

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(a) of the Constitution of Bosnia and Herzegovina, 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), in Plenary and composed of the following judges:

Ms. Valerija Galić, President

Mr. Mirsad Ćeman, Vice-President

Mr. Zlatko M. Knežević, Vice-President

Ms. Helen Keller, Vice-President

Ms. Seada Palavrić,

Ms. Angelika Nussberger, and

Mr. Ledi Bianku

Having deliberated in the case no. **U-16/20**, at its session held on 19 January 2023, adopted the following

R U L I N G

It is hereby established that the Concession Commission of Bosnia and Herzegovina, acting 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, has failed to enforce Partial Decision of the Constitutional Court of Bosnia and Herzegovina no. U-16/20 of 16 July 2021.

Pursuant to Article 72(6) of the Rules of the Constitutional Court of Bosnia and Herzegovina, this Ruling is remitted to the Prosecutor's Office of Bosnia and Herzegovina.

This Ruling 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.*

O B R A Z L O Ž E N J E

1. On 16 July 2021, the Constitutional Court of Bosnia and Herzegovina (“Constitutional Court”) adopted the Partial Decision on Admissibility and Merits no. U-16/20 (“Partial Decision”) establishing that there is a dispute over decisions on concession which were passed by the Republika Srpska with regard to the concession property and the competence to pass them. The Court, *inter alia*, ordered the Concession Commission of Bosnia and Herzegovina (“the Concession Commission”) 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, no later than three months as of the delivery of that decision, the disputed issues

between Bosnia and Herzegovina and the Republika Srpska arising in connection with awarding concessions and acts noted in the decision.

2. The Partial Decision was submitted to the Concession Commission on 28 July 2021. The deadline for its enforcement has ended on 28 October 2021.

3. On 11 October 2021, the Concession Commission informed the Constitutional Court that it is unable to take adequate measures to enforce this decision. At the same time, the Concession Commission requested extension of the time limit for enforcement of the decision.

4. By its Ruling no. U-16/20 of 2 and 3 December 2021, the Constitutional Court established that the Concession Commission of Bosnia and Herzegovina, in the capacity as the Joint Concession Commission, has failed to enforce the Partial Decision of the Constitutional Court, ordered the manner of enforcement of the decision by the Concession Commission by ordering the extension of a time limit of six months from the delivery of the Ruling at the latest for the enforcement of the Partial Decision and ordered the Concession Commission to inform the Constitutional Court of the measures taken. At the same time, the Court of Bosnia and Herzegovina („the Court of BiH“) was ordered to take measures aimed at urgent resolution of the dispute pending registered under no. SI 3 U 041293 21 Fp. This pending administrative dispute concerned a challenge against the Ruling on Appointment of the Joint Commission for resolution of disputes 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 of 2 and 3 December 2021 was not remitted to the Prosecutor's Office of Bosnia and Herzegovina („Prosecutor's Office of BiH“).

5. The aforementioned Ruling no. U-16/20 was submitted to the Concession Commission on 27 December 2021. The time limit for its enforcement has ended on 27 June 2022.

6. On 15 February 2022, the Court of BiH has submitted to the Constitutional Court the judgment of 9 February 2022 adopted upon the lawsuit of the member of the Concession Commission, Mr. Mensur Šehagić. By this judgment, it resolved the dispute by granting the lawsuit and annulling the contested act of the Concession Commission of 20 September 2021. It remitted the case back to the Commission for the renewed decision making.

7. On 24 June 2022, the Concession Commission submitted to the Constitutional Court information on the actions taken thus far. In the information, the Commission, *inter alia*, stated that a Member of the Joint Commission, Mr. Mensur Šehagić has again initiated an administrative dispute against the Ruling on Appointment of the Joint Commission before the Court of BiH, and

decided not to participate in the work of the Joint Commission pending the resolution of the dispute. It further stated that the Concession Commission of BiH currently has four members and that the procedure for election of new members has been annulled. In addition, it stated that the Chairman of the Joint Commission cannot appoint another member in replacement of the member who does not participate in the work. It also stated that for these reasons this “renders it impossible for the Commission to hold the sessions and make decisions”. Thus, for objective reasons the Joint Commission could not take a decision on this case within the given time limit. In the information, the Commission also stated that the remaining members of the Joint Commission have taken all necessary actions, and considered the relevant documents and other evidence. Therefore, the Joint Commission proposed that the Constitutional Court „should consider the possibility of extending again the time limit given to the Joint Commission to take a decision“.

8. At the session held on 14 July 2022, the Constitutional Court adopted the conclusion that the ruling of 2 and 3 December 2021 is to be remitted to the Prosecutor’s Office of BiH. On 27 September 2022, the Prosecutor’s Office of BiH has submitted information to the Constitutional Court that the Court of BiH has acted in accordance with the decision of the Constitutional Court.

9. Therefore, although by its ruling of 2 and 3 December 2021, the Constitutional Court has determined additional time limit for enforcement of the decision, which ended on 27 June 2022, the Concession Commission has failed to enforce the Partial Decision of the Constitutional Court no. U-16/20 of 16 July 2021 even after the extension of the time limit. Under Article VI(5) of the Constitution of Bosnia and Herzegovina, the decisions of the Constitutional Court of BiH are final and binding. Article 72 of the Rules of the Constitutional Court stipulates that every physical and legal person shall be obligated to comply with them (paragraph 1), and that all bodies shall be obligated to enforce the decisions of the Constitutional Court within their competences established by the Constitution and law (paragraph 2). This Article also stipulates that the Constitutional Court renders a ruling in which it establishes that its decision has not been enforced and it may determine the manner of enforcement of the decision (paragraph 6).

Valerija Galić
President
Constitutional Court of Bosnia and Herzegovina