# HR's op-ed in Nezavisne novine: Resolution of State and Defense Property is a Rule of Law Issue

State and Defense Property have recently again been the focus of the media, with certain public statements and arguments that these properties belong to the respective Entity. Those same statements argue that registration in the name of the state would change the Dayton Peace Agreement by taking – according to them – 3% of the territory of Republika Srpska. As "the final authority in theatre", according to Dayton, I feel duty-bound to address this and other misconceptions intentionally publicized by some political actors and their loyal collaborators.

In July 2012 the BiH Constitutional Court rendered a landmark decision which provided an authoritative interpretation of the BiH Constitution in this matter. In particular, it clarified two important issues under the BiH Constitution: 1) who is the rightful owner of State Property and 2) how State Property assets need to be apportioned between various levels of government. To the first question the Court established that *the State of BiH is the titleholder (owner) of all former SFRY/SRBiH property*. The ruling could not be more clear. Second, it ruled that the BiH Parliamentary Assembly has exclusive competence to regulate the matter of (further apportionment) of State and Defense Property, in other words, to decide which levels of government will get which properties.

The decision of the BiH Constitutional Court is final and binding and must be respected and implemented. Unfortunately, it appears that RS authorities have decided to ignore decisions of the BiH Constitutional Court, including the one on State Property, which makes it very clear that, under the Constitution of BiH, the State owns such properties. The RS authorities even went a step further in ignoring the rule of law by also ignoring the relevant decision of the Court of BiH on the prospective defense property location in Han Pijesak.

Instead of focusing their efforts on implementing the Courts' decisions, some political leaders choose to spend their energy on arguing cases that have already been decided. They continue to claim that State and Defense Property do not belong to the state, and that the registration of (State and) Defense Property would change the Dayton Peace Agreement by reducing the territory of one entity.

Let me explain the absurdity of their argument, which wrongly equates the concepts of territory and property. Public or private ownership over immovable property does not in any way affect the territory or the territorial jurisdiction of a State or Entity. Prospective defense locations or other State Property assets registered under the ownership of the State of BiH still remain part of the territory of the RS or the Federation. This argument is like saying that if one buys a piece of land in the RS or the FBiH, this will reduce the territory of the respective entity. Of course, it will not!

Furthermore, the issue of ownership over State Property is often wrongly confused with the issue of constitutional competencies. In this context, the claim is that the State of BiH cannot be the owner of State and Defense Property, since the 'regulation of property relations' represents a constitutional competence of the entities. This simply makes no sense! To explain in simple terms, these are two separate issues. While the RS does have the constitutional responsibility and the authority to regulate property and contractual relations, as well as the protection of all forms of property within its territory, State and Defense Property are matters of constitutional law, whereby the State of BiH is the legal successor of the property of the former Socialist Federal Republic of Yugoslavia (SFRY) and the former Socialist Republic of BiH (SRBiH). The BiH Constitutional Court in its 2012 ruling explicitly established that the RS lacks the constitutional competence to regulate the legal matter of State and Defense Property, and that it is exclusively the competence of the BiH Parliamentary Assembly.

The issue of State and Defense Property is neither 'complex', nor 'impossible to resolve', as some claim. It can be resolved fairly quickly, if all relevant stakeholders would abide by the rule of law and the principles set by the BiH Constitutional Court. There is only one thing needed: the adoption of coherent state-level legislation by the BiH Parliamentary Assembly, in which the State of BiH, as the titleholder and owner of State Property, would apportion and transfer certain State Property assets to the Entities (and lower levels of government), in accordance with the principle of functionality, i.e. taking into account the respective constitutional and legal competencies and needs of all levels of authority.

The issue of the registration of prospective defense property is even easier. So-called "prospective defense property" is part of the wider category of State Property, and as property of the former SFRY/JNA it shares the

same legal status. However, in addition to the Constitution of BiH and the Succession Agreement, there are several other legal documents and political acts that make the process of registration of these locations under the ownership of the State of BiH very straightforward; the BiH Law on Defense, relevant BiH Presidency decisions, and the binding court verdict in the Han Pijesak case among them. The F BiH has already successfully registered 24 perspective defence locations.

The competent RS authorities, primarily the RS Administration for Geodetic and Property-Related Affairs, need to fully implement the BiH Court decision in the Han Pijesak case, which requires the “veliki Zep” location to be registered in the name of the State of BiH. The same must happen with all the prospective defense properties located in the Republika Srpska. The competent RS authorities are obligated by law to conduct these registrations as soon as possible. At the same time, I also urge all competent authorities at the level of BiH to begin work on preparation and adoption of adequate State Property legislation, in accordance with principles set by the BiH Constitutional Court. Such legislation would finally resolve the issues of State and Defense Property and would thus implement the first two objectives of the “5+2 Agenda”. This is the only way to move forward and successfully resolve this important issue.

Finally, everyone in this country, all citizens of all ethnicities on both sides of the Inter-Entity Boundary Line should, as a matter of principle, firmly stand behind decisions of the Courts. Rule of law is an absolute necessity for any functioning democracy because it protects everyone equally, holds those in positions of power accountable for their actions and allows all people equal access to justice. The time for change is now.