

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(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 the seven delegates of the Council of Peoples of the Republika Srpska, in the Case no. **U 9/19**, at its session held on 6 February 2020, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

In deciding on the request of the Seven Delegates of the Council of Peoples of the Republika Srpska for review of the constitutionality of Article 2, items 11, 12, 20 and 21, Article 4, Article 6 paragraph 2, Article 8 paragraph 1 lines 1 and 2, Article 10, Article 15 paragraph 2, Article 24, Article 25 paragraph 4, Article 28 paragraph 3, Article 30 paragraph 1, Article 94 paragraph 4 and Article 95 paragraphs 1 and 2 of the Law on Inland Waterways Navigation of the Republika Srpska (*Official Gazette of the Republika Srpska*, 54/19)

It is hereby established that the provisions of Article 2, items 11, 12, 20 and 21, Article 4, Article 6 paragraph 2, Article 8 paragraph 1 lines 1 and 2, Article 10, Article 15 paragraph 2, Article 24, Article 25 paragraph 4, Article 28 paragraph 3, Article 30 paragraph 1, Article 94 paragraph 4 and Article 95 paragraphs 1 and 2 of the Law on Inland Waterways Navigation of the Republika Srpska (*Official Gazette of the Republika Srpska*, 54/19) are not in conformity with Article I(1), Article III(3)(b) and Article IV(4)(e) of the Constitution of Bosnia and Herzegovina.

In accordance with Article 61(2) of the Rules of the Constitutional Court of Bosnia and Herzegovina, the provisions of Article 2, items 11, 12, 20 and 21, Article 4, Article 6 paragraph 2,

Article 8 paragraph 1 lines 1 and 2, Article 10, Article 15 paragraph 2, Article 24, Article 25 paragraph 4, Article 28 paragraph 3, Article 30 paragraph 1, Article 94 paragraph 4 and Article 95 paragraphs 1 and 2 of the Law on Inland Waterways Navigation of the Republika Srpska (*Official Gazette of the Republika Srpska*, no. 54/19) shall be quashed.

The quashed provisions of Article 2, items 11, 12, 20 and 21, Article 4, Article 6 paragraph 2, Article 8 paragraph 1 lines 1 and 2, Article 10, Article 15 paragraph 2, Article 24, Article 25 paragraph 4, Article 28 paragraph 3, Article 30 paragraph 1, Article 94 paragraph 4 and Article 95 paragraphs 1 and 2 of the Law on Inland Waterways Navigation of the Republika Srpska (*Official Gazette of the Republika Srpska*, 54/19), shall be rendered ineffective on the first day following the publication of this Decision in *the Official Gazette of Bosnia and Herzegovina*, in accordance with Article 61(3) 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 24 October 2019, Dževad Mahmutović, Mihnet Okić, Džemaludin Šabanović, Fakur Đozić, Muris Čirkić, Ahmet Čirkić and Alija Tabaković, seven delegates of the Council of Peoples of the Republika Srpska (“the applicants”) filed a request with the Constitutional Court of Bosnia

and Herzegovina (“the Constitutional Court”) for review of the constitutionality of Article 2, items 11, 12, 20 and 21, Article 4, Article 6 paragraph 2, Article 8 paragraph 1 lines 1 and 2, Article 10, Article 15 paragraph 2, Article 24, Article 25 paragraph 4, Article 28 paragraph 3, Article 30 paragraph 1, Article 94 paragraph 4 and Article 95 paragraphs 1 and 2 of the Law on Inland Waterways Navigation of the Republika Srpska (*Official Gazette of the Republika Srpska*, 54/19, “the Law”) with Article I(1) of the Constitution of Bosnia and Herzegovina, Article III(3)(b) of the Constitution of Bosnia and Herzegovina and Article IV(4)(e) of the Constitution of Bosnia and Herzegovina.

II. Procedure before the Constitutional Court

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

III. Request

a) Allegations stated in the request

4. The applicants primarily pointed to two things. They claimed that the National Assembly does not have the following: (1) legal basis for legal regulation of the issue of state-owned property and (2) of the issue of international and interstate traffic and infrastructure on water surfaces in the Republika Srpska. In the opinion of the applicants, the competence to resolve the mentioned issues lies exclusively with the State of Bosnia and Herzegovina (“BiH” or “the State of BiH”) and its authorities. Despite that, the National Assembly regulated the mentioned issues in the Law. The applicants indicated that the challenged provisions were 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 (“the Constitution of BiH” or “the Constitution”).
5. As to the state property, the applicants pointed to the following: 1994 Law on the Transformation of Socially-Owned Property into State-Owned Property, Decision of the Constitutional Court no. U-1/11 of 13 July 2012 and positions taken in that decision on the continuity of the State of BiH and the state property, 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 in the territory of the Entities. The applicants stated that despite the fact that the issue of state property was an issue that was primarily within the jurisdiction of the State of BiH, the Entity of the Republika Srpska tried to resolve the same issue unilaterally and contrary to

the Constitution of BiH, by enacting the Law on the Status of State Property Located in the Territory of the Republika Srpska and under the Disposal Ban, stipulating that it was about the property owned by the Republika Srpska (in respect of which the Constitutional Court passed its Decision no. U-1/11). The applicant stated that it was a similar situation as regards the challenged provisions of the Law.

6. The applicants (as to international and interstate traffic and infrastructure) have indicated that the responsibilities of the Institutions of BiH are set forth in Article III(1) of the Constitution of BiH. Accordingly, the exclusive responsibilities of the Institutions of BiH include, *inter alia*, the foreign policy (item a), and the establishment and operation of common and international communications facilities (item h). The applicants pointed to the relevant stances specified in the Decision of the Constitutional Court no. U-9/00 of 3 November 2000 (the subject of decision-making was the constitutionality of the Law on State Border Service of BiH), as well as to the laws passed by the Parliamentary Assembly of BiH pursuant to Article IV(4)(e) of the Constitution of BiH, concerning the issues of international and interstate traffic and infrastructure, pointing to the Law on Ministries and other Administration Authorities of BiH (Article 10), the Law on Border Control (Articles 22-26) and the Law on Border Police of BiH in respect of which the challenged provisions of the Law were not harmonized.

7. According to the applicants, it follows from the aforementioned regulations that there is a special ministry at the state level responsible for the issues of international and interstate traffic and infrastructure (the Ministry of Communications and Transport of BiH). The Ministry of Communications and Transport of BiH is responsible, among other things, (also) for the international and inter-Entity traffic and infrastructure. In that connection, it is mentioned that water surfaces in the territory of any Entity, bordering with neighboring states, on which the international traffic regimes have been established, pursuant to the powers set forth in the Constitution of BiH, should be the subject of special regulations at the level of BiH. In this connection, the applicants pointed to the Framework Transport Strategy of BiH for the period 2016-2030, as well as the Framework Agreement on the Sava River Basin and Protocol on the Navigation Regime (*e.g.* Article 2 paragraph 1 and Article 4 paragraph 3), with the emphasis that the Framework Agreement had already resolved the issue of navigation on the Sava River. According to the Framework Transport Strategy of BiH for the period 2016-2030, the Sava River is a border waterway, and an international navigation regime is established on it. Accordingly, this document prescribes a divided jurisdiction over the traffic on this river, according to which the Ministry of Communications and Transport of BiH is in charge of international traffic. In view of the above, it may be concluded that

delegating the responsibility for these issues to the Entities' ministries, as determined by the challenged provisions of the Law, constitutes a violation of Articles III(3)(b) and IV(4)(e) of the Constitution of Bosnia and Herzegovina.

8. The applicants stated that the provision of Article III(3)(b) of the Constitution of BiH stipulates the general principles of international law as an integral part of law of Bosnia and Herzegovina, which implies that the State of BiH has to comply with the international treaties signed and ratified. In the present case, as already stated, Bosnia and Herzegovina ratified the Agreement on Succession and the Framework Agreement on the Sava River Basin and its Protocol on the Navigation Regime, thereby accepting to work, together with other signatory states, on the establishment of an international regime of navigation on the Sava River and its navigable tributaries. As part of this Agreement, BiH assumed the obligation specified in the Protocol on the Navigation Regime, according to which navigation on the rivers of the Sava River Basin shall be carried out in accordance with the Rules of Navigation to be determined by the International Sava River Basin Commission and the competent authorities of the Parties, and that the customs and border formal procedures shall be conducted at the sites designated by the competent authorities of the Parties, that is to say by the competent bodies of the State of BiH (considering the fact that the State is a signatory to the mentioned Agreement). It is possible to infer that the issues related to the international traffic and infrastructure (international waterways and ports, harbors, winter ports, border and customs control on these waterways, international and interstate regime of navigation and all issues related to them and such like) are an international obligation of the State of BiH. Tackling these issues in the manner provided for by the challenged provisions of the Law on Inland Waterways Navigation of the Republika Srpska constitutes an interference with the international obligations of the State of BiH, which it took over upon ratifying the Framework Agreement on the Sava River Basin and, in this way, it constitutes an activity on the part of the Entity's legislator, which is contrary to the provisions of Article III(3)(b) of the Constitution of BiH and may not remain in force. In view of the above, the applicants deem that the issue of inland navigation should be, first and foremost, regulated by a law at the level of BiH, which would clearly position the responsibility of the State and 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.

9. The applicants state that the Constitution of BiH (Article I(1)) clearly determines that BiH shall continue its legal existence under international law as a state with its internal structure modified based on the principles of democracy, equality and respect for human rights. The

applicants point out that in BiH there are still groups, and one could say they are strengthening, which are not inclined to the common state. The applicants underline the operation of these groups, giving as examples the blockages of the decision-making processes at the state level, and the intensification of legislative activities at lower levels by those groups, outside the constitutional framework of BiH. By such activities, attempts are made to establish “states” in lieu of the Entities with their own legislature and institutions, which may function without the Institutions of the State. A series of laws have been enacted, while many are in the pipeline and attempting to define differently the issues already considered by the Constitutional Court of BiH and found to be the responsibility of the State of BiH. Thus, attempts are being made to provide for the powers of the Entities that the Constitution of BiH does not confer on them, *i.e.* to usurp the powers of the State of Bosnia and Herzegovina. A blatant example of the aforementioned is the Law on Inland Waterways Navigation of BiH, which has been in the pipeline as a preliminary draft since 2005, which has not gone through the parliamentary procedure to this day. The applicants indicate that the Preliminary Draft Law at the state level regulates the issues pertaining to vessels, operation and regime of navigation, control and safety of transport, and defines priority directions for advancement of cooperation related to revitalization of the waterway, harmonization of the system and unification of the rules of navigation. However, even after almost fifteen years, the law has not been adopted in a parliamentary procedure at the level of BiH. However, its matter was taken over and regulated by the legislator in the Republika Srpska, by enacting the challenged Law on Inland Waterways Navigation of the Republika Srpska.

10. The applicants state 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 continuity of the right of the State of BiH to regulate the issue of state property, which belongs to it. Rivers, channels, lakes and other waterways may certainly be regarded as the state property, which the challenged Law declares as a public good owned by and in possession of the Republika Srpska. This property constitutes a portion of the property, which the Constitutional Court found to be capable of being a subject matter of regulation, primarily, under the laws at the level of BiH. Unilateral solution, as established by the provision of Article 4 of challenged Law, constitutes a violation of Article I(1) of the Constitution of BiH. The applicants indicate that the Constitutional Court specified in its Decision no. U-1/11 the notion of state property, and established that it includes, *inter alia*, sea water and seabed, river water and river beds, *etc.*, and that, by its nature, it primarily serves all people in the country, and reflects the statehood, sovereignty and territorial integrity of BiH (see paragraph 62). Despite the fact that it is obvious that rivers, channels, lakes and other water surfaces referred to in Article 3, paragraph 1 of

the Law constitute a portion of state property, the Law, under the challenged provision of Article 4, prescribed that it is a public good owned by and in the possession of the Republika Srpska.

11. The applicants indicate that the Constitution of BiH contains numerous provisions on the division of responsibilities between the State of BiH and the Entities. Although Article III(1) of the Constitution of BiH enumerates the responsibilities of the Institutions of BiH, this constitutional norm cannot be construed separately from other constitutional provisions. The Constitutional Court of BiH dealt with the responsibilities of the State and Entities' institutions in numerous cases before and established that the responsibility thereof has to be viewed in the context of the overall text of the Constitution of BiH. In that connection, and on the basis of the decisions of the Constitutional Court of BiH in the cases nos. U-5/98-II, U-25/00 and U-1/11, one may infer that the division of responsibilities between the Institutions of BiH and those of the Entities may be found also in the provisions of Articles III, IV(4), V(3), as well as in other numerous provisions of the Constitution of BiH, such as Articles I(4) and I(7). In connection with the responsibility of the State and the division of responsibilities between the State of BiH and its Entities (in the present case in connection with the disputing of the provisions of the Law), the applicants pointed out the international obligations of the State of BiH and the obligation of the Entities to comply with the Constitution of BiH and the decisions of the Institutions of Bosnia and Herzegovina, contained in Article III(3)(b) of the Constitution of BiH.

12. The applicants requested that the Constitutional Court adopt the decision granting the request for review of the constitutionality of Article 2, items 11, 12, 20 and 21, Article 4, Article 6, paragraph 2, Article 8 paragraph 1 lines 1 and 2, Article 10, Article 15, paragraph 2, Article 24, Article 25, paragraph 4, Article 28, paragraph 3, Article 30, paragraph 1, Article 94, paragraph 4 and Article 95, paragraphs 1 and 2 of the Law on Inland Waterways Navigation of the Republika Srpska and establishing that the challenged articles of the Law are not in conformity with Article I(1), Article III(3)(b) and Article IV(4)(e) of the Constitution of Bosnia and Herzegovina and shall cease to be in force.

13. In order to prevent detrimental consequences that the challenged provisions might generate, the applicants proposed that the Constitutional Court adopt the interim measure prohibiting the application of the challenged articles of the mentioned Law.

b) Reply to the request

14. In the reply to the appeal, the National Assembly indicate that Article III(3)(a) of the Constitution of Bosnia and Herzegovina prescribes 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. Bearing in mind this provision, as well as Article III(1) of the Constitution of Bosnia and Herzegovina - the Law on Inland Waterways Navigation was passed in accordance with the Constitution of the Republika Srpska. Furthermore, the National Assembly indicate that Article 1 of the Law on Inland Waterways Navigation of the Republika Srpska prescribes that it regulates the conditions and manner of use of inland waters and the coastline of inland waters of the Republika Srpska for navigation, the safety of navigation on inland waters of the Republika Srpska, navigation safety objects, vessels, ship's papers, a procedure of entry into a register and deletion from the register of a vessel, vessel's capability to sail, shippers, goods and passengers transport, marine incidents, river information system, technical maintenance of waterways. This is to say that the Law regulates the inland navigation on inland waters of the Republika Srpska, which can, in no way, be in contravention of Article I(1), Article III(3)(b) and Article IV(4)(e) of the Constitution of Bosnia and Herzegovina.

15. Furthermore, it is indicated that Article 2 of the Law regulates the use of certain notions that have no normative character, where item 11 prescribes that an international navigational route is a waterway, where an international regime of navigation is applied and where vessels are allowed to sail under all flags, while item 12 stipulates that an international waterway is a waterway where an interstate regime of navigation is applied and where vessels are allowed to sail under the flags of the bordering states on that waterway. Both definitions only carry the clarification of the notions relating to the navigation regime, or the rules of navigation on inland navigable waterways, which constitute a traffic infrastructure owned by the Entity, and not an international or state navigable waterway.

16. The National Assembly further indicated that an international regime of navigation was declared on the Sava River and its navigable tributaries by the Framework Agreement on the Sava River Basin and the Protocol on the Regime of Navigation to the Framework Agreement, and referred to Article 2 of the Protocol on the Regime of Navigation to the Framework Agreement on the Sava River Basin. Also, references were made to Article 2 of the Framework Agreement on the Sava River Basin, which, as stated in the reply, "defined the position of the Republika Srpska and its competent institutions", while the list attached to the Framework Agreement on the Sava River Basin and the Protocol on the Regime of Navigation mentioned, as the bodies responsible for the implementation of the Framework Agreement on the Sava River Basin in BiH, the Ministry of Transport and Communications of the Republika Srpska, the Ministry of Spatial Planning, Construction and Ecology of the Republika Srpska and the Ministry of Agriculture, Forestry and

Water Management. Therefore, it is clear that the Law in no way regulates the issue of international navigation, but the manner and conditions of the use of inland waters of the Republika Srpska, which was the reason why it was necessary to mention in Article 2, items 20 and 21 what the notions of a foreign vessel and a foreign public vessel implied, as well as to prescribe in Article 10 the manner and conditions under which a foreign vessel may use the navigable waterways of the Republika Srpska.

17. Further, the reply reads that Article 3 of the Law governs the issue of inland waters of the Republika Srpska, which include rivers, channels, lakes and other water surfaces of the Republika Srpska where navigation is carried out on certain waterways, while Article 4 prescribes that inland waters are a public good owned by and in the possession of the Republika Srpska. This provision, as stated in the reply, in no way attempts to solve the issue of state property, as it was clearly stated that those are inland waters where navigation is carried out, which is not the responsibility of Bosnia and Herzegovina under the Constitution of Bosnia and Herzegovina. The objective of this legal solution is to protect and to prevent from any detrimental treatment of inland waters of the Republika Srpska, and to establish the manner and conditions for safe use of inland waterways, as well as the maintenance and management of navigable waterways of the Republika Srpska.

18. Furthermore, Article 8 governs the issue of the regime of navigation on inland waters of the Republika Srpska, which, *inter alia*, may be the international navigation regime or interstate navigation regime. The objective of such formulation concerning this specific provision is to establish the conditions and manner of the use of inland waters of the Republika Srpska for navigation, as well as safety of navigation in these waters. Under the same analogy, Article 24, paragraph 1 prescribes that ports, or harbors may be open to public traffic (international and inland) or docks for own needs of carriers as part of their business activities (docks for gravel and sand, construction material and such like), if conditions for the safety of navigation have been met as set forth in the Law. Bearing in mind the definition of ports, or harbors, as prescribed in Article 23, paragraph 1 of the Law, as well as the definition of the navigation safety facilities referred to in Article 20, paragraph 1 of the Law, and the fact that the international navigation regime was established on the Sava River and its tributaries, it is clear, as stated in the reply, that there was no violation of Article III(3)(b) of the Constitution of Bosnia and Herzegovina.

19. The National Assembly states that the challenged provision of Article 28, paragraph 3 of the Law prescribes that the Government shall pass a decision determining winter ports on inland navigation routes of the Republika Srpska to which international or interstate navigation regime is applied and prescribing the conditions that winter ports have to meet. **Given that Article 27,**

paragraph 2 prescribes the definition of winter ports (built or natural water surfaces on a waterway, which is planned and equipped so as to be a safe shelter for vessels from ice damage, high water levels or other bad weather conditions) and the fact that a winter port is one of the navigation safety facilities situated on the coastline of inland waters, which construction and use require the consent of an authority in charge of spatial development and construction, it is the obligation of the owner of traffic infrastructure (namely the Republika Srpska in this case) to regulate this matter.

20. Article 30, paragraph 1 prescribes that the River Information System (RIS) shall be established on the navigational route on which the international navigation regime has been established, for the purpose of providing information services in planning and managing navigation, which will be available to all system users under equal conditions. The navigation on the navigational route on which the international navigation regime has been established shall be carried out in accordance with the rules of the International Sava River Basin Commission and the obligations arising from EU Directives. Bearing in mind the aforementioned, the Law has been aligned with the Directive 2005/44 EC of the European Parliament and the Council dated 7 September 2005, on aligned River Information Systems (RIS) on inland waterways.

21. The challenged Article 94, paragraph 4 prescribes that international transport is transport by vessels from any domestic port or harbor to a foreign port or harbor, or *vice versa*. This provision only defines what an international traffic implies. Article 95, paragraphs 1 and 2 regulates conditions a boatman has the obligation to meet in order to perform public transport of passengers and goods in inland and international traffic, as well as conditions for the transport for own needs in inland and international traffic.

22. In view of all the aforementioned, as stated in the reply, it is clearly visible that the assertions made by the applicants are ill-founded that all issues related to the international traffic and infrastructure - international waterways and ports, harbors, winter ports, international regime of navigation and interstate regime of navigation – are an international obligation of Bosnia and Herzegovina, and that the Law on Inland Waterways Navigation of the Republika Srpska constitutes the interference with the international obligations of Bosnia and Herzegovina. Bearing in mind the aforementioned, the National Assembly proposed that the respective request be dismissed, that is to say to establish that there is no violation in terms of the competence of the Constitutional Court of Bosnia and Herzegovina referred to in Article VI(3)(a) of the Constitution of Bosnia and Herzegovina, *i.e.* that the challenged legal provision is in conformity with the Constitution of Bosnia and Herzegovina.

IV. Relevant Law

23. The Constitution of Bosnia and Herzegovina

Article I

Bosnia and Herzegovina

1. Continuity

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 III

3. Law and Responsibilities of the Entities and the Institutions

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

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.

24. The Law on Inland Waterways Navigation of the Republika Srpska (*Official Gazette of the Republika Srpska*, 54/19), so far as relevant, reads:

CHAPTER I

BASIC PROVISIONS

Article 1

This Law regulates the conditions and manner of use of inland waters and the coastline of inland waters of the Republika Srpska for navigation, the safety of navigation on inland waters of the Republika Srpska, navigation safety facilities, vessels, ship's papers, a procedure of entry into a register and deletion from the register of a vessel, vessel's capability to sail, boatmen, transport of goods and passengers, marine incidents, river information system, technical maintenance of waterways.

Article 2

Certain notions used in this Law shall have the following meaning:

[]

11) international navigational route is a waterway, where an international regime of navigation is applied and where vessels are allowed to sail under all flags,

12) international waterway is a waterway where an interstate regime of navigation is applied and where vessels are allowed to sail under the flags of the bordering states on that waterway,

[]

18) the River Information System (hereinafter: RIS) are aligned information services intended as a support to the management of navigation on waterways, including, if so justified, a connection with other forms of traffic,

[...]

20) a foreign vessel is a vessel of foreign affiliation entered in a foreign register of vessels,

21) a foreign public vessel is a vessel used by a public authority of other states, other than warships, used exclusively for non-economic purposes,

[...]

Article 3

(1) The inland waters of the Republika Srpska (hereinafter: the inland waters) are rivers, channels, lakes and other water areas of the Republika Srpska, which specific navigational routes are sailed on, in accordance with this Law.

(2) A decision determining navigational routes on the inland waters of the Republika Srpska shall be issued by the Government of the Republika Srpska (hereinafter: the Government).

Article 4

The inland waters referred to in Article 3, paragraph 1 of this Law are public goods owned by and in the possession of the Republika Srpska.

CHAPTER II

SAFETY OF NAVIGATION

1. Common Provisions

Article 6

(1) The safety of navigation includes the conditions, rules, technical rules and measures to be fulfilled as mandatory by vessels, vessels crew, waterways and safety facilities, in order to ensure safe navigation.

(2) The Minister of Traffic and Communications (hereinafter: the Minister) shall pass rulebooks prescribing a manner of exercising the protection of people, goods and the environment, as well as procedures for investigating the causes of accidents of domestic and foreign civilian vessels on inland waters of the Republika Srpska.

2. Regimes of navigation and navigation

Article 8

(1) The following navigation regimes may be prescribed on inland waterways navigational routes:

1) International navigation regime,

2) Interstate navigation regime,

[...]

(2) The Government shall issue a decision on the navigation regimes on inland waterways navigational routes of the Republika Srpska.

Article 10

- 1) *Foreign vessels may navigate inland waterways navigational routes on which the prescribed navigation regime applies.*
- 2) *Foreign vessels may navigate other inland waterways navigational routes for the purpose of entry into a port, or harbor open to international traffic.*
- 3) *Foreign vessels shall have the obligation to display the national ensign when navigating or operating in inland waters of the Republika Srpska.*
- 4) *The Minister shall issue a rulebook determining the conditions for navigation and stay of foreign vessels in inland waters of the Republika Srpska*

Article 15

[...]

- (2) *Categorization of waterways is carried out on the basis of technical and exploitation features established under an international agreement.*

[...]

Article 24

- 1) *Ports, or harbors may be open to public traffic (international and inland) or docks for own needs of carriers as part of their business activities (docks for gravel and sand, construction materials and such like), if conditions for the safety of navigation have been met as set forth in Article 6, paragraph 1 of this Law.*
- 2) *The Government shall issue a decision determining ports, or harbors designated for international traffic, as well as conditions that are mandatory for the ports, or harbors designated for international traffic to meet.*

Article 25 paragraph 4

- 4) *When it comes to using a port, or a harbor open to international public traffic and paying port or harbor fees, on a condition of reciprocity, foreign vessels enjoy the same status as domestic vessels.*

Article 28 paragraph 3

- (3) *The Government shall pass a decision determining winter ports on inland navigational routes of the Republika Srpska on which international or interstate*

navigation regime is applied and prescribing the conditions that winter ports have to meet.

Article 30

(1) The River Information System (RIS) shall be established on the navigational route on which the international navigation regime has been established, for the purpose of providing information services in planning and managing navigation, which will be available to all system users under equal conditions.

[...]

Article 94 paragraph 4

(4) International transport is transport by vessels from any domestic port or harbor to a foreign port or harbor, or vice versa.

Article 95

(1) A boatman may perform public transport of passengers and goods in inland and international traffic if registered to perform such activity.

(2) Transport for own needs in inland and international traffic may be performed by a legal or natural person if registered to perform such activity.

[...]

25. The **Law on Ministries and other Administration Authorities of Bosnia and Herzegovina** (*Official Gazette of BiH*, 5/03, 42/03, 26/04, 42/04, 45/06, 88/07, 35/09, 59/09, 103/09, 87/12, 6/13, 19/16 and 83/17). For the purpose of this decision, unofficial revised text compiled at the Constitutional Court of Bosnia and Herzegovina will be used, which reads as follows:

Article 10

The Ministry of Communications and Transport shall be responsible for:

policy and regulation of common and international communication facilities;

international and inter-Entity transportation and infrastructure;

preparation of treaties, agreements and other acts in the field of international and inter-Entity communications and transport;

relations with international organizations in the field of international and inter-Entity communications and transport;

preparation and drafting of strategic and plan documents in the field of international and inter-Entity communications, transport, infrastructure and information technologies;

tasks of control of smooth transport in international transportation;

civil aviation and air traffic control.

The Ministry shall comprise administrative organizations: the Directorate of Civil Aviation of Bosnia and Herzegovina and the Regulatory Board of Railways of Bosnia and Herzegovina, the rights and duties of which shall be set forth by a special law.

26. The **Law on Border Control** (*Official Gazette of BiH*, 53/09, 54/10 and 47/14), so far as relevant, reads as follows:

Article 22

(Permit for foreign vessels' cruise and stopping)

(1) *Foreign vessels for entertainment or sports may cruise and stop in the coastal seas of BiH, and on rivers designated for international navigation, if they obtain a permit.*

(2) *The permit referred to in paragraph 1 of this Article may be issued to a foreign vessel for entertainment or sports if the crew of such vessels meets general conditions for the entry into BiH, prescribed by Article 8, paragraph 2 of this Law, and the vessel possesses appropriate documents.*

(3) *The permit is issued by the nearest port authority, with the consent of the competent units of the BPBiH and ITA, after the foreign vessel referred to in paragraph 1 of this Article has entered the inland waters.*

(4) *The permit for foreign vessels referred to in paragraph 1 of this Article, shipped to BiH by land, is issued by the nearest port authority.*

(5) *The permit referred to in paragraph 1 of this Article shall contain the features of a foreign vessel designated for entertainment or sports, the details on the crew and passengers of the vessel concerned, as well as the expiry date of the permit.*

*Article 23**(Temporary ban or restriction of navigation)*

BPBiH may temporarily ban or restrict the navigation in a certain area of a river designated for international navigation or coastal seas, if so suggested for the reasons of border safety.

*Article 24**(Obligation to report persons without documents)*

(1) A vessel commander or leader shall have the obligation, after docking at a port, to report to the competent unit of the BPBiH or other police unit any person aboard the vessel without documents required to cross the state border, as well as a person who boarded the vessel without the permission of the captain or leader.

(2) The vessel commander or leader will not allow for a person referred to in paragraph 1 of this Article, or a person prohibited to enter BiH, to disembark the vessel without the permission of the BPBiH.

(3) In the event that a person referred to in paragraphs 1 and 2 of this Article disembarks the vessel without the permission of the BPBiH, the commander, leader or owner of the vessel shall have the obligation to cover the costs of the stay and removal of that person from BiH.

*Article 25**(A person boarding the vessel outside a border crossing)*

(1) The vessel commander or leader in international traffic shall not allow persons to board or disembark a vessel outside a border crossing, unless in the event of rescuing persons.

(2) The vessel commander or leader in international traffic shall have the obligation to report immediately the case referred to in paragraph 1 of this Article to the nearest unit of BPBiH or to other police unit.

*Article 26**(Permit issued to a crewmember to move in the place of the detention of a ship)*

(1) A crewmember of a foreign ship, who does not have the required visa to enter BiH, for the duration of the detention of the ship in the area of a border crossing or a port, may be issued a permit to move in the area where the port is situated.

(2) *The permit referred to in paragraph 1 of this Article, upon the request of the commander of a foreign ship, shall be issued by the competent unit of the BPBiH for the duration of the detention of the ship, up to a maximum of 30 days.*

(3) *The BPBiH will issue an enforcement regulation on the layout, content and the method of issuance, and on the form of the permit for movement in the place of detention of a ship, within one year from the day of entry into force of this Law.*

27. **The Protocol on the Regime of Navigation to the Framework Agreement on the Sava River Basin (FASRB) – Decision on ratification of the Framework Agreement on the Sava River Basin and the Protocol on the Regime of Navigation** (*Official Gazette of BiH – International Treaties*, 8/03 and 10/04), so far as relevant, reads:

Pursuant to the provisions referred to in Article 10, paragraph 6 of the Framework Agreement on the Sava River Basin (hereinafter: The Agreement), Bosnia and Herzegovina, the Republic of Croatia, Republic of Slovenia and the Federal Republic of Yugoslavia (hereinafter: The Parties) have agreed as follows:

Article 1

Navigation on the Sava River from the river kilometer 0.00 to the river kilometer 586.00, on the Kolubara River from the river kilometer 0.00 to the river kilometer 5.00, on the Drina River from the river kilometer 0.00 to the river kilometer 15.00, on the Bosna River from the river kilometer 0.00 to the river kilometer 5.00, on the Vrbas River from the river kilometer 0.00 to the river kilometer 3.00, on the Una River from the river kilometer 0.00 to the river kilometer 15.00 and on the Kupa River from the river kilometer 0.00 to the river kilometer 5.00, shall be carried out in accordance with the provisions of Article 10 of the Framework Agreement on the Sava River Basin.

Article 2

1) *Navigation on the rivers referred to in Article 1 of this Protocol shall be carried out in accordance with the Rules of Navigation to be determined by the International Sava River Basin Commission (hereinafter: Sava Commission) and the competent authorities of the Parties.*

2) *The Rules determined by the competent authorities of the*

Parties shall be in accordance with the decisions of the Sava Commission.

Article 3

The Parties acknowledge equal status of all vessels in:

- a) payment of navigation and port fees, services and taxes;*
- b) use of pilotage services;*
- c) use of port equipment, anchorage sites, navigation locks and other vessel equipment for general use;*
- d) loading and unloading vessels, embarking and disembarking persons;*
- e) conducting all types of controls and issuing documents by the competent authorities;*
- f) furnishing vessels with fuel, lubricants, water and other supplies; and*
- g) discharging waste, wastewater and used mineral oils generated onboard vessels.*

Article 4

- 1) The competent authorities of the Parties shall be in charge of customs, police and sanitary procedures and shall communicate the rules on these procedures to the Sava Commission which shall assist in their harmonization.*
- 2) The customs, police and sanitary rules pertaining to navigation on the rivers referred to in Article 1 of this Protocol shall be applied to vessels without discrimination in terms of nationality. These rules shall be of such nature so as not to hinder navigation.*
- 3) Customs and border formal procedures shall be conducted at the sites designated by the competent authorities of the Parties. The Parties shall inform the Sava Commission on the location of these sites.*

Article 5

The competent authorities of the Parties shall supervise navigation in a uniform manner in accordance with the decisions of the Sava Commission and national regulations of the Parties.

<https://www.savacommission.org/index.php?idmenu=1&l=bhbo&page=organ>) carries a column titled “Basic documents”, which contains a document “List of the bodies of the Parties’ responsible for implementation of the Framework Agreement on the Sava River Basin”. The mentioned document lists the following bodies for Bosnia and Herzegovina:

- *Ministry of Communications and Transport of BiH*
- *Ministry of Foreign Trade and Economic Relations of BiH*
- *Ministry of Agriculture, Forestry and Water Management of the Republika Srpska*
- *Federal Ministry of Agriculture, Water Management and Forestry*
- *Ministry of Transport and Communications of the Republika Srpska*
- *Federal Ministry of Transport and Communications*
- *Ministry of Spatial Planning, Civil Engineering and Ecology of the Republika Srpska*

29. The Decision adopting the Framework Transport Strategy of Bosnia and Herzegovina for the period 2016-2030 (Official Gazette of BiH, 71/16), so far as relevant, reads (the Decision published in the Official Gazette– Bosnian language, page 142 onwards was used):

2.4 Inland Waterways

Taking into account the morphological and hydrological characteristics of the watercourses in BiH as well as possibilities and needs for development of transport on the rivers, it is necessary to observe separately the Sava River from other rivers, the Sava's tributaries: the rivers Una with Sana, Vrbas, Bosna and Drina. Both the Drina and Una rivers are navigable with a length of about 15 km from their confluences in the Sava River.

The Sava River, as a border waterway, deserves a special attention because it is a valuable economic potential, particularly in terms of navigation and providing conditions for economic transport of goods.

On the Sava River, an international regime of navigation is established and jurisdiction over traffic is divided on three levels:

- *Ministry of Communications and Transport of BiH, in charge of international traffic;*

- *Ministry of Transport and Communications of FBiH, responsible for infrastructure;*
- *Ministry of Transport and Communications of the RS, responsible for infrastructure;*
- *Traffic Department in the Brcko District, responsible for infrastructure.*

V. Admissibility

30. 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.

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 neighboring 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 $\frac{1}{4}$ 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 BiH, (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.ccbh.ba).

33. Having regard to the provisions of Article VI(3)(a) of the Constitution of Bosnia and Herzegovina and Article 17(1) of the Rules of the Constitutional Court, the Constitutional Court found that the request is admissible, as it was filed by an authorized subject, therefore, there is no single formal reason under Article 17(1) of the Rules of the Constitutional Court rendering the request inadmissible.

VI. Merits

34. The applicants state that the Law on Inland Waterways Navigation of the Republika Srpska (“the Law”) is not in conformity with Article I(1), Article III(3)(b) and Article IV(4)(e) of the Constitution of BiH.

35. The Constitutional Court will divide the reasoning of the decision into two parts, as follows:

a) The first part of the reasoning will relate to Article 4 of the Law, which is challenged so as to claim that the Entity of the Republika Srpska has no legal basis for legal regulation of the issue of state-owned property, which, in the opinion of the applicants, certainly includes inland waters, which the mentioned article prescribed to be owned by the Republika Srpska.

b) The second part of the reasoning will relate to articles of the Law, as follows: Article 2, items 11, 12, 20 and 21, Article 4, Article 6 paragraph 2, Article 8 paragraph 1 lines 1 and 2, Article 10, Article 15 paragraph 2, Article 24, Article 25 paragraph 4, Article 28 paragraph 3, Article 30 paragraph 1, Article 94 paragraph 4 and Article 95 paragraphs 1 and 2. The mentioned articles are disputed because they regulate the issues of international and interstate traffic and infrastructure on water surfaces, which issues, in the opinion of the applicants, fall exclusively within the jurisdiction of the State of BiH and its authorities.

36. The National Assembly, as the enactor of the Law, challenged the allegations made by the applicants. The essence of the allegations is that the Law pertains to the inland waters of the Republika Srpska, over which the State of BiH has no jurisdiction under the Constitution of BiH. Article 3 of the Law prescribes what inland waters are and the Republika Srpska has the jurisdiction over those.

37. The challenged Article 4 of the Law prescribes as follows: “The inland waters referred to in Article 3 paragraph 1 of this Law are public goods owned by and in the possession of the Republika Srpska”. Article 3 paragraph 1 of the Law prescribes as follows: “The inland waters of the Republika Srpska (hereinafter: the inland waters) are rivers, channels, lakes and other water areas of the Republika Srpska, which specific navigational routes are sailed on, in accordance with this

Law”. Synonyms for the word property referred to in the challenged Article 4 are possession and ownership.

38. In the Decision no. *U-I/II* of 13 July 2012, the Constitutional Court examined whether the Republika Srpska had the constitutional responsibility to pass the Law on the Status of State Property Located in the Territory of the Republika Srpska and under the Disposal Ban. However, in that decision the Constitutional Court explained what the notion state property meant. Accordingly, paragraph 62 reads as follows: “State property, although similar in its structure to civil law 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 title holder. It includes, on the one hand, movable and immovable assets in the hands of public authorities which it uses to exercise that authority, on the other hand, it may include 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.”

39. In addition, in paragraph 77 of the Decision no. *U-I/II* the Constitutional Court emphasized that the subject-matter of regulation by the challenged Law under examination 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 additionally clarified that the notion of state property may not mean solely real properties such as buildings and such like, and emphasized as follows: “The Constitutional Court reiterates that the state property has a special status. It encompasses, on the one hand, movable and immovable assets in the hands of public authorities used to exercise that authority. 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, necessary 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 executing the responsibilities 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.”

40. It follows from the cited case-law of the Constitutional Court that waters, as public goods, are considered state property. When the challenged Article 4 is read together with the provisions of Article 3 paragraph 1 of the Law, it follows that inland waters are “...water areas... where navigation is carried out on certain waterways...” However, it is obvious that “inland waters” or “water areas”, as referred to in the mentioned articles of the Law, are considered public goods, concerning which the Constitutional Court had taken a position earlier to be part of state property (river water and river beds, lakes, running water, as stated in the cited paragraphs 62 and 82 of the Decision no. *U-I/II*). The Constitutional Court held (also) in the present case that “inland waters”, referred to in the challenged Article 4, were included in the notion of state property. The Constitutional Court does not take it as a justification that the legislator indicated that these were “inland waters in the territory of the Republika Srpska”, for all of that is situated in the territory of the State of BiH. In terms of the title-holder of state property, there are no abstract “external waters”, in order for the legislator to make a difference in comparison to the “inland waters” in the territory of the Republika Srpska that are its property.

41. As the challenged Article 4 of the Law prescribes that inland waters are “ownership of the Republika Srpska”, in that way they were registered legally as the property of the Republika Srpska and were assigned to the Republika Srpska. It has been reasoned above that the state property (the property of the State of BiH) includes (also) inland waters. Therefore, the Constitutional Court has to conclude that the disputed provision is contrary to Articles I(1), III(3)(b) and IV(4)(e) of the Constitution of BiH, for the state property should be decided at the level of the State of BiH, as it follows from the Decision *U-I/II*, which the Constitutional Court supports in this case too, as the decision on the status of the state property falls exclusively within the jurisdiction of the State of BiH in terms of the cited constitutional provisions.

42. However, unlike the case in which the decision *U-I/II* was rendered, in this case the constitutionality of the entire law was not challenged. The Entity of the Republika Srpska undoubtedly has the responsibility to regulate the navigation on “certain” inland waters, which will be elaborated on in the continuing part of the reasoning.

43. This part of the reasoning will carry the examination of the constitutionality of the provisions of the Law, as follows: Article 2, items 11, 12, 20 and 21, Article 4, Article 6 paragraph 2, Article 8 paragraph 1 lines 1 and 2, Article 10, Article 15 paragraph 2, Article 24, Article 25 paragraph 4, Article 28 paragraph 3, Article 30 paragraph 1, Article 94 paragraph 4 and Article 95 paragraphs 1 and 2.

44. The mentioned articles of the Law will be examined together, for the reason that the Constitutional Court deems that the same reasoning applies to all the challenged provisions.

45. As indicated in the part of the reasoning above, the Constitutional Court holds that the Republika Srpska has responsibility to regulate the issue of inland navigation, exclusively on inland waters though. In terms of the constitutional division of responsibility, the Constitutional Court regards as “exclusively inland waters” the waters of the Republika Srpska that are not at the same time the state borders and international navigable rivers.

46. Under Article 3(1) of the Law, it is obvious that various issues of inland navigation, which are regulated by the challenged articles, pertain to all inland waters that are situated in the Republika Srpska. That is where the Constitutional Court sees the main problem. It is undisputed that the rivers Sava and Drina flow through the Republika Srpska. However, it is undisputed that the rivers Sava and Drina make up a part of the state border to the Republic of Croatia and to the Republic of Serbia, while being at the same time the international navigable rivers. The Law, which is obvious from the provisions of the law and the reply of the National Assembly of the Republika Srpska, established the exclusive responsibility of the Republika Srpska over the issues of inland navigation on all water courses in the Republika Srpska, including the Sava River and the Drina River, irrespective of the fact that those rivers are part of the state border and are international navigable rivers at the same time. The Constitutional Court does not see a single reason why the part of the river border should be treated differently from the land, sea or air border, over which certain responsibilities are undisputedly held by state authorities (for instance, customs service, border police, *etc.*). According to the existing state laws, particularly under the provisions of the Law on Border Control (*Official Gazette of BiH*, nos. 53/09, 54/10 and 47/14), state authorities have responsibilities over navigable rivers on which international navigation takes place. For instance, the Border Police of BiH has powers to issue permits for sailing and stopping of foreign vessels (Article 22), to temporarily ban or restrict navigation (Article 23), to regulate the obligation to report persons without documents (Article 24) as well as embankment of vessels outside a border crossing (Article 25), and the issuance of permits to a crew member for movement at the location of the ship detention (Article 26).

47. In addition, the issues of navigation on the international navigable rivers are regulated under the Framework Agreement on the Sava River Basin as well as the Protocol on the Regime of Navigation (Decision on ratification of the Framework Agreement on the Sava River Basin and the Protocol on the Regime of Navigation, *Official Gazette of BiH – International Treaties*, 8/03 and 10/04), where, for instance, Article 4 (Protocol on the Regime of Navigation) prescribes that the competent authorities of the Parties shall be in charge of customs, police and sanitary procedures. However, as there are no guarantees that the responsibilities of state authorities referred to in the cited provisions of the Law on Border Control will be observed, nor is it possible to see from the challenged provisions of the Law that the responsibilities of state authorities, which the mentioned Article 4 of the Protocol on the Regime of Navigation pertains to, will be observed. It is indisputable that according to the state laws the state authorities have powers concerning “customs and police service”, as stipulated in Article 4 of the Protocol on the Regime of Navigation. The website of the Sava Commission carries a list of the national bodies responsible for implementation of the Framework Agreement on the Sava River Basin, as follows: the Ministry of Communications and Transport of BiH and the Ministry of Foreign Trade and Economic Relations of BiH (on behalf of the State of BiH), on behalf of the Entity of the Republika Srpska the responsible bodies are the following: the Ministry of Agriculture, Forestry and Water Management of the Republika Srpska, the Ministry of Transport and Communications of the Republika Srpska and the Ministry of Spatial Planning, Civil Engineering and Ecology of the Republika Srpska. According to the Decision adopting the Framework Transport Strategy of Bosnia and Herzegovina for the period 2016-2030 (*Official Gazette of BiH*, 71/16), an international regime of navigation was established on the Sava River, while the responsibility over traffic was divided between: the Ministry of Communications and Transport of BiH – responsible for international traffic and the Ministry of Transport and Communications of the Republika Srpska – responsible for infrastructure. Despite that, in the reply of the National Assembly of the Republika Srpska, when referring to the aforementioned acts, there is no mention of the state authorities and specific responsibilities of the state authorities, instead the reply mentions solely the responsibilities of the Entity of the Republika Srpska in such a way that it is possible to conclude that all the issues relating to the inland navigation on interstate and international navigable rivers (Sava and Drina) are the exclusive responsibility of the Republika Srpska.

48. The National Assembly may not base its exclusive responsibility over the regulation of the issues of inland waters navigation on the rivers Sava and Drina, just because they flow partially

through the Republika Srpska. The Constitutional Court reached a similar conclusion concerning the regulation of the issue of property (ownership) over the waterways in the Republika Srpska.

49. Therefore, the issues pertaining to the navigation on interstate and international rivers, as well as the related responsibility between the State and Entity authorities, should be regulated by a law to be passed at the state level, as those issues are the exclusive responsibility of the State of BiH under Articles I(1), III(3)(b) and IV(4)(e) of the Constitution of BiH.

50. In view of the fact that the aforementioned has not been done and the challenged provisions of the Law may be applied (also) to the rivers Sava and Drina, which make up part of the border of BiH, while being the international navigable rivers, the Constitutional Court concludes that articles of the Law, as follows: Article 2, items 11, 12, 20 and 21, Article 4, Article 6 paragraph 2, Article 8 paragraph 1 lines 1 and 2, Article 10, Article 15 paragraph 2, Article 24, Article 25 paragraph 4, Article 28 paragraph 3, Article 30 paragraph 1, Article 94 paragraph 4 and Article 95 paragraphs 1 and 2, are not in conformity with Articles I(1), III(3)(b) and IV(4)(e) of the Constitution of BiH.

VII. Conclusion

51. The Constitutional Court concludes that the provisions of Article 2, items 11, 12, 20 and 21, Article 4, Article 6 paragraph 2, Article 8 paragraph 1 lines 1 and 2, Article 10, Article 15 paragraph 2, Article 24, Article 25 paragraph 4, Article 28 paragraph 3, Article 30 paragraph 1, Article 94 paragraph 4 and Article 95 paragraphs 1 and 2 of the Law on Inland Waterways Navigation of the Republika Srpska (*Official Gazette of the Republika Srpska*, 54/19) are not in conformity with Articles I(1), III(3)(b) and IV(4)(e) of the Constitution of Bosnia and Herzegovina, for the reason that the issues pertaining to the navigation on interstate and international rivers, as well as the related responsibility between the State and Entity authorities, should be regulated by a law to be passed at the state level, as those issues are the exclusive responsibility of the State of BiH according to the mentioned provisions of the Constitution of BiH.

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

53. Given the decision of the Constitutional Court in this case, it is not necessary to consider separately the applicants' proposal of the request for an interim measure.

54. Pursuant to Article 43 of the Rules of the Constitutional Court, President Zlatko M. Knežević and Judge Miodrag Simović gave a statement dissenting from the majority decision.

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

Zlatko M. Knežević
President
Constitutional Court of Bosnia and Herzegovina