

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(a) of the Constitution of Bosnia and Herzegovina, Article 57(2)(b), Article 59(1) and (2), Article 61(1), (2) and (3) and Article 64(4) of the Rules of the Constitutional Court of Bosnia and Herzegovina – consolidated text (*Official Gazette of Bosnia and Herzegovina*, 94/14 and 47/23), in plenary and composed of the following judges:

Ms. Seada Palavrić, President

Ms. Valerija Galić, Vice-President

Ms. Angelika Nussberger, Vice-President

Mr. Mirsad Ćeman,

Ms. Helen Keller,

Mr. Ledi Bianku, and

Mr. Marin Vukoja

Having deliberated on the request by **Kemal Ademović, Chair of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina at the time of filing the request**, in case no. **U-3/24**, at the session held on 11 July 2024, adopted the following

DECISIONS ON ADMISSIBILITY AND MERITS

Having deliberated on the request by **Kemal Ademović, Chair of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina at the time of filing the request**, seeking a review of constitutionality of the Decision on Changing the Purpose of Forestland and Temporary Use of Forestland for Other Purposes of the Government of the Federation of Bosnia and Herzegovina (*Official Gazette of FBiH*, 89/23 and 100/23),

it is hereby established that the Decision on Changing the Purpose of Forestland and Temporary Use of Forestland for Other Purposes of the Government of the Federation of Bosnia and Herzegovina (*Official Gazette of FBiH*, 89/23 and 100/23) is not compatible with Articles I(1), I(2) and VI(5) of the Constitution of Bosnia and Herzegovina.

Pursuant to Article 61(1) of the Rules of the Constitutional Court of Bosnia and Herzegovina and Article 2(2) of the Law on the Temporary Prohibition of the Disposal of State Property of BiH (*Official Gazette of BiH*, 18/05, 29/06, 85/06, 32/07, 41/07, 74/07, 99/07, 58/08 and 22/22), the Decision on Changing the Purpose of Forestland and Temporary Use of Forestland for Other Purposes of the Government of the Federation of Bosnia and Herzegovina (*Official Gazette of the FBiH*, 89/23 and 100/23) is quashed and shall be rendered ineffective following the date of publication of that decision in *the Official Gazette of the Federation of Bosnia and Herzegovina*, 89/23 and 100/23).

Pursuant to Article 61 of the Rules of the Constitutional Court of Bosnia and Herzegovina, the Government of the Federation of Bosnia and

Herzegovina and the Ministry of Agriculture, Water Management and Forestry of the Federation of Bosnia and Herzegovina are ordered to undertake all activities to annul all decisions and activities based on the Decision on Changing the Purpose of Forestland and Temporary Use of Forestland for Other Purposes of the Government of the Federation of Bosnia and Herzegovina (*Official Gazette of FBiH*, 89/23 and 100/23).

Pursuant to Article 72(5) of the Rules of the Constitutional Court, the Government of the Federation of Bosnia and Herzegovina and the Ministry of Agriculture, Water Management and Forestry of the Federation of Bosnia and Herzegovina are ordered to notify the Constitutional Court of Bosnia and Herzegovina of the measures taken to enforce this decision within three months from the date of delivery of this decision.

Pursuant to Article 64(4) of the Rules of the Constitutional Court of Bosnia and Herzegovina, the Decision on Interim Measure no. *U-3/24* of 30 May 2024 shall cease to have effect.

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

REASONS

1. On 4 March 2024, Kemal Ademović, Chair of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina at the time of filing the request (“the applicant”), filed a request with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) seeking a review of the constitutionality of the Decision on Changing the Purpose of Forestland and Temporary Use of Forestland for other Purposes (*Official Gazette of FBiH*, 89/23 and 100/23) (“the Decision”).

2. Pursuant to Article 64 of the Rules of the Constitutional Court, the applicant also submitted a request for adoption of an interim measure by which the Constitutional Court would suspend the Decision pending a final decision of the Constitutional Court.

II. Proceedings before the Constitutional Court

3. The Constitutional Court granted the applicant's request by the Decision on Interim Measure no. *U 3/24* of 30 May 2024 (available at www.ustavisud.ba) and suspended the Decision pending a final decision of the Constitutional Court of Bosnia and Herzegovina ("BiH") on the submitted request.

4. Pursuant to Article 23(2) of the Rules of the Constitutional Court, the Government of the Federation of Bosnia and Herzegovina ("the Government"), represented by the Office for Cooperation and Representation before the Constitutional Court of BiH and the Constitutional Court of the Federation of BiH ("the Office") were requested on, respectively, 11 March and 4 April 2024 to submit a response to the request within 30 days of receiving the letter.

5. The Government and the Office submitted their responses to the request on, respectively, 11 and 30 April 2024.

III. Request

a) Complaints in the request

6. The applicant contended that the Decision was contrary to Articles I(2), II(3)(k), III(3) (b) and IV(4)(e) of the Constitution of BiH and Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the European Convention").

7. In giving arguments to support these allegations, the applicant first stated that the contested decision was a general act and that the Constitutional Court had jurisdiction to review the constitutionality, and considered that there was a dispute between BiH and the Federation of BiH because the enforcement of that decision could cause harmful consequences to the property of BiH. The applicant further contended that the Government did not have a constitutional basis for regulating the issue of State property and that it acted contrary to the provisions of the Law on the Temporary Prohibition of Disposal of State Property of BiH ("the Law on Prohibition of Disposal") and the Law on the Temporary Prohibition of the Disposal of the State Property of the Federation of BiH ("the F BiH Law on

Prohibition of Disposal”) prohibiting the disposal of State property for the territory of the Federation of BiH. In addition, the applicant contended that in this way the Government acted contrary to a large number of decisions of the Constitutional Court (nos. *U-1/11*, *U-8/19*, *U-9/19*, *U-16/20*, *U-4/21* and *U-10/22*) taking the position that the issue of State property is within the exclusive competence of the State of BiH and its authorities and that the Entities do not have the right to dispose of State property.

8. In this regard, the applicant considered that the change of use of forestland constituted an act of disposal of State property. The applicant stated that such an action can only be taken by the owner and that the decision on this issue cannot be made by the Entity bodies, but only by the institutions of BiH, i.e. the Parliamentary Assembly of BiH (“the Parliamentary Assembly”). Next, the applicant pointed to the content of Article 5 of the Decision, which prescribes that compensation for the change of use of forest land is paid as assigned revenue of the budget of the Federation of BiH. In this connection, the applicant stated that given the fact that the Entities do not have the right of disposal, it follows that they cannot unilaterally dispose of the financial benefits from that property either. Thus, the applicant considered that this issue can only be regulated by the Parliamentary Assembly in accordance with its responsibility under Article IV(4)(b) of the Constitution of BiH. In addition, the applicant contended that the fact that Article IV (2) of the Decision stated that a request for a change of use can only be submitted by an authorized body of the State of BiH, did not reduce the inconsistency of the challenged decision with the Constitution of BiH due to the fact that the Government was not competent to regulate those issues.

9. The applicant further pointed out that the provisions of the Decision stipulating the possibility of awarding forestland for temporary use for other purposes were unconstitutional as well. In this regard, the applicant stated that Article VII (2) of the Decision stipulated the possibility of using forest land for other purposes at the request of conceding party, concessionaire or investor. In this regard, the applicant referred to the decision of the Constitutional Court no. *U-16/20*, from which it followed that the Concessions Commission of BiH was competent for adopting decisions on awarding concessions with regard to State property and resolving disputes arising in connection with this matter (see the Constitutional Court, Decision on Admissibility and Merits no. *U-16/20* of 16 July 2021, available at www.ustavnisud.ba). For this reason, the applicant considered that the challenged norms seek to enable the direct or indirect disposal of State property, without any consent of the owner of the property, that is, the State and its institutions. In this regard, the applicant pointed out that

the Decision on Amendments to the Decision deleted the part of the provision that referred to the consent of the Office of Attorney General of BiH (“the Office”) when granting temporary use. According to the applicant's opinion, in this way, the Government showed a clear intention to decide on the disposal of State property without the consent and knowledge of its owner, which is contrary to fundamental legal principles. In addition, the applicant considered that the provisions of Article VII (3) and (4) of the Decision for use of forestland were also unconstitutional. In this regard, the applicant stated that the Parliamentary Assembly is the only body authorized to decide on the distribution of funds that would refer to the concession fee, and that an Entity minister or Entity authorities cannot be authorised to issue a permit for use of forest land. Finally, the applicant considered that the challenged Decision prevented the owner of State property from exercising its ownership rights, amounting to a violation of Article 1 of Protocol No. 1 to the European Convention and Article II(3)(k) of the Constitution of BiH.

b) Response to the request

10. First of all, the Government contended that the Constitutional Court did not have jurisdiction to review the constitutionality of the Decision based on Article VI(3)(a) of the Constitution of BiH due to the fact that the contested Decision is an executive authority's act of inferior lower legal rank compared to the law. The Government was also of the opinion that in this case there was no dispute between BiH and the Federation of BiH because the Decision in no way interfered with the jurisdiction of BiH regarding the issue of ownership or the right to dispose of property in the context of the Law on Prohibition of Disposal. It indicated that the Decision applied to all forests and forest land, regardless of ownership, but that it followed from the request that the arguments related exclusively to State property. In this regard, the Government pointed out that this Decision did not prescribe the direct or indirect transfer of ownership, i.e. the sale of land or any form of disposal of State property that is within the exclusive jurisdiction of BiH. In this regard, the Government stated that Article I, paragraph 3 of the Decision expressly stipulated that the Decision does not regulate ownership or other real rights to real estate or the lease of real estate. In addition, it emphasized that Article 1, paragraph 2 of the Decision stipulated that the property of the State of BiH is considered to be the property that is defined as such in Article 1, paragraph 2 of the Law on Prohibition of Disposal, regardless of the current registration of the owner in the land register. In view of the above, the Government considered that the provisions of the Decision provided broader protection for State property compared to the provisions of the

Law on Prohibition of Disposal. It further pointed out that the Decision only regulated the possibility of changing the use of State property and using the forest land for other purposes on temporary basis. For this reason, the Government contended that a clear conclusion followed from the cited provisions that based on the Decision, no dispute can arise between BiH and FBiH within the meaning of Article VI(3)(a) of the Constitution of BiH.

11. Responding to the applicant's allegations regarding the provisions of Articles II-VI of the Decision regulating the procedure for changing the use of forest land, the Government stated that this procedure can only be initiated at the request of the property owner in order to change the use of the land in accordance with applicable spatial planning acts. In order to avoid an indirect transfer of ownership based on the decision on changing the use of forest land, Article IV, paragraph 2 of the Decision stipulates that only an authorized body of BiH may submit a request to change the use of land owned by BiH. In connection with this, the Government pointed out that the Constitution of BiH did not regulate the issue of spatial planning for the level of Entities, cantons and local self-government units and the use of natural resources. Next, it pointed out that according to Article III(1) and Article III(2) of the Constitution of the Federation of BiH, the Federation of BiH is responsible for spatial planning. In addition, the Government stated that the change of use procedure is regulated by the Law on Spatial Planning and Land Use at the Level of the Federation of BiH (“the Law on Spatial Planning”) and cantonal laws on spatial planning and construction, which strive to ensure the planning of space on the principles of sustainable development. In view of the aforesaid, the Government considered that the planning of the use of forest land was regulated in another procedure, and that the Decision prescribed only the procedure and manner in which the change of use of forest land is carried out. The decision on changing the use of forest land, as stated, only changes the use of the land in accordance with the spatial development plan, but it does not change the ownership of such land. Therefore, starting from the fact that the change of use of forest land has legal consequences, but that such an act of disposal can only be requested by the owner, i.e. the decision on the change of use of forestland cannot be made by Entity bodies without a request from an institution of BiH, the Government considered that the claims that these provisions are in violation of the provisions of the Constitution of BiH were unfounded.

12. As regards the applicant's claims that the FBiH Entity and the Cantons cannot unilaterally dispose of financial benefits from the property, the Government indicated that the fee referred to in Article V of the Decision cannot be used for purposes other than

afforestation aimed at sustainable forest management. The Government contended that this compensation was not financial income from property (sale, purchase, lease, easements, etc.), but income earned based on the reduction of the area under forests. It also pointed out that this provision of the Decision should not be viewed narrowly because, as stated, all owners, i.e. investors who want to change the use of forests and forest land are obliged to pay for it, and it represented a type of environmental tax with the aim of preserving the environment and taxing investors who want to fully cut down the forest on a certain area and permanently change its purpose. Finally, the Government stated that there was not a single provision in the Constitution of BiH stipulating that the institutions of BiH are authorised to dispose of compensation for changing the use of privately owned forest land.

13. As regards the complaints challenging the provisions of Articles VII and VIII of the Decision, which prescribe the possibility of awarding forest land for temporary use for other purposes, the Government stated that the Decision did not regulate the procedure for awarding a concession, nor did it prescribe the authority for awarding a concession, i.e. the competence of the Commission for Concessions of BiH shall not be taken over when it comes to procedures for which it is competent. Accordingly, the Government pointed out that awarding a concession is a condition on the basis of which forest land can be temporarily used for other purposes. Therefore, the Government claimed that in Article VII of the Decision, only the procedure of temporary use of forest land for other purposes is regulated, which is already determined by the spatial development plan and the concession contract. In view of the above, it claimed that this procedure did not deal with property legal relations related to the real estate that is given under concession, but that these relations are dealt with in the earlier concession awarding procedure in accordance with Article 29 of the Law on Concessions of the Federation of BiH and Article 82 of the Rules on the Concession Award Procedure. As to the applicant's allegations that the Federation of BiH did not have the authority to make decisions on the distribution of funds, the Government stated that the compensation is paid because the ecological and economic functions of the forest are reduced, and that these funds represented the designated income of the Federation of BiH and the Cantons, and it cannot be used for other purposes except for returning the money collected from this compensation for the needs of afforestation and other tasks aimed at sustainable forest management.

14. Furthermore, the Government dismissed as unfounded the applicant's claims that the Government, by adopting the Decision on Amendments to the Decision and deleting part of

the provision that prescribed the consent of the Attorney General when adopting a decision on the temporary use of forest land for other purposes, expressed the intention to dispose of State property without any consent of BiH. In this connection, the Government pointed out that based on the decisions made in this procedure, the forest land does not change its purpose or owner, but it still remains forest land, so there is no indirect disposal of that land within the meaning of Article 1(3) of the Law on Prohibition of Disposal. The Government considered that this case is a typical administrative procedure and that, in accordance with the provisions of Article 48 of the Law on Administrative Procedure, the Office of the Attorney General has the right to participate in the proceedings as an authorized body of BiH, and that it can protect the right to property of the State of BiH. In addition, the Government stated that the FBiH Ministry of Agriculture, Water Management and Forestry issued four decisions on temporary use of forest land for other purposes in four cases and those decisions were delivered to the Office of Attorney General as a party to the proceedings. The Office of Attorney General initiated administrative disputes before the Cantonal Court in Sarajevo in order to have those decisions quashed. If the Decision had not been adopted, as the Government further stated, the owners of non-state property would have been prevented from enjoying their property without hindrance because they would not have been allowed to use their land in the manner provided for in the spatial development plan, and then there would have been an indisputable violation of Article 1 of Protocol No. 1 to the European Convention.

15. Finally, the Government stated that the draft Decision was submitted to the Office of Attorney General for comments, proposals and suggestions, but the Office never submitted any observations. In addition, it stated that in the process of drafting the Decision, the Office of the High Representative in BiH, as the only authorised interpreter of the provisions, submitted document no. 029/2023/JLD/SS dated 15 November 2023, which states: "With regard to your request for clarification, please be aware that the change of purpose of forest land obviously results in considerable legal consequences for the property in question and thus would be an act of disposal that requires active involvement and consent of the owner. On the other hand, allocation of the right of temporary use does not represent an act of direct or indirect transfer of ownership and thus should not be considered as disposal in the sense of the State Property Disposal Ban". The Government stated that in accordance with this understanding, the Decision stipulated that only the owner of the property had the right to

submit a request to change the use of forest land, which in the case of State property, are the authorised bodies of the State of BiH.

16. In view of the above, the Government considered that the Decision did not relate to the disposal of State property in such a way as to enable the direct or indirect transfer of ownership of State property, and that the decision did not encroach on ownership rights in any way, but that area is regulated in a uniform way in order to enable the implementation of spatial development plans and the improvement of economic activities in the territory of the Federation of BiH.

IV. Relevant Law

17. The **Constitution of BiH**, as relevant, reads:

Article I(1) and (2)

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 (...)

2. Democratic Principles

Bosnia and Herzegovina shall be a democratic state, which shall operate under the rule of law and with free and democratic elections.

Article II(3)(k)

All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:

k) The right to property.

Article IV(4)(a) and (e)

Parliamentary Assembly

4. Powers

The Parliamentary Assembly shall have responsibility for:

a) *Enacting legislation as necessary to implement decisions of the Presidency or to carry out the responsibilities of the Assembly under this Constitution.*

b) *Deciding upon the sources and amounts of revenues for the operations of the institutions of Bosnia and Herzegovina and international obligations of Bosnia and Herzegovina.*

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

Article VI(5)

Constitutional Court

5. Decisions

Decisions of the Constitutional Court shall be final and binding.

18. The **Law on the Temporary Prohibition of the Disposal of State Property of BiH** (*Official Gazette of BiH*, 18/05, 29/06, 85/06, 32/07, 41/07, 74/07, 99/07, 58/08 and 22/22). For the purposes of this decision, the unofficial and revised text prepared in the Constitutional Court is used, which reads:

Article 1

This Law prohibits the disposal of State Property.

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

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

2. *Immovable property for which the right of disposal and management belonged to the former*

Socialist Republic of Bosnia and Herzegovina before 31 December 1991.

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

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

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

Article 2

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

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

Article 3, paragraph 2

Additionally, the **State Property Commission** established by the Decision of the Council of Ministers of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, 10/05, hereinafter: "the Commission") **may, upon the proposal of an interested party, decide to exempt certain State Property from the prohibition imposed by this Law.**

Article 4

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

19. The **Law on Temporary Prohibition of Disposal of State Property of the Federation of BiH** (Official Gazette of BiH, 20/05, 17/06, 62/06, 40/07, 70/07, 94/07 and 41/08) as relevant reads:

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 any level of government or public organization in Federation of Bosnia and Herzegovina, and

- 2. Immovable property properties for which the right of disposal and management belonged to the former Socialist Republic of Bosnia and Herzegovina (hereinafter: SRBIH) before 31 December 1991, which on the day of adoption of this Law is considered to be owned or possessed by any level of government or public organization or body in Federation of Bosnia and Herzegovina.*

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

Article 2

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

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

Article 3

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

- 1. Assets and rights of enterprises, registered as such, which are subject to privatization as defined in Article 1 of the Law on Privatization of Enterprises (Official Gazette of Federation of BiH, 27/97, 8/99, 45/00, 61/01, 27/02, 33/02, 28/04 and 44/04); and which are currently determined or will be determined as constituting the approved active balance sheet of enterprises as stipulated in the Law on Opening Balance Sheet of Enterprises and Banks (Official Gazette of FBiH, 12/98 and 40/99) and the Decree on Methodology for Preparation of Program of Privatization and Opening Balance Sheet (Official Gazette of FBiH no. 10/98, 26/98, 49/99 and 40/00); as well as the assets and rights that are the subject of small privatization. The competent body, in accordance with the aforementioned laws shall be entitled to determine the amended active balance sheet, but shall communicate to the Commission, ex officio, any addition thereto of property specified by Article 1 of this Law; and*

2. *Assets subject to sale pursuant to the Law on Sale of Apartments with Occupancy Rights (Official Gazette of FBiH, 27/97, 11/98, 22/99, 27/99, 7/00, 32/01, 56/01, 61/01, 15/02 and 54/04).*

Additionally, the State Property Commission established by the Decision of the Council of Ministers of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, 10/05, hereinafter: "the Commission") may, upon the proposal of an interested party, decide to exempt certain State Property from the prohibition imposed by this Law.

Pursuant to Articles 71-74 of the Law on the Defence of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, 88/05), a part of the State property that will continue to be used for defence purposes shall also be exempted from the temporary prohibition of disposal promulgated by this Law.

Article 4

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

20. **The Decision on Changing the Purpose of Forest Land and Temporary Use of Forest Land for other Purposes of the Government of the Federation of BiH** (*Official Gazette of FBiH, 89/23 and 100/23*) as relevant reads:

I

(1) This decision regulates *the method of changing the use of forestland and the temporary use of forest land for other purposes.*

(2) Regarding the provisions of this decision, the property of the State of Bosnia and Herzegovina shall be the property that is defined as such in Article 1, paragraph 2 of the Law on the Temporary Prohibition of the Disposal of State Property of Bosnia and Herzegovina (Official Gazette of Bosnia and

Herzegovina, 18 /05, 29/06, 85/06, 32/07, 41/07, 74/07, 99/07, 58/08 and 22/22) regardless of the owner's current entry in Sheet B of the land registry folio.

- (3) This decision does not regulate ownership or other real rights on real estate and the lease of real estate.*

III

A permit to change the use of forest land is issued in the form of a decision issued by the Minister of Agriculture, Water Management and Forestry of the Federation of Bosnia and Herzegovina ("the FBiH Minister") with the prior opinion of the cantonal ministry responsible for forestry ("the Cantonal Ministry") and the opinion of the Administration for Forestry of the Federation of Bosnia and Herzegovina.

IV

(2) A request to change the use of forestland owned by the State of Bosnia and Herzegovina can only be submitted by an authorized body of the State of Bosnia and Herzegovina.

V

*(1) By the decision allowing the change of land use, the investor is ordered to pay **compensation for the change of use of forest land**, the value of which is determined **in the amount of the cost of building and maintaining new forests** on an area that cannot be less than the area for which the use is changed and the market value of wood obtained by felling.*

(2) The fee is calculated by the expert commission formed by the cantonal ministry, and is paid as assigned revenue in the Budget of the Federation of Bosnia and Herzegovina for the protection, improvement and construction of new forests and for rural development in the amount of 40% (forty percent), i.e. assigned revenue in the budget of the canton in the amount of 60% (sixty percent).

VII

*(1) Forest land may, except for forest management, **be temporarily used for other planned purposes**, as follows:*

(a) for the purpose of exploitation of mineral raw materials and other natural resources during the concession agreement.

b) for the purpose of using renewable energy sources during the concession agreement;

c) for the purpose of performing sports and tourism activities during the concession agreement;

d) for the installation/construction of GSM base stations, water supply, precipitation, waste, gas, hot water, electrical and telecommunication lines;

*(2) **The conceding party, concessionaire or investor referred to in paragraph 1 of this section may submit** a request to the cantonal ministry for the use of forestland for other purposes if this is provided for in the spatial development plan. In addition to the documentation under section IV of this decision, for points a), b) and c) from paragraph (1) of this section, the concession agreement is attached to the request. Exceptionally, for point d) from paragraph 1 of this section, an extract from the spatial arrangement plan is not attached. For point d), a GSM license for base stations and proof of the right to use the land is attached.*

(3) After the complete documentation has been submitted, the cantonal ministry forms a commission from section V of this decision to calculate the compensation from paragraph 5 of this section and submits all the documentation, together with its opinion, to the Ministry of Agriculture, Water Management and Forestry of the Federation of Bosnia and Herzegovina.

4) For the purposes referred to in paragraph 1 of this section, the permit for the use of forestland is issued in the form of a decision, issued by the FBiH minister with the prior opinion of the Forestry Administration of the Federation of Bosnia and Herzegovina.

*(5) **Due to the reduction of the ecological and economic functions of the forest,** the decision allowing the use of forest land for the purposes referred to in paragraph 1 of this section orders the investor to pay compensation, the value of which is determined in the amount of the cost of erecting and maintaining new forests on an area that cannot be smaller than the area that is given for use for other purposes and the market value of the wood that is obtained from felling.*

(6) The fee referred to in paragraph 5 of this section is calculated by the expert committee formed by the cantonal ministry, and is paid as assigned revenue in the Budget of the Federation of Bosnia and Herzegovina for the protection, improvement and construction of new forests and for rural development in the amount of 40% (forty percent), that is, as assigned revenue in the budget of the canton in the amount of 60% (sixty percent).

VIII

(1) After the concession agreement expires, the person who received the decision from section VII of this decision is obliged to carry out re-cultivation-afforestation of the land on the surface where the land was used for other purposes.

V. Admissibility

21. In examining the admissibility of the appeal, the Constitutional Court refers to the provisions of Article VI(3)(a) of the Constitution of BiH and Article 19 of the Rules of the Constitutional Court.

22. Article VI(3)(a) of the Constitution of BiH reads:

The Constitutional Court shall uphold this Constitution.

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

[...]

- Whether 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.

23. Article 19 of the Rules of the Constitutional Court reads:

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

the Constitutional Court lacks jurisdiction to take a decision;

24. The request for constitutional review was submitted by the Speaker of the House of Peoples of the Parliamentary Assembly of BiH at the time of submission of the request, which means that the request was submitted by an authorised person within the meaning of Article VI(3)(a) of the Constitution of BiH.

25. After it established that the request was submitted by an authorised person, the Constitutional Court notes that in this proceeding the question of admissibility of the request is raised according to Article 19(1)(a) of the Rules, which stipulates that the request shall not be admissible in case where the Constitutional Court lacks jurisdiction to take a decision. Therefore, the Constitutional Court should consider whether the issues raised by the relevant requests falls within the scope of the jurisdiction of the Constitutional Court as prescribed under Article VI(3)(a) of the Constitution of BiH.

26. The Constitutional Court observes that it is beyond dispute in this case that the subject of the constitutional review is not the Constitution or laws of the Entities, but the Decision made by the Government and that it is as an act of inferior legal rank compared to the law. As Article VI(3)(a) of the Constitution of BiH stipulates that the Constitutional Court has jurisdiction to decide on any dispute arising under this Constitution, which includes, but is not limited to, whether any provision of the constitution or law of an Entity is in accordance with this Constitution, the Constitutional Court should examine whether, in the present case, it has jurisdiction to review the constitutionality of the disputed Decision, as an act of inferior legal rank compared to the constitution and the law. In this connection, the Constitutional Court points out that in its previous case law, in situations where the issue was raised with regard to the conformity of a general act that is not expressly stated in the provision of Article VI(3)(a) of the Constitution of BiH, in each individual case it assessed the character and the legal nature of the contested acts in relation to the jurisdiction assigned to it on the basis of the aforementioned article, and accordingly expressed its opinion as to whether it would consider the specific request for review of those acts admissible. Therefore, the Constitutional Court indicates that when considering jurisdiction in such cases, it is not limited only to the type of an act, but in each specific case it examines and decides on an *ad hoc* basis whether it is possible to accept jurisdiction.

27. In this regard, the Constitutional Court has established certain criteria and accepted jurisdiction in situations where acts of inferior legal rank compared to the law raise the issue

of violation of human rights and fundamental freedoms protected by the Constitution of BiH and the European Convention (see, for example, the Constitutional Court, Decision on Admissibility and Merits no. *U-4/05* of 22 April 2005, published in *the Official Gazette of Bosnia and Herzegovina*, 32/05; and Decision on Admissibility and Merits no. *U-7/05* of 2 December 2005, published in the *Official Gazette of BiH*, 45/05). Next, the Constitutional Court found that it may establish its jurisdiction to decide the constitutional dispute in which it is claimed that an authority passed a by-law for the adoption of which it had no competence under the Constitution of BiH (see Constitutional Court, Decision on Admissibility and Merits no. *U-10/14* of 4 July 2014, paragraph 79). Moreover, the Constitutional Court emphasized that a “dispute” cannot arise from ordinary and positive legal regulations but it must relate to certain issues regulated by the Constitution of BiH itself (see Constitutional Court, Decision on Admissibility no. *U 12/08* of 30 January 2009, published in the *Official Gazette of BiH*, 62/09, paragraph 7). Finally, the Constitutional Court established that jurisdiction could be accepted if the contested act would go beyond the scope of the law, i.e. if the by-law would regulate the matter that should be regulated by law (see, Constitutional Court, Decision on Admissibility no. *U-5/17* of 28 September 2017, available at: www.ustavnisud.ba).

28. In view of the above, the Constitutional Court considers that the admissibility of this request should be addressed in accordance with the position of the Constitutional Court that jurisdiction for the review of constitutionality can be accepted if the contested act goes beyond the scope of the law, i.e. if the contested act regulates matter that should be regulated by law. Namely, in interpreting the reasons adduced in the decision of the Constitutional Court no. *U-5/17* (*ibid.*), in which it is stated "The Constitutional Court concludes that the Rulebook, prescribing the driver's qualification card, did not go beyond the scope of the Law, as stated by the applicants", it can be concluded that the jurisdiction for constitutional review could be accepted if the disputed act went beyond the scope of the law, i.e. if the by-law regulated a matter that should have been regulated by a law.

29. Turning to the present case, while the disputed Decision is not a "law" in the formal and substantive sense, it is obvious that it was adopted despite the fact that no law governing the issue of State property has been passed at the State level, which refers not only to the issue of ownership rights but also to the management of State property. Furthermore, the contested act was adopted contrary to the ban on the disposal of State land, which includes forests and forest lands according to Article 1(2)(4) of the Law on Prohibition of Disposal. In

this connection, the Constitutional Court points out that in decision no. *U-1/11* of 13 July 2012 (paragraphs 80 and 81, available at www.ustavnisud.ba) and in numerous other decisions that also related to forests and forest land (see Constitutional Court, Decision on Admissibility and Merits no. *U-4/21* of 23 September 2021, paragraphs 39 and 42), it emphasized that "[...] the State of BiH has the right to continue to regulate the State property, i.e. that it is the title owner of State property, and that the provisions of Article IV(4)(e) of the Constitution of BiH prescribe the responsibility of the Parliamentary Assembly necessary for the performance of state duties, and that State property reflects the statehood, sovereignty and territorial integrity of BiH", and that "there is no doubt that this provision gives the State of BiH and the Parliamentary Assembly the authority to regulate the issue of State property. Therefore, this is the exclusive competence of BiH [...]" (*idem*, *U-1/11*, paragraph 80).

30. The Constitutional Court considers that in this particular case, the authority of the body for adopting the contested act is in question, since the contested act deals with disposal of State property, even though no law has been passed at the State level that will resolve the issue of State property. In addition, the disputed act goes "beyond the scope of the law" because it was adopted contrary to the Law on Prohibition of Disposal. Therefore, the Constitutional Court considers that these are all valid reasons for accepting jurisdiction in this case.

31. Bearing in mind the provisions of Article VI(3)(a) of the Constitution of BiH and Article 19(1) of the Rules of the Constitutional Court, the Constitutional Court concludes that the request is admissible because it was submitted by an authorised person, and because there is no formal reason under Article 19(1) of the Rules of the Constitutional Court that would render the request inadmissible.

VI. Merits

32. The applicant contended that the disputed Decision was contrary to Articles I(2), II(3)(k), III(3)(b) and IV(4)(e) of the Constitution of BiH and Article 1 of Protocol No. 1 to the European Convention. On the other hand, the Government contested the allegations in the request, pointing out that the Decision did not deal with the disposal of State property in a way that enables direct or indirect transfer of ownership and that the Decision "does not encroach on the State's ownership rights to forests and forest land".

33. Bearing in mind the substance of the allegations in the request and the response to the request, the Constitutional Court considers that the request raises the issue of whether the disputed Decision, by which the Government regulated the method of changing the purpose of forest land and the temporary use of forest land for other purposes, is in accordance with Articles I(1), I(2) and VI(5) of the Constitution of BiH. In this regard, the Constitutional Court recalls that in several of its decisions it addressed the issue of regulating State property, and that in decision no. *U-28/22*, the Constitutional Court chronologically presented the previous case law regarding this issue (see, Constitutional Court, Decision on Admissibility and Merits no. *U-28/22* of 21 March 2024, published in the *Official Gazette of Bosnia and Herzegovina*, 27/24, paragraphs 24, 26 and 27).

34. Turning to the present case, the Constitutional Court notes that it is beyond dispute that the provisions of the Decision do not only apply to privately owned forests and forest land, but also to forests and forest land owned by the State. However, the Constitutional Court emphasizes that State property, although it is a form of ownership that is similar in structure to private property under civil law, represents a special legal concept, and for this reason enjoys a special status. Proceeding from the fact that the decision regulates the possibility of changing the purpose of forest land and granting temporary use of forest land for other purposes, the Constitutional Court considers that the Decision regulates issues that are directly related to the right of ownership, which gives the owner the authority to own the thing freely and, at his own will, to use it and disposes of it, and to exclude everyone from those rights within the limits set by law. Therefore, in the instant case, the dispute arises as to whether and to what extent the Government could regulate such issues without encroaching on the ownership rights of the State of BiH, by deciding on issues of disposal and distribution of forests and forest land as State property.

35. In connection with the above, the Constitutional Court observes that it follows from the legislation regulating the concepts of forest and forest land that forest means land covered with forest trees or forest bushes, while forest land, in addition to forested land, also includes uncultivated, unused or barren land outside the forest to the extent that it provides or supports the functions of the adjacent forest. Thus, the Constitutional Court observes that forests and forest land as public goods are characterized, among other things, by their purpose, which depends on their natural properties. In such circumstances, it is beyond dispute that a change in the purpose of forests and forest land can call into question their character as a "public good" and thus the character of ownership rights to such land. For this reason, the

Constitutional Court considers that the content of the provision of Article I, paragraph 2 of the Decision, which stipulates that State property is considered to be property that is defined as such in the Law on Prohibition of Disposal, cannot constitute a sufficient guarantee for the protection of State property regardless of current registration of the owner in the land register.

36. Furthermore, the Constitutional Court considers that the aforementioned findings can be applied to the provisions of the Decision which established the authority of the bodies of the Federation of BiH and Cantons to decide on the issue of awarding forest land for temporary use for other purposes. Namely, the Constitutional Court observes that these provisions of the Decision enable factual changes in the use of forest land without the request of the land owner. In this way, based on the decisions made in the administrative procedure before the Entity or Cantonal levels of government, it is possible for forests and forest land to be used for purposes that are not directly related to the character of forests and forest land as "public goods" owned by the State, and that compensation be paid for this in favour of the Federation of BiH. Therefore, the Constitutional Court considers that all of the above indicates that such conversion, including the obligation to pay compensation for the destruction of the forest fund, regardless of their formal and legal determination in the Decision, constitutes forms of disposal of State property, as it stipulates the possibility of encroaching on the ownership rights of the owner of the property - the State, to decide on the method of use and giving forests and forest land for use. For these reasons, the explanation given by the Government that the Decision "does not constitute the disposal of State property in a way that enables direct or indirect transfer of ownership and that the decision does not encroach on the ownership rights of the State over forests and forest land" is unacceptable.

37. In this regard, the Constitutional Court recalls that by Decision no. *U-4/21*, the Constitutional Court found that the challenged provisions of the Law on Forests of the RS, in the part reading "*owned by the Republika Srpska*", are not in conformity with Articles I(1), III(3)(b) and IV(4)(e) of the Constitution of BiH *as the issues related to determining the ownership status of State property, as well as the competence in this regard between the State and the Entity bodies, should be regulated by a law that will be passed at the State level. These issues fall within the exclusive competence of the State of BiH according to the mentioned provisions of the Constitution of BiH.* (paragraph 47). In that decision, in paragraph 40, the Constitutional Court stated: *As the impugned articles of the law stipulate that forests and forestland are "owned by the Republika Srpska", they are thus legally recorded as property of the Republika Srpska and assigned to the Republika Srpska. It has*

been previously explained that State property (property of the State of BiH) includes (also) forests and forestland. Therefore, the Constitutional Court must conclude that the disputed provisions of the Law on Forests are not in accordance with Articles I(1), III(3)(b) and IV(4) (e) of the Constitution of BiH. Furthermore, Article 1(4) of the Law on Temporary Prohibition of Disposal, which is applied at the State level, stipulates that State property consists of rivers, forests and forest land, in respect of which the Constitutional Court of Bosnia and Herzegovina found that they represent State property in its decisions in cases no. U-9/19 and no. U-4/21. In addition, the Constitutional Court indicates that Article 4 of the Law on the Temporary Prohibition of the Disposal of State Property stipulates that the temporary prohibition on the disposal of State Property in accordance with this Law shall be in force until entry into force of State-level legislation regulating the rights of ownership and management of State property, adopted by the Parliamentary Assembly of Bosnia and Herzegovina, or the High Representative decides otherwise.

38. The Constitutional Court recalls that there is no regulation at the level of BiH regulating the competence of Entities to make decisions on changing the use of forest land and temporary use of state-owned forest land for other purposes. The only option prescribed in Article 3(2) of the Law on Prohibition of Disposal is that *the State Property Commission established by the Decision of the Council of Ministers of Bosnia and Herzegovina may, upon the proposal of an interested party, decide to exempt certain State property from the prohibition imposed by this Law.* There was no such decision made by the Commission for State Property, regardless of the statements in the response to the request - that the Government tried to take into account the fact that the case in question concerned State property. In addition, it follows from the response to the request that State institutions oppose to making such or similar decisions. Namely, the Government itself stated in its response that the Office of Attorney General initiated administrative disputes before the Cantonal Court in Sarajevo in order to quash the decision issued by the FBiH Ministry of Agriculture, Water Management and Forestry on the temporary use of forest land for other purposes. Therefore, it clearly follows from such actions of the Office of Attorney General that the State authorities oppose to this kind of disposal of State property by the Entity Government.

39. In view of the above, regardless of the legal question as to whether the Government had the constitutional authority to regulate the procedure for changing the use of forests and forest land in connection with the provisions on spatial planning, the Constitutional Court considers that the Government, considering the character and real implications of the

Decision on forests and forest land that constitute State property, did not have the authority to adopt the above Decision with regards to forests and forest land owned by the State. As indicated above, in its case law, the Constitutional Court has already taken a position on the status of State property, which includes forests and forest land. Therefore, the Constitutional Court has no reason for departing from its case law in this particular case. Namely, the forests and forest land cannot be disposed of in any way until the issue of State property is resolved by a law that will be passed at the State level, which implies that Entities cannot claim competence to decide on ownership rights to State property.

40. Finally, Article 2(2) of the Law on Prohibition of Disposal stipulates that *any decision, act, contract, or other legal instrument, disposing of property referred to in Article 1 of this Law concluded contrary to provisions of this Law after its entry into force, shall be null and void*. The fact that the Parliamentary Assembly of BiH has not yet passed a law regulating the right to own and manage State property cannot be an excuse for adopting the disputed Decision, on the basis of which the purpose of forests and forest land will change or the forest land will be given in order to be temporarily used for other purposes.

41. Bearing in mind the conclusion that the Government, without a law not being passed at the State level, was not competent to regulate the method of changing the use of state-owned forest land and temporary use of that land for other purposes, the Constitutional Court dismisses as irrelevant the Government's statements referring to the Decision's provisions that, allegedly, provide protection to the State property in those proceedings. In addition, the Constitutional Court considers that the statements that these provisions were adopted with the aim of enabling implementation of spatial development plans and improvement of economic activities on the territory of the Federation of BiH carry no weight, considering the lack of competence of the Entity government to adopt such a decision.

42. As regards the opinion of the Office of the High Representative, referred to by the Government in its response to the request, the Constitutional Court emphasizes that while it takes into consideration the opinions of the Office of the High Representative, those opinions are not binding. In the instant case, the Constitutional Court is informed of the opinion the High Representative submitted to the Government. However, the Constitutional Court notes that the Government has completely ignored the part of the opinion which states that "the change of purpose of forest land obviously results in considerable legal consequences for the property in question and thus would be an act of disposal that requires active involvement

and consent of the owner". When giving an opinion on the possibility of granting the right of "temporary use", the Office of the High Representative did not deal with the question of what that use would be, how long "temporary use" would last, and the like. Namely, without such indicators, there could be a complete factual change in the use of forest land without any involvement of the State as the owner of forests and forest land, which is not in accordance with the Law on Prohibition of Disposal and is therefore contrary to the Constitution of BiH.

43. In such circumstances, and bearing in mind its earlier case law, the Constitutional Court concludes that the contested Decision is contrary to Articles I(1), I(2) and VI(5) of the Constitution of BiH.

44. In deciding on the effectiveness of the decision of the Constitutional Court, in accordance with Article 61(1) of the Rules of the Constitutional Court and bearing in mind the content of Article 2(2) of the Law on Prohibition of Disposal, the Constitutional Court has found that the challenged Decision is void *ab initio*. Furthermore, proceeding from the fact that it follows from the Government's response that decisions on the temporary use of forest land for other purposes were adopted on the basis of the Decision, the Constitutional Court, in accordance with Article 61 of its Rules, ordered the Government and the FBiH Ministry of Agriculture, Water Management and Forestry to annul all decisions and activities that are based on the disputed Decision. Accordingly, no temporary user is to be considered a *bona fide* user and does not enjoy protection based on the regulations governing real property rights.

Other complaints

45. Lastly, the Constitutional Court notes that the applicant also contested the constitutionality of the challenged laws from the aspect of Articles II(3)(k), III(3)(b) and IV(4)(e) of the Constitution of BiH and Article 1 of Protocol No. 1 to the European Convention. However, the Constitutional Court considers that, given the findings already made, there is no need to examine these allegations separately.

VII. Conclusion

46. The Constitutional Court concludes that the Decision is not in accordance with Articles I(1), I(2) and VI(5) of the Constitution of BiH because the Government had no competence to regulate the method of changing the use of forests and forest land and the

temporary use of forest land for other purposes, as these provisions refer to the disposal of forests and forest land as State property that falls within the scope of exclusive jurisdiction of the institutions of BiH.

47. Pursuant to Article 64(4) of the Rules of the Constitutional Court, the Decision on Interim Measure no. *U-3/24* of 20 May 2024 ceases to have legal effect.

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

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