

The Latest Proposal of the Law on State Property of Bosnia and Herzegovina
– Between Political Will and Constitutional Impossibility

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ABSTRACT

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In November 2025, four members of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, as authorized proposers, submitted to the House of Representatives a Proposal of the Law on State Property for consideration under urgent procedure, as it was considered in their opinion “*a draft law of a high degree of urgency*.” The proposal was not adopted and was subsequently, in accordance with the Rules of Procedure of the House of Representatives, referred to regular legislative procedure. It should be emphasised that this was not the first attempt to resolve this extremely important issue. By a Decision of the Council of Ministers of BiH in December 2004, a State Property Commission had been established, tasked with drafting criteria for determining which property belongs to Bosnia and Herzegovina and which belongs to the entities and the Brčko District of BiH. Nevertheless, this commission failed to produce any results from 2004 to 2025. Besides this, the Constitutional Court of BiH also significantly engaged in resolving this issue through its decisions. In order to achieve the goals, the activities of the Office of the High Representative (OHR) for BiH need reconsideration.

Keywords: Constitution of BiH, Bosnia and Herzegovina, the Republic of Srpska, state property, Office of the High Representative for BiH, Constitutional Court of BiH.

I. INTRODUCTORY REMARKS

In recent years, the public in Bosnia and Herzegovina has witnessed exhausting debates (and disagreements) on a daily basis, primarily among representatives of political parties, over perhaps the most difficult political issue in Bosnia and Herzegovina, which, during the thirty years of the Dayton Bosnia and Herzegovina, despite all efforts of domestic and international actors¹—primarily those same politicians, but also certain legal experts—has (not) been resolved. Whether the issue has been resolved remains contested, as there is no unified position within

¹ In 2023, Office of the High Representative (OHR) for BiH established a special Expert Working Group tasked with “preparing, with the participation and contribution of international experts, a series of conclusions, recommendations, and principles to be presented to political decision-makers”. A member of this Expert Working Group was also the co-author of this paper Prof. Mitrović. Prof. Mitrović left the group after the first session with the following explanation: At the first and only session of the Working Group that I attended, the views of the representatives of the Republic of Srpska (Prof. Mladen Mandić, PhD and Prof. Ljubinko Mitrović, PhD), on the one hand, and legal experts from the Bosniak community (primarily Prof. Larisa Vilić, PhD), on the other hand, were strongly polarised. After this first, consultative session, it was completely clear that the implementation of the above task was simply impossible. Given all the events and completely contradictory views expressed at the first working meeting of the Expert Working Group, and especially after receiving the minutes of that first meeting and the draft conclusions, Prof. Mitrović realised that he could not continue working in this Working Group, and therefore, shortly after its establishment, he withdrew from its work, about which he informed the Office of the High Representative for BiH, as well as the wider Bosnian-Herzegovinian public, in writing”.

Bosnia and Herzegovina. According to the majority of participants from the Republic of Srpska, the issue was resolved by the Dayton Peace Agreement.²

Through several points elaborated below, and primarily through an analysis of the most recent Proposal of the Law on State Property submitted at the end of last year into parliamentary procedure, we attempt to provide our view on the entire situation and answer the long-standing question: Why is state property a stumbling block in Bosnia and Herzegovina?³

It should also be noted that in the modern world only two countries have a single law regulating the issue of so-called state property: Montenegro and Uzbekistan. On the other hand, examples from Switzerland,⁴ Germany, Belgium, Sweden, Spain, and Austria show that federal or autonomous units generally retain control and management over forests, agricultural land, waters, energy facilities, and other natural resources, while central authorities manage only what is clearly and explicitly defined by constitutions and laws. Similarly, in most classic federations such as the United States or Australia, territory belongs to federal units, while the federation retains ownership only of land necessary for federal institutions.

² In the RTRS program on January 24, 2023, the President of the Republic of Srpska, Milorad Dodik, also spoke about state property: "Property was resolved by the Dayton Agreement. No Constitutional Court will resolve property, nor the House of Representatives, nor the House of Peoples at the level of BiH. Property, as far as its status is concerned, is the property of the Republic of Srpska. This is inviolable and cannot be discussed and will not be on the agenda."

³ The only thing that is clear when it comes to state property is that political leaders in Bosnia and Herzegovina cannot agree on practically any segment of this problem. Therefore, there is no consensus among them on the answers to any of the following questions: what is the definition of state property, what constitutes state property, who is the legal owner of state property, how should the status of state property be decided, which level of government is competent to regulate the status of state property, and who manages state property and how (more in: *State and Property: Policy Analysis*, Atlantic Initiative, Sarajevo, 2014). In order to further complicate the situation, the „so-called high representative” in Bosnia and Herzegovina, Mr. Christian Smith by his own decision, in April 2022 enacted the Law on amendments and supplements to the law on temporary prohibition on the disposal of state property of Bosnia and Herzegovina, thereby extending the temporary ban on the disposal of state property until the entry into force of a state-level law regulating the rights of ownership and management of state property. Under this Law, Article 4 is amended in a way: "The temporary ban on the disposal of state property in accordance with this law shall remain in force until the entry into force of a state-level law regulating the rights of ownership and management of state property, which would be adopted by the Parliamentary Assembly of Bosnia and Herzegovina, or until the High Representative decides otherwise."

⁴ In Switzerland, the cantons are the original holders of sovereignty and owners of the territory, while the Swiss Confederation has only those powers that the cantons have transferred to it by the Constitution of the Swiss Confederation.

II. THE LATEST PROPOSAL OF THE LAW ON STATE PROPERTY

As stated in the abstract, in November 2025, four members of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, as authorized proposers, submitted to the House of Representatives a Proposal of the Law on State Property for consideration under urgent procedure, as it was considered in their opinion 'a draft law of a high degree of urgency'. The proposal was not adopted and was referred, in accordance with the Rules of Procedure of the House of Representatives, to regular legislative procedure.

The proposal contains a number of highly problematic provisions (many of them unconstitutional), and here we point out the most important ones. The provision of Article 4 (the concept of state property) of the Proposal defines what is considered to be the state property of Bosnia and Herzegovina, including: 1) public goods such as atmospheric air, airspace, river waters, drinking or technical water, lake and sea waters, the seashore, radio frequencies...; 2) public infrastructure such as public roads, streets, squares, railway, electricity transmission, gas, heating, telecommunication corridors and networks...; 3) Goods of general interest such as construction land, agricultural land, forests and forest land, protected natural areas, flora and fauna, and cultural, historical, and ecological assets...; 4) national and cultural-historical monuments of Bosnia and Herzegovina.

The provision of Article 8 of the Law Proposal determines the holder of the right of ownership of all state property in such a way that Bosnia and Herzegovina is the holder of the right of ownership of all state property (listed in the provision of Article 4 of the Law Proposal). On the other hand, paragraph 2 of this Article states that the entities and other levels of government in Bosnia and Herzegovina may manage and use or own such state property needed to exercise their individual competencies, to the extent authorized by this Law, or another law enacted by the Parliamentary Assembly of BiH.

In terms of its constitutionality, the provision of Article 12 of the Law Proposal also appears compelling, which constitutes the so-called The Unified State Property Register as a public register that represents a comprehensive and complete, methodologically standardised and continuously updated record of state property, general goods, public goods and goods of general interest that are at the disposal and managed by Bosnia and Herzegovina and its authorities.

The provisions of Article 25 of the Law Proposal stipulate that the Directorate for the Management and Recording of State Property is established as an independent administrative organization with its headquarters in Sarajevo to perform the affairs related to state property, acquisition, management, disposal of state property in accordance with this law, and to keep records and the Unified

State Property Register.

Hereby we can conclude that the cited provisions (along with some others that we have not elaborated this time) from the proposal of the Law on State Property are unconstitutional, which will be elaborated in more details in the following chapters of this paper. On the other hand, the Republic of Srpska has no right, nor may it give its property to anyone or under any pretext. The adoption of the proposed Law on State Property would precisely entail that.

III. THE CONCEPT OF STATE PROPERTY

The concept of state property is very broad and complex, since it encompasses a number of different categories of property, public goods and goods in general use, the owners of which are, in addition to the level of Bosnia and Herzegovina, certainly also other levels of government, i.e. entities, cantons, cities, municipalities. The concept of state property does not exclusively apply to the property that belongs to and is owned by Bosnia and Herzegovina as a collective, but this term encompasses, i.e. implies the property of all, i.e. lower levels of government – entities, cantons, cities and municipalities.⁵ The above is certainly supported by the position of the Steering Board of the Peace Implementation Council, which back in 2004 stressed that the issue of (state) property should be addressed in a way that ensures that all levels of government have ownership of the resources (property) they need to exercise their powers. Any other interpretation of the concept of state property is completely unacceptable, especially if it is known that state property arose from social property and that the titleholders of social property were all levels of public authority. For example, the titleholder of state (i.e. public) property is most certainly a city or municipality (and not Bosnia and Herzegovina) that built a sports hall, water supply system or local road using its own funds. Unfortunately, it seems that for a significant number of legal experts from the Federation of Bosnia and Herzegovina, as well as some legal experts from the Office of the High Representative for Bosnia and Herzegovina, state property equals property the titleholder of which is exclusively and solely Bosnia and Herzegovina.

The Constitutional Court of Bosnia and Herzegovina has also embarked on defining the concept of state property (completely contrary to the Constitution

⁵ Aware of the legal uncertainty implied by this situation, the Steering Board of the Peace Implementation Council decided that this issue should be addressed in a manner that ensures that all levels of government have ownership of the resources they need to exercise their responsibilities. In its Declaration adopted at the level of Political Directors in Sarajevo on 24 September 2004, the Steering Board called for the achievement of a “durable solution” to the “issue of state property” (more in: Legal observations of the Legal Department of the Office of the High Representative on the Applicant’s request in case U – 1/11).

of Bosnia and Herzegovina and its competences granted by that Constitution), Decision U-1/11, point 82 from July 2012, examining whether the Republic of Srpska had constitutional competence to adopt the Law on the Status of State Property Located on its Territory. Even there the concept of “state property”⁶ was defined in a very vague and confusing way, even for lawyers.

IV. THE CONSTITUTION OF BOSNIA AND HERZEGOVINA AND THE METHOD OF SOLVING THE ISSUE OF STATE PROPERTY

Even for someone with non-legal understanding of the Constitution of BiH,⁷ it is quite clear that this highest legal act of Bosnia and Herzegovina does not contain the explicit provision which deals with the issue of state property, including agricultural land, i.e. the issue of the division of state property.⁸ This

⁶ According to that decision, “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 that reason enjoys a special status. State property is characterized by the public law nature of the relationship between subjects and the use of that property, as well as its owner. It includes, on one hand, movable and immovable things that are in the hands of the public authority and which serve it for the purpose of exercising that authority, on the other hand, it can include ‘public good’. It, by its nature, as a priority, it serves all people in the state. As such, ‘public good’ can be exempted from legal circulation because of its importance, since it is the only way to preserve and protect it”. Furthermore, “the Constitutional Court reiterates that state property has a special status. It includes, on one hand, movable and immovable things that are in the hands of the public authority and which serve it for the exercise of that authority. On the other hand, ‘state property’ can include a public good, which by its nature serves as a priority for all people in the state (flowing water, protection of climatic conditions of life, protection of other natural resources, such as forests, necessary state infrastructure network in the sense of Annex 9 of the General Framework Agreement for Peace in Bosnia and Herzegovina etc.). Such property is a reflection of statehood, its sovereignty and territorial integrity. Also, the interest of Bosnia and Herzegovina cannot be ignored, as part of the “state property” that serves all the citizens of Bosnia and Herzegovina, which is not necessary for the effective execution of a specific administrative-territorial level in the state. In addition, this property can also serve as “another way of financing the obligations of the institutions of Bosnia and Herzegovina” IV/4. b) in connection with Article VIII/3. Constitution of Bosnia and Herzegovina”.

⁷ Constitution of Bosnia and Herzegovina, Annex IV of the General Framework Agreement for Peace in Bosnia and Herzegovina and Official Gazette of Bosnia and Herzegovina, No. 25/2009 – Amendment I.

⁸ In a separate opinion on disagreement with the Decision of the Constitutional Court of Bosnia and Herzegovina in case No. 1/11, Judge of the Constitutional Court of Bosnia and Herzegovina Zlatko M. Knežević points out: “Finally, I regret that the issue of a constitutional gap, which has its serious consequences for the citizens of Bosnia and Herzegovina and its constitutional system (and the constitutional system of Bosnia and Herzegovina consists, in addition to the Constitution of Bosnia and Herzegovina, of the entity constitutions, and some other constitutional sources of a domestic and international nature), was not resolved in a manner that, in my deep conviction, is Bosnian-Herzegovinian. In accordance with the Constitution of BiH, and if there is no constitutional provision, then through the division of rights and competences

point of view was ultimately taken by the Constitutional Court of BiH, which in paragraph 63 of Decision U-1/11 of 13 July 2012, states: “although the Constitution of BiH divides competences between the state and the entities, it does not contain a single provision related to state property”.

This position is also confirmed by the Legal department of the Office of the High Representative for BiH,⁹ which states in Legal Observations regarding the applicant’s request in the case of the Constitutional Court of BiH – U-1/11 from 2011 the following: “The Constitution of BiH DOES NOT CONTAIN explicit provisions on how state property should be divided among different levels of government, and therefore the State and the Entities have not agreed on what their individual rights are to use, manage and dispose of such property, including the property over which the Socialist Republic of Bosnia and Herzegovina had the right of disposal, and the property that belonged to Bosnia and Herzegovina under the international Agreement on Succession Issues”¹⁰. A similar position was taken by the Atlantic Initiative in 2014, stating: “The problem of the status of state property in Bosnia and Herzegovina is the result of the lack of legislation at the state level that would define what is considered state property. This applies to both movable and immovable property, both in BiH and abroad. In addition, there is no legislation that defines the legal owner and users of state property.”

In the light of the above, it can be safely stated that there is no provision regarding state property in the Constitution of BiH, but also in the entire legislation in Bosnia and Herzegovina.¹¹ Therefore, the position of the representatives of the Republic of Srpska, according to which the issue of the distribution of state property was defined long ago by the Dayton Peace Agreement (more on this

between the state and the entities or to paraphrase the opinion of the Venice Commission, [...] both the state and the entities have the right to property in accordance with their needs and the territorial-functional principle.”

⁹ The following official position of this institution can be found on the website of the Office of the High Representative for BiH: “Myth 2: Status of State Property Claim: The issue of state property has already been resolved.” Reality: The issue of state property was not resolved in Dayton in 1995 and still represents one of the goals and conditions for the end of international supervision in BiH. The Dayton Agreement and the Constitution of BiH established BiH as the successor of the former Republic of Bosnia and Herzegovina. The Constitutional Court of BiH confirmed that BiH is a titleholder of state property as one of the successor states of the former SFRY. A comprehensive and sustainable solution for the distribution of property between the state and other levels of government should be adopted by the Parliamentary Assembly of BiH. Until then, those who suffer due to the current legal uncertainty are citizens of Bosnia and Herzegovina.

¹⁰ More: Legal observations of the Legal Department of the Office of the High Representative regarding the applicant’s request in case U – 1/11.

¹¹ More: Atlantic Initiative State and Property: Policy Analysis, (2014).

later),¹² seems accurate.

V. DIVISION OF COMPETENCES IN THE CONSTITUTION OF BOSNIA AND HERZEGOVINA

The principle of presumption of competence in favour of the entities is one of the basic principles of the constitutional order of Bosnia and Herzegovina (point 1 of Article III determines the competences of the institutions of Bosnia and Herzegovina, and point 3 of Article III, states that everything that is not explicitly entrusted to the institutions of Bosnia and Herzegovina belongs to the entities). Namely, according to the Constitution of Bosnia and Herzegovina (point 3a, Article III): “*all state functions and powers that are not explicitly given in this Constitution to the institutions of Bosnia and Herzegovina belong to the entities*”. Therefore, residual competence within Bosnia and Herzegovina belongs to the entities, which means that all competences that are not explicitly given to the institutions of Bosnia and Herzegovina belong to the entities. On the other hand, Bosnia and Herzegovina cannot perform (execute) any task unless it is assigned to it by a special constitutional provision, i.e. unless it is assigned to it based on the consent and agreement of the entities (through coordination, i.e. additional competences). Likewise, it should be particularly borne in mind that Bosnia and Herzegovina is not authorized to assign (determine) certain competences to the entities.

In addition to all of the above, it must also be taken into account that the entire text of the Constitution of BiH does not include any provision that grants competence to any institutions or bodies at the level of Bosnia and Herzegovina (including the Parliamentary Assembly of BiH)¹³ to regulate, through legislative or other normative activity, the issue of state property, property rights and the protection of property or property rights. There are different interpretations

¹² See: Siniša Karan, ‘Dayton Peace Agreement - twenty-five years of dismantling, ANURS, Round Table, Dayton Peace Agreement - twenty-five years later’ (2020); Mile Dmičić, ‘Constitutional status of Republika Srpska within Bosnia and Herzegovina - normative and real, Republika Srpska - ten years of the Dayton Peace Agreement, Academy of Sciences and Arts of Republika Srpska’ (2005) 163.

¹³ On the website of the Office of the High Representative for Bosnia and Herzegovina, one can also find the following, certainly very intriguing (it is unclear what it is based on) official position of this institution: Myth 5: Competence; Claim: The Parliamentary Assembly of BiH is not competent for the issue of state property because it belongs to the entities. Reality: The Parliamentary Assembly of Bosnia and Herzegovina consists of 42 deputies elected from both entities and 15 delegates directly elected by the Parliament of the Federation of BiH and the National Assembly of the Republic of Srpska. This means that, according to its constitutional powers and composition, the Parliamentary Assembly of BiH is the only competent body and best place to adopt a comprehensive law that will resolve the issue of state property for the betterment of all citizens of Bosnia and Herzegovina.

nowadays, primarily in the Federation of BiH, that derived from some other provisions of the Constitution of BiH (such attempts to rewrite the Constitution of BiH seem highly incorrect). Consequently, it is simply impossible, without an adequate amendment to the Constitution of BiH, to establish any new competencies for any institutions or bodies, including the Parliamentary Assembly of BiH, or to give it competence over something that it does not have according to the Constitution of BiH as the highest legal act.

VI. THE CONSTITUTIONAL COURT OF BOSNIA AND HERZEGOVINA AND STATE PROPERTY

According to the Constitution of BiH, legislative power is exercised exclusively by the Parliamentary Assembly of BiH, and according to the provision of point 4 of Article IV, of the Constitution of BiH, which reads: “*The Parliamentary Assembly is competent for: a) Enacting laws necessary for the implementation of decisions of the Presidency or for the performance of the functions of the Assembly under this Constitution*”.

However, by designating the Parliamentary Assembly of BiH in its Decisions No. U-1/11 and Decisions No. U-4/21, as the competent body that will regulate the so-called state property through a special law, the Constitutional Court of BiH has transformed itself from an interpreter and protector of the Constitution of BiH (as are these courts in all the countries in the world) into a constitution-maker (creating its “own” norms and unconstitutionally making judgements according to these norms), which is completely unacceptable¹⁴. On

¹⁴ In a separate opinion on disagreement with the Decision of the Constitutional Court of BiH, in case number 1/11, Judge of the Constitutional Court of BiH Zlatko M. Knežević says: “Therefore, it is acceptable to me (whether I agree with the decision or not) to declare the article/articles or the entire law that is being challenged to be inconsistent with the Constitution, but not to put the Constitutional Court in the role of a constitution-maker and change an explicit provision of the Constitution on what belongs to the state as a competence and what (everything else) to the entities. This very dangerous tendency according to which the Constitutional Court, through the decisions of nine judges, gives itself the right to simultaneously interpret the text of the Constitution and, not only model but essentially pass new provisions of the Constitution, casts serious doubt on the legitimacy of the representative who was acquired in the General Elections and who alone has the right to change the Constitution”. Also, in a separate opinion on disagreement with the Decision of the Constitutional Court of BiH, in case number 4/21, Judge of the Constitutional Court of BiH Zlatko M. Knežević says: “...Namely, at the risk of simplification, but with the intention of not conveying it completely in this text reasoning of the decision (which is available), for me the decision of the majority boils down to three disputed issues (in addition to the already mentioned general positions in Ad II). They are:

a) identification of public good and state property b) the issue of serious violation of the constitutional system of Bosnia and Herzegovina in the sense of toleration, so even emphasizing different legal solutions on the same issue (forests), until acceptance discriminatory status of one constitutional category (Republic of Srpska in relation to another entity and the Brčko District of Bosnia and Herzegovina), which is notoriously contrary to the constitutional principle rule of law; c) the majority opinion, which places the Constitutional Court as superior to the Parliament

the other hand, the competences of the Constitutional Court of BiH are set out in the Constitution of BiH (Article VI, point 3)¹⁵ and it is simply impossible to change, supplement, or reduce them, or to expend competencies without changing that same Constitution. This is the case everywhere in the world, and it should be the same in Bosnia and Herzegovina too. Consequently, the Constitutional Court of BiH could decide whether or not an article/articles, or even a specific law as a whole, are in accordance with the Constitution of BiH. However, the Constitutional Court of BiH could not do so, because no provision of the Constitution grants it the authority to carry out the distribution of constitutional competences, or to allocate competences of various constitutional categories¹⁶. Ultimately, it is quite clear that the Constitutional Court of BiH, with its decisions on the so-called state property, has repeatedly grossly violated the Constitution of BiH, going beyond the scope of its jurisdiction prescribed by the Constitution of BiH.

VII. WHY IS THERE NO AGREEMENT AND WHAT ARE THE POSSIBLE SOLUTIONS?

There are three possible directions to this problem, all implying a compromise between all the parties, namely:

of Bosnia and Herzegovina because it is from the category of negative legislator (which our Constitution prescribes as the competence of the Constitutional court) exceeded the category of a positive legislator before passing the law. To clarify, the competence of the Constitutional Court is to evaluate whether a particular provision is in relation to the adopted laws or the entire law in accordance with the Constitution, and not to mandate in a situation where the law has not been passed to the Parliament what must be in the law or what must not be in the law (as it is in the specific case)”.

¹⁵ Point 3 of Article VI, of the Constitution of Bosnia and Herzegovina states: The Constitutional Court shall uphold this Constitution. a) The Constitutional Court shall have exclusive jurisdiction to decide any dispute that arises under this Constitution between the Entities or between Bosnia and Herzegovina and an Entity or Entities, or between institutions of Bosnia and Herzegovina, including but not limited to:- Whether an Entity’s decision to establish a special parallel relationship with 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. b) The Constitutional Court shall also have appellate jurisdiction over issues under this Constitution arising out of a judgment of any other court in Bosnia and Herzegovina. c) The Constitutional Court shall have jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is compatible with this Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina; or concerning the existence of or the scope of a general rule of public international law pertinent to the court’s decision.

¹⁶ Separate opinion on disagreement with the Decision in case number 1/11, Judge of the Constitutional Court of Bosnia and Herzegovina Zlatko M. Knežević.

a) for Serb representatives, the issue of state property (including agricultural land, forests, rivers, roads, squares...) was resolved by the Dayton Peace Agreement. In the absence of exact provisions of the Constitution, the wording of the Geneva Principles is in support of this position. The Geneva Principles (the Geneva Principles of 8 September 1995¹⁷ in the Article 2 stipulate: “Bosnia and Herzegovina shall consist of two entities, the Federation of Bosnia and Herzegovina established by the Washington Agreement and the Republic of Srpska”. The following provision, namely provision 2.1., stipulates: “The ratio of 51:49 of the territorial proposal of the Contact Group is a foundation of the agreement. That territorial proposal is open for changes resulting from the joint agreements”. Finally, provision 2.2. states: “Either entity will continue to function with their respective constitutions (amended in the manner to match these basic principles)) and the New York Principles (the continuation of the Geneva Principles are so-called New York Principles of 26 September 1995, which in Article 6.4. stipulate: “Constitutional Court has jurisdiction to decide all questions arising under the Constitution of Bosnia Herzegovina “). The aforementioned principles, which fully define the issue of territorial demarcation between the Federation of Bosnia and Herzegovina and the Republic of Srpska¹⁸, are also clearly confirmed in the General Framework Agreement for Peace in Bosnia and Herzegovina, which states in its preamble: “Affirming their commitment to the Agreed Basic Principles issued on September 8, 1995 (Geneva Principles), the Further Agreed Basic Principles issued on September 26, 1995 (New York Principles) and the cease-fire agreements of September 14 and October 5, 1995 ...”

Likewise, Annex 2, entitled Agreement on Inter-Entity Boundary Line between the Republic of Srpska and the Federation of Bosnia and Herzegovina, states: Article 1 - Inter-Entity Boundary Line - The boundary between the Federation of Bosnia and Herzegovina and the Republic of Srpska (the “Inter-Entity Boundary Line”) shall be as delineated on the map at the Appendix. Article

¹⁷ On September 8, 1995, the Republic of Srpska and the Federation of Bosnia and Herzegovina, based on United Nations Security Council Resolution No. 942 of September 23, 1994, which approved the territorial division between the Republic of Srpska and the Federation of Bosnia and Herzegovina in the ratio of 49% of the territory to the Republic of Srpska and 51% to the Federation of Bosnia and Herzegovina, concluded a mutual agreement – the Geneva Principles.

¹⁸ The following official position of this institution can be found on the website of the Office of the High Representative for Bosnia and Herzegovina: Myth 3: Territory; Claim: The issue of property distribution is being insisted on in order to deprive the entities of territory. Reality: The issue of state property does not affect the territorial ratio established by the Dayton Peace Agreement. For example, prospective military property registered as the property of the Ministry of Defense of Bosnia and Herzegovina is still part of the entity territory. The same applies to property owned by private individuals or companies, or to large industrial complexes with foreign capital such as the steelworks in Zenica or the refinery in Brod. The issue of state property is a technical and functional issue in order to find the best way to put state property at the service of the well-being of all citizens of Bosnia and Herzegovina.

2 - Adjustment by the Parties - The Parties may adjust the Inter-Entity Boundary Line only by mutual consent, and then Annex 2 entitled Agreement on the Inter-Entity Boundary Line and Related Issues, and the Constitution of Bosnia and Herzegovina¹⁹.

Therefore, the Republic of Srpska finds only acceptable and possible the so-called “territorial principle” according to which “all state property existing at the time of entry into force of Annex 4 to the General Framework Agreement shall be the property of the entity in which it is located, and the joint institutions of Bosnia and Herzegovina may use the property necessary for the exercise of their constitutional and legal competences, to the extent that the entities may authorize it by law”;

b) on the other hand, the political representatives of Bosniaks²⁰ in their statement of April 19, 2023, point out: 2. ...The description of state property, given by the Constitutional Court of Bosnia and Herzegovina, clearly states that state property does not only mean a set of real estate that serves the public authority to exercise its powers. State property is also public goods (sea water, seabed, river water, river beds, lakes, mountains and other natural resources, public and transport network, transport infrastructure), which serve all people in the state as a priority. State property reflects statehood, independence, sovereignty and territorial integrity that belong exclusively to the state of Bosnia and Herzegovina, and not to the entities. 3. ...Only the state of Bosnia and Herzegovina has the exclusive competence to regulate all issues related to state property by general or individual legal acts adopted by the competent authorities in accordance with a precisely defined procedure. These decisions must be respected by the entities, as well as all other lower levels of government. 4. ...The State Property Law should ensure efficient and transparent management and disposal of state property of Bosnia and Herzegovina, which will serve to achieve a higher standard

¹⁹ The Constitution of Bosnia and Herzegovina, in its preamble, states: “Recalling the Basic Principles agreed in Geneva on September 8, 1995, and in New York on September 26, 1995, Bosniacs, Croats, and Serbs, as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina hereby determine...”

²⁰ In the article of the Factor magazine dated May 13, 2023 titled: State property: OHR hides the names of the members of the Working Group... “the so-called expert on state property issues Muharem Cero explains that there are three types of property - property from continuity, which includes property that was present on December 31, 1991, property from succession, the inheritance of Yugoslavia, and the succession agreement, which states that the property becomes the property of the one on whose territory it is located on the day of the declaration of independence. State property includes property on the entire territory of the state of BiH, and this includes rivers, forests, forest land, agricultural land. It is precisely this part of the property that politicians from the RS do not allow to be registered with the state. M. Cero warns that by lowering state property to the entity level, the state of BiH would become what Milorad Dodik advocates, which is a state union and would encroach on the territorial integrity of Bosnia and Herzegovina”.

of living for the population and to protect the interests of the state of Bosnia and Herzegovina, and to ensure responsible disposal, care and improvement of natural resources, cultural and historical heritage and other strategic interests of the state of Bosnia and Herzegovina. This is the principle of the so-called “legal continuity” which was advocated by the representatives of the Bosniak people in 2004, and later in the work of the Commission for State Property formed by the Council of Ministers (this solution was essentially transferred to the latest Law Proposal from November 2025), and according to this principle „Bosnia and Herzegovina, as a legal successor of the Republic of Bosnia and Herzegovina, is the holder of the right of ownership of all state property, provided that the entities and other levels of government may use or own the property they need to exercise their individual competencies, to the extent that they may be authorized by a law passed by the Parliamentary Assembly of Bosnia and Herzegovina“²¹.

c) as a third compromise solution, the State Property Commission formed by the Council of Ministers produced a so-called “functional-territorial” distribution of state property. According to this “compromise” theory “the institutions of Bosnia and Herzegovina are the owners of all state property located within its internationally recognized borders, which they need to exercise their constitutional and legal powers, as well as all property of the former SR BiH and property from the Succession Agreement located abroad. According to the aforementioned theory, the governments of the entities, or the Brcko District, will be the owners of all other state property located within their territory”. This principle was adopted by the ambassadors of the Peace Implementation Council (PIC) in a statement issued on 30 October 2008, in which they “agreed that the starting position for resolving this long-standing issue should be the compromise reached by the State Property Commission, according to which state-level institutions would receive the property they need to “functionally” exercise their constitutional responsibilities, and other levels of government would receive the remaining state property according to the “territorial” principle. For the reasons already mentioned, the compromise theory had no chance of survival (mostly due to the explicit position of the Bosniak representative, as stated in the previous point) and it has hardly been discussed since then.

Finally, we should not forget (which has been forgotten by both the Expert Working Group and the initiator of its establishment, the Office of the High Representative for BiH, and by the Constitutional Court of BiH, as well as the latest proposers of the Law on State Property in the Parliamentary Assembly of BiH) that legislative solutions regarding the titleholders of state property are completely different in administrative-territorial-political categories in Bosnia and Herzegovina. It is important to note that for example, the Law on Property

²¹ Legal observations of the Legal Department of the Office of the High Representative regarding the applicant's request in case U – 1/11.

of the Brcko District of BiH in which the territorial principle is exclusively applied and all property, including property acquired by the Succession Agreement, located on the territory of the Brcko District, according to this legal solution belongs exclusively to the Brcko District (which, interestingly, does not bother the proponents of the theory of so-called legal continuity). Incidentally, all this was carried out with the direct participation of the Office of the High Representative for BiH, as the Deputy High Representative is at the same time the supervisor of the Brcko District of BiH. Likewise, the fact that cantons continue to regulate forestry through their own legislation despite the lack of a single Forest Law of the Federation of BiH (which was declared unconstitutional by the Constitutional Court of the Federation of BiH back in 2009) appears to attract little concern. And finally, would it not be logical that the issue of so-called state property be first resolved in the Federation of BiH (between the Federation of BiH and the cantons, i.e. cities and municipalities), where the issue of property is completely unregulated, and that talks on regulating the issue— i.e. the status of state property in Bosnia and Herzegovina— then begin.

VIII. CONCLUSION

In light of the above, the discussion about property can be reduced to two models. The first one is the pro-state model that is advocated at the level of BiH institutions²². The second one is the pro-entity model advocated by the Republic of Srpska. However, this discussion concerns one of the most difficult— and according to many the most difficult and controversial— political issues²³ in Bosnia and Herzegovina. It has been causing serious polemics and heated debates for years, as well as anxiety among all citizens in Bosnia and Herzegovina, often accompanied by frequent mutual threats of deeper political disagreement and even conflict. Despite all the efforts of a significant number of domestic and international, primarily politicians, and also a certain number of legal experts, the issue remains unresolved. Even on this point, we do not have a unified position, as Serb representatives maintain that this issue was resolved by the Dayton Peace Agreement of 1995.

²² Some scholars from the Federation of Bosnia and Herzegovina argue that the use of state property of BiH is in accordance with territorial sovereignty and integrity are called into question primarily because of the asymmetric Constitutional structures where the state is hostage to politics. See: Amir Dehić, 'Continuity of the state property of BiH' (2014) 13 *Annals of the Law Faculty of the University of Zenica* 152.

²³ The issue of so-called state property is an exclusively internal issue of Bosnia and Herzegovina as a member of the United Nations, regulated by the Constitution of Bosnia and Herzegovina, Annex 2 of the Dayton Peace Agreement, Security Council Resolution No. 942 and the Geneva Agreement of September 8, 1995, so any attempt to impose any of the laws on so-called state property would represent a flagrant and gross violation of the Constitution of Bosnia and Herzegovina and the UN Charter (more: Warning to OHR: A panel on property was held at the Faculty of Law in Banja Luka, 10.12.2025.).

At the centre of these disputes is the issue of the so-called state property and its allocation among Bosnia and Herzegovina as an internationally recognized state, its entities — the Republic of Srpska and the Federation of Bosnia and Herzegovina— as well as ten cantons within the Federation of Bosnia and Herzegovina, the municipalities and cities, and the Brčko district.

The only currently possible and acceptable solution for all parties (state level, entities and cantons) seems to be the one that implies a compromise according to which the institutions at the state level of Bosnia and Herzegovina would be allocated only such property as is necessary for their constitutional and statutory functions , while all other property would be allocated to the other levels of government -primarily the entities, but also the cantons, municipalities and cities— on the basis of “territorial” principle. The reason for this attitude is the constitutional norm according to which Bosnia and Herzegovina has precisely specified powers, while the entities, by the constitution, are given all other state functions.

In any case, the maximalist demands of any of the opposing sides (or individual political representatives, primarily Bosniaks) do not lead to compromise, and therefore to a final solution to this extremely sensitive issue.