

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

Mr. Zlatko M. Knežević, President

Mr. Mato Tadić, Vice-President

Mr. Mirsad Ćeman, Vice-President

Ms. Margarita Tsatsa-Nikolovska, Vice-President

Mr. Tudor Pantiru,

Ms. Valerija Galić,

Mr. Miodrag Simović,

Ms. Seada Palavrić,

Mr. Giovanni Grasso

Having deliberated on the request filed by the **Municipal Court in Cazin**, in Case no. **U 10/19**, at its session held on 6 February 2020, adopted the following

## DECISION ON ADMISSIBILITY AND MERITS

In deciding the request filed by the Municipal Court in Cazin (Judge Erol Husić) for review of compatibility of the provisions of Article 69(3) and (4) of the Law on Enforcement Procedure of the FBiH (*Official Gazette of the Federation of Bosnia and Herzegovina*, 32/03, 52/03, 33/06, 39/09, 35/12 and 46/16 and the *Official Gazette of Bosnia and Herzegovina*, 42/18),

it is hereby established that the provisions of Article 69(3) and (4) of the Law on Enforcement Procedure of the FBiH (*Official Gazette of the Federation of Bosnia and Herzegovina*, 32/03, 52/03, 33/06, 39/09, 35/12 and 46/16 and the *Official Gazette of Bosnia and Herzegovina*, 42/18) are not compatible with Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Parliament of the Federation of Bosnia and Herzegovina is hereby ordered, pursuant to Article 61(4) of the Rules of the Constitutional Court of Bosnia and Herzegovina, to harmonise, within six months from the date of publication of the present Decision in the *Official Gazette of Bosnia and Herzegovina*, the provisions of Article 69(3) and (4) of the Law on Enforcement Procedure of the Federation of Bosnia and Herzegovina (*Official Gazette of the Federation of Bosnia and Herzegovina*, 32/03, 52/03, 33/06, 39/09, 35/12 and 46/16 and the *Official Gazette of Bosnia and Herzegovina*, 42/18) with Article II(3)(k) of the Constitution of Bosnia and Herzegovina and

Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Parliament of the Federation of Bosnia and Herzegovina is hereby ordered, pursuant to Article 72(5) of the Rules of the Constitutional Court, to inform the Constitutional Court of Bosnia and Herzegovina, within the time limit set forth in the preceding paragraph, of the measures taken in order to enforce this Decision.

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

## REASONING

### I. Introduction

1. On 31 October 2019, the Municipal Court in Cazin (Judge Erol Husić; “the applicant”) filed a request with the Constitutional Court of Bosnia and Herzegovina (“the Constitutional Court”) for review of the compatibility of Article 69(2), (3), (4), (5), (6), (7), (8), (9) and (10) of the Law on Enforcement Procedure of the FBiH (*Official Gazette of the Federation of Bosnia and Herzegovina*, 32/03, 52/03, 33/06, 39/09, 35/12 and 46/16 and the *Official Gazette of Bosnia and Herzegovina*, 42/18) with Article II(1) of the Constitution of Bosnia and Herzegovina, Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the European Convention”).

### II. Procedure before the Constitutional Court

2. Pursuant to Article 23 of the Rules of the Constitutional Court, the House of Peoples and the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina were requested on 15 November 2019 to submit their respective replies to the request.
3. The House of Peoples and the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina failed to submit their respective replies to the request, however the Government of the Federation of Bosnia and Herzegovina (“the Government”) submitted its opinion on the request on 16 December 2019.

### **III. Request**

#### **a) The present case concerning which the request was filed**

4. The applicant stated that it was proposed in the enforcement proceedings initiated by enforcement claimant *Sudo Luka doo* Velika Kladuša against the enforcement debtor Hazim Beganović, for the payment of debt in the amount of BAM 550.00, that the debt be settled by foreclosure and sale of the movable items of the enforcement debtor.
5. In deciding on the motion, the applicant issued a decision on enforcement of the movable items of the debtor. The first foreclosure was unsuccessful, as no movable items were found at the debtor’s place that were suitable to be the subject of the enforcement. The applicant informed the enforcement claimant thereof and invited the enforcement claimant to propose a new foreclosure of movable items. The enforcement claimant proposed, thereafter, the change of the item and means of enforcement wherein it specified as the subject of the enforcement the real property co-owned by the enforcement debtor. In deciding on the mentioned motion, the applicant issued a Conclusion inviting again the enforcement claimant to propose a new item and means of enforcement as the enforcement of the real property of the enforcement debtor was found to be disproportionate, given the debt of the enforcement debtor in the amount of BAM 550.00. The enforcement claimant proposed again that the enforcement be executed against the movable items of the enforcement debtor. The applicant then issued a decision terminating the enforcement proceeding, discontinued all enforcement actions it undertook and dismissed as unfounded the motion of the enforcement claimant for the change of items and means of enforcement.
6. In deciding on the appeal of the enforcement claimant against the decision to terminate the proceedings, the Cantonal Court in Bihać (“the Cantonal Court”) issued a decision granting the appeal, quashing the first-instance decision and remitting the case for the renewed proceeding. It was stated in the reasoning that the applicant, before issuing the decision on the motion of the

enforcement claimant for enforcement of the co-owned share of real properties of the enforcement debtor, invited the enforcement claimant to propose a new item or means of enforcement, justifying the adoption of such a decision (conclusion) by apparent disproportion between the amount of the claim by the enforcement claimant and the property of the enforcement debtor (co-owned share of the real property). According to the view of the Cantonal Court, the enforcement claimant has the right to have his/her claim settled within the meaning of Article 8(3) of the Law on Enforcement Procedure. It follows from the case-file that the settlement action could not have been taken against the movable items of the enforcement debtor, which is the reason why the enforcement claimant proposed a new real property of the enforcement debtor as the subject of the enforcement. To that end the Cantonal Court indicated that in a situation of apparent disproportion between the claim and the subject of enforcement, the enforcement debtor had the right, within the meaning of Article 71 of the Law on Enforcement Procedure, to propose the enforcement action against a new item, the approximate value of which was equal to the value of the debt, in order to prevent the enforcement action against the real property, which was possibly of the higher amount than the amount claimed by the enforcement claimant. The Cantonal Court concluded that the applicant, by terminating the enforcement proceedings, erroneously applied the provision of Article 64(4) of the Law on Enforcement Procedure (the completion of enforcement), which was the reason why the challenged ruling was quashed and the case referred back for retrial.

**b) Allegation made in the request regarding the unconstitutionality of the challenged provisions**

7. The applicant alleged that there was a number of enforcement proceedings with the same factual and legal basis pending before that court, according to which the enforcement claimants sought from the enforcement debtors, on the basis of legally binding enforceable documents, the settlement of their claims against the real properties which the enforcement debtors co-owned. Bearing in mind that the values of the claims filed by enforcement claimants were mainly minor amounts (in the present case, the claim amounts to BAM 550.00) compared to the value of the portion of the real property co-owned by the enforcement debtors, the applicant considers that the provision of Article 69(2), (3), (4), (5), (6), (7), (8), (9) and (10) of the Law on Enforcement Procedure of the FBiH, which regulates the manner of the enforcement action against real properties with co-ownership or joint ownership, offers a possibility for an enforcement proceeding against the property of the persons who do not have any real and legal connection with the liability of the enforcement debtor, thus, against the property of other co-owners who have their rights over the real property concerned.

8. The applicant, additionally, held that the consistent application of the mentioned provision could result in the foreclosure of property of co-owners who were not enforcement debtors on the real property, which was subject to enforcement for the settlement of debt, which was not their debt but the debt of the enforcement debtor. Also, in the opinion of the applicant, the enforcement debtor could find himself in a situation to lose, over a minor amount of debt to the enforcement claimant, the property of much greater value, specifically without his co-owned share of the real property subject to enforcement. In that context, the applicant particularly emphasized that the provision of Article 69 (4), (5) and (6) of the Law on Enforcement Procedure of the FBiH created an illusory situation treating the value of the co-owned share and the settlement in such a manner as if the dissolution of co-ownership had already been executed, while *de facto* and *de iure*, co-ownership still existed. According to the applicant, the mentioned provision does not provide for proportionality between the protection of the legitimate aim in the form of the settlement of the enforcement claimant and the right to property of co-owners who are not enforcement debtors. The applicant, without minimizing the right of the enforcement claimants to realize in the enforcement proceeding their right to property through the payment of the claim, holds that the standard of proportionality should be incorporated into the mentioned provision so as to limit the value of the claim and the burden on the enforcement debtor's property for the purpose of settling that claim, both for the interests of co-owners of real property against which the enforcement is carried out who are not enforcement debtors and for the interest of enforcement debtors. In that connection, it was mentioned that there were frequent situations in practice where due to minor amounts of debt to the enforcement claimant (of several hundred convertible marks) the enforcement was carried out against a real property, irrespective of whether real property was co-owned or was exclusive ownership of the enforcement debtor. Therefore, in such situations a question arose as to the existence of proportionality between the same right, the right to property, which was enjoyed by the opponent parties to the proceedings and the justification of such enforcement. Specifically, the question arises as to the justification to deprive, over minor amounts of the claims by the enforcement claimant, the enforcement debtor of the right to property, which is of far greater value than the claim, as well as to the justification to deprive, through the application of the provision of Article 69 of the Law on Enforcement Procedure of the FBiH, of the right to property the persons, co-owners who are not enforcement debtors, who can be linked in any way whatsoever to the relation between the enforcement claimant and the enforcement debtor.
9. In the applicant's opinion, the intention of the legislator is clear to ensure, through consistent implementation of the mentioned provision, the payment of the enforcement claimant's claim and to

ensure in that way the implementation of decisions of courts and other authorities with the aim of fulfilling the obligation towards the enforcement claimant. However, without establishing the proportionality in enforcement to protect the right to property of the parties to the proceedings, particularly of co-owners who are not enforcement debtors, the applicant points out a reasonable doubt as to the existence of any public interest, which would serve as the basis for the application of the disputed provision of Article 69 of the Law on Enforcement Procedure of the FBiH. In addition, according to the applicant, the application of that provision leads to the collision with the provisions of Articles 2, 17, 25 and 26 of the Law on Real Property Rights of the FBiH, under which the right of (co)ownership is guaranteed in full scope, therefore it is illogical to treat the provisions of the Law on Enforcement Procedure of the FBiH as *lex specialis* vis-à-vis the Law on Real Property Rights.

10. Therefore, the applicant proposed that the Constitutional Court review the compatibility of the provision of Article 69(2), (3), (4), (5), (6), (7), (8), (9) and (10) of the Law on Enforcement Procedure of the FBiH with the provisions of Article II(1) and Article II(3)(k) of the Constitution of Bosnia and Herzegovina, in conjunction with the provision of Article 1 of Protocol No. 1 to the European Convention, which guarantee the highest level of internationally recognized human rights and fundamental freedoms.

#### **b) Reply to Request**

11. In its reply to the appeal, the Government indicated that the provision of Article 69 of the Law on Enforcement Procedure was the subject-matter of the Draft Law on Amendments to the Law on Enforcement Procedure of the FBiH, which was prepared by the FBiH Ministry of Justice. Legal amendments to Article 69 of the Law on Enforcement Procedure of the FBiH, along with the proposal of amendments to the provision of Article 89 of the Law on Enforcement Procedure, will be submitted for legislative procedure as soon as possible (without any other details). Attached to the opinion, the Government submitted the text of the proposed amendments to the mentioned provision. Based on the proposal submitted by the Government, it is possible to conclude that proposed amendments to Article 69 of the Law on Enforcement Procedure go in the direction as regulated by the Law on Enforcement Procedure of the Republika Srpska, i.e. concerning the enforcement against a share co-owned by the co-owner who is not an enforcement debtor and who has no debt to the enforcement claimant, to seek explicit consent of such co-owner.

#### IV. Relevant Law

12. The **Law on Enforcement Procedure** (*Official Gazette of the Federation of Bosnia and Herzegovina*, 32/03, 52/03- *Corrigendum*, 33/06, 39/06- *Corrigendum*, 39/09, 74/11- Decision of the Constitutional Court, 35/12 – Ruling of the Constitutional Court of BiH, 46/16, 36/17 - Decision of the Constitutional Court of BiH and 55/18 – Ruling of the Constitutional Court of BiH), in so far as relevant, reads as follows:

##### *Article 69*

##### *Real Property as an Object of Enforcement*

(1) *Unless otherwise provided, real property may be object of enforcement only in its entirety as defined by regulations governing property and other property rights.*

(2) *The share of co-owned real property may be an independent object of enforcement regarding which the rules of this Law are applied accordingly concerning the enforcement against real property.*

(3) *In the event of an enforcement procedure against a co-owned share, upon the motion of the enforcement claimant, enforcement debtor or other co-owner, the Court will order in the Decision on enforcement that the entire real property and the co-owned share that is the object of enforcement be offered for sale. In the Decision on enforcement the court will specify, depending on the fulfillment of conditions referred to in paragraph 4 of this Article, that it will decide by its Conclusion referred to in paragraph 3 of Article 90 of this Law whether the object of sale is the entire real property or only its co-owned share. In the same Decision the Court will order that the registration of enforcement in the Land Book referred to in Article 72 of this Law be applicable to the entire real property.*

(4) *If the sale price of the co-ownership share of the real property is substantially higher in the event of the sale of the entire real property, the Court will order the sale of the entire real property acting as if it were a motion of co-owner for the division of physically indivisible asset, as provided by regulations governing co-ownership relations.*

(5) *In the case referred to in paragraph 4 of this Article, co-owners who are not enforcement debtors have the right to settlement in the value of their co-ownership shares from the amount obtained through the sale of assets prior to the settlement of the enforcement claimant and other persons who are set to receive settlement in enforcement procedure and before the compensation for the costs of the enforcement procedure.*

(6) *Co-owners who are not enforcement debtors have the right to request to be ceded the asset, which is the object of enforcement, if they deposit the amount, which corresponds to the value of the enforcement debtor's share in that asset.*

(7) *The Court will advise the co-owner who is not an enforcement debtor and whose share in the asset, which is the object of enforcement, was contested to institute a litigation against the enforcement claimant and against the enforcement debtor if he/she contests the co-owner's right to prove his/her right, unless he/she can prove their right in an enforcement*



*procedure by way of a legally binding judgment, public document or a private document certified under the law. The provisions of this Law stipulating the conduct of the court upon objections raised by third persons shall apply accordingly to the instituted litigation, as well as to the rights of co-owners to seek therein the postponement of the enforcement procedure.*

*(8) If the co-owner referred to in paragraph 7 of this Article may prove his/her right by way of a legally binding judgment, public document or a private document certified under the law, the Court will proceed as if their right had not been contested.*

*(9) The circumstance that the Court took it in the enforcement procedure as if the right of the person referred to in paragraph 7 of this Article had not been contested within the meaning of the provisions of that paragraph or paragraph 8 of this Article shall not affect the right of the enforcement claimant or enforcement debtor to exercise their rights against the person concerned in a separate litigation.*

*(10) Provisions of paragraphs 2 through 9 of this Article accordingly apply to the owners of joint property (joint owners). If there is no consensus among the enforcement debtor and other owners of joint property concerning their rights on the shared asset, the court will advise, in the form of a Conclusion, the owner of joint property who contests the enforcement debtor's rights to the shared asset to prove his/her rights in a litigation. The provisions of this Law stipulating the conduct of the Court upon objections raised by third persons shall apply accordingly to the instituted litigation, as well as to the rights of owners of joint property to seek therein the postponement of the enforcement procedure.*

*(11) If the right of usufruct has been established on a real property or on its percentage share of ownership, it may be an independent object of enforcement, provided that the enforcement debtor can satisfy his/her claims out of the fruits realized from such rights based on some legal relationship (rent, lease), regarding which the rules of this Law governing enforcement over rights shall apply accordingly.*

### **3. Appraisal of Real Property**

#### *Article 80 Manner of Appraisal*

*(1) The Court shall determine the manner of appraising real property by issuing a Conclusion immediately after it issues the Decision on enforcement. If so necessary, the Court shall hold a hearing with the parties before issuing the conclusion.*

*(2) The appraisal of real property shall commence after the Decision on enforcement becomes enforceable, and may commence even before such time on the motion of the enforcement claimant if he/she ensures beforehand means necessary for the appraisal and agrees to bear the costs of the appraisal even if the enforcement is discontinued.*

*(3) Real property shall be appraised based on an expert's evaluation and other facts to determine its market value on the date of the appraisal. During the appraisal of the real property, its decreased value will be taken into account on account of certain rights that will remain on the property after the sale.*

*(4) In lieu of the appraisal stipulated in paragraph 3 of this Article, the Court may request a relevant authority of the tax administration to provide the data on the value of the real property.*

*(5) In the enforcement procedure against co-owned share referred to in Article 69 of this Law, the appraisal will contain the established values for the real property in entirety and for the co-ownership share, as well as the value of the co-ownership share that would be obtained in the event of the sale of the entire real property, in accordance with paragraph 4 Article 69 of this Law.*

*(6) The provisions referred to in paragraphs 1 through 4 of this Article shall not be applied if the parties and other persons to be settled in the enforcement procedure reach a consensus on the value of the real property.*

#### *Article 81*

##### *Objection to Insufficient Settlement*

*(1) Any person who has a right to be paid from the sale price of real property, and whose right takes precedence over the enforcement claimant in the order of priority, may propose that the enforcement be discontinued if the appraised value of the real property does not cover even partially the amount of enforcement claimant's claim.*

*(2) A proposal for discontinuation of enforcement may be submitted within eight days from the date of service of the Conclusion on sale.*

*(3) Upon the proposal of the right holder and on meeting the conditions referred to in paragraph 1 of this Article, the Court shall issue a Decision to discontinue the enforcement procedure.*

*(4) In the event of a discontinuation of enforcement referred to in paragraph 1 of this Article, the enforcement claimant who initiated the enforcement shall cover the costs of the proceedings.*

#### *Article 82*

##### *Conclusion on Sale*

*(1) After conducting a proceeding for determining the value of the real property, the Court shall issue a Conclusion on sale of the real property, setting forth the value of the real property and stipulating the manner and conditions of sale, as well as the time and place of sale, if the sale is being carried out at a public auction.*

*(2) In the enforcement procedure against co-owned share referred to in Article 69 of this Law, the Conclusion on sale will contain separate data for the entire real property and for the co-ownership share, which is the object of enforcement, as well as a note that the Court will decide on the final object of sale in accordance with paragraph 3 Article 90 of this Law.*

*(...)*

#### *Article 83*

##### *Right of Preemption*

*(1) A person who has a legal or contractual right of preemption entered in the Land Book has precedence over the highest bidder if he/she acknowledges, immediately following the termination of the auction, that he/she will buy the real property on the same conditions.*

*(2) If the real property is sold by direct settlement, the Court shall instruct the holder of the registered right of preemption, or the holder of the legal right of preemption to acknowledge within a specified time, whether he/she will exercise that right; otherwise, such right will expire.*

13. The **Law on Enforcement Procedure** (*Official Gazette of the Republika Srpska*, 59/03, 85/03, 64/05, 118/07, 29/10, 57/12, 67/13, 98/14, 5/17 – Decision of the Constitutional Court of RS, 43/17 – Decision of the Constitutional Court of BiH, 90/17 – Decision of the Constitutional Court of BiH, 58/18 – Ruling of the Constitutional Court of BiH and 66/18)

For the purpose of the present Decision, an unofficial consolidated text made in the Constitutional Court of BiH, is used and, as relevant, reads:

### ***Real Property as an Object of Enforcement***

#### *Article 69*

*(1) Unless otherwise provided, real property may be object of enforcement only in its entirety, as defined by regulations governing property and other property rights.*

*(2) The share of co-owned real property may be an independent object of enforcement regarding which the rules of this Law are applied accordingly concerning the enforcement against real property.*

*(3) In the event of an enforcement procedure against a co-ownership share, upon the motion of the enforcement claimant, enforcement debtor or other co-owner, the Court will order in the Decision on enforcement that the entire real property and the co-ownership share, which is the object of enforcement, be offered for sale, only if explicitly agreed to by the co-owner of the real property who is not the enforcement debtor. Prior to issuing the Decision on enforcement, the Court has to obtain the explicit consent of the co-owner of the real property who is not the enforcement debtor. In the Decision on enforcement the Court will decide by its Conclusion referred to in Article 90 of this Law whether the object of sale is the entire real property or only its co-owned share. In the same Decision the Court will order that the registration of enforcement in the Land Book referred to in Article 72 of this Law be applicable to the entire real property. The statement of a co-owner who is not an enforcement debtor has to be processed by a Notary Public, and if the co-owner who is not an enforcement debtor fails to present the document processed by the Notary Public within 15 days, it shall be considered that he/she has not given the consent to the sale of his/her co-ownership share.*

*(3a) In the event that there is no explicit consent of the co-owner of the real property referred to in paragraph 1 of this Article, who is not an enforcement debtor, the Court will continue the enforcement procedure against the enforcement debtor's co-ownership share.*

*(4) In the event that the co-owner of the real property who is not the enforcement debtor has given an explicit consent to the sale of the entire real property, and the sale price of the co-ownership share of the real property is substantially higher in the event of the sale of the entire real property, the Court will order the sale of the entire real property acting as if it were a motion of co-owner for the division of physically indivisible asset, as provided by regulations governing co-ownership relations.*

*(5) In the case referred to in paragraph 4 of this Article, co-owners who are not enforcement debtors have the right to settlement in the value of their co-owned shares from the amount obtained through the sale of assets prior to the settlement of the enforcement claimant and other persons who are set to receive settlement in enforcement procedure and before the compensation for the costs of the enforcement procedure.*

*(6) Co-owners who are not enforcement debtors have the right to request to be ceded the asset, which is the object of enforcement, if they deposit the amount, which corresponds to the value of the enforcement debtor's share in that asset.*

*(7) The Court will advise the co-owner who is not an enforcement debtor and whose share in the asset, which is the object of enforcement, was contested to institute a litigation against the enforcement claimant and against the enforcement debtor if he/she contests the co-owner's right to prove his/her right, unless he/she can prove their right in an enforcement procedure by way of a legally binding judgment, public document or a private document certified under the law. The provisions of this Law governing the conduct of the court upon objections raised by third persons shall apply accordingly to the instituted litigation, as well as to the rights of co-owners to seek therein the postponement of the enforcement procedure.*

*(8) If the co-owner referred to in paragraph 7 of this Article can prove his/her right by way of a legally binding judgment, public document or a private document certified under the law, the Court will proceed as if their right had not been contested.*

*(9) The circumstance that the Court took it in the enforcement procedure as if the right of the person referred to in paragraph 7 of this Article had not been contested within the meaning of the provisions of that paragraph or paragraph 8 of this Article shall not affect the right of the enforcement claimant or enforcement debtor to exercise their rights against the person concerned in a separate litigation.*

*(10) Provisions of paragraphs 2 through 9 of this Article shall apply accordingly to the owners of joint property. If there is no consensus among the enforcement debtor and other owners of joint property concerning their rights on the shared asset, the court will advise, in the form of a Conclusion, the owner of joint property who contests the enforcement debtor's rights to the shared asset to prove his/her rights in a litigation. The provisions of this Law governing the conduct of the Court upon objections raised by third persons shall apply accordingly to the instituted litigation, as well as to the rights of owners of joint property to seek therein the postponement of the enforcement procedure.*

*(11) If the right of usufruct has been established on a real property or on its percentage share of ownership, it may be an independent object of enforcement, provided that the enforcement debtor can satisfy his/her claims out of the fruits realized from such rights based on some legal relationship (rent, lease), regarding which the rules of this Law governing enforcement over rights shall apply accordingly.*

14. The **Law on Property Rights** (*Official Gazette of the Federation of Bosnia and Herzegovina*, 66/13 and 100/13, in so far as relevant, reads as follows:

*Article 2*  
*Restrictions of Property Rights*

*(1) The right of ownership and other property rights may be denied against the will of the owner or restricted only in the public interest and under the conditions provided by law in accordance with the principles of the international law.*

*(2) It is possible to restrict or regulate separately by law, in the public interest, particularly for the purpose of protecting natural riches, the environment, human health, cultural and historical heritage and such like, the manner of use and disposal of certain property.*

*Article 17*  
*Substance of Ownership Right*

*(1) Ownership is a property right, which authorizes the owner to possess the property freely and of own will, to use and dispose of it, and to preclude everyone else from that right within the scope stipulated by law.*

*(2) Everyone shall have the obligation to refrain from violating the right of ownership of another person.*

**1. Co-ownership**

*Article 25*

*Notion*

*(1) Co-ownership shall exist when two or more persons have the right of ownership on the same property, each according to their share proportionate to the whole (aliquot part).*

*(2) If co-ownership shares are not specified, they are presumed to be equal.*

*Article 26**Aliquot Part of Property*

- (1) A co-owner is the owner of such aliquot part, which is commensurate with his/her co-ownership share, therefore concerning that share he/she has all powers that an owner is entitled to, if, considering the nature of an aliquot part, he/she is capable of exercising them.*
- (2) The aliquot part of property is considered an independent property in legal transactions.*

*Article 27**Use and Disposal of Property*

- (1) A co-owner shall have the right to possess and to use property proportionate to his/her aliquot part, without violating the rights of other co-owners. A co-owner may dispose of his/her share without the consent of other co-owners.*
- (2) When a co-owner of real property is selling his/her share, other co-owners shall have the right of preemption, unless otherwise provided by this Law.*
- (3) A co-owner who has the intention to sell his/her co-ownership share shall have the obligation to send by registered mail under the rules of civil procedure, or to notify via Notary Public thereof other co-owners by specifying accurate land books and cadastral details of the real property, the price and other conditions of the sale.*
- (4) If the offered co-owners fail to notify the offeror in the same way in which the offer has been made within 30 days from the day of receiving the offer of accepting the offer, the co-owner may sell his/her share to another person, not at a lower price or more favourable conditions though.*
- (5) If the co-owner fails to sell his/her co-ownership share within six months upon the expiry of the deadline to accept the offer, he/she shall have the obligation, in the event of a new sale, to comply with the provisions of paragraph 3 of this Article.*
- (6) If a co-owner fails to make an offer to other co-owners in accordance with the provisions of paragraphs 3 and 5 of this Article, or if, after making an offer, he/she sells to a third person his/her co-ownership share under more favourable conditions, co-owners who have the right of preemption may request via court for the contract to be annulled and that the ownership on the respective co-ownership share be transferred to them under the same conditions.*
- (7) A lawsuit referred to in paragraph 6 of this Article may be filed within 30 days from the day when the holder of the right of preemption has learnt of the sale and conditions of sale, not later than one year from the day of the conclusion of the contract.*

(8) *The right of preemption of co-owners shall be precluded if the real property concerned, according to its culture, cadastre and land books, is marked as an access road.*

15. The **Law on Property Rights** (*Official Gazette of the Republika Srpska*, 124/98, 3/09 – *Corrigendum*, 58/09, 95/11, 60/15, 18/16 – Decision of the Constitutional Court and 107/19)

For the purpose of the present Decision, an unofficial consolidated text made in the Constitutional Court of BiH, is used and, as relevant, reads:

*Restrictions of Property Rights*  
*Article 2*

(1) *The right of ownership and other property rights may be denied against the will of the owner or restricted only in the public interest and under the conditions provided by law, in accordance with the principles of the international law.*

(2) *It is possible to restrict or regulate separately, in the public interest, and particularly for the purpose of protecting natural riches, the environment, human health, cultural and historical heritage and such like, the manner of use and disposal of certain property.*

*Notion*

*Article 25*

(1) *Co-ownership shall exist when two or more persons (co-owners) have the right of ownership on the same property, each according to their share proportionate to the whole (aliquot part).*

(2) *If co-ownership shares are not specified, they are presumed to be equal.*

*Aliquot Part of Property*

*Article 26*

(1) *A co-owner is the owner of such aliquot part, which is commensurate with his/her co-ownership share, and concerning that share he/she has all powers that an owner is entitled to, if, considering the nature of an aliquot part, he/she is capable of exercising them.*

(2) *The aliquot part of property is considered an independent property in legal transactions.*

*Article 27*

*Use and Disposal of Property*

- (1) *A co-owner shall have the right to possess and to use property proportionate to his/her aliquot part, without violating the rights of other co-owners. A co-owner may dispose of his/her share without the consent of other co-owners.*
- (2) *When a co-owner of real property is selling his/her share, other co-owners shall have the right of preemption, unless otherwise provided by this Law.*
- (3) *A co-owner who has the intention to sell his/her co-ownership share shall have the obligation to send by registered mail under the rules of civil procedure, or to notify via Notary Public thereof other co-owners by specifying accurate land books and cadastral details of the real property, the price and other conditions of the sale.*
- (4) *If the offered co-owners fail to notify the offeror in the same way in which the offer has been made within 30 days from the day of receiving the offer of accepting the offer, the co-owner may sell his/her share to another person, not at a lower price or more favourable conditions though.*
- (5) *If the co-owner fails to sell his/her co-ownership share within six months upon the expiry of the deadline to accept the offer, he/she shall have the obligation, in the event of a new sale, to comply with the provisions of paragraph 3 of this Article.*
- (6) *If a co-owner fails to make an offer to other co-owners in accordance with the provisions of paragraphs 3 and 5 of this Article, or if, after making an offer, he/she sells to a third person his/her co-ownership share under more favorable conditions, co-owners who have the right of preemption may request via court for the contract to be annulled and that the ownership on the respective co-ownership share be transferred to them under the same conditions.*
- (7) *A lawsuit referred to in paragraph 6 of this Article may be filed within 30 days from the day when the holder of the right of preemption has learnt of the sale and conditions of sale, not later than one year from the day of the conclusion of the contract.*
- (8) *The right of preemption of co-owners shall be precluded if the real property concerned, according to its culture, cadaster and land books, is marked as an access road.*

**16. The Law on Non-Contentious Procedure** (*Official Gazette of the Federation of Bosnia and Herzegovina*, 2/98, 39/04 and 73/05), in so far as relevant, reads as follows:

**4. Division of Co-owned Assets and Real Properties***Article 161*

*In the procedure of the division of co-owned assets and real properties, the Court shall decide on the division and the manner of division of such assets and real properties.*



*Article 162*

*The procedure of the division of co-owned assets and real properties may be initiated upon a proposal of a co-owner, while the proposal has to include all co-owners.*

*The proposal contains the details about the object of division, the size of the share and about other property rights of every co-owner.*

*When a real property is concerned, it is necessary to specify the details from land books or cadaster and to attach relevant written evidence as to the right of ownership, the right of easement and other property rights, as well as to the possession of a real property.*

*The proposal shall be submitted with the Court in which area the asset or real property is located, and if co-owned assets or real properties are located in the area of several courts, each of the courts shall have the competence.*

*Article 163*

*If the Court, while acting on the proposal, establishes that co-owners find disputable the right to assets, which are the object of division, or the right to property, that the size of the share in assets is disputable, or the co-owned property, or that it is disputable which assets or rights make part of the co-owned real property, the Court will discontinue the procedure and advise the proponent to institute a litigation within 15 days.*

*If the proponent referred to in paragraph 1 of this Article fails to institute a litigation, the proposal shall be considered withdrawn.*

*Article 164*

*On receiving the proposal, the Court will schedule a hearing, to which it will summon all co-owners and persons who hold some property right concerning the object of division.*

*Article 165*

*If co-owners or persons who hold some property right concerning the object of division reach during the procedure a settlement on the conditions and manner of division, the Court will enter the settlement into the record as a court settlement.*

*Article 166*

*If the persons referred to in Article 165 of this Law fail to reach a settlement on the conditions and manner of division, the Court will hear them, present the necessary evidence, as well as expert evaluation when so necessary, and will, on the basis of the results of the overall procedure, in accordance with the relevant regulations of the substantive law, issue a Decision on the division of co-owned assets or real properties, while taking care of satisfying the justified requests and interests of co-owners and persons who hold some property right concerning the object of division.*

*When deciding who should get what asset, the Court will particularly bear in mind special needs of individual co-owners as to why that co-owner should get such an asset.*

*If the division of assets is to be carried out by the sale thereof, the sale will be approved and conducted under the provisions of the Law on Enforcement Procedure.*

*Article 167*

*The Decision on division contains the following: object, conditions and manner of division, details about physical parts of the asset and rights held by individual co-owners, as well as rights and obligations of co-owners established under the division.*

*In the Decision on division the Court will decide on the manner of the exercise of the right of easement and of other property rights on the parts of the asset that has been physically divided among co-owners.*

17. The **Law on Non-Contentious Procedure** (*Official Gazette of Republika Srpska*, 36/09 and 91/16), in so far as relevant, reads as follows:

**5. Division of Co-owned Assets and Property**

*Article 172*

*In the procedure of the division of co-owned assets and property, the Court shall decide on the division and the manner of division of such assets and property.*

*Article 173*

(1) *The procedure of the division of co-owned assets and property may be initiated upon proposal of a co-owner, while the proposal has to include all co-owners.*

(2) *The proposal contains all the details about the object of division, the size of the share and about other property rights of every co-owner. When a real property is concerned, it is necessary to specify the details from land books or cadastral data and to attach relevant written evidence as to the right of ownership, the right of easement and other property rights, as well as to the possession of a real property.*

(3) *The proposal shall be submitted with the Court in which area the asset or property is located, and if co-owned assets or property are located in the area of several courts, each of the courts shall have the competence.*

*Article 174*

(1) *If the Court, while acting on the proposal, establishes that co-owners find disputable the right to assets, which are the object of division, or the right to property, that the size of the share in assets is disputable, or the co-owned property, or that it is disputable which assets or rights make part of the co-owned property, the Court will discontinue the procedure and advise the proponent to institute a litigation within 15 days.*

(2) *If the proponent fails to institute a litigation within the specified deadline, the proposal shall be considered withdrawn.*

*Article 175*

*On receiving the proposal, the Court will schedule a hearing, to which it will summon all co-owners and persons who hold some property right concerning the object of division.*

*Article 176*

*If co-owners or persons who hold some property right concerning the object of division reach during the procedure a settlement on the conditions and manner of division, the Court will enter the settlement into the record as a court settlement.*

*Article 177*

*(1) If the persons referred to in Article 176 of this Law fail to reach a settlement on the conditions and manner of division, the Court will hear them, present the necessary evidence, as well as expert evaluation when so necessary, and will, on the basis of the results of the overall procedure, in accordance with the relevant regulations of the substantive law, issue a Decision on the division of co-owned assets or property, while taking care of satisfying the justified requests and interests of co-owners and persons who hold some property right concerning the object of division.*

*(2) When deciding who should get what asset, the Court will particularly bear in mind special needs of individual co-owners as to why that co-owner should get such asset.*

*(3) If the division of assets is to be carried out by the sale thereof, the sale will be approved and conducted under the provisions of the Law on Enforcement Procedure.*

*Article 178*

*(1) The Decision on division contains the following: object, conditions and manner of division, details about physical parts of the asset and rights held by individual co-owners, as well as rights and obligations of co-owners established under the division.*

*(2) In the Decision on division the Court will decide on the manner of the exercise of the right of easement and of other property rights on the parts of the asset that has been physically divided among co-owners.*

## **V. Admissibility**

18. In examining admissibility of the request the Constitutional Court invoked the provisions of Article VI(3)(c) of the Constitution of Bosnia and Herzegovina.

Article VI(3)(c) of the Constitution of Bosnia and Herzegovina reads as follows:

*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.*

19. In the present case, the applicant is an ordinary court in Bosnia and Herzegovina and the issue relates to whether the law on whose validity its decision depends is compatible with the Constitution of Bosnia and Herzegovina, which means that the request was filed by an authorized person for the purposes of Article VI(3)(c) of the Constitution of Bosnia and Herzegovina (see Constitutional Court, Decision on Admissibility and Merits no. *U 5/10* of 26 November 2010, paragraph 7-14, published in *Official Gazette of BiH*, 37/11). Taking into account the provisions of Article VI(3)(c) of the Constitution of Bosnia and Herzegovina and Article 19(1) of the Rules of the Constitutional Court, the Constitutional Court has established that the request is admissible as it was filed by an authorized person and as there is not any other reason under Article 19(1) of the Rules of the Constitutional Court, which would render the request inadmissible.

## **VI. Merits**

20. The applicant requested the Constitutional Court to decide on the compatibility of the impugned provisions of Article 69(2), (3), (4), (5), (6), (7), (8), (9) and (10) of the Law on Enforcement Procedure of the FBiH with Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention.

21. The Constitutional Court notes that it considers a request for review of the compatibility in a general sense (*erga omnes*) and not in relation to this specific case (*inter partes*), in respect of which the request was filed (see, Constitutional Court, Decision on Admissibility and Merits no. *U 15/11* of 13 March 2102, paragraph 63). Therefore, the Constitutional Court will review in an abstract manner with respect to the right to property under Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention.

22. Article II(3)(k) of the Constitution of Bosnia and Herzegovina reads:

*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) right to property.*

23. Article 1 of Protocol No. 1 to the European Convention reads:

*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

*The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*

24. The Constitutional Court holds that the applicant's allegations that the provisions of Article 69(2), (3), (4), (5), (6), (7), (8), (9) and (10) of the Law on Enforcement Procedure of the FBiH are incompatible with the right to property under Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention may be summarized as follows: a) the impugned provisions are contrary to the standard of proportionality as they make it possible that the enforcement debtor's property, which is of much higher value than the amount claimed by the enforcement claimant against the enforcement debtor, can be sold; b) the impugned provisions are in contravention of the provisions of Articles 2, 17, 25 and 26 of the Law on Real Property Rights of the FBiH, under which the right of (co)ownership is guaranteed in full scope, therefore it is illogical to treat the provisions of the Law on Enforcement Procedure of the FBiH as *lex specialis* vis-à-vis the Law on Real Property Rights; and c) the impugned provisions provide a possibility for an enforcement proceeding to be conducted concerning the property of persons who do not have any real and legal connection with the liability of the enforcement debtor and a possibility to sell the property of co-owners who are not enforcement debtors on the real property, which is subject to enforcement for the settlement of debt, which is not their debt but the debt of the enforcement debtor.

25. As to the applicant's allegations referred to in subparagraph (a) above, the Constitutional Court indicates that Article II(2) of the Constitution of Bosnia and Herzegovina provides that the rights and freedoms referred to in the European Convention and its Protocols apply directly in BiH (and) that they (rights and freedoms under the European Convention) have priority over all other law. The Constitutional Court has consistently reiterated in its decisions that the obligation to apply directly

the European Convention is vested in all courts and all bodies, which decide the rights and obligations contained in the European Convention. The proportionality standard is enshrined in the right to property under Article 1 of Protocol No. 1 to the European Convention and the courts are required to apply it to specific cases, based on the cited provision of the Constitution of BiH.

26. As to the applicant's allegations referred to in subparagraph (b) above, the Constitutional Court notes that, in its previous case-law, it has consistently indicated that the applicants referred to in Article VI(3)(c) of the Constitution of BiH cannot request the Constitutional Court to decide how to apply the relevant law in each particular case. Therefore, the applicant's dilemma, which law is *lex specialis*, is a matter to be resolved by the ordinary courts, and it is not an argument for examining the compatibility of the impugned provisions under Article VI(3)(c) of the Constitution of BiH.
27. However, the applicant's allegations referred to in (c) above that it ensues from the relevant parts of the provisions of Article 69 of the Law on Enforcement Procedure of the FBiH that the entire real property and the co-owned portions of the persons who are not enforcement debtors (Article 69 (3) and (4); "other co-owners") can be the object of enforcement, *i.e.* the persons who do not have any connection with the debt of the enforcement debtor towards the enforcement creditor, raise, in the opinion of the Constitutional Court, the issue of compatibility of the impugned provisions with the other co-owners' right to property referred to in Article 1 of Protocol No. 1 to the European Convention. As already stated, the impugned provisions provide the possibility for an enforcement proceeding to be conducted on the entire property, including the other co-owners' portions and, therefore, the question is whether the interference with the property which includes that circle of persons is justified, since Article 69(3) and (4) of the Law on Enforcement Procedure of the FBiH provide for the possibility to sell the entire real property in the enforcement proceedings to settle the debt towards the enforcement creditor, without prior consent by other co-owners who have no debt towards the enforcement creditor.
28. In order to examine the compatibility of the impugned provisions with the standards of the right to property under Article 1 of Protocol No. 1 to the European Convention, the Constitutional Court will make a comparative analysis of the legal position of the co-owners under the provisions of the Law on Real Property Rights, as a basic law governing the mechanism of (co)ownership right and the legal position of co-owners, which is specified in the impugned provision of Article 69(3) and (4) of the Law on Enforcement Procedure of the FBiH.
29. Such a situation requires answers to the following questions: a) whether a co-owner in the enforcement proceedings is in the same or more difficult position with respect to the comparative

provisions of the Law on Real Property Rights; and b) whether the comparative provisions of the Law on Real Property Rights, when compared to the Law on Enforcement Procedure of the FBiH, regulate the transactions relating to the co-ownership portions differently.

30. According to the relevant provisions of the Law on Real Property Rights (Articles 25 and 26), co-ownership exists where two or more persons have the right of ownership on a particular thing, each being entitled to a part defined in proportion to the whole (aliquot part), and the aliquot part of property is considered an independent property in legal transactions. Analogous to the right of ownership, it follows that the co-owner, in proportion to his aliquot part of the property, has the right to own, use and dispose (the use, which includes alienation). Accordingly, the same rights that the owner has. Pursuant to Article 2 of the Law on Real Property Rights, the right of ownership may be denied against the will of the owner or restricted only in the public interest and under the conditions provided by law (protection of natural resources, cultural and historical heritage), and by analogy, the right of co-ownership is restricted for the same reasons (and) further restricted by the rights of other co-owners. Thus, for example: pursuant to Article 27, paragraph 1 of the Law on Real Property Rights), a co-owner has the right to possess and to use property proportionate to his/her aliquot part, without violating the rights of other co-owners. The same provision stipulates that a co-owner may dispose of his/her share without the consent of other co-owners. This essentially implies that a co-owner may alienate his/her aliquot part or sell it but, in the exercise of his/her right, he/she is restricted by the prescribed procedure (Article 27 of the Law on Real Property Rights), specifically by the pre-emptive right of other co-owners which may or may not be exercised, but ultimately allows the co-owner to dispose of its co-ownership, which includes, among other things, the sale to co-owners or third parties if other co-owners are not interested. It follows from the foregoing that the co-owners of the real property, while acting according to their right, which is proportionate to the whole, without endangering the right of the other co-owners, cannot prevent the legal transaction of the aliquot part of the real property of any of the co-owners who wishes to exercise that right.
31. Turning to the relevant provision of Article 69(3) and (4) of the FBiH Law on Enforcement Procedure, it follows that the subject of enforcement may be the entire property in which the aliquot parts are held by other co-owners (who are not enforcement debtors). It also follows that there is no requirement that the other co-owners give their prior consent for the purpose of the entire property to be sold in order to settle the debt, which is not theirs.
32. First of all, the Constitutional Court notes that it follows from the provision of Article 69(3) and (4) of the Law on Enforcement Procedure that the court, in the enforcement procedure, may decide to

sell the entire property if it estimates that the sale price of the co-ownership part would be significantly higher. In this case, the court, in the enforcement procedure, applies the procedure prescribed under the Law on Non-Contentious Procedure (Articles from 161 through 167 of the FBiH Law). The relevant provisions of the said Law prescribe the possibility of physical division of real property resulting either in an agreement of the parties or in a civil division. Therefore, the result is the legal turnover of the co-ownership parts (to one of the co-owners or by sale to third parties) and the settlement of the co-owners against the amount obtained by the sale. In addition, analogous to the pre-emptive right of the co-owners under the relevant provisions of the Law on Property Rights, other co-owners under the provision of Article 69(6) of the FBiH Law on Enforcement Procedure, may require that the item under enforcement be ceded if they deposit the amount corresponding to the value of the enforcement claimant's portion in the asset. It follows from the foregoing that the other co-owners in the enforcement procedure, in analogy to the relevant provisions of the Law on Property Rights, cannot prevent the legal transaction of the entire real property in which they have aliquot parts.

33. Upon summarizing the above stated, it follows that (under the provisions of the Law on Property Rights (Article 27) and according to the procedure of the Law on Non-Contentious Procedure), only one co-owner may request the sale of his/her co-owner's portion on the property, regardless of whether (i) the other co-owners want it. A co-owner seeking to sell his/her co-owner's portion does not need consent of other co-owners but has to follow a procedure that aims to protect the other co-owners. In that context, he/she will first offer them his/her co-owner's portion, but if the other co-owners do not buy that co-owner's portion, the entire property will be ultimately sold during the auction that is enforced by the court. In this case, there should be no dispute between the co-owners, or the claim of one co-owner against the other, etc. Therefore, it is enough that one co-owner wants to sell his/her co-owner's portion and the other co-owners cannot prevent him/her from doing so unless they buy his/her co-owner's portion.

34. A different situation is governed by the challenged provisions of Article 69(2) through (10) of the Law on Enforcement Procedure of FBiH, with the specific possibility under paragraphs (3) and (4) of the mentioned provision, that the entire property (including portions of other co-owners who are not enforcement debtors) may be sold in the enforcement procedure without consent of other co-owners to settle the debt that only the co-owner has, who is at the same time the enforcement debtor. It follows that the legal position of the co-owners according to the challenged provisions and the provisions of the Law on Real Property (Article 27) is not similar in comparison as the



enforcement procedure allows for the sale of the entire property and not only of the co-ownership portions of the co-owner, who is at the same time the enforcement debtor, without the consent of other co-owners. That further implies that other co-owners who are not enforcement debtors cannot prevent the sale of their co-ownership portions by invoking their co-ownership right. The only way to prevent the sale of the entire property is to purchase the portion of the respective co-owner – the enforcement debtor. If, however, the whole property is sold, the other co-owners have the right to satisfaction in the amount of their co-ownership portions from the amount obtained by the sale, and before the settlement of all other persons participating in the enforcement proceedings (creditors, *etc.*).

35. It follows from the analysis of the relevant provisions of the Law that the ownership right, as well as the co-ownership right is limited. It is indisputable that the right to property permits interference but exclusively if certain conditions provided for in Article 1(2) of Protocol No. 1 to the European Convention are fulfilled. This interference, in the present case, is stipulated by the Law, *i.e.* the provisions of Article 69(3) and (4) of the Law on Enforcement Procedure, which do not include the consent of the other co-owners if the court orders the sale of the entire property to settle the debt of only one co-owner (enforcement debtor). However, the issue arises whether in such a situation a public interest of settling the debt of the enforcement debtor can be achieved without sacrificing the property of other co-owners. The Constitutional Court finds that the public interest of meeting the obligation towards the enforcement debtor can be pursued through sale of the enforcement debtors' co-ownership aliquot share and not through sale of entire property with co-ownership portions of (also) other co-owners. The possibility of selling the entire property in the enforcement procedure, including portions of other co-owners who are not enforcement debtors, without their consent, in order to settle the debt of only one co-owner does not meet, in the opinion of the Constitutional Court, the proportionality standard, for it places an excessive burden on other co-owners in relation to the co-owner - enforcement debtor, since the sale of the whole property is the result of his/her debt alone.
36. The Constitutional Court notes that it follows from the response of the Government that the proposed amendments to the provision in question go in the direction as regulated by the Law on Enforcement Procedure of the Republika Srpska, *i.e.* concerning the enforcement against a share co-owned by the co-owner who is not an enforcement debtor and who has no debt to the enforcement claimant, to seek explicit consent of such co-owner. Although the Constitutional Court's task in the present case is to examine the compatibility of the applicable provisions of Article 69 of the Law on Enforcement Procedure with the standards of the right to property, which was done by the

Constitutional Court, without having an obligation to comment on the view of the Government, it follows that the aim of the mentioned amendments was the harmonization of the regulations of the Federation of Bosnia and Herzegovina and Republika Srpska, which is in accordance with the principles of the rule of law and legal certainty.

37. Bearing in mind the above stated, as well as the abovementioned standards of property rights, the Constitutional Court holds that the disputed provision of Article 69(3) and (4) of the Law on Enforcement Procedure is not in accordance with Article II(3)(k) of the Constitution of Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention. The Constitutional Court notes that during the examination it confined itself to Article 69(3) and (4) of Law on Enforcement Procedure, which essentially concern the sale of property in an enforcement procedure for the purpose of settling a debt which does not belong to all co-owners but exclusively to the co-owner – enforcement debtor, while other paragraphs of Article 69 (2, 5, 6, 7, 8, 9 and 10) of the Law on Enforcement Procedure do not at all raise the issue of compatibility with the standards of the right to property referred to in the cited provision of the Constitution.
38. In view of the above, the Constitutional Court concludes that Article 69(3) and (4) of the Law on Enforcement Procedure of the FBiH is not compatible with Article II(3)(k) of the Constitution Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention.

## **VII. Conclusion**

39. The Constitutional Court concludes that Article 69(3) and (4) of the Law on Enforcement Procedure of F BiH is not compatible with Article II(3)(k) of the Constitution Bosnia and Herzegovina and Article 1 of Protocol No. 1 to the European Convention, as they place an excessive burden on other co-owners in relation to the co-owner - enforcement debtor, whose debt is settled in the enforcement procedure by the sale of the entire property, including co-ownership portions of other co-owners, which is in contravention of the proportionality standard.
40. Pursuant to Article 59(1) and (2) and Article 61(1) and (4) of the Rules of the Constitutional Court, the Constitutional Court decided as stated in the enacting clause of this decision.
41. According to Article VI(5) the Constitution of Bosnia and Herzegovina, the decisions of the Constitutional Court shall be final and binding.

Zlatko M. Knežević

President  
Constitutional Court of Bosnia and Herzegovina