

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) and Article 59(1) and (2) and Article 61(2) and (3) 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. Zlatko M. Knežević, President,

Mr. Mato Tadić, Vice-President

Mr. Mirsad Ćeman, Vice-President

Ms. Margarita Tsatsa-Nikolovska, Vice-President,

Mr. Tudor Pantiru,

Ms. Valerija Galić,

Mr. Miodrag Simović,

Ms. Seada Palavrić,

Mr. Giovanni Grasso,

Having deliberated on the request filed by **Seven Delegates of the Council of Peoples of Republika Srpska**, in Case No. **U 8/19**, at its session held on 6 February 2020, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

In deciding on the request of **Seven Delegates of the Council of Peoples of Republika Srpska** for review of constitutionality of Article 53 of the Law on Agricultural Land of Republika Srpska (*Official Gazette of Republika Srpska*, 93/06, 86/07, 14/10, 5/12 and 58/19),

it is hereby established that Article 53 of the Law on Agricultural Land of Republika Srpska (*Official Gazette of Republika Srpska*, 93/06, 86/07, 14/10, 5/12 and 58/19) is not compatible with Article I(1), Article III(3)(b) and Article IV(4)(e) of the Constitution of Bosnia and Herzegovina.

Pursuant to Article 61(2) of the Constitution of Bosnia and Herzegovina, Article 53 of the Law on Agricultural Land of Republika Srpska (*Official Gazette of Republika Srpska*, 93/06, 86/07, 14/10, 5/12 and 58/19) is quashed.

Pursuant to Article 61(2) of the Rules of the Constitutional Court, the Law on Agricultural Land of Republika Srpska (*Official Gazette of Republika Srpska*, 93/06, 86/07, 14/10, 5/12 and 58/19), the quashed Article 53 of the Law on Agricultural Land of Republika Srpska (*Official Gazette of Republika Srpska*, 93/06, 86/07, 14/10, 5/12 and 58/19) shall be rendered ineffective on the next day following the date of the publication of the decision of the Constitutional Court in the *Official Gazette 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 in the *Official Gazette of the Brčko District of Bosnia and Herzegovina*.

REASONING

I. Introduction

1. On 24 October 2019, Seven Delegates of the Council of Peoples of Republika Srpska (“the applicants”) filed a request with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) for review of constitutionality of Article 53 of the Law on Agricultural Land of Republika Srpska (*Official Gazette of Republika Srpska*, 93/06, 86/07, 14/10, 5/12 and 58/19). In addition, the applicants requested the Constitutional Court to take a decision on interim measure to forbid the application of the challenged provision pending a decision by the Constitutional Court.

II. Procedure before the Constitutional Court

2. Pursuant to Article 23 of the Rules of the Constitutional Court, the National Assembly of Republika Srpska (“the National Assembly”) was requested on 29 October 2019 to submit a response to the request.
3. The National Assembly submitted its response on 2 December 2019.

III. Request

a) Allegations from the request

4. The applicants claim that the challenged provision is contrary to Article I(1), Article III(3)(b) and Article IV(4)(e) of the Constitution of Bosnia and Herzegovina. They alleged that despite a series of prohibitions to deal with the issue of State-owned property unilaterally, and a clear position of the Constitutional Court of BiH in case No. *U-1/11* that the said issue is within the exclusive responsibility of BiH, the RS National Assembly passed the challenged provisions in the latest

Amendments to the Law on Agricultural Land (*Official Gazette of RS*, 58/19), thus unilaterally tackling the issue of a portion of the state-owned property of BiH.

5. According to the challenged provision, as further alleged, agricultural land in the territory of the Republika Srpska registered in public records as people's property, without the registered right of use, management or disposal, or as socially-owned or state-owned property with the right of use, management or disposal in favor of enterprises which were the subject of privatization or were registered as the possession of the said enterprises, or as possession of former social-legal entities with the seat outside the territory of the Republika Srpska, upon the entry into force of those Amendments, by force of law, shall become the property and possession of the Republika Srpska.
6. The applicants further note that the Law on the Transformation of Socially-Owned Property, which was enacted by the Republic of Bosnia and Herzegovina, determines that the Republic of Bosnia and Herzegovina shall become the right holder of socially-owned property as prescribed in Article 1 of that Law. Furthermore, the applicants allege that the Agreement on Succession Issues was signed among Bosnia and Herzegovina, the Republic of Croatia, the Republic of Macedonia, the Republic of Slovenia and the Federal Republic of Yugoslavia (concluded in Vienna on 29 June 2001 and ratified in a decision of the Presidency on 28 November 2001). According to Article 2 of Annex A of the Agreement on Succession, *Immovable State property of the SFRY, which was located within the territory of the SFRY, shall pass to the Successor State on whose territory that property is situated*. The applicants are of the opinion that the Agreement on Succession undisputedly indicates that the state of BiH is the titleholder of ownership of immovable property of the former SFRY, which was situated in the territory of BiH, following the dissolution of the former SFRY. As the subject of international law, BiH is the signatory to this multilateral agreement (Agreement on Succession), which was ratified by its competent authorities and bodies and has the responsibility to comply with it.
7. The applicants also refer to the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina and two Entities' laws prohibiting the disposal of state property on the territory of the Federation of BiH, and the RS, which were enacted by the decision of the High Representative in BiH. The mentioned laws, as alleged, are still in effect given the fact that no law on state property has been enacted at the level of BiH. Article 1, paragraphs 1 and 2 of the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina determines the property considered as State property of BiH. In its Decision *No. U-1/II*, the Constitutional Court of BiH deems that "the High Representative passed the relevant laws on the temporary prohibition

- of the disposal of state property...” in order to help the process enactment of laws at the state and lower levels on the rights of ownership, management and other issues related to state property”.
8. Furthermore, the applicants allege that the BiH authorities have not passed a law to regulate the issue of state property, but, this time around partially, this issue was attempted to be regulated by the legislator in the Entity of the RS, by enacting the challenged amendments to the Law on Agricultural Land of the Republika Srpska. They allege that the continuity of the State of BiH, as prescribed by Article I(1) of the Constitution of BiH, implies in the present case the continuation of the right of the State of BiH to regulate the issue of state property, which belonged to it on the basis of the right of disposal, management or use. That property, as considered by the applicants, by all means, may include agricultural land, which the challenged Law on Agricultural Land of the Republika Srpska declares as public good owned by and in possession of the RS. This property constitutes a part of the property, which was, under the Agreement on Succession, conferred upon the State of BiH, which the Constitutional Court, in its Decision *No. U I/II*, found to be capable of being a subject matter of disposal, primarily, under the laws at the level of BiH.
 9. The applicants further allege that the Agreement on Succession (Article 1 and Article 2) shows beyond any doubt that the State of BiH is the titleholder of ownership over the state property. The Constitutional Court of BiH defined in its Decision *No. U-I/II* the notion of “state property”, and established that, by its nature, it primarily serves all people in the country, and reflects the statehood, sovereignty and territorial integrity of Bosnia and Herzegovina. In the applicants’ opinion, despite the fact that it is obvious that the agricultural land referred to in the challenged Article constitutes a portion of state property, which became the property of the State of BiH under the Agreement on Succession, the challenged provision prescribes that it shall become, by the force of law, a public good owned by and in the possession of the Republika Srpska. In this 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, which makes the challenged provision unsustainable. The issue of agricultural land should, first and foremost, be regulated by a law at the level of BiH, which would clearly position the responsibility of the Entities, thereby observing the Constitution of BiH and “the decisions of the institutions of BiH” and harmonize the operation of the competent bodies within BiH.
 10. The applicants allege that the challenged provision also violates Article IV(4)(e) of the Constitution of BiH, which bestows the responsibility on the Parliamentary Assembly concerning such other matters as are necessary to carry out the duties of the State. They allege that the state-owned property is an issue in the exclusive jurisdiction of the State of BiH and its authorities, which may

be observed based on a number of laws proclaimed by the decision of the High Representative in BiH: the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina, and the two Entities' laws prohibiting the disposal of state property in the territory of the Federation of BiH, and the RS.

11. The applicants propose that the Constitutional Court should grant the request for review of constitutionality and establish that the challenged provision is not in conformity with Article I(1), Article III(3)(b) and Article IV(4)(e) of the Constitution of Bosnia and Herzegovina and, pursuant to Article 61(2) and (3) of the Rules of the Constitutional Court, that the challenged provision should be rendered ineffective on the next day after the day of the publication of this Decision in the *Official Gazette of Bosnia and Herzegovina*.

b) Reply to the request

12. In its response to the request, the National Assembly first contests the standing of the applicants to initiate proceedings for the purposes of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina as the Council of Peoples of the Republika Srpska does not constitute a special House of the National Assembly, which follows from Article 69(2) of the Constitution of the Constitution of Republika Srpska. Thus, it is clear that the Council of Peoples, which has a restrictive responsibility, constitutes a special body for the protection of vital national interest of any of the constituent peoples, and not the second house of the National Assembly.
13. According to the opinion of the National Assembly, the request in this case is not founded and the Constitutional Court should therefore dismiss it, including the request for interim measure. In support of the aforementioned, they alleged that Amendment XXXII to Article 68(6) of the Constitution of the Republika Srpska stipulates that Republic shall regulate and ensure, *inter alia*, property and obligation relations and protection of all forms of property, and item 8 of the mentioned Article stipulates that Republic shall regulate the main objectives and directions of economic, scientific, technological, demographic and social development, the development of agriculture and the village, etc. The National Assembly further alleges that it follows from a number of the provisions of the Constitution of Republika Srpska, which are the constitutional basis for adoption the law in question, that Republika Srpska has the responsibility to enact the Law on Agricultural Land, i.e. has the responsibility to regulate all those issues which are relevant to agricultural land, a good of general interest, including the issue of ownership over agricultural land.

14. In the opinion of the National Assembly, the applicants' allegations that the challenged provision is in violation of Articles I(1), Article III(3)(b) and Article IV(4)(e) of the Constitution of BiH are unfounded. As to Article I(1) of the Constitution, the National Assembly alleges that the mentioned Article strictly stipulates the continuation of legal existence of Bosnia and Herzegovina under international law, the consequence of which is not legal continuation of property or ownership of the agricultural land. The part of that legal provision reading "with its internal structure modified as provided in this Constitution" actually means that the legal continuation does not exclude internal structure as modified and defined by the Constitution of Bosnia and Herzegovina.
15. As to Article III(3)(b) of the Constitution of Bosnia and Herzegovina, which stipulates that the Entities and any of their subdivisions shall comply fully with this Constitution, which renders ineffective all inconsistent law provisions of Bosnia and Herzegovina and constitutional and law provisions of the Entities, including the decisions of the institutions of Bosnia and Herzegovina, the National Assembly, unlike the applicants' opinion according to which the contested provision is in violation of the mentioned provisions of the Constitution of BiH, holds that the challenged provision was passed based on the responsibilities provided for in the Constitution of the Republika Srpska, which is compatible with the Constitution of BiH. It was noted that Amendment XXXII to Article 68(6) of the Constitution of the Republika Srpska provides the responsibility for the Republic to regulate and ensure property relations and to protect all forms of property. According to the National Assembly, the challenged provision is deriving from the Constitution of BiH, which, in its Article III(1), enumerates the matters being the responsibility of the institutions of BiH and prescribes, at the same time, 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.
16. Also, the National Assembly considers as unfounded the applicants' allegations that the contested provisions is also in violation of Article IV(4)(e) of the Constitution of Bosnia and Herzegovina, which stipulates that the Parliamentary Assembly 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. Unlike the allegations of the applicants, the National Assembly is of the opinion that the mentioned provision, when interpreted, must be brought in conjunction with Article III(1) which enumerates the matters being the responsibility of the institutions of BiH, including the matter of ownership of agricultural land.

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17. The response also states that in 2010, the Office of the High Representative for BiH adopted a Decision on the State Property Inventory in and Outside Bosnia and Herzegovina with the aim of providing assistance to the authorities of Bosnia and Herzegovina to make an inventory of State Property by gathering data on immovable property, which makes part of the property determined in a Decision to Form a Working Group for Inventory of Property of the Council of Ministers of BiH, dated 9 April 2009. In accordance with the aforementioned, in 2010, the Office of the High Representative for Bosnia and Herzegovina made a “Final Report on the State Property Inventory - Annex A”, which provided for a State property inventory in BiH, which did not determine that agricultural land was the State property of BiH and which was the subject of regulation in the challenged provision. It is further stated that the contested provision relates to agricultural land, which had been used by former State-owned enterprises, which were the subject of privatization conducted by the Republika Srpska in accordance with the Law on Privatization of State capital in the companies. Given the fact that Article 8 of the mentioned Law stipulates that natural resources, public goods, cultural monuments of general importance given to the enterprise for use cannot be the subject of privatization of the State-owned capital in enterprises, it is clear that agricultural land, which is the subject of regulation of the challenged provision and which had been used for agricultural production could not be the subject of privatization, and which, at the same time, was not on the High Representative’s list of State property of BiH.
18. Other allegations of the applicants, which refer to the Agreement on Succession Issues between former Yugoslav Republics, are pointless in the opinion of the National Assembly and may in no way be relevant to the determination of constitutionality of the contested provision.
19. The National Assembly referred to the case-law of the Constitutional Court in the Cases Nos. AP 2108/14 of 7 March 2017, AP 4731/14 of 19 April 2017 and AP 2187/16 of 11 October 2018. According to the opinion of the National Assembly, in the mentioned cases the Constitutional Court upheld the decisions of the County Court and Supreme Court, wherein it was determined that agricultural land, which was registered as State property in land registers and other public registers, was governed by and was at the disposal of Republika Srpska.
20. Taking into account the aforesaid, in the opinion of the National Assembly, the challenged provision is not 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. Therefore, the National Assembly proposes that the Constitutional Court should dismiss the request and establish that there has been no violation for the purposes of the Constitutional Court’s jurisdiction under Article VI(3)(a) of the Constitution, i.e. the

challenged provision is compatible with the Constitution of Bosnia and Herzegovina according to the National Assembly.

IV. Relevant Law

21. The **Constitution of Bosnia and Herzegovina**, in its relevant part, reads as follows:

Article I(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.

Article III(3)(b)

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(4)(e)

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.

22. The **Law on Agricultural Land** (*Official Gazette of Republika Srpska*, 93/09, 86/07, 14/10, 5/12 and 58/19). For the purpose of the present Decision, an unofficial consolidated text of the Law on Agricultural Land made in the Constitutional Court of BiH is used and, as relevant, reads:

Article 1

- (1) *This Law regulates planning, protection, development, use and disposal of land and other issues relevant to the agricultural land as a common good.*
- (2) *Agricultural land as a natural resource and common good shall be used for agricultural production and cannot be used for other purpose except as provided in this Law.*

VI- DISPOSAL OF AGRICULTURAL LAND

Article 53

- (1) *Agricultural Land in the territory of the Republic registered in public records as national property, without the registered right of use, management or disposal, socially-owned or state-owned property with the right of use, management or disposal in favor of enterprises, which were the subject of privatization or were registered as the possession of the said enterprises, upon the entry into force of this law, by force of law, shall become the property and possession of the Republic.*
- (2) *Agricultural Land in the territory of the Republic registered in public records as national property, without the registered right of use, management or disposal, socially-owned or state-owned property with the right of use, management or disposal, or as the possession of former social-legal entities with the seat outside the territory of the Republic, upon the entry into force of this law, by force of law, shall become the property and possession of the Republic.*
- (3) *An administration authority in charge of keeping public records on real properties shall register the right of ownership and possession on real properties referred to in paragraphs 1 and 2 of this Article on the request of the Public Attorney's Office of the Republika Srpska.*
- (4) *The right of ownership and possession in favor of the Republic shall be established on the real properties referred to in paragraphs 1 and 2 of this Article, concerning which no ownership records exist and which were registered as the possession of former social-legal entities, or were registered in the cadaster as the possession of natural or legal persons without a valid legal ground.*
- (5) *On the request of the Public Attorney's Office of the Republika Srpska, an administration authority in charge of property-legal affairs shall conduct a procedure and render an administrative decision establishing the rights referred to in paragraph 4 of this Article.*

23. The **Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina** (*Official Gazette of BiH*, 18/05 and 29/06, 85/06, 32/07, 41/07, 74/07, 99/07, 58/08), in its relevant part, reads 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 an 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 Bosnia and Herzegovina or other public organizations of Bosnia and Herzegovina; and*
- 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, which on the day of adoption of this Law is considered to be owned or possessed by Bosnia and Herzegovina, or public organization or body of Bosnia and Herzegovina and any of its subdivisions.*

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

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 the recommendations of the Commission but not later than one year from the day of the entry into force of this Law, i.e. or until an “acceptable and sustainable” apportionment of property is endorsed between the State and other levels of authority by the

Steering Board of the Peace Implementation Council, or until the High Representative decides otherwise.

24. The **Framework Law on Privatisation of Enterprises and Banks in Bosnia and Herzegovina** (*Official Gazette of BiH*, 12/99, 14/00 and 16/02), in its relevant part, reads as follows:

Article 2

In accordance with the GFAP, this Law expressly recognises the right of the Entities to privatise non-privately owned enterprises and banks located on their territories.

25. The **Law on Privatization of State-Owned Capital in Enterprises** (*Official Gazette of Republika Srpska*, 51/06, 1/07, 53/07, 41/08, 58/09, 79/112 and 28/13), in its relevant part, reads as follows:

Article 1

This Law regulates the requirements and procedure for sale and transfer of the State-owned capital in enterprises, which was owned by Republika Srpska ("the State-owned capital), owned by national and foreign natural and legal persons [...].

Article 4

The subject of privatization are shares and equities and the State-owned capital in enterprises which have not been established in accordance with the Law on Enterprises or the Law on Public Enterprises until the day of entry of this Law.

Article 8

- (1) Natural resources, common goods of general use, monuments of general cultural and historic importance, which are given to the enterprise for use cannot be the subject of privatization on the basis of this Law*
- (2) The status of construction and agricultural land shall be determined in a special law.*

Article 8a, paragraph 1

(1) *Based on the records of the privatization of the State-owned capital, which was carried out in enterprises in accordance with the provisions of the Law on Privatization of the State-Owned Capital in Enterprises (Official Gazette of Republika Srpska, 24/98, 62/02, 38/03 and 109/05) and provisions of the Framework Law on Privatization of Enterprises and Banks in Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, 14/98), Investiciono-razvojana banka Republike Srpske a.d. Banja Luka, upon request of enterprise, issues a certificate to mark immovable property as it is marked in the initial balance sheet (the privatization program) and specified in assets of the enterprise which has been the subject of privatization. (...)*

V. Admissibility

26. 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.

27. 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.

28. The request for review of constitutionality was filed by seven delegates of the Council of Peoples of the Republika Srpska, which consists of a total number of 28 delegates, which means one-fourth of either chamber of a legislature of an Entity. Thus, unlike the allegations of the

National Assembly, the request was filed by an authorized person for the purposes 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 www.ustavnisud.ba).

VI. Merits

29. The applicants claim that the challenged provisions of the Entity law regulating the legal status of agricultural land is in violation of Articles I(1), III(3)(b) and IV(4)(e) of the Constitution of Bosnia and Herzegovina as there is no constitutional ground for the National Assembly to regulate the issue relating to a part of the State-owned property, the regulation of which is the exclusive responsibility of the State of Bosnia and Herzegovina and its authorities according to the provisions of the Constitution of Bosnia and Herzegovina.

30. The Constitutional Court notes that it dealt with the issue of the State-owned property and constitutional responsibility to regulate that matter in its Decision *No. U 1/11* (see Constitutional Court, Decision on Admissibility and Merits *No. U-1/11* of 13 July 2012, available at www.ustavnisud.ba). In that case, the Constitutional Court reviewed the constitutionality of the Law on the Status of State Property Located in the Territory of the Republika Srpska and under the Disposal Ban concluded that the Republika Srpska had enacted the challenged Law on Status of State Property located in the territory of Republika Srpska and is under the Disposal Ban and it concluded that Republika Srpska had enacted that Law contrary to Article I(1), Article III(3)(b) and Article IV(4)(e) of the Constitution of BiH as Bosnia and Herzegovina had the exclusive responsibility to regulate the matter of property referred to in disputable Article 2 of the challenged Law. For these reasons, the challenged Law was unconstitutional and the law as a whole could not remain in effect (*op. cit.* U-1/11, paragraph 86).

31. The Constitutional Court notes that the applicants' request gives rise to the issue of whether the agricultural land in question constitutes the State-owned property, the title holder of which is Bosnia and Herzegovina and, in this respect, whether Republika Srpska had the constitutional responsibility to regulate the right of ownership of that land in its favour by enacting that provision. Also, given the response of the National Assembly, which states that the challenged provision exclusively relates to the agricultural land which had been used by the former State enterprises and which could not be the subject of the privatization carried out by the Republika Srpska in accordance with the Law on Privatization of State-Owned Capital because the agricultural land was regarded as natural resources and common good, and that Article 8 of the Law gives it the responsibility to pass the challenged provision, the Constitutional Court notes that the present case

gives rise to the issue whether Republika Srpska had the responsibility to enact the challenged provision according to the Law on Privatization of State-Owned Capital in Enterprises.

32. With regard to the National Assembly's allegation that the present case relates to the privatization of the property of the former State enterprises, which was carried out by the Republika Srpska, the Constitutional Court notes that the Framework Law on Privatisation of Enterprises and Banks in Bosnia and Herzegovina expressly recognises the right of the Entities to privatise non-privately owned enterprises located on their territories. However, the Constitutional Court also notes that the agricultural land in question was not recorded in any public register as the property of the enterprises (agricultural cooperatives, combines etc.) in order to be the subject of privatization. The mentioned land was registered as people's property, socially-owned property, i.e. the State-owned property with a right to use or manage, and as such it constituted the property of the former State (Socialist Republic of Bosnia and Herzegovina). The provisions of the Law on the Initial Balance Sheet in the Procedure for Privatization of the State-Owned Capital in Enterprises (*Official Gazette of Republika Srpska*, 24/98), which stipulate that the value of assets, claims and liabilities and capital of the enterprise being the subject of privatization is stated in the initial balance according to book value and in convertible marks (Article 2 and 4). Thus, the Constitutional Court holds that the National Assembly cannot base its responsibility to regulate the status of the land in question on the Law on Privatization of the State-Owned Capital in Enterprises as it is undisputable that the land in question was not the property of the enterprises (according to the books), the privatization of which was carried out by Republika Srpska. Also, taking into account the fact that agricultural land is considered a natural resource and public good according to Article 8 of the same Law and cannot be the subject of privatization according to the mentioned law and that the status of agricultural land shall be determined in a special law, the Constitutional Court considers as unfounded the National Assembly's allegations that the National Assembly was given the responsibility under the Law on the Privatization of the State-Owned Capital in Enterprises to privatize the agricultural land and establish it as its ownership. Next, as to the allegations of the National Assembly that the land in question was not included in the High Representative's Final Report on the State Property Inventory, of December 2009, the Constitutional Court observes that the fact as to whether agricultural land was recorded as State-owned land or not (referring to the inventory of December 2009) is not relevant to the decision as it is indisputable that the case related to the land recorded as people's property, socially-owned property or State-owned property with the rights arising out of such an ownership.

33. As regards the National Assembly's reference to the case-law of the Constitutional Court in cases no. AP-2108/14, AP-4731/14 and AP-2184/16 (wherein "Ratar" a.d. Prnjavor was the appellant), the Constitutional Court notes that in those cases, which fell under the scope of the appellate jurisdiction of the Constitutional Court, it dealt with the alleged violations of the constitutional rights of appellant "Ratar" a.d. Prnjavor (the right to a fair trial, right to property, right to prohibition of discrimination) in the proceedings before the ordinary courts and that "it did not find in those cases that agricultural land was subject to privatization process and that it was owned by the Republika Srpska".

34. Starting from the allegations of the applicants, the next issue the Constitutional Court should examine is whether the agricultural land in question constitutes the State-owned property of BiH and, in that respect, whether Republika Srpska had constitutional responsibility to regulate the right of ownership over that land in the challenged provision.

35. When determining the notion of the State-owned property, the Constitutional Court found in the mentioned decision that "it includes, first of all, movable and immovable objects in the hands of public authorities and can include furthermore a "public good" (sea water and sea bed, 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" (*op. cit. U-1/11*, paragraph 62).

36. The Constitutional Court observes that the Law on Agricultural Land determines that agricultural land constitutes natural resource and public good used for agricultural production and cannot be used for other purpose, except as provided in that Law.

37. Next, the Constitutional Court observes that the legal status of agricultural land was similar in former legal systems of Bosnia and Herzegovina, i.e. it was a public good subject to decision-making by the State. The Constitution of the Socialist Republic of Bosnia and Herzegovina (Article 92) stipulated that the good of general interest, such as, *inter alia*, land, forests, water and other natural resources enjoyed special protection and were used under the terms and in the manner as prescribed by the law. However, in addition to the fact that it was defined as public good of general interest, agricultural land is also used as means of work in the agricultural production being of general interest. In this connection, the Constitutional Court notes that agricultural land had the status of people's property in the legal system of the Socialist Republic of Bosnia and Herzegovina and socially-owned property at a later point, which encompassed the right to manage, use it and have it at their disposal. For example, the first time that the means of work, such as the agricultural

land, were encompassed by the right of use was in the 1953 Law on (SFRY) on Agricultural Land Fund of People's Property and Allocation of Land to Agricultural Organisations. Taking into account the legal continuation of the State of Bosnia and Herzegovina under Article I(1) of the Constitution of Bosnia and Herzegovina, the Constitutional Court observes that it follows from the foregoing that the land, including agricultural land, constituted public or State-owned property.

38. In response to the question whether agricultural land constitutes a part of the State property, the title holder of which is Bosnia and Herzegovina, the Constitutional Court, taking as a starting point Article I(1) of the Constitution of Bosnia and Herzegovina (State continuation) and conclusion referred to in its Decision *No. U-1/11 (op. cit. U-1/11, paragraphs 71 and 72)*, concludes that Bosnia and Herzegovina is the titleholder of the property of its legal predecessors, i.e. the agricultural land constitutes a part of the State property, the titleholder of which is Bosnia and Herzegovina.

39. It follows from the challenged provision that Republika Srpska established that the agricultural land in question, upon the entry into force of the Law on Amendments to the Law on Agricultural Land, by force of law, would become the property and possession of the Republika Srpska, and that paragraphs 3, 4 and 5 prescribe the procedure for the registration of ownership. The Constitutional Court observes that Republika Srpska regulated in the challenged provision the procedure for registration of ownership in its favour over the property, which the Constitutional Court found to be the State property. According to the challenged provision, the agricultural land in question becomes "the ownership" of Republika Srpska.

40. The next question to be answered by the Constitutional Court is whether Republika Srpska had the responsibility to regulate the legal status of the agricultural land in question as its ownership. In the mentioned case *No. U-1/11*, the Constitutional Court concluded that "pursuant to Article I(1) of the Constitution of BiH, BiH is entitled to continue to regulate 'the state property' of which it is the title holder, meaning all the issues related to the notion of 'the state property', both in terms of civil law and public law. This conclusion is the sole possible logical and substantive content of the notion of "identity and continuity" under the quoted provision. In addition, the Constitutional Court reiterates that though every level of government enjoys constitutional autonomy, the Entities' constitutional competencies subordinated to the obligation to comply with the Constitution and "the decisions of the Institutions of BiH". This clearly arises from the provisions of Article III(3)(b) of the Constitution of BiH. Furthermore, the right of the State of BiH to regulate the issue of state property also stems from the provisions of Article IV(4)(e) of the Constitution of Bosnia and Herzegovina. Therefore, taking into account all the conclusions reached above, primarily that the State of BiH is entitled to continue to regulate the state property, i.e. that

the State of BiH is the title holder of the state property, and that the provisions of Article IV(4)(e) of the Constitution of Bosnia and Herzegovina prescribe that the Parliamentary Assembly will be responsible for regulating such other matters as necessary to carry out its duties and that the state property reflects the statehood, sovereignty and territorial integrity of Bosnia and Herzegovina, it is undisputed that the aforementioned provision gives the State of BiH, i.e. the Parliamentary Assembly, competence to regulate the issue of state property. Therefore, this concerns the exclusive responsibility of BiH derived from Article I(1), Article III (3)(b) and Article IV(4)(e) of the Constitution of BiH” (*op.cit.* U-1/11, paragraph 80).

41. As to the findings and legal views which were expressed in the mentioned decision *U-1/11*, which are binding upon the Constitutional Court, the Constitutional Court notes that it has established in its case-law that the compliance with the final and binding decisions of the Constitutional Court relates not only to the enacting clause of the relevant decision but also to the legal opinion and the legal assessment as to what constitutional right has been violated and in what manner (see rulings of the Constitutional Court, *No. AP 289/03* and *AP 854/04* of 1 June 2006, paragraph 8 and, *mutatis mutandis*, Decisions on Admissibility and Merits, *No. 2578/15* of 12 January 2016, paragraph 84, and *AP 699/15* of 9 July 2015, paragraph 61). Although the mentioned case-law is based on Article 62(4) of the Rules of the Constitutional Court, which relates to the effects of the decisions on appeals, the Constitutional Court holds that the same case-law relates to the decisions taken under Article VI(3)(a) and (c) of the Constitution of Bosnia and Herzegovina (see Constitutional Court, Ruling *No. U-3/13* of 30 September 2016, paragraph 11).

42. The Constitutional Court observes that the Law on the Temporary Prohibition of Disposal of State Property of Bosnia and Herzegovina, which was enacted by the High Representative for Bosnia and Herzegovina, is in effect, and that Article 4 of that Law stipulates that the temporary prohibition on the disposal of State property in accordance with this Law shall be in force until the 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, or until otherwise decided by the High Representative. The Constitutional Court observes that it concluded in Decision *No. U-1/11* that there was a true necessity and positive obligation of BiH to resolve this issue as soon as possible (*op. cit.* *U-1/11*, paragraph 84). The Constitutional Court holds that the fact that a Law on the State Property has not been enacted yet does not mean that the Entities may regulate, by their own laws, the issue of ownership over the State property, which has not been defined yet at the level of Bosnia and

Herzegovina. In addition, the Constitutional Court reiterates that the decision in this case does not prejudice the issue of legal regulation of the State property in the future, including the agricultural land, by BiH, Republika Srpska, Federation BiH and Brčko District.

43. Taking into account the provisions of Article I(1), Article III(3)(b) and Article IV(4)(e) of the Constitution of Bosnia and Herzegovina, which stipulate the legal continuation of the State of Bosnia and Herzegovina, and the fact that the State of Bosnia and Herzegovina is therefore the title holder of the property of its legal predecessors, that Bosnia and Herzegovina has the exclusive right to regulate the State property, as its title holder, the Constitutional Court concludes that the challenged provision, which stipulates that the agricultural land in question shall become, by force of law, the property and possession of the Republika Srpska is not compatible with Article I(1), Article III(3)(b) and Article IV(4)(e) of the Constitution of Bosnia and Herzegovina,

VII. Conclusion

44. The Constitutional Court concludes that the challenged provision, which stipulates that the agricultural land in question, which is a public good, i.e. the state property, shall become, by force of law, the property and possession of the Republika Srpska is incompatible with Article I(1), Article III(3)(b) and Article IV(4)(e) of the Constitution of Bosnia and Herzegovina, as Bosnia and Herzegovina has the exclusive responsibility to regulate the issue of state property.

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

46. Given the decision of the Constitutional Court in this case, the Constitutional Court does not need to consider the applicants' request for interim measure.

47. Within the meaning of Article 43 of the Rules of the Constitutional Court, President of the Constitutional Court Zlatko M. Knežević and Judge Miodrag Simović gave a statement of dissent from the decision of the majority of judges.

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