

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), Article 61(1), (2) and (3) and Article 64(4) of the Rules of the Constitutional Court of Bosnia and Herzegovina – consolidated text (*Official Gazette of Bosnia and Herzegovina*, 94/14, 47/23 and 41/24), in plenary and composed of the following judges:

Ms. Seada Palvrić, President

Ms. Valerija Galić, Vice-President

Ms. Angelika Nussberger, Vice-President

Mr. Mirsad Ćeman,

Ms. Helen Keller,

Mr. Ledi Bianku, and

Mr. Marin Vukoja

Having deliberated on a request filed by **13 Members of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina** in case no. **U-6/24**, at the session held on 11 July 2024, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

In deciding on the request filed by **13 Members of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina** for review of the constitutionality of the Decision on the Method and Conditions of the Sale of Real Property owned by the Republika Srpska located within the Special Area of Jahorina, by public bidding (*Official Gazette of the RS*, 114/23),

it is hereby established that the Decision on the Method and Conditions of the Sale of Real Property owned by the Republika Srpska located within the Special Area of Jahorina, by public bidding (*Official Gazette of the RS*, 114/23) is not compatible with the provisions of Article I(1), I(2) and VI(5) of the Constitution of Bosnia and Herzegovina.

Pursuant to Article 61(1) of the Rules of the Constitutional Court of Bosnia and Herzegovina and Article 2(2) of the Law on the Temporary Prohibition of the Disposal of State Property of BiH (*Official Gazette of BiH*, 18/05, 29/06, 85/06, 32/07, 41/07, 74/07, 99/07, 58/08 and 22/22), the Decision on the Method and Conditions of the Sale of Real Property owned by the Republika Srpska located within the Special Area of Jahorina, by public bidding (*Official Gazette of RS*, 114/23) is declared null and void and shall cease to have effect on the day of publication of that decision in the *Official Gazette of RS*, 114/23.

Pursuant to Article 61 of the Rules of the Constitutional Court of Bosnia and Herzegovina, the Government of the Republika Srpska and the Ministry of Trade and Tourism of the Republika Srpska are hereby ordered to take all activities necessary to quash all decisions

and activities taken based on the Decision on the Method and Conditions of the Sale of Real Property owned by the Republika Srpska located within the Special Area of Jahorina, by public bidding (*Official Gazette of the RS*, 114/23).

Pursuant to Article 72(5) of the Rules of the Constitutional Court of Bosnia and Herzegovina, the Government of the Republika Srpska and the Ministry of Trade and Tourism of the Republika Srpska are hereby ordered to inform the Constitutional Court of Bosnia and Herzegovina, within a time limit of three months from the delivery of this decision, of the measures taken to enforce the present decision.

Pursuant to Article 64(4) of the Rules of the Constitutional Court of Bosnia and Herzegovina, Decision on Interim Measure no. U-6/24 of 30 May 2024 shall cease to have effect.

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

REASONS

I. Introduction

1. On 12 March 2024, 13 Members of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina (“the applicants”) filed a request with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) to resolve a dispute with the entity Republika Srpska (“the RS”) arising from the adoption of the Decision on the Method and Sale of Real Property owned by the RS located within the Special Area of Jahorina, by public bidding (*Official Gazette of the RS*, 114/23; “the challenged decision”). In the event that the Constitutional

Court concludes that the request does not concern a dispute between the RS Entity and the State of Bosnia and Herzegovina (“BiH”), the applicants requested that the Constitutional Court review the constitutionality of the challenged decision in relation to Articles I(1), I(2), and VI(5) of the Constitution of Bosnia and Herzegovina. In addition, the applicants requested that the Constitutional Court issue an interim measure that *would suspend the application of the challenged decision, pending a final decision of the Constitutional Court on the request.*

II. Proceedings before the Constitutional Court

2. By Decision on Interim Measure no. U 6/24 of 30 May 2024, the Constitutional Court suspended temporarily the execution of the challenged decision pending a final decision of the Constitutional Court on the request.

3. Pursuant to Article 23 of the Rules of the Constitutional Court, the Government of the Republika Srpska (“the RS Government”) was requested on 14 March 2024 to submit a reply to the request. The RS Government failed to submit the reply within the given time limit.

III. Request

a) Allegations in the request

4. The applicants state that they, as persons authorised under Article VI(3)(a) of the Constitution of Bosnia and Herzegovina, have the right and obligation to protect the constitutional order of BiH, including but not limited to the issues listed in paragraph 1, sub-paragraphs 1 and 2 of the mentioned Article. The applicants state that the dispute in question relates to the issue of constitutional obligations of the RS Entity to comply with the Constitution of Bosnia and Herzegovina, the division of responsibilities between the State and the Entities and, in particular, compliance with the decisions of the Constitutional Court, which are final and binding. According to the applicants, a gross violation of provisions of the Constitution of Bosnia and Herzegovina may be classified as more severely, as a violation of the obligations arising out of the principles of the rule of law and democracy, within the meaning of Articles I(2) and I(1) of the Constitution of Bosnia and Herzegovina, which guarantee the continuity of BiH. In addition, as to the admissibility of the request, the applicants refer to several decisions of the Constitutional Court, which they quote in the relevant parts, namely: U-15/08 (paragraph 29), U-10/16 (paragraphs 32 and 37), U-10/14 (paragraphs 33 and 75), and U-16/20 (paragraph 27). The applicants referred to the aforementioned decisions in connection with the decisions of the Constitutional Court relating to state property U-1/11 (paragraphs 62 and 82) and U-4/21 (paragraph 40), on “forests and forest land” referred to in

the Law on Forests of the RS. In this connection, the applicants refer to Article VI(5) of the Constitution of Bosnia and Herzegovina, which stipulates that the decisions of the Constitutional Court shall be final and binding.

5. Based on the case law they refer to, the applicants conclude that the Constitutional Court took the position that the RS Government has no right to manage and dispose of state property, which includes the sale of state land. By disregarding the decisions of the Constitutional Court, which are final and binding, the institutions of the RS Entity continue, without legal basis, to dispose of public goods and forests as parts of state property. In this regard, the applicants recall that the RS Government, at the 51st session held on 28 December 2023, passed the challenged decision, which was published in the Official Gazette of the RS. In the challenged decision, the RS Government determined the method and conditions for the sale of real property owned by the RS and located in the area of Jahorina. The challenged decision came into force on 30 December 2023. The applicants reasoned that the real property referred to in the challenged decision are within the special area of Jahorina at the Vučiji Most location, which is registered in public records as LN-337 Cadastral Municipality Jahorina, having a total area of 56,405 m². According to the challenged decision, the sale should be conducted by competitive bidding, and the initial price is BAM 41,172,730.00. The applicants specifically point to paragraph X of the challenged decision, which reads:

The forest wood assortments created by deforestation on the real property that is the subject of this decision shall belong to the Public Forestry Enterprise Forests of the Republika Srpska" LLC Sokolac, Forestry Holding "Jahorina" Pale (JPŠ „Šume Republike Srpske“ a.d. Sokolac, ŠG „Jahorina“ Pale), and the Public Forestry Enterprise "Forests of the Republika Srpska" LLC Sokolac, Forestry Holding, "Jahorina" Pale shall be responsible for the professional and technical tasks of deforestation in accordance with the dynamics of investment works in agreement with the Regulatory Plan of the special area of Jahorina at the Vučiji Most location.

6. According to the applicants, the aforementioned paragraph of the challenged decision clearly indicates that it concerns a forestland, and such land can be disposed of solely by BiH. In addition, the applicants allege that the unconstitutional activities of the institutions of the RS Entity continued through actions relating to the conduct of the sale process. Furthermore, the applicants state that the media, after the announcement of the public tender, published information that the RS Government had already made a decision on the sale of real property. Due to the

unconstitutional actions of the institutions in the RS Entity, on 27 February 2024, the applicants filed a request with the RS Government, wherein they demanded that the unconstitutional activities be terminated and that the challenged decision and all the acts passed thereafter in connection with the implementation thereof be cancelled under the urgent procedure. The RS Government did not take any action in relation to the aforementioned request, which the applicants submitted for inspection.

7. The applicants argue that taking into account that the RS institutions disregarded the decisions of the Constitutional Court relating to the jurisdiction and the disposal of public goods, which include the forests and forestland of the special area of Jahorina, which, as part of the state property, are within the exclusive jurisdiction of the State of BiH, a dispute arose between BiH and the RS Entity, the resolution of which falls within the exclusive jurisdiction of the Constitutional Court. The applicants therefore contend that the possibility of an abstract review of constitutionality is ruled out and that this is a “*par excellence* example of the so-called federal dispute between the State and one Entity”. However, just as a precaution, the applicants suggested that the request be considered as a *request for review of constitutionality*.

Unconstitutionality with regard to Article I(1) of the Constitution of Bosnia and Herzegovina

8. The applicants allege that Article I(1) implies the continuity of ownership of the property of the Republic of BiH, *i.e.* the former Socialist Republic of BiH, which was also confirmed by the judgment of the Court of BiH no. P-254/06 of 3 October 2008. This property, as well as the property which passed to Bosnia and Herzegovina pursuant to the International Agreement on the Succession Issues, constitutes state property owned by the State of BiH. The Constitutional Court found in decision U-1/11 (paragraph 82), and has subsequently reaffirmed in decisions U-8/19, U-9/19 and U-4/21 the position that state property is also 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.*). In addition, the applicants state that in decision U-4/21 the Constitutional Court stated as follows: *The Constitutional Court also considers in this case that “forests and forest land” “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. [...] 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” (paragraphs 38 and 39). As the applicants point out, the Constitutional Court has clearly stated in the case law that forests and forestland constitute state property owned by the State of BiH. The applicant argues that the sale, by the RS Entity, of state property based on the challenged decision, is contrary to the position taken by the Constitutional Court. According to the decisions of the Constitutional Court, the State of BiH has the right to dispose of state property pending the Law on the Status of State Property at the level of BiH. Therefore, the applicants argue that it is evident that the challenged decision is in contravention of Article I(1) of the Constitution of Bosnia and Herzegovina.

Unconstitutionality with regard to Article I(2) of the Constitution of Bosnia and Herzegovina

9. In addition, the applicants state that the decisions of the Constitutional Court nos. U-1/11, U-9/19, U-4/21 and other decisions impose an obligation on the competent bodies in BiH, Entities and Brčko District to comply with the decisions of the Constitutional Court, which are final and binding, which constitutes an inseparable part of the rule of law principle. Therefore, by selling state property and disposing of forests and forest land contrary to the decisions of the Constitutional Court, the authorities of the RS Entity have violated Article I(2) of the Constitution of Bosnia and Herzegovina. Furthermore, the applicants allege that the sale of state property to the largest extent has been recorded based on the challenged decision, and the authorities in the RS Entity persist in the realization thereof. In this connection, the applicants state that on 11 January 2024 the BiH Public Attorney’s Office, as a legal representative of the State of BiH, warned the competent entity ministry that it was an illegal activity of the RS Entity. That warning produced no effect, since the unconstitutional activities on the sale of forestland did not terminate but rather intensified. The applicants state that considering the conduct of the authorities in the RS Entity, it can be concluded that they do not comply with the final and binding decisions of the Constitutional Court. According to the position of the applicants, such unconstitutional actions of the authorities in the RS Entity *take on a much stronger classification of opposing the modern principles of the functioning of the rule of law and democratic state, which causes general tensions in BiH*, thereby violating Article I(2) of the Constitution of BiH.

Unconstitutionality with regard to Article VI(5) of the Constitution of Bosnia and Herzegovina

10. The applicants quote the relevant parts of decision no. U-1/11 (paragraphs 62 and 82), wherein the position was taken that the RS Government did not have the right to manage and

dispose of state property, including sales. They argue that despite the aforementioned, the RS Government continues to sell state property (forest land), thereby acting contrary to the final and binding decision of the Constitutional Court. In addition, the applicants refer to and quote parts of decision no. U-4/21 (paragraphs 40 and 42). The applicants state that in the mentioned decision the Constitutional Court *refused to accept that the RS Entity was the owner of the forests and forestland in the territory of the RS Entity and that it had the right to dispose of such land on that basis*. Besides, the Constitutional Court reiterated the position that it concerned state property that can be disposed of by the State of BiH only. Accordingly, they argue that the challenged decision is in breach of Article VI(5) of the Constitution of Bosnia and Herzegovina, as the challenged decision and the other acts passed in connection therewith are in contravention of the decisions of the Constitutional Court nos. U-1/11, U-9/19 and U-4/21.

IV. Relevant Law

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

Article I(1)

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. (...)

Article I(2)

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 VI(5)

5. Decisions

Decisions of the Constitutional Court shall be final and binding.

12. The **Law on Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina** (*Official Gazette of BiH*, 18/05, 29/06, 85/06, 32/07, 41/07, 74/07, 99/07, 58/08 and 22/22)

An unofficial consolidated text of the law drafted at the Constitutional Court will be used for the purpose of this decision, reading as follows:

Article 1

This Law prohibits the disposal of State Property.

For the purpose of this Law, State Property is considered to be:

1. Immovable property, which belongs to the State of Bosnia and Herzegovina pursuant to the international Agreement on Succession Issues, signed on 29 June 2001 by the states of Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Slovenia, and the Federal Republic of Yugoslavia.

2. Immovable property, for which the right of disposal and management belonged to the former Socialist Republic of Bosnia and Herzegovina before 31 December 1991.

3. Agricultural land, considered as State Property by the Constitutional Court of Bosnia and Herzegovina in its decisions in Case No. U-8/19.

4. Rivers, forests, and forestland, considered as State Property by the Constitutional Court of Bosnia and Herzegovina in its decisions in Case No. U-9/19 and Case No. U-4/21.

For the purpose of this Law, disposal of the aforementioned property shall mean the direct or indirect transfer of ownership.

Article 2

Notwithstanding the provisions of any other law or regulation, State Property may be disposed of only by the State of Bosnia and Herzegovina, as its titleholder, in accordance with the provisions of this Law.

Any decision, act, contract, or other legal instrument, disposing of property referred to in Article 1 of this Law concluded contrary to provisions of this Law, after its entry into force, shall be null and void.

Article 4

The temporary prohibition on the disposal of State Property in accordance with this Law shall be in force until entry into force of State-level legislation regulating the rights of ownership and management of State Property, adopted by the Parliamentary Assembly of Bosnia and Herzegovina, or the High Representative decides otherwise.

13. **The Law on Temporary Prohibition of Disposal of State Property of Republika Srpska** (*Official Gazette of Republika Srpska*, br. 32/05, 32/06, 100/06, 44/07, 86/07, 113/07 and 64/08).

An unofficial consolidated text of the law drafted at the Constitutional Court will be used for the purpose of this decision, reading as follows:

Article 1

This Law prohibits the disposal of State Property.

For the purpose of this Law, State Property is considered to be:

- 1. Immovable property which belongs to the state of Bosnia and Herzegovina (as internationally recognized state) pursuant to the international Agreement on Succession Issues signed on 29 June 2001 by the states of Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Slovenia and the Federal Republic of Yugoslavia which, on the day of adoption of this Law, is considered to be owned or possessed by any level of government or public organization in Republika Srpska, and*
- 2. Immovable property for which the right of disposal and management belonged to the former Socialist Republic of Bosnia and Herzegovina (hereinafter: SRBIH) before 31 December 1991, which on the day of adoption of this Law is considered to be owned or possessed by any level of government or public organization or body in Republika Srpska.*

For the purpose of this Law, disposal of the aforementioned property shall mean the direct or indirect transfer of ownership.

Article 2

Notwithstanding the provisions of any other law or regulation, State Property may be disposed of only in accordance with the provisions of this Law.

Any decision, act, contract, or other legal instrument, disposing of property referred to in Article 1 of this Law concluded contrary to provisions of this Law after its entry into force, shall be null and void.

Article 3

The following assets shall be exempt from the prohibition specified in Article 1 of this law and shall include:

- 1. Assets and rights of enterprises, registered as such, which are subject to privatization as defined in Article 1 of the Law on Privatization of State Capital in Enterprises in Republika*

Srpska (Official Gazette of RS no. 24/98, 62/02, 38/03 and 65/03); and which are currently determined or will be determined as constituting the approved active balance sheet of enterprises as stipulated in the Law on Opening Balance Sheet in Privatization Procedure of State Capital in Enterprises (Official Gazette of RS no. 24/98) The competent body, in accordance with the aforementioned laws shall be entitled to determine the amended active balance sheet, but shall communicate to the Commission, ex officio, any addition thereto of property specified by Article 1 of this Law; and

2. Assets subject to sale pursuant to the Law on Privatization of State Owned Apartments (Official Gazette of RS no. 11/00, 20/00, 18/01, 35/01, 65/01, 47/02, 65/03, 03/04, 70/04 and 2/05).

Additionally, the State Property Commission established by the Decision of the Council of Ministers of Bosnia and Herzegovina (“Official Gazette of Bosnia and Herzegovina”, No. 10/05, hereinafter: “the Commission”) may, upon the proposal of an interested party, decide to exempt certain State Property from the prohibition imposed by this Law.

The portion of State Property that will continue to serve defence purposes, pursuant to and in accordance with Articles 71-74 of the Law on Defence of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, no. 88/05) shall also be exempt from the temporary prohibition imposed by this Law.

Article 4

The temporary prohibition on the disposal of State Property in accordance with this Law shall be in force until entry into force of the law regulating implementation of criteria to be used for identification of property owned by Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District of Bosnia and Herzegovina and specifying the rights of ownership and management of State Property, which shall be enacted upon recommendations of the Commission, or until either an acceptable and sustainable resolution of the issue of apportionment of State Property between the State and other levels of government has been endorsed by the Peace Implementation Council Steering Board, or the High Representative decides otherwise.

V. Admissibility

14. In examining the admissibility of the request, the Constitutional Court invoked the provisions of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina and Article 19 of the Rules of the Constitutional Court.

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

The Constitutional Court shall uphold this Constitution.

a) 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.

16. Article 19 of the Rules of the Constitutional Court, insofar as relevant reads:

A request shall be inadmissible in any of the following cases:

a) the Constitutional Court is not competent to take a decision.

17. The request for review of constitutionality was lodged by 13 members of the House of Representatives of the Parliamentary Assembly of BiH, out of 42 members, which makes one-fourth of the members of either House of the Parliamentary Assembly. The request was therefore filed by an authorised person within the meaning of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina (see Constitutional Court, Decision on Admissibility and Merits no. *U 15/21* of 14 July 2022, paragraph 23 with further references, available at www.ustavnisud.ba).

18. In addition, the issue of admissibility of the request arises for the Constitutional Court, in terms of Article 19(1)(a) of the Rules of the Constitutional Court, given that the challenged decision is of inferior legal rank compared to a law. In its case law related to its jurisdiction under Article

VI(3)(a), the Constitutional Court declared itself competent and examined the constitutionality of regulations inferior to a law when such regulations gave rise to the issue of violation of human rights and fundamental freedoms protected by the Constitution of Bosnia and Herzegovina and the European Convention (see Constitutional Court, Decision on Admissibility and Merits no. *U-4/05* of 22 April 2005, published in the *Official Gazette of BiH*, 32/05, and Decision on Admissibility and Merits no. *U-7/05* of 2 December 2005, published in the *Official Gazette of Bosnia and Herzegovina*, 45/05). In both cases, the Constitutional Court concluded that it had jurisdiction to decide on contested regulations for the purposes of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina because the requests for review of constitutionality related to issues arising from the Constitution of Bosnia and Herzegovina and international agreements for protection of human rights, and concerned the exercise of human rights and constitutional principles, *i.e.* the principle of the constituent status of the peoples and the right to non-discrimination.

19. The Constitutional Court notes that it has taken position in its hitherto case law that the issue relating to a conflict of responsibilities between different levels of government in Bosnia and Herzegovina as to the constitutional responsibility to pass by-laws may give rise to the constitutional dispute within the meaning of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina. Given the provisions of Article VI(3) under which the *Constitutional Court shall uphold this Constitution* as well as the provision of the same Article reading, as relevant, ... *including but not limited to...*, in respect of which the Constitutional Court considers also the provisions on division of responsibilities under Article III of the Constitution of Bosnia and Herzegovina, and in view of the constitutional principle of the rule of law under Article I(2) of the Constitution of Bosnia and Herzegovina, the Constitutional Court finds that it may establish its jurisdiction to decide the constitutional dispute in which it is claimed that the authority passed the by-law for the adoption of which it had no jurisdiction under the Constitution of Bosnia and Herzegovina (see Constitutional Court, Decision on Admissibility and Merits no. *U-10/14* of 4 July 2014, paragraph 79, published in the *Official Gazette of BiH*, 61/14 of 5 August 2014, available at www.ustavnisud.ba). In this connection, the Constitutional Court further noted in its case law that a “dispute” could not arise from ordinary and positive legal regulations but it had to relate to certain issues regulated by the Constitution of BiH itself (see Constitutional Court, Decision on Admissibility no. *U-12/08* of 30 January 2009, paragraph 7, *Official Gazette of BiH*, 62/09, available at www.ustavnisud.ba).

20. In addition to the above, the Constitutional Court contends that the admissibility of this request should be decided in accordance with the Constitutional Court’s view that jurisdiction for

review of constitutionality can be accepted if the challenged regulations go beyond the scope of the law, *i.e.* if the challenged regulations govern a matter that should be governed by a law. Namely, in interpreting the reasons given in the Constitutional Court's decision no. *U-5/17* of 28 September 2017 (available at www.ustavnisud.ba), in which it is noted that "The Constitutional Court concludes that the Rulebook stipulating the driver's qualification card has not exceeded the scope of the Law, as stated by the applicants", it can be concluded that jurisdiction for review of constitutionality could be accepted if the challenged regulation went beyond the scope of the law, *i.e.* if the by-law regulated the matter that should be regulated by the law. Turning to the present case, although the challenged decision is not a "law" in the formal and material sense, it is obvious that it was passed despite the fact that no law was passed at the state level to resolve the issue of state property. Furthermore, the challenged decision was passed contrary to the ban on the disposal of state land, which includes forests and forestlands according to Article 1(4) of the Law on the Temporary Prohibition of the Disposal of State Property ("the Law on Temporary Prohibition").

21. Given that it is obvious that this case gives rise to the issue of jurisdiction of the authority for passing the challenged decision on disposal of state property, that no law has been passed at the state level that would resolve the issue of state property and that the challenged decision "exceeds the scope of the law", because it was passed contrary to the Law on Temporary Prohibition, the Constitutional Court concludes that it has jurisdiction to take a decision in the present case.

22. In view of 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 concludes that the request is admissible for it has been filed by an authorised person, and that there is not a single formal reason under Article 19(1) of the Rules of the Constitutional Court that would render the request inadmissible.

VI. Merits

23. The Constitutional Court notes that the request gives rise to the issue of whether the challenged decision, by which the RS Government determined the method and conditions of the sale of forests and forestland in the area of Jahorina, is compatible with Article I(1), I(2) and VI(5) of the Constitution of Bosnia and Herzegovina.

24. In this regard, the Constitutional Court recalls that in several of its decisions it dealt with the issue of regulation of state property. In its decision no. *U-28/22*, the Constitutional Court chronologically presented the hitherto case law in relation to this issue (see Constitutional Court,

Decision on Admissibility and Merits no. U-28/22 of 21 March 2024, published in the *Official Gazette of Bosnia and Herzegovina*, 27/24, paragraphs 24 and 26).

25. Turning to the present case, the Constitutional Court observes that the applicants made it plausible by the statements and evidence submitted with the request that the case relates to the forest and forestlands that were at the disposal of the RS Government. In this connection, the Constitutional Court recalls that in decision no. U-4/21, it found that the challenged provisions of the Law on Forests of the RS, in the part that reads “owned by the Republic”, are not compatible 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* (see Constitutional Court, Decision on Admissibility and Merits no. U-4/21 of 23 September 2021, published in the *Official Gazette of BiH*, 63/21, paragraph 47). In paragraph 40 of the same decision, the Constitutional Court noted that the *challenged articles prescribe 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*. The Constitutional Court ordered the RS National Assembly to harmonize, no later than six months of the date of delivery of the Court’s decision, the challenged provisions of the RS Law on Forests with the Constitution of Bosnia and Herzegovina. On 6 July 2022, the Constitutional Court passed a ruling on non-enforcement of decision no. U-4/21 and rendered the challenged provisions of the RS Law on Forests ineffective, since the RS National Assembly did not comply with the order of the Constitutional Court within the given time limit nor did it inform the Constitutional Court as to whether it had fulfilled the obligation referred to in decision no. U-4/21 prior to decision-making on the request in question.

26. In addition, according to the provision of Article 1(4) of the Law on Temporary Prohibition, applicable at the State level, *state property is considered to be rivers, forests, and forestland, considered as State Property by the Constitutional Court of Bosnia and Herzegovina in its decisions in Case No. U-9/19 and Case No. U-4/21*. Furthermore, Article 2(2) of the Law on Temporary Prohibition prescribes that *any decision, act, contract, or other legal instrument, disposing of property referred to in Article 1 of this Law concluded contrary to provisions of this*

Law, after its entry into force, shall be null and void, and Article 4 of the same Law prescribes that the temporary prohibition on the disposal of State Property in accordance with this Law shall be in force until entry into force of State-level legislation regulating the rights of ownership and management of State Property, adopted by the Parliamentary Assembly of Bosnia and Herzegovina, or the High Representative decides otherwise. Bearing this in mind, as well as the conclusions referred to in decision U-4/21 and the allegations in the request, the Constitutional Court contends that, by passing the challenged decision, the RS Government illegally disposed of state property that is under the regime of temporary prohibition of disposal. The fact that the Parliamentary Assembly of BiH has not yet passed a law regulating the right to own and manage state property cannot be a justification for making the challenged decision, by which the entity government disposed of state property over which it has no jurisdiction.

27. Given these circumstances, the Constitutional Court concludes that the challenged decision is not in accordance with Articles I(1), I(2) and VI(5) of the Constitution of Bosnia and Herzegovina.

28. In deciding on the effectiveness of the decision of the Constitutional Court, in accordance with Article 61(1) of the Rules of the Constitutional Court and bearing in mind the content of Article 2(2) of the Law on Prohibition of Disposal of State Property of BiH, the Constitutional Court has found that the challenged decision is void *ab initio*. Furthermore, starting from the fact that based on such decision, further activities were undertaken with regard to the use of forest land for other purposes, the Constitutional Court, pursuant to Article 61 of the Rules of the Constitutional Court, ordered the Government of the RS and the Ministry of Trade and Tourism of the RS to repeal all decisions and activities that are based on the challenged decision. Accordingly, no temporary user is to be considered a *bona fide* user and does not enjoy protection based on the regulations governing real property rights.

VII. Conclusion

29. The Constitutional Court holds that the challenged decision whereby the RS Government disposed of State property, which is under regime of temporary prohibition and falls within the exclusive competence of the institutions of BiH, is not in accordance with Articles I(1), I(2) and VI(5) of the Constitution of Bosnia and Herzegovina.

30. Pursuant to Article 59(1) and (2), Article 61(1), (2) and (3) and Article 64(4) of the Rules of the Constitutional Court, the Constitutional Court decided as stated in the enacting clause of this decision.

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

Seada Palavrić
President
Constitutional Court of Bosnia and Herzegovina