

Having regard to Article VI (3) (b) of the Constitution of Bosnia and Herzegovina and Article 57 (3) and Article 72 (6) of the Rules of the Constitutional Court of Bosnia and Herzegovina – Revised text (*Official Gazette of Bosnia and Herzegovina*, 94/14), the Constitutional Court of Bosnia and Herzegovina, composed of the following Judges:

Mr. Mato Tadić, President

Mr. Miodrag Simović, Vice-President

Mr. Mirsad Ćeman, Vice-President

Mr. Valerija Galić,

Ms. Seada Palavrić,

Mr. Zlatko M. Knežević,

Ms. Angelika Nussberger,

Ms. Helen Keller, and

Mr. Ledi Bianku

At its session held on 2 and 3 December 2021, adopted the following

## **RULING**

It is hereby established that the Concession Commission of Bosnia and Herzegovina, in the capacity as the Joint Concession Commission, in terms of Article 4, paragraph 3 and Article 6, paragraph 2 of the Law on Concessions of Bosnia and Herzegovina, failed to enforce the Partial Decision of the Constitutional Court of Bosnia and Herzegovina no. U 16/20 of 16 July 2021.

The manner of enforcement of the Partial Decision of the Constitutional Court of Bosnia and Herzegovina no. U 16/20 of 16 July 2021 is hereby determined as follows:

The Concession Commission of Bosnia and Herzegovina in the capacity as the Joint Concession Commission is hereby ordered, in terms of Article 4, paragraph 3 and Article 6, paragraph 2 of the Law on Concessions of Bosnia and Herzegovina, to enforce the Partial Decision of the Constitutional Court of Bosnia and Herzegovina no. U 16/20 of 16 July 2021 not later than six months after the date of delivery of this Ruling and to inform the Constitutional Court of the measures taken to enforce this Decision;

The Court of Bosnia and Herzegovina is hereby ordered to take measures aimed at resolving the dispute no. SI 3 U 041293 21 Fp in an expedient manner, against the Ruling on Appointment of the Joint Commission for Resolving Disputed Issues between Bosnia and Herzegovina and the Republika Srpska regarding the award of concessions for construction of the hydropower plants on the Drina River of 31 August 2021.

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

## REASONING

1. In its Partial Decision no. U 16/20 of 16 July 2021, the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) established that there was a dispute related to the decisions on concessions, passed by the Republika Srpska, as regards the concession property and the competence to pass them. The Constitutional Court ordered the Concession Commission of Bosnia and Herzegovina, in the capacity as the Joint Concession Commission, to resolve, in terms of Article 4, paragraph 3 and Article 6, paragraph 2 of the Law on Concessions of Bosnia and Herzegovina and not later than three months after the date of delivery of that decision, the disputes between Bosnia and Herzegovina and the Republika Srpska, arising in connection with the concessions awarded by the acts referred to in that decision.
2. The decision in question was submitted to the Concession Commission of Bosnia and Herzegovina on 28 July 2021, meaning that the time limit for its enforcement expired on 28 October 2021.
3. On 11 October 2021, the Concession Commission of Bosnia and Herzegovina informed the Constitutional Court on the measures taken to enforce the decision. According to that notice, on 31 August 2021, the Concession Commission of Bosnia and Herzegovina passed the Ruling on Appointment of the Joint Commission for Resolving Disputed Issues between Bosnia and Herzegovina and Republika Srpska, arising in connection with the concessions awarded for construction of the hydropower plants on the Drina River (“the Joint Commission”). Two meetings of the mentioned Commission were held on 8 and 20 September 2021. However, due to a temporary absence of some members who were sick, and a lack of adequate documentation on the subject-matter of the dispute and given that one of the appointed members initiated a dispute before the Court of Bosnia and Herzegovina against the Ruling on Appointment of the Joint Commission and requested that the enforcement of the Ruling on Appointment of the Joint Commission be postponed, the Concession Commission of Bosnia and Herzegovina asked the Constitutional Court

to extend the time limit for enforcement of the decision no. U 16/20 of 16 July 2021. In addition, it was requested that the complete case-file of the Constitutional Court no. U 16/20 be submitted.

4. On 15 October 2021, the Constitutional Court submitted to the Concession Commission of Bosnia and Herzegovina part of the case file no. U 16/20, which included the response to the request by the Government of the Republika Srpska including the technical documentation of the Ministry of Industry, Energy and Mining of Republika Srpska.

5. On 29 October 2021, the Concession Commission of Bosnia and Herzegovina once again informed the Constitutional Court on the measures taken and the “objective circumstances that affected the non/enforcement of the mentioned Decision within the given time limit”. In that letter, the Commission emphasized, *inter alia*, the fact that the dispute registered under no. SI 3 U 041293 21 Fp had been initiated before the Court of Bosnia and Herzegovina against the Ruling on Appointment of the Joint Commission, and that the dispute was pending. According to the allegations in the lawsuit, the initiator of the dispute considered that the Deputy Chairman of the Concession Commission did not have the authority to pass the Ruling on Appointment of the Joint Commission, and he also disputed the composition of the mentioned Commission. In addition, he stated that the session of the Joint Commission had been scheduled for 21 October 2021 and postponed for 27 October 2021. The session was not held on 27 October 2021 due to lack of quorum, since the member who initiated the dispute before the Court of BiH informed that he would not be able to attend the session for medical reasons. It was also stated that under the Rules of Procedure of the Concession Commission of Bosnia and Herzegovina, presence of all seven members is necessary for the session to be held or otherwise the session is postponed. Furthermore, “the date of another session is uncertain as the facts...indicate that the quorum of the Joint Commission will remain uncertain in the future. It will be uncertain at least until the adoption of the decision of the Court on this lawsuit. As the Concession Commission currently has 4 members, and the procedure of election of a new composition has been annulled, the Chairman of the Joint Commission is not able to appoint another member to replace the member who does not participate in the work. This practically means that the Joint Commission is prevented from holding sessions and deciding on the matter. This, in turn, prevents the enforcement of the decision of the Constitutional Court.” Finally, it was proposed “that the Constitutional Court examine a possibility to approve an additional deadline for the Joint Commission, if possible 6 months. This may suffice, according to the existing circumstances, to complete these activities and to implement the decision of the Constitutional Court successfully.”

6. The Constitutional Court recalls that in its Partial Decision no. U 16/20 of 16 July 2021 it set a manner and time limit for enforcement of the decision. Under Article VI (5) of the Constitution of Bosnia and Herzegovina, the decision of the Constitutional Court shall be final and binding. In addition, under Article 72 (1) of the Rules of the Constitutional Court, every physical and legal person shall be obligated to comply with the decision of the Constitutional Court and, under paragraph 2 of the same Article, all bodies shall be obligated to enforce the decisions of the Constitutional Court within their competences established by the Constitution and law. Under paragraph 6 of the same Article, the Constitutional Court shall render a ruling in which it shall establish that its decision has not been enforced and it may determine the manner of enforcement of the decision.

Mato Tadić  
President  
Constitutional Court of Bosnia and Herzegovina