

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(a) of the Constitution of Bosnia and Herzegovina, Article 42(5), Article 57(2)(b), Article 59(1) and (2) and Article 61(2), (3) and (4) of the Rules of the Constitutional Court of Bosnia and Herzegovina (*the Official Gazette of Bosnia and Herzegovina* no. 94/14), in plenary and composed of the following judges:

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,

Mr. Giovanni Grasso

Having deliberated on a request lodged by **Mrs. Borjana Krišto, the Second Deputy Chairman of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina at the time of filing the request**, in case no. **U-6/16**, at its session held on 6 July 2017, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

The request lodged by **Mrs. Borjana Krišto, the Second Deputy Chairman of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina at the time of filing the request**, is hereby granted.

It is hereby established that Article 114(3) of the Law on Police Officials of Bosnia and Herzegovina (*the Official Gazette of Bosnia and Herzegovina*, 27/04, 63/04, 5/06, 33/06, 58/06, 15/08, 35/09 and 7/12) is inconsistent with Article I(2) of the Constitution of Bosnia and Herzegovina.

The Parliamentary Assembly of Bosnia and Herzegovina is hereby ordered, pursuant to Article 61(4) of the Rules of the Constitutional Court of Bosnia and Herzegovina, to harmonise Article 114(3) of the Law on Police Officials of Bosnia and Herzegovina (*the Official Gazette of Bosnia and Herzegovina*, 27/04, 63/04, 5/06, 33/06, 58/06, 15/08, 35/09 and 7/12) with Article I(2) of the Constitution of Bosnia and Herzegovina, not later than six months after publication of this Decision in the *Official Gazette of Bosnia and Herzegovina*.

The Parliamentary Assembly of Bosnia and Herzegovina is hereby ordered to inform the Constitutional Court of Bosnia and Herzegovina, within the time limit given in the preceding paragraph, about the measures taken to enforce this Decision, in accordance with Article 72(5) of the Rules of the Constitutional Court of Bosnia and Herzegovina.

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

REASONING

I. Introduction

1. On 27 June 2016 Mrs. Borjana Krišto, the Second Deputy Chairman of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina at the time of filing the request (“the applicant”), filed a request with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) for review of the constitutionality of Article 114(3) of the Law on Police Officials of Bosnia and Herzegovina (*the Official Gazette of Bosnia and Herzegovina, 27/04, 63/04, 5/06, 33/06, 58/06, 15/08, 35/09 and 7/12; “the Law on Police Officials”*).

II. Procedure before the Constitutional Court

2. Pursuant to Article 23(2) of the Rules of the Constitutional Court, on 1 July 2016 the Parliamentary Assembly of Bosnia and Herzegovina, the House of Representatives and the House of Peoples, were requested to submit their respective replies to the request.

3. On 28 July 2016, the Commission on Constitutional and Legal Affairs of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina submitted its reply to the request and on 1 August 2016 the Commission on Constitutional and Legal Affairs of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina submitted its reply to the request.

4. At its session held on 30 and 31 March 2017 and pursuant to Article 90(1)(b) of the Rules of the Constitutional Court, the Constitutional Court made a decision on disqualification of Mr. Mirsad Ćeman, the President of the Constitutional Court and Mrs. Seada Palavrić, a Judge of the Constitutional Court from a deliberation and decision-making in the present case, given that they, as members to the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, had participated in the process of passing the Law on Police Officials of Bosnia and Herzegovina, the provision of which has been challenged.

III. Request

a) Allegations from the Request

5. The applicant alleges that the provision of Article 114(3) of the Law on Police Officials of Bosnia and Herzegovina is inconsistent with the provision of Article II(2) and II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) and (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the European Convention”).

6. The applicant clarifies that the challenged provision of Article 114 of the Law on Police Officials is titled “Duration of Proceedings” and that it, in paragraph 2, specifies a time limit for completing internal proceedings and disciplinary proceedings for serious breaches of official duty and that the challenged provision of paragraph 3 of the same Article specifies as follows: *As an exception to Paragraph 2 of this Article, whenever a police official is under criminal investigation, disciplinary proceedings shall be initiated and the police official shall be suspended until the criminal trial is concluded or the criminal investigation is closed.* Therefore, as the applicant points out, the challenged provision regulates an exception to Paragraph 2, *i.e.* that the nine-month time limit for completing internal proceedings and disciplinary proceedings is extended during a criminal investigation or criminal proceedings against a police official and that the mentioned provision, therefore, cannot prescribe that *the police official shall be suspended* given that the suspension is prescribed by Article 112 of the Law on Police Officials.

7. The applicant considers that it is logical and legally correct that the mentioned paragraph 3 reads: *As an exception to Paragraph 2 of this Article, whenever a police official is under criminal investigation, an internal investigation shall be conducted and disciplinary proceedings shall be initiated and, afterwards, the disciplinary proceedings (instead of the police official) shall be suspended until the criminal trial is concluded or the criminal investigation is closed.* The applicant also points out that “it is necessary to add to this provision that an internal procedure will be conducted, as in the practice of the police authorities in Bosnia and Herzegovina, disciplinary proceedings are initiated immediately by the Disciplinary Commission of BiH, without conducting the internal procedure and, as a result, there is a direct violation of the basic human right to a fair trial, the principle of equality of arms and the principle of the presumption of innocence.” Furthermore, according to the applicant, the Law on Police Officials and the Rules of Procedure on Disciplinary Responsibility of Police Officials (“the Rules of Procedure”) stipulates that disciplinary proceedings will be conducted following the internal proceedings and that no exception can be made, analogous to the initiation of criminal proceedings before courts, which is always

preceded by the investigative and criminal proceedings conducted by the Prosecutor's Office and police bodies. So, it is necessary to conduct the internal proceedings, as the disciplinary proceedings cannot be initiated without the presentation of defence by the police official concerned.

8. The applicant holds that the challenged provision is in contravention of the provisions of Articles II(2) and II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 of the European Convention, which apply directly in Bosnia and Herzegovina and which prescribe the fundamental rights of individuals in criminal proceedings. The applicant quotes the provision of Article 112(1) of the Law on Police Officials and concludes that the provision of Article 112 (titled "Suspension") prescribes a suspension as an alternative possibility (it may and does not have to be imposed), the head of police authority enjoys a margin of appreciation in deciding on the precisely described situations and requirements which are to be met cumulatively. The applicant also points out that the provision of Article 112 of the Law on Police Officials actually corroborates that Article 114(3) of the Law on Police Officials is unconstitutional, given that Article 112(1) of the Law on Police Officials prescribes the suspension as an alternative possibility if the criminal proceedings (higher stage in relation to the criminal investigation) or the disciplinary proceedings have been initiated and if other requirements of this provision have been met, while the challenged provision of Article 114(3) related to the duration of the proceedings, by an imperative norm, prescribes the mandatory suspension at a lower stage, *i.e.* at the stage of criminal investigation. The applicant infers that even if an imperative and alternative possibility for suspension existed, it would be correct that it existed in reverse situations, meaning that a decision on suspension during a criminal investigation should be at the discretion of the head of police authority and that it should be imperatively determined where criminal proceedings are initiated, as corroborated by Article 18 of the Criminal Procedure Code of Bosnia and Herzegovina.

b) Reply to the request

9. In response to the request, the Commission on Constitutional and Legal Affairs of the House of Peoples states that it considered the request at its session of 26 July 2016 and concluded that the Parliamentary Assembly of Bosnia and Herzegovina had passed the Law on Police Officials of Bosnia and Herzegovina, which had been published in the Official Gazette of Bosnia and Herzegovina, and that on 27 June 2016 the Constitutional Court of Bosnia and Herzegovina received the applicant's request and that, following the discussion, "the Commission unanimously decided to inform the Constitutional Court of Bosnia and Herzegovina about the aforementioned facts and that a decision on the request would be passed by the Constitutional Court in accordance with its responsibilities.

10. In response to the request, the Commission on Constitutional and Legal Affairs of the House of Representatives points out that it considered the request at its session of 25 July 2016 and, following the discussion, it adopted the conclusion, by four votes in favour, one vote against and three abstentions, that the Parliamentary Assembly of Bosnia and Herzegovina had adopted the Law on Police Officials of Bosnia and Herzegovina.

IV. Relevant Law

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

Article I

Bosnia and Herzegovina

[...]

2. Democratic Principles

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

Article II(2) International Standards

The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.

Article II(3) Enumeration of Rights

[...]

All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:

[...]

e) The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings. [...]

12. The **Law on Police Officials of Bosnia and Herzegovina** (*the Official Gazette of Bosnia and Herzegovina*, 27/04, 63/04, 5/06, 33/06, 58/06, 15/08, 35/09 and 7/12), as relevant, reads:

Article I

Scope of the Law

This Law regulates police powers and the working legal status (labour relations, including: obligations and rights, recruitment, education and in-service training, deployment, ranks, performance evaluation and promotion, remuneration, working conditions, disciplinary responsibility, responsibility for damage and termination of employment) of police officials of Bosnia and Herzegovina (hereinafter: BiH).

Article 103

Disciplinary Responsibility of a Police Official

(1) A police official shall be held disciplinarily accountable for the violations of official duty prescribed by this Law, which occurred as a result of his/her own fault.

(2) The criminal responsibility for a criminal offence shall not exclude the disciplinary responsibility of police officials, provided that the act also constitutes a violation of official duty.

(3) Release from criminal responsibility shall not be regarded as a release from disciplinary responsibility.

(4) The disciplinary procedure shall be further defined in a by-law to be adopted by the Minister, upon consultations with the heads of the police bodies.

(5) All disciplinary procedures must be fair and transparent. Throughout the disciplinary procedure, police officials shall be entitled to the following rights which shall be guaranteed in the by-law adopted pursuant to Paragraph 4 of this Article:

1. The right to be duly notified of the allegations of the violation of official duty and the supporting evidence, along with the right to respond in writing or to have a verbal statement recorded in writing;

2. The right to a fair and public hearing within a reasonable time by the bodies established by this Law. The public may be excluded from all or part of the hearing in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in special circumstances where publicity would prejudice the interests of justice according to opinion of the bodies established by this Law;

3. The right to assert the privilege against self-incrimination and the right to appear at any hearing and defend against the allegations either unaided by legal counsel or with legal counsel of choice;

4. *The right that decisions shall be pronounced publicly;*

5. *The right to lodge a complaint against a decision of the Disciplinary Commission established by this Law.*

Article 106

Initiation of the Internal Proceedings

(1) Internal proceedings for a violation of official duty shall be initiated on the basis of:

a) Citizen's complaint;

b) Request from an employee or employees of the police body;

c) Request from immediate supervisor of the police official; or

d) Request from the Head of the Public Complaints Bureau of the Ministry.

(2) Internal proceedings shall be conducted by the Internal Control Department.

(3) Whoever receives information or complaint against a police official shall submit the said information or complaint to the Internal Control Department within the following 24 hours.

(4) The internal proceedings for a minor violation of official duty shall be completed within 30 days from the date on which it was reported to the Internal Control Department.

(5) The internal proceedings for a serious violation of official duty shall be completed within three months from the date on which it was reported to the Internal Control Department and it can be extended for two more months based on the complexity of the case.

Article 107

Pronouncement of Disciplinary Sanction

(1) Disciplinary sanctions for minor violations of official duty shall be pronounced by the Head, after the internal proceedings referred to in Article 106 of this Law have been completed.

(2) Disciplinary sanctions for serious violations of official duty shall be pronounced by the Disciplinary Commission, after the disciplinary proceedings referred to in Article 109 of this Law have been completed.

(3) The decision on disciplinary responsibility shall be delivered to a police official.

*Article 109**Initiation of the Disciplinary Procedure*

- (1) For serious violations of official duty, the Internal Control Department shall submit to the Disciplinary Commission within seven days after the completion of the internal proceedings referred to in Article 106 of this Law the request to start the disciplinary procedure.*
- (2) The Disciplinary Commission shall start the disciplinary procedure, by the decision, within seven days after the reception of initiative from Internal Control Department.*
- (3) The request and the decision on initiation of disciplinary procedure for a serious violation of official duty shall be delivered to the police official.*
- (4) The Disciplinary Commission shall issue a decision on disciplinary responsibility within 60 days after receiving the request referred to in Paragraph 1 of this Article.*

*Article 112**Suspension*

- (1) A police official may be temporarily suspended from tasks and duties that he/she performs or from the police body if criminal or disciplinary proceedings have been initiated against him/her and if, considering the nature of criminal offence or the nature of serious violation of official duty as well as the circumstances under which a criminal offence or a violation was committed, there are grounds to believe that otherwise it would be damaging to the interest of the service or internal proceedings.*
- (2) The Head shall issue a decision on temporary suspension in accordance with Paragraph 1 of this Article.*
- (3) A suspension of a police official issued in accordance with Paragraph 1 of this Article may last until the end of the disciplinary procedure or the criminal trial.*
- (4) During suspension the official weapon and official identification card are seized from the police official and he/she is forbidden to wear official uniform.*
- (5) A police official who receives a decision on suspension referred to in Paragraph 1 of this Article may lodge a complaint to the Police Board referred to in Article 121 of this Law within 3 days following the day upon which he/she receives the said decision. The complaint shall not suspend the execution of the decision.*

*Article 114**Duration of Proceedings*

(1) The internal proceedings and the determination of sanctions by the Head for a minor violation of official duty must be completed within 60 days from the date on which the violation was committed or reported to the Internal Control Department.

(2) The internal proceedings and the disciplinary proceedings for a serious violation of official duty must be completed within nine months from the date on which the violation was reported to the Internal Control Department.

(3) As an exception to Paragraph 2 of this Article, whenever a police official is under criminal investigation, a disciplinary procedure shall be initiated and the police official shall be suspended until the criminal trial is concluded or the criminal investigation is closed.

13. **The Rules of Procedure on Disciplinary Responsibility of Police Officials of Bosnia and Herzegovina** (*the Official Gazette of Bosnia and Herzegovina*, 18/05, 34/08 and 73/12), as relevant, reads:

*Article 15**Presumption of Innocence*

Everyone charged with a breach of official duty shall be presumed innocent until proved guilty by a final ruling passed in disciplinary proceedings.

*Article 20**Right to make a statement and right to defend oneself*

A police official shall have the right to duly notification of charges of a breach of official duty and of evidence, as well as the right to make a statement in writing in reply to the charges and the right to have his/her oral statement written down.

A police official shall have the right not to make a statement against himself/herself, the right to defend himself/herself in person or through legal assistance of his own choosing, and the right to attend each hearing of the relevant proceedings.

*Article 28**Internal Proceedings*

Any authorised official who receives information or a complaint about the conduct of a police official shall transmit such information or complaint to the Internal Control Department within the following 24 hours.

The internal proceedings for a breach of official duty shall be conducted by the Internal Control Department and shall be initiated based on the following:

- a) complaint filed by a citizen;*
- b) upon a request of one or more employees of the police authority;*
- c) upon a request of the immediate superior of the police official concerned;*
- d) upon a request filed by the Head of the Public Complaints Bureau within the Ministry.*

Article 31

Motion to Initiate the Disciplinary Proceedings

A motion to initiate disciplinary proceedings for a serious breach of official duty shall be submitted to the Disciplinary Commission by the Internal Control Department within seven days after the date of completion of the internal proceedings referred to in Article 30 of these Rules of Procedure. [...]

Article 32

Decision to Initiate the Disciplinary Proceedings

The Disciplinary Commission shall issue a decision on the disciplinary proceedings within seven days after the date of delivery of the motion by the Internal Control Department.

[...]

The accused is not entitled to file an objection against the motion or the decision to initiate the disciplinary proceedings, but he/she has the right to respond in writing to the charges, or to have his/her oral statement written down, in the event that the same was not done in the course of the internal procedure. [...]

[...]

Article 36

Course of Hearings in Public

[...]

The President of the Commission shall ask the accused whether he has understood the motion. In case that the President of the Commission is not convinced that the accused has understood the motion, he/she shall present the content thereof in detail, so that the accused understands the motion. After that, the President of the Commission shall invite the accused to make a statement concerning each count of the motion and to present his/her defence. [...]

14. The **Criminal Procedure Code of Bosnia and Herzegovina** (*the Official Gazette of Bosnia and Herzegovina*, 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 12/09, 16/09, 93/09 and 72/13), unofficial consolidated version available at: http://www.sudbih.gov.ba/files/docs/zakoni/ba/Zakon_o_kvivnom_postupku_BH), as relevant, reads:

Article 18

Consequences of Initiation of the Proceedings

When it is prescribed that the initiation of criminal proceedings entails the restriction of certain rights, such restrictions, unless this Code specifies otherwise, shall commence when the indictment is confirmed. And for the criminal offenses for which the principal penalty prescribed is a fine or imprisonment up to five (5) years, those consequences shall commence as of the day the verdict of guilty is rendered, regardless of whether the verdict has become legally binding.

V. Admissibility

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

16. Article VI(3)(a) of the Constitution of Bosnia and Herzegovina reads:

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.*

17. In the present case, the request was submitted by Mrs. Borjana Krišto, the Second Deputy Chairman of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina at the time of filing the request. Taking into account the provisions of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina and Article 19 of the Rules of the Constitutional Court, the Constitutional Court establishes that the request is admissible as it was filed by an authorized person and because there is no single formal reason under Article 19 of the Rules of the Constitutional Court that would render it inadmissible.

VI. Merits

18. The applicant states that the provision of Article 114(3) of the Law on Police Officials of Bosnia and Herzegovina is inconsistent with the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) and (2) of the European Convention. However, given the essence of the request for review of the constitutionality of the challenged provision of the Law on Police Officials of Bosnia and Herzegovina, it follows that the request raises constitutional issues related to the rule of law under Article I(2) of the Constitution of Bosnia and Herzegovina, which includes, *inter alia*, the quality of laws in terms of their precision and clarity and which does not allow the interpretation of a law or legal provision in an arbitrary manner. Namely, the applicant points out that the contested Article is titled “Duration of Proceedings” and that paragraph 3 regulates an exception to paragraph 2, meaning that the nine-month time limit for completing internal proceedings and disciplinary proceedings for serious breaches of official duty is extended (in case that a criminal investigation is conducted against a police official) during the criminal investigation or criminal proceedings and that the mentioned provision, therefore, cannot prescribe that *the police official shall be suspended* given that the suspension is prescribed by Article 112 of the Law on Police Officials. The applicant holds that the logical question arises whether it is about an error in the Law on Police Officials of Bosnia and Herzegovina, as it is logical and legally correct that the mentioned provision of Article 114(3) reads: *As an exception to paragraph 2 of this Article, whenever a police official is under criminal investigation, an internal investigation shall be conducted and disciplinary proceedings shall be initiated and, afterwards, the disciplinary proceedings (instead of the police official) shall be suspended until the criminal trial has been concluded or the criminal investigation has been closed.*

19. The Constitutional Court highlights that the European Court of Human Rights established in its case-law that that Court is master of the characterisation to be given in law to the facts of the case, it is not bound by the characterisation given by the applicant or the Government. By virtue of the *iura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by the parties and even under a provision in respect of which the Court had declared the complaint to be inadmissible while declaring it admissible under a different one. The reason being that the European Court of Human Rights holds that a complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see ECHR, *Şerife Yiğit v. Turkey*, Judgment of 2 November 2010, paragraphs 51-52 with further references). The Constitutional Court's case-law is similar in the situations where an appellant makes reference to one right and the facts or arguments presented by the appellant disclose a possible violation of some other constitutional rights (see, Constitutional Court, Decision on Admissibility and Merits No. *AP 2043/12* of 12 December 2012, paragraph 22, published in the *Official Gazette of BiH*, 10/16 and available at www.ccbh.ba).

20. The Constitutional Court also notes that the body that enacted the challenged Law on Police Officials failed in the reply to the request to refer to the essence of the request and it only stated "that the Parliamentary Assembly of Bosnia and Herzegovina had passed the Law on Police Officials of Bosnia and Herzegovina, which had been published in the Official Gazette of Bosnia and Herzegovina". Taking into account the aforementioned and the positions stated in the preceding paragraphs of the present Decision, the applicant's allegations that the challenged provisions of the Law on Police Officials are unconstitutional will be examined by the Constitutional Court in respect of the rule of law under Article I(2) of the Constitution of Bosnia and Herzegovina. The mentioned provision of the Constitution of Bosnia and Herzegovina defines that *Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law*. The Constitutional Court has jurisdiction and is obligated always to uphold the Constitution (Article VI(3)), including one of its fundamental principles – the rule of law under the aforementioned constitutional provision. The rule of law principle means a political system that is based on the adherence to the constitution, laws and other regulations by all citizens and government. In addition, the concept of the rule of law is not confined only to the formal adherence to the principle of constitutionality and lawfulness but it requires that constitution and laws must have a certain quality that is appropriate to a democratic system, so that they protect human rights and freedoms as regards a relationship between citizens and governmental bodies within a democratic political system.

21. The Constitutional Court also recalls that the requirements of legal certainty and the rule of law entail that a legal norm must be adequately accessible for persons to whom it will be applied and it must be foreseeable, meaning that it must be formulated with sufficient precision, so that the persons can know actually and specifically their rights and obligations, to a degree that is reasonable in the circumstances, to regulate their conduct accordingly. If this requirement is not met, vague and imprecise norms make room for arbitrary decision-making by competent authorities. Laws, in a legal system that is based on the rule of law, should be of a general nature and should be applied to all people equally and legal consequences should be foreseeable for those to whom the law will be applied. In this connection, the Constitutional Court recalls the position of the European Court related to the determination of “autonomous term of law”, clarifying the expression “law”. Under the case-law of the European Court, the expression “law” does not relate to the mere existence of law, but also relates to the quality of law, requiring that a law is in compliance with the rule of law and that its norms are sufficiently precise, clear and foreseeable (see European Court, case *Silver and Others v. Great Britain*, judgment of 25 March 1983, paragraphs 85-88; *Sunday Times v. Great Britain*, judgment of 26 April 1979, paragraphs 48-49; *Hasan and Chaush v. Bulgaria*, judgment of 26 October 2000, paragraph 84). Law must give the sufficiently clear scope of any discretionary right given to public authorities as well as the manner in which it is executed (see *Rotaru v. Romani*, judgment of 4 May 200, paragraphs 52-56; *Rekvenyi v. Hungary*, judgment of 20 May 1999, paragraph 34).

22. In addition, the Constitutional Court recalls that the Law on Police Officials of Bosnia and Herzegovina regulates police powers and the working legal status (labour relations, including: obligations and rights, recruitment, education... disciplinary responsibility, responsibility for damage and termination of employment) of police officials of Bosnia and Herzegovina. Furthermore, the mentioned law specifies the rules of disciplinary proceedings, which secure that, in the legal proceedings conducted before the competent disciplinary commission, no disciplinary sanction is imposed on an innocent person and that a sanction is imposed on or some other measure in accordance with the Law on Police Officials of Bosnia and Herzegovina is issued against the police official who committed a minor or serious violation of official duty. In terms of the Constitution of Bosnia and Herzegovina, the legislator has exclusive jurisdiction to regulate disciplinary proceedings and disciplinary responsibility of police officials. From the constitutional-legal aspect, the legislator, in regulating specific mechanisms of the mentioned proceedings, has just one obligation and that is that it should satisfy the requirements under the Constitution of Bosnia and Herzegovina and, particularly, those stemming from the principle of the rule of law. More

precisely, the regulation of those proceedings always has to be such as to ensure achievement of legitimate aims of disciplinary proceedings, legal certainty, clarity, accessibility, foreseeability and that the norms are as determinate as possible. It is a task of the Constitutional Court to ensure compliance with the mentioned requirements.

23. Bringing the aforesaid into context with the relevant request, the Constitutional Court first recalls that the Law on Police Officials defines that police officials are civil servants employed within the State Investigation and Protection Agency and the State Border Service of Bosnia and Herzegovina and the Directorate for Coordination of Police Bodies of Bosnia and Herzegovina. The main duty of police officials includes the direct maintenance of public peace and order, the national security, the prevention of behaviour considered unacceptable by society, finding the perpetrators of petty offences and criminal offences and the police apparatus, as a means of compulsion, is at the disposal of the authorities to secure, by applying coercion, that their decisions are complied with. Police officials apply police powers envisaged by the Law on Police Officials and act as authorised official persons in accordance with the Criminal Procedure Code. In performing their duty, police officials are required to act in an impartial and legal manner and to protect the public interest and basic human rights and freedoms.

24. In view of the above powers and responsibilities conferred on police officials in performing their duty and the obligation to adhere to the Constitution of Bosnia and Herzegovina and laws passed in accordance with the Constitution, police officials, whether on or off duty, must conduct themselves properly and in accordance with law. Certain breaches of the law in respect of which proceedings are initiated against police officials in order to establish their criminal or disciplinary responsibility require, *i.e.* justify their removal-suspension from duty during the course of such proceedings. It is about a special measure that is not a sanction, as their criminal or disciplinary responsibility is not yet established. The police official suspended from duty still has his/her official capacity and remains a police official and retains his/her position, but he/she does not perform his/her official duty and, during his/her suspension, he/she is entitled to receive 55% of his/her salary or in exceptional cases, when the police official has a family to support, he/she has the right to receive up to 65 % of his/her salary (Article 113 of the Law on Police Officials).

25. The Constitutional Court notes that the issue of suspension is regulated by Article 112 of the Law on Police Officials (titled "Suspension"). Paragraph 1 of the said Article prescribes as follows: *A police official may be temporarily suspended from tasks and duties that he/she performs or from the police body if criminal or disciplinary proceedings have been initiated against him/her and if, considering the nature of criminal offence or the nature of serious violation of official duty as well*

as the circumstances under which a criminal offence or a violation was committed, there are grounds to believe that otherwise it would be damaging to the interest of the service or internal proceedings. Therefore, the said provision stipulates two conditions that has to be met in order to suspend a police official. The first condition to be met is that *criminal or disciplinary proceedings have been initiated* against the police officer concerned, while the second one includes the following: *if, considering the nature of criminal offence or the nature of serious violation of official duty as well as the circumstances under which a criminal offence or a violation was committed, there are grounds to believe that otherwise it would be damaging to the interest of the service or internal proceedings.* In addition, the Constitutional Court notes that the issue of duration of suspension is regulated by paragraph 3 of the said Article, as follows: *A suspension of a police official issued in accordance with Paragraph 1 of this Article may last until the end of the disciplinary procedure or the criminal trial.* Therefore, the legislator regulated by the said Article the issue of suspension of a police officer, so that it prescribed the conditions under which the head of police authority can issue a decision on temporary suspension, and the legislator regulated the issue of duration of suspension, so that it prescribed that it *may last until the end of the disciplinary procedure or the criminal trial.*

26. Furthermore, the Constitutional Court notes that the legislator regulated the issue of duration of disciplinary proceedings by the provision of Article 114 of the Law on Police Officials. Paragraph 1 of the said Article prescribes as follows: *The internal proceedings and the determination of sanctions by the Head for a minor violation of official duty must be completed within 60 days from the date on which the violation was committed or reported to the Internal Control Department.* Paragraph 2 of the said Article regulates the issue of duration of internal and disciplinary proceedings related to a serious violation of official duty, so that it prescribes as follow: *The internal proceedings and the disciplinary proceedings for a serious violation of official duty must be completed within nine months from the date on which the violation was reported to the Internal Control Department.*

27. However, paragraph 3 of the said Article, titled, as already stated, “Duration of Proceedings”, prescribes as follows: *As an exception to Paragraph 2 of this Article, whenever a police official is under criminal investigation, a disciplinary procedure shall be initiated and the police official shall be suspended until the criminal trial is concluded or the criminal investigation is closed.*

28. Therefore, although Article 112 of the Law on Police Officials clearly regulates the conditions under which a police official can be suspended and the duration of his/her suspension,

the legislator regulates in the challenged provision of Article 114(3) an exception to paragraph 2 of that Article, related to the duration of internal proceedings and disciplinary proceedings for a serious violation of official duty, so that it prescribes that disciplinary proceedings will be initiated and the police official will be suspended if he/she is under criminal investigation and it determines that the suspension will last until the criminal trial is concluded or the criminal investigation is closed. The said provision, in the opinion of the Constitutional Court, is imprecise and inconsistent with the provision of Article 112, which regulates a suspension and clearly stipulates the conditions under which a police official can be suspended and the duration of his/her suspension.

29. Namely, based on the challenged provision of Article 114(3) of the Law on Police Officials, titled “Duration of Proceedings”, it cannot be determined with certainty what was the intention of the legislator, whether it wished to prescribe a situation in which a police officer should in any case be placed under suspension or whether it still remains a facultative measure. In addition, it is unclear whether the imposition of the suspension measure, as prescribed by the challenged provision, requires that the second condition under Article 112(1), which reads: *if, considering the nature of criminal offence or the nature of serious violation of official duty as well as the circumstances under which a criminal offence or a violation was committed, there are grounds to believe that otherwise it would be damaging to the interest of the service or internal proceedings*, should be satisfied, or it requires just that *criminal or disciplinary proceedings have been initiated* against the police officer concerned. Besides, the Constitutional Court notes that the challenged provision, as regards the duration of suspension, is also contradictory to Article 112, as it prescribes that: *A police official shall be suspended until the criminal trial is concluded or the criminal investigation is closed*, while Article 112(3) regulates the duration of suspension, so that the duration of suspension is prescribed as a possibility: *it may last until the end of the disciplinary procedure or the criminal trial*.

30. In view of the above and given that the requirements of legal certainty and the rule of law entail that a legal norm must be adequately accessible to those to whom it will be applied and it must be foreseeable, meaning that it must be formulated with sufficient precision, so that the persons can know actually and specifically their rights and obligations, to a degree that is reasonable in the circumstances, and can regulate their conduct accordingly. The Constitutional Court holds that the challenged provision of Article 114(3) of the Law on Police Officials does not satisfy the requirements of precision and clarity and especially does not provide for in the practice an adequate protection against possible abuses. In addition, the challenged provision is in contravention of Article 112 of the Law on Police Officials and, as such, it allows for different

interpretations, as regards the imposition of suspension measure against a police official and its duration, by both police officials and Disciplinary Commission and its Head, who has legal responsibility for making the decision on suspension.

31. Therefore, the Constitutional Court concludes that in the present case there is a violation of the principle of the rule of law under Article I(2) of the Constitution of Bosnia and Herzegovina, which includes the quality of laws in terms of the precision and clarity and foreseeability of norms.

32. Taking into account that the Constitutional Court established that the provision of Article 114(3) of the Law on Police Officials is inconsistent with Article I(2) of the Constitution of Bosnia and Herzegovina, it is not necessary to consider separately whether Article 114(3) of the Law on Police Officials is consistent with Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) and (2) of the European Convention.

VII. Conclusion

33. The Constitutional Court concludes that the provision of Article 114(3) of the Law on Police Officials is inconsistent with Article I(2) of the Constitution of Bosnia and Herzegovina for being imprecise and vague and, as such, it allows arbitrary interpretation and application and it is therefore in contravention of the rule of law principle.

34. Pursuant to Article 42(5), Article 59(1) and (2) and Article 61(2), (3) and (4) of the Rules of the Constitutional Court, the Constitutional Court decided as stated in the enacting clause of the present decision.

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

Mato Tadić
Vice-President
Constitutional Court of Bosnia and Herzegovina