the aim of the RS Second Report was to inform the UN Security Council “about the opinion of the Government relating to its rights and obligations as a signatory party to the Dayton Peace Accord and to urge the Security Council to act in accordance with

the Peace Accord and international law”. Therefore, the Government of the Republika Srpska considers that “given the fact that the Court found that the Memorandum of Agreement in the case of *Silajdžić* is constitutional, which also included the lobbying in the UN, the Second Report, which was submitted to the Security Council, is also consistent with Articles III(1)(a) and (b), III(3)(b), V(3)(a) and (c) and V(4)(a) of the Constitution of Bosnia and Herzegovina. Moreover, when compared with the *Silajdžić* case, the Second Report is not in violation of the Constitution on any other ground. The Second Report is not an act on behalf of the State or a kind of act relating to the activities reserved to the State, such as: establishing diplomatic relations with another country, entering into agreement with another country or international organisation on behalf of the State or representation of the Republika Srpska as an independent state. “Even if, as stated by the applicant, these three factors are not mutually exclusive but they represent the examples of possible unconstitutional activities, they point to the fact that the Court considers, like in the *Izetbegović* case, that the Entities of Bosnia and Herzegovina have a constitutional right to represent themselves before sovereign states and international organisations and to take part in the activities within the international community. Although that right is not unlimited, the activities that may raise a constitutional issue have a narrow scope and relate to the official functions, which are exclusively reserved to the State. The Second Report does not fall within this category of prohibited activities”.

26. The Government of the Republika Srpska states that there is no “exclusive jurisdiction”, such as the one which is “almost” designated by the applicant, considering that Article I(1) of the Constitution of Bosnia and Herzegovina “does not indicate that only the BiH institutions may communicate with the UN, which would imply that the Entities are excluded, because non-state entities communicate with the UN on regular basis. Furthermore, in the *Silajdžić* case the Constitutional Court established that the lobbying of Entities in the UN does not constitute a takeover of or interference with the foreign policy or foreign trade policy of Bosnia and Herzegovina. It is further stated that addressing the UN Security Council is not limited to the sovereign states and international organisations (for example, Kosovo, which is not a member state to the UN, used to address the Security Council on several occasions, which includes the period before the proclamation of independence, and the Palestinian officials were frequently addressing the UN Security Council, including a number of non-profit organisations – Human Rights Watch, Amnesty International. It is also stated that Article V(3)(c) of the Constitution of Bosnia and Herzegovina does not forbid the Republika Srpska to submit the Report to the UN Security Council neither does the Second Report constitute an attempt of the Government of the Republika

Srpska to speak on behalf of or to represent the interests of Bosnia and Herzegovina. The court ban on the communication of the democratically elected Government of the Republika Srpska with the UN Security Council with regards to the positions of the Government relating to issues that directly concern the citizens of the Republika Srpska would block the right of those citizens to “take part in the public affairs, either directly or through their freely elected representatives.” The Government of the Republika Srpska is of the opinion that the challenged Second Report cannot be considered as its attempt to act on behalf of Bosnia and Herzegovina stating that the applicant was either misinformed about the nature and purpose of the Second Report or he wants to suppress the opinions of a considerable number of citizens of Bosnia and Herzegovina, *i.e.* the opinion of one of the signatory parties to the Dayton Peace Accord and Entity of Bosnia and Herzegovina relating to important interests that must concern the Security Council. The Government of the Republika Srpska suggested that the applicant’s request be dismissed as ill-founded.

#### **IV. Relevant Law**

27. **The General Framework Agreement for Peace in Bosnia and Herzegovina**, in its relevant part, reads:

##### *Article 5*

*The Parties welcome and endorse the arrangements that have been made concerning the Constitution of Bosnia and Herzegovina, as set forth in Annex 4. The Parties shall fully respect and promote fulfilment of the commitments made therein.*

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

##### *Article 1*

*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.*



**Article III (1)(a)**

*Responsibilities of the Institutions of Bosnia and Herzegovina*

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

- a) *Foreign policy.*

**Article III (3)(b)**

3. *Law and Responsibilities of the Institutions*

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

**Article V(3)(a) and (c)**

*The Presidency shall have responsibility for:*

- a) *Conducting the foreign policy of Bosnia and Herzegovina.*
- c) *Representing Bosnia and Herzegovina in international and European organizations and institutions and seeking membership in such organizations and institutions of which Bosnia and Herzegovina is not a member.*

**Article V(4)(a)**

*The Presidency shall nominate the Chair of the Council of Ministers, who shall take office upon the approval of the House of Representatives. The Chair shall nominate a Foreign Minister, a Minister for Foreign Trade, and other Ministers as may be appropriate, who shall take office upon the approval of the House of Representatives.*

- a) *Together the Chair and the Ministers shall constitute the Council of Ministers, with responsibility for carrying out the policies and decisions of Bosnia and Herzegovina in the*

*fields referred to in Article III(1), (4), and (5) and reporting to the Parliamentary Assembly (including, at least annually, on expenditures by Bosnia and Herzegovina).*

29. **The Second Report of RS to the Security Council on the Situation in BiH, No. 04/1-2219/9 of 16 November 2009**, together with the cover letter, is attached as an annex to this decision

## **V. Admissibility**

30. In examining the admissibility of the request, the Constitutional Court referred to Article VI(3)(a) of the Constitution of Bosnia and Herzegovina.

Article VI(3)(a) of the Constitution of Bosnia and Herzegovina, in so far as relevant, reads as follows:

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

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

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

31. The applicant seeks that the Constitutional Court establish that the Second Report of RS to the Security Council on the Situation in BiH, No. 04/1-2219/9 of 16 November 2009, and the activities taken by Republika Srpska either directly or through its authorized agent towards the UN Security Council relating to the mentioned Report are inconsistent with Articles I, III(1)(a), III(3)(b), V(3)(a) and (c) and V(4)(a) of the Constitution of Bosnia and Herzegovina.

32. The request was filed by the Deputy Chairman of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, which means that the request was filed by an authorized person under Article VI(3)(a) of the Constitution of Bosnia and Herzegovina.

33. Further, the Constitutional Court will establish whether the issue raised by the Request is an issue of dispute as prescribed under Article VI(3)(a) of the Constitution of Bosnia and Herzegovina. In this regard, the Constitutional Court refers to the opinion expressed in its Decision on Admissibility and Merits No. *U 15/08* of 3 July 2009 (published in the *Official Gazette of Bosnia and Herzegovina*, No. 73/09), in which the Constitutional Court reviewed the compatibility of certain acts of the Government of the Republika Srpska and activities, which were taken either directly or through the authorized agent, relating to the mentioned acts with Articles III(1)(a) and (b), III(3)(b), V(3)(a) and (c) and V(4)(a) of the Constitution of Bosnia and Herzegovina. In the mentioned decision, the Constitutional Court concluded that, within the meaning of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina, it was about the case initiating an issue of dispute between Bosnia and Herzegovina and Entity Republika Srpska relating to the constitutional issue of compliance with the division of responsibilities under Article III(1)(a) of the Constitution of Bosnia and Herzegovina and an issue under Articles III(3)(b), V(3)(a) and (c) and V(4)(a) of the Constitution of Bosnia and Herzegovina. The Constitutional Court concluded that the Constitutional Court has exclusive jurisdiction to decide the dispute at hand within the meaning of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina.

34. Considering the admissibility of the Request and taking into account the position taken in Decision of the Constitutional Court No. *U 15/08* of 3 July and the facts of the Request at hand, the Constitutional Court considers that this case raises a dispute between Bosnia and Herzegovina and Entity Republika Srpska in relation to the constitutional issue of division of responsibilities under Article III(1)(a) of the Constitution of Bosnia and Herzegovina and the issue under Articles III(3)(b), V(3)(a) and (c) and V(4)(a) of the Constitution of Bosnia and Herzegovina. Therefore, within the meaning of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina, the Constitutional Court is competent to decide the dispute at hand.

35. Having regard to Article VI(3)(a) of the Constitution of Bosnia and Herzegovina and Article 17(1) of the Constitutional Court's Rules, the Constitutional Court establishes that the Request is

admissible for it was filed by an authorized person and there are no reasons for which the request would be considered inadmissible under Article 17(1) of the Rules of the Constitutional Court.

## **VI. Merits**

36. The applicant states that the Second Report of the Republika Srpska to the Security Council on the Situation in Bosnia and Herzegovina and activities of the Republika Srpska, which are taken either directly or through its authorized agent and directed towards the UN Security Council relating to the challenged Report are inconsistent with Articles I(1), III(1)(a), III(1)(b), V(3)(a) and (c) and V(4)(a) of the Constitution of Bosnia and Herzegovina. In the applicant's opinion, the Republika Srpska makes a direct and targeted effort to assume the role of the institutions of Bosnia and Herzegovina by presenting, to the international community, the positions and requests relating to the entire State of Bosnia and Herzegovina. Furthermore, the challenged Report is an attempt of the Government of the Republika Srpska to speak on behalf of Bosnia and Herzegovina as a whole on the international scene. Apart from presenting the documented facts about Bosnia and Herzegovina as a whole, the challenged Report is full of subjective opinions of the Government of the Republika Srpska about Bosnia and Herzegovina or opinions attempted to be attributed to Bosnia and Herzegovina as a whole.

37. In its written reply, the Government of the Republika Srpska challenges the incompatibility of the Second Report of RS to the Security Council on the Situation in Bosnia and Herzegovina and activities of the Republika Srpska, which are taken towards the UN Security Council either directly or through its authorized agent relating to the challenged Report, with the mentioned provisions of the Constitution of Bosnia and Herzegovina arguing that the provisions of the Constitution of Bosnia and Herzegovina do not ban the communication with the UN Security Council, in other words they do not indicate that only the BiH institutions may communicate with the UN, which would allegedly imply that the Entities are excluded". The Government of the Republika Srpska challenges the admissibility of the request at hand stating that the Second Report of the RS to the Security Council on the Situation in Bosnia and Herzegovina and activities of the Republika Srpska, which are taken either directly or through its authorized agent and directed towards the UN Security Council relating to the challenged Report are political acts whereby certain political opinions are expressed and they cannot be subject to constitutional review.

38. In examining the allegations stated in the request, the Constitutional Court invokes Article I(1) of the Constitution of Bosnia and Herzegovina according to which, *inter alia*, Bosnia and Herzegovina 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 and Article III that stipulates the responsibilities and relations between the institutions of Bosnia and Herzegovina and Entities. Paragraph 1, item a) of this Article provides for a list of responsibility of the institutions of Bosnia and Herzegovina in the area of foreign policy and paragraph 3 item b provides that the Entities and any subdivisions thereof shall comply fully with this Constitution. In addition, Article V(3)(a) and (c) of the Constitution of Bosnia and Herzegovina provides that the Presidency of Bosnia and Herzegovina is responsible for conducting the foreign policy of Bosnia and Herzegovina and for representing Bosnia and Herzegovina in international and European organizations and institutions, as well as for seeking membership in such organizations and institutions of which Bosnia and Herzegovina is not a member. Furthermore, Article V(4)(a) of the Constitution of Bosnia and Herzegovina provides, *inter alia*, that the Council of Ministers is responsible for carrying out the policies and decisions of Bosnia and Herzegovina in the fields referred to in Article III, paragraphs 1, 4 and 5 of the Constitution of Bosnia and Herzegovina.

39. The aforementioned constitutional provisions clearly stipulate that Bosnia and Herzegovina and its bodies are exclusively responsible for conducting foreign policy and representing Bosnia and Herzegovina in international organizations and institutions. The Constitutional Court indicates that compliance with the constitutional responsibilities and with the responsibilities concerning foreign policy among others is the obligation of the entity based on the Constitution of Bosnia and Herzegovina.

40. The Constitutional Court holds that the issue relating to the compliance with the division of responsibilities between Bosnia and Herzegovina and Entities may be raised in the event that the activities taken by Entity officials constitute an interference with or assumption of some of the responsibilities of Bosnia and Herzegovina.

41. Within the concept of jurisdiction thus established, an issue may raise as to the preparation and submission of the challenged Second Report of the Republika Srpska to the Security Council on the Situation of Bosnia and Herzegovina as an act of the Government of the Republika Srpska.

42. The Constitutional Court notes that in its Decision No. *U 15/08* of 3 July 2008 it is pointed out that “the Constitutional Court does not consider it necessary to give a definition of foreign policy“. Accordingly, the Constitutional Court will not give a definition of foreign policy in the case at hand. However, while considering the activities taken by the Republika Srpska in the case at hand and taking into account the content of the challenged Second Report of the Republika Srpska to the Security Council on the Situation in Bosnia and Herzegovina, *i.e.* the submission of the mentioned Report to the UN Security Council, the Constitutional Court considers that the contested report and activities do not represent a report of the State of Bosnia and Herzegovina nor they have in any way represented the State of Bosnia and Herzegovina before the UN Security Council in a way that would bring into question the constitutional division of competencies in terms of foreign policy.

43. The Constitutional Court notes that there is nothing in the activities taken by the Government of the Republika Srpska by drafting and submitting the challenged Second Report to the UN Security Council on the situation in Bosnia and Herzegovina that could be considered foreign policy and thus included in the exclusive responsibility of Bosnia and Herzegovina. In addition, the Constitutional Court holds that in the present case there is no violation of the Constitution of Bosnia and Herzegovina, in particular as to the division of responsibilities between the State of Bosnia and Herzegovina and its Entities, *i.e.* no legally relevant activity based on the challenged Report was taken to the detriment of the constitutional position of the State of Bosnia and Herzegovina.

44. Therefore, the Constitutional Court concludes that the applicant's allegations of the violation of the provisions of Articles I(1), III(1)(a), III(1)(b), V(3)(a) and (c) and V(4)(a) of the Constitution of Bosnia and Herzegovina are ill-founded.

## **VII. Conclusion**

45. The Constitutional Court considers that the acts and activities taken by one of the Entities may raise an issue as to the existence of a dispute between the Entity and Bosnia and Herzegovina over a matter under the Constitution of Bosnia and Herzegovina, which only the Constitutional Court is competent to resolve. However, in the instant case, the Constitutional Court has concluded that the preparation and submission of the Second Report of the Republika Srpska to the United Nations Security Council on the Situation in Bosnia and Herzegovina, as referred to by the appellant, does not

constitute an interference with or assumption of foreign policy, and it is not inconsistent with Articles I(1), III(1)(a), III(1)(b), V(3)(a) and (c) and V(4)(a) of the Constitution of Bosnia and Herzegovina.

46. Having regard to Article 61(1) and (3) of the Constitutional Court's Rules, the Constitutional Court decided as set out in the enacting clause of the present Decision.

47. Pursuant to Article 41 of the Rules of the Constitutional Court, Separate Dissenting Opinion of Judge Mirsad Ćeman, joined by the Vice-Presidents Valerija Galić and Seada Palavrić, shall make an integral part of the present Decision.

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

Prof. Miodrag Simović  
President  
Constitutional Court of Bosnia and Herzegovina

## DISSENTING OPINION OF JUDGE ĆEMAN JOINED BY JUDGES GALIĆ AND PALAVRIĆ

Pursuant to Article 41(2) of the Rules of the Constitutional Court of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, Nos. 60/05, 64/08 and 51/09), contrary to the decision on the merits of the majority of the Constitutional Court of Bosnia and Herzegovina in the case no. *U 15-09* of 27 March 2010, I hereby present my dissenting opinion.

1. Taking into account that the majority position in this case relies on the majority position taken in Decision No. *U 15/08*, my separate opinion, in essential legal aspects, follows a separate opinion in case No. *U 15/08*, which may relate *mutatis mutandis* to the present case. Therefore, as to the essential legal aspects, I refer to the decision no. *U 15/08* and the separate opinions attached thereto rather than repeating the relevant parts.

2. As to the admissibility, I agree with the position and decision of the majority, as stated in paragraphs 28 through 33 of the present Decision. With all due respect, however, I disagree with the decision on the merits of the case.

3. Namely, Article III(1)(a) of the Constitution of Bosnia and Herzegovina specifies the responsibilities of the BiH Institutions in the area of foreign policy and Article V(3)(a) and (c) of the Constitution of Bosnia and Herzegovina stipulates the responsibilities of the Presidency of Bosnia and Herzegovina for conducting the foreign policy of Bosnia and Herzegovina and representing Bosnia and Herzegovina in international and European organizations and institutions and for seeking membership in such organizations and institutions of which Bosnia and Herzegovina is not a member. Also, Article V(4)(a) of the Constitution of Bosnia and Herzegovina stipulates, *inter alia*, the Council of Minister's responsibility for carrying out the policies and decisions of Bosnia and Herzegovina in the fields referred to in Article III(1), (4), and (5) of Article III of the Constitution of Bosnia and Herzegovina. In this regard, contrary to the position of the majority of the Constitutional Court, which decided and concluded that "...there is nothing in the activities taken by the Government of the Republika Srpska by drafting and submitting the challenged Second Report to the UN Security Council on the situation in Bosnia and Herzegovina that could be considered to be foreign policy and thus included in the exclusive responsibility of Bosnia and Herzegovina", and that "...in the present case there is no violation of the Constitution of Bosnia and Herzegovina, in particular as to the division of responsibilities between the State of Bosnia and Herzegovina and its Entities, *i.e.* no legally relevant activity based on the challenged Report was taken to the detriment of the constitutional position of the State of Bosnia and Herzegovina", I am unable to accept that reasoning or that conclusion taking into account that the cited constitutional provisions clearly stipulate the responsibility of Bosnia and Herzegovina and its bodies for conducting its foreign policy and representing Bosnia and Herzegovina in international and European organizations, as a sole responsibility of Bosnia and Herzegovina.



For these reasons, I hold that the objections by the Government of the Republika Srpska are irrelevant where they state that the applicant's assertion is unfounded as to the following "only the sovereign countries are authorised to act before the United Nations", and that "it submitted the Second Report of RS to the Security Council on the Situation in BiH not only as an Entity of Bosnia and Herzegovina but also as a signatory party to the General Framework Agreement for Peace in Bosnia and Herzegovina and eleven international agreements thereto", given that the constitutional issue, *i.e.* the constitutional dispute should be considered within the context of the sole responsibility of the State of Bosnia and Herzegovina in the area of foreign policy (Article III(1)(a), Article V(3)(a) and (c), Article V(4)(a) and Article III(1), (4) and (5) of the Constitution), as the issue relating to the constitutional division of the responsibilities between Bosnia and Herzegovina and the Entities may be raised in the event that the activities taken by the Entity's officials or bodies constitute an interference with and assumption of responsibility of Bosnia and Herzegovina.

The challenged activities of the Republika Srpska, in my opinion, include the matters and positions which, by their nature, fall within the scope of the State of Bosnia and Herzegovina's foreign policy and, as such, they are within the sole responsibility of the State of Bosnia and Herzegovina (for example, the assertions and statements given in the challenged Report: "the establishment of the principles of progress in BiH", "BiH's contribution to international peace and stability", "the progress in BiH impeded by serious and strengthened interference of the High Representative and certain countries in BiH's internal affairs", as to the status of international judges and prosecutors at the level of Bosnia and Herzegovina and the High Representative for Bosnia and Herzegovina, "BiH's inalienable right to choose its political, economic, social and cultural systems", the removal of officials at the level of the State of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Brčko District, the positions and requests on behalf of Bosnia and Herzegovina, "the Government of the Republika Srpska's speech on behalf of the citizens of BiH").

In addition, the Government of the Republika Srpska, through the preparation and submission of the challenged Second Report, acted unilaterally on the international scene (before the UN Security Council), which constitute an interference with the responsibilities of the State of Bosnia and Herzegovina by the Entity. Precisely, this has led to a dispute within the meaning of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina as to the constitutional division of the responsibilities in the area of foreign policy and, therefore, the Constitutional Court is competent and called upon to make a decision on that dispute.

4. In view of the above, I hold that the applicants' allegations are well-founded where it is stated that the preparation and submission of the challenged Second Report of the Republika Srpska to the Security Council on the Situation of Bosnia and Herzegovina is inconsistent with Articles III(1)(a), V(3)(a) and (c) and V(4)(a) of the Constitution of Bosnia and Herzegovina. In this context, I hold that it is unnecessary to consider separately whether the preparation and submission of the challenged Second

Report of the Republika Srpska to the Security Council on the Situation of Bosnia and Herzegovina is consistent with Articles I(1) and III(3)(b) of the Constitution of Bosnia and Herzegovina.

5. Contrary to the position of the majority that no legally relevant activity based on the challenged Report was taken to the detriment of the constitutional position of the State of Bosnia and Herzegovina, I hold that the preparation and submission of the challenged Second Report constitutes such an activity and the damages for Bosnia and Herzegovina arising from that activity, in my view, are reflected in damages to the constitutional capacity, sovereignty and international subjectivity of Bosnia and Herzegovina as a state (“internally and externally”), which are the categories safeguarded by the Constitution and the Constitutional Court is obliged to protect them (“The Constitutional Court shall uphold this Constitution” – Article VI(3) of the Constitution).

6. Finally, by the majority decision, in the present decision as well as in the decision No. U 15/09, the Constitutional Court considered that it was not necessary to give a definition of foreign policy. In addition to the reasons stated in the separate opinion in the decision U 15/08, in my view, defining the constitutional notion “foreign policy” would mean the establishment of a clear constitutional standard of “foreign policy”. This would significantly reduce or eliminate the disputes or facilitate a resolution of possible disputes between the State of Bosnia and Herzegovina and its Entities relating to the foreign policy issue. By circumventing to do so, the Constitutional Court, objectively, allows the opposite effects to take place.