The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI (3) (a) of the Constitution of Bosnia and Herzegovina, Article 57 (2) (b), Article 59 (1) and (2) and Article 61 (4) of the Rules of the Constitutional Court of Bosnia and Herzegovina – Revised text (*Official Gazette of Bosnia and Herzegovina,* 94/14), in Plenary and composed of the following judges:

Mr. Mato Tadić, President,

Mr. Tudor Pantiru, Vice-President,

Mr. Miodrag Simović, Vice-President

Mr. Mirsad Ćeman, Vice-President

Ms. Valerija Galić,

Ms. Seada Palavrić,

Mr. Zlatko M. Knežević,

Ms. Angelika Nuβberger, and

Ms. Helen Keller

Having deliberated on the request filed by the **seven delegates of the Council of Peoples of the Republika Srpska,** in the Case No. **U 4/21**, at its session held on 23 September 2021, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

In deciding the request filed by the **seven delegates of the Council of Peoples of the Republika Srpska** for review of the constitutionality of the Law on Forests of the Republika Srpska (*Official Gazette of the Republika Srpska*, 75/08, 60/13 and 70/20),

it is hereby established that the provisions of Article 3, Article 4 (1), Article 5 (2) (dj) and (3), Article 18 (1) and (2), Article 22 (1) and (2), Article 23 (1), Article 24 (1), Article 28 (2), Articles 31 and 33, Article 34 (1) (l) and (2) and (3), Articles 35 and 36, Article 37 (2), Article 46 (3), Article 47 (5), Article 48 (2), Article 49, Article 50 (2), Article 51 (3), Article 52 (1), Article 54 (1), Article 55 (1), Article 57 (1), Article 58 (2), Article 60 (1), (3), (4) and (5), Article 61 (3), Article 62 (1), (2), (5), (6) and (8), Article 63 (3), Article 64, Article 65 (2), (3) (b), (v) and (i), Article 66, Article 71 (3) and (4), Article 72 (5), (6) and (7), Article 73 (1) and (2), Article 74 (2) and (5), Article 75, Article 77 (2), (3) and (5), Article 79, Article 80 (2), Article 81 (2), Article 82 (2), (3), (7) and (8), Article 84, Article 85 (1) and (2), Article 88 (1) (g), Article 89 (1), (2), (6) and (10), Article 90 (2), Article 92 (1) and (3), Article 95 (1), Article 97 (1) and (2), Article 98, Article 101 (1) (g), (dj) and (j), Article 102 (1) (dž) and š), Article 104 (1), (2), (3), (4) and (5) and Article 107 (3) (z) and (i) of the Law on Forests of the Republika Srpska (*Official Gazette of the Republika Srpska*, 75/08, 60/13 and 70/20), in the part reading "owned by the Republic", are not in conformity with Articles I (1), III (3) (b) and IV (4) (e) of the Constitution of Bosnia and Herzegovina.

The National Assembly of the Republika Srpska is hereby ordered, in accordance with Article 61 (4) of the Rules of the

Constitutional Court of Bosnia and Herzegovina, to harmonize, no later than six months of the date of delivery of this Decision, the provisions of Article 3, Article 4 (1), Article 5 (2) (dj) and (3), Article 18 (1) and (2), Article 22 (1) and (2), Article 23 (1), Article 24 (1), Article 28 (2), Articles 31 and 33, Article 34 (1) (l) and (2) and (3), Articles 35 and 36, Article 37 (2), Article 46 (3), Article 47 (5), Article 48 (2), Article 49, Article 50 (2), Article 51 (3), Article 52 (1), Article 54 (1), Article 55 (1), Article 57 (1), Article 58 (2), Article 60 (1), (3), (4) and (5), Article 61 (3), Article 62 (1), (2), (5), (6) and (8), Article 63 (3), Article 64, Article 65 (2), (3) (b), (v) and (i), Article 66, Article 71 (3) and (4), Article 72 (5), (6) and (7), Article 73 (1) and (2), Article 74 (2) and (5), Article 75, Article 77 (2), (3) and (5), Article 79, Article 80 (2), Article 81 (2), Article 82 (2), (3), (7) and (8), Article 84, Article 85 (1) and (2), Article 88 (1) (g), Article 89 (1), (2), (6) and (10), Article 90 (2), Article 92 (1) and (3), Article 95 (1), Article 97 (1) and (2), Article 98, Article 101 (1) (g), (dj) and (j), Article 102 (1) (dž) and š), Article 104 (1), (2), (3), (4) and (5) and Article 107 (3) (z) and (i) of the Law on Forests of the Republika Srpska (*Official Gazette of the Republika Srpska*, 75/08, 60/13 and 70/20), in the part reading "owned by the Republic", with Articles I (1), III (3) (b) and IV (4) (e) of the Constitution of Bosnia and Herzegovina.

The National Assembly of the Republika Srpska is hereby ordered to notify the Constitutional Court of Bosnia and Herzegovina, no later than three months after the expiration of the time limit referred to in the foregoing paragraph, about the measures taken with a view to enforcing 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 26 February 2021, Mihnet Okić, Džemaludin Šabanović, Muris Čirkić, Samir Baćevac, Alija Tabaković, Faruk Djozić and Ahmet Čirkić, seven delegates of the Council of Peoples of the Republika Srpska ("the applicant"), filed a request with the Constitutional Court of Bosnia and Herzegovina ("the Constitutional Court") for review of the constitutionality of the Law on Forests of the Republika Srpska (*Official Gazette of the Republika Srpska*, 75/08, 60/13 and 70/20, "the challenged Law").

2. At the same time, the applicants requested that the Constitutional Court render a decision on an interim measure prohibiting the application of the challenged law pending a final decision by the Constitutional Court on the request in question.

II. Procedure before the Constitutional Court

3. On 5 March 2021, the National Assembly of the Republika Srpska ("the National Assembly"), pursuant to Article 23 of the Rules of the Constitutional Court, was requested to submit its reply to the request.

4. The National Assembly submitted its reply on 24 June 2021.

III. Request

a) Allegations stated in the request

5. The applicant deems that the challenged law is in violation of the provisions of Article I (1), Article III (3) (b) and Article IV (4) (e) of the Constitution of Bosnia and Herzegovina, as well as Article 2 of Annex II to the Constitution of Bosnia and Herzegovina. It is pointed out that despite clear prohibitions for the issue of state property to be resolved unilaterally, and despite a clear

position of the Constitutional Court in the cases nos. U-1/11, U-8/19 and U-9/19 that the said issue falls within the exclusive jurisdiction of Bosnia and Herzegovina, the National Assembly passed the challenged law which, in the opinion of the applicant, unilaterally resolved the issue of part of the state property of BiH.

6. The provisions of the challenged law, as further stated, apply to all forests and forestland, irrespective of the form of ownership. Under Article 2 of the challenged law, forests and forestland are natural goods of general interest and enjoy special care and protection of the Republika Srpska. The applicant indicates that despite a series of decisions of the Constitutional Court (nos. U-1/11, U-8/19 and U-9/19), according to which the state property is the ownership of the State of BiH, the National Assembly prescribed under Article 3 of the challenged law that forests and forestland in the territory of the RS are the ownership of the Republika Srpska and other legal and natural persons. It is highlighted that forests and forestland owned by legal and natural persons make a minor portion of this public good. The applicant deems that Article 3 of the challenged law is contrary to the mentioned provisions of the Constitution of BiH, as, under the said Article, the Republika Srpska unconstitutionally assigned the right of ownership of forests and forestland to the Entity of RS. In the opinion of the applicant, unconstitutionally assigned right of ownership of forests and forestland was the basis for further definition of disposal and management of forests and forestland, as done in other provisions of the challenged law. The applicant holds that the mentioned provisions of the challenged law, which regulate the right of management of forests and forestland "owned by the Republic" (the words "owned by the Republic" are marked in bold in the request), are in contravention of the Constitution of BiH. Therefore, the entire law is unconstitutional and the applicant challenges it in its entirety.

7. As to the state property, the applicant refers to the following: the 1994 Law on the Transformation of Social Property into State Property, the Decision of the Constitutional Court no. U-1/11 of 13 July 2012 and positions referred to in that Decision on the continuity of the State of BiH and state property, the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina and two Entity laws prohibiting the disposal of state property in the territory of the Entities. The applicant stated that, despite the fact that the issue of state property is the issue that falls primarily within the jurisdiction of the State of BiH, the Entity of Republika Srpska tried to resolve it unilaterally and contrary to the Constitution of BiH. Thus, it passed the Law on the Status of State Property Located in the Territory of the Republika Srpska and under the Disposal Ban, which law stipulated that it was the property owned by the Republika Srpska (in

respect of which the Constitutional Court rendered the Decision no. U-1/11). The applicant stated that similar thing occurred with regard to the challenged law.

8. The applicant further states that the Law on the Transformation of Social Property passed by RBiH in 1994 established that on the day of entry into force of that law RBiH became the holder of the right of ownership of socially owned property, as prescribed under Article 1 of that Law. In addition, the applicant emphasises that BiH concluded the Agreement on Succession Issues among Bosnia and Herzegovina, the Republic of Croatia, the Republic of Macedonia, the Republic of Slovenia and the Federal Republic of Yugoslavia (done at Vienna on 29 June 2001, which was ratified on 28 November 2001 by the decision of the Presidency of BiH). Under Article 2 of Annex A to the Succession Agreement *"*Immovable State property of the former SFRY which was located within the territory of the former SFRY shall pass to the successor State on whose territory that property is situated". The applicant considers that the Succession Agreement undoubtedly shows that the State of BiH is an owner of the immovable property of the former SFRY, which, upon the dissolution of the former SFRY, was situated in the territory of BiH. Bosnia and Herzegovina, as a subject of international law and a signatory to this multilateral agreement (Succession Agreement), which was ratified by its competent authorities and bodies, has the obligation to comply with the said agreement.

9. As to the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina and the two Entity laws prohibiting the disposal of state property in the territory of the Federation of BiH and the RS, which were enacted by the decision of the High Representative for BiH, it is pointed out that the mentioned laws are still in force given the fact that no law on state property at the level of BiH has been passed. Next, it is mentioned that Article 1 (1) and (2) of the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina determined the immovable property that is regarded as a state property of BiH.

10. The applicant highlights that the continuity of the State of BiH, as prescribed under Article I (1) of the Constitution of BiH, in the present case implies the continuity of the right of the State of BiH to regulate the issue of state property that belonged to it based on the right of disposal, management or use. That property, as the applicant deems, certainly includes forests and forestland, which the challenged law declared public good owned by the RS. The mentioned property constitutes part of the property that was allocated to the State of BiH under the Succession Agreement, in respect of which the Constitutional Court, in its Decision no. U-1/11, established that it might be the subject of disposal only in accordance with the laws at the level of BiH. Therefore,

as indicated by the applicant, a unilateral solution that was established by the challenged law constitutes a violation of Article I (1) of the Constitution of BiH.

11. It is pointed out that the Succession Agreement (Articles 1 and 2 of Annex A) undoubtedly show that the State of BiH is the owner of the state property. In the Decision no. *U-1/11,* the Constitutional Court defined the term of "state property", and established that, by its nature, it serves primarily to all the people in the State and represents a reflection of statehood, sovereignty and territorial integrity of BiH. In the opinion of the applicant, despite the fact that it is obvious that forests and forestland, as referred to in the challenged law, are part of the state property, which became the property of the State of BiH under the Succession Agreement, the challenged law prescribes that the said property is *ex lege* the public good owned by the Republika Srpska. In such a way the State of BiH is deprived of the right to exercise its international obligations prescribed under Article III (3) (b) of the Constitution of BiH.

12. The applicant states that the challenged law also violates Article IV (4) (e) of the Constitution of BiH, which bestows upon the Parliamentary Assembly of BiH the jurisdiction concerning other issues required for the exercise of the commitments of the State. It is stated that the state property is an issue that falls within the exclusive jurisdiction of the State of BiH and its authorities, which may be observed from a number of laws that were enacted by the decision of the High Representative for BiH. Those are the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina and the two Entity laws prohibiting the disposal of state property in the territory of the Federation of BiH and the RS respectively.

13. In addition, the applicant alleges that the 1993 Law on Forests of the Republic of Bosnia and Herzegovina is still in legal force. This law was passed by the Presidency of the Republic of BiH on 4 October 1993, first as an Ordinance on Forests with Legal Force (*Official Gazette of the Republic of BiH*, 23/93), which was confirmed as a law under the Law Confirming Ordinances with Legal Force (*Official Gazette of the Republic of BiH*, 13/94). Bearing in mind the constitutional principle of the rule of law referred to in Article I (2) of the Constitution of BiH and the continuity of regulations referred to in Article 2 of Annex II to the Constitution of BiH, the applicant alleges that the 1993 Law on Forests of the Republic of BiH is still part of the legal system of BiH, for after the entry into force of the Constitution of BiH "the competent authority of BiH" failed to render any decision whatsoever which would determine differently the management of forests and forestland in the territory of BiH. Furthermore, in the opinion of the applicant, the mentioned law is not in contravention of the Constitution of BiH. By passing the challenged law, in the view of the applicant, the authorities of the Entity of the RS call into question the application of the mentioned

Law on Forests of the Republic of BiH, thereby violating Article I (2) of the Constitution of BiH and Article 2 of Annex II to the Constitution of BiH.

14. The applicant proposed that the Constitutional Court render a decision granting the request for review of the constitutionality of the challenged law and establish that the challenged law is not in conformity with Article I (1), Article III (3) (b) and Article IV (4) (e) of the Constitution of BiH, as well as Article 2 of Annex II to the Constitution of BiH, and that it shall cease to be in force on the day following the day of the publication of the decision in the *Official Gazette of BiH*.

15. The applicant proposed, for preventing detrimental consequences that the challenged law might generate, that the Constitutional Court issue an interim measure prohibiting the application of the challenged law pending a final decision by the Constitutional Court. The challenged provisions, as alleged, would make possible the registration of state property in the land books in favour of the Entity of Republika Srpska, which is situated in the territory of the mentioned Entity and is under the disposal ban. That would make it possible for the disposal of that property by the authorities of the Entity of Republika Srpska and the resulting damage would be hard to repair. In addition, the process to resolve the issue of state property would be made more difficult, which is of great importance for continued negotiations with the European Commission in the process of the application of Bosnia and Herzegovina for a candidate status for admission into the European Union.

b) Reply to the request

16. In its reply to the request, the National Assembly primarily challenges the authorization of the applicant to initiate a proceeding, within the meaning of Article VI (3) (a) of the Constitution of Bosnia and Herzegovina, as the Council of Peoples of the RS does not represent one separate chamber of the National Assembly. This follows from Article 69 (2) of the RS Constitution. Therefore, it is clear, as the National Assembly infers, that the Council of Peoples, which possesses a restrictive jurisdiction, represents one separate body for the protection of the vital national interest of any of the constituent peoples, and not the second chamber of the RS National Assembly.

17. In the opinion of the National Assembly, the mentioned request is ill-founded, therefore the Constitutional Court should dismiss it, as well as the request for the adoption of an interim measure. To support the aforementioned, it is indicated that Amendment XXXII to Article 68 paragraph 6 of the Constitution of the Republika Srpska prescribes that the Republic, among other things, regulates and secures property and obligations-related relations and the protection of all forms of property. It is indicated that paragraph 8 of the same Article prescribes that the Republic regulates the basic

objectives and directions of economic, scientific, technological, demographic and social development, development of agriculture and villages, *etc*. In addition, Article 59 (2) of the Constitution of the Republika Srpska prescribes that the law regulates the protection, use, improvement and management of goods of public interest. In accordance with Article 64 of the Constitution, the Republic, among other things, protects and encourages rational use of natural resources with a view to protecting and improving the quality of life, protecting, and renewing the environment in general interest. Further, it is indicated that based on the mentioned provisions of the Constitution of the Republika Srpska, which are the constitutional basis for passing the respective law, it clearly follows that the Republika Srpska has the jurisdiction to pass the Law on Forests. Thus, it has the jurisdiction to regulate all issues of relevance to the forests and forestland, as goods of general interest, including the issue of ownership of forests and forestland.

18. In addition, the National Assembly alleges that the applicant's position is ill-founded where suggesting that the challenged law is unconstitutional for it regulates the issues of management and administration of forests and forestland as part of state property, and that the issue of state property is within the exclusive jurisdiction of the State of BiH and its authorities. It is indicated that the Law on Forests regulates the issues of relevance to forests as a good of general interest for the purpose of advancing and sustainably using forests and forestland, as well as developing forestry in the Republika Srpska. Thus, the challenged law regulates comprehensively the area of forests in the Republika Srpska and its provisions apply to all forests irrespective of the form of ownership. This law applies equally to forests and forestland owned by natural and legal persons, which is the reason why the allegations made by the applicant are not true in that they suggest that this law regulates the disposal of state property.

19. The National Assembly points out that the interpretation of the applicant is particularly unacceptable concerning the term of state property itself. Namely, while referring to the reasoning provided for certain decisions of the Constitutional Court of BiH (U-1/11, U-8/19 and U-9/19) the applicant reached a conclusion that forests and forestland are a public good and, accordingly, a part of state property the regulation of which falls within the jurisdiction of the BiH institutions. This understanding is contrary also to the decisions of the Constitutional Court, which the applicant referred to, as the Decision no. U-1/11 speaks about property the owner of which is BiH, however, there is no identification of public good with state property, that is to say that neither this nor other decisions read that Bosnia and Herzegovina is an owner of all public goods, nor that all public goods constitute state property. Such a thing does not ensue from either the Constitution of BiH or any other legal act or international convention. The National Assembly further indicates that the

applicant alleges that the earlier decisions of the Constitutional Court, primarily the Decision no. U-1/11, established that the exclusive jurisdiction to regulate state property rested on BiH, but not even the mentioned decision or other decisions for that matter noted or presumed that it implied the exclusive jurisdiction of Bosnia and Herzegovina to regulate the area of forests and forestland. This is understandable, as such a conclusion would be contrary to the Constitution of BiH.

20. Namely, as further mentioned, the area of forestry is not envisaged under Article III (1) of the Constitution of BiH as an exclusive jurisdiction of the institutions of BiH, which undoubtedly follows from the text thereof. Even if the position of the Constitutional Court was taken into account that the exclusive competences of BiH are not exhausted by the list under Article III (1) of the Constitution of BiH, and that the complete text of the Constitution of BiH has to be taken into account, the area of forests still remains outside the exclusive jurisdiction of the institutions of BiH, unless the Entities agreed on that issue within the meaning of Article III (5) (a) of the Constitution of BiH. However, as there is no approval of the Entities regarding this issue, *i.e.* there is no consensus for the institutions of BiH to assume exclusive jurisdiction for the regulation of forests, there are no conditions to establish additional jurisdiction of the institutions of BiH based on Article III (5) (a) of the Constitution of BiH.

21. In the opinion of the National Assembly, the allegations of the applicant that the challenged law is in violation of Article I (1), Article I (2), Article III (3) (b) and Article IV (4) (e) of the Constitution of BiH are unfounded.

22. As to Article I (1) of the Constitution of BiH, the National Assembly indicates that the mentioned Article prescribes strictly the continuity of the subjectivity of BiH under the international law, which does not result in legal continuity of property, *i.e.* the continuity of ownership of forests and forestland. The portion of the mentioned provision "... with its internal structure modified as provided in this Constitution", actually means that the legal continuity does not rule out the internal structure as modified and defined under the Constitution of BiH. In other words, as further mentioned, the continuity of state property may exist only with the respect for the internal structure as modified under the Constitution of BiH, which clearly establishes the demarcation of jurisdiction between the institutions of BiH and those of the Entities. Thus, when regulating the issue of forests it is necessary to respect the internal structure and the separation of powers in accordance with the Constitution of BiH, which undoubtedly bestows the competence for the regulation of this issue on the Entities. It is also indicated that Article III (3) (a) of the Constitution of BiH regulates residual responsibilities of the Entities, accordingly prescribing that all governmental functions and powers

not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.

23. As to Article I (2) of the Constitution of BiH, the National Assembly states that the applicant's allegations are ill-founded as a whole. This suggests that the National Assembly has no constitutional basis to regulate by law the issue of management and administration of forests and forestland, as part of the state property, as it concerns a matter already regulated under the Law on Forests at the state level (the Law of the Republic of BiH passed as an Ordinance in 1993 and which was confirmed by virtue of the Ordinance with a Legal Force in 1994). Namely, the responsibilities for the regulation of certain issues, including the issue of management and administration of forests, are prescribed by the Constitution of BiH, wherefrom it follows that it is an issue that falls within exclusive jurisdiction of the Entities. Accordingly, in the opinion of the National Assembly, the allegations are unfounded that the challenged Law on Forests is in violation of the provisions of Article I (2) of the Constitution of BiH, which laid down democratic principles, reading that Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections. In addition, it is mentioned that the applicant refers to the constitutional principle of continuity of regulations under Article 2 of Annex II, and that, in keeping with the foregoing, the Law on Forests of the Republic of BiH is still in force and that there is an obligation of all the lower instance authorities, including the legislator in the Republika Srpska, to comply with and to uphold the mentioned law. The National Assembly indicates that the Law on Forests of the Republic of BiH is contrary to the basic principles on which of the Constitution of BiH rests, *i.e.* to the principle of consensus of the constituent peoples, which did not exist in order for this issue to be regulated at the state level, or regarding the text of the law itself. That this law is not in force and that it has not been applied after the passing of the Constitution of BiH, as the National Assembly points out, is clearly indicated by the fact that there is a number of laws at all levels of the government in BiH, which regulate the issue of forests. Accordingly, the Law on Forests in the Federation of BiH was passed in 2002, in the Brčko District the law in force is the Law on Forests of the Brčko District of BiH passed in 2010, while there are laws on forests also at the cantonal level in the Federation of BiH. In the Republika Srpska, the 2008 challenged law is in force, which rendered ineffective the 1994 Law on Forests of the RS (*Official Gazette of the Republika Srpska*, 13/94). Therefore, there is no obligation for any authority in BiH to establish that the Law on Forests of the Republic of BiH is no longer in force, for upon the entry into force of the Constitution of BiH, which this law is in contravention of, this law is no longer *ipso jure* in force. Besides, the Law on Forests of the Republic of BiH is not applicable in practical sense, as under this

law the responsibilities rested with the authorities, which ceased to exist following the passing of the Constitution of BiH.

24. As to Article III (3) (b) of the Constitution of BiH, which prescribes that 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, contrary to the applicant's allegations that the challenged law is in violation of the mentioned provision of the Constitution of BiH, the National Assembly holds that the challenged law has been passed based on a power contained in the Constitution of the Republika Srpska, which is in conformity with the Constitution of BiH. It is indicated that the Constitution of the Republika Srpska, in Amendment XXXII to Article 68 paragraph 6, assigns a power to the Republic to regulate and ensure property relations and to protect all forms of property. In the opinion of the National Assembly, the challenged law also arises from the Constitution of BiH, which enumerates in Article III (1) the issues within the jurisdiction of the institutions of BiH, which do not include the issues of forests, simultaneously prescribing in Article III (3) (a) that all governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.

25. In the opinion of the National Assembly, the allegations are ill-founded that the challenged law violated also Article IV (4) (e) of the Constitution of BiH, according to which the Parliamentary Assembly of BiH shall have responsibility for such other matters as are necessary to carry out its duties or as are assigned to it by mutual agreement of the Entities. Contrary to the allegations made by the applicant, the National Assembly is of the opinion that when interpreting the challenged law it has to be linked to Article III (1), which enumerates issues within the jurisdiction of the institutions of BiH which do not include the issues concerning the ownership of forests and forestland.

26. In the opinion of the National Assembly, other allegations made by the applicant when referring to the Agreement on Succession Issues among the former Yugoslav Republics are purposeless and can in no way be of relevance to the establishment of the constitutionality of the challenged law.

27. In view of the aforementioned, the National Assembly is of the opinion that the challenged law is not in violation of the provisions of Article I (1), Article I (2), Article III (3) (b) and Article IV (4) (e) of the Constitution of BiH, which is the reason why it proposed that the Constitutional Court dismiss the request.

IV. Relevant Laws

28. The **Constitution of Bosnia and Herzegovina**

Article I

Bosnia and Herzegovina

1. Continuation

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.

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 III

Responsibilities of and Relations between the Institutions of Bosnia and Herzegovina and the Entities

3. Law and Responsibilities of the Entities and the Institutions

a) All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.

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 IV

Parliamentary Assembly

4. Powers

The Parliamentary Assembly shall have responsibility for:

(…)

e) Such other matters as are necessary to carry out its duties or as are assigned to it by mutual agreement of the Entities

Annex II

Transitional Arrangements

2. Continuation of Laws

All laws, regulations, and judicial rules of procedure in effect within the territory of Bosnia and Herzegovina when the Constitution enters into force shall remain in effect to the extent not inconsistent with the Constitution, until otherwise determined by a competent governmental body of Bosnia and Herzegovina

29. The **Law on Forests** (*Official Gazette of the Republika Srpska*, 75/08, 60/13 and 70/20)

Unofficial consolidated text drafted by the Constitutional Court will be used for the purpose of this Decision, reading as follows:

Article 1

(1) This Law shall regulate forest politics, planning, utilisation and management of forests and forestland, protection of forests, financing and value of forests, forests and forestland cadastre, forestry information system, property and legal relations and other issues of importance for forests and forestland for the enhancement, sustainable management of forests and forestland and forestry development.

(2) The provisions of this Law shall refer to forests and forestlands irrespective of ownership.

Article 2

(1) Forests and forestland are goods of public interest and are subject to special care and protection of the Republika Srpska ("the RS").

(2) The right of use of forests and forestland may be subject to restriction if in public interest.

Article 3

(1) The forests and forestland on the territory of the Republic are owned by the Republic and other natural and legal persons.

(2) The total area covered by forests owned by the Republic cannot be reduced except the cases referred to in Article 42 of the Law.

(3) The forests and forestland owned by the Republic cannot be alienated except if consolidated or in the cases provided for by this Law.

Article 4

(1) The forests and forestland owned by the Republic are managed and administered by the Ministry of Agriculture, Forestry and Water Management („the Ministry“).

(2) The forests and forestland shall be administered in accordance with criteria and principles of sustainable management.

(3) The criteria for sustainable management of forests are as follows:

a) conservation and enhancement of forest ecosystems and their contribution to the global carbon sequestration (cycle),

Article 5

(1) The activities of public interest shall include study through research, forestry, protection, planning, management, maintenance and enhancement of forests.

(2) General/public interest under paragraph 1 of this Article shall be protected by:

a) maintenance and enhancement of existing forests and by increasing the total area covered by forests,

b) protection of forests and forestlands,

c) conservation and enhancement of generally beneficial forest functions,

d) increasing the contribution of the forestry sector to the total social and economic development of the RS, by optimal production of wood and non-wood products and other forest values,

e) drawing up strategic Plans and Programs for the territory of RS,

f) preserving ownership of existing forests owned by the Republic,

(…)

(3) The Government of the Republika Srpska (“the Government”) shall control the realisation of general interest in the forests owned by the Republic through the activities of the Ministry and realisation of the Contract concluded with the Public Forestry Company.

Article 9

(1) National Assembly of RS adopts a Strategy of Forestry Development which representing foundation for development of Forestry Program of the Republic.

(…)

Article 10

(1) The Forestry Program of the RS is the basic document providing participating, comprehensive, inter-sector and continuous process of planning, implementing, monitoring and assessing the forest policy with a view to achieving a sustainable management of forests of all forms of ownership, together with an Implementation Action Plan.

(...)

Article 18

(1) Forest Management Plans shall be created with regard to the forests owned by the Republic and privately owned forests.

(2) One Forest Management Plan shall be created for the forests of one forest-economic area owned by the Republic;

(...)

Article 22

(1) The public forest company shall submit a developed forest management plan for the forests owned by the Republic and the municipality shall submit a developed forest management plan for the privately owned forests to the Ministry at least 60 days before the expiry of the validity of the forest management plan.

(2) The Ministry is obliged to submit the Forest Management Plan, within a time limit of 30 days from the day of reception of the Forest Management Plan for the forests owned by the Republic, to the municipality, for the territory of which the Forest Management Plan is developed, for the purpose of giving it an opportunity to give its opinion.

(...)

Article 23

(1) The public forest company shall develop forest management plans for the forests owned by the Republic.

(...)

Article 24

(1) The realization of the Forest Management Plan owned by the Republic shall be carried out based on execution designs.

(...)

Article 28

(...)

(2) The Annual Forest Management Plan with regard to the forests owned by the Republic must be compatible with the Forest Managements Plans.

(...)

Article 29 (3)

(...)

(3) The requirements of the use of other forest products of the forests owned by the Republic shall be passed by the Minister.

III. ADMINISTRATION AND MANAGEMENT OF THE FORESTS

1. Administration and management of the forests owned by the Republic

Article 31

(1) The administration and management of the forests and forestlands owned by the Republic is an activity of general interest.

(2) The Ministry shall carry out inspections and shall monitor the works executed by the public forest company and shall carry out an annual analysis of the activities, including the work performance and proposal for the measures related to further use of the forests and forestlands owned by the Republic, including the maintenance thereof.

Article 33

(1) The Public Forest Company „Šume Republike Srpske" a.d. shall perform a part of the activities related the management of the forests and forestlands (the use of the forests and forestlands owned by the Republic, including the maintenance thereof) based on a special agreement with the Ministry upon a prior approval by the Government.

(2) The Public Forest Company „Šume Republike Srpske" a.d. (hereinafter referred to as the "user of the forests and forestland owned by the Republic") shall perform a part of the activities related to the management of the forests and forestlands owned by the Republic, which form part of forest-economic areas and karst areas, through the organisational units which are created by it and form its integral part.

Article 34 (1) subparagraph 1 and (2) and (3)

(1) The user of the forests and forestlands owned by the Republic shall perform the activities related to the use of the forests and forelands owned by the Republic, including the maintenance thereof and a part of the activities related to the management of forests and forestlands, as follows:

(...)

l) guarding and maintaining the boundary marks between the forests owned by the Republic and privately owned forests;

(2) In performing the activities related to the use of the forests and forestlands owned by the Republic, including the maintenance activities, the user of the forests and forestlands owned by the Republic, is obliged to preserve and to increase the value of forests and, in using the forests, forestlands and other potentials of the forests and the entire area and contents of the forests, to provide the conditions for further development and forest functions of general benefit, to achieve the best economic effects in accordance with this Law and other regulations and to harmonize its plans and activities with the plans and activities of other users of natural resources that perform an economic activity in the same field.

(3) In accordance with paragraph 2 of this Article and in compliance with the principles referred to in paragraph 2 of this Article, the user of the forests and forestlands owned by the Republic shall;

a) ensure the economic function of the forests by providing the continuity of the yields of wood other forest products and functions;

(...)

Article 35 (a)

The user of the forests and forestlands owned by the Republic has the right integrally to use the forests and forestlands owned by the Republic in order to gain profit, including primarily:

a) the production and trade in wood assortments;

(...)

Article 36

(1) The Government may, upon proposal by the Ministry, restrict the activities of the user of the forests and forestlands owned by the Republic or deprive it of the activities related to the use of the forests and forestlands owned by the Republic on a temporary basis, including the

obligation of maintenance of the whole or a part of the forests or forestland if the user does not perform its activities in accordance with this Law and agreement until the user complies with measures ordered and harmonizes its activities with the applicable legislation.

(2) The activities related to the use of the forests and forestland owned by the Republic, which are restricted or denied on a temporary basis, including the obligation of maintenance, shall be regulated in detail in an agreement between the Ministry and the user of the forests and forestlands owned by the Republic.

Article 37 (2)

(…)

(2) In order to improve the conditions of the works performed in forests and implementation of the measure of sustainable management of the forests owned by the Republic, the contractors to perform the works in forests could be associated.

Article 46(3)

(…)

(3) Notwithstanding paragraph 1 of this Article, the establishment of priority welfare functions of forests, if such forests or parts thereof are less than 20 hectares, shall be performed by the Ministry, upon the previously obtained opinion from the owner of private forests or from the users of forests and forestland owned by the Republic, as well as from the legal person performing technical tasks in the forests owned by private owners and by local communities.

Article 47(5)

(…)

(5) If the funds referred to in paragraph 4 of this Article are not secured, the user of forests and forestland owned by the Republic, i.e. the owner of the forest, shall not be obliged to implement the measures stipulated under the Act referred to in paragraph 1 of this Article.

Article 48 (2)

(…)

(2) The user of forests and forestland owned by the Republic shall have the responsibility to monitor the forests health status via the Reporting and Forecasting Service in its composition and shall keep the Ministry and public informed thereof.

Article 49

The user of forests and forestland owned by the Republic shall have the obligation to reforest burnt areas, areas where rejuvenation and forestation were not successful, as well as areas which were devastated (illegal clear-cutting), deforested or where rare species of trees were illegally cut, within the time limit not longer than two years.

Article 50 (2)

(…)

(2)The owner of forests and the user of forests and forestland owned by the Republic shall have the obligation to monitor the impact of biotic and abiotic factors on the forests health condition and to undertake in a timely fashion the measures to protect the forests and forestland in accordance with paragraph 1 of this Article.

Article 51 (3)

(…)

(3) If the owners of forests and the user of forests and forestland owned by the Republic fail to implement the activities referred to in paragraphs 1 and 2 of this Article, a forestry and hunting inspector shall order the execution thereof at the expense of the owners of forests or the user of forests and forestland owned by the Republic.

Article 52 (1)

(1) The owners of forests and the user of forests and forestland owned by the Republic shall have the obligation to inform the Ministry of the outbreaks of pests and the damage that occurred in the forest and on the forestland.

Article 54(1)

(1) In emergency situations, when necessary, the Minister shall prescribe for appropriate measures in protecting forests to be undertaken, which measures are to be implemented by the competent institutions, the owners of forests and the user of forests and forestland owned by the Republic.

Article 55 (1)

(1) The owners of forests and the user of forests and forestland owned by the Republic shall have the obligation to adopt the Forest Fire Protection Plan.

Article 57 (1)

(1) Natural and legal persons who cause damage to the forest shall have the obligation to compensate the damage that has occurred to the owner of forests or the user of forests and forestland owned by the Republic according to the Forest damage compensation price list to be applied to all forests irrespective of the form of ownership.

Article 58 (2)

(2) The owners of forests and the user of forests and forestland owned by the Republic shall have the obligation to prevent actions referred to in paragraph 1 of this Article, as well as to clean garbage, with the right to full reimbursement of costs from the legal or natural persons who have disposed of garbage, or on the basis of a decision, or an administrative decision issued by the competent administration authority with the reimbursement of costs.

Article 60 (1), (4) subparagraph a and (5)

(1) Citizens have free access to the forest owned by the Republic for the purpose of enjoyment, rest and recreation where they are personally responsible for their own safety.

(4) The Ministry, the owner of forests or the user of forests and forestland owned by the Republic may restrict or prohibit the right to stay and freely move in the forest if, without an obtained permit, visitors engage in the following:

a) Erecting temporary facilities, tents and set up camps,

(5) The user of forests and forestland owned by the Republic and the owners of forests shall have the right to compensation for damage on the forest, land and infrastructure facilities, inflicted by legal or natural persons, in the event of non-compliance with the prohibitions referred to in paragraph 4 of this Article.

Article 61 (3)

(3) It shall be prohibited to visitors, while staying in the forest, to damage vegetation, disturb wild animals and to damage or destroy their habitats, the land and forest mat, as well as to disturb and interrupt the owners of forests or the user of forests and forestland owned by the Republic in the exercise of their respective rights related to forests.

Article 62 (1), (2) subparagraph a and (5), (6) and (8)

(1) Pasture in the forests owned by the Republic shall be prohibited.

(2) If there is no risk from endangering the functions of the forest, including biodiversity, the user of forests and forestland owned by the Republic may issue a permit for pasture, or feeding with acorns, except for the pasture and browsing of goats, in the following cases:

a) Where trees are of such height that livestock cannot damage them,

(5) The user of forests and forestland owned by the Republic has the right to charge the pasture according to the price list.

(6) The user of forests and forestland owned by the Republic shall establish the conditions for pasture, or feeding with acorns (the time interval for pasture, or feeding with acorns, the type of livestock, the number of livestock heads, the amount of the fee and such like).

(8) The user of forests and forestland owned by the Republic shall designate and mark the roads for driving livestock to pasture and feeding with acorns in the forests and pasture on the forestlands and watering points.

Article 63 (3)

(3) The user of forests and forestland owned by the Republic, as a user of the hunting ground, and other users of the hunting ground are obliged to monitor the damage caused by game animals in the forest.

Article 64

(1) The protection of forests from misappropriation, use, destruction and other illegal actions (disposal of waste and toxic harmful substances, forest pollution, destruction of boundary signs and markings etc.) shall be provided by the owners of forests, and the user of forests and forestland owned by the Republic.

(2) In accordance with paragraph 1 of this Article, the owners of forests and the user of forests and forestland owned by the Republic shall be obliged to provide for immediate forest protection.

(3) The protection tasks of forests owned by the Republic may be performed by a worker who possesses a minimum secondary education in forestry – forestry technician (hereinafter: the forest warden), as well as a person authorized by the user of forests and forestland owned by the Republic, who also meet other conditions stipulated by special regulations.

Article 65 (2), (3), subparagraphs b, v and i

(2) The forest warden and the person authorized by the user of forests and forestland owned by the Republic shall have the right, by showing their official identification card, to request

from the person caught committing a misdemeanour punishable under this Law, or criminal offenses relating to forests, or persons for whom there is a reasonable suspicion that they have committed such offenses, personal documents for the purpose of establishing their identity.

(3) The forest warden is an official authorized person and has the rights and obligations to engage in the following:

b) Protects the boundary signs from destruction and illegal use of forests and forestland owned by the Republic,

v) In the event of arbitrary occupation of forests and forestland owned by the Republic as well as regarding the illegal actions in forests performed by other legal and natural persons, he/she shall undertake appropriate measures in accordance with this law and shall notify the relevant services in a timely fashion,

i) Through authorized persons of the user of forests and forestland owned by the Republic, requests assistance from the Ministry of the Interior if he/she has been prevented by the perpetrator of an illegal action from performing his tasks of forest protection.

Article 66

(1) The maintenance of seed facilities, except for seed facilities for the production of seeds of known origin, shall be performed by the user of forests and forestland owned by the Republic in the manner ensuring maximum production of quality forest seeds and making it easier to pick and collect seeds.

(2) The measures of the management of the starting material for the production of forest seeds are prescribed by planning documents prepared by the user of forests and forestland owned by the Republic, and approved by the Ministry.

Article 71(3), (4)

(3) The production of wood assortments in the forests owned by the Republic is carried out according to the principles of maximum utilization with the application of standards.

(4) Wood assortments are produced following the previous marking of cross section by a person specializing in forestry, IV grades secondary school, (tree gauge handler) who is engaged by the user of forests and forestland owned by the Republic, or the owner of the forest.

Article 72 (5), (6) and (7)

(5) The competent inspection authority as well as the person authorized by the user of forests and forestland owned by the Republic has the right to confiscate a tree if placed on the market contrary to the provisions referred to in paragraphs 1, 2 and 4 of this Article.

(6) The control of the timber traffic shall be performed by persons authorized by the user of forests and forestland owned by the Republic, forests guards, the inspection for forestry and hunting and market inspection.

(7) The stamping of a cut tree and the issuance of a dispatch statement is performed by persons authorized by the user of forests and forestland owned by the Republic, whereas the stamping of a cut tree and the issuance of a dispatch statement for a tree from the forests in private ownership is performed by the authorized representative of the executor of specialized and technical tasks.

Article 73

(1) The owners of forests or the user of forests and forestland owned by the Republic shall be obliged to organize and carry out all works concerning the forest management at the time and in the manner ensuring the maintenance and establishment of forest order.

(2) If the established forest order is changed, the owners of forests, the user of forests and forestland owned by the Republic shall be obliged to establish forest order in the prescribed manner within 30 days at the latest.

Article 74 (2) and (5)

(2) The Commission for Technical Acceptance is founded by the user of forests and forestland owned by the Republic.

(5) If it has been established during the technical acceptance that the works have not been successfully and with quality carried out according to the execution project, the user of forests and forestland owned by the Republic is obliged to remove the established shortcomings within the time limit set by the Commission referred to in paragraph 2 of this Article, or within two years at the latest.

Article 75

The owner, or the possessor of a given land plot shall have the obligation to allow unobstructed passage across own property to the user of forests and forestland owned by the Republic and to the owner of the forest without an access road, for the purpose of unhindered performance of activities concerning the forest management, whereas the

owner, or possessor, shall have be entitled to compensation for passage and damage caused.

Article 77 (2), (3) and (5)

(2) The user of forests and forestland owned by the Republic has the right to use other forest products, for a fee of 3% of the product's sale price allocated in the special account of the user of forests and forestland owned by the Republic, which fee it has the obligation to direct at revitalization of other forest products at locations where they originate from.

(3) A public competition shall be announced for forest management areas where the user of forests and forestland owned by the Republic does not collect other forest products.

(5) A fee referred to in paragraph 4 of this Article is paid in the special account of the user of forests and forestland owned by the Republic by the 5 day of the month for the previous month and is used exclusively for the revitalization of other forest products at locations where they originate from.

Article 79

The building and putting into operation of charcoal plants, limestone plants, sawmills, wood processing plants, industrial plants and other plants in the forest, as well as at a distance of up to 100 meters from the edge of the forest for the forests owned by the Republic, require the consent of the Ministry and of the user of forests and forestland owned by the Republic, whereas for the forests in private ownership the consent of the authorities of local self-government units is required.

Article 80 (2)

(2) The owners of forests and the user of forests and forestland owned by the Republic may request other legal and natural persons who benefit from infrastructure to participate in the costs of the building and maintenance thereof proportionately to the benefit they have.

Article 81 (2)

(2) Planning, building and maintenance of roads in the function of forest management are carried out by the user of forests and forestland owned by the Republic, in accordance with the planning documents to which the Ministry gave the consent.

Article 82 (2), (3), (7) and (8)

(2) The user of forests and forestland owned by the Republic shall be obliged to maintain forest roads.

(3) Notwithstanding paragraph 1 of this Article, forest roads may be used by other legal persons and citizens under conditions laid down by the user of forests and forestland owned by the Republic and the local self-government unit authority for the roads which building they funded.

(7) Local self-government unit authorities and the user of forests and forestland owned by the Republic, in cooperation with the authority in charge of traffic and the Ministry of the Interior, will erect and maintain signs of forest roads and follow the traffic in accordance with the provisions of this Article, and in cases where road signs and surveillance are not sufficient barriers may be used.

(8) Damage on forest roads done by third persons has to be compensated to the user of forests and forestland owned by the Republic, based on the compensation price list it adopts.

Article 84

(1) The user of forests and forestland owned by the Republic is obliged to provide, under the same conditions, for the necessary minimum of forest wood assortments to the local companies for mechanical wood processing from the areas where those assortments originate from, for the purpose of encouraging local entrepreneurship and supporting village and homeland development.

(2) Provision of the necessary minimum of forest wood assortments referred to in paragraph 1 of this Article shall be established by the user of forests and forestland owned by the Republic on the basis of the criteria prescribed by a decision of the Government, which take into account the relevance of local businesses for mechanical wood processing, for that local community.

Article 85 (1) and (2)

(1) The user of forests and forestland owned by the Republic and the owner of forests through the executor of specialized and technical tasks shall be obliged to keep and update as prescribed the forest and forestland cadastre and to notify the Ministry about the changes that have occurred by 31 March at the latest for the previous year.

(2) The Ministry shall integrate the cadastre of the user of forests and forestland owned by the Republic and of the owner of forests referred to in paragraph 1 of this Article.

Article 88, subparagraph g

The funds referred to in Article 87, paragraph 1 of this Law are provided for from:

g) the fees for the lease of forestland owned by the Republic and the fees for the expropriation of land from forest production referred to in Article 92 of this Law,

Article 89 (1), (2), (6) and (10)

(1) The fees for the use of forest and forestland owned by the Republic (the funds for simple reproduction) are earmarked from the realized total income of the user of forests and forestland owned by the Republic, whereas the earmarked funds cannot be lower than 10% of the value of the sold forest assortments established according to the prices in the forest on the stump, according to the price list of the user of forests and forestland owned by the Republic.

(2) The fees referred to in paragraph 1 of this Article shall be paid in the special account of the user of forests and forestland owned by the Republic on a monthly basis and is used within the forest management area, namely the forestry holding where they were collected.

(6) The user of forests and forestland owned by the Republic shall be obliged to pay a fee for the development of undeveloped parts of the municipality from which the sold assortments originate in the amount of 10% of the funds obtained from the sale of forest wood assortments established under the price list, at ex-truck road prices.

(10) The user of forests and forestland owned by the Republic shall pay the fee referred to in paragraph 6 of this Article on a quarterly basis by 5th day of the month for the previous quarter. The user of forests and forestland owned by the Republic shall not be obliged to pay the said funds if the local self-government unit failed to adopt the annual plan on expenditure of earmarked funds.

Article 90 (2)

(2) The basis for the calculation of the fee for carrying out the works of general interest in the forests in private ownership in the amount 10% is the market value of the net cut wood mass established at the scene of loading into a means of transportation (ex-truck road) according to the prices list of the user of forests and forestland owned by the Republic.

Article 92 (1) and (3)

(1) A lease user shall be obliged to pay a fee for the lease of a forestland owned by the Republic in the public revenues account of the Republic.

(3) The funds collected based on the lease of forestland will be used for the purchase and grow new forests owned by the Republic.

Article 95 (1) subparagraph a

(1) The fee for the improvement of forest functions for public benefit (expanded reproduction) is used for the financing of the design and realization of the Forestry Program of the Republika Srpska, the Forestry Development Strategy of the Republika Srpska, Long-term Karst Area Management Program, for the financing of forests and forestland management in the karst areas, for the performance of activities of the Forestry Council of the Republika Srpska, for the establishment and maintenance of the information system in forestry, for the establishment and maintenance of forests and forestland cadastre, for the financing of the demarcation of the boundaries of forests and forestland owned by the Republic, for making and conducting forest inventories across large areas, for the support to the protected areas through improvement and development of social forest functions and realization of projects on forests improvement in all forms of ownership of forests and forestland, as well as for the following:

a) Growth of new forests,

Article 97 (1) and (2)

(1) It shall be prohibited to sell and misappropriate in other ways forests and forestland owned by the Republic.

(2) The Ministry may exchange a part of a forest and forestland owned by the Republic where it is not possible to organize rational management (a small isolated forest, enclave or semi-enclave) with the owners whose forests are isolated, or located as enclaves or semi-enclaves within the complex of forests owned by the Republic, with the consent of the Government.

Article 98

(1) The forests owned by the Republic cannot be leased.

(2) The forestland owned by the Republic can be leased until such time it gets used for the purpose established under the planning documents and under the conditions set forth in this Law.

(3) The forestland owned by the Republic, which has been leased, cannot be used for the construction of permanent facilities, except in special cases of general interest, pursuant to a decision of the Government.

(4) The forestland owned by the Republic is leased by the Ministry with the consent of the user of forests and forestland owned by the Republic.

(5) The Minister shall prescribe the conditions and manner of leasing the forestland owned by the Republic.

Article 101 (1) subparagraphs g, đ and j

(1) A business company or other legal person shall be punished for a misdemeanour with a fine in the amount from BAM 5,000 to BAM 15,000 if they:

g) carry out the realization of the Basis for forests owned by the Republic without an execution project in accordance with Article 24, paragraph 1 of this Law,

đ) fail to carry out the works of the use of forests and forestland owned by the Republic, including the obligation to maintain them in accordance with Article 34 of this Law,

j) fail to pay a fee for the use of forests and forestland owned by the Republic, as well as a fee for the municipality development in accordance with Article 89 of this Law,

Article 102 (1) subparagraphs dž and š

(1) A company or other legal person shall be fined KM 3,000.00 to 9,000.00 for an offence, if:

dž) sells and otherwise alienates the forest and forestland owned by the Republika, contrary to the provisions of Article 97, paragraph 1 of this Law, and

š) builds permanent facilities on forestland owned by the Republika, which has been leased, contrary to the provisions of Article 98, paragraph 3 of this Law.

Article 104

(1) The boundaries of forests and forestland owned by the Republic must be determined and marked.

(2) Undetermined boundaries of forests and forestland owned by the Republic shall be determined within ten years from the day this Law enters into force, based on the annual program adopted by the user of forests and forestland owned by the Republic, with the consent of the Ministry.

(3) Funds for determining and marking the boundaries of forests and forestland owned by the Republic shall be provided from special purpose funds for forests and funds of forest users and forestland owned by the Republic, in the amount determined by the program referred to in paragraph 2 of this Article.

(4) The boundaries of forests and forestland owned by the Republic shall be determined by a decision of the competent regional unit of the Republic Administration for Geodetic and Property-Legal Affairs, and at the request of the user of forest and forestland owned by the Republic or holders of private forests.

(5) The user of forests and forestland owned by the Republic shall be obliged to mark the borders of forests and forestland owned by the Republic and to maintain border signs.

Article 107 (3) subparagraphs z and i

(3) Within nine months from the day this Law enters into force, the Minister shall issue:

z) Regulation on the conditions and manner of replacement of forests and forestland owned by the Republic, and

i) Regulation on the conditions and manner of leasing of forestland owned by the Republic.

(...)

V. Admissibility

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

31. Article VI (3) (a) of the Constitution of Bosnia and Herzegovina reads as follows:

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

- *Whether an Entity's decision to establish a special parallel relationship with a 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.

32. The request for review of constitutionality was filed by seven delegates of the Council of Peoples of the Republika Srpska, which has a total of 28 delegates, which makes up ¼ of members of either chamber of a legislature of an Entity, which means, contrary to the assertions made by the National Assembly of the Republika Srpska, that the request was filed by an authorized subject, within the meaning of Article VI (3) (a) of the Constitution of Bosnia and Herzegovina, (see, the Constitutional Court, Decision on Admissibility no. *U-7/10* of 26 November 2010, paragraph 21, available at the website of the Constitutional Court: www.ustavnisud.ba).

33. Having regard to the provisions of Article VI (3) (a) of the Constitution of Bosnia and Herzegovina and Article 19 (1) of the Rules of the Constitutional Court, the Constitutional Court finds that the present request is admissible, as it was filed by an authorized subject, therefore, there is no single formal reason under Article 19 (1) of the Rules of the Constitutional Court rendering the request inadmissible.

VI. Merits

34. The applicant claims that the impugned law is inconsistent with Articles I (1), I (2), III (3) (b) and IV (4) (e) of the Constitution of BiH and Article 2 of Annex II to the Constitution of BiH. The essence of the allegations from the request is that the applicant claims that the said law is unconstitutional, because throughout almost the entire text (except Articles 1 and 2) this law prescribes that the Republika Srpska owns forests and forestland, except forests and forestland owned by other natural and legal persons. In the opinion of the applicant, the above stated is contrary to the relevant case law of the Constitutional Court, according to which the legislator at the State level must first decide this type of property.

35. The Constitutional Court notes that Article 1 of the impugned law stipulates that this law shall regulate policy and planning, management and administration of forests and forestland, forest protection, financing and value of forests, cadastre of forests and forestland and information system in forestry, and property-legal relations. Article 1 of the impugned law also regulates other issues of importance for the forest and forestland for the purpose of improvement and sustainable use of forests and forestland and development of forestry. Article 2 of the disputed law stipulates that forests and forestland are natural goods of general interest and that they enjoy special care and protection of the Republika Srpska. Article 3 stipulates that forests and forestland on the territory of

the Republika Srpska are owned by the Republika Srpska and other legal and natural persons, and then consistently throughout the entire text of the law it is stated "owned by the Republika" where referring to forests and forestland that are not owned by other natural and legal persons.

36. As regards the current case law relating to state property issues, the Constitutional Court points out that in the Decision no. U-1/11 (see, Constitutional Court, Decision on Admissibility no. U-1/11 of 13 July 2012, available on the website of the Constitutional Court *www.ustavnisud.ba*), it examined whether the Republika Srpska had the constitutional competence to enact the Law on the Status of State Property Located on the Territory of the Republika Srpska and under the Disposal Ban. However, in that decision, the Constitutional Court explains what is considered the State property. Thus, paragraph 62 states: "State property, although similar in its structure to civil-legal private property, is a specific legal concept enjoying a special status for this reason. State property is characterized by the public law nature of the relationship between the subjects and the use of that property as well as its owner. It includes, first, movable and immovable objects in the hands of public authorities and can include furthermore a "public good" (sea water and seabed, river water and river beds, lakes, mountains and other natural resources, public transport networks, traffic infrastructure, *etc*.). It, by its nature, primarily serves all people in the country. As such, the "public good" may be exempted from legal transaction (*res extra commercium*) due to its importance, as it is the only way to preserve and protect it."

37. In addition, in paragraph 77 of the Decision no. U-1/11, the Constitutional Court emphasizes that that the subject-matter regulated by the challenged Law is "the immovable property which Bosnia and Herzegovina got on the basis of the International Agreement on Succession Issues", and "the immovable property over which the former SRBiH had the right to manage and to dispose of". However, in the continuation of the reasoning (see paragraph 82), the Constitutional Court further clarifies that the notion of state property cannot be understood only as real property in terms of buildings and other, and further emphasizes: "The Constitutional Court reiterates that the state property has a special status that encompasses, on the one hand, movable and immovable objects in the hands of public authorities used to exercise that authority and, on the other hand, the state property can include a public good, which, by its nature, primarily serves all people in the country (running water, protection of climate-related living conditions and protection of other natural resources such as forests and state infrastructural networks within the meaning of Annex 9 to the General Framework Agreement for Peace in BiH, *etc*.). Such property reflects the statehood, sovereignty and territorial integrity of Bosnia and Herzegovina. Furthermore, the interest of BiH

should not be disregarded when it comes to preserving its "public good", as a part of the state property serving all citizens of BiH and as a part which is not essential in order for specific competence of certain administrative-territorial level of government to be effectively exercised in the state. In addition, this property may serve as "another means for financing the expenses necessary for performing the operations of the Institutions of Bosnia and Herzegovina and international obligations of Bosnia and Herzegovina, within the meaning of Article IV (4) (b) in conjunction with Article VIII (3) of the Constitution of Bosnia and Herzegovina."

38. It follows from the cited case law of the Constitutional Court that forests, as public goods, are considered state property. Earlier in the Decision U-1/11, the Constitutional Court took the position that forests are part of state property (running water, protection of climate conditions, protection of other natural resources, such as forests, necessary state infrastructure network in terms of Annex 9 of the General Framework Agreement for peace in BiH, *etc*., as stated in the cited paragraphs 62 and 82 of Decision U-1/11). The Constitutional Court also considers in this case that "forests and forestland" "owned by the Republika Srpska", as prescribed by the disputed articles of the law, are covered by the notion of state property as stated in the relevant part of Decision U-1/11.

39. Regarding the constitutional competence of the Republika Srpska to regulate the legal status of forests and forestland as its property, the Constitutional Court points out that in Decision U-1/11 it stated that "it cannot support the position of the RS National Assembly that this issue automatically falls under the so-called residual jurisdiction of the Entities" (*op. cit.* U-1/11, paragraph 80). In this regard, the Constitutional Court points out that Article III (1) of the Constitution of BiH contains a catalogue of competencies of BiH institutions, but that the competencies of BiH institutions are also listed in other provisions of the Constitution of BiH. The Constitutional Court concludes that "in terms of Article I(1) of the Constitution of BiH, BiH has the right to continue to regulate "state property" of which it is the owner, meaning all issues related to the concept of "state property" in both civil and public law. This conclusion is the only possible logical and material content of the notion of "identity and continuity" from the cited provision. Furthermore, the Constitutional Court reiterates that, although each level of government enjoys constitutional autonomy, the entity's constitutional jurisdiction is subordinated to the obligation to be in accordance with the Constitution of BiH and "decisions of the institutions of BiH". This clearly follows from the provisions of Article III (3) (b) of the Constitution of BiH. In addition, the right of the State of BiH to regulate the issue of state property derives from the provision of Article IV (4) (e) of the Constitution of BiH. Namely, if we take into account the previous conclusions,

primarily that the State of BiH has the right to continue to regulate the State property, *i.e.* that it is the title owner of state property, and that the provisions of Article IV (4) (e) of the Constitution of BiH prescribe the competence of the Parliamentary Assembly necessary for the performance of state duties, and that state property reflects the statehood, sovereignty and territorial integrity of BiH, there is no doubt that this provision gives the State of BiH and the Parliamentary Assembly the authority to regulate the issue of state property. Therefore, this is the exclusive competence of BiH arising from Articles I (1), III (3) (b) and IV (4) (e) of the Constitution of BiH" (*op. cit.* U-1/11, paragraph 80).

40. As the impugned articles of the law stipulate that forests and forestland are "owned by the Republic", they are thus legally recorded as property of the Republika Srpska and assigned to the Republika Srpska. It has been previously explained that state property (property of the State of BiH) includes (also) forests and forestland. Therefore, the Constitutional Court must conclude that the disputed provisions of the Law on Forests are not in accordance with Articles I (1), III (3) (b) and IV (4) (e) of the Constitution of BiH.

41. Regarding the allegations from the response to the request that this law also applies to forests and forestlands owned by other natural and legal persons, the Constitutional Court emphasizes that it sees no problem with the jurisdiction of the Republika Srpska over forests owned by other persons in terms of compliance with the Constitution of BiH. The main problem with the disputed law, as stated above, is the registration of the Republika Srpska as the owner of forests and forestland (not owned by other natural and legal persons), which the Constitutional Court considers to be state property (property of the State of BiH) until otherwise decided at the State level.

42. The Constitutional Court points out that the Law on Temporary Prohibition of Disposal of State Property (*Official Gazette of Bosnia and Herzegovina,* 18/05 and 29/06, 85/06, 32/07, 41/07, 74/07, 99/07 and 58/08) is in effect and is passed by the High Representative for BiH. The Constitutional Court also points out that Article 4 of the Law stipulates that the ban on disposing of state property remains in force until the entry into force of the law governing the criteria to be applied for determining the property owned by BiH, the Federation of BiH, the Republika Srpska and the Brčko District of BiH. The Constitutional Court also points out that this Law also determines the rights of ownership and management of state property or until the High Representative decides otherwise. The fact that the Law on State Property has not been enacted yet does not mean, in the opinion of the Constitutional Court, that the Entities can regulate the issue of

ownership of state property, which is not yet defined at the level of BiH by its own laws. In addition, the Constitutional Court reiterates that the decision in this case does not prejudge the regulating of the issue of state property, including forests and forestland by BiH, Republika Srpska, the Federation of BiH and the Brčko District of BiH.

43. In view of the above, the Constitutional Court decides to give the National Assembly a period of six months during which it is ordered to harmonize the disputed provisions of the law with the Constitution of BiH. The Constitutional Court is aware that all forests that ***are not owned*** by legal and natural persons must be cared for and managed by someone because of the importance of forests as a public good and natural wealth that is of a general interest. It is indisputable that the Republika Srpska should perform activities regarding the management and protection of forests and forestland, as determined by Articles 1 and 2 of the Law on Forests. However, it cannot prescribe by law that forests and forestland are in its ownership until the issue is determined at the State level as to which State property or public goods and natural resources are the property of BiH, and which are the property of the Entities. Given the structure of the Law on Forests, the Constitutional Court notes that, in case of quashing all disputed provisions of the law that this court found to be inconsistent with the Constitution of BiH, then no action could be taken according to law and this would result in neglect of natural goods. Therefore, taking into account the importance of the law and the issues it regulates, the Constitutional Court concludes that it is necessary to give the National Assembly a deadline for harmonizing the disputed provisions of the law with the Constitution of BiH, and within which the National Assembly will eliminate the established violations of the Constitution of BiH in the manner it chooses itself.

44. In view of the above, the Constitutional Court concludes that the disputed provisions of the Law on Forests are not in accordance with Articles I (1), III (3) (b) and IV (4) (e) of the Constitution of Bosnia and Herzegovina. The issues related to determining the ownership status of state property, as well as the competence in this regard between the State and the Entity bodies, should be regulated by a law that will be passed at the State level, as these issues fall within the exclusive competence of the State of BiH according to the mentioned provisions of the Constitution of BiH.

Other allegations

45. Since it has determined that the disputed provisions of the Law on Forests are not in accordance with Articles I (1), III (3) (b) and IV (4) (e) of the Constitution of Bosnia and Herzegovina, the Constitutional Court holds that it is not necessary to consider separately the other allegations of the applicant who claims that the provisions of Article I (2) and Article 2 of Annex II to the Constitution of BiH have been violated.

46. Finally, the Constitutional Court highlights again that the issue of state property has not been resolved since the date on which the Constitution of BiH came into force, *i.e.* since 14 December 1995. Therefore, there is an absolute necessity and a positive obligation of BiH to resolve this issue as soon as possible (*op. cit.* U-1/11, paragraph 84).

VII. Conclusion

47. The Constitutional Court concludes that the disputed provisions of the Law on Forests are not in accordance with Articles I (1), III (3) (b) and IV (4) (e) of the Constitution of Bosnia and Herzegovina, as the issues related to determining the ownership status of state property, as well as the competence in this regard between the State and the Entity bodies, should be regulated by a law that will be passed at the State level. These issues fall within the exclusive competence of the State of BiH according to the mentioned provisions of the Constitution of BiH.

48. Pursuant to Article 59 (1) and (2) and Article 61 (4) of the Rules of the Constitutional Court, the Constitutional Court decided as set out in the enacting clause of this decision.

49. In view of the decision of the Constitutional Court in the present case, it is not necessary to consider separately the applicant's proposal for an interim measure.

50. Pursuant to Article 43 of the Rules of the Constitutional Court, a Separate Dissenting Opinion of Judge Zlatko M. Knežević is annexed to the present Decision. Vice-President Miodrag Simović gave a statement of dissent to the majority decision.

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

Mato Tadić
President
Constitutional Court of Bosnia and Herzegovina

Separate Dissenting Opinion of Judge Zlatko M. Knežević

Ad I.

At its plenary session, the Constitutional Court of Bosnia and Herzegovina passed a decision in the case U 4/21, declaring the provisions of the Law on Forests of the Republika Srpska unconstitutional (as stated in the operative part of the decision).

In essence, the Constitutional Court declared unconstitutional all provisions whereby the Republika Srpska declared itself the owner (titleholder) of forests and forestland in the Republika Srpska, and decided to leave in effect the provisions whereby legal and physical persons can be the owners (titleholders) of forests and forestland.

Regretfully, with all the respect for the views of my colleagues, I am unable to accept the position taken by the majority for the following reasons.

Ad II.

For reasons of expediency, in this separate opinion I will not repeat my views previously presented on the provisions of the Constitution of Bosnia and Herzegovina. Those are the regulation of competencies between the State and the Entities, the constitutional autonomy of the Entities when it comes to the regulation of property relationships, the right and obligation of both the state and entity levels to adhere to the division of competencies, constitutional compliance of the Constitution of the Republika Srpska with the provisions of the Constitution of Bosnia and Herzegovina, as confirmed in several decisions of the Constitutional Court of Bosnia and Herzegovina, the need for the Constitutional Court **to interpret and not to create** the provisions of the Constitution of Bosnia and Herzegovina, the necessity for the Constitutional Court to distance itself from the doctrine of constitutionalism where it is contrary to explicit constitutional provisions and the position that the Constitutional Court acts as a **constitutional remedial mechanism** and **is not a framer of constitution**.

Certainly, my dissenting opinion in the case U-1/11, and the majority in this decision relies on the majority opinion in that case, is sufficient to indicate tendencies that are unacceptable to me in the task of interpreting the Constitution. Thus, it can be considered that this general, the introductory part in the case U-1/11 (of my dissenting opinion) constitutes an integral part of the dissenting opinion in the case U 4/21. Therefore, I am not going to reiterate the mentioned dissenting opinion, but I do emphasise it.

Ad III.

However, the majority decision in the present case goes much further than the positions in the case U-1/11, so I have to emphasize the key reasons for not accepting the decision.

Namely, at the risk of simplification, but with the intention not to convey the complete reasoning of the decision (which is available) in this text, in my opinion the decision of the majority is reduced to three disputable issues (in addition to the general views already mentioned in Ad II.).

Those are:

- **the identification of a public good with state property**;

- the issue of **serious violation of the constitutional system of Bosnia and Herzegovina** in terms of tolerance, and even emphasizing different legal solutions on the same issue (forests), to the acceptance of the **discriminatory status** of one constitutional category (the Republika Srpska in relation to the other Entity and the Brčko District of Bosnia and Herzegovina), which is notoriously contrary to the constitutional principle of the **rule of law**;

- the majority position by which the Constitutional Court sets itself up as a **superior** to the Parliament of Bosnia and Herzegovina, as it moved from the category of negative legislator (which our Constitution prescribes as the jurisdiction of the Constitutional Court) to the category of positive legislator **before the enactment of the law**. To clarify, the jurisdiction of the Constitutional Court, as to **the laws passed**, is to assess whether a provision or the law in whole is in accordance with the Constitution and not to order the Parliament, in a situation where the law **has not been passed**, what has to be in the law or what must not be in the law (as in the present case).

Ad III. a)

As to the identification of the public good with state property, it is unclear what the majority was guided by in the decision and the reasoning of the decision where the majority decided so. Namely, ever since the French law school, which introduced public goods into law, public goods represent specific categories that are considered general goods, which a state organization, in the broadest sense of the word, can limit in use, disposal or, in our terminology, management, but which has to have **an owner** if they meet the conditions introduced by Roman law, and which has been serving as the basis of property law to date. Certainly, there are public goods on which there can be no ownership in any case, such as air, but the management up to the ownership can be arranged on a derivative (transmission of radio and television waves and low-frequency telecommunication

system). Laws on telecommunications and national frequencies, and international agreements on mutual use or restrictions speak about it, without special reference.

However, the public good is not identified anywhere with only one category of property, in this case, state property. Such a strained argument does not exist here even if in some other decisions it could be claimed, albeit with very strained interpretations, that state property is what belongs to Bosnia and Herzegovina, as a successor, under the succession agreements with other members of the former federal state, and what had been titled as property of the federal state or its institutions, or that it is part of the property under decisions of the body envisaged by the Constitution (Presidency of Bosnia and Herzegovina in the part of military property acquired by succession from the former federal army). The reference to the indirect effect of laws passed by the OHR is a bad argument, as one could enter into a discussion of the constitutionality of such laws and what does it mean "binding decisions and measures" in the constitutional order of Bosnia and Herzegovina. The argument referring to decisions taken during the war in 1993 is even weaker, as it conflicts with an explicit constitutional provision on regulations passed during the war, and which are in conflict with the new constitutional organization (*modified by this Constitution*), and it could even be said to be, in essence, a counter-argument. The paradox of the decision in question is that the paragraphs in the reasoning contradict each other, so it is unclear what the final reasoning is.

I have already stated that I will not explain in detail the constitutional division of powers and competences here, but I cannot help but notice that it is about *autoplagiarism* in the present decision, where the previously passed decision is a basis of the new decision, and these decisions have neither a firm nor constitutional basis, for there is no constitutional provision supporting such a decision.

If we look at the enacting clause of the decision, we come to the paradoxical conclusion that the constitutional category (Entity of Republika Srpska) cannot be the owner of one real property (forests and forestland), and everyone else can. Thus, the owners can be legal persons and natural persons, and it turns out that Bosnia and Herzegovina can also be the owner, but only the Republika Srpska cannot. I think that this issue is too serious to allow myself to trivialize this position, but the question arises: *What if some legal or natural person donates forests (forest as a cadastral unit) to the Republika Srpska*? How this will be recorded in the cadastre? Are they allowed to make a registration in favour of the Republika Srpska, *i.e.* are notaries allowed to draft such a contract at all? We could go even further, we can conclude that this form of **new nationalization** from the entity level to the state level is discriminatory for it is not of a general nature, since the property of

legal and natural persons survives. We can then say that legal persons owned by the Republika Srpska (public companies) may be owners of forests and forestland!

These remarks only speak of all possible interpretations of an unfortunate decision by which the mechanisms of the public good and state property are mutually opposed and which blindly followed its position.

AD III. b)

When I speak about the violation of the rule of law and discriminatory position, it suffices to repeat briefly the allegations in the reasoning that the Brčko District of BiH owns forests and forestland in its area, and the biggest paradox is the Federation regulation on forests and forestland, which, paraphrased, states that forests and forestland are state property owned by the Federation of BiH! I do not intend to talk about cantonal regulations in this area, for they are not the same constitutional categories.

So, we have not only inconsistent but also opposing legal systems which, this time, are not due to a mistake of the legislator, but due to the reaction of the Constitutional Court, which stubbornly defends its position that it can decide only on the basis of request for review of constitutionality, and it is silent and does not want to see that by a unilateral decision it undermines the rule of law and the constitutional balance of the equality of constitutional categories (in this case, the Entities). All the more so because the constitutional principle, above the normative part, is the rule of law, and such a decision is in violation of it. If, by any chance, the Constitutional Court, by its decision, had decided equally towards all constitutional categories precisely for the protection of the constitutional principle of the rule of law, it could have been said that the decision came from the authorisation of constitutional division of competences between constitutional categories, but that it had been **justly** negative towards everyone in Bosnia and Herzegovina. Unfortunately, all of us in the Constitutional Court are thus sliding towards non-recognition of our decisions, and we show that the allegations of unfair treatment are correct, and everything that already constitutes a negative odium towards the Constitutional Court.

On top of all that, after the decision declaring the Republika Srpska as a **non-owner**, we also impose an obligation on the Republika Srpska to manage, protect, cultivate and whatever else is specified as the obligations under the Law on Forests and Forestland. This obligation is of a permanent nature until the Parliament of Bosnia and Herzegovina passes the law on state property. Let us not say the law on forests of Bosnia and Herzegovina (for it is clear to the majority that such

an authority does not exist in the Constitution of Bosnia and Herzegovina), which would be logical, as it has already gone so far that way.

I repeat, the main problem in this decision is the mutual opposition of positions in the reasoning, and it is only clear that according to the position of the majority, in fact, there is no single or even common constitutional system of Bosnia and Herzegovina but a partial one, which is dependent on requests submitted or views of authorized applicants.

AD III. c)

Finally, about the tendencies of leaving the constitutional zone of the negative legislator towards the unconstitutional zone of the positive legislator.

The Constitutional Court has very clear competences under the Constitution. In addition, the Constitutional Court rightly insists that all who are obliged to enforce them enforce decisions, and that everyone complies with them. That is the essence of the constitutional remedial mechanism, *i.e.* the interpreter of the Constitution. However, this also means that the Constitutional Court, when it comes to reviewing the constitutionality of a law, **must not** order the legislator in advance how the future legal text should read. It is a notorious premise of a democratic society according to which sovereignty is in the hands of the people, citizens, voters, and whose will is represented by democratically elected representatives.

There are constitutional systems in which the Constitutional Court has the authority to give a preliminary opinion on the text of a bill submitted by the legislature of a particular democracy. In the theory of constitutional law, the mentioned authority is also extremely disputable, so that such constitutional systems have mechanisms of restrictions, and even certain forms of negotiation before a final position. However, regardless of the partial steps out of the classic position of a negative legislator, no authority of the constitutional court to be a positive legislator exists in democratic systems, *i.e.* to tell the legislator how a certain legal norm or law should read. The legislature, precisely for essential democratic reasons, passes laws, and the constitutional corrective decides one or more times whether a certain norm is in line with the constitution.

In the present case, the decision exceeds that limit and orders the legislator what should not be in the future law. Therefore, the legislator says you need to pass a law on state property and, in that law, you must not envisage that the Republika Srpska be the owner of forests and forestland in any way (and some other real properties as it follows from other decisions that are not the subject-matter of this analysis), or the representatives in the legislative body from the Republika Srpska are told that they can only pass a law by which the Republika Srpska cannot be the titular of ownership of

forests and forestland (let us dwell on this issue only). I assume I do not have to speak about such a possibility, and until then - until the very, very distant future, if such a law will exist at all - there will be legal chaos, various legal solutions and all in favour of violating the rule of law in Bosnia and Herzegovina.

If the decision, for example, had said that the relevant provisions of the law had been unconstitutional but that the Constitutional Court, due to the absence of the law at the level of Bosnia and Herzegovina and similar or identical solutions in the other two constitutional categories, had decided to leave them in force pending the enactment of the law or to protect the rule of law, even by unconstitutional norms, the legislator would have had the task of harmonising the entire legal system in this area and there would not have been imbalance within the system. This decision did not achieve the goal of constitutional review, nor did it strengthen Bosnia and Herzegovina as a constitutional system. In addition, the Constitutional Court did not act as a constitutional remedial mechanism.

Quite the opposite, actually.

For these and some other reasons, which I presented in detail at the plenary session, I was unable to accept the proposed decision and I voted against it.